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Flood Insurance
Federal Emergency Management Agency

Food Additives
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Presidential Documents

Title 3—

The President

Proclamation 5348 of May 29, 1985

Very Special Arts U.S.A. Month, 1985

By the President of the United States of America

A Proclamation

Art is one of the most important forms of human expression. Whether as creators or as spectators, Americans participate in the arts in some form almost every day, and their lives are made richer by this activity. Art also brings us into contact with the rich aesthetic tradition of our civilization, while the art of other cultures can be one of the best introductions available for those who want to learn more about them.

The importance of art makes it essential that all Americans be able to make use of this unique resource. The National Committee, Arts with the Handicapped, is an educational affiliate of the John F. Kennedy Center for the Performing Arts. During the past eleven years, it has served as the coordinating agency for arts programs for disabled children, youth, and adults. The Very Special Arts Program that it sponsors provides ongoing arts programs for many Americans with disabilities.

The Very Special Arts Program makes it possible for disabled Americans to participate in the arts and enrich their lives in the same way as all other Americans. Through it, they can gain the opportunity for self-expression within the context of our rich cultural tradition. This program deserves the support and assistance of all Americans.

In recognition of the importance of arts education in the lives of everyone, including those with disabilities, and in celebration of Very Special Arts Programs throughout the country, the Congress, by Senate Joint Resolution 103, has designated the month of May 1985 as "Very Special Arts U.S.A. Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1985 as Very Special Arts U.S.A. Month. I encourage the people of the United States to observe this month with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-13379
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

Office of Management and Budget Information Collection Control Numbers and Miscellaneous Other Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The list of information collection requirements and the control numbers assigned by the Office of Management and Budget (OMB) are revised in the regulations governing the mandatory inspection of eggs and egg products (7 CFR Part 59). This action follows OMB's review and extension of approval of existing information collection and recordkeeping requirements in the regulation.

Authority citations are centralized in regulations governing mandatory and voluntary egg products inspection and voluntary poultry, rabbit, and egg grading (7 CFR Parts 55, 56, 59, and 70). They now conform to updated Administrative Committee of the Federal Register (ACFR) regulations governing the form and placement of such citations.

Duplicate displays of OMB control numbers are removed from regulations governing voluntary poultry and rabbit grading (7 CFR Part 70). These citations were inadvertently not removed from within the text when the information collection requirements and OMB control numbers were originally placed in table format.

These amendments make information collection requirements, OMB control numbers, and authority citations more convenient to locate and easier to use.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: D.M. Holbrook, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Building, Washington, D.C. 20250 (202–447–3506).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this amendment is merely administrative and is not subject to the requirements of Executive Order 12291. It involves the identification of information collection requirements and assignment of OMB control numbers pursuant to 5 CFR Part 1320, as well as the form and placement of authority citations and OMB control numbers pursuant to 1 CFR Part 21.

Administrative Procedure Act

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest because this amendment is nonsubstantive and imposes no new requirements. It merely eliminates repetition and gives uniformity to the way in which OMB control numbers and authority citations are displayed, making this information more helpful to the reader. Thus, good cause also is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Regulatory Flexibility Act

Since this rulemaking is exempt from the notice and comment provisions of the Administrative Procedure Act, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

Background

The Paperwork Reduction Act of 1980 was designed both "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." On March 31, 1983, OMB issued a final rule, 5 CFR Part 1320, implementing the provisions of the Paperwork Reduction Act of 1980. Among other provisions, the rule requires the display of OMB control numbers on collection of information requirements contained in agency rules adopted after public notice and comment. The control numbers provide a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as the Act requires. The Director of OMB, as the accountable individual in the Government, has assured that the information is needed, is not duplicative of information already collected, and is collected efficiently.

Each information collection requirement in the regulations is reviewed and evaluated periodically. In addition, every three years the Agency submits a clearance docket to OMB, based on the criteria in 5 CFR Part 1320, for review and extension of approval of existing information collection and recordkeeping requirements.

OMB approval of collection of information under 7 CFR Part 59 would have expired in April 1985. Prior to that the Agency submitted to OMB a revised clearance docket requesting approval of the information collection and recordkeeping requirements under 7 CFR Part 59. It also included sections of the regulation not previously listed, deleted one section inadvertently displayed as containing an information collection requirement, and requested that information collection and recordkeeping be approved under and assigned OMB No. 0581–0113. Previously, recordkeeping had a different OMB control number. A notice of the OMB review was published January 25, 1985 (50 FR 3579), and subsequently the clearance docket for 7 CFR Part 59 was approved by OMB.

Therefore, § 59.18 of 7 CFR Part 59 is updated by adding section numbers not previously displayed to the list of sections with information collection requirements, deleting one section number inadvertently displayed as containing an information collection requirement, and changing all control numbers to the current OMB assigned control number. The Agency has determined that this amendment is not substantive. It merely provides a convenient and current listing of the information collection requirements and

OMB control numbers in accordance with 5 CFR Part 1320.

The ACFR updated many of its regulations governing publication procedures effective April 29 (50 FR 12462). One requires authority citations to be centralized at the part level rather than at each section level, thus eliminating repetition, reducing pages in the CFR, saving printing costs, and being more helpful to the readers. Authority citations for 7 CFR Parts 55, 56, 59, and 70, that currently appear directly after the tables of content and before the regulatory text, will be stated in full. Citations following individual sections will be removed.

In 7 CFR Part 70, OMB control numbers were centralized in a table in § 70.6 in 1983. Prior to that time they had been placed parenthetically at the end of individual sections containing the information collection requirement. Parenthetical notations inadvertently left in §§ 70.76 and 70.77 after the table was codified will be removed.

List of Subjects

7 CFR Part 55

Egg products, Voluntary inspection service.

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

For the reasons set out in the preamble, 7 CFR is amended as follows:

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

7 CFR Part 55 is amended as follows:

1. The authority citation for Part 55 is revised to read as set forth below and the authority citations following all the sections in Part 55 are removed:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

7 CFR Part 56 is amended as follows:

2. The authority citation for Part 56 is revised to read as set forth below and the authority citations following all the sections in Part 56 are removed:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

7 CFR Part 59 is amended as follows:

3. The authority citation for Part 59 is revised to read as set forth below and the authority citations following all the sections in Part 59 are removed:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

4. In § 59.18, paragraph (b) is revised to read as follows:

§ 59.18 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

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§ 59.920	0581–0113
§ 59.930(f)	0581–0113
§ 59.960	0581–0113
§ 59.965	0581–0113

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS, AND U.S. CLASSES, STANDARDS, AND GRADES

7 CFR Part 70 is amended as follows:

5. The authority citation for Part 70 is revised to read as set forth below and the authority citations following all the sections in Part 70 are removed:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

§§ 70.76 and 70.77 [Amended]

6. Sections 70.76 and 70.77 are amended by removing the Office of Management and Budget control number following the text of each section.

Done at Washington, D.C., on: May 21, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–13150 Filed 5–31–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–ACE–13]

Designation of Transition Area; Macon, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Macon, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fower Memorial Airport, Macon, Missouri, utilizing the Macon VOR as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument

Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Fower Memorial Airport, Macon, Missouri, utilizing the Macon VOR as a navigational aid. The establishment of an instrument approach procedure, based on this approach aid, entails designation of a transition area at Macon, Missouri, at or above 700 feet above the ground within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

Discussion of Comments

On page 12314 of the **Federal Register** dated March 28, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Macon, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, by designating the following transition area:

Macon, Missouri

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Fower Memorial Airport (Latitude 39°43'40" N. Longitude 92°27'25" W.) and that airspace 3 miles either side of the Macon, Missouri, VORTAC 003° Radial extending from 5 miles radius to 8 miles NE of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)).

This amendment becomes effective at 0901 G.m.t. August 1, 1985.

Issued in Kansas City, Missouri, on May 21, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-13189 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ACE-03]

Designation of Transition Area; York, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at York, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the York, Nebraska Municipal Airport utilizing the York, Nebraska Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the York, Nebraska Municipal Airport utilizing the York NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at York, Nebraska, at or above 700 feet above the ground within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 13818 of the **Federal Register** dated April 8, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at York, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

York, Nebraska

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the York Municipal Airport (latitude 40°53'47" N., longitude 90°37'26" W.) within 3 miles each side of the York NDB (JYR) (latitude 40°53'51" N., longitude 97°37'01" W.) 188° bearing extending from the 5 mile radius to 8.5 miles southwest of the York NDB and within 3 miles each side of the York NDB 320° bearing extending from the 5 mile radius to 8.5 miles northwest of the York NDB.

This amendment becomes effective at 0901 G.m.t. August 1, 1985.

Issued in Kansas City, Missouri, on May 23, 1985.

Wiliam H. Pollard,

Acting Director, Central Region.

[FR Doc. 85–13188 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AAL–3]

Designation of Transition Area, Anvik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes a transition area at Anvik, AK, to provide aircraft conducting flight under Instrument Flight Rules (IFR) with exclusive use of that airspace when the flight visibility is less than 3 miles, thereby enhancing the safety of such operations. The circumstance which created the need for this action was the development of instrument approach procedures to the Anvik, AK, Airport.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist, (AAL–536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513–0087, telephone (907) 271–5902.

SUPPLEMENTARY INFORMATION:

History

On March 25, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Anvik, AK, Airport (50 FR 11708). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish the base of controlled airspace at 700 feet above the surface within a 5-mile radius of the Anvik, AK, Airport and a rectangular area 18.5 statute miles long by 14 statute miles wide on the 180° radial of the Anvik, AK, VOR. While this airspace designation would exclude aircraft from conducting flight under Visual Flight Rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under Instrument Flight Rules (IFR).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Anvik, AK [New]

That airspace extending upward from 700-feet above the surface within a 5-mile radius of the Anvik Airport (lat. 62°38'50" N., long. 160°11'18" W.); and within 9.5 miles west and 4.5 miles east of the (180 °M)(160 °T) radial from the Anvik VOR to 18.5 miles south of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Anchorage, Alaska, on May 21, 1985.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 85–13050 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 24664; Amdt. No. 324]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment

involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace, Aviation Safety.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on June 6, 1985/

John S. Kern,

Acting Director of Flight Operations.

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 324 EFFECTIVE DATE, JUNE 06, 1985

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

ATLANTIC ROUTES

A20 IS AMENDED TO READ IN PART

KENNEDY, NY VORTAC	OWENZ, OA FIX	MAA 45000
OWENZ, OA FIX	BERGH, OA FIX	21000 MAA 45000
BERGH, OA FIX	CHAMP, OA FIX	14000 MAA 45000

A23

KENNEDY, NY VORTAC	LEDES, OA FIX	2000 MAA 45000
LEDES, OA FIX	LANND, OA FIX	17000 MAA 45000
LANND, OA FIX	FLANN, OA FIX	4500 MAA 45000

R56

LANND, OA FIX	SLATN, OA FIX	17000 MAA 45000

§95.6004 VOR FEDERAL AIRWAY 4

IS AMENDED TO READ IN PART

TATOOSH, WA VORTAC *5000 - MRA	*JAWBN, WA FIX	5000
JAWBN, WA FIX *4000 - MRA	*LOFAL, WA FIX	7500

IS AMENDED TO DELETE

LARAMIE, WY VORTAC	FLEMS, WY FIX VIA N ALTER	11000
FLEMS, WY FIX VIA N ALTER	KYOTE, CO FIX VIA N ALTER	10000
KYOTE, CO FIX VIA N ALTER	NUNNS, CO FIX VIA N ALTER	9000
NUNNS, CO FIX VIA N ALTER	GILL, CO VORTAC VIA N ALTER	7000
GILL, CO VORTAC VIA N ALTER	DENVER, CO VORTAC VIA N ALTER	7000

§95.6006 VOR FEDERAL AIRWAY 6

IS AMENDED TO READ IN PART

NILES, MI FIX	SOUTH BEND, IN VORTAC	3000

§95.6008 VOR FEDERAL AIRWAY 8

IS AMENDED TO DELETE

BRYCE CANYON, UT VORTAC	*HANKSVILLE, UT VORTAC VIA S ALTER *11000 - MCA HANKSVILLE VORTAC, SW BND	13000

§95.6008 VOR FEDERAL AIRWAY 8—Continued

BRYCE CANYON, UT VORTAC	*GREEL, UT FIX VIA N ALTER *12000 - MRA **12800 - MOCA	**16000
GREEL, UT FIX VIA N ALTER	*SAKES, UT FIX VIA N ALTER *14000 - MCA SAKES FIX, W BND **12800 - MOCA	**16000
SAKES, UT FIX VIA N ALTER *9240 - MOCA	GRAND JUNCTION, CO VORTAC VIA N ALTER	
HANKSVILLE, UT VORTAC VIA S ALTER *8200 - MOCA	ANJUM, UT FIX VIA S ALTER	
ANJUM, UT FIX VIA S ALTER	GRAND JUNCTION, CO VORTAC VIA S ALTER	10800
GRAND JUNCTION, CO VORTAC VIA S ALTER	TRACI, CO FIX VIA S ALTER	9000
TRACI, CO FIX VIA S ALTER *9700 - MOCA	PACES, CO FIX VIA S ALTER	**11000
PACES, CO FIX VIA S ALTER	GLENO, CO FIX VIA S ALTER	3000
GLENO, CO FIX VIA S ALTER *14000 - MRA **12600 - MOCA #13600 MEA FOR ACFT WITH DME	*FURRS, CO FIX VIA S ALTER	#**13500
FURRS, CO FIX VIA S ALTER *14000 - MRA **11700 - MOCA #12500 MEA FOR ACFT WITH DME	*BRIMM, CO FIX VIA S ALTER	#**13600
BRIMM, CO FIX VIA S ALTER #13500 MEA FOR ACFT WITH DME	KREMMLING, CO VORTAC VIA S ALTER	#13500

§95.6009 VOR FEDERAL AIRWAY 9

IS AMENDED TO READ IN PART

PONTIAC, IL VORTAC	TRIDE, IL FIX	2600
TRIDE, IL FIX	ROCKFORD, IL VORTAC	2700
ROCKFORD, IL VORTAC	JANESVILLE, WI VORTAC	2700
JANESVILLE, WI VORTAC	MADISON, WI VOR/DME	2800
MADISON, WI VOR/DME	OSHKOSH, WI VORTAC	2800

IS DELETED

MC COMB, MS VORTAC VIA W ALTER *4200 - MRA	*BYRAM, MS FIX VIA W ALTER	2900

§95.6009 VOR FEDERAL AIRWAY 9—Continued

BYRAM, MS FIX VIA W ALTER	JACKSON, MS VORTAC VIA W ALTER	2900
JACKSON, MS VORTAC VIA W ALTER	GREENWOOD, MS VORTAC VIA W ALTER	2000

IS AMENDED TO DELETE

NEW ORLEANS, LA VORTAC VIA E ALTER	PICAYUNE, MS VORTAC VIA E ALTER	2000
PICAYUNE, MS VORTAC VIA E ALTER	MC COMB, MS VORTAC VIA E ALTER	2000
MC COMB, MS VORTAC VIA E ALTER *3400 - MRA	*BANDO, MS FIX VIA E ALTER	2000
BANDO, MS FIX VIA E ALTER	JACKSON, MS VORTAC VIA E ALTER	2000
JACKSON, MS VORTAC VIA E ALTER *3500 - MRA	*VAHNS, MS FIX VIA E ALTER	2000
VAHNS, MS FIX VIA E ALTER	GREENWOOD, MS VORTAC VIA E ALTER	2000

§95.6010 VOR FEDERAL AIRWAY 10

IS AMENDED TO READ IN PART

PLANO, IL FIX *2100 - MOCA	VAINS, IL FIX	*4000
NILES, IL FIX	SOUTH BEND, IN VORTAC	3000

IS AMENDED TO DELETE

VAINS, IL FIX	CHICAGO O'HARE, IL VOR/DME	2500

§95.6013 VOR FEDERAL AIRWAY 13

IS AMENDED BY ADDING

LAREDO, TX VORTAC *2000 - MOCA	MC ALLEN, TX VOR	*5000

IS DELETED

SHREVEPORT, LA VORTAC VIA W ALTER	CADOZ, TX FIX VIA W ALTER	2500
CADOZ, TX FIX VIA W ALTER	ATOMS, TX FIX VIA W ALTER	2600
ATOMS, TX FIX VIA W ALTER	TEXARKANA, AR VORTAC VIA W ALTER	2000

§95.6015 VOR FEDERAL AIRWAY 15

IS AMENDED TO READ IN PART

HOBBY, TX VOR/DME	NAVASOTA, TX VORTAC	2000

IS AMENDED TO DELETE

HOBBY, TX VOR/DME VIA W ALTER	SEALY, TX FIX VIA W ALTER	2000
SEALY, TX FIX VIA W ALTER *1700 - MOCA	PRARI, TX FIX VIA W ALTER	*3500
PRARI, TX FIX VIA W ALTER	COUTH, TX FIX VIA W ALTER	2000
COUTH, TX FIX VIA W ALTER	COLLEGE STATION, TX VORTAC VIA W ALTER	1900
COLLEGE STATION, TX VORTAC VIA W ALTER *1900 - MOCA	BARBA, TX FIX VIA W ALTER	*2500
BARBA, TX FIX VIA W ALTER	BOSEL, TX FIX VIA W ALTER	3600
BOSEL, TX FIX VIA W ALTER	WACO, TX VORTAC VIA W ALTER	2700

§95.6016 VOR FEDERAL AIRWAY 16

IS AMENDED TO DELETE

*TUCSON, AZ VORTAC VIA S ALTER	GERON, AZ FIX VIA S ALTER SE BND NW BND	9000 7000
*6600 - MCA TUCSON VORTAC, SE BND		
GERON, AZ FIX VIA S ALTER	COCHISE, AZ VORTAC VIA S ALTER	9500
COLUMBUS, NM VORTAC VIA N ALTER	HUBEY, NM FIX VIA N ALTER	9000
HUBEY, NM FIX VIA N ALTER	EL PASO, TX VORTAC VIA N ALTER	9200
WINK, TX VORTAC VIA S ALTER	NOTES, TX FIX VIA S ALTER	5500
NOTES, TX FIX VIA S ALTER	MIDLAND, TX VORTAC VIA S ALTER	5000
MIDLAND, TX VORTAC VIA S ALTER	BIG SPRING, TX VORTAC VIA S ALTER	4400

§95.6017 VOR FEDERAL AIRWAY 17

IS AMENDED TO READ IN PART

COTULLA, TX VORTAC	MILET, TX FIX	2500

IS DELETED

MC ALLEN, TX VOR VIA W ALTER *1900 - MOCA	LAREDO, TX VORTAC VIA W ALTER	*5000
COTULLA, TX VORTAC VIA E ALTER *1800 - MOCA	MILET, TX FIX VIA E ALTER	*2500

FROM	TO	MEA
§95.6017 VOR FEDERAL AIRWAY 17—Continued		
MILET, TX FIX VIA E ALTER *1900 - MOCA	LEMIG, TX FIX VIA E ALTER	*2500
LEMIG, TX FIX VIA E ALTER	SAN ANTONIO, TX VORTAC VIA E ALTER	3000
SAN ANTONIO, TX VORTAC VIA W ALTER	DENTS, TX FIX VIA W ALTER	[illegible]
DENTS, TX FIX VIA W ALTER *3500 - MRA **2700 - MOCA	*CEDIL, TX FIX VIA W ALTER	**3400
CEDIL, TX FIX VIA W ALTER	AUSTIN, TX VORTAC VIA W ALTER	3000
AUSTIN, TX VORTAC VIA E ALTER	HUTTO, TX FIX VIA E ALTER	2700
HUTTO, TX FIX VIA E ALTER *1900 - MOCA	TRACE, TX FIX VIA E ALTER	*2700
TRACE, TX FIX VIA E ALTER *1800 - MOCA	BARBA, TX FIX VIA E ALTER	*2700
BARBA, TX FIX VIA E ALTER	BOSEL, TX FIX VIA E ALTER	3600
BOSEL, TX FIX VIA E ALTER	WACO, TX VORTAC VIA E ALTER	2700
OKLAHOMA CITY, OK VORTAC VIA W ALTER *4300 - MRA	*CURRI, OK FIX VIA W ALTER	3500
CURRI, OK FIX VIA W ALTER *3100 - MOCA	ROLLS, OK FIX VIA W ALTER	*6500
ROLLS, OK FIX VIA W ALTER	GAGE, OK VORTAC VIA W ALTER	[illegible]
§95.6018 VOR FEDERAL AIRWAY 18 **IS DELETED**		
MONROE, LA VORTAC VIA N ALTER *2800 - MRA **1900 - MOCA	*PECKS, MS FIX VIA N ALTER	**2300
PECKS, MS FIX VIA N ALTER	JACKSON, MS VORTAC VIA N ALTER	[illegible]
MONROE, LA VORTAC VIA S ALTER *3000 - MRA	*ALTOS, LA FIX VIA S ALTER	2000
ALTOS, LA FIX VIA S ALTER *3400 - MRA **1800 - MOCA	*BOLTS, MS FIX VIA S ALTER	**2300
BOLTS, MS FIX VIA S ALTER	JACKSON, MS VORTAC VIA S ALTER	[illegible]
JACKSON, MS VORTAC VIA S ALTER *3300 - MRA **1900 - MOCA	*FANEN, MS FIX VIA S ALTER	**3000
FANEN, MS FIX VIA S ALTER *2000 - MOCA	MERIDIAN, MS VORTAC VIA S ALTER	*3000
VULCAN, AL VORTAC VIA N ALTER	HOKES, AL FIX VIA N ALTER	[illegible]
HOKES, AL FIX VIA N ALTER *4000 - MOCA	ROME, GA VORTAC VIA N ALTER	*5000

FROM	TO	MEA
§95.6018 VOR FEDERAL AIRWAY 18—Continued		
ROME, GA VORTAC VIA N ALTER *5000 - MRA	*NELLO, GA FIX VIA N ALTER	5600
NELLO, GA FIX VIA N ALTER *5000 - MRA	*AWSON, GA FIX VIA N ALTER	5600
AWSON, GA FIX VIA N ALTER	CORCE, GA FIX VIA N ALTER	4600
CORCE, GA FIX VIA N ALTER	IRMOS, GA FIX VIA N ALTER	3800
IRMOS, GA FIX VIA N ALTER	ATHENS, GA VORTAC VIA N ALTER	3000
ATHENS, GA VORTAC VIA N ALTER *2400 - MOCA	DANBI, GA FIX VIA N ALTER	*2500
DANBI, GA FIX VIA N ALTER *2000 - MOCA	AUGUSTA, GA VORTAC VIA N ALTER	*2500
AUGUSTA, GA VORTAC VIA S ALTER *1900 - MOCA	SARDY, GA FIX VIA S ALTER	*2200
SARDY, GA FIX VIA S ALTER	ALLENDALE, SC VOR VIA S ALTER	[illegible]
ALLENDALE, SC VOR VIA S ALTER	CHARLESTON, SC VORTAC VIA S ALTER	[illegible]
§95.6019 VOR FEDERAL AIRWAY 19 **IS AMENDED TO DELETE**		
CHEYENNE, WY VORTAC VIA E ALTER	DOUGLAS, WY VORTAC VIA E ALTER	[illegible]
DOUGLAS, WY VORTAC VIA E ALTER	CASPER, WY VORTAC VIA E ALTER	[illegible]
§95.6020 VOR FEDERAL AIRWAY 20 **IS AMENDED TO READ IN PART**		
BEAUMONT, TX VORTAC	LAKE CHARLES, LA VORTAC	[illegible]
IS DELETED		
LAFAYETTE, LA VORTAC VIA S ALTER	TIBBY, LA VORTAC VIA S ALTER	1700
TIBBY, LA VORTAC VIA S ALTER	NEW ORLEANS, LA VORTAC VIA S ALTER	1700
SEMMES, AL VORTAC VIA S ALTER	MONROEVILLE, AL VORTAC VIA S ALTER	[illegible]
MONTGOMERY, AL VORTAC VIA N ALTER	SEMAN, AL FIX VIA N ALTER	[illegible]
SEMAN, AL FIX VIA N ALTER *3300 - MOCA	GIFFY, AL FIX VIA N ALTER	*4000
GIFFY, AL FIX VIA N ALTER *3400 - MOCA	FELTO, AL FIX VIA N ALTER	[illegible]
FELTO, AL FIX VIA N ALTER *4000 - MOCA	ROME, GA VORTAC VIA N ALTER	*5000

FROM	TO	MEA
§95.6020 VOR FEDERAL AIRWAY 20—Continued		
ROME, GA VORTAC VIA N ALTER *5000 - MRA	*NELLO, GA FIX VIA N ALTER	5600
NELLO, GA FIX VIA N ALTER	TURNN, GA FIX VIA N ALTER	6000
TURNN, GA FIX VIA N ALTER	TOCCOA, GA VORTAC VIA N ALTER	5000
TOCCOA, GA VORTAC VIA N ALTER	PELAM, SC FIX VIA N ALTER	[illegible]
PELAM, SC FIX VIA N ALTER *2400 - MOCA	SPARTANBURG, SC VORTAC VIA N ALTER	*3000
IS AMENDED TO DELETE		
BEAUMONT, TX VORTAC VIA N ALTER	LAKE CHARLES, LA VORTAC VIA N ALTER	1700
LAKE CHARLES, LA VORTAC VIA N ALTER	HATHA, LA FIX VIA N ALTER	1700
HATHA, LA FIX VIA N ALTER	LAFAYETTE, LA VORTAC VIA N ALTER	2100
NEW ORLEANS, LA VORTAC VIA N ALTER	PICAYUNE, MS VORTAC VIA N ALTER	[illegible]
PICAYUNE, MS VORTAC VIA N ALTER	SEMMES, AL VORTAC VIA N ALTER	[illegible]
§95.6024 VOR FEDERAL AIRWAY 24 **IS AMENDED BY [illegible]**		
FARMM, IL FIX	NORTHBROOK, IL VORTAC	2700
IS AMENDED TO READ IN PART		
LONE ROCK, WI VORTAC *2800 - MOCA	GLARS, WI FIX	*3400
GLARS, WI FIX *2200 - MOCA	JANESVILLE, WI VORTAC	[illegible]
JANESVILLE, WI VORTAC *2300 - MOCA	FARMM, IL FIX	*2500
§95.6035 VOR FEDERAL AIRWAY 35 **IS DELETED**		
FORT MYERS, FL VORTAC VIA W ALTER	SARASOTA, FL VORTAC VIA W ALTER	[illegible]
SARASOTA, FL VORTAC VIA W ALTER	SAINT PETERSBURG, FL VORTAC VIA W ALTER	[illegible]
SAINT PETERSBURG, FL VORTAC VIA E ALTER	BAYPO, FL FIX VIA E ALTER	[illegible]
BAYPO, FL FIX VIA E ALTER *3000 - MRA **1500 - MOCA	*HOMOE, FL FIX VIA E ALTER	**3000
HOMOE, FL FIX VIA E ALTER	GAINESVILLE, FL VORTAC VIA E ALTER	3000
GAINESVILLE, FL VORTAC VIA E ALTER	CROSS CITY, FL VORTAC VIA E ALTER	[illegible]

FROM	TO	MEA
§95,6035 VOR FEDERAL AIRWAY 35—Continued		
SUGARLOAF MOUNTAIN, NC VORTAC VIA W ALTER	WEAKS, NC FIX VIA W ALTER	[illegible]
WEAKS, NC FIX VIA W ALTER	UNICO, TN FIX VIA W ALTER	7500
UNICO, TN FIX VIA W ALTER	HOLSTON MOUNTAIN, TN VORTAC VIA W ALTER	7000
§95.6049 VOR FEDERAL AIRWAY 49 **IS DELETED**		
VULCAN, AL VORTAC VIA E ALTER	DECATUR, AL VOR/DME VIA E ALTER	[illegible]
VULCAN, AL VORTAC VIA W ALTER *2200 - MOCA	JOHNY, AL FIX VIA W ALTER	*2800
JOHNY, AL FIX VIA W ALTER *2100 - MOCA	DECATUR, AL VOR/DME VIA W ALTER	[illegible]
DECATUR, AL VOR/DME VIA W ALTER	TANNE, AL FIX VIA W ALTER	[illegible]
TANNE, AL FIX VIA W ALTER *2300 - MOCA	GRAHAM, TN VORTAC VIA W ALTER	*3000
GRAHAM, TN VORTAC VIA W ALTER *2100 - MOCA	VALER, TN FIX VIA W ALTER	[illegible]
VALER, TN FIX VIA W ALTER *2000 - MOCA	TEACH, TN FIX VIA W ALTER	[illegible]
TEACH, TN FIX VIA W ALTER *2000 - MOCA	BOWLING GREEN, KY VORTAC VIA W ALTER	*2600
§95.6056 VOR FEDERAL AIRWAY 56 **IS AMENDED TO DELETE**		
AUGUSTA, GA VORTAC VIA S ALTER	LASHE, SC FIX VIA S ALTER	2900
LASHE, SC FIX VIA S ALTER	COLUMBIA, SC VORTAC VIA S ALTER	[illegible]
§95.6066 VOR FEDERAL AIRWAY 66 **IS DELETED**		
COLUMBUS, NM VORTAC VIA N ALTER	HUBEY, NM FIX VIA N ALTER	[illegible]
HUBEY, NM FIX VIA N ALTER	EL PASO, TX VORTAC VIA N ALTER	9200
IS AMENDED TO DELETE		
ATHENS, GA VORTAC VIA S ALTER	VESTO, GA FIX VIA S ALTER	2500
VESTO, GA FIX VIA S ALTER	GREENWOOD, SC VORTAC VIA S ALTER	2500

FROM	TO	MEA
§95.6066 VOR FEDERAL AIRWAY 66—Continued		
GREENWOOD, SC VORTAC VIA S ALTER *2100 - MOCA	SANDHILLS, NC VORTAC VIA S ALTER	*4000
SANDHILLS, NC VORTAC VIA S ALTER	RALEIGH-DURHAM, NC VORTAC VIA S ALTER	2000
§95.6068 VOR FEDERAL AIRWAY 68		
IS DELETED		
HOBBS, NM VORTAC VIA S ALTER	GOMIT, TX FIX VIA S ALTER	5200
GOMIT, TX FIX VIA S ALTER	MIDLAND, TX VORTAC VIA S ALTER	5000
MIDLAND, TX VORTAC VIA S ALTER	DERIC, TX FIX VIA S ALTER	4400
DERIC, TX FIX VIA S ALTER *4200 - MOCA	SAN ANGELO, TX VORTAC VIA S ALTER	*5000
SAN ANGELO, TX VORTAC VIA S ALTER	JUNCTION, TX VORTAC VIA S ALTER	4000
JUNCTION, TX VORTAC VIA S ALTER *3400 - MOCA	CENTER POINT, TX VORTAC VIA S ALTER	*4000
CENTER POINT, TX VORTAC VIA S ALTER *3200 - MOCA	MEDINA, TX FIX VIA S ALTER	*3800
MEDINA, TX FIX VIA S ALTER *2800 - MOCA	SAN ANTONIO, TX VORTAC VIA S ALTER	*3800
§95.6069 VOR FEDERAL AIRWAY 69		
IS AMENDED TO DELETE		
BOJAK, IL FIX	KEDZI, IL NDB	2500
§95.6070 VOR FEDERAL AIRWAY 70		
IS AMENDED TO READ IN PART		
PALACIOS, TX VORTAC	SCHOLES, TX VORTAC	1800
SCHOLES, TX VORTAC	SABINE PASS, TX VORTAC	2000
IS DELETED		
LAFAYETTE, LA VORTAC VIA N ALTER	ZUNOE, LA FIX VIA N ALTER	1700
ZUNOE, LA FIX VIA N ALTER	BATON ROUGE, LA VORTAC VIA N ALTER	1800
§95.6071 VOR FEDERAL AIRWAY 71		
IS DELETED		
BATON ROUGE, LA VORTAC VIA E ALTER	NATCHEZ, MS VOR/DME VIA E ALTER	2000

FROM	TO	MEA
§95.6071 VOR FEDERAL AIRWAY 71—Continued		
NATCHEZ, MS VOR/DME VIA W ALTER *6000 - MCA TULLO FIX, SE BND **1800 - MOCA	*TULLO, LA FIX VIA W ALTER	**6000
TULLO, LA FIX VIA W ALTER	MONROE, LA VORTAC VIA W ALTER	2000
§95.6076 VOR FEDERAL AIRWAY 76		
IS DELETED		
LUBBOCK, TX VORTAC VIA N ALTER	BIG SPRING, TX VORTAC VIA N ALTER	5100
LLANO, TX VORTAC VIA N ALTER	AUSTIN, TX VORTAC VIA N ALTER	3000
LLANO, TX VORTAC VIA S ALTER	FELTZ, TX FIX VIA S ALTER	2300
FELTZ, TX FIX VIA S ALTER	CAPET, TX FIX VIA S ALTER	3000
CAPET, TX FIX VIA S ALTER	AUSTIN, TX VORTAC VIA S ALTER	3000
AUSTIN, TX VORTAC VIA N ALTER	PODDS, TX FIX VIA N ALTER	2500
PODDS, TX FIX VIA N ALTER *1900 - MOCA	INDUSTRY, TX VORTAC VIA N ALTER	*2500
INDUSTRY, TX VORTAC VIA S ALTER	EAGLE LAKE, TX VOR/DME VIA S ALTER	2000
EAGLE LAKE, TX VOR/DME VIA S ALTER	BLUMS, TX FIX VIA S ALTER	2100
BLUMS, TX FIX VIA S ALTER	HOBBY, TX VOR/DME VIA S ALTER	2400
§95.6085 VOR FEDERAL AIRWAY 85		
IS AMENDED TO DELETE		
MEDICINE BOW, WY VORTAC VIA W ALTER *9700 - MRA	*ALCOS, WY FIX VIA W ALTER	9900
ALCOS, WY FIX VIA W ALTER	CASPER, WY VORTAC VIA W ALTER N BND S BND	*8400 *9700
*8400 - MOCA		
§95.6092 VOR FEDERAL AIRWAY 92		
IS AMENDED BY ADDING		
BEBEE, IL FIX *3100 - MCA NILES FIX, N BND	*NILES, IL FIX	3400
NILES, IL FIX	CHICAGO HEIGHTS, IL VORTAC	2000

FROM	TO	MEA
§95.6092 VOR FEDERAL AIRWAY 92—Continued		
IS AMENDED TO DELETE		
JOLIET, IL VORTAC	CHICAGO HEIGHTS, IL VORTAC	2500
§95.6094 VOR FEDERAL AIRWAY 94		
IS DELETED		
MONROE, LA VORTAC VIA S ALTER	GREENVILLE, MS VOR/DME VIA S ALTER	2000
GREENVILLE, MS VOR/DME VIA N ALTER	KOCHA, MS FIX VIA N ALTER	2000
KOCHA, MS FIX VIA N ALTER *1800 - MOCA	WALET, MS FIX VIA N ALTER	*5000
WALET, MS FIX VIA N ALTER *1800 - MOCA	HOLLY SPRINGS, MS VORTAC VIA N ALTER	*2500
IS AMENDED TO DELETE		
DEMING, NM VORTAC VIA S ALTER *7600 - MOCA	HUBEY, NM FIX VIA S ALTER	*9000
HUBEY, NM FIX VIA S ALTER	NEWMAN, TX VORTAC VIA S ALTER	9200
NEWMAN, TX VORTAC VIA N ALTER	WHOLE, TX FIX VIA N ALTER	[illegible]
WHOLE, TX FIX VIA N ALTER	MAYFY, TX FIX VIA N ALTER	9000
MAYFY, TX FIX VIA N ALTER *10500 - MRA **9000 - MOCA	*CONNE, TX FIX VIA N ALTER	**10500
CONNE, TX FIX VIA N ALTER	SALT FLAT, TX VORTAC VIA N ALTER	9000
§95.6095 VOR FEDERAL AIRWAY 95		
IS DELETED		
PHOENIX, AZ VORTAC VIA W ALTER	*KNOBB, AZ FIX VIA W ALTER N BND S BND	[illegible]
*8000 - MRA		
KNOBB, AZ FIX VIA W ALTER *14000 - MCA FERER FIX, NE BND **7500 - MOCA	*FERER, AZ FIX VIA W ALTER	**8000
FERER, AZ FIX VIA W ALTER *9600 - MOCA	WINSLOW, AZ VORTAC VIA W ALTER	*14000

FROM	TO	MEA
§95.6097 VOR FEDERAL AIRWAY 97		
IS AMENDED BY ADDING		
CHICAGO HEIGHTS, IL VORTAC *3100 - MCA NILES FIX, N BND	*NILES, IL FIX	2000
NILES, IL FIX	BEBEE, IL FIX	3400
IS AMENDED TO READ IN PART		
FARMM, IL FIX *2300 - MOCA	JANESVILLE, WI VORTAC	*2900
IS DELETED		
MIAMI, FL VORTAC VIA E ALTER	GILBI, FL FIX VIA E ALTER	2000
GILBI, FL FIX VIA E ALTER *1400 - MOCA	LA BELLE, FL VORTAC VIA E ALTER	*2000
IS AMENDED TO DELETE		
CHICAGO O'HARE, IL VOR/DME	DRABB, IL FIX	2700
DRABB, IL FIX	FARMM, IL FIX	[illegible]
JANESVILLE, WI VORTAC VIA W ALTER	GLARS, WI FIX VIA W ALTER	[illegible]
GLARS, WI FIX VIA W ALTER *2800 - MOCA	LONE ROCK, WI VORTAC VIA W ALTER	*3400
§95.6102 VOR FEDERAL AIRWAY 102		
IS DELETED		
SALT FLAT, TX VORTAC VIA S ALTER	CARLSBAD, NM VORTAC VIA S ALTER	8000
§95.6105 VOR FEDERAL AIRWAY 105		
IS DELETED		
DRAKE, AZ VORTAC VIA E ALTER	PEACH SPRINGS, AZ VORTAC VIA E ALTER	[illegible]
PEACH SPRINGS, AZ VORTAC VIA E ALTER *9000 - MCA MEADS FIX, SE BND	*MEADS, NV FIX VIA E ALTER	[illegible]
MEADS, NV FIX VIA E ALTER	LAS VEGAS, NV VORTAC VIA E ALTER	6000
COALDALE, NV VORTAC VIA E ALTER	MINA, NV VORTAC VIA E ALTER	11500
MINA, NV VORTAC VIA E ALTER	YERIN, NV FIX VIA E ALTER	11500
YERIN, NV FIX VIA E ALTER	CHIME, NV FIX VIA E ALTER NW BND SE BND	10000 11500

FROM	TO	MEA
§95.6105 VOR FEDERAL AIRWAY 105—Continued		
CHIME, NV FIX VIA E ALTER	RENO, NV VORTAC VIA E ALTER	10000
§95.6114 VOR FEDERAL AIRWAY 114		
IS AMENDED BY ADDING		
NEW ORLEANS, LA VORTAC SLIDD, LA FIX GULFPORT, MS VORTAC MINDO, MS FIX	SLIDD, LA FIX GULFPORT, MS VORTAC MINDO, MS FIX EATON, MS VORTAC	5000 1800 1800 2000
IS DELETED		
GREGG COUNTY, TX VORTAC VIA N ALTER *3000 - MRA	*WORKS, TX FIX VIA N ALTER	2300
WORKS, TX FIX VIA N ALTER	SHREVEPORT, LA VORTAC VIA N ALTER	3000
SHREVEPORT, LA VORTAC VIA N ALTER	KNELT, LA FIX VIA N ALTER	2300
KNELT, LA FIX VIA N ALTER *1700 - MOCA	COVEX, LA FIX VIA N ALTER	*3500
COVEX, LA FIX VIA N ALTER *6000 - MRA **1700 - MOCA	*NUBOY, LA FIX VIA N ALTER	**4500
NUBOY, LA FIX VIA N ALTER	BOYCE, LA FIX VIA N ALTER SE BND NW BND	2000 4500
BOYCE, LA FIX VIA N ALTER	ALEXANDRIA, LA VORTAC VIA N ALTER	2000
ALEXANDRIA, LA VORTAC VIA N ALTER	MUSHE, LA FIX VIA N ALTER	2000
MUSHE, LA FIX VIA N ALTER *3000 - MRA **1500 - MOCA	*WRACK, LA FIX VIA N ALTER	**4000
WRACK, LA FIX VIA N ALTER *1700 - MOCA	CLUNK, LA FIX VIA N ALTER	*5000
CLUNK, LA FIX VIA N ALTER *1400 - MOCA	WALKE, LA FIX VIA N ALTER	*2500
WALKE, LA FIX VIA N ALTER	NEW ORLEANS, LA VORTAC VIA N ALTER	1800
§95.6115 VOR FEDERAL AIRWAY 115		
IS AMENDED TO DELETE		
CHATTANOOGA, TN VORTAC VIA W ALTER	KNOXVILLE, TN VORTAC VIA W ALTER	3000

FROM	TO	MEA
§95.6116 VOR FEDERAL AIRWAY 116		
IS AMENDED BY ADDING		
WILLA, IL FIX *1800 - MOCA	NEPTS, MI FIX	*4000
IS AMENDED TO READ IN PART		
JOLIET, IL VORTAC	BOJAK, IL FIX	2500
§95.6129 VOR FEDERAL AIRWAY 129		
IS AMENDED TO READ IN PART		
HIBBING, MN VORTAC *3100 - MOCA	INTERNATIONAL FALLS, MN VORTAC	*3600
§95.6132 VOR FEDERAL AIRWAY 132		
IS AMENDED BY ADDING		
MEDICINE BOW, WY VORTAC MOIST, WY FIX	MOIST, WY FIX CHEYENNE, WY VORTAC	9500 9000
§95.6138 VOR FEDERAL AIRWAY 138		
IS AMENDED TO DELETE		
MEDICINE BOW, WY VORTAC VIA N ALTER MOIST, WY FIX VIA N ALTER	MOIST, WY FIX VIA N ALTER CHEYENNE, WY VORTAC VIA N ALTER	9500 9000
§95.6140 VOR FEDERAL AIRWAY 140		
IS AMENDED TO READ IN PART		
HARRISON, AR VOR	VILLO, AR FIX	3000
IS AMENDED TO DELETE		
TULSA, OK VORTAC VIA N ALTER ADAIR, OK FIX VIA N ALTER *2800 - MOCA	ADAIR, OK FIX VIA N ALTER RAZORBACK, AR VORTAC VIA N ALTER	2500 *3400
§95.6141 VOR FEDERAL AIRWAY 141		
IS AMENDED TO READ IN PART		
DRUNK, MA FIX *2500 - MRA **1500 - MOCA	*CELTS, MA FIX	**4000

FROM	TO	MEA
§95.6152 VOR FEDERAL AIRWAY 152		
IS DELETED		
SAINT PETERSBURG, FL VORTAC VIA S ALTER LAKELAND, FL VORTAC VIA S ALTER ORLANDO, FL VORTAC VIA S ALTER SMYRA, FL FIX VIA S ALTER	LAKELAND, FL VORTAC VIA S ALTER ORLANDO, FL VORTAC VIA S ALTER SMYRA, FL FIX VIA S ALTER ORMOND BEACH, FL VORTAC VIA S ALTER	2000 1700 2000 1600
§95.6157 VOR FEDERAL AIRWAY 157		
IS AMENDED TO READ IN PART		
MIAMI, FL VORTAC GILBI, FL FIX *1400 - MOCA	GILBI, FL FIX LA BELLE, FL VORTAC	2000 *2000
§95.6159 VOR FEDERAL AIRWAY 159		
IS AMENDED TO READ IN PART		
FORT LAUDERDALE, FL VOR/DME *1500 - MOCA NITNY, FL FIX *2500 - MOCA	NITNY, FL FIX TBIRD, FL FIX	*5000 *5000
IS DELETED		
*PRESK, FL FIX VIA S ALTER *2500 - MRA CERMO, FL FIX VIA S ALTER OCALA, FL VORTAC VIA E ALTER GAINESVILLE, FL VORTAC VIA E ALTER	CERMO, FL FIX VIA S ALTER OCALA, FL VORTAC VIA S ALTER GAINESVILLE, FL VORTAC VIA E ALTER GREENVILLE, FL VORTAC VIA E ALTER	5000 2000 2000 2000 MAA- 7000
§95.6163 VOR FEDERAL AIRWAY 163		
IS DELETED		
CORPUS CHRISTI, TX VORTAC VIA W ALTER ATHIS, TX FIX VIA W ALTER THREE RIVERS, TX VORTAC VIA W ALTER LEMIG, TX FIX VIA W ALTER SAN ANTONIO, TX VORTAC VIA W ALTER *2600 - MOCA GUADA, TX FIX VIA W ALTER *3200 - MOCA	ATHIS, TX FIX VIA W ALTER THREE RIVERS, TX VORTAC VIA W ALTER LEMIG, TX FIX VIA W ALTER SAN ANTONIO, TX VORTAC VIA W ALTER GUADA, TX FIX VIA W ALTER STONEWALL, TX VORTAC VIA W ALTER	1700 1800 2000 3000 *4000 *4000

FROM	TO	MEA
§95.6163 VOR FEDERAL AIRWAY 163—Continued		
STONEWALL, TX VORTAC VIA W ALTER *3200 - MOCA LLANO, TX VORTAC VIA W ALTER *5000 - MRA **2800 - MOCA BUILT, TX FIX VIA W ALTER ARDMORE, OK VORTAC VIA W ALTER ALEXX, OK FIX VIA W ALTER	LLANO, TX VORTAC VIA W ALTER *BUILT, TX FIX VIA W ALTER ACTON, TX VORTAC VIA W ALTER ALEXX, OK FIX VIA W ALTER OKLAHOMA CITY, OK VORTAC VIA W ALTER	*4000 **4500 3000 3000 2800
§95.6172 VOR FEDERAL AIRWAY 172		
IS AMENDED TO READ IN PART		
POLO, IL VORTAC	ELGIN, IL FIX	2700
IS AMENDED TO DELETE		
DUPAGE, IL VOR/DME	CHICAGO O'HARE, IL VOR/DME	2600
CHICAGO O'HARE, IL VOR/DME *2500 - MOCA NEPTS, MI FIX	NEPTS, MI FIX SOUTH BEND, IN VORTAC	*4000 2600
§95.6173 VOR FEDERAL AIRWAY 173		
IS AMENDED TO DELETE		
BOJAK, IL FIX	KEDZI, IL NDB	2500
§95.6177 VOR FEDERAL AIRWAY 177		
IS AMENDED TO DELETE		
MADISON, WI VOR/DME VIA W ALTER DELLS, WI VORTAC VIA W ALTER	DELLS, WI VORTAC VIA W ALTER STEVENS POINT, WI VORTAC VIA W ALTER	3200 3000
§95.6185 VOR FEDERAL AIRWAY 185		
IS AMENDED TO READ IN PART		
SARDY, GA FIX	AUGUSTA, GA VORTAC	2200
IS AMENDED TO DELETE		
SUGARLOAF MOUNTAIN, NC VORTAC VIA E ALTER WEAKS, NC FIX VIA E ALTER *5500 - MCA OTWAY FIX, SE BND	WEAKS, NC FIX VIA E ALTER *OTWAY, TN FIX VIA E ALTER	[illegible] 7000

FROM	TO	MEA

§95.6185 VOR FEDERAL AIRWAY 185—Continued

OTWAY, TN FIX	*PENCE, TN FIX	
VIA E ALTER	VIA E ALTER	4000
*4000 - MCA PENCE FIX, NE BND		
PENCE, TN FIX	KNOXVILLE, TN VORTAC	
VIA E ALTER	VIA E ALTER	[illegible]

§95.6187 VOR FEDERAL AIRWAY 187

IS AMENDED TO DELETE

FARMINGTON, NM VORTAC	PLATA, CO	
VIA W ALTER	VIA W ALTER	10000
PLATA, CO	CORTEZ, CO VOR/DME	
VIA W ALTER	VIA W ALTER	10600
CORTEZ, CO VOR/DME	DOVE CREEK, CO VORTAC	
VIA W ALTER	VIA W ALTER	[illegible]
DOVE CREEK, CO VORTAC	PAROX, CO FIX	
VIA W ALTER	VIA W ALTER	12000
PAROX, CO FIX	*GRAND JUNCTION, CO VORTAC	
VIA W ALTER	VIA W ALTER	12000
*10400 - MCA GRAND JUNCTION VORTAC, S BND		

§95.6198 VOR FEDERAL AIRWAY 198

IS AMENDED TO READ IN PART

WEMAR, TX FIX	EAGLE LAKE, TX VOR/DME	[illegible]
BROOKLEY, AL VORTAC	LOXLY, AL FIX	[illegible]
LOXLY, AL FIX	CRESTVIEW, FL VORTAC	*3000
*2400 - MOCA		

IS DELETED

JUNCTION, TX VORTAC	ARPER, TX FIX	
VIA N ALTER	VIA N ALTER	[illegible]
*3400 - MOCA		
ARPER, TX FIX	STONEWALL, TX VORTAC	
VIA N ALTER	VIA N ALTER	*4000
*3300 - MOCA		
STONEWALL, TX VORTAC	GOBBY, TX FIX	
VIA N ALTER	VIA N ALTER	3500
GOBBY, TX FIX	DENTS, TX FIX	
VIA N ALTER	VIA N ALTER.	*3500
*2800 - MOCA		
DENTS, TX FIX	MARCS, TX FIX	
VIA N ALTER	VIA N ALTER	*3500
*2600 - MOCA		
MARCS, TX FIX.	SEEDS, TX FIX	
VIA N ALTER	VIA N ALTER	*4500
*2000 - MOCA		
SEEDS, TX FIX	WEMAR, TX FIX	
VIA N ALTER	VIA N ALTER	[illegible]
WEMAR, TX FIX	EAGLE LAKE, TX VOR/DME	
VIA N ALTER	VIA N ALTER	2100
EAGLE LAKE, TX VOR/DME	SCHOLES, TX VORTAC	
VIA S ALTER	VIA S ALTER	2500
SCHOLES, TX VORTAC	SABINE PASS, TX VORTAC	
VIA S ALTER	VIA S ALTER	1700

FROM	TO	MEA

§95.6202 VOR FEDERAL AIRWAY 202

IS AMENDED BY ADDING

*TUCSON, AZ VORTAC	GERON, AZ FIX	
	SE BND	[illegible]
	NW BND	7000
*6600 - MCA TUCSON VORTAC, SE BND		
GERON, AZ FIX	COCHISE, AZ VORTAC	9500

§95.6207 VOR FEDERAL AIRWAY 207

IS AMENDED TO DELETE

DENVER, CO VORTAC	WENNY, CO FIX	
VIA W ALTER.	VIA W ALTER	7000
WENNY, CO FIX	GILL, CO VORTAC	
VIA W ALTER	VIA W ALTER	
	SW BND	[illegible]
	NE BND	7000

§95.6210 VOR FEDERAL AIRWAY 210

IS AMENDED TO DELETE

FARMINGTON, NM VORTAC	TURLY, NM FIX	
VIA S ALTER.	VIA S ALTER	[illegible]
TURLY, NM FIX	MANUL, NM FIX	
VIA S ALTER.	VIA S ALTER	
	E BND	13000
	W BND	9600
MANUL, NM FIX	RODDS, CO FIX	
VIA S ALTER.	VIA S ALTER	13000
RODDS, CO FIX	ALAMOSA, CO VORTAC	
VIA S ALTER.	VIA S ALTER	
	SW BND	13000
	NE BND	10000

§95.6212 VOR FEDERAL AIRWAY 212

IS DELETED

ALEXANDRIA, LA VORTAC	LARTO, LA FIX	
VIA N ALTER	VIA N ALTER	[illegible]
LARTO, LA FIX	NATCHEZ, MS VOR/DME	
VIA N ALTER	VIA N ALTER	2000
NATCHEZ, MS VOR/DME	MC COMB, MS VORTAC	
VIA N ALTER.	VIA N ALTER	2000

§95.6222 VOR FEDERAL AIRWAY 222

IS AMENDED TO READ IN PART

JUNCTION, TX VORTAC	STONEWALL, TX VORTAC	[illegible]
STONEWALL, TX VORTAC	MARCS, TX FIX	3500
BEAUMONT, TX VORTAC	LAKE CHARLES, LA VORTAC	[illegible]
LAKE CHARLES, LA VORTAC	MAXON, LA FIX	2000

§95.6225 VOR FEDERAL AIRWAY 225

IS DELETED

KEY WEST, FL VORTAC	CORGI, FL FIX	
VIA E ALTER.	VIA E ALTER	1500

FROM	TO	MEA

§95.6225 VOR FEDERAL AIRWAY 225—Continued

CORGI, FL FIX	GOODY, FL FIX	
VIA E ALTER	VIA E ALTER	*3500
*1200 - MOCA		
GOODY, FL FIX	FORT MYERS, FL VORTAC	
VIA E ALTER.	VIA E ALTER	2000

§95.6227 VOR FEDERAL AIRWAY 227

IS AMENDED TO READ IN PART

PONTIAC, IL VORTAC	PLANO, IL FIX	*3000
*2100 - MOCA		
PLANO, IL FIX	VAINS, IL FIX	*4000
*2100 - MOCA		

§95.6228 VOR FEDERAL AIRWAY 228

IS AMENDED BY ADDING

STEVENS POINT, WI VORTAC	DELLS, WI VORTAC	[illegible]
DELLS, WI VORTAC	MADISON, WI VOR/DME	3300
MADISON, WI VOR/DME	JANESVILLE, WI VORTAC	[illegible]
JANESVILLE, WI VORTAC	FARMM, IL FIX	*2900
*2300 - MOCA		
FARMM, IL FIX	NORTHBROOK, IL VORTAC	2700

§95.6241 VOR FEDERAL AIRWAY 241

IS AMENDED TO DELETE

WIREGRASS, AL VORTAC	EFORD, AL FIX	
VIA W ALTER.	VIA W ALTER	[illegible]
EFORD, AL FIX	MILER, AL FIX	
VIA W ALTER.	VIA W ALTER	*3000
*2400 - MOCA		
MILER, AL FIX	LA GRANGE, GA VORTAC	
VIA W ALTER.	VIA W ALTER	2600
LA GRANGE, GA VORTAC	TIROE, GA FIX	
VIA W ALTER.	VIA W ALTER	[illegible]

§95.6245 VOR FEDERAL AIRWAY 245

IS AMENDED BY ADDING

BIGBEE, MS VORTAC	MINIM, AL FIX	[illegible]
MINIM, AL FIX	TUSCALOOSA, AL VORTAC	2300

§95.6262 VOR FEDERAL AIRWAY 262

IS AMENDED TO READ IN PART

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

FROM	TO	MEA

§95.6262 VOR FEDERAL AIRWAY 262—Continued

IS AMENDED TO DELETE

BOJAK, IL FIX	KEDZI, IL NDB	2500

§95.6278 VOR FEDERAL AIRWAY 278

IS AMENDED TO DELETE

BIGBEE, MS VORTAC	MINIM, AL FIX	
VIA S ALTER	VIA S ALTER	[illegible]
MINIM, AL FIX	TUSCALOOSA, AL VORTAC	
VIA S ALTER	VIA S ALTER	2300
TUSCALOOSA, AL VORTAC	VULCAN, AL VORTAC	
VIA S ALTER	VIA S ALTER	2400

§95.6287 VOR FEDERAL AIRWAY 287

IS AMENDED TO READ IN PART

BREDA, WA FIX	*LOFAL, WA FIX	
	S BND	**5500
	N BND	**6000
*4000 - MRA		
**4400 - MOCA		

§95.6289 VOR FEDERAL AIRWAY 289

IS DELETED

BEAUMONT, TX VORTAC	SILBE, TX FIX	
VIA E ALTER.	VIA E ALTER	*2000
*1600 - MOCA		
SILBE, TX FIX	LUFKIN, TX VORTAC	
VIA E ALTER	VIA E ALTER	*2500
*1800 - MOCA		

§95.6291 VOR FEDERAL AIRWAY 291

IS DELETED

WINSLOW, AZ VORTAC	*FRISY, AZ FIX	
VIA N ALTER.	VIA N ALTER	9000
*10500 - MCA FRISY FIX, W BND		
FRISY, AZ FIX	*FLAGSTAFF, AZ VOR/DME	
VIA N ALTER.	VIA N ALTER.	11500
*11000 - MCA FLAGSTAFF VOR/DME, NE BND		

§95.6306 VOR FEDERAL AIRWAY 306

IS AMENDED TO READ IN PART

OFERS, TX FIX	LAKE CHARLES, LA VORTAC	2000

IS DELETED

AUSTIN, TX VORTAC	PODDS, TX FIX	
VIA S ALTER.	VIA S ALTER	2500

FROM	TO	MEA
§95.6306 VOR FEDERAL AIRWAY 306—Continued		
NAVASOTA, TX VORTAC VIA S ALTER	HUMBLE, TX VORTAC VIA S ALTER	2000
HUMBLE, TX VORTAC VIA S ALTER	DAISETTA, TX VORTAC VIA S ALTER	2000
DAISETTA, TX VORTAC VIA S ALTER	BEAUMONT, TX VORTAC VIA S ALTER	2000
BEAUMONT, TX VORTAC VIA S ALTER	LAKE CHARLES, LA VORTAC VIA S ALTER	1700
§95.6311 VOR FEDERAL AIRWAY 311		
IS AMENDED BY ADDING		
AIREGRASS, AL VORTAC	EFORD, AL FIX	2400
EFORD, AL FIX	MILER, AL FIX	3000
MILER, AL FIX	LA GRANGE, GA VORTAC	2600
IS AMENDED TO DELETE		
LOGEN, GA FIX	CORCE, GA FIX	4000
§95.6314 VOR FEDERAL AIRWAY 314		
IS AMENDED TO READ IN PART		
U.S. CANADIAN BORDER *8000 - MRA **3900 - MOCA	*PATTA, ME FIX	**6000
PATTA, ME FIX *3900 - MOCA	MILLINOCKET, ME VORTAC	*6000
§95.6325 VOR FEDERAL AIRWAY 325		
IS AMENDED TO DELETE		
GADSDEN, AL VOR/DME VIA E ALTER	HOBBI, AL FIX VIA E ALTER	3600
HOBBI, AL FIX VIA E ALTER	DECATUR, AL VOR/DME VIA E ALTER	3000
DECATUR, AL VOR/DME VIA E ALTER	MUSCLE SHOALS, AL VORTAC VIA E ALTER	2500
§95.6341 VOR FEDERAL AIRWAY 341		
IS AMENDED TO READ IN PART		
MADISON, WI VOR/DME	OSHKOSH, WI VORTAC	2800
§95.6352 VOR FEDERAL AIRWAY 352		
IS AMENDED TO READ IN PART		
U.S. CANADIAN BORDER *8000 - MRA	*PATTA, ME FIX	6300

FROM	TO	MEA
§95.6352 VOR FEDERAL AIRWAY 352—Continued		
PATTA, ME FIX	HOULTON, ME VOR/DME	6300
§95.6358 VOR FEDERAL AIRWAY 358		
IS AMENDED BY ADDING		
ARDMORE, OK VORTAC	ALEXX, OK FIX	3000
ALEXX, OK FIX	OKLAHOMA CITY, OK VORTAC	2800
IS AMENDED TO READ IN PART		
GUADA, TX FIX	STONEWALL, TX VORTAC	4000
§95.6364 VOR FEDERAL AIRWAY 364		
IS ADDED TO READ		
SUGARLOAF MOUNTAIN, NC VORTAC	WEAKS, NC FIX	8000
WEAKS, NC FIX	UNICO, TN FIX	7500
UNICO, TN FIX	HOLSTON MOUNTAIN, TN VORTAC	7000
§95.6368 VOR FEDERAL AIRWAY 368		
IS ADDED TO READ		
FARMINGTON, NM VORTAC	TURLY, NM FIX	9000
TURLY, NM FIX	MANUL, NM FIX E BND W BND	11000 9700
MANUL, NM FIX	RODDS, CO FIX	13000
RODDS, CO FIX	ALAMOSA, CO VORTAC W BND E BND	13000 10000
§95.6382 VOR FEDERAL AIRWAY 382		
IS ADDED TO READ		
BRYCE CANYON, UT VORTAC *10000 - MRA **12800 - MOCA	*GREEL, UT FIX	**16000
GREEL, UT FIX *14000 - MCA SAKES FIX, W BND **12800 - MOCA	*SAKES, UT FIX	**16000
SAKES, UT FIX *9200 - MOCA	GRAND JUNCTION, CO VORTAC	*11000
§95.6391 VOR FEDERAL AIRWAY 391		

FROM	TO	MEA
§95.6391 VOR FEDERAL AIRWAY 391—Continued		
IS AMENDED BY ADDING		
FARMINGTON, NM VORTAC PLATA, CO CORTEZ, CO VOR/DME	PLATA, CO CORTEZ, CO VOR/DME DOVE CREEK, CO VORTAC	10000 10600 9800
§95.6397 VOR FEDERAL AIRWAY 397		
IS ADDED TO READ		
MONROE, LA VORTAC	GREENVILLE, MS VOR/DME	2000
GREENVILLE, MS VOR/DME KOCHA, MS FIX *1800 - MOCA	KOCHA, MS FIX WALET, MS FIX	2000 *5000
WALET, MS FIX *1800 - MOCA	HOLLY SPRINGS, MS VORTAC	*2600
§95.6409 VOR FEDERAL AIRWAY 409		
IS ADDED TO READ		
ATHENS, GA VORTAC	GREENWOOD, SC VORTAC	2500
GREENWOOD, SC VORTAC *2100 - MOCA	SANDHILLS, NC VORTAC	*4000
SANDHILLS, NC VORTAC *N	RALEIGH-DURHAM, NC VORTAC	2000
§95.6415 VOR FEDERAL AIRWAY 415		
IS ADDED TO READ		
MONTGOMERY, AL VORTAC	SEMAN, AL FIX	2300
SEMAN, AL FIX *3300 - MOCA	GIFFY, AL FIX	*4000
GIFFY, AL FIX *3400 - MOCA	FELTO, AL FIX	*6000
FELTO, AL FIX *4000 - MOCA	ROME, GA VORTAC	*5000
ROME, GA VORTAC *5000 - MRA	*NELLO, GA FIX	5600
NELLO, GA FIX TURNN, GA FIX TOCCOA, GA VORTAC PELAM, SC FIX *2400 - MOCA	TURNN, GA FIX TOCCOA, GA VORTAC PELAM, SC FIX SPARTANBURG, SC VORTAC	6000 5000 4000 *3000
§95.6417 VOR FEDERAL AIRWAY 417		
IS ADDED TO READ		
MONROE, LA VORTAC *3000 - MRA	*ALTOS, LA FIX	2000
ALTOS, LA FIX *3400 - MRA	*BOLTS, MS FIX	2300
BOLTS, MS FIX	JACKSON, MS VORTAC	2000
JACKSON, MS VORTAC *3300 - MRA **1700 - MOCA	*FANEN, MS FIX	**3000
FANEN, MS FIX *2300 - MOCA	MERIDIAN, MS VORTAC	*3000

FROM	TO	MEA
§95.6417 VOR FEDERAL AIRWAY 417—Continued		
MERIDIAN, MS VORTAC	TUSCALOOSA, AL VORTAC	2000
TUSCALOOSA, AL VORTAC	VULCAN, AL VORTAC	2400
VULCAN, AL VORTAC	HOKES, AL FIX	3600
HOKES, AL FIX *4000 - MOCA	ROME, GA VORTAC	*5000
ROME, GA VORTAC *5000 - MRA	*NELLO, GA FIX	5600
NELLO, GA FIX *5000 - MRA	*AWSON, GA FIX	5600
AWSON, GA FIX	CORCE, GA FIX	4600
CORCE, GA FIX	IRMOS, GA FIX	3800
IRMOS, GA FIX	ATHENS, GA VORTAC	3000
ATHENS, GA VORTAC	DANBI, GA FIX	2500
DANBI, GA FIX	AUGUSTA, GA VORTAC	2500
AUGUSTA, GA VORTAC	SARDY, GA FIX	2200
SARDY, GA FIX	ALLENDALE, SC VOR	2000
ALLENDALE, SC VOR	CHARLESTON, SC VORTAC	2000
§95.6422 VOR FEDERAL AIRWAY 422		
IS AMENDED BY ADDING		
BEBEE, IL FIX *3100 - MCA NILES FIX, N BND	*NILES, IL FIX	3400
NILES, IL FIX	CHICAGO HEIGHTS, IL VORTAC	2000
§95.6427 VOR FEDERAL AIRWAY 427		
IS ADDED TO READ		
MONROE, LA VORTAC *2800 - MRA **1900 - MOCA	*PECKS, MS FIX	**2300
PECKS, MS FIX	JACKSON, MS VORTAC	2000
§95.6429 VOR FEDERAL AIRWAY 429		
IS AMENDED TO DELETE		
VAINS, IL FIX	CHICAGO O'HARE, IL VOR/DME	2500
§95.6441 VOR FEDERAL AIRWAY 441		
IS DELETED		
SAINT PETERSBURG, FL VORTAC VIA E ALTER	DADES, FL FIX VIA E ALTER	2000
DADES, FL FIX VIA E ALTER	OCALA, FL VORTAC VIA E ALTER	2000
§95.6447 VOR FEDERAL AIRWAY 447		
IS AMENDED TO READ IN PART		
MONTPELIER, VT VOR/DME *8000 - MRA	*PLOTT, VT FIX	4800

FROM	TO	MEA
§95.6455 VOR FEDERAL AIRWAY 455		
IS AMENDED TO DELETE		
NEW ORLEANS, LA VORTAC	SLIDD, LA FIX	
VIA E ALTER	VIA E ALTER	5000
SLIDD, LA FIX	GULFPORT, MS VORTAC	
VIA E ALTER	VIA E ALTER	1800
GULFPORT, MS VORTAC	MINDO, MS FIX	
VIA E ALTER	VIA E ALTER	1800
MINDO, MS FIX	EATON, MS VORTAC	
VIA E ALTER	VIA E ALTER	2000
NEW ORLEANS, LA VORTAC	MACAW, LA FIX	
VIA W ALTER	VIA W ALTER	1900
MACAW, LA FIX	EATON, MS VORTAC	
VIA W ALTER	VIA W ALTER	*4000
*1800 - MOCA		
EATON, MS VORTAC	BAING, MS FIX	
VIA W ALTER	VIA W ALTER	*3000
*2000 - MOCA		
BAING, MS FIX	*PAULD, MS FIX	
VIA W ALTER	VIA W ALTER	3000
*3000 - MRA		
*3000 - MCA PAULD FIX, SW BND		
PAULD, MS FIX	MERIDIAN, MS VORTAC	
VIA W ALTER	VIA W ALTER	2000
§95.6460 VOR FEDERAL AIRWAY 460		
IS AMENDED TO READ IN PART		
SMADI, CA FIX	BLYTHE, CA VORTAC	7000
§95.6465 VOR FEDERAL AIRWAY 465		
IS DELETED		
MILES CITY, MT VORTAC	WILLISTON, ND VORTAC	
VIA E ALTER	VIA E ALTER	*6000
*5200 - MOCA		
§95.6477 VOR FEDERAL AIRWAY 477		
IS DELETED		
HUMBLE, TX VORTAC	NAVASOTA, TX VORTAC	
VIA W ALTER	VIA W ALTER	2000
NAVASOTA, TX VORTAC	LEONA, TX VORTAC	
VIA W ALTER	VIA W ALTER	3000
LEONA, TX VORTAC	SCURRY, TX VORTAC	
VIA W ALTER	VIA W ALTER	2300
§95.6491 VOR FEDERAL AIRWAY 491		
IS AMENDED BY ADDING		
RAPID CITY, SD VORTAC	DICKINSON, ND VORTAC	*9000
*5500 - MOCA		
DICKINSON, ND VORTAC	MINOT, ND VORTAC	*6000
*4100 - MOCA		
MEDICINE BOW, WY VORTAC	*ALCOS, WY FIX	[illegible]
*9700 - MRA		
ALCOS, WY FIX	CASPER, WY VORTAC	
	N BND	*8400
	S BND	*9700
*8400 - MOCA		

FROM	TO	MEA
§95.6492 VOR FEDERAL AIRWAY 492		
IS AMENDED TO READ IN PART		
LA BELLE, FL VORTAC	PAHOKEE, FL VORTAC	*2000
*1500 - MOCA		
PAHOKEE, FL VORTAC	PALM BEACH, FL VORTAC	*2000
*1500 - MOCA		
§95.6495 VOR FEDERAL AIRWAY 495		
IS AMENDED TO READ IN PART		
SEATTLE, WA VORTAC	*LOFAL, WA FIX	[illegible]
*4000 - MRA		
LOFAL, WA FIX	U.S. CANADIAN BORDER	7500
§95.6507 VOR FEDERAL AIRWAY 507		
IS AMENDED BY ADDING		
OKLAHOMA CITY, OK VORTAC	*CURRI, OK FIX	3500
*4300 - MRA		
CURRI, OK FIX	ROLLS, OK FIX	*6500
*3100 - MOCA		
ROLLS, OK FIX	GAGE, OK VORTAC	[illegible]
§95.6531 VOR FEDERAL AIRWAY 531		
IS AMENDED TO READ IN PART		
PALM BEACH, FL VORTAC	SHEDS, FL FIX	*3000
*2500 - MOCA		
§95.6533 VOR FEDERAL AIRWAY 533		
IS ADDED TO READ		
SAINT PETERSBURG, FL VORTAC	LAKELAND, FL VORTAC	2000
LAKELAND, FL VORTAC	ORLANDO, FL VORTAC	1700
ORLANDO, FL VORTAC	SMYRA, FL FIX	[illegible]
SMYRA, FL FIX	ORMOND BEACH, FL VORTAC	1600
§95.6537 VOR FEDERAL AIRWAY 537		
IS ADDED TO READ		
VERO BEACH, FL VORTAC	*PRESK, FL FIX	[illegible]
*2500 - MRA		
PRESK, FL FIX	CERMO, FL FIX	*5000
*2000 - MOCA		
CERMO, FL FIX	OCALA, FL VORTAC	[illegible]
OCALA, FL VORTAC	GAINESVILLE, FL VORTAC	2000
GAINESVILLE, FL VORTAC	GREENVILLE, FL VORTAC	2000
§95.6539 VOR FEDERAL AIRWAY 539		
IS ADDED TO READ		
KEY WEST, FL VORTAC	CORGI, FL FIX	1500
CORGI, FL FIX	GOODY, FL FIX	*3500
*1200 - MOCA		

FROM	TO	MEA
§95.6539 VOR FEDERAL AIRWAY 539—Continued		
GOODY, FL FIX	*GUMMY, FL FIX	2000
*4000 - MRA		
GUMMY, FL FIX	FORT MYERS, FL VORTAC	2000
§95.6541 VOR FEDERAL AIRWAY 541		
IS ADDED TO READ		
GADSDEN, AL VOR/DME	HOBBI, AL FIX	*3600
*2600 - MOCA		
HOBBI, AL FIX	DECATUR, AL VOR/DME	3000
DECATUR, AL VOR/DME	MUSCLE SHOALS, AL VORTAC	2500
§95.6543 VOR FEDERAL AIRWAY 543		
IS ADDED TO READ		
NEW ORLEANS, LA VORTAC	MACAW, LA FIX	1900
MACAW, LA FIX	EATON, MS VORTAC	*4000
*1800 - MOCA		
EATON, MS VORTAC	BAING, MS FIX	*3000
*2000 - MOCA		
BAING, MS FIX	*PAULD, MS FIX	3000
*3000 - MRA		
*3000 - MCA PAULD FIX, SW BND		
PAULD, MS FIX	MERIDIAN, MS VORTAC	[illegible]
§95.6545 VOR FEDERAL AIRWAY 545		
IS ADDED TO READ		
MILES CITY, MT VORTAC	MARRO, MT FIX	*6000
*5200 - MOCA		
§95.6546 VOR FEDERAL AIRWAY 546		
IS ADDED TO READ		
WINK, TX VORTAC	NOTES, TX FIX	5500
NOTES, TX FIX	MIDLAND, TX VORTAC	5000
MIDLAND, TX VORTAC	BIG SPRING, TX VORTAC	4400
§95.6547 VOR FEDERAL AIRWAY 547		
IS ADDED TO READ		
CHEYENNE, WY VORTAC	DOUGLAS, WY VORTAC	8000
DOUGLAS, WY VORTAC	CASPER, WY VORTAC	7900
§95.6548 VOR FEDERAL AIRWAY 548		
IS ADDED TO READ		
HOBBY, TX VOR/DME	SEALY, TX FIX	2000
SEALY, TX FIX	PRARI, TX FIX	*3500
*1700 - MOCA		

FROM	TO	MEA
§95.6548 VOR FEDERAL AIRWAY 548—Continued		
PRARI, TX FIX	COUTH, TX FIX	2000
COUTH, TX FIX	COLLEGE STATION, TX VORTAC	2000
COLLEGE STATION, TX VORTAC	BARBA, TX FIX	2500
BARBA, TX FIX	BOSEL, TX FIX	3600
BOSEL, TX FIX	WACO, TX VORTAC	2800
§95.6550 VOR FEDERAL AIRWAY 550		
IS ADDED TO READ		
COTULLA, TX VORTAC	LEMIG, TX FIX	2500
LEMIG, TX FIX	SAN ANTONIO, TX VORTAC	3000
SAN ANTONIO, TX VORTAC	DENTS, TX FIX	3000
DENTS, TX FIX	*CEDIL, TX FIX	3400
*3500 - MRA		
CEDIL, TX FIX	AUSTIN, TX VORTAC	3000
AUSTIN, TX VORTAC	TRACE, TX FIX	2700
TRACE, TX FIX	BARBA, TX FIX	*2700
*1900 - MOCA		
BARBA, TX FIX	BOSEL, TX FIX	3600
BOSEL, TX FIX	WACO, TX VORTAC	2800
§95.6552 VOR FEDERAL AIRWAY 552		
IS ADDED TO READ		
BEAUMONT, TX VORTAC	LAKE CHARLES, LA VORTAC	2000
LAKE CHARLES, LA VORTAC	HATHA, LA FIX	2000
HATHA, LA FIX	LAFAYETTE, LA VORTAC	2100
LAFAYETTE, LA VORTAC	TIBBY, LA VORTAC	2000
TIBBY, LA VORTAC	NEW ORLEANS, LA VORTAC	2000
NEW ORLEANS, LA VORTAC	PICAYUNE, MS VORTAC	2000
PICAYUNE, MS VORTAC	SEMMES, AL VORTAC	2000
SEMMES, AL VORTAC	MONROEVILLE, AL VORTAC	2000
§95.6554 VOR FEDERAL AIRWAY 554		
IS ADDED TO READ		
NATCHEZ, MS VOR/DME	*TULLO, LA FIX	**6000
*6000 - MCA TULLO FIX, SE BND		
*1800 - MOCA		
TULLO, LA FIX	MONROE, LA VORTAC	2000
§95.6555 VOR FEDERAL AIRWAY 555		
IS ADDED TO READ		
NEW ORLEANS, LA VORTAC	PICAYUNE, MS VORTAC	2000
PICAYUNE, MS VORTAC	MC COMB, MS VORTAC	2000
MC COMB, MS VORTAC	*BANDO, MS FIX	2000
*3400 - MRA		
BANDO, MS FIX	JACKSON, MS VORTAC	2000
JACKSON, MS VORTAC	*VAHNS, MS FIX	2000
*3500 - MRA		

FROM	TO	MEA
§95.6555 VOR FEDERAL AIRWAY 555—Continued		
VAHNS, MS FIX	GREENWOOD, MS VORTAC	2000

§95.6556 VOR FEDERAL AIRWAY 556
IS ADDED TO READ

SAN ANGELO, TX VORTAC	JUNCTION, TX VORTAC	4000
JUNCTION, TX VORTAC	STONEWALL, TX VORTAC	4000
STONEWALL, TX VORTAC	MARCS, TX FIX	3500
MARCS, TX FIX	SEEDS, TX FIX	*4500
*2000 - MOCA		
SEEDS, TX FIX	WEMAR, TX FIX	2500
WEMAR, TX FIX	EAGLE LAKE, TX VOR/DME	2000
EAGLE LAKE, TX VOR/DME	SCHOLES, TX VORTAC	2500

§95.6557 VOR FEDERAL AIRWAY 557
IS ADDED TO READ

MC COMB, MS VORTAC	*BYRAM, MS FIX	2900
*4200 - MRA		
BYRAM, MS FIX	JACKSON, MS VORTAC	2900
JACKSON, MS VORTAC	GREENWOOD, MS VORTAC	2000

§95.6558 VOR FEDERAL AIRWAY 558
IS ADDED TO READ

LLANO, TX VORTAC	AUSTIN, TX VORTAC	3000
AUSTIN, TX VORTAC	INDUSTRY, TX VORTAC	2500
INDUSTRY, TX VORTAC	EAGLE LAKE, TX VOR/DME	2000
EAGLE LAKE, TX VOR/DME	BLUMS, TX FIX	2100
BLUMS, TX FIX	HOBBY, TX VOR/DME	2400

§95.6559 VOR FEDERAL AIRWAY 559
IS ADDED TO READ

LAFAYETTE, LA VORTAC	BATON ROUGE, LA VORTAC	2000

§95.6560 VOR FEDERAL AIRWAY 560
IS ADDED TO READ

NEWMAN, TX VORTAC	MAYFY, TX FIX	9000
MAYFY, TX FIX	*CONNE, TX FIX	**10500
*10500 - MRA		
**9000 - MOCA		

FROM	TO	MEA
§95.6560 VOR FEDERAL AIRWAY 560—Continued		
CONNE, TX FIX	SALT FLAT, TX VORTAC	9000
SALT FLAT, TX VORTAC	CARLSBAD, NM VORTAC	8000

§95.6562 VOR FEDERAL AIRWAY 562
IS ADDED TO READ

DRAKE, AZ VORTAC	PEACH SPRINGS, AZ VORTAC	9000
PEACH SPRINGS, AZ VORTAC	*MEADS, NV FIX	9000
*9000 - MCA MEADS FIX, SE BND		
MEADS, NV FIX	LAS VEGAS, NV VORTAC	6000

§95.6563 VOR FEDERAL AIRWAY 563
IS ADDED TO READ

LUBBOCK, TX VORTAC	BIG SPRING, TX VORTAC	5100

§95.6564 VOR FEDERAL AIRWAY 564
IS ADDED TO READ

COALDALE, NV VORTAC	MINA, NV VORTAC	11500
MINA, NV VORTAC	YERIN, NV FIX	11500
YERIN, NV FIX	CHIME, NV FIX	
	NW BND	10000
	SE BND	11500
CHIME, NV FIX	RENO, NV VORTAC	10000

§95.6565 VOR FEDERAL AIRWAY 565
IS ADDED TO READ

LLANO, TX VORTAC	FELTZ, TX FIX	3300
FELTZ, TX FIX	AUSTIN, TX VORTAC	3000

§95.6566 VOR FEDERAL AIRWAY 566
IS ADDED TO READ

GREGG COUNTY, TX VORTAC	*WORKS, TX FIX	2300
*3000 - MRA		
WORKS, TX FIX	SHREVEPORT, LA VORTAC	3000
SHREVEPORT, LA VORTAC	KNELT, LA FIX	2300
KNELT, LA FIX	COVEX, LA FIX	*3500
*1700 - MOCA		
COVEX, LA FIX	*NUBOY, LA FIX	**4500
*6000 - MRA		
**1700 - MOCA		
NUBOY, LA FIX	BOYCE, LA FIX	
	SE BND	2000
	NW BND	4500
BOYCE, LA FIX	ALEXANDRIA, LA VORTAC	2000
ALEXANDRIA, LA VORTAC	MUSHE, LA FIX	2000
MUSHE, LA FIX	*WRACK, LA FIX	**4000
*3000 - MRA		
**1500 - MOCA		
WRACK, LA FIX	CLUNK, LA FIX	*5000
*1700 - MOCA		

FROM	TO	MEA
§95.6566 VOR FEDERAL AIRWAY 566—Continued		
CLUNK, LA FIX	WALKE, LA FIX	*2500
*1400 - MOCA		
WALKE, LA FIX	NEW ORLEANS, LA VORTAC	2000

§95.6567 VOR FEDERAL AIRWAY 567
IS ADDED TO READ

PHOENIX, AZ VORTAC	*KNOBB, AZ FIX	
	N BND	8000
	S BND	6000
*8000 - MRA		
KNOBB, AZ FIX	*FERER, AZ FIX	**8000
*14000 - MCA FERER FIX, NE BND		
**7500 - MOCA		
FERER, AZ FIX	WINSLOW, AZ VORTAC	*14000
*9600 - MOCA		

§95.6568 VOR FEDERAL AIRWAY 568
IS ADDED TO READ

CORPUS CHRISTI, TX VORTAC	THREE RIVERS, TX VORTAC	1800
THREE RIVERS, TX VORTAC	LEMIG, TX FIX	2000
LEMIG, TX FIX	SAN ANTONIO, TX VORTAC	3000
SAN ANTONIO, TX VORTAC	GUADA, TX FIX	*4000
*2600 - MOCA		
GUADA, TX FIX	STONEWALL, TX VORTAC	4000
STONEWALL, TX VORTAC	LLANO, TX VORTAC	4000
LLANO, TX VORTAC	*BUILT, TX FIX	**4500
*5000 - MRA		
**2800 - MOCA		
BUILT, TX FIX	ACTON, TX VORTAC	3000

§95.6569 VOR FEDERAL AIRWAY 569
IS ADDED TO READ

BEAUMONT, TX VORTAC	SILBE, TX FIX	2000
SILBE, TX FIX	LUFKIN, TX VORTAC	2500

§95.6570 VOR FEDERAL AIRWAY 570
IS ADDED TO READ

ALEXANDRIA, LA VORTAC	NATCHEZ, MS VOR/DME	2000
NATCHEZ, MS VOR/DME	MC COMB, MS VORTAC	2000

§95.6571 VOR FEDERAL AIRWAY 571
IS ADDED TO READ

FROM	TO	MEA
§95.6571 VOR FEDERAL AIRWAY 571—Continued		
HUMBLE, TX VORTAC	NAVASOTA, TX VORTAC	2000
NAVASOTA, TX VORTAC	LEONA, TX VORTAC	3000
LEONA, TX VORTAC	SCURRY, TX VORTAC	2300

§95.6572 VOR FEDERAL AIRWAY 572
IS ADDED TO READ

WINSLOW, AZ VORTAC	FRISY, AZ FIX	9000
FRISY, AZ FIX	FLAGSTAFF, AZ VOR/DME	10000

§95.6573 VOR FEDERAL AIRWAY 573
IS ADDED TO READ

TEXARKANA, AR VORTAC	*JAMMI, AR FIX	**3500
*5000 - MRA		
**1800 - MOCA		
JAMMI, AR FIX	PIKES, AR FIX	*3500
*1800 - MOCA		
PIKES, AR FIX	MARKI, AR FIX	*3500
*2000 - MOCA		
MARKI, AR FIX	HOT SPRINGS, AR VOR	*3500
*2500 - MOCA		
HOT SPRINGS, AR VOR	LONNS, AR FIX	*3000
*2500 - MOCA		
LONNS, AR FIX	LITTLE ROCK, AR VORTAC	2000

§95.6574 VOR FEDERAL AIRWAY 574
IS ADDED TO READ

NAVASOTA, TX VORTAC	HUMBLE, TX VORTAC	2000
HUMBLE, TX VORTAC	DAISETTA, TX VORTAC	2000
DAISETTA, TX VORTAC	BEAUMONT, TX VORTAC	2000
BEAUMONT, TX VORTAC	LAKE CHARLES, LA VORTAC	2000

§95.6575 VOR FEDERAL AIRWAY 575
IS ADDED TO READ

DENVER, CO VORTAC	GILL, CO VORTAC	7000
GILL, CO VORTAC	NUNNS, CO FIX	7000
NUNNS, CO FIX	KYOTE, CO FIX	9000
KYOTE, CO FIX	FLEMS, CO	10000
FLEMS, CO	LARAMIE, WY VORTAC	11000

§95.6579 VOR FEDERAL AIRWAY 579
IS ADDED TO READ

FORT MYERS, FL VORTAC	SARASOTA, FL VORTAC	2000
SARASOTA, FL VORTAC	SAINT PETERSBURG, FL VORTAC	2000
SAINT PETERSBURG, FL VORTAC	BAYPO, FL FIX	2000
BAYPO, FL FIX	*HOMOE, FL FIX	**3000
*3000 - MRA		
**1500 - MOCA		
HOMOE, FL FIX	GAINESVILLE, FL VORTAC	*3000
*2000 - MOCA		

FROM	TO	MEA
§95.6579 VOR FEDERAL AIRWAY 579—Continued		
GAINESVILLE, FL VORTAC	CROSS CITY, FL VORTAC	2000
§95.6581 VOR FEDERAL AIRWAY 581		
IS AMENDED TO DELETE		
SAINT PETERSBURG, FL VORTAC	OCALA, FL VORTAC	2000

FROM	TO	MEA	MAA
§95.7079 JET ROUTE NO. 79			
IS AMENDED TO READ IN PART			
NORFOLK, VA VORTAC	COYLE, NJ VORTAC	18000	45000
§95.7121 JET ROUTE NO. 121			
IS AMENDED TO READ IN PART			
NORFOLK, VA VORTAC	SNOW HILL, MD VORTAC	18000	45000
SNOW HILL, MD VORTAC	SEA ISLE, NJ VORTAC	18000	45000
§95.7157 JET ROUTE NO. 157			
IS AMENDED BY ADDING			
DENVER, CO VORTAC	SCOTTSBLUFF, NE VORTAC	18000	45000
§95.7174 JET ROUTE NO. 174			
IS AMENDED BY ADDING			
SNOW HILL, MD VORTAC	WARNN, NJ FIX	24000	41000
WARNN, NJ FIX	HAMPTON, NY VORTAC	18000	41000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT FROM	AIRWAY SEGMENT TO	CHANGEOVER POINTS DISTANCE	CHANGEOVER POINTS FROM
	V-20		
	IS AMENDED TO DELETE		
TIBBY, LA VORTAC VIA S ALTER	NEW ORLEANS, LA VORTAC VIA S ALTER	26	TIBBY
	V-115		
	IS AMENDED BY ADDING		
WHITESBURG, KY VORTAC	CHARLESTON, WV VORTAC	40	WHITESBURG
	V-356		
	IS AMENDED TO DELETE		
NAVASOTA, TX VORTAC VIA S ALTER	HUMBLE, TX VORTAC VIA S ALTER	12	NAVASOTA
	V-477		
	IS AMENDED TO DELETE		
HUMBLE, TX VORTAC VIA W ALTER	NAVASOTA, TX VORTAC VIA W ALTER	30	HUMBLE
	V-552		
	IS AMENDED BY ADDING		
TIBBY, LA VORTAC	NEW ORLEANS, LA VORTAC	26	TIBBY
	V-573		
	IS AMENDED BY ADDING		
HOT SPRINGS, AR VOR	LITTLE ROCK, AR VORTAC	14	HOT SPRINGS

19

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT FROM	AIRWAY SEGMENT TO	CHANGEOVER POINTS DISTANCE	CHANGEOVER POINTS FROM
	J-174		
	IS AMENDED BY ADDING		
WARNN, NJ FIX # COP MEASURED FROM SWL VORTAC.	HAMPTON, NY VORTAC	#85	WARNN

20

[FR Doc. 85-13186 Filed 5-31-85; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 50453-5053]

Special Licenses Available To Export Equipment Designed for the Manufacture or Testing of Printed Circuit Boards

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Commodity Control List contains all items controlled for export by the U.S. Department of Commerce. On March 30, 1984, the Office of Export Administration published in the **Federal Register** a document amending the Commodity Control List (49 FR 12678–12783). Among the amendments was a reclassification of equipment designed for the manufacture or testing of printed circuit boards under a new entry 1354A.

Certain exports of such equipment previously had been authorized under special licenses. However, the March 30 document inadvertently indicated that no special licenses are available to export such equipment.

This rule revises the "Special Licenses Available" paragraph of 1354A by indicating that Part 373 of the Regulations contains information on those special licenses available to export equipment covered by 1354A.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Assistance Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this rule pertains to a foreign affairs function of the United States, the proposed rulemaking procedures and the delay in effective date required under the Administrative Procedure Act are not necessary.

2. This rule contains a collection of information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The collection of this information has been approved by the Office of Management and Budget (OMB control numbers 0625–0002, 0625–0052, and 0625–0041).

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because a notice of proposed rulemaking is not being published. Accordingly, no initial or final Regulatory Flexibility Analysis has or will be prepared.

4. This rule is not a rule within the meaning of section 1(a) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 399

Exports.

PART 399—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Secs. 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628, (50 U.S.C. 1702, 1704), E.O. No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984; Presidential Notice of March 28, 1985 (50 FR 12513 March 29, 1985).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), ECCN 1354A of Commodity Group 3, General Industrial Equipment, is amended by revising the *Special Licenses Available* paragraph to read—"Special Licenses Available: See Part 373."

Dated: May 21, 1985.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85–13148 Filed 5–31–85; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9180]

City of Minneapolis; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Order Withdrawing Complaint.

SUMMARY: This order withdraws the complaint alleging that the City of Minneapolis had combined, contracted or agreed with taxicab companies to pursue certain anticompetitive policies in violation of section 5 of the Federal Trade Commission Act. The Commission held that changes now made in the City's municipal Code, which includes raising the number of taxicab licenses to be made available to operators, "significantly relieves the injury to competition alleged in the complaint and * * * may eliminate the need for further Commission action." Thus, continuing the matter would not be in the public interest. In withdrawing its complaint, the Commission expressed no opinion as to whether the "liability of the City of Minneapolis could have been established at trial."

DATES: Complaint issued May 10, 1984. Order Withdrawing Complaint issued May 7, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Susan Ticknor, Office of Public Affairs, Federal Trade Commission, Washington, D.C. 20580. (202) 523–1892.

SUPPLEMENTARY INFORMATION: In the Matter of The City of Minneapolis, a municipal corporation.

List of Subjects in 16 CFR Part 13

Taxicabs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before the Federal Trade Commission

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

In the matter of The City of Minneapolis, a municipal corporation; Docket No. 9180.

Order

Complaint counsel have moved for withdrawal of the complaint in this matter, on the ground that a new municipal ordinance that the City of Minneapolis recently enacted "significantly relieves the injury to competition alleged in the complaint and * * * may eliminate the need for further Commission action." The Administrative Law Judge has certified that motion to the Commission, with the recommendation that the Commission grant the motion. The complaint alleges that the City of Minneapolis has combined, contracted or agreed with taxicab companies in a number of respects relating to fare increases, fare uniformity, limitations on the number of taxicab licenses issued in Minneapolis, barriers to entry, and competition from vehicles-for-hire licensed outside Minneapolis, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. In the Notice of Contemplated Relief that accompanied the complaint,

[1] Copies of the Complaint, Statements of Chairman Miller and Commissioner Pertschuk and "An Economic Analysis of Taxicab Regulation" by the Bureau of Economics staff are filed with the original document.

the Commission indicated that as part of any relief it might order, it might prohibit enforcement of three separate groups of Minneapolis Code provisions: (1) Section 341.710 *et seq.* (with some exceptions), which generally regulate fares; (2) portions of § 341.260 and § 341.280, which established a variety of criteria for determining whether new taxicab licenses should be issued; and (3) § 341.300 and § 341.310, which established 248 as the maximum number of taxicab licenses (other than 48 "winter licenses") available to operators in any given year.

The City of Minneapolis has now amended its Code to repeal § 341.260 and § 341.280. It has also amended § 341.300 of the Code to raise the number of taxicab licenses from 248 to 323 by February 1, 1986, and by as many as an additional 25 licenses every year thereafter, beginning on July 1, 1986.[2] These changes offer the prospect of preventing the anticompetitive conduct alleged in the complaint by strongly facilitating new entry into the Minneapolis taxicab market. The Commission has therefore determined that continuing this matter would not presently serve the public interest, and that the complaint should be withdrawn. In taking this action, we express no opinion as to whether the liability of the City of Minneapolis could have been established at trial.

Accordingly, it is ordered that the complaint issued against the City of Minneapolis in Docket No. 9180 be, and it hereby is, withdrawn.

By direction of the Commission.

Commissioner Azcuenaga did not participate.

Emily H. Rock,

Secretary.

[FR Doc. 85-13147 Filed 5-31-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Clothes Washers

AGENCY: Federal Trade Commission.

ACTION: Publication of ranges under the Appliance Labeling Rule.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy costs for clothes washers have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on May 25, 1983 [1] remain in effect until new ranges are published.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-8934, or Lucerne D. Winfrey, 202-376-8934, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [2] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) feezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliance use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [3] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [4] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this ihitial report, shall report the same information annually by specified dates for each product type.[5] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for clotheswashers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on May 25, 1983.[6]

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[2] Section 341.290(b) has been amended to require that all license holders must be "a member of a company, cooperative, or association" with at least eight taxicabs licensed by Minneapolis; at least fifteen licensed taxicabs "operated under a common color scheme with common radio dispatching facilities;" and a total of at least fifteen such taxicabs licensed in Minneapolis within one year of issuance of the first eight licenses. Section 341.290(c) exempts taxicabs already holding licenses from this requirement.

[1] 48 FR 23383.

[2] Pub. L. 94-163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

[3] 44 FR 66466, 16 CFR Part 305 (November 19, 1979)

[4] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 28036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[5] Reports for clotheswashers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[6] 48 FR 23383.

In consideration of the foregoing, the present ranges for clotheswashers will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservantion Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–13143 Filed 5–31–85; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–6582, 34–22076, 35–23705, 39–990, IC–14537, IA–975]

Revision of Rule Concerning the Acceptance of Food and Refreshment

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Rule 3(b)(2) of the Commission's Conduct Regulation, 17 CFR 200.735–3(b)(2), generally prohibits members and employees of the Commission from accepting anything of value from entities with whom they transact official business. The Rule provides for several exceptions. Those exceptions are narrowly drawn and strictly interpreted. The rule change would permit members and staff to accept meals and refreshments at group functions which they attend in their official capacities and for the benefit of the agency, without regard to the identity of the sponsor.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Myrna Siegel, Ethics Counsel, Securities and Exchange Commission, Washington, D.C., (202) 272–2430.

SUPPLEMENTARY INFORMATION: The Commission has generally deemed informal contacts with representatives of the securities industry by its members and staff as an important supplement to formal appearances before and submissions to the Commission by such entities. To this end, Commission members and staff frequently participate in educational programs sponsored by non-federal entities and aimed at educating the industry, the securities bar and the public.[1]

In addition to formal educational programs, Commission members and staff are often invited to attend group functions including luncheon and dinner gatherings given by self-regulatory organizations, trade associations and accounting groups. The Commission deems such informal opportunities for the sharing of views with industry groups to be beneficial to the functioning of the Commission. However, difficulties have arisen because the gatherings often focus on a meal or other hospitality.

The Commission's Conduct Regulation generally prohibits Commission members and employees from accepting anything of value from "prohibited entities" *i.e.*, entities with whom they transact official business, and who: (1) Have or are seeking to obtain contractual or other business or financial relations with the Commission; (2) conduct operations or activities regulated by the Commission; or (3) have interests that may be substantially affected by the performance or non-performance of the member's or employee's official duties.[2]

Exceptions to the rule are narrowly drawn and strictly interpreted. The exception which permits the acceptance of food and refreshment at a group function is particularly narrowly drawn and permits the acceptance of food and refreshment only of modest value, if offered in the course of a meeting not connected with an inspection or investigation at which attendance is official and proper and circumstances make individual payment difficult. It is often difficult to determine what is modest or whether a gathering can be considered a meeting. Moreover, it is almost always possible to make arrangements for individual payment. As a result, members and staff have often paid for their own meals when attending functions in their official capacities and for the benefit of the agency, functions they might have chosen not to attend, but for the benefit of the agency.

The Commission's rule incorporates prohibitions in Executive Order 11222.[3] That Order includes, in addition to the general prohibition, a provision permitting agencies to adopt regulations to implement the prohibition, providing for "such exceptions as may be necessary and appropriate in view of the nature of the agency's work and the duties and responsibilities of the employees."[4] The Commission has determined that it is appropriate to amend its current rule to permit the flexibility necessary for members and staff to accept meals at group functions without regard to the sponsor organization, so long as a determination is made that attendance is desirable to assist the member or employee in performing his or her official duties.

The flexibility provided by the new rule only applies to group functions. The Commission's rules still prohibit its members and employees from accepting meals proffered in individual meetings with representatives of prohibited entities.

Accordingly, the Commission is amending 17 CFR 200.735–3(b)(2) to permit members and staff to accept meals and refreshments at group functions which they attend in their official capacities and for the benefit of the agency, without regard to the identity of the sponsor.

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

List of Subjects in 17 CFR Part 200

Administrative Practice and Procedure, Freedom of Information, Privacy, Securities.

Text of Amendment

In consideration of the foregoing, the Commission hereby amends Part 200 of Chapter II, Title 17 Code of Federal Regulations as follows:

PART 200—ORGANIZATION, CONDUCT AND ETHICS AND INFORMATION AND REQUESTS

1. The authority citation for Subpart M of Part 200 will continue to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53

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[1] *See* H.R. Rep. No. 98–106, 98th Cong., 1st Sess. 2 (1983).

[2] 17 CFR 200.735–3(b)(2).

[3] Executive Order 11222 prescribes standards of ethical conduct for Government officers and employees.

[4] Exec. Order No. 11222, May 8, 1965. The Executive Order provides that agency heads are authorized to issue regulations, coordinated and approved by the Civil Service Commission. The Office of Government Ethics now performs the approval function.

Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11; E.O. 11222; 3 CFR, 1964-1965 Comp., 5 CFR 735.104.

2. By revising paragraph (b)(2), redesignating paragraphs (b)(3) through (b)(11) as (b)(4) through (b)(12) and adding a new paragraph (b)(3) of § 200.735-3 as follows:

§ 200.735-3 General provisions.

* * * * *

(b) A member or employee of the Commission shall not:

* * * * *

(2) Solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, service, or any other thing of monetary value from any person with whom he or she transacts business on behalf of the United States: (i) Who has, or is seeking to obtain, contractual or other business or financial relations with the Commission; (ii) who conducts operations or activities regulated by the Commission; or (iii) who has interests that may be substantially affected by the performance or non-performance of his or her official duty.

(3) The restrictions of paragraph (b)(2) do not prohibit members and employees from the following:

(i) The acceptance of food and refreshments, not lavish in kind, offered free in the course of a meeting or other group function, not connected with an inspection or investigation, at which attendance is desirable because it will assist the member or employee in performing his or her official duties. Members shall determine for themselves and their staffs the propriety of accepting such invitations. Division Directors, Office Heads, and Regional Administrators are authorized to make such determinations for themselves and their subordinates. Staff members are required to advise their Division Director, Office Head, or Regional Administrator of invitations received from entities described in paragraph (b)(2).

(ii) The acceptance of items of value when the circumstances make it clear that it is family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors.

(iii) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, notepads, calendars and other items of modest value.

(iv) The acceptance of meals and refreshments as provided to all panelists, when participating as a panelist in an educational program.

(v) The acceptance of gifts given for participation in an educational program when they are (A) of modest value; or (B) provided to all participants in the program; or (C) in the nature of a remembrance traditional to the particular sponsor institution.

(vi) For purposes of this subpart, "person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company; or any other organization or institution or anyone who acts for such a person in a representative capacity.[5]

* * * * *

The Commission finds that the foregoing action relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comments under Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, are unnecessary. *See* 5 U.S.C. 553(b).

By the Commission.

John Wheeler,

Secretary.

May 24, 1985.

[FR Doc. 85-13108 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 200, 239, 250, and 259

[Release Nos. 33-6581, 34-22075, 35-23704, 39-989; File No. S7-23-85]

Temporary Rules and Forms Under the Public Utility Holding Company Act of 1935 for the Pilot Electronic Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Temporary rules and forms.

SUMMARY: The Commission announces the adoption of temporary rules and forms under the Public Utility Holding Company Act of 1935 to facilitate the participation of public utility holding companies in the Commission's pilot electronic disclosure system ("Pilot"). The Pilot, now underway, is engaged in developing and testing, with actual filings, an electronic disclosure system, designated "Edgar". The temporary rules adapt various procedural rules to accommodate the filing and review, in an electronic format, of documents. Amendments to previously adopted temporary forms also are necessary to facilitate electronic filing. These rules and forms will apply only to companies that have volunteered to submit their filings to the Commission in an acceptable form of direct digital transmission, diskette or magnetic tape. The electronic documents will replace "paper" documents in the filing and review process.

EFFECTIVE DATE: June 3, 1985.

Comment date: Interested persons will have until July 30, 1985 to comment on the temporary rules and forms. The Commission will review the comments and make any changes in the rules or forms which it deems necessary and appropriate.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comment letters should refer to File No. S7-23-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: (Legal) Kathleen Brandon at (202) 272-2073 or (Operational) Martin Grenn at (202) 272-7688, Office of Public Utility Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") announces the adoption of temporary rules and amendments to forms necessary to facilitate the participation of public utility holding companies in the Edgar pilot. The general temporary rule is rule 111 (17 CFR 250.111) under the Public Utility Holding Company Act of 1935 ("Holding Company Act") (15 U.S.C. 79—79z-6). The temporary rules that adopt Form ET (17 CFR 239.62), Form ID (17 CFR 239.63), and Form SE (17 CFR 239.64) under the Holding Company Act are rules 601 (17 CFR 259.601), 602 (17 CFR 259.602), and 603 (17 CFR 259.603), respectively. These temporary forms are being amended to designate them for use in filings made pursuant to the Holding Company Act. Further, the Commission is delegating to the Director of the Division of

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[5] Members and employees of the Commission are subject also to provisions of the federal criminal code which prohibit, (1) any officer or employee of the United States from asking, accepting or receiving any money or other thing of value in connection with any matter before him or her in his or her official capacity, (18 U.S.C. 203); and (2) the compensation of government employees for services to the government by entities other than the United States (18 U.S.C. 209). In addition, members are prohibited by 5 CFR 735.203(c) from receiving compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas which have not become part of the body of public information. *See also* 17 CFR 200.735-4.

Investment Management, the authority to adjust the filing date of a filing submitted in electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problems.

I. Summary

With the Edgar Pilot, the Commission is continuing its efforts to develop an effective and efficient means of using computer technology to improve the receipt, storage, review and dissemination of filed information.

The Pilot is designed to develop and test Edgar with actual filings. On September 24, 1984 the Commission began accepting electronic filings of documents filed under the Securities Act of 1933, ("Securities Act") (15 U.S.C. 77a–77aa) the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a–78jj), and the Trust Indenture Act of 1939 ("Trust Indenture Act") (15 U.S.C. 77aaa–77bb–bb). The Commission expects that on July 1, 1985, it will begin accepting electronic filings of documents under the Holding Company Act. Electronic filings may be submitted in one of three forms: direct digital transmission, diskette, or magnetic tape. Filings made by direct digital transmission will be submitted to the Commission over communication lines.[1] Filings made by diskette or magnetic tape will be delivered to the Commission in the manner currently used for paper filings, *i.e.*, by mail or hand delivery. Once in the possession of the Commission, the tapes or diskettes will be entered into the Edgar system using equipment capable of reading and translating a large variety of electronic formats. Currently, the Commission accepts filings prepared on over 85 different word processors or personal computer. Thereafter, the electronically submitted documents will be processed, screened and reviewed in the same manner as other filings in the Office of Public Utility Regulation. Immediately upon acceptance, these documents will be available to the public in the Commission's Public Reference Rooms in Washington, Chicago and New York City by means of viewing terminals. They also will be available to the public on microfiche as are documents filed on paper.

Changes to the Holding Company Act rules and regulations are necessary to permit electronic documents to replace paper documents and to meet the filing requirements. The temporary rules being adopted will apply only to companies who have volunteered to participate in the Pilot. Certain forms which facilitate electronic filing, previously adopted under the Securities Act, the Exchange Act and the Trust Indenture Act will be amended for use under the Holding Company Act.[2] Because the temporary rules are procedural in nature, their adoption is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). Nevertheless, the Commission is soliciting comments to assist it in developing the Pilot.

In addition to the temporary procedural rules and forms, an Edgar User Manual has been published, which specifies technical procedures for making filings in electronic format. This manual is subject to revision as the technology evolves and experience with the Pilot grows. The manual is available from the Commission's Public Reference Room; revisions will be sent to all Pilot participants and will be available upon request.

II. The Temporary Rules and Forms

The following discussion is intended to help interested parties understand the temporary rules and forms and the effect the rules will have on filings made by Pilot participants. In general, the rules being adopted under the Holding Company Act are similar to the temporary Edgar rules previously adopted under the Securities Act, the Exchange Act, and the Trust Indenture Act.

A. Definitions

The definitions of certain words primarily associated with ink and paper have been changed to cover documents submitted in an electronic format.

1. Electronic Format. Since the basic difference in the filings made in the Pilot from other filings made with the Commission is one of format, the term "electronic format" is used to refer to the format style of Edgar filings (rule 111(b)(1)). The term is limited to the types of magnetic impulse or computer data compilation that can be accommodated in the Pilot.

There are three ways that an electronically formatted document can be submitted to the Commission: by direct digital transmission over communication lines, or by delivery of diskette, or magnetic tape.

Within these categories, the Pilot is prepared to accept a large variety from different manufacturers.

2. *Written, In Writing.* Where the Holding Company Act or any rule thereunder requires that a document be "written" or "in writing" these terms are defined to include magnetic impulse or other forms of computer data compilation, thus allowing for submission of a document in an electronic format as well as on paper (rule 111(b)(2)).

3. *Original.* The term "original" is defined to allow for the fact that electronically formatted documents are written in a language read only by machines (computers) and must be translated to viewing screens or other media in order to be comprehended (rule 111(b)(3)). For evidentiary purposes, the Commission is defining the term "original" to include an output that accurately reflects the data contained in an electronic format in a manner that can be read by sight.[3]

4. *Received.* The term "received", as it is used to determine the filing date, is defined to mean the date the filing is "accepted" to accommodate the fact that the Pilot will be receiving direct digital transmissions as well as diskettes, magnetic tapes, and some paper documents (rule 111(b)(4)). Currently, the Pilot receives direct digital transmissions from 8:30 a.m. to 7:00 p.m. (Washington, D.C. time). As the Pilot develops, the daily time frame for receiving filings may vary. In any case, the date of filing will be determined by the hours in which the Commission is open for business on the particular day accepted.[4] Thus, a direct digital transmission made after 5:30 p.m., the current closing time for the Commission, would be deemed "received" the following day. This definition also allows the Commission to adjust the filing date in case of any equipment malfunction.

In this connection, the Commission is also amending its rules governing delegation of authority to delegate to the Director of the Division of Investment Management the authority to adjust the date of filing to a date not earlier than the registrant's initial attempt to file in cases where the Commission's acceptance of a filing submitted in an electronic format is delayed because of

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[1] Directions for making electronic filings with the Commission are published in the Edgar User Manual, available from the Commission's Public Reference Room, which the Commission is authorizing for use with electronically formatted filings pursuant to the Holding Company Act. (*See* Securities Act Release No. 6539 (June 27, 1984) [49 FR 28044 (July 10, 1984)].)

[2] Forms ET, ID, and SE, adopted in Securities Act Release No. 6539 (June 27, 1984) [49 FR 28044 (July 10, 1984)]. Existing copies of these forms may be used until supplies run out.

[3] This definition is similar to the definition of "original" in the Federal Rules of Evidence. See Fed. R. Evid. 1001.3.

[4] *See, e.g.*, Business hours of the Commission, 17 CFR 230.110.

equipment malfunction or technical problem. These cases include, but are not limited to, problems with respect to hardware or software, transmission or reception, communication network, line or wire unavailability, or diskette or magnetic tape damage.

5. *Signatures.* To accommodate the development of technology and law in the area of electronic signatures, the temporary rules define "signed" to include the entry in the form of a magnetic impulse or other form of a computer data compilation of any symbol or series of symbols executed, adopted or authorized by the person as his/her signature (rule 111(b)(5)). By requiring that the symbol be manually entered into the document, the necessary intention to authenticate will be demonstrated.

Filings made on diskette or magnetic tape must be accompanied by an executed paper signature page which will identify and attest to the statement or report being signed as well as executed copies of any required opinions or consents. The electronic filing shall contain conformed signatures, opinions or consents. Further information is contained in the Edgar User Manual.

Because it is not possible to provide a paper signature page contemporaneously with a direct digital transmission, another approach is necessary. For filings made by direct digital transmission, the Pilot will use Personal Identification Numbers ("PIN"s) as signature symbols. Individuals required to provide signatures in documents filed under Edgar, including officers, directors, accountants and other experts, will be issued PINs upon application to the Commission. Form ID, previously adopted for this purpose, is being amended for use in connection with Holding Company Act filings. The form requires the applicant to agree that his/her "execution, adoption or authorization to enter the PIN * * * constitutes * * * (his/her) signature."[5] The Edgar User Manual contains additional information on obtaining and using PINs.

B. Suspended or Substituted Requirements

Certain rule changes cannot be accomplished by a definitional change. Accordingly, a separate paragraph of rule 111(c) addresses rules that are suspended or replaced, in whole or in part, for electronic documents.

[5] The Commission staff is continuing to look at additional ways to handle signatures.

1. *Paper.* The Commission is defining the term paper to include the term "electronic format" in the temporary rules. Thus, any rule that specifies paper also includes "electronic format" (rule 111(c)(5)).

Certain terms, such as quality and size of paper or type size, do not apply to electronic formats and must therefore be suspended to permit electronic filings (rule 111(c)(6)). The Edgar User Manual designates analogous standards for the Pilot and may change as experience with the Pilot grows and technology evolves. Filings which continue to be made on paper must comply with the rules as they exist for paper formatted documents.

2. *Numbers of Copies and Other Technical Requirements.* Rules relating to numbers of copies and other technical matters need to be suspended for documents submitted in an electronic format since the nature of a computer allows anyone, with an output device and proper authorization access, to produce a copy of the document as needed (rule 111(c)(3)).

"Binding" also is a term specific to paper, but the purpose of keeping together the different documents comprising a single filing applies to electronically formatted documents as well. In the Pilot, documents comprising a filing that are required to be bound and filed together will be required to be submitted together in or with a single electronic submission as described in the directions to filers (this single submission may be comprised of more than one diskette or magnetic tape, where necessary). Since the paper signature pages are a part of the statements or reports filed on diskette or magnetic tape, under the rule, they must accompany these electronic documents (rule 111(c)(1)).

3. *Exact Copies.* The requirement that a copy of a document be filed with the Commission will be satisfied for the temporary rule by a copy of the document in an electronic format. However, this document must contain a detailed explanation which describes all differences between the paper document and the document in an electronic format including, but not limited to, colors, type size, and type style. Descriptions of photographs or other images also must be provided. The explanation should be sufficiently thorough to ensure that the purpose of the rule is fulfilled while at the same time permitting the document to be filed electronically.

4. *Registant.* The term "registrant" is used throughout the rules and forms developed for the Pilot under the Securities Act. However, it is not commonly used in the Holding Company Act. Therefore, in amending those existing forms and rules, the Commission is defining "registrant" to include any person required or permitted to make a filing with the Commission pursuant to the Holding Company Act (rule 111(c)(5)).

5. *Fees.* In order to facilitate the payment of fees, Edgar filers are directed to Securities Act Release No. 6540 (June 27, 1984) (49 FR 27306 (July 3, 1984)) which describes the means for Edgar filers and others to pay their fees by mail or wire transfer to a lockbox at a U.S. Treasury Department designated depository in Pittsburgh, Pennsylvania.

C. Forms

1. *Form SE.* The Commission is aware that many exhibits are not created in an electronic format and, accordingly is permiting Edgar filers to file certain of their exhibits in paper format under cover of a separate form and incorporate them by reference into the electronically formatted filing. Nevertheless, the Commission encourages the submission of exhibits in electronic format to the maximum extent practicable and anticipates that, over time, most exhibits will be prepared in an electronic format.

New temporary rule 111(c)(2) will provide the means for Edgar filers, to file some or all of their exhibits on paper and incorporate them by reference into an electronic filing. Form SE, previously adopted for this purpose, is being amended for use in connection with Holding Company Act filings.

Where information required to be filed is contained in a document previously filed with the Commission, existing rule 22(b) permits incorporation "by exact and specific reference to the filing in which . . . (information) . . . was physically filed." The term "physically filed" will be defined to include reference to a filing submitted in electronic format (rule 111(c)(ii)).

Other existing rules concerning what is incorporated by reference into a filing need no modification and will not be changed by the temporary rules for the Pilot.

2. *Form ET.* Form ET accompanies any magnetic tape or diskette used to file under the Edgar pilot. The form identifies the registrant and contact person and provides technical data to enable the Commission to transfer the filings from the tapes or diskettes to the Edgar computer system. It is being amended to designate its use in connection with Holding Company Act filings.

3. *Form ID.* Form ID is a uniform application form used by individuals to request assignment of a PIN, and by all registrants participating in the Pilot, to request assignment of a CIK (registrant identification number) and password. The CIK, in combination with the password, enables the registrant to protect against other parties filing data under its name and enables the Commission to ensure that the materials received are from the registrant. Similarly, as discussed above, each individual signing any document submitted to the Commission via direct digital transmission should request and receive a unique PIN to serve the same purpose. The application solicits the information necessary for the assignment of this number. Form ID is being amended to designate it for use in connection with Holding Company Act filings.

III. Request for Comments

The temporary rules will become effective immediately. In order to give interested parties an opportunity to comment on the temporary rules, comments will be accepted on or before July 30, 1985, after which the Commission will review the comments and make such changes that it deems necessary and appropriate.

Further suggestions concerning Edgar from applicants, potential users of the electronic disclosure system, and other members of the public may be submitted throughout the Pilot. During the course of the Pilot, the Commission may find it necessary to amend the temporary rules or forms to make minor technical changes.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (government agencies), Reporting and recordkeeping requirements.

17 CFR Part 239

Reporting and recordkeeping requirements.

17 CFR Part 250

Electric utilities, Holding companies, Public utility holding companies, Reporting and recordkeeping requirements.

17 CFR Part 259

Electric utilities, Holding companies, Public utility holding companies, Reporting and recordkeeping requirements.

IV. Text of New Rules and Amended Forms

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 250 continues to read as follows:

Authority: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79o, 79t unless otherwise noted.

2. By adding § 250.111 to read as follows:

§ 250.111 Edgar temporary rule.

(a) *Scope.* In conjunction with the applicable rules and regulations under the Holding Company Act, this rule shall govern the filing of documents under the Act by holding companies and their subsidiaries permitted to participate in the Edgar pilot. This rule shall be controlling for an electronically formatted document provided for in paragraphs (b)(1) through (c)(6) of this section.

(b) *Definitions.* Unless otherwise specifically provided, the terms used in this rule have the same meanings as in the Act and in the general rules and forms. In addition, the following definitions of terms apply specifically to a document in an electronic format and shall define such terms wherever they appear in the rules or forms unless the context otherwise requires:

(1) *Electronic format.* The term "electronic format" shall refer to a computerized format of a document that is submitted to the Commission by direct digital transmission, magnetic tape of diskette.

(2) *Written, in writing.* The terms "written" or "in writing" shall include magnetic impulse or other form of computer data compilation.

(3) *Original.* The term "original", when used or implied in the regulations or forms, shall include the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. If data are stored in a computer or similar device, any printout or other readable by sight, shown to reflect the data accurately, is an "original".

(4) *Received.* The term "received" when used to determine the filing date, *i.e.*, the date "received" by the Commission, shall be the date on which such filing is accepted, as determined by the Commission, for a document filed in an electronic format.

(5) *Signed.* The term "signed" shall include the entry in the form of a magnetic impulse or other form of computer data compilation of any symbol or series of symbols executed, adopted or authorized as a signature.

(c) *Suspended or substituted requirements.* The following paragraphs refer to requirements that are suspended or replaced, in whole or part, for a document in an electronic format.

(1) *Binding.* The requirement for a copy to be bound in one or more parts shall be satisfied by including in or with a single submission in an electronic format all documents required to be so bound.

(2) *Filing of documents incorporated by reference.* (i) Wherever a document, or part thereof, which is incorporated by reference into a directly transmitted electronic filing is required to be filed with, provided with, or is to accompany the filing to the Commission and such document is not in an electronic format, such requirement shall be suspended, provided that the document has been filed with or provided to the Commission previously. Any requirement as to delivery or provision to persons other than the Commission shall not be affected by this paragraph.

(ii) Where in the regulations incorporation is permitted by specific reference to a filing in which a document was "physically filed," the term is expanded to allow reference to a filing in which a document was submitted in electronic format.

(3) *Number of copies required to be filed.* One copy of a document filed in an electronic format shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

(4) *Exact copies.* The requirement that a copy of a document be filed with the Commission shall be satisfied by filing such document in an electronic format with an explanation that narratively describes in detail the variation between such document and the copied document.

(5) *Registrant.* The term "registrant", when used in the forms ID, ET or SE, or in the rules adopting those forms, shall include any person required or permitted to make filings with the Commission pursuant to the Holding Company Act.

(6) *Paper.* Whenever the term "paper" appears, the term "electronic format" also shall be included unless the context refers specifically to characteristics of paper.

(7) *Rule 22(d), "Formal Specifications".* The requirements as to size, quality and color of paper are suspended for documents in an electronic format.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 259 continues to read as folows:

Authority: Secs. 5, 6, 7, 10, 12, 13, 14, 17(a), 20, 49 Stat. 812, 814, 815, 818, 823, 825, 827, 830, 833; 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

2. By adding Subpart G—Forms for Electronic Filing to include §§ 259.601, 259.602 and 259.603, to read as follows:

Subpart G—Forms for Electronic Filing

Sec.

259.601 Form ET, transmittal form for electronic format documents under the Edgar pilot.

259.602 Form ID, uniform application for identification numbers and passwords under the Edgar pilot.

259.603 Form SE, for exhibits of registrants filing under the Edgar pilot.

Subpart G—Forms for Electronic Filing

§ 259.601 Form ET, transmittal form for electronic format documents under the Edgar pilot.

This Form shall accompany each electronic filing under the Edgar pilot project when the reporting medium is either diskette or magnetic tape.

§ 259.602 Form ID, uniform application for identification numbers and passwords under the Edgar pilot.

(a) Form ID is to be used by persons participating in the Edgar Pilot for the purpose of requesting assignment of:

(1) Company Identification Number (CIK)—used internally by the Commission to uniquely identify each registrant;

(2) Company Password—a unique command assigned to a registrant which is essential to obtain access to the electronic filing system for the purpose of imputing data on behalf of that registrant;

(3) Personal Identification Number (PIN)—a series of symbols, which serves as a signature, to be assigned upon request to each individual who may sign documents filed with the Commission.

(b)(1) CIK and Passwords may be requested only by the registrant or by a duly authorized person (*e.g.*, officer, director or trustee) on its behalf.

(2) PIN may be requested only by the person to whom the number is to be assigned.

§ 259.603 Form SE, for exhibits of registrants filing under the Edgar pilot.

This form shall be used for the filing of any exhibit(s) by persons filing any document pursuant to the Public Utility Holding Company Act of 1935 provided such registrant:

(a) Is filing in an electronic format under the Edgar Pilot project; and

(b) determines that it is impracticable, in its judgment, to file such exhibit(s) in an electronic format.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: Securities and Exchange Act of 1933; 15 U.S.C. 77a.

2. By amending paragraph *IV* of the General Instructions of Form ET described in § 239.62 to read as follows:

§ 239.62 Form ET, transmittal form for electronic format documents under the Edgar pilot.

* * * * *

Form ET

* * * * *

IV. Application of General Rules and Regulations and Directions

Attention is directed to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, Trust Indenture Act of 1939, and Public Utility Holding Company Act of 1935, as modified by temporary rules 499, 12b–37, 0–12 and 111, respectively. * * *

* * * * *

3. By amending Part III—SIGNATURES of Form ID described in § 239.63 to read as follows:

§ 239.63 Form ID, uniform application for identification numbers and passwords under the Edgar pilot.

* * * * *

Form ID

* * * * *

Part III—Signatures

* * * * *

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), sections 13(a) and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78w), section 319 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss), and section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t), authorizes solicitation of this information.* * *

* * * * *

4. By amending Parts I, II, and III of the General Instructions of Form SE described in § 239.64 to read as follows:

§ 239.64 Form SE, for exhibits of registrants filing under the Edgar pilot.

* * * * *

Form SE

* * * * *

I. Rule as to the Use of Form SE

This form shall be used for the filing of any exhibit(s) by persons filing registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, or the Public Utility Holding Company Act of 1935 provided such registrant: * * *

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, the Exchange Act, the Trust Indenture Act, and the Holding Company Act as modified by temporary rules 499, 12b–37, 0–12, and 111 respectively. * * *

B. Particular attention is directed to Rules 411 and 499(c)(2) under the Securities Act; Rules 12b–23, 12b–32, and 12b–37 under the Exchange Act, and Rules 22 and 111(c)(2) under the Holding Company Act, the specific registration or reporting form to be used, and Item 601 of Regulation S–K.

III. Preparation of Form

Form SE shall serve as a covering sheet for all exhibits to be filed in paper format. An exhibit index shall be included and where applicable shall list exhibits filed according to the number assigned to such exhibit in the table contained in Item 601 of Regulation S–K.

* * * * *

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for subpart A of Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C.

2. By revising paragraph (f) introductory text and adding new paragraph (f)(10) to § 200.30–5 to read as follows:

§ 200.30–5 Delegation of Authority to Director of Division of Investment Management.

* * * * *

(f) With respect to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*):

* * * * *

(10) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

* * * * *

V. Findings

* * * * *

In accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), these temporary rules and forms relate solely to agency organization, procedure, or practice, and thus the notice and public comment procedure is not necessary.

By the Commission.

John Wheeler,

Secretary.

May 23, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed Edgar temporary rules and forms promulgated, under the Public Utility Holding Company Act of 1935 will not have a significant economic impact on a substantial number of small entities. The reason for this certification is as follows: The Edgar Pilot Project ("Pilot") is designed to develop and test, using actual filings, an electronic disclosure system, designated "Edgar" for Electronic Data Gathering, Analysis and Retrieval. The proposed rules and forms would merely adapt current procedural rules to accommodate electronic filings. The electronic filings will be made by companies that have volunteered to participate in the Pilot and that already have (or are willing to purchase) the computer facilities necessary to make their filings electronically. Since participation in the Pilot is voluntary, small companies may avoid possible burdens of the program by not volunteering. Moreover, the definition of a small business as found in Rule 110 under the Public Utility Holding Company Act of 1935; ". . . a holding company system whose gross consolidated revenues . . . for its previous fiscal year did not exceed $1,000,000," excludes all holding companies currently registered under the Act, as the smallest of these had operating revenues of $10,907,000 in 1984.

Dated: May 23, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85-13110 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 6 and 24

[T.D. 85-95]

Customs Regulations Amendments Relating to Progressive Clearance of Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to progressive clearance for airlines that commingle domestic (stopover) passengers who arrived on an earlier flight and have already cleared Customs at their port of arrival and are continuing on to another U.S. destination, with international passengers who are arriving at their port of arrival and have not yet cleared Customs. The amendments will implement progressive clearance procedures to be followed by airlines which would enable Customs to be reimbursed for the additional cost of reinspecting revenue producing domestic (stopover) passengers at the same time the international passengers are being inspected for the first time.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Joseph O'Gorman, Office of Inspection and Control, (202-566-5607).

Legal Aspects: John Mathis, Carriers, Drawback and Bonds Division, (202-566-5706) U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Generally, Customs inspects passengers when they arrive at their port of arrival in the U.S. If a plane carrying international passengers who have not yet cleared Customs stops temporarily at a port of arrival in the U.S. to pick up domestic (stopover) passengers who arrived on an earlier flight and have already cleared Customs, before continuing to a final U.S. destination, standard Customs procedure is to inspect all arriving international passengers before the domestic passengers board the plane. This procedure eliminates the commingling of domestic passengers, who have already cleared Customs, with international passengers who have not cleared Customs. As a result, all passengers heading for the final U.S. destination have cleared Customs and there is no possibility of international passengers passing contraband to domestic passengers not subject to futher inspection, or other such fraudulent practices. Domestic (stopover) passengers include not only revenue producing passengers but non-revenue producing passengers as well (i.e., airline personnel and other persons to whom the carrier is authorized to provide free transportation).

However, the increasingly high cost to the airlines of having their planes wait on the ground at the initial location while the international passengers are inspected before the boarding of the domestic passengers, has prompted the airlines to request that inspection of the international passengers be deferred to the final destination. In such a case Customs would be required to reinspect the domestic passengers due to the commingling of inspected and uninspected passengers.

Pursuant to these requests, Customs has entered into voluntary agreements with several airlines that specify compliance with specific requirements before approval will be granted by Customs for the progressive clearance of flights when inspected domestic (stopover) passengers are commingled with international passengers who have not yet cleared Customs. Information regarding specific carriers that have signed these agreements may be obtained from Customs.

One of the requirements of each agreement is that the airlines reimburse Customs for the additional costs of reinspection at the rate of $2.00 per revenue producing domestic (stopover) passenger. The airlines have agreed to pay this progressive clearance fee and Customs may assess it pursuant to the User Charges Statute (31 U.S.C. 9701), which states that a Federal agency is required to charge appropriate fees to recover the costs of special services provided by that agency. The fees must be fair and based on the costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts. This fee is in addition to any other charges currently incurred, except overtime reimbursed by the airlines under the Customs overtime laws (19 U.S.C. 267, 1451). In those cases where Customs is reimbursed by the airlines under 19 U.S.C. 1451, the fee will not be charged. In addition, the progressive clearance fee will not be charged for the reinspection of non-revenue passengers.

In addition to paying the reinspection fee, the airlines must also: (1) Arrange for the checked baggage of all passengers requiring reinspection on the previously-described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate of final) where an inspection is to take place; (2) notify in writing all stopover passengers, prior to boarding, that they will be subject to full reinspection by Customs; (3) provide to the domestic (stopover) passenger a Customs declaration identified by the words "Domestic Flight". The domestic (stopover) passenger is only required to complete Items 1-4 on the declaration; and (4) make available to Customs the permit to proceed and/or the general declaration, which clearly indicates the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate of final) where an inspection of passengers is to take place. An airline that wishes to terminate the permit to proceed granted upon

compliance with these requirements must provide Customs a minimum of 30 days written notice before a scheduled change.

Although the progressive clearance procedures based on voluntary agreements between Customs and the affected airlines went into effect as of January 1, 1984, by notice published in the Federal Register on October 3, 1984 (49 FR 39075) Customs proposed to amend §§ 6.9 and 24.12, Customs Regulations (19 CFR 6.9, 24.12) to implement these procedures. No comments were received in response to the notice. Accordingly, after a further review of the matter, Customs has determined to adopt the rule as proposed.

Executive Order 12291

It has been determined that these amendments are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen. E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Lists of Subjects

9 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports, Freight.

9 CFR Part 24

Customs fees, Accounting.

Amendments to the Regulations

Parts 6 and 24, Customs Regulations (19 CFR Parts 6, 24), are amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: May 3, 1985.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 49 U.S.C. 1474, 1509:

§ 6.2 also issued under 19 U.S.C. 1322, 1448, 1450, 1451, 1644;

§ 6.6 also issued under 19 U.S.C. 1431;

§ 6.7 also issued under 19 U.S.C. 1644;

§ 6.8 also issued under 19 U.S.C. 1644, 46 U.S.C. 91, 92;

§ 6.17 also issued under 19 U.S.C. 1551, 1552, 1553; and

§§ 6.18 and 6.20 also issued under 19 U.S.C. 1552, 1553.

2. All other statutory authority cited at the end of various sections in Part 6 is removed.

3. Part 6 is amended by adding a new paragraph (f) to § 6.9 to read to follows:

§ 6.9 Residue cargo and passengers not previously cleared.

* * * * * *

(f) Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are arriving at their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. These requirements are as follows:

(1) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or on foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(2) Pay a $2.00 charge per each revenue producing domestic (stopover) passenger reinspected in the U.S. (See § 24.12 of this chapter).

(3) Arrange for the checked baggage of all passengers requiring reinspection on the previously-described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(4) Notify in writing all stopover passengers, prior to boarding, that they will be subject to full reinspection by Customs. This written notification will contain the following language: "Notice to all boarding passengers; You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry."

(5) Provide to the domestic (stopover) passengers a Customs declaration identified by the words "Domestic Flight". The domestic (stopover) passenger is only required to complete Items 1–4 on that declaration.

(6) Make available to Customs the permit to proceed and/or the general declaration, which clearly states the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final), as otherwise required by law, where an inspection of passengers is to take place.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 31 U.S.C. 9701:

§ 24.1 also issued under 19 U.S.C. 197, 198, 1648;

§ 24.4 also issued under 19 U.S.C. 1623, 26 U.S.C. 5007, 5054, 5061, 7805;

§ 24.11 also issued under 19 U.S.C. 1485(d);

§ 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 927;

§ 24.14 also issued under 19 U.S.C. 1;

§ 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623, 46 U.S.C. 2111, 2112;

§ 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562, 46 U.S.C. 2110, 2111, 2112;

§ 24.32 also issued under 5 U.S.C. 5582, 5583;

§ 24.36 also issued under 26 U.S.C. 6423.

2. All other statutory authority cited at the end of various sections in Part 24 is removed.

3. Part 24 is amended by adding a new paragraph (d) to § 24.12 to read as follows:

§ 24.12 Customs Fees; charges for storage.

* * * * * *

(d) Pursuant to the progressive clearance procedures set forth in § 6.9(f) of this chapter, when airlines commingle domestic (stopover) passengers who have already cleared Customs at their port of arrival and are continuing on to another U.S. destination, with international passengers who are arriving at their port of arrival and have not yet cleared Customs, a progressive clearance fee of $2.00 per domestic (stopover) passenger reinspection in the U.S. will be charged by Customs to the affected airlines to offset the additional cost to Customs of reinspecting passengers who have already been cleared. The fee is in addition to any other charges currently incurred, such as overtime services, but will not apply to passengers reinspected on an overtime basis if the cost of performing such reinspection is reimbursed to Customs in accordance with 19 U.S.C. 1451. The fee will not apply to the reinspection of non-revenue producing passengers, including but not limited to, employees of the carrier and their dependents, deadhead

crew, employees of other carriers who may be assessed a service charge by the transporting carrier, and other persons to whom the carrier is authorized to provide free transportation pursuant to 14 CFR Part 233. The airline industry will be notified at least 90 days in advance of the date of any change in the amount of the fee necessitated by either an increase or decrease in costs to Customs, but no new fee shall take effect before January 1, 1986.

[FR Doc. 85-13174 Filed 5-31-85; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of Certain Color Additives; Postponement of Closing Dates

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing for 90 days the closing dates for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of these color additives for use in coloring food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics; of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date for the provisional listing of all of these color additives will be September 3, 1985. This postponement will permit the uninterupted use of these color additives while the agency conducts a rulemaking on new, longer extensions of the provisional list. The agency intends to propose these extensions in the **Federal Register** shortly.

DATES: Effective June 3, 1985, the new closing dates for FD&C Red No. 3 and its lakes, D&C Yellow No. 5 and its lakes, D&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 will be September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 1985 (50 FR 13018), FDA established the current closing date of June 3, 1985, for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs and for the provisional listing of the use of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 in food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and of D&C Red No. 8, D&C Red. No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics. The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 45237 for FD&C Red No. 3, 48 FR 45760 for FD&C Yellow No. 5, 49 FR 13344 for FD&C Yellow No. 6, 48 FR 42807 for D&C Red No. 8 and D&C Red No. 9, 48 FR 44773 for D&C Red No. 33, and 49 FR 38935 for D&C Red No. 36.

In that same issue of the **Federal Register** (50 FR 13017), FDA published a final rule establishing the current closing date of June 3, 1985, for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in externally applied drugs and cosmetics. The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 38814 for D&C Red No. 19 and D&C Red No. 37 and 48 FR 44774 for D&C Orange No. 17.

FDA recently has extended the closing dates for the provisional listing of each of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 to permit consideration of the scientific and policy aspects of the data concerning the safety of their provisionally listed uses. As a result of that consideration, it has become clear that the uses of all of these color additives except FD&C Yellow No. 5 raise significant scientific and policy questions that cannot be resolved in the immediate future. Because of these questions, the agency has decided that it is necessary to propose new extensions of the provisional list to permit additional review. The agency will explain the questions raised by these additives and the basis for the length of the proposed extension for each color additive in the **Federal Register** document that it will publish shortly. To ensure that the provisional listing of these color additives does not expire during the rulemaking on that proposal, FDA is postponing the closing date of the provisional list until September 3, 1985. This brief postponement will provide an opportunity for the public to comment on the actions that FDA will propose to take with respect to these color additives and for the agency to review those comments and to publish a final rule. The continued use of these color additives, including FD&C Yellow No. 5 and its lakes, until September 3, 1985, will not pose a hazard to the public health.

Because of the shortness of time until the June 3, 1985, closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, D&C Orange No. 17, D&C Red No. 19, D&C Red No. 37, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, until September 3, 1985. Therefore, in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being issued as a final rule and is being made effective on June 3, 1985. In accordance with 21 CFR 10.40(e)(1), FDA will consider comments from any person who believes that the brief extension of the provisional list provided for in this final rule should be modified or revoked.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the transitional provisions of the Color Additive Amendments of 1960 and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for Part 81 is revised to read as follows:

Authority: Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c) and (d)); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives*, by revising the closing dates for "FD&C Red No. 3," "FD&C Yellow No. 5," and "FD&C Yellow No. 6" in

paragraph (a) to read "September 3, 1985" and by revising the closing dates for "D&C Orange No. 17," "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 19" "D&C Red No. 33," "D&C Red No. 36," and "D&C Red No. 37" in paragraph (b) to read "September 3, 1985."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing*, by revising the closing dates for "D&C Orange No. 17," "FD&C Red No. 3," "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 19," "D&C Red No. 33," "D&C Red No. 36," "D&C Red No. 37," "FD&C Yellow No. 5," and "FD&C Yellow No. 6" in paragraph (d) to read "September 3, 1985" and by revising the closing dates for "FD&C Red No. 3" and "D&C Red No. 33" in paragraph (e) to read "September 3, 1985."

Dated: May 20, 1985.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 85-13381 Filed 5-31-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 85F-0058]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant/stabilizer in olefin copolymers intended for use in contact with food. This action responds to a petition filed by B.F. Goodrich Co.

DATES: Effective June 3, 1985; objections by July 3, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 26, 1985 (50 FR 7837), FDA announced that a petition (FAP 4B3828) had been filed by B.F. Goodrich Co., Akron, OH 44318, proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*,3*H*5*H*)trione as an antioxidant/stabilizer in olefin copolymers complying with § 177.1520 (21 CFR 177.1520) intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food and Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously concluded that this action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA has not received any new information or comments that would alter its previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required. The evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES; ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 510. and 5.61.

2. In § 178.2010(b) by adding the Chemical Abstracts Service Registry number (CAS Reg. No.) for "1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione and by adding new limitation 4 to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6 (1H,3H,5H)trione (CAS Reg. No. 27676-62-6)	For use only: 4. At levels not exceeding 0.1 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1, 3.2, 3.3, 3.4, or 3.5.

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 3, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 3, 1985.

Dated: May 20, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–13135 Filed 5–31–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 83F–0116]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for additional safe uses of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer in various food-contact applications. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective June 3, 1985; objections by July 3, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 26, 1983 (48 FR 18895), FDA announced that a food additive petition (FAP 3B3701) had been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that Parts 175, 176, 177, and 178 (21 CFR Parts 175, 176, 177 and 178) of the food additive regulations be amended to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer in food-contact applications listed in the following sections: § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125), § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) in paragraph (b)(3)(xxxi), § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320), § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170), § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210), § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210), § 178.3800 *Preservatives for wood* (21 CFR 178.3800), and § 178.3850 *Reinforced wax* (21 CFR 178.3850).

In a notice published in the Federal Register of March 18, 1985 (50 FR 10859), FDA announced that it was amending the filing notice of April 26, 1983, to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant/stabilizer in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) as follows:

1. In pressure sensitive adhesives complying with § 175.125 *Pressure sensitive adhesives* (21 CFR 175.125);

2. In can end cement formulations complying with § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300);

3. In petroleum alicyclic hydrocarbon resins complying with § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320);

4. In petroleum alicyclic hydrocarbon resins or their hydrogenated products complying with § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170);

5. In resins and polymers complying with § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180);

6. In rosin and rosin derivatives complying with § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210);

7. In closures with sealing gaskets complying with § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210);

8. In petroleum hydrocarbon resin and rosins complying with § 178.3800 *Preservatives for wood* (21 CFR 178.3800); and

9. In reinforced wax complying with § 178.3850 *Reinforced wax* (21 CFR 178.3850).

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive uses are safe and that the regulations should be amended to permit the petitioned uses of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as stated in the amended filing notice.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES; ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by adding nine new entries to the list of limitations for "Tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
. . . . .	
Tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane (CAS Reg. No. 6683-19-8)	For use only * * * 11. At levels not to exceed 1 percent by weight of pressure sensitive adhesives complying with § 175.125 of this chapter. 12. At levels not to exceed 1 percent by weight of can end cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter.

Substances	Limitations
	13. At levels not to exceed 1 percent by weight of petroleum alicyclic hydrocarbon resins complying with § 175.320(b)(3) of this chapter.
	14. At levels not to exceed 1 percent by weight of petroleum alicyclic hydrocarbon resins or their hydrogeneted products complying with § 176.170(b)(2) of this chapter.
	15. At levels not to exceed 1 percent by weight of resins and polymers complying with § 176.180 of this chapter.
	16. At levels not to exceed 1 percent by weight of rosin and rosin derivatives complying with § 176.210(d)(3) of this chapter.
	17. At levels not to exceed 1 percent by weight of closures with sealing gaskets complying with § 177.1210 of this chapter.
	18. At levels not to exceed 1 percent by weight of petroleum hydrocarbon resin and rosins and rosin derivatives complying with § 178.3800(b) of this chapter.
	19. At levels not to exceed 1 percent by weight of reinforced wax complying with § 178.3850 of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 3, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 3, 1985.

Dated: May 20, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-13138 Filed 5-31-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 84F-0109]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by revising the use temperature limitation for C_{10-16}-alkyl mercaptoacetates reaction products with dichlorodioctylstannane and trichlorooctylstannane in vinyl chloride plastics intended for use in contact with food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective June 3, 1985; objections by July 3, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 17, 1984 (49 FR 20914), FDA announced that a food additive petition (FAP 4B3791) had been filed by Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that the food additive regulations be amended to remove the use temperature limitation for C_{10-16}-alkyl mercaptoacetates reaction products with dichlorodioctylstannane and trichlorooctylstannane in vinyl chloride plastics intended for use in contact with food under 21 CFR 178.2650.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. The agency has, however, determined that a revision, rather than a removal, of the use temperature limitation is in accord with the data submitted by the petitioner.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES; ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 178.2650 [Amended]

2. Section 178.2650 *Octyltin stabilizers in vinyl chloride plastics* is amended in the introductory paragraph by changing the use temperature limitation "49 °C (120° F)" to read "75 °C (167° F)."

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 3, 1985, submit to the Dockets Management

Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 3, 1985.

Dated: May 20, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-13137 Filed 5-31-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Colloidal Ferric Oxide Injection; Iron Dextran Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify two previously approved new animal drug applications (NADA's) sponsored by Ralston-Purina Co. and Boehringer Ingelheim Animal Health, Inc. The NADA's provide for intramuscular use of ferric oxide or hydroxide complexed with a polysaccharide (dextrin or dextran) in baby pigs for preventing or treating iron deficiency anemia. The regulations are also amended to indicate those conditions of use which were found effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC) evaluation of the products.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63164, is sponsor of NADA 11-779 providing for use of Purina Pigemia Injectable 100. Boehringer Ingelheim Animal Health, Inc. (formerly Philips Roxane, Inc.), 2621 North Belt Highway, St. Joseph, MO 64502, is sponsor of NADA 10-955 providing for use of FE-100. The products contain injectable iron polysaccharide (dextrin or dextran) complexes equivalent to 100 milligrams of elemental iron per milliliter. They were subjects of a Drug Efficacy Study Implementation (DESI) notice published in the **Federal Register** of February 14, 1969 (34 FR 2211). In the notice, NAS/NRC concluded and FDA concurred that the drugs are effective for prevention and treatment of iron-deficiency anemia in suckling pigs.

The sponsors were invited to submit supplemental NADA's providing revised labeling limiting the claims and presenting the conditions of use substantially as stated in the notice. Both firms responded to the notice by submitting supplemental NADA's which revised their products' labeling in accordance with the DESI notice. The agency approved the supplements but at that time, such approvals were not routinely codified. Accordingly, the regulations are now amended to codify the firms' approved NADA's and to specify the NAS/NRC-approved conditions of use.

This action, reflecting an approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Since the NADA's were approved before July 1, 1975, the sponsors have not been required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)). However, a summary of the basis for each approval is available upon request in accordance with 21 CFR 514.11(e)(2)(i).

For identical or similar products having the same conditions of use, applications need not include effectiveness data as specified by §§ 514.1(b)(8)(ii) or 514.111(a)(5)(ii)(*a*)(*4*) (21 CFR 514.1(b)(8)(ii) or 514.111(a)(5)(ii)(*a*)(*4*) of the animal drug regulations, but approval may require bioequivalency or similar data as suggested in the guidelines for submitting NADA's for NAS/NRC-reviewed generic drugs, available in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OF INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 522.940 by redesignating existing paragraphs (b) and (c) as (c) and (d), adding new paragraph (b), and revising redesignated paragraph (c) to read as follows:

§ 522.940 Colloidal ferric oxide injection.

* * * * *

(b) *NAS/NRC status.* Use of this drug has been NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(c) *Sponsor.* See Nos. 010042, 012481, and 017800 in § 510.600(c) of this chapter.

* * * * *

3. In § 522.1183 by redesignating existing paragraphs (b), (c), and (d) as (c), (d), and (e); and adding new paragraphs (b) and (f) to read as follows:

§ 522.1183 Iron hydrogenated dextran injection.

* * * * *

(b) *NAS/NRC status.* Use of this drug has been NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter,

but may require bioequivalency and safety information.

* * * * *

(f)(1) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(2) *Conditions of use.* It is used in baby pigs as follows:

(i) For prevention of iron deficiency anemia, administer intramuscularly 100 milligrams at 2 to 4 days of age. Dosage may be repeated at 14 to 21 days.

(ii) for treatment of iron deficiency anemia, administer intramuscularly 100 to 200 milligrams when indicated between 5 to 28 days of age.

Dated: May 24, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-13136 Filed 5-31-85; 8:45 am]

BILLING CODE 4160-01-M

PEACE CORPS

22 CFR Part 307

Standards of Conduct

Correction

In FR Doc. 85-11945 beginning on page 20902 in the issue of Tuesday, May 21, 1985, make the following correction: In the third column, under **General Counsel,** the third line should read "'Assistant General Counsel".

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on payment of premiums that appeared at page 12533 in the **Federal Register** of Friday, March 29, 1985 (50 FR 12533). This action is needed to correct certain editorial errors in the filing requirements for plans that change plan years.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-8476 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85-7675 appearing on 12533 in the issue of March 29, 1985:

§ 2610.3 [Corrected]

1. On page 12537, column three, the introductory text of paragraph (a)(8) is corrected by removing from the eighth line the words "no later than" and adding "on or before the later of 30 days after the date on which the amendment to change the plan year was adopted, or".

2. On page 12537, column three, paragraph (a)(8)(i) is corrected to read as follows:

* * * * *

(i) For plan years beginning before January 1, 1985, the last day of the seventh month following the close of the preceding short plan year;

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-13134 Filed 5-31-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Extension of Deadline for Submission of Program Amendments to the Texas Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Texas to (1) promulgate rules governing the training, examination and certification of blasters and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On June 25, 1984, Texas requested a six-month extension of the deadline for submission of a blaster program. On September 21, 1984, OSM announced its decision to extend Texas' deadline to March 21, 1985 (49 FR 37062). On March 7, 1985, Texas requested an additional four months' extension through July 15, 1985, to submit a blaster training and examination program.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional four-month extension of time, to July 15, 1985, to submit a proposed blaster certification program.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, 333 West Fourth Street, Room 3014, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after the publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication date of OSM's rule, or March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSM published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State. On June 25, 1984, Texas advised OSM that it would require a six-month extension of the deadline for resubmission of a blaster program to prepare any necessary revisions and additions to the program. On September 21, 1984, OSM announced its decision to extend the deadline for submission of the blaster program to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional four-month extension to July 15, 1985, to submit a blaster training and certification program. Texas stated that, due to restrictions in its Administrative Procedure and Texas Register Act, only

one rule action amending § 11.221 may be pending at a time. Because of another rulemaking ongoing in Texas, the State anticipates that a rulemaking to revise blaster certification regulations will not be submitted to the Railroad Commission until July 15, 1985.

Section 850.12(b) of the Federal regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline until July 15, 1985, for Texas to resubmit rules governing a blaster certification and training program consistent with Federal requirements. This extension is granted in light of procedural restrictions in Texas' rulemaking schedule.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 28, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 943—TEXAS

30 CFR Part 943 is amended as follows:

1. The authority citation for Part 943 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 943 is amended by revising paragraph (a) of § 943.16 to read as follows:

§ 943.16 Required program amendments.

Pursuant to 30 CFR 732.17, Texas is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By July 15, 1985, Texas shall submit for OSM's approval—

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

[FR Doc. 85–13178 Filed 5–31–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 28]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Appeals and Hearings

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment to final rule.

SUMMARY: This final rule revises Chapter X of the Department of Defense Regulation governing CHAMPUS, DoD 6010.8–R, to allow the Director, Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), or a designee, generally to complete the administrative appeals process through issuance of a final agency decision. The effect of the amendment is to reserve to the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) authority to review and issue final agency decisions in those appeal cases requiring resolution of CHAMPUS policy and a final decision which may be relied on, used, or cited as precedent in the administration of CHAMPUS. The amendment also removes the unintended result of reconsideration reviews being performed on issues where the authority for the initial determination is not vested in OCHAMPUS.

DATES: Effective March 1, 1985. Comments will be accepted until August 2, 1985.

ADDRESS: Send comments to Policy Branch, OCHAMPUS, Aurora, Colorado 80045, Attention: Reta Michak.

FOR FURTHER INFORMATION CONTACT: Reta Michak, Policy Branch OCHAMPUS, Aurora, Colorado 80045, Telephone (303) 361–4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this Title. In FR Doc 83–6298, appearing in the **Federal Register** on March 11, 1983 (48 FR 10309), the Office of the Secretary of Defense amended § 199.16 revising the policies and procedures for appealing benefit decisions made by the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of the Civilian Health and Medical Program of the Uniformed Services Europe (OCHAMPUSEUR) and CHAMPUS Fiscal Intermediaries.

This amendment will reduce administrative handling of appeals, reduce the time required for completion of administrative appeals, limit appeals to those matters under the authority of OCHAMPUS, and allow the Office of the Secretary to monitor contractor implementation of CHAMPUS requirements of law and regulation.

Because a delay in implementation of this procedural change and the expected expediting of administrative appeals would be contrary to public interest, a memorandum was issued by the Assistant Secretary of Defense (Health Affairs) which authorized the Director, OCHAMPUS, to issue final decisions effective March 1, 1985. This final rule revises DoD 6010.8–R to reflect this procedural change. The proposed rule making process is not being used based on a determination that delay in adoption of the amendment would be contrary to public interest (32 CFR 296.2(d)(4)). However, in recognition of the value of public comments, written comments are invited for 60 days following publication of this final rule. A document advising of any revisions prompted by public comments will be published in the **Federal Register** and any changes which operate to increase

the rights, benefits, or privileges provided in the amended regulation will be effective retroactively to the effective date insofar as administratively feasible.

The first change under § 199.16 corrects the unintended implications of the 1983 amendments that fiscal intermediaries review appeals involving denial of CHAMPUS claims based on ineligibility of the claimant, denial of issuance of a nonavailability statement, and exclusion of a provider from CHAMPUS based on disqualification under other federal programs. Appeal, if any, of these issues lies with the uniformed services or other federal programs and not OCHAMPUS or its fiscal intermediaries.

The second change under § 199.16 allows the Director, OCHAMPUS, or a designee, generally to finalize the administrative appeal process. Under the present procedure, a Final Decision by the ASD(HA) is required for every appeal except where the Director, OCHAMPUS, or a designee, agrees with a Recommended Decision in favor of the appealing party. This amendment limits review and Final Decisions by the ASD(HA) to those cases where the Director, OCHAMPUS, or a designee, forwards the case for review by the ASD(HA) as necessary to resolve CHAMPUS policy and issue a Final Decision which may be relied on, used, or cited as a precedent in the administration of CHAMPUS.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. The Note in § 199.16(a)(6)(iv) is revised as follows:

§ 199.16 Appeal and hearing procedures.

* * * * *

(a) * * *
(6) * * *
(iv) * * *

Note.—A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (§ 199.16(a)(5)(i)) or does not involve a sufficient amount in dispute (§ 199.16(a)(6)) may not be rejected at the reconsideration level of appeal. However, an appeal shall involve an appealable issue and sufficient amount in dispute under these sections to be granted a formal review or hearing.

3. Section 199.16(e) is revised to read as follows:

* * * * *

(e) *Final Decision.* (1) *Director, OCHAMPUS.* The recommended decision shall be reviewed by the Director, OCHAMPUS, or a designee, who shall adopt or reject the recommended decision or refer the recommended decision for review by the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, or designee, normally will take action with regard to the recommended decision within 90 days of receipt of the recommended decision or receipt of the revised recommended decision following a remand order to the Hearing Officer.

(i) *Final Action.* If the Director, OCHAMPUS, or a designee, concurs in the recommended decision, no further agency action is required and the recommended decision, as adopted by the Director, OCHAMPUS, is the final agency decision in the appeal. In the case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this § 199.16, shall be the final agency decision and the final decision shall be sent by certified mail to the appealing party or parties. A final agency decision under this § 199.16(e)(1) will not be relied on, used, or cited as precedent by the Department of Defense in the administration of CHAMPUS.

(ii) *Referral for review by ASD(HA).* The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of CHAMPUS policy and issuance of a final decision which may be relied on, used, or cited as procedent in the administration of CHAMPUS. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(2) *ASD(HA).* The ASD(HA), or a designee, after reviewing a case arising under the procedures of this § 199.16 may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and a copy of the final decision shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this § 199.16(e)(2) may be relied on, used, or cited as precedent in the administration of CHAMPUS.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
May 28, 1985.

[FR Doc. 85–13081 Filed 5–31–85; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85–09]

Special Local Regulations; KHMO National Tom and Becky Raft Race

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: Special local regulations are being adpoted for Miles 309.0 to 311.0, Upper Mississippi River. The "KHMO National Tom and Becky Raft Race", an

approval marine event, will be held on July 6, 1985, at Hannibal, Missouri. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations will be effective from 10:00 a.m. on July 6, and terminate at 12:00 noon on July 6, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B. J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St., Louis, MO 63103. Telephone (314) 425–4055.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Upper Mississippi River Between miles 309.0 and 311.0 during the "KHMO National Tom and Becky Raft Race", July 6, 1985. This event will consist of approximately 35 participants with homemade log rafts, which could pose hazards to navigation in the area. Therefore, these special local regulational are deemed necessary for the promotion of safety of life and property in the are during this event.

A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until April 25, 1985, and there was insufficient time in which to publish proposed rules in advance of the event. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulations are BMCM W.L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0208 to read as follows:

§ 100.35–0208 Upper Mississippi River, miles 309.0 through 311.0.

(a) *Regulated Area* The area between Mile 309.0 and 311.0 Upper Mississippi River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 10:00 a.m. on July 6, and 12:00 noon, on July 6, 1985. All times listed are local time.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0208 will be effective on July 6, 1985, between the hours of 10:00 a.m. and 12:00 noon (local time).

(33 U.S.C. 1233; 49 U.S.C. 108; 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 10, 1985.

B. F. Hollingsworth

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 13202 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD3 85–27]

Special Local Regulations; Cape May Classic

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the 1985 Cape May Classic. This Hobie Cat Regatta is sponsored by Hobie Cat Fleet 416 of Central Valley, Pennsylvania. This sailboat racing event will be held off Cape May, New Jersey on June 22–23, 1985. This regulation is needed to provide for safety of life on navigable waters during the event.

EFFECTIVE DATES: This regulation is effective from 9:00 a.m. to 5:00 p.m. on June 22 and 23, 1985.

FOR FURTHER INFORMATION CONTACT: Lt D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until May 8, 1985, and there was not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Cape May Classic is a Hobie Cat Sailboat racing event to be held off the Cape May Beachfront from Grant Beach to Poverty Beach from the shoreline out

to a distance of 2.0 nautical miles seaward. This regatta will be held on both June 22 and 23, 1985 and is sponsored by Hobie Cat Fleet 416 of Center Valley, Pennsylvania. Nearly 180 hobie cats ranging from 14 to 20 feet in length will participate in this event which is well known to the boaters and residents of this area. The sponsor is providing 5 vessels in conjunction with Coast Guard and local authorities to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the regulated area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The Authority Citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–316 to read as follows:

§ 100.35–316 Cape May Classic, New Jersey.

(a) *Regulated Area.* That area off Cape May, New Jersey from Grant Beach to Poverty Beach in the area bounded by the following points:
Latitude 38°55'38"N.; Longitude 74°56'06"W.
Latitude 38°56'10"N.; Longitude 74°53'38"W.
Latitude 38°54'13"N.; Longitude 74°53'03"W.
Latitude 38°53'43"N.; Longitude 74°55'29"W.

(b) *Effective Period.* This regulation will be effective from 9:00 a.m. to 5:00 p.m. on June 22 and 23, 1985.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator, commercial fishing or press boats may enter or remain in the regulated area unless authorized to be there by the sponsor or Coast Guard patrol personnel. Those vessels wishing to cross the regulated area shall contact the Coast Guard Patrol Commander.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(4) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: May 20, 1985.

P.A. Welling,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85–13199 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[08–84–11]

Drawbridge Operation Regulations; Mermentau River and Superior Oil Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operation of the following two drawbridges:

(1) The swing span bridge over the Mermentau River, mile 7.1 on LA82 at Grand Chenier, Cameron Parish, Louisiana.

(2) The swing span bridge over the Superior Oil Canal, mile 6.3, on LA82 between Grand Chenier and Pecan Island, Cameron Parish, Louisiana.

This change requires that at least four hours advance notice be given for an opening of the draw of the Mermentau River bridge from 9 p.m. to 5 a.m. and for the Superior Oil Canal bridge from 6 p.m. to 6 a.m. The bridges will continue to open on signal outside these hours. Presently, the Mermentau River bridge opens on signal at all times, while the Superior Oil Canal bridge is on 12 hours advance notice from 9 p.m. to 5 a.m. and opens on signal outside these hours.

This change is being made because of the infrequent requests to open the draws during the prescribed advance notice periods. This action will relieve the bridge owner of the burden of having persons constantly available at the bridges to open the draws during the advance notice periods and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 2 January 1985, the Coast Guard published a proposed rule (50 FR 122) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 11 January 1985 and in the Local Notice to Mariners of 16 January 1985. In each instance, interested persons were given until 19 February 1985 to submit comments.

Drafting Information

The drafters of these regulations are Perry Haynes, project office, and Steve Crawford, project attorney.

Discussion of Comments

Five letters were received. One came from a gas and oil exploration company stating that the proposed rule was acceptable, considering the commitment made by the LDOTD that the bridges would be opened on less than the four hours advance notice in the case of a bona fide emergency. One came from the Cameron Parish Police Jury expressing concern about the economic representativeness of using 1982 bridge openings to make the case and the effect of the operating change on the local economy, and stemmed in part from condensed information. To allay this concern, the LDOTD wrote to the police juring showing: (1) The 1980 through 1983 bridge openings were used to justify the change, not just 1982, and that these openings are representative of various levels of economic activity; (2) that these openings are few and basically for repeat waterway users; (3) that these mariners can arrange for an opening by calling the bridge owner collect from ashore or afloat at any time; and, (4) that this type of operation should not have a detrimental economic effect on those mariners or the parish. As a result of the foregoing, there was no indication of any further concern. Three letters of no objection were received from federal agencies.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of

Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridges during the prescribed advance notice periods, respectively, with 1983 openings showing a decline from those of 1982, 81 and 80. There were 293 openings of the Mermentau River bridge in 1983 between 9 p.m. and 5 a.m., in contrast to 332 in 1980, a peak oil activity year, or less than one opening per day in each year on average. Similarly, there were 157 openings of the Superior Oil Canal Bridge in 1983 between 6 p.m. and 6 a.m., in contrast to 326 in 1980, or less than one opening per day in each year on average. These few vessels can reasonably provide four hours notice for a bridge opening by placing a collect call at any time to the LDOTD District Office in Lake Charles, (318) 439–2406. From afloat, this contact may be made by marine radiotelephone through a public coast station. Scheduling their arrival at the bridges at the appointed times would involve little or no additional expense to the mariners. However, should the occasion arise during the advance notice period, to open the bridges on less than four hours notice to accommodate a bona fide emergency or to operate the bridges on demand for a temporary surge in waterway traffic, the LDOTD has committed to doing so. Since the economic impact of these regulations are expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority for Part 117 continues to read as follows:

Authority. 33 U.S.C. 499 and 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by adding a new § 117.480 and revising § 117.495, to read as follows:

§ 117.480 Mermentau River.

The draw of the S82 bridge, mile 7.1 at Grand Chenier, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw will open on less than four hours notice for an emergency and will open on demand should a temporary surge in waterway traffic occur.

§ 117.495 Superior Oil Canal.

The draw of the S82 bridge mile 6.3 in Cameron Parish, shall open on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw will open on less than four hours notice for an emergency and will open on demand should a temporary surge in waterway traffic occur.

Dated: May 20, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander Eighth Coast Guard District.

[FR Doc. 85–13203 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7 85–02]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is changing regulations governing the PGA Boulevard and Parker bridges in Palm Beach County by permitting the number of openings to be limited during certain periods. This change is being made because periods of vehicular and marine traffic have increased. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350–4103.

SUPPLEMENTARY INFORMATION: On January 31, 1985 the Coast Guard published proposed rules (50 FR 4528) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated February 12, 1985. In each notice interested persons were given until March 18, 1985 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

In response to the proposal 4 letters were received. One supported the proposal. Another supported the proposal only if his vessel was considered a regularly scheduled cruise vessel eligible for passage through the draws at any time. The vessel owner was advised that the Coast Guard considered it reasonable to conclude that the vessel was a "regularly scheduled cruise vessel". Two requested the installation of radiotelephones; one of these commenters also requested "on demand" bridge openings after dark. The installation of radiotelephones is under consideration by the Florida Department of Transportation. The proposed regulations would, at certain times, require vessels to await a scheduled opening during darkness. This is not inconsistent with rules for other drawbridges and can be addressed by future rulemaking if indicated.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.261 is amended by adding a new paragraph (i)(3) and revising paragraph (j) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(i)(3) The draw of the PGA Boulevard Bridge, mile 1012.6, shall open on signal; except that from 7 a.m. to 9 a.m. and 4

p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

(j) The draw of the Parker (US–1) Bridge, mile 1013.7, shall open on signal; except from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

* * * * * *

Dated: May 14, 1985.

A. R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85–13200 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[08–84–12]

Drawbridge Operation Regulations; Lafourche Bayou and Company Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operation of the following three drawbridges:

(1) The lift span bridge over Company Canal, mile 0.4, on LA1 at Lockport, Lafourche Parish, Louisiana.

(2) The swing span bridge over Lafourche Bayou, mile 50.8, on LA655 at Lockport, Lafourche Parish, Louisiana.

(3) The pontoon bridge over Lafourche Bayou, mile 54.2, on LA364 at Mathews, Lafourche Parish, Louisiana.

This change requires that the draws of the first two bridges, at Lockport, open on at least four hours advance notice from 6 p.m. to 10 a.m. and on signal from 10 a.m. to 6 p.m.; and that the draw of the third bridge, at Mathews, open on at least four hours advance notice at all times. The three bridges presently are required to open on signal at all times.

This change is being made because of the infrequent requests for opening the draws during the prescribed advance notice periods. This action will relieve the bridge owner of the burden of having persons constantly available at the bridges to open the draws during the advance notice periods and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 24 December 1984, the Coast Guard published a proposed rule (49 FR 49856) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 2 January 1985. In each instance, interested persons were given until 7 February 1985 to submit comments.

Drafting Information

The drafters of these regulations are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments

Five letters were received in response to the public notice. None were received in response to the **Federal Register**. Two letters from federal agencies offered no objections to the proposed regulations. Three letters of concern were received from two marine service companies and the Mayor of Lockport who wrote on behalf of them. Both companies are located on Lafourche Bayou just downstream from the Lockport bridge at mile 50.8. The letters indicated that the four hours advance notice for an opening of the two Lockport bridges could cause a business loss to the companies were they unable to react quickly to customer calls for service. The LDOTD has assured the respondents that if a vessel must depart its company facility and transit the bridges, in less than the prescribed four hours advance notice, to meet the requirements of a customer call, that the LDOTD would make every effort to effectuate an earlier transit. Moreover, and for all cases, because the bridges are in close proximity to each other, whenever a vessel has to transit them in succession, the same bridgetender would follow from bridge to bridge to facilitate the passage. In view of this, the respondents stated that they had no objection to the proposed change in operating the bridges and the issuance of this final rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridges during the prescribed advance notice periods. During these periods, both Lockport bridges and the Mathews bridge are averaging less than one opening per day. These few vessels can reasonably provide four hours notice for a bridge opening by placing a collect call during normal working hours to the LDOTD Office at Houma, Louisiana, telephone (504) 851–0900 and at any time to the District Office at Lafayette, Louisiana, telephone (318) 233–7404. Scheduling their arrival at the bridges at the appointed time would involve little or no additional expense to the mariners. However, should the occasion arise, during the advance notice period, to open the bridges on less than four hours notice to accommodate a bona fide emergency or to operate the bridges on demand for a temporary surge in waterway traffic, the LDOTD has committed to doing so. Since the economic impact of these regulations are expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read:

Authority: 33 U.S.C. 499 and 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.465 is amended by renumbering the existing § 117.465 (a) through (c) as § 117.465 (c) through (e), and adding a new § 117.465 (a) and (b); and a new § 117.438a is added to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draw of the S655 bridge, mile 50.8 at Lockport, shall open on signal; except that, from 6 p.m. to 10 a.m. the

draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

(b) The draw of the S364 bridge, mile 54.2 at Mathews, shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

. . . . .

§ 117.438a Company Canal.

The draw of the S1 bridge, mile 0.4 at Lockport, shall open on signal; except that, from 6 p.m. to 10 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: May 20, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander Eighth Coast Guard District.

[FR Doc. 85-13204 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD3-85-23]

Safety Zone Regulations; New York, East River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New York Harbor, East River.

This zone is needed to protect vessels from possible safety hazards associated with a fireworks display in the East River. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective on July 4, 1985 at 8 p.m. It terminates on July 4, 1985 at 10 p.m.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York (212)-668-7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation. Publishing an NRPM would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG M. O'Malley, Project Officer for the Captain of the Port, Ms. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display in the East River.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Part 165 is amended by adding § 165.T343 to read as follows:

§ 165.T343 Safety Zone: New York, New York Harbor, East River.

(a) *Location.* The following area is a safety zone: The waters of the East River, New York, New York from the northern end of the Consolidated Edison Pier at 15th Street Manhattan, thence easterly on a course of 087 degrees true to the northern end of the Noble Street Pier Brooklyn, thence north along the Brooklyn shoreline including Newtown Creek to the Kosciusko Bridge, thence along the Queens shoreline to Hell Gate Light at Hallets Point (LL# 1275), thence on a westerly course of 261 degrees true to the Fireboat Station Pier at Horns Hook Manhattan, thence south along the Manhattan shoreline to the starting point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the port.

Dated: May 17, 1985.

A.E. Henn,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 85-13206 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CCGD11-80-12]

Safety Zone Cancellation; San Pedro Bay, Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document cancels the Safety Zone in San Pedro Bay published December 29, 1980 in the **Federal Register**. Construction in the San Pedro Bay has been completed and a Safety Zone is no longer required.

EFFECTIVE DATE: This amendment is effective upon publication.

FOR FURTHER INFORMATION CONTACT: LtJg Jorge Arroyo, 11th District Boating Affairs Office, 400 Ocean Gate Blvd., Long Beach, CA 90822, Telephone (213) 590-2331.

SUPPLEMENTARY INFORMATION: Construction in the San Pedro Bay has been completed and the Captain of the Port Los Angeles/Long Beach has determined the public is no longer endangered.

Drafting Information

The principal person involved in the drafting of the rulemaking is: LCdr T.H. Jenkins, Chief, Port Management Division, c/o Captain of the Port, Los Angeles/Long Beach, 165 N. Pico Ave., Long Beach, CA 90802. The project attorney is Lt. C.M. McNally, c/o Commander, Eleventh Coast Guard District (d1), 400 Oceangate Blvd., Long Beach, CA 90802.

List of Subjects in 33 CFR Part 165

Harbors, Marines safety, Navigation (water), Security measures, Vessels, Waterways.

In consideration of the above, Part 165 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5.

§ 165.1108 [Removed]

2. By removing § 165.1108.

L.E. Beaudin,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

May 29, 1985.

[FR Doc. 85-13205 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

Administration of the Forest Development Transportation System

AGENCY: Forest Service, USDA.

ACTION: Completion of review of existing regulation.

SUMMARY: In compliance with Executive Order 12291, the Forest Service has reviewed 36 CFR Part 212, Administration of the Forest Development Transportation System. The regulation describes the system of access roads, trails, and airfields needed for the protection, administration, and use of the National Forests; establishes principles for use of the Forest Development Transportation System; provides for the cooperative development and maintenance of transportation facilities with commercial users and other public agencies; provides for the acquisition and granting of easements; and provides for the administration of the Pacific Crest National Scenic Trail. The regulation and amendments were published in the **Federal Register** on December 18, 1959; July 7, 1960; April 16, 1965; July 31, 1974; November 11, 1975; January 14, 1977; May 10, 1978; and June 23, 1983. A notice of intent to review the regulation was published in the Department of Agriculture Semiannual Regulatory Agenda, published in the **Federal Register** on April 19, 1984 (49 FR 15706).

Review of the existing regulation was conducted internally. Public comment was not solicited during the review, because the regulation primarily defines the forest development transportation system and provides internal authority and guidance to Forest System employees. Moreover, a review of agency records revealed that no public comment or complaint has been received on the regulation.

Based upon internal administrative review, the Forest Service has determined that the regulation should be retained in its present form and that the regulation does not impose economic or regulatory burdens on the public. The review did conclude that the current regulation can be improved in minor technical ways, but that the need for these changes is not urgent.

FOR FURTHER INFORMATION CONTACT: Jerome B. Knaebel, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (703) 235–9846.

Dated: May 24, 1985.

F. Dale Robertson,

Associate Chief.

[FR Doc. 85–13222 Filed 5–31–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 447

[BPO–020–F]

Medicare and Medicaid Program; Withholding the Federal Share of Payments To Recover Medicare or Medicaid Overpayments

Correction

In FR Doc. 85–11005 beginning on page 19684 in the issue of Friday, May 10, 1985, make the following correction:

On page 19689, first column, the last two line of § 447.30(e)(1), "provider's services under Medicaid with FFP." should have read "provider's services under Medicaid."

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6662]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood-plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet the statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final

rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal Standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region I					
Maine:					
York	Newfield, town of	230196B	Mar. 12, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Feb. 21, 1975 and June 15, 1979	June 5, 1985
Do	South Berwick, town of	230157C	Apr. 21, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Aug. 9, 1974, July 6, 1979, and Oct. 15, 1976.	Do.
Massachusetts:					
Barnstable	Bourne, town of	255210D	Apr. 30, 1971, Emerg.; June 29, 1973, Reg.; June 5, 1985, Susp.	June 29, 1973, July 1, 1974, Jan. 2, 1976, and May 7, 1976.	Do
Bristol	Fairhaven, town of	250054	Oct. 8, 1971, Emerg.; Mar. 16, 1976, Reg.; June 5, 1985, Susp.	May 31, 1974 and Oct. 1, 1983	Do
Barnstable	Mashpee, town of	250009E	Nov. 24, 1972, Emerg.; Sept. 15, 1978, Reg.; June 5, 1985, Susp.	Aug. 2, 1974, Sept. 15, 1978, and Oct. 1, 1983.	Do
Bristol	Somerset, town of	255220B	Nov. 13, 1970, Emerg., Mar. 17, 1972, Reg.; June 5, 1985, Susp.	Mar. 18, 1972, July 1, 1974, and Apr. 23, 1976.	Do.
Region II					
New Jersey: Morris	Washington, township of	340368	Sept. 1, 1972, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Jan. 9, 1974 and June 4, 1976	Do
New York:					
Warren	Glens Falls, city of	360872B	June 24, 1975, Emerg., June 5, 1985, Reg.; June 5, 1985, Susp.	May 31, 1974 and Oct. 10, 1975	Do
Orange	Newburgh, city of	360626B	June 9, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Mar. 15, 1974 and July 23, 1976	Do.
Do	Newburgh, town of	36067A	July 22, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Dec. 17, 1976	Do.
Sullivan	Liberty, town of	360823B	May 14, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	June 21, 1974 and Jan. 30, 1976	Do.
Rensselaer	Schaghticoke, town of	360158B	Dec. 27, 1979, Emerg.; June 11, 1982, Reg.; June 5, 1985, Susp.	Jan. 23, 1976 and June 11, 1982	Do.
Do	Valley Falls, village of	361469B	Dec. 19, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Nov. 22, 1974 and July 23, 1976.	Do
Region III					
Maryland: Charles	Unincorporated areas	240089B	Mar. 30, 1973, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Feb. 7, 1975 and Sept. 17, 1982	Do
Virginia:					
Rockingham	Broadway, town of	510135B	July 5, 1974, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	May 17, 1974 and Apr. 30, 1976	Do.
Do	Mt. Crawford, town of	510224	July 18, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Aug. 16, 1974 and May 21, 1976	Do.
Region VI					
Texas:					
Brazoria	Surfside Beach, village of	481266	Jan. 20, 1976, Emerg.; June 10, 1977, Reg.; June 5, 1985, Susp.	May 8, 1971, July 1, 1974 and June 10, 1977.	Do
Tarrant	Westover Hills, town of	480615B	July 2, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Aug. 30, 1974 and Dec. 19, 1975	Do.
Region VIII					
Colorado:					
El Paso	Fountain, city of	080061	Oct. 2, 1974, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	June 28, 1974, Oct. 24, 1975 and May 29, 1979.	Do.
[illegible]	Green Mountain Falls, town of	080052B	Mar. 18, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Aug. 30, 1974 and Dec. 12, 1975	Do.
Region X					
Oregon: Klamath	Klamath Falls, city of	410112B	Aug. 5, 1974, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	June 28, 1974 and Feb. 20, 1976	Do.
Washington: Yakima	Unincorporated areas	530217B	Apr. 11, 1974, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Dec. 27, 1974 and Aug. 9, 1977	Do.
[illegible] CONVERSIONS					
Region II					
New York:					
Jefferson	Adams, town of	360324C	Sept. 1, 1978, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	May 31, 1974 May 5, 1978 and Oct. 15, 1976.	Do

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Columbia	Ancram, town of	361312A	July 24, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Nov. 15, 1974	Do
Do	Austerlitz, town of	361385A	Feb. 14, 1977, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Dec. 27, 1974	Do
Jefferson	Brownsville town of	361063B	Apr. 29, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Dec. 6, 1974 and Nov. 28, 1975	Do
Warren	Chester, town of	360609A	Apr. 8, 1977, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Feb. 6, 1976	Do
Chenango	Earlville, village of	360397B	July 30, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	May 31, 1974 and May 28, 1976	[illegible]
Columbia	Greenport, town of	361319B	Aug. 29, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Nov. 1, 1974 and July 23, 1976	Do.
Essex	Keene, town of	361151C	Nov. 9, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Nov. 1, 1974, July 16, 1976 and Dec. 22, 1978.	Do
Chenango	McDonough, town of	361377A	Mar. 26, 1976, Emerg., June 5, 1985, Reg.; June 5, 1985, Susp.	Jan. 31, 1975	Do
Essex	Newcomb, town of	361390A	Apr. 15, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Jan. 24, 1975	Do
Columbia	New Lebanon, town of	360176C	July 22, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Apr. 12, 1974, July 30, 1976 and Nov. 12, 1976.	Do.
Jefferson	Rutland, town of	360350C	Aug 11, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	June 7, 1974, Jan. 16, 1976 and Sept. 3, 1976.	Do
Clinton	Saranac, town of	360171A	May 9, 1978, Emerg; June 5, 1985, Reg.; June 5, 1985, Susp.	Apr. 18, 1975	Do
Region III					
Pennsylvania: Crawford	Linesville, borough of	421560A	Apr. 15, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Jan 10, 1975	Do
Armstrong	Wayne township of	421318B	Oct. 3, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp	Sept. 13, 1974 and July 23, 1976	[illegible]
Region X					
Idaho Latah	Deary, city of	160133A	June 25, 1975, Emerg.; June 5, 1985, Reg; June 5, 1985, Susp.	Jan 17, 1975	Do
Idaho	Ferdinand, city of	160068B	June 23, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Sept. 6, 1974 and Apr. 9, 1976	Do
Adams	New Meadows, city of	160181A	Aug. 27, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Feb. 21, 1975	Do
Washington, Stevens	Colville, city of	530187B	July 23, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Dec. 28, 1973 and Mar. 26, 1976	Do
Washington: Snohomish	Lynnwood, city of	530167B	May 9, 1975, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	June 28, 1974 and Dec. 28, 1975	Do.
Kittitas	Roslyn, city of	530299	Nov. 29, 1976, Emerg.; June 5, 1985, Reg.; June 5, 1985, Susp.	Oct. 22, 1976	Do
REGULAR CONVERSION					
Wisconsin: LaCrosse	LaCrosse, city of	555562B	Dec. 4, 1970, Emerg.; Jan. 15, 1971, Reg.; June 15, 1985, Susp..	Jan. 15, 1971, July 1, 1974, May 14, 1976 and May 15, 1985.	June 15, 1985

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension

Issued: May 29, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-13146 Filed 5-31-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use, Ruby Lake National Wildlife Refuge, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is withdrawing regulations published on June 12, 1984, that govern boating on Ruby Lake National Wildlife Refuge (NWR). In their place, regulations are issued that will permit powerboats on the South Sump of Ruby Lake from August 1 through December 31 only. These actions are being taken to comply with a court-approved settlement arising from a lawsuit over the June 12 rulemaking.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240 (telephone: 202-343-4311).

SUPPLEMENTARY INFORMATION: On June 12, 1984, at 49 FR 24139, the Service issued a final rulemaking to regulate the use of boats on the South Sump of Ruby Lake NWR, Nevada. The regulations provided that motorless boats and boats with electric motors could be used from June 15 through December 31 annually. The regulations further permitted the use of powerboats (having motors of 10 horsepower or less) on the South Sump from July 15 through December 31 in 1984, 1986, and 1988, and from August 1 through December 31 in 1985 and 1987. This alternating annual schedule was developed to accommodate a Service research program to evaluate the effects of powerboating on canvasback and redhead duck broods.

On July 16, 1984, a notice was published at 49 FR 28773 announcing the emergency closure of the South Sump to powerboating from July 15, 1984, through July 31, 1984. This action was taken because extremely high water had caused a high rate of nest failure and subsequent late renesting among canvasback and redhead ducks using the refuge, thereby making nests vulnerable to disturbance.

On July 5, 1984, the Defenders of Wildlife, *et al.*, filed suit (Civil Action No. 84-2035) in U.S. District Court, Washington, D.C., against the Secretary of the Interior, *et al.*, to contest the July 15 opening dates for powerboating as set forth in the June 12 rulemaking. On January 3, 1985, the District Court

dismissed the lawsuit pursuant to a stipulated settlement by the parties providing for the Service to withdraw the June 12, 1984, final rule pertaining to regulations for powerboats and replace it with a rule that would permit powerboats on the South Sump of Ruby Lake only from August 1 through December 31 annually. This rule is in response to the terms of the stipulated settlement agreement. No substantive comments were received on the proposed rule on this issue, which was published on March 7, 1985, at 50 FR [illegible].

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA), as amended (16 U.S.C. 668dd), authorizes the Secretary of the Interior to permit public access, use and recreation on refuges whenever it is determined that such uses are compatible with the major purposes for which such areas were established. The Service has determined that permitting the use of motorized boats from August 1 through December 31 annually will not have a biological impact on waterfowl nesting and is compatible with the major purposes for which the Ruby Lake NWR was established.

The provisions of the NWRSAA relating to recreation are administered in accordance with the Refuge Recreation Act of 1962 (16 U.S.C. 460k), which authorizes the Secretary to permit recreational uses on refuges if they are appropriate incidental or secondary uses. In conformance with that Act, the Service has determined that motorized recreational boating, governed by the regulations set forth in this rule, permits a secondary use of Ruby Lake NWR that is not inconsistent with the primary objectives for which it was established. Further, the proposed recreational use will not interfere with the primary purposes for which the Ruby Lake NWR was established. The above determinations are based in large part on the Service's empirical data derived from its experience under the identical regulations in effect from 1978 to the present. In addition, funds are available within the annual refuge budget for the administration of the recreational activities that will be permitted by these regulations.

Economic Effect

Executive Order 12291 of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or government jurisdictions.

This rulemaking is a minor adjustment to existing regulations for one refuge; therefore, this action will not have an adverse impact on the overall economy or a particular region, industry or group of industries, or level of government. With respect to small entities, the rulemaking will not significantly alter the existing recreational uses of the refuge, and small entities such as sporting good stores, restaurants, motels and local governments will not be significantly affected by the rule.

Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

The final environmental impact statement for the "Operation of the National Wildlife Refuge System" [FES 76-52] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in 41 FR 51131. Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), an environmental assessment (EA) was prepared in 1976 on the effects of boating on the management of Ruby Lake NWR. An EA and Finding of No Significant Impact were also prepared for the June 12, 1984, rulemaking.

Maps of the South Sump are available from the Refuge Manager, Ruby Lake NWR, Ruby Valley, Nevada 89833, and will be posted at refuge boat landings. Copies of the maps can also be obtained from the Regional Director, U.S. Fish and Wildlife Service, 500 Northeast Multnomah Street, Suite 1692, Portland, Oregon 97232.

Primary author of this rule is Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Sts., NW., Washington, D.C. 20240.

List of Subjects in 50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

PART 26—[AMENDED]

Accordingly, 50 CFR Part 26, is amended as set forth below:

1. The authority citation for Part 26 continues to read as follows:

Authority: Sec. 2, 22 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, 45 Stat. 449 (16 U.S.C. 690d); Sec. 10, Stat. 1244 (16 U.S.C. 715); Sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); Sec. 4, 76 Stat. 654 (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd); (5 U.S.C. 301); (16 U.S.C. 685, 725, 690d), unless otherwise noted.

2. The entry at § 26.34 for Ruby Lake National Wildlife Refuge, Nevada, is revised to read as follows:

§ 26.34 [Amended]

Ruby Lake National Wildlife Refuge, Nevada

Beginning June 15 annually and continuing until December 31 annually, motorless boats and boats with electric motors are permitted only on that portion of the Ruby Lake National Wildlife Refuge known as the South Sump. Beginning August 1 annually and continuing until December 31 annually, boats propelled with a motor or combination of motors in aggregate not to exceed a 10 horsepower rating are permitted on the South Sump of the refuge. Boats may be launched only from landings approved and so designated by the Refuge Manager.

Dated: May 3, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-13157 Filed 5-31-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 40211-4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of squid specifications increase.

SUMMARY: NOAA issues this notice increasing the annual squid specifications under the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Regulations governing the squid fisheries require publication of specification adjustments, with reasons for such adjustments. This action is intended to foster the FMP's goal of creating benefits for the U.S. fishing industry.

EFFECTIVE DATE: June 15, 1985. Comments are invited until June 18, 1985.

ADDRESS: Send comments to Salvatore A. Testaverde, Northeast Region, NMFS, State Fish Pier, Gloucester, MA 01930. Mark on the outside of the envelope, "Comments on Notice of Squid Specifications."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, extension 273.

SUPPLEMENTARY INFORMATION: Section 655.21(b)(1)(v) of the implementing regulations states that initial optimum yield (IOY) specifications for Atlantic squid may be adjusted at any time during the fishing year by the Director, NMFS, Northeast Region (Regional Director), in consultation with the Mid-Atlantic Fishery Management Council (Council). The basis for any adjustment may be that new information or changed circumstances indicate that U.S. fishermen will exceed the initial DAH, or that IOY should be increased to produce maximum net benefits to the United States based upon an application of economic factors. Section 655.22(f) requires any adjustments to the IOY to be published in the **Federal Register** with the reasons for such adjustments, and may provide for a public comment period.

An addition of 2,500 mt has been made to the *Illex* TALFF to recognize confirmation that a proposal involving Spain, which was approved by the Council, will be pursued as originally presented to the Council. In addition to commitments to make *Loligo* purchases already recognized in the final annual specifications, an *Illex* joint venture will be carried out as originally presented as part of the Spain/Stonavar proposal. The amounts previously identified in a footnote as potential TALFFs are being placed into TALFFs. This is consistent with NOAA's policy of placing into the annual specifications only those amounts which are part of a proposal reviewed and endorsed by the Council. If the available TALFF is not utilized in a manner beneficial to the United States, further amounts may not be allocated, and any unallocated amounts may even be withdrawn from TALFF. This revision also requires adjustments to bycatch amounts in the *Loligo* TALFF of one percent of the increased amount of *Illex* squid (25 mt), and in the butterfish TALFF of one percent (25 mt).

Revisions are also made to the annual specifications to reflect adjustments in the TALFFs for *Loligo* and *Illex* squids. In the final annual specifications, published at 50 FR 20215, May 15, 1985, the *Loligo* TALFF was adjusted from 700 mt to 5,700 mt consistent with the terms of the FMP. Adjustments must also be made to bycatch amounts in the *Illex* TALFF of ten percent, or 500 mt; and to the butterfish TALFF of six percent, or 300 mt.

In summary, each of the IOY specifications has been increased; *Loligo*, from 28,200 mt to 28,225 mt; *Illex*, from 16,700 mt to 19,700 mt; and butterfish, from 11,700 mt to 12,025 mt. All squid and butterfish bycatch adjustments were made in accordance with regulations; the regulations for squids are found at § 655.21(b)(1)(iv) (A) and (B), and for butterfish at § 655.21(b)(3)(iii).

The following table lists the revised specifications including bycatch amounts for *Loligo* and *Illex* squid and butterfish, in metric tons. Revised specifications are made for the initial optimum yield (IOY) and total allowable level of foreign fishing (TALFF).

REVISED SPECIFICATIONS FOR FISHING YEAR APRIL 1, 1985, THROUGH MARCH 31, 1986

(In metric tons (mt))

	Loligo squid		Illex squid		Butterfish	
	Initial specifications	Revised specifications	Initial specifications	Revised specifications	Initial specifications	Revised specifications
Max OY[1]	44,000		30,000		[2] 16,000	
ABC	33,000		25,000		[2] 16,000	
IOY	28,200	28,225	16,700	19,700	11,700	12,025
DAH	22,500		16,000		11,000	
DAP	20,500		11,500		11,000	
JVP	[3] 2,000		[3] 4,500			
Reserve	0	0	0	0		
TALFF	5,700	5,725	700	3,700	700	1,025

[1] These are maximum OYs (as stated in the FMP)
[2] Up to the figure given.
[3] Additional amounts may be added to JVP by increasing the IOY up to 1,700 mt (for a total of 3,700 mt) for *Loligo* and up to 4,000 mt (for a total of 8,500 mt) for *Illex*, depending upon performance

Other Matters

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: May 29, 1985.

Carmen J. Blondin,

Deputy Assistant Adminstrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–13228 Filed 5–29–85; 4:46 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 106
Monday, June 3, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Proposed Change in Interest Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposal that would change the interest rate charged on delinquent assessments from one percent per month to one and one-half percent per month. The proposed action is designed to bring the interest rate more into line with current comparable rates, and thereby encourage handlers to pay assessments in a more timely manner.

DATES: Comments must be submitted by July 3, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This action is designed to promote orderly marketing of the Hawaiian papaya crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This proposal is issued under Marketing Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proposal is based upon the recommendations and information submitted by the Papaya Administrative Committee and upon other available information. Under § 928.41 of the marketing order, if a handler does not pay program assessments within a prescribed period, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary. The current interest rate is set forth in § 928.141 of Subpart—Rules and Regulations (§§ 928.141–928.160), and that rate has been in effect since February 13, 1984. This proposal would revise the rate from one percent to one and one-half percent to reflect a rate more in line with current comparable interest rates.

List of Subjects in 7 CFR Part 928

Marketing agreement and orders, Hawaii, Papayas.

PART 928—[AMENDED]

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 928.141 is revised to read as follows:

§ 928.141 Interest charges.

(a) Assessments levied pursuant to § 928.41 not paid within five days after the 25th of each month on papayas handled during the preceding month shall be subject to an interest charge of one and one-half percent per month.

(b) Notification that assessments are due not later than five days after the 25th of each month shall constitute a demand on a handler for the payment of the handler's pro rata share of expenses within the meaning of § 928.41(a).

Dated: May 24, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–13152 Filed 5–31–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ACE–06]

Proposed Revocation of Transition Area; West Plains, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revoke the West Plains, Missouri, transition area. It was anticipated that instrument approaches would be made to the West Plains, Missouri Airport utilizing the Non-Directional Radio Beacon (NDB) as a navigational aid. The transition area was established based on this NDB to ensure the segregation of aircraft utilizing the instrument approach procedures under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). However, the City of West Plains, Missouri has permanently closed their airport effective May 8, 1985, and the NDB will be relocated. Therefore, the transition area is no longer necessary.

DATES: Comments must be received on or before July 8, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Lewis G. Earp, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by revoking the 700-foot transition area at West Plains, Missouri. The City of West Plains permanently closed their airport on May 8, 1985. The NDB on which the approach procedure was predicated was also shutoff at this time and will be relocated. Therefore, the transition area is no longer necessary. Accordingly, the FAA proposes to release that airspace below 700 feet above the ground level for other than instrument flight operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by altering the following transition area:

West Plains, Missouri

Revoke transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

Issued in Kansas City, Missouri, on May 22, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–13185 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 832–3031]

Wein Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require four California firms and two individuals engaged in the advertising, sale and distribution of "DECIMATE," an ultrasonic pest control product, among other things, to cease representing that DECIMATE or any other ultrasonic pest control product will eliminate cockroaches, rats, mice, or other such pests from a home or place of business; will eliminate them within a specified period of time; will protect a home or place of business from rodent or insect infestations or cause any area to be free of such pests; and will serve as an effective alternative to the use of conventional pest control products. The firms would also be barred from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely upon proper substantiating evidence when making those claims. Additionally, the order would require that the firms maintain, for a period of three years, copies of all materials relied upon to substantiate product claims, as well as those materials in their possession that contradict, qualify or otherwise question any representation.

DATE: Comments must be received on or before July 29, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:
Harrison J. Sheppard, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Ultrasonic pest control devices, Trade practices.

Before the Federal Trade Commission

In the Matter of Wein Products, Inc., a corporation; El Mar Trading Corporation, a corporation; El Mar Corporation, a corporation; Stanley Weinberg, and Allen Schor, individually and as officers and

directors of the corporation(s); File No. 832-3031.

Agreement containing consent order to cease and desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Wein Products, Inc., a corporation; El Mar Trading Corporation, a corporation; El Mar Corporation, a corporation; Stanley Weinberg, individually and as an officer and director of Wein Products, Inc.; and Allen Schor, individually and as an officer and director of El Mar Trading Corporation and El Mar Corporation, (hereinafter sometimes referred to as proposed respondents), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Wein Products, Inc., El Mar Corporation and El Mar Trading Corporation, by their duly authorized officers, Stanley Weinberg, individually and as an officer of Wein Products, Inc., and Allen Schor, individually and as an officer of El Mar Trading Corporation and El Mar Corporation, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Wein Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 115 W. 25th Street, Los Angeles, California 90007.

Proposed respondents El Mar Trading Corporation and El Mar Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the State of California, with their offices and principal place of business located at 821 E. Artesia Boulevard, Carson, California 90745.

Proposed respondent Stanley Weinberg is an officer and director of Wein Products, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

Proposed respondent Allen Schor is an officer and director of El Mar Trading Corporation and El Mar Corporation. He formulates, directs, and controls the policies, acts and practices of said corporations and his address is the same as that of said corporations.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Wein Products, Inc., a corporation, El Mar Trading Corporation, a corporation, and El Mar Corporation, a corporation, their successors and assigns, and their officers; Stanley Weinberg, individually and as an officer and director of Wein Products, Inc.; and Allen Schor, individually and as an officer and director of El Mar Trading Corporation and El Mar Corporation; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the "DECIMATE" or any other ultrasonic pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the Decimate or any other ultrasonic pest control product will:

(1) Eliminate cockroaches, rats, mice or other pests from a home or place of business;

(2) Eliminate rodents or insects from a home or place of business within two to six weeks, or within any other specified period of time;

(3) Protect an area where said product is in use in a home or place of business from rodents or insects, or will cause an area to be free of rodents or insects;

(4) Protect, from rodent and insect infestations, areas up to 2000 square feet in a home or place of business, or in any other specified square footage area; or

(5) Serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any ultrasonic pest control product, unless at the time of

making such representation respondents possess and rely upon competent and reliable evidence which substantiates the representation. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures geneally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing, directly or by implication, that any ultrasonic pest control product is effective in providing protection from insect or rodent infestation in a home or place of business unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which either directly relates to such home or place of business use conditions, or which can properly be applied to such conditions. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

II

It is further ordered that for a period of three (3) years after the last date of dissemination of any representation concerning the performance characteristics or efficacy of any product covered by this order, respondents shall maintain and upon request make available to the Commission for inspection and copying copies of all materials relied upon to substantiate the representation, and copies of all documents in respondents' possession that contradict, qualify, or otherwise call into question said representation, including complaints from consumers.

III

It is further ordered that respondents shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future managerial employees, distributors, independent sales agents, and direct purchasers.

IV

It is further ordered that for a period of ten years:

A. Corporate respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents that may affect compliance obligations arising out of this order, such as dissolution, assignment of the ultrasonic pest control business, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

B. Respondent Allen Schor shall promptly notify the Commission of the discontinuance of his present business or employment in connection with the marketing of ultrasonic pest control products and of his affiliation with any new business or employment in the ultrasonic pest control business, stating the nature of the business or employment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with such new ultrasonic pest control business or employment and the address of such new business or employment.

V

It is further ordered that respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an Agreement to a proposed Consent Order from the following corporations and individuals:

Wein Products, Inc., 115 W. 25th Street, Los Angeles, California 90007
El Mar Trading Corporation a.k.a. El Mar Corporation, 821 E. Artesia Boulevard, Carson, California 90745
Stanley Weinberg, 115 W. 25th Street, Los Angeles, California 90007
Allen Schor, 821 E. Artesia Boulevard, Carson, California 90745

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The respondents listed above have been and are engaged in the manufacture and marketing of an ultrasonic pest control product called the "DECIMATE." In marketing the DECIMATE, respondents have said that the device is an effective alternative to the use of "toxic chemicals," pesticides, sprays, poisons or traps. They have claimed that the DECIMATE will eliminate roaches, rats, mice, mosquitoes, crickets, fleas, flies, spiders and other crawling and flying pests from a home; that the DECIMATE will cover a very large area, up to 2000 or 3500 square feet (depending upon the mode of the product); and that all insects and rodents will be eliminated from the home or place of business in two to six weeks.

According to the Commission's Complaint, the DECIMATE will not completely or permanently rid a home or place of business from insect or rodent infestation, nor will it do so within two to six weeks as claimed. The Complaint alleges as false, respondents' claim that use of the DECIMATE is an effective alternative to the use of traps, sprays, powders or other chemicals. The Complaint alleges that even though rodents can hear ultrasound, they rapidly habituate to it and any reaction by rodents to the DECIMATE would, at best, only be of short duration. The Complaint also alleges that ultrasound has no pest control effect on insects. According to the Complaint, the use of ultrasound is not an effective alternative to the use of conventional pest control products.

The Complaint challenges respondents' claim that the DECIMATE can effectively cover 2000 to 3500 square feet in the home or place of business. The Complaint alleges that these claims are false because ultrasound loses intensity as it travels, is absorbed by soft objects, is reflected by hard objects and is unable to penetrate to places of feeding or nesting behind doors or walls.

Finally, the Complaint charges that respondents do not possess a reasonable basis for the product claims they make because they have not conducted appropriate tests which show that the DECIMATE performs as represented or they have improperly applied the results of tests of others.

Respondents have signed an Agreement containing a Consent Order which requires them, jointly and severally, to cease and desist from representing that the DECIMATE or any ultrasonic pest control product will: (1) Eliminate cockroaches, rats, mice or other pests from a home or place of business; (2) eliminate rodents and insects within two to six weeks or within any other specified period of time; (3) protect an area from or cause an area to be free of rodents or insects; (4) protect against rodent or insect infestations in areas up to 2000 square feet or in any other specified square footage area; or (5) serve as an effective pest control alternative to the use of

conventional products such as sprays, powders, traps or other chemicals.

The Order further requires respondents to refrain from making any performance claims for the DECIMATE or any other ultrasonic pest control product unless they possess and rely upon competent and reliable evidence which substantiates the claims of performance.

The Order also requires the corporate respondents to notify the Commission of any proposed changes in their corporate structures, require the individual respondent Allen Schor to notify the Commission of any change in his involvement in the pest control product business, requires respondents to notify all managerial and sales personnel of the order by distributing a copy of the order to each of them, and requires all respondents to file a compliance report.

Respondents' Agreement to enter into this Order is for settlement purposes only, and does not constitute an admission by respondents that they have violated the law as alleged in the Complaint issued with the Order.

The purposes of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify its terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 85-13141 Filed 5-31-85; 8.45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 811-0089]

Decorating Products Association of Central Florida; Correction

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Tuesday, May 14, 1985 (50 FR 20107, FR Doc. 85-11552). The end of the comment period was incorrect. Comments will be accepted until July 15, 1985.

DATE: The correction is effective June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Ed Glynn, FTC/L-502-4, Washington, D.C. 20580 (202) 634-6608.

Emily H. Rock,

Secretary.

[FR Doc. 85-13142 Filed 5-31-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[EE-1-85]

Church Tax Inquiries and Examinations; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the procedures for conducting church tax inquiries and examinations.

DATES: The public hearing will be held on Tuesday, July 16, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, July 2, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W. Washington, D.C. The requests to speak and outlines or oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-1-85).

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202-566-3935 (not a toll free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under Treasury Regulations § 301.7611-1. The proposed regulations appeared in the **Federal Register** for Monday, March 11, 1985 (50 FR 9678).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, July 2, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

James J. McGovern,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 85-13226 Filed 5-31-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-85-14]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Mr. Walter Ketcham, representing local mariner interests, the Coast Guard is considering changing the regulations governing the Broad Causeway bridge, mile 1081.4, at Bay Harbor Islands by shifting the authorized opening times by 15 minutes. This proposal is being made because of a change in the types of vessels using the waterway over the last ten years. This action should facilitate navigation with no impact on vehicular traffic.

DATE: Comments must be received on or before July 18, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida 33130. Normal office hours are 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist at (305) 350-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments.

Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The Sunny Isles and Broad Causeway bridges cross the Atlantic Intracoastal Waterway in Dade County, Florida. During periods that these bridges are authorized scheduled openings the former opens on the quarter-hour and three-quarter hour while the latter opens on the hour and half-hour. A vessel proceeding through both bridges must traverse the 3.4 miles between them at a speed of at least 13.2 knots in order to pass through the second bridge when it next opens. Slower vessels must plan on spending 45 minutes between bridges for an average speed of about 4.5 knots. If both bridges opened simultaneously at 30 minute intervals, all vessels traveling 6.8 knots or faster would arrive at the second bridge in time for its next opening and thus avoid waiting an extra 15 minutes. An examination of bridgetender logs showed that the majority of vessels requiring an opening could travel between the bridges in under 30 minutes.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be beneficial and a full regulatory evaluation is unnecessary. We conclude this because the proposal will not impose any additional restrictions on navigation and will continue to exempt tugs with tows and regularly scheduled cruise vessels. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, it is proposed to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. It is proposed to amend § 117.261 by revising paragraph (y)(2) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(y) * * *

(2) The draw of the Broad Causeway bridge, mile 1081.4, at Bay Harbor Islands shall open on signal except that from 8:00 a.m. to 6:00 p.m. daily, the draw need open only on the quarter-hour and three-quarter hour.

* * * * *

Dated: May 14, 1985.

A.R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85–13201 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Location of Information About Mailing Under Company Permit Imprints

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: In order to improve the inspection, audit, and the return of undeliverable mail when mailed under a company permit, the Postal Service proposes to amend the Domestic Mail Manual to require mailers to print on matter bearing a company permit imprint a complete return address where information about a mailing may be obtained for inspection and audit by postal officials. At present, postal regulations do not require that information about a mailing be kept at the return address. The proposal would also allow the Postal Service to return undeliverable as addressed mail to the mailer's office.

DATE: Comments must be received on or before July 3, 1985.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260–5360. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room P200, U.S. Postal Service Headquarters, 935 L'Enfant Plaza N., S.W. Washington, D.C. 20260–5360.

FOR FURTHER INFORMATION CONTACT: John C. English of the Office of Mail Classification, (202) 245–4353.

SUPPLEMENTARY INFORMATION:

I. Background

Section 145 of the Domestic Mail Manual currently requires mailers who use company permits to print a complete return address. The regulation does not, however, require mailers' records, which are subject to review and audit by postal officials, to be kept at that address. Accordingly, Postal Service officials have often been unable to locate the required records. In other instances, considerable effort must be expended by the Postal Service to locate information about mailings submitted under company permit imprints. It has also been difficult to return undeliverable as addressed First-Class Mail and postage due mail when the office of mailings and the return address on the company permit have not been the same.

II. Recommended Change

The Postal Service concludes that the proposed change would lead to greater efficiency in the administration of regulations governing company permits. It would also make it practical for the Postal Service to return undeliverable as addressed First-Class Mail and postage due mail to the location where the records are maintained for the mailings.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed relemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

CHAPTER 1—DOMESTIC MAIL SERVICES

145 Permit Imprints [Mail Without Affixed Postage]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise 145.44 of the Domestic Mail Manual to read as follows:

145.44 Company Permit Imprints for Any Class of Mail

The city, State, and permit number may be omitted if the permit holder has permits at two or more post offices, provided the exact name of the company or individual holding the permits is shown in the permit imprint. When this style of company imprint is used, the mailing piece must bear a complete domestic return address where information (date of mailing, post office of mailing, number of pieces mailed, weight of a single piece, the amount of postage paid), can be obtained for a mailing. The permit holder must maintain the records for one year and make them available for inspection and audit upon request of post office officials. A sample piece from the mailing must also be available.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Louis A. Cox,

General Counsel.

[FR Doc. 85–13175 Filed 5–31–85; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 12

[CGD 84–088]

Certification of Seamen

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for advance notice of proposed rulemaking.

SUMMARY: The Advance Notice of Proposed Rulemaking (50 FR 4875) published February 4, 1985 (50 FR 4875), put forth items being considered for inclusion into the total revision of 46 CFR Part 12, Certification of Seamen. Due to requests from the public, the comment period is being extended 60 days.

DATES: Comments must be received on or before August 1, 1985.

ADDRESSES: Comments should be submitted to: Commandant (G–CMC), (CGD 84–088), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington D.C. 20593. Comments will be available for examination at the Marine Safety Council (G–CMC/21), Room 2110, 2100 Second Street, SW., Washington, D.C. 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Sean T. Connaughton, Project Manager, Office of Merchant Marine Safety (G–MVP), (202) 426–2240.

SUPPLEMENTARY INFORMATION: The Advance Notice of Proposed Rulemaking published on February 4, 1985, provided that public comments should be received by June 1, 1985. Due to public interests and request, the 120-day comment period is being extended another 60 days, to August 1, 1985.

May 29, 1985.

B.G. Burns,

Captain, U.S. Coast Guard Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85–13198 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 85–17]

Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule and request for comments.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing financial reports required of vessel operating common carriers in the domestic offshore waterborne commerce of the United States. This action is necessary to conform the reporting form (Form FMC–378) to the Uniform Financial Reporting Requirements (46 CFR Part 232) of the Maritime Administration, U.S. Department of Transportation. These requirements replaced the Uniform System of Accounts for Maritime Carriers (46 CFR Part 582) upon which the report form was previously based. Other minor reporting changes are proposed to delete unnecessary information reporting requirements.

DATE: Comments due by July 3, 1985.

ADDRESS: Comments (original and 15 copies) to: Bruce Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5796

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5866

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is required to evaluate the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers. To provide for the orderly acquisition of the data essential to this evaluation, the Commission promulgated what is now 46 CFR Part 552. Self-propelled vessel operators report the required financial and operating data on FMC Form 378, "Statements of Financial and Operating Data". It has been the policy of the Commission to base these statements on the chart of accounts prescribed by the Maritime Administration, U.S. Department of Transportation (MARAD). It is the intention of the Commission to continue this policy. Therefore, because MARAD has recently revised its chart of accounts through the publication of Uniform Financial Reporting Requirements (46 CFR Part 232), the Commission is amending 46 CFR Part 552 (49 FR 42934) to conform its reporting form to the revised chart of accounts.

These amendments which do not result in any substantive modification of financial reporting requirements and reflect only new terminology are summarized as follows:

1. *Section 552.5 (o) and (p)*—the addition of new definitions, "voyage expense" and "voyage expense relationship" are new terms replacing "vessel operating expense" and "vessel operating expense relationship", respectively;

2. *Section 552.6(a)(2)*—substitution of MARAD's new designation "Uniform Financial Reporting Requirements" for the former designation, "Uniform System of Accounts for Maritime Carriers";

3. *Section 552.6(b)(4)(i)*—reflects the use of a combined schedule for self-propelled vessel operators (Form FMC–378) reporting assets and accumulated depreciation, and substitutes the term "voyage expense relationship" for "vessel operating expense relationship";

4. *Section 552.6(b)(5)*—reflects the new terminology used for "average voyage expense" definition;

5. *Section 552.6(b)(7)*—reflects the inclusion of other assets with "Investment in Other Property and Equipment"—Schedule A–IV—for self-propelled vessel operators (Form FMC–378);

6. *Section 552.6(b) (9) and (10)*—reflects renumbering of schedules;

7. *Section 552.6(c)(2)*—reflects usage of new terminology in designating "voyage expense" accounts;

8. *Section 552.6(c)(4)*—reflects consolidation of line item accounts under "Administrative and General Expense" schedules.

In addition to the changes necessitated by the revision of MARAD's chart of accounts, other changes have been made amending or removing certain provisions of the regulations. These changes concern information which the Commission considers no longer necessary to the effective administration of its regulatory responsibilities, and which do not result in substantial changes in the calculations of Rate Base or Net Income or reporting carriers. They are summarized as follows:

1. *Section 552.4(c)*—cross referencing exhibits and schedules to underlying workpapers deleted as duplicative of 552.4(a);

2. *Section 552.6(a)(1)*—directors and stockholders need not be disclosed because it is irrelevant to the Commission's rate-of-return methodology;

3. *Section 552.6(b)(1)*—gross amounts for additions and deductions to vessel investment need not be disclosed because *pro rata* allocation for the reporting period is the relevant information from which gross amounts can be calculated if necessary;

4. *Section 552.6(b)(1)(ii)*—allocation of vessels costs to Other Cargo need not be disclosed because the allocation to the Trade is the relevant information from which Other Cargo can be calculated, if necessary;

5. *Section 552.6(b)(2)(i)*—depreciable life and residual value of vessels need not be disclosed because accumulated depreciation is the relevant information.

Finally, the citation of statutory authority is being revised to reflect only United States Code citations in accordance with required Federal Register format.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 CFR 12193, February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies; or geographic regions; or,

(3) Significant adverse effect on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Vice Chairman of the Federal Maritime Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small governmental jurisdictions.

The primary economic impact of this rule would be on ocean common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities, but that impact is not considered to be significant.

List of Subjects in 46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

Collection of Information requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned control numbers 3072–0008, 3072–0029 and 3072–0030.

PART 552—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553; secs. 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820, 841(a)); and secs. 1, 2, 3(a), 3(b), 4 and 9 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a) and 847), Part 552 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 552 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

§ 552.4 [Amended]

2. Section 552.4(c) is removed.

3. Paragraphs (o) and (p) of § 552.5 are revised to read as follows:

§ 552.5 Definitions.

* * * * *

(o) "*Voyage Expense*" means: (1) For carriers required to file Form FMC–378: The total of Vessel Operating, Vessel Port Call and Cargo Handling Expenses less Other Shipping Operations Revenue.

(2) For carriers required to file From FMC–377: The total of Direct Vessel and Other Shipping Operations Expenses, less Other Revenue.

(p) *"Voyage Expense Relationship"* means the ratio of total Trade Voyage Expense to total Company Voyage Expense.

* * * * *

4. Section 552.6 is amended by revising paragraphs (a) introductory text of (b)(1), (b)(1)(ii), (b)(2)(i), paragraph heading of (b)(4), (b)(4)(i), (b)(5), (b)(7), paragraph heading of (b)(9), (b)(10), (c)(2) and (c)(4) to read as follows:

§ 552.6 Forms.

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;

Exhibit B—Income Account and supporting schedules;

Exhibit C—Rate of Return and supporting schedules;

Exhibit D—Application for Waiver; and

Exhibit E—Initial Tariff Filing Supporting Data.

(2) Statements containing the required exhibits and schedules, are described in paragraphs (b), (c), (d), (e) and (f) of this section and are available upon request from the Commission. The required General Information, schedules and exhibits are contained in forms FMC–377 and FMC–378. For carriers required to file form FMC–378, the statements are based on the *Uniform Financial Reporting Requirements* prescribed by the Maritime Administration, U.S. Department of Transportation. For carriers required to file Form FMC–377, the statements are based on the accounts prescribed by the Interstate Commerce Commission for Carriers by Inland and Coastal Waterways. The schedules contained in these statements are distinguished from those contained in the Form FMC–378 statements by the suffix "A" (e.g., Schedule A–IV(A)).

(b) *Rate Base (Exhibits A and A(A))*—(1) *Investment in Vessels (Schedules A–I and A–I(A)).* Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service for which a statement is filed shall be listed by name, showing the original cost to the carrier or to any related company, *plus* the cost of improvements, conversions, and alterations, *less* the cost of any deductions. All additions and deductions made during the period shall be shown on a *pro rata* basis, reflecting the number of days they were applicable during the period. The result of these computations shall be called Adjusted Cost.

* * * * *

(ii) The total of the adjusted cost of all vessels employed in the Service during the period which has not been allocated to Other Services, as required in § 552.6(b)(1)(i)(B), shall be allocated to

the Trade in the cargo-cube mile relationship.

(2) *Accumulated Depreciation—Vessels (Schedules A–II and A–II(A)).* (i) Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service shall be listed separately. For vessels owned the entire year, accumulated depreciation as of the beginning and the end of the year shall be reported and the arithmetic average computed. This amount shall be allocated to the Service and to the Trade in the same proportions as the cost of the vessel was allocated on Schedule A–I or A–I(A). If the depreciable life of any equipment installed on a vessel differs from the depreciation life of the vessel, the cost and the depreciation bases shall be set forth separately.

* * * * *

(4) *Investment in Other Property and Equipment; Accumulated Depreciation Other Property and Equipment (Schedules A–IV and A–IV(A) and A–V(A)).* (i) Actual investment, representing original cost to the carrier or to any related company, in other fixed assets employed in the Service shall be reported as of the beginning of the year. Accumulated depreciation for these assets shall be reported both as of the beginning and as of the end of the year. The arithmetic average of the two amounts shall also be shown and shall be the amount deducted from original cost in determining rate base. Additions and deductions during the period shall also be reported, and the carrier shall report as though all such changes took place at midyear, except for those involving substantial sums, which shall be prorated on a daily basis. Allocation to the Trade shall be based upon the actual use of the specific asset or group of assets within the Trade. For those assets employed in a general capacity, such as office furniture and fixtures, the voyage expense relationship shall be employed for allocation purposes. The basis of allocation to the Trade shall be set forth and fully explained.

* * * * *

(5) *Working Capital (Schedule A–V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining the vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense and Interest Expense allocated to the Trade as provided in paragraphs (c)(2), (c)(4) and (c)(5) of this section. For this purpose, if the average voyage, as determined above, is of less than 90 days duration, the expense of hull and machinery insurance and protection and indemnity insurance shall be determined to be 90 days, provided that such allowance for insurance expense shall not, in the aggregate, exceed the total actual insurance expense for the period.

* * * * *

(7) *Investment in Other Assets (Schedule A–VII(A)); Accumulated Depreciation—Other Assets (Schedule A–VIII(A)).* For carriers required to file Form FMC–377, any other assets claimed by the carrier as components of its rate base shall be set forth separately in a schedule. The basis of allocation to the Trade and computations of percentages employed shall be set forth and fully explained. Where other assets are subject to depreciation, the amount of accumulated depreciation to be subtracted from the original cost in determining the component of rate base shall be the arithmetic average of both the beginning and the end of the year. Capital Construction Funds and other special funds are specifically excluded from rate base. For carriers required to file Form FMC–378, other assets, and the related accumulated depreciation, are to be included on Schedule A–IV.

* * * * *

(9) *Capitalization of Interest During Construction (Schedules A–VII and A–IX(A)).*

* * * * *

(10) *Capitalization of Leases (Schedules A–VIII and A–X(A)).* Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A–VIII or A–X(A), "Capitalization of Leases," shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization calculation. Allocations to the Trade shall follow the requirements of paragraphs (b)(1) and (b)(4) of this section.

(c) *Income Account (Exhibits B and B(A)).*

* * * * *

(2) *Voyage Expense (Schedule B–II.* A schedule of voyage expense shall be submitted for any period in which any cargo was carried in the Service. Allocations to the Trade shall be on the following basis:

(i) For all voyages in the Service, vessel expense shall be allocated to the Trade in the cargo-cube mile or cargo cube relationship, as appropriate. Should any of the elements of vessel expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Vessel port call and cargo handling expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Other Shipping Operations Revenue shall be deducted from Vessel Operating Expense. Other Shipping Operations Revenue should be assigned directly, to the extent possible, or otherwise allocated on the basis of cargo cube loaded and discharged at each port. Any direct assignments shall be fully set forth and explained.

* * * * *

(4) *Administrative and General Expense (Schedules B–III and B–III(A)).* Administrative and general expenses (A & G) shall be allocated to the Trade using the voyage expense relationship. Direct assignments should be made where practical, particularly with respect to advertising expense related to the operation of passenger and combination vessels. Any direct assignment shall be set forth and explained. Charitable contributions shall not be allocated to the Trade. In those instances where a carrier is engaged in other business in addition to shipping, A&G should be allocated to each business in the ratio of total operating expenses for each business (*less* A&G and income taxes) to total company operating expenses (*less* A&G and income taxes).

* * * * *

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–13034 Filed 5–31–85; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 50, No. 106
Monday, June 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding the Management of Historic Properties at the Bellows Air Force Station, Island of Oahu, HI

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the U.S. Air Force, 15th Air Base Wing and the Hawaii State Historic Preservation Officer providing for the management of historic properties found on lands owned, managed or controlled by the Bellows Air Force Station on the Island of Oahu, Hawaii. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated and protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this Programmatic Memorandum of Agreement is available from the Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden Colorado 80401, telephone (303) 236–2682.

Dated: May 28, 1985.

John M. Fowler,

Deputy Executive Director.

[FR Doc. 85–13164 Filed 5–31–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Subcommittee for Biotechnology Animal Molecular Biology; Meeting; Correction

In **Federal Register**, Vol. 50, No. 99, published at page 21104, on Wednesday, May 22, 1985, the announced place of a meeting of the Subcommittee for Biotechnology Animal Molecular Biology that was to be held at the U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C., has been changed to the University of California at Davis, California.

This notice appears in a less than 15-day notice period prior to the meeting due to extenuating circumstances which necessitated moving the place of the meeting.

All other information in the announcement remains the same.

Contact person for more information: Kenneth J. Cremer, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, Room 112 Morrill Hall, Washington, D.C.; telephone: (202) 475–5022.

Dated: May 30, 1985.

Kenneth J. Cremer,

Executive Secretary.

[FR Doc. 85–13408 Filed 5–31–85; 8:45 am]

BILLING CODE 3410–MT–M

Agricultural Marketing Service

[Marketing Agreement 146]

Budget of Expenses of the Peanut Administrative Committee and Rate of Assessment for the 1985–86 Crop Year

Pursuant to Marketing Agreement 146, regulating the quality of domestically produced peanuts (30 FR 9402), and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement, and other information, it is hereby found and determined that the expenses of said Committee and the rate of assessment applicable to peanuts produced in 1985 and for the crop year beginning July 1, 1985, shall be as follows:

(a) *Administrative expenses.* The budget of expenses for the Committee for the crop year beginning July 1, 1985, shall be in the amount of $690,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to 1985 crop peanuts, effective July 1, 1985, are estimated at, but may exceed $6.375 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the Peanut Administration Committee, in accordance with section 48 of the marketing agreement, an assessment at the rate of $4.71 per net ton of farmers stock peanuts received or acquired other than those described in section 31 (c) and (d) ($0.46 for administrative expenses and $4.25 for indemnification expenses).

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 48 of the marketing agreement, shall continue. That portion of the total assessment funds accrued from the $4.25 rate and not expended in providing indemnification on the 1985 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses of subsequent crops.

This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The expenses and rate of assessment are, under the agreement, on a crop year basis and will automatically be applicable to all assessable peanuts from the beginning of such crop year. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments; they are represented on the Committee which has submitted the recommendation with respect to such expenses and assessment for approval;

and handlers have had knowledge of the foregoing in their recent industry-wide discussions and will be afforded maximum time to plan their operations accordingly.

Dated: May 24, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 85-13151 Filed 5-31-85; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

Designation Renewal of Sioux City Inspection and Weighing Agency, Inc. (IA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Sioux City Inspection and Weighing Agency, Inc. (Sioux City), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Sioux City's designation terminates on June 30, 1985, and requested application for official agency designation to provide official services within the specified geographic area in the January 2, 1985, issue of the **Federal Register** (50 FR 135). Applications were to be postmarked by February 4, 1985.

There were two applicants for the Sioux City designation. Sioux City applied for designation renewal and David L. Ayers and Kenneth W. Ayers, proposing to do business as Siouxland Grain Inspection Service, Inc., also applied for the Sioux City designation.

FGIS announced the applicant names and requested comments on same in the March 1, 1985, issue of the **Federal Register** (50 FR 8351). Comments were to be postmarked by April 15, 1985; one favorable comment was received regarding Sioux City's designation renewal.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), determined that Sioux City is better able than any other applicant to provide official services in the geographic area for which FGIS is renewing its designation, effective July 1, 1985, and terminating June 30, 1988. Sioux City will provide official inspection services in its specified geographic area, which is the entire area previously described in the January 2 **Federal Register** issue.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address: Sioux City Inspection and Weighing Agency, Inc., 310 South Floyd Blvd., Room 302 (03,05,06), Sioux City, IA 51101.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 14, 1985.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85-13038 Filed 5-31-85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Louisville Grain Inspection Services, Inc. (KY), Minot Grain Inspection Service, Inc. (ND), and Tri-State Grain Inspection Service, Inc. (OH)

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Louisville Grain Inspection Services, Inc., Minot Grain Inspection Service, Inc., and Tri-State Grain Inspection Service, Inc.

DATE: Comments to be postmarked on or before July 18, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1985, issue of the **Federal Register** (50 FR 12842). Applications were to be postmarked by May 1, 1985.

There were two applicants for the Louisville designation. Louisville Grain Inspection Services, Inc., applied for designation renewal, and Grain Inspection Services of America, and unincorporated subsidiary of Woodson-Tenent Laboratories, Inc., Memphis, Tennessee, also applied for the Louisville designation. Minot Grain Inspection Service, Inc., and Tri-State Grain Inspection Service, Inc., were the only applicants, each applying for designation renewal.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comment and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 23867, as amended (7 U.S.C. 71 *et seq.)*

Dated: May 15, 1985.

Neil E. Porter,

Acting Director Compliance Division.

[FR Doc. 85–13039 Filed 5–31–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to Idaho Grain Inspection Service (ID), Lewiston Grain Inspection Service, Inc. (ID), and Utah Department of Agriculture (UT)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are Idaho Grain Inspection Service, Lewiston Grain Inspection Service, Inc., and Utah Department of Agriculture.

DATE: Applications to be postmarked on or before July 3, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Idaho Grain Inspection Service (Idaho), U.S. Highway 30 West, P.O. Box 4209, Pocatello, ID 83201, Lewiston Grain Inspection Service, Inc. (Lewiston), 1450 3rd Avenue North, Lewiston, ID 83501, and Utah Department of Agriculture (Utah), 350 North Redwood Road, Salt Lake City, UT 84116, were each designated under the Act as an official agency to provide inspection functions on December 1, 1982.

Each official agency's designation terminates on November 30, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Idaho, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Utah, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Utah.

Interested parties, including Idaho, Lewiston, and Utah, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning December 1, 1985, and ending November 30, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 14, 1985.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–13040 Filed 5–31–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in Colorado and Portions of Nebraska and Wyoming

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice requests comments for interested parties on the applicant for official agency designation in the State of Colorado and portions of the States of Nebraska and Wyoming.

DATE: Comments to be postmarked on or before July 18, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designatin to provide official services in the States of Colorado and portions of the States of Nebraska and Wyoming in the April 5, 1985, issue of the **Federal Register** (50 FR 13641). Applications were to be postmarked by May 6, 1985.

Hutchings, Inc., doing business as Denver Grain Exchange Association, Commerce City, Colorado, was the only applicant. This agency has been providing official inspection service in the area on an interim basis since April 1, 1985.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Management Branch, Resources

Management Division, specified in the address section of this notice.

Comments and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: May 14, 1985.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–13041 Filed 5–31–85; 8:45 am]

BILLING CODE 3410–FN–M

COMMISSION ON CIVIL RIGHTS

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9:00 a.m. and will adjourn at 12:00 Noon on June 20, 1985, at the Holiday Inn, 200 West Turnpike Access Road, Lawrence, Kansas. The purpose of the meeting is to provide an orientation for new members and develop plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Burdett A. Loomis or Melvin Jenkins, director of the Central States Regional Office at (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 22, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–13154 Filed 5–31–85; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and will adjourn at 9:00 p.m., on June 18, 1985, at the Madison Metropolitan School District, 545 W. Dayton, Room 103, Madison, Wisconsin. The purpose of the meeting is to hold an orientation session for new members and discuss followup to the Indian Rights Memorandum sent to the Commission.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kwame S. Salter or Clark G. Roberts, director of the Midwestern Regional Office, at (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–13155 Filed 5–31–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Argonne National Laboratory et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–075. Applicant: Argonne National Laboratory, Argonne, IL 60439. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: N.V. Philips Electronic Instruments, The Netherlands. Intended use: See notice at 50 FR 4996. Instrument ordered: December 17, 1984.

Docket No. 85–076. Applicant: The Institute for Cancer Research, Philadelphia, PA 19111. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: N.V. Philips Electronic Instruments, The Netherlands. Intended use: See notice at 50 FR 4996. Instrument ordered: December 28, 1984.

Docket No. 85–077. Applicant: University of Texas System Cancer Center, Houston, TX 77030. Instrument: Electron Microscope, with Eucentric Side Entry Goniometer Stage, Model JEM 1200EX/SEG–10. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 11746. Instrument ordered: June 19, 1984.

Docket No. 85–080R. Applicant: Children's Hospital of San Francisco, San Francisco, CA 94118. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 15596. Application received by Commissioner of Customs: February 4, 1985.

Docket No. 85–082. Applicant: College of William and Mary, Williamsburg, VA 23185. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 7363. Instrument ordered: December 21, 1984.

Docket No. 85–085. Applicant: Microelectronics Center of North Carolina, Research Triangle Park, NC 27709. Instrument: Electron Microscope, Model JEM 200CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 7944. Instrument ordered: November 15, 1984.

Docket No. 85–094. Applicant: University of Puerto Rico, Rio Piedras, PR 00931. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: See notice at 50 FR 11746. Instrument ordered: September 14, 1984.

Docket No. 85–136. Applicant: National Institutes of Health, Bethesda, MD 20205. Instrument: Electron Microscope, Model EM 410 with Accessories. Manufacturer: N.V. Philips Electronic Instruments, The Netherlands. Intended use: See notice at 50 FR 15597. Instrument ordered: January 23, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–13211 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–DS–M

Environmental Protection Agency; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–023. Applicant: U.S. Environmental Protection Agency, Las Vegas, NV 15027. Instrument: Mass Spectrometer, Model MM ZABS250 with Accessories. Manufacturer: VG Analytical, United Kingdom. Intended use: See notice at 49 FR 47646.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a triple sector instrument capable of MS/MS analysis with a mass range of 1 to 3000 atomic mass units at an accelerating voltage of 8000. The National Institutes of Health advises in its memorandum dated April 2, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director Statutory Import Programs Staff.

[FR Doc. 85–13214 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–DS–M

University of Illinois at Urbana Champaign; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, D.C.

Docket No. 85–024. Applicant: University of Illinois at Urbana-Champaign, Urbana, IL 61801. Instrument: Photon Counting Spectrometer with Accessories. Manufacturer: Photochemical Research Associates, Canada. Intended Use: See notice at 49 FR 47646.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument operates in the nanosecond to millisecond range, with pulsed light mode providing time-correlated single photon counting. The National Bureau of Standards advises in its memorandum dated March 21, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpsoe and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director Statutory Import Programs Staff.

[FR Doc. 85–13215 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–DS–M

Rutgers University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Document No. 85–026. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Mass Spectrometer, Model MM7070EQ–HF with Accessories. Manufacturer: VG Analytical, Ltd., United Kingdom. Intended Use: See notice at 49 FR 47647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high-resolution MS/MS analysis capability and a mass range of 1 to 15 600 atomic mass units. The National Institutes of Health advises in its memorandum dated April 2, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equvalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 85–13213 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–DS–M

Wayne State University; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83–324R. Applicant: Wayne State University, Detroit, MI 48202. Instrument: GC/Mass Spectrometer, MS80. Original notice of this resubmitted application was published in the **Federal Register** of October 31, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a scan cycle time of 0.3 seconds and is capable of at least 3 scans per second when performing GC/MS. The National Bureau of Standards advises in its memorandum dated April 16, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value

to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director Statutory Import Programs Staff.

[FR Doc. 85-13212 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-403-401]

Carbon Steel Structural Shapes From Norway; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that carbon steel structural shapes (structurals) from Norway are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Terri Feldman, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 377-4198.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that structurals from Norway are being, or are likely to be, sold in the United States at less than fair value, pursuant to section 733(b) of the Tariff Act of 1930, as amended (the Act).

We found that the foreign market value of structurals exceeded the United States price on 100 percent of the sales compared. These margins ranged from 5.51 percent to 13.92 percent. The overall weighted-average margin on all sales compared is 8.62 percent. If this investigation proceeds normally, we will make a final determination by August 12, 1985.

Case History

On December 20, 1984, we received a petition from Chaparral Steel Company on behalf of the U.S. industry producing structurals. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of structurals from Norway are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also alleged that critical circumstances exist with respect to imports of structurals from Norway.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on January 9, 1985 (50 FR 2317). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of structurals are materially injuring a United States industry (50 FR 6070).

On February 14, 1985, a questionnaire was sent to Norsk Jerverk A.S. (Norsk), a Norwegian producer of structurals. We received its response on April 1, 1985. On May 7, 1985, we received a supplemental response from Norsk.

Scope of Investigation

The products under investigation are "carbon steel structural shapes," which cover hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedules 6, Part 2, Subpart B of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any other tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the F.A.S. packed price to United States purchasers.

Foreign Market Value

In accordance with Section 773(a)(1) of the Act, we used home market prices to determine foreign market value. The home market prices were based on delivered, packed prices to unrelated home market purchasers. In calculating foreign market value, we made currency conversions from Norwegian krone to United States dollars in accordance with § 353.56(a)(1) of the Commerce Regulations, using the certified quarterly exchange rates. We made deductions, where appropriate, for inland freight, insurance and rebates. We made such or similar comparisons of merchandise based upon product subgroups selected by Department of Commerce industry experts, and, where appropriate, made adjustments for differences in physical characteristics based upon production cost differences provided by these industry experts.

We disallowed the following adjustments. Norsk claimed a circumstance of sale adjustment to account for the differences in selling costs incurred in the Norwegian and United States markets. We disallowed this adjustment because it was based upon indirect expenses, and thus was not directly related to sales under consideration as required by § 353.15(a) of the Commerce Regulations. Norsk also claimed an adjustment to account for the surcharge it places on small orders. We disallowed this adjustment because Norsk has not provided sufficient information explaining the basis for the adjustment.

If additional verifiable information regarding the disallowed adjustments is provided, it will be considered for the purposes of the final determination.

Verification

We will verify all data used in reaching the final determination in this investigation.

Negative Preliminary Determination of Critical Circumstances

The petitioners have alleged that imports of structural shapes from Norway present critical circumstances. Under section 733(e) of the Act, critical

circumstances exist when the Department has a reasonable basis to believe or suspect that: (1)(a) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: whether imports have surged recently; recent import penetration levels; and whether patterns of imports over the period may be explained by seasonal swings.

We have reviewed recent import statistics and have determined that there have not been massive imports of structurals from Norway over a relatively short period. Since we did not find massive imports over a relatively short period, we did not need to consider whether there is a history of dumping of structurals from Norway or whether the importers knew or should have known that the merchandise was being sold for less than fair value.

Therefore, for the reasons described above, we preliminarily determine that critical circumstances do not exist with respect to structurals from Norway.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of structurals from Norway. This suspension of liquidation applies to all merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price.

This suspension of liquidation will remain in effect until further notice. The weighted-average margin is 8.62 percent.

ITC Notification

In accordance with section 733(F) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten materially injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on July 1, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 24, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

May 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13230 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-402]

Carbon Steel Plate From Poland; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: We preliminarily determine that carbon steel plate from Poland is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of the notice. If this investigation proceeds normally, we will make a final determination by August 12, 1985.

EFFECTIVE DATE: June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; Telephone: (202) 377-0186.

SUPPLEMENTARY INFORMATION:

Preliminary Determinaton

Based upon our investigation, we preliminarily determine that carbon steel plate from Poland is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 15.02 percent.

If this investigation proceeds normally, we will make a final determination by August 12, 1985.

Case History

On December 19, 1984, we received a petition from United States Steel Corporation, filed on behalf of the domestic producers of carbon steel plate. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that imports of carbon steel plate from Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure, or threaten material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation on carbon steel plate. We notified the ITC of our action and initiated such an investigation on January 8, 1985 (50 FR 1915). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of carbon steel plate are materially injuring a U.S. industry (50 FR 6070).

On March 11, 1984, a questionnaire was sent to Stalexport, and on April 17, 1985, we received Stalexport's response. Stalexport submitted a supplemental response on May 23, 1985.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that Poland is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The product under investigation is carbon steel plate which covers hot-rolled carbon steel products whether or nor corrugated or crimpled; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620 and 607.6625 of the *Tariff Schedules of the United States Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

Because Stalexport accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of carbon steel plate for the period July 1, 1984, through December 31, 1984.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we calculated the purchase price of carbon steel plate based on the F.O.B., C. & F. or ex-mill price to unrelated United States purchasers shown in the response submitted by Stalexport. We made deductions, where appropriate, for foreign inland freight and insurance, ocean freight, stowage, brokerage and handling charges, and commissions. We will develop information for our final determination which will allow us to value zloty-denominated charges in a non-state-controlled economy country at a omparable level of economic development.

Foreign Market Value

In accordance with section 773(c) of the Act, we used prices of carbon steel plate imported into the United States to determine foreign market value.

Petitioner alleged that Poland is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of the Polish economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that Poland is a state-controlled-economy country for the purpose of this investigation. Central to our decision on this issue is the fact that the central government of Poland strictly controls the prices and levels of production of steel products as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producing plate, Department of Commerce economists determined that Greece, South Africa and Taiwan were countries at a comparable stage of economic development and it would, therefore, be appropriate to base foreign market value on their sales prices. However, the companies which we contacted in Greece, South Africa and Taiwan have all advised us that they will not provide surrogate data for this investigation.

Pursuant to § 353.8(a)(1) of our regulations, we therefore based foreign market value on available information for prices at which carbon steel plate was sold by third countries of comparable economic development to Poland for export to the United States. Department of Commerce economists determined that of the countries exporting plate to the United States, South Africa, Greece and Taiwan were at the most comparable level of economic development to Poland. There were no exports of plate to the United States by Greece during the period of investigation. Therefore, we based foreign market value on the simple average ex-mill price of plate from South Africa and Taiwan for export to unrelated purchasers in the United States. We gathered simple average price information from special steel summary invoice (SSSI) statistics, which was the best information available. We made deductions for foreign wharfage, ocean freight, and marine insurance. We also made deductions, where applicable, for United States duty, wharfage and handling. We made comparisons of merchandise based upon product subgroups selected by Department of Commerce industry experts.

Verification

We will verify all data used in reaching the final determination in these investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of carbon steel plate from Poland that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 15.02 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on July 18, 1985, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington,

D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration. Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 11, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

May 24, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13229 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-403]

Carbon Steel Structural Shapes From Poland; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration. Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that structural shapes (structurals) from Poland are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist in this case. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of the notice. If this investigation proceeds normally, we will make a final determination by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur Simonetti, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; Telephone: (202)377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that structurals from Poland are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 59.96 percent. We also preliminarily determine that critical circumstances do not exist in this case.

If this investigation proceeds normally, we will make a final determination by August 12, 1985.

Case History

On December 20, 1984, we received a petition from Chaparral Steel Company, filed on behalf of the domestic producers of structurals. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of structurals from Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure, or threaten material injury to, a United States industry. The petition also alleged that critical circumstances exist with regard to imports of structurals from Poland. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on January 9, 1985 (50 FR 2317). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of structurals are materially injuring a U.S industry (50 FR 6070).

On March 11, 1984, a questionnaire was sent to Stalexport, and on April 17, 1985, we received Stalexport's response. Stalexport submitted a supplemental response on May 17, 1985.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that Poland is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The products under investigation are structural shapes, which cover hot-rolled forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedules 6, Part 2, Subpart B of the Tariff Schedules of the United States Annotated (TSUSA), for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any other tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041 and 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

Because Stalexport accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of structurals for the period July 1, 1984, through December 31, 1984.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we calculated the purchase price of structurals based on the F.O.B., or C.I.F. price to unrelated United States purchasers shown in the response submitted by Stalexport. We made deductions, where appropriate, for foreign inland freight and insurance, ocean freight, stowage, brokerage and handling charges, and commissions. We will develop information for our final determination which will allow us to value zloty-denominated charges in a non-state-controlled economy country at a comparable level of economic development.

Foreign Market Value

In accordance with section 773(c) of the Act, we used prices of structurals imported into the United States as a surrogate in determining foreign market value.

Petitioner alleged that Poland is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of the Polish economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that Poland is a state-controlled-economy country for the purpose of this investigation. Central to our decision on this issue is the fact that the central government of Poland strictly controls the prices and levels of production of steel products as well as the internal pricing of the factors of the production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar

merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing structurals, Department of Commerce economists determined that Greece, South Africa, Taiwan and Ireland were countries at a comparable stage of economic development and it would, therefore, be appropriate to base foreign market value on their prices. However, the companies which we contacted in Greece, South Africa, Taiwan and Ireland have advised us that they will not provide surrogate data for this investigation.

Pursuant to § 353.8(a)(1) of our regulations, we therefore based foreign market value on available information for prices at which structurals were sold by third countries of comparable economic development to Poland for export to the United States. Department of Commerce economists determined that of the countries exporting structurals to the United States, South Africa, Belgium and Japan were at the most comparable level of economic development to Poland. We based foreign market value on the simple average ex-mill price of structurals from South Africa, Belgium and Japan for export to unrelated purchasers in the United States. We gathered simple average price information from special steel summary invoice (SSSI) statistics, which was the best information available. We made deductions for foreign wharfage, ocean freight, and marine insurance. We also made deductions, where applicable, for United States duty, wharfage and handling. We made comparisons of merchandise based upon product subgroups selected by Department of Commerce industry experts, and, in the case of South Africa sales, we made adjustments for differences in physical characteristics of the merchandise based upon production cost differences provided by these industry experts.

Verification

We will verify all data used in reaching the final determination in these investigations.

Negative Preliminary Determination of Critical Circumstances

The petitioners have alleged that imports of structural shapes from Poland present critical circumstances. Under section 733(e) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1)(a) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: whether imports have surged recently; recent import penetration levels; and whether patterns of imports over the period may be explained by seasonal swings.

We have reviewed recent import statistics and have determined that there have not been massive imports of structurals from Poland over a relatively short period. Since we did not find massive imports over a relatively short period, we did not need to consider whether there is a history of dumping of structurals from Poland or whether the importers knew or should have known that the merchandise was being sold for less than fair value.

Therefore, for the reasons described above, we preliminarily determine that critical circumstances do not exist with respect to structurals from Poland.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of structurals from Poland that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to these investigations exceeded the United States price, which was 59.96 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on July 9, 1983, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 2, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 28, 1985.

[FR Doc. 85-13231 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-053]

Oleoresins of Paprika From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Spain, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on oleoresins of paprika from Spain would not cause, or threaten to cause, material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after June 21, 1982, will be liquidated without regard to countervailing duties.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Long or Christopher Beach, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On February 28, 1979, the Treasury Department published in the **Federal Register** a countervailing duty order on oleoresins of paprika from Spain (44 FR 11214).

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Government of Spain had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On March 8, 1985, the ITC notified the Department of its determination (50 FR 10118, March 5, 1985) that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, by reasons of imports of oleoresins of paprika from Spain if the order were revoked. As a result, the Department is revoking the countervailing duty order concerning oleoresins of paprika from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: May 24, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–13177 Filed 5–31–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–549–501]

Preliminary Affirmative Countervailing Duty Determination; Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of certain circular welded carbon steel pipes and tubes (pipes and tubes). The estimated net bounty or grant is 4.41 percent *ad valorem* during the period of review. However, during the period of review companies exporting the products under investigation filed applications for the receipt of Tax Certificates for Exports for shipments to the United States. Therefore, we are adjusting the bonding/deposit rate to reflect the receipt of benefits under this program. We are directing the U.S. Customs Service to suspend liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond on entries of these products in an amount equal to 5.03 percent *ad valorem*.

If this investigation proceeds normally, we will make our final determination by August 7, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephones: (202) 377–0187 and (202) 377–3464.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is a reasonable basis to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of certain circular welded carbon steel pipes and tubes. The following programs are preliminarily determined to confer bounties or grants:

- Export Packing Credits
- Tax Certificates for Exports

We estimate the net bounty or grant to be 4.41 percent *ad valorem* during the period of review. However, we are adjusting the bonding/deposit rate by 0.62 percent *ad valorem* to reflect the receipt of benefits under the Tax Certificates for Exports program which would apply to pipes and tubes entered into the United States after the date of publication of this notice.

Case History

On February 28, 1985, we received a petition filed on behalf of the Committee on Pipe & Tube Imports (CPTI), its subcommittees on standard and line pipe, and the companies which are members of those subcommittees, with respect to certain welded carbon steel pipes and tubes. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Thailand of certain circular welded carbon steel pipes and tubes receive bounties or grants within the meaning of section 303 of the Act.

The petition, as originally filed, covered both standard pipe, which is defined in the "Scope of Investigation" section of this notice, and line pipe. By amendment dated March 12, 1985, for petitioners clarified that the petition was being filed on behalf of the standard pipe subcommittee and the line pipe subcommittee of the CPTI, and by individual manufacturers of standard pipe and line pipe. By amendment dated March 14, 1985, petitioners withdrew the portion of the petition dealing with line pipe.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 20, 1985, we initiated such an investigation (50 FR 12062). We stated that we expected to issue a preliminary determination by May 24, 1985. We also stated in our initiation notice that the subcommittee on standard pipe and the

individual manufacturers of standard pipe had standing to file the petition with respect to standard pipe, and that the subcommittee on line pipe did not have standing with respect to standard pipe because a majority of its membership does not produce standard pipe.

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of this merchandise cause or threaten material injury to a United States industry.

We presented a questionnaire to the government of Thailand in Washington, D.C., on March 29, 1985. The response to our questionnaire was received on May 3, 1985.

On April 15, 1985, United States Steel Corporation (U.S. Steel) became a party to the proceeding. On April 24, 1985, U.S. Steel alleged that additional bounties or grants, not covered in our initiation notice, are being conferred on the manufacture and exportation of the merchandise. Since these new allegations were made on a timely basis, we are seeking additional information on the Export Promotion Fund, business tax exemptions on export sales, and tax deductions based on increased export earnings.

Scope of the Investigation

The products under investigation are circular welded carbon steel pipes and tubes, with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, and currently classifiable in the Tariff Schedules of the United States Annotated (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53, and A–135.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered to confer a bounty or grant in the final determination.

For purposes of this determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1984.

There are two Thai producers of circular welded carbon steel pipes and tubes (pipes and tubes) which account for 95 percent of the exports of the subject merchandise to the United States during the period for which we are measuring bounties or grants: Saha Thai Pipe Company and Thai Steel Pipe Industry Company.

Based upon our analysis of the petition and the response to our questionnaire, we preliminarily determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of pipes and tubes under the following programs.

A. Export Packing Credits

Petitioners allege that producers and exporters of the products under investigation receive preferential export financing. Export packing credits are short-term loans used for either pre-shipment or post-shipment financing. These loans, which are provided through commercial banks, can be rediscounted at the Bank of Thailand through its export refinancing facility. Under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports" (B.E. 2514), the commercial banks charge the borrower a maximum of seven percent interest per annum for the export credit, and then the bank rediscounts these loans at five percent interest with the Bank of Thailand. On October 1, 1984, the discount rate was increased to nine percent and the rediscount rate was increased to seven percent. These loans are provided in baht for up to 180 days.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate for short-term financing. For purposes of this preliminary determination, we are using a weighted-average interest rate as calculated by the Bank of Thailand and included in the questionnaire response of the government, as best information available. During verification, we will gather additional information on commercial short-term interest rates to determine whether this is the most appropriate benchmark for short-term loans in Thailand.

Comparing this weighted-average interest rate to the rate charged on export packing credits, we find that the rate on export packing credits is preferential, and, therefore, preliminarily determine that these loans confer bounties or grants on the products under investigation. During the period of review, Thai Steel Pipe used export packing credits on exports to the United States. Applying this average commercial bank interest rate as the benchmark, we calculate an estimated net bounty or grant of 4.41 percent *ad valorem* for exports to the United States.

B. Tax Certificates for Exports

Petitioners allege that producers and exporters of the products under investigation receive tax certificates on their exports. The government of Thailand issues tax certificates to exporters to rebate indirect taxes on inputs into the exported product. In Thailand indirect tax rebates are authorized under two programs.

In 1981, a program for rebating indirect taxes was implemented through the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (hereinafter the Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of a 1975 input/output (I/O) study. The statistical base for the I/O study was updated in 1980. Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. They also calculate the import duties and indirect taxes on each input. The Ministry then calculates the ratio of indirect taxes to the ex-factory prices of the final product to determine the rebate rate for each type of product. This rate is then applied to the FOB value of the export to determine the

amount of rebate that will be provided. Under the Tax and Duty Act the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities. The current rebate rates on 99 covered products are listed in the "Notification of the Ministry of Finance" No. Or. 1/2524.

The alternative program authorizing the rebate of indirect taxes is the "Announcement of the Ministry of Finance ' No. 256/2524. This rebate authorization was announced in 1971 and revised in 1978. According to the response of the government of Thailand, this "flat rate rebate" is available only to exporters of galvanized steel pipe with coupling which is not a product under investigation; the flat rate rebate also was not used by any of the producers who exported the subject merchandise during the review period.

Accordingly, for this preliminary determination, we have analyzed only the rebate program provided through the Tax and Duty Act.

Traditionally, we have applied a three-prong test to determine whether the rebate of prior stage cumulative indirect taxes borne by inputs that are physically incorporated into the final product confers a bounty or grant. Under this test, we examine whether: (1) The program involved operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where an indirect tax rebate system incorporates rebates on import duties, or where there is a fixed duty drawback system instead of an individual duty drawback system (Thailand operates an individual duty drawback system), we have determined that we must apply a linkage analysis similar to our test for rebate systems that are designed only to rebate indirect taxes.

First, the Department examines whether the system is intended to operate as a drawback system. Next, the Department analyzes whether the government properly ascertained the level of the fixed drawback. This includes a review of the sample, including the documentation and accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically so that the drawback amount reflects the amount of duty (and indirect taxes, if there is a combined duty and indirect tax rebate system) paid.

Where these conditions are met, the Department will consider that a rebate system that rebates both indirect taxes and import duties, or a fixed duty drawback system, does not confer a bounty or grant when the amount rebated for duties and indirect taxes on physically incorporated inputs equals (or is less than) the fixed amount set in the schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we would find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs. Based on these tests, we preliminarily determine the following:

The Tax and Duty Act provides that the taxes and duties eligible for rebate include those on materials, equipment, spare parts, machinery, fuels and other energy used in production. Taxes such as income tax, payment of royalties to the government for mineral rights, and taxes which are otherwise refundable or exempt are excluded from the rebate. Thus, the program operates to rebate indirect taxes and import duties.

The eligibility criteria for the Tax and Duty Act rebate program when considered in conjunction with the government's response, including copies of the input/output tables, the conversions codes and the Ministry of Finance rebate charts, leads us to conclude that there is a link between eligibility for the rebate and indirect taxes and import duties actually paid.

We have reviewed the documentation submitted by the government in their response showing their detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemize the inputs and list ex-factory prices, import values, import taxes, and domestic indirect taxes. The inputs itemized in the government's calculations include non-physically incorporated items.

Because under the Tax and Duty Act rebate program, non-physically incorporated items are included in the rebate calculations at the final stage, we preliminarily determine that there is an excessive remission of indirect taxes on exported goods. To calculate the amount of the overrbate, we have taken into account the following factors. Under the program, the government calculates a "full" rebate rate that includes both import duties and indirect taxes, and a "normal" rebate rate which includes only indirect taxes. The normal rebate rate is claimed when firms participate in the customs duty drawback or exemption programs on imported raw materials, or when firms do not use imported materials in the production process. For purposes of this preliminary determination, we are calculating the overrebate based only on the normal rate, since according to the government response, all rebates applied for or received by pipe and tube producers were calculated at the rate of 1.96 percent which is the normal rate of rebate.

To determine the estimated net bounty or grant from this excessive remission of indirect taxes, we calculated the indirect tax incidence on physically incorporated inputs at FOB prices. We compared this allowable rebate to the authorized rebate available to pipe and tube producers. We then compared the percentage by which the authorized rebate would exceed the allowable rebate. Using this methodology, we calculated an estimated net bounty or grant of 0.62 percent *ad valorem*. Because this is a recurring program, we are allocating the benefit to the year of receipt.

The first shipments of the merchandise under investigation to the U.S. were in the last quarter of 1984. Although applications for tax certificates were filed based on these exports, no tax certificates based on these exports were received by either producer during the review period. Since applications have been filed and the tax certificates are forthcoming, the benefits accorded under this program will apply to pipes and tubes imported into the United States after the date of publication of this notice. Therefore, we are adjusting the bonding/deposit rate to reflect the receipt of the tax certificates. This results in an estimated bonding/deposit rate of 0.62 percent *ad valorem*.

II. Programs Determined Not To Be Used

We preliminarily determine that the manufacturers, producers or exporters in Thailand of pipes and tubes do not use the following programs which were listed in our notice of initiation.

A. Investment Promotion Act

Petitioners allege that producers and exporters of the products under investigation receive benefits under the Investment Promotion Act. The Investment Promotion Act (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the Investment Promotion Act authorizes the exemption of import duties and certain taxes. According to the response of the government of Thailand, neither Saha Thai nor Thai Steel Pipe receive benefits under this program.

B. Export Processing Zones

In 1979, Export Processing Zones were authorized through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). One export processing zone has been set up in Thailand. According to the response of the government of Thailand, neither Saha Thai nor Thai Steel Pipe is located in the export processing zone.

C. Rediscount of Industrial Bills

Petitioners allege that producers and exporters of the product under investigation receive benefits from the rediscount of Industrial bills. The Bank of Thailand authorizes rediscounts for short-term promissory notes arising from industrial activity. The Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" permit commercial banks to rediscount short-term promissory notes for industrial purchases. These industrial promissory notes are also called industrial bills. According to the response of the government of Thailand, neither Saha Thai nor Thai Steel Pipe use this program.

D. Electricity Discount for Exporters

Petitioners allege that exporters of the products under investigation receive discounts of electricity charges. The three electricity authorities in Thailand provides a discount of 20 percent on the electricity rates charged to producers of export products. The discount is calculated as a credit which is deducted from each company's electric bill. According to the response of the government of Thailand, neither Saha Thai nor Thai Steel Pipe use this program.

E. Assistance to Trading Companies

Petitioners allege that trading companies in Thailand receive benefits under the Investment Promotion Act. In 1978 the Board of Investment authorized certain incentives to eligible trading companies under section 36 of the Investment Promotion Act. These incentives included duty exemption for both raw materials and essential materials used in export production, exemptions of certain business taxes, double deduction of foreign marketing expenses for income tax purposes and permission to maintain foreign currency accounts. According to the response of the govenment of Thailand, Saha Thai and Thai Steel Pipe do not export the subject merchandise through Thai trading companies.

F. Tax Exemption for Promoted Industries

Petitioners allege that "promoted" industries are exempt from certain sales taxes. According to the response of the government of Thailand, this program is not used.

Verification.

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response that cannot be verified in our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 5.03 *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations (19 CFR 355.35), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 26, 1985, at the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 19, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act 19 U.S.C. 1671b(f)).

Dated: May 24, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13207 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–433–502]

Preliminary Affirmative Countervailing Duty Determination; Oil Country Tubular Goods For Austria

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Austria of oil country tubular goods. The estimated net subsidy is 1.82 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Austria that are entered or withdrawn from warehouse for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by August 7, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–0167 or 377–3464.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1980, as amended (the Act), are being provided to manufacturers, producers, or exporters in Austria of oil country tubular goods. For purposes of this investigation, the following programs are found to confer subsidies:

- Equity Infusions.
- Grants to the Austrian Steel Industry.
- Export Financing Under the Kontrollbank Export Credits Program.
- 100,000 Schilling Action Cash Grant Program.

We determine the estimated net subsidy to be 1.82 percent *ad valorem*.

Case History

On February 28, 1985, we received a petition from the United States Steel Corporation of Pittsburg, Pennsylvania, filed on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Austria of oil country tubular goods directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

On March 5, 1985, we received a letter from Lone Star Steel Company of Dallas, Texas, requesting that the company be added as a co-petitioner to the proceeding on oil country tubular goods from Austria, filed by the United States Steel Corporation. The United States Steel Corporation agreed to include Lone Star Steel Company as a co-petitioner in this proceeding. By letter dated March 7, 1985, Lone Star Steel Company amended the petition. On March 26, 1985, CF&I Steel Corporation requested to become a co-petitioner in this proceeding; the request was subsequently granted, after the agreement of the other two petitioners.

We found that the amended petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 20, 1985, we initiated such an investigation (50 FR 12065). We stated that we expected to issue a preliminary determination by May 24, 1985.

Since Austria is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our intention. On April 17, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of oil country tubular goods from Austria. (50 FR 16173).

We presented a questionnaire concerning the allegations to the government of Austria in Washington, D.C., on March 21, 1985. The government of Austria and Voest-Alpine AG provided responses to our questionnaire on April 29, 1985.

Scope of the Investigation

The Products covered by this investigation are "oil country tubular goods" (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil country tubular goods. The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

Analysis of Programs

Thoughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attahced to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

There is only one known producer in Austrua of oil country tubular goods, Voest-Alpine AG. We have received information from the company and the government of Austria. For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Petitioners alleged that Voest-Alpine AG has received massive government equity infusions since 1975. Petitioners believe that these equity infusions have been on terms inconsistent with commercial considerations. We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment. Voest-Alpine AG's shares are not publicly traded and there are no market-determined prices for its shares. Therefore, we must determine whether the equity infusions into Voest-Alpine AG were reasonable commercial investments.

To make this determination, we reviewed and assessed financial statments from 1971 to 1983 (1984 statements were not provided). In analyzing the financial statements, we considered the information from the viewpoint of an investor. Included in this review we analyzed the following data:

- Rate of return on sales.
- Rate of return from operations.
- Rate of return on equity.
- Debt to equity ratio.
- Current ratio.

Based on our review of the financial statements, and responses of the company and government, we preliminarily determine that the government's equity infusions into Voest-Alpine AG between 1978 and 1984 were on terms inconsistent with commercial considerations. In their responses, the government of Austria and Voest-Alpine AG provided data for the applicable period, including

financial statements and debt information.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of oil country tubular goods under the following programs:

A. Equity Infusions

Petitioners alleged that equity infusions into Voest-Alpine AG by the government of Austria were on terms inconsistent with commercial considerations. The responses stated that Voest-Alpine AG received equity infusions during the period 1975–1984 from Osterreichische Industrieverwaltungs-Aktiengesellshaft (OIAG). Portions of the equity infusions into Voest-Alpine AG have been transferred to an affiliated company, Vereinigte Edelstahlwerke AG (VEW). Under the terms of applicable legislation, Voest-Alpine AG was required to transfer the funds to VEW. VEW does not produce or export any of the merchandise under investigation, and therefore we do not consider equity infusions to VEW to benefit the products under investigation.

As discussed in the "Analysis of Programs" section, we preliminarily determine that Voest-Alpine AG was not a reasonable commercial investment from 1978 to 1984, and thus the government equity infusions between 1978 and 1984 were on terms inconsistent with commercial considerations. Therefore, we preliminarily determine that these equity infusions confer benefits which constitute a subsidy.

Following the methodology contained in the Subsidies Appendix, we have calculated the benefit from these equity infusions by comparing the national average rate of return on equity in 1984 to Voest-Alpine AG's rate of return on equity in 1983. During verification, we intend to seek information on Voest-Alpine AG's rate of return on equity in 1984. The national average rate of return on equity was taken from *Capital International Perspective*. We then allocated the aggregate benefit over the value of total sales of all products produced by Voest-Alpine AG. On this basis we preliminarily determine the subsidy to be 0.08 percent *ad valorem*.

B. Grants to the Austrian Steel Industry

Under Law 602/1981, the Austrian government authorized a grant of 2 billion Austrian schillings for the structural improvement of Voest-Alpine AG. These funds were dispersed through OIAG to Voest-Alpine AG in 1981 and 1982.

Law 589/1983 further permitted OIAG to raise new funds beginning in 1983. These funds were to be used for improving the economic structure of nationalized industrial enterprises. Of the funds raised by OIAG, pursuant to the 1983 law, a portion went to Voest-Alpine AG in the form of equity infusions. These are discussed above. The other portion was made available to Voest-Alpine AG in the form of grants, approximately three-quarters of which were disbursed in 1983 and 1984. Approximately one-quarter of the grant money, allocated to Voest-Alpine AG under Law 589/1983, was not disbursed as of April 29, 1985.

We find these grants to be limited to a specific enterprise or industry or to a specific-group-of enterprises or industries. Therefore, we preliminarily determine these grants to be countervailable.

To calculate the amount of the benefit, we have allocated the grants over 15 years (the average useful life of renewable assets in the steel industry). Discount rates have been developed for the years in which the grants were agreed upon. Therefore, the grants authorized under the 1981 law have been allocated using Voest-Alpine AG's 1981 weighted cost of capital. For the grants authorized by the 1983 law, the date of agreement varies. Apparently the amounts and the dates of allocation are negotiated by OIAG and Voest-Alpine AG. Therefore, for grants received pursuant to the 1983 law we have used Voest-Alpine AG's weighted cost of capital in the year of allocation as the discount rate. The portion of the grant which had not been disbursed as of April 29, 1985, was not included in these benefit calculations. During verification we intend to seek updated information on the standing of this undisbursed portion of the grant.

We allocated the aggregate benefit over the value of total sales of all products produced by Voest-Alpine AG. Based on this methodology we find the subsidy conferred by grants to be 1.60 percent *ad valorem*.

C. Kontrollbank Export Financing

Petitioners alleged that Voest-Alpine AG has received preferential export financing from the Austrian government in the form of loans at below-market interest rates. The government of Austria's response stated that it does not extend export financing credits, but that such credits are extended by commercial banks through various programs. The most important of such programs is the Statutory Export Financing Scheme operated by Osterreichische Kontrollbank Aktiengesellschaft (OKB). The OKB was founded by the Austrian government in 1946 to provide services not normally available from commercial banks. Since 1950 it has served as the official arm of the Federal Ministry of Finance for administration of the Austrian Export Credit and Guarantee Scheme. OKB's twelve shareholders are exclusively Austrian credit institutions of which two are large nationalized banks.

Voest-Alpine AG received export financing through this program at interest rates lower than the national average short-term interest rate in Austria during 1984. For purposes of this preliminary determination, we have used 9.25 percent as the benchmark for short-term loans. This is the "Commercial Bank Lending Rate to Prime Borrowers," in Austria as reported in *World Financial Markets*. Since Kontrollbank export financing is only available for use by exporters and the rates of interest charged are less than commercial interest rates on comparable loans, we preliminarily determine that the provision of such financing constitutes a countervailable benefit.

The benefit provided under this program was determined by applying the interest rate differential between the short-term benchmark and the interest rates paid by Voest-Alpine AG, on the principal amount of all loans received by the company, for the number of days the loans were outstanding. We then allocated the aggregate benefit over the value of exports of all products produced by Voest-Alpine AG. On this basis, we calculated a subsidy in the amount of 0.08 percent *ad valorem* for the products under investigation.

D. Various Cash Grant Programs

Petitioners alleged that the Federal government provides cash grants, equal to 100,000 Schillings per job created, to companies relocating to, or expanding plants in the special development and coal-mining areas.

The government response stated that a 100,000 Schilling Action program was established by joint resolution between Austria's federal and state governments. Funds from this program are granted (by both the federal and the applicable state government) as a premium in an amount

no greater than 100,000 Schillings for each newly created job. To receive these cash grants, a company must meet the following requirements: (1) The recipient must have invested at least 400,000 Schillings in a newly estimated plant or 200,000 Schillings in the expansion of an old plant; (2) the character of the investment must be innovative; and (3) the recipient must make an employment guarantee of at least three years.

Under this program, Voest-Alpine AG was awarded a cash grant for the construction of its new seamless tube mill in Kindberg, Styria. Accordingly, 50 percent of any grant awarded is to be paid by the state (Styria) government and 50 percent by the federal government. The grant was approved in 1981 with payment to be made in two equal installments. The first installment was paid in May, 1983; the second installment is still outstanding. We have no information on the record that the rate of federal support does not vary from state to state and/or that the support is available in all parts of Austria. Because this program may be limited to companies located in specific regions, we preliminary determine this grant to be countervailable.

The methodology used to calculate the benefit was similar to the methodology used in the section entitled "Grants to the Austrian Steel Industry." The undisbursed portion of the grant was not included in this benefit calculation.

We allocated the aggregate benefit over the value of total sales of the oil country tubular goods under investigation. Based on this methodology we find the subsidy conferred by this grant to be 0.06 percent *ad valorem*.

II. Programs Determined Not To Confer a Subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters in Austria of oil country tubular goods under the following programs:

A. Osterreichische Investitionskredit TOP–1 and TOP–2 Loans

Petitioners alleged that Voest-Alpine AG has received preferential export financing from the government of Austria through TOP–1 and TOP–2 loans. The government of Austria's response stated that the programs are intended to further investments which are important for structural change by providing federal interest rate supporting for credits given by Austrian banks. These credits are refinanced on the Austrian capital market by the Investitionskredit AG.

According to the government's response, the TOP–1 and TOP–2 programs are not limited to export promotion nor are they limited to a specific industry or group of industries. Therefore, we preliminarily determine that the program does not constitute a subsidy.

B. Labor Subsidies

Petitioners alleged that Voest-Alpine AG has received benefits from labor programs sponsored by the Austrian government.

1. *Government-Funded Labor Training.* The government response stated that under the Labor Market Promotion Act, Law No. 31/1969, companies in Austria may receive funds from the Austrian government for the establishment of in-house training programs to improve worker skills or to teach workers new vocations. In addition, under this law companies in Austria with low levels of capacity utilization may receive funds to be paid to the workers involved in training combined with reduced hours of work. Employees whose working hours are reduced receive support payments compensating them for the loss in earning sustained. Workers receiving benefits under this program spend the difference between their reduced working hours and their normal working hours in training programs. The government's response stated that funding for these labor training programs is available to all sectors of Austrian industry and not just to the iron and steel industry or to export-related industries. Because this program is not limited to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine that the program does not constitute a subsidy.

2. *Special Assistant Act.* The Special Assistant Act of 1973, Law No. 642/1973, provides enhanced unemployment benefits for former employees of sectors of the economy hit by the downturn which have been let go and are at least 55 years old for men or 50 years old for women. The Federal Minister of Social Affairs is empowered to determine by decree which sectors of the economy warrant application of the provisions of the law. In a decree issued on March 21, 1983, the iron and steel industry was included within the provisions of this law. The government of Austria's response stated that payments under this law are made directly to the workers who have been laid off by an employer. The employer itself is not entitled to any support or subsidies under this law and is not relieved from payment of any expenses otherwise the obligation of such employer. Because this program provides assistance to workers and does not relieve Voest-Alpine AG of any expenses or obligations, we preliminarily determine that the company does not receive a subsidy under this program.

C. Interest Subsidy Program

Petitioners alleged that Voest-Alpine AG has received interest subsidies from the Austrian government. The government of Austria's response stated that the European Recovery Program Fund of Austria administered a program from 1978–1981 aimed at encouraging industrial projects in Austria. Under this program, qualifying investments were eligible for interest support, reducing the amount of interest payable on commercial loans obtained to finance such investments. Furthermore, the response stated that all companies in Austria were eligible for this program and it was not confined to export-related projects. Because this program is not related to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine that this program does not constitute a subsidy.

D. Loan Guaranty Program

Petitioners alleged that Voest-Alpine AG has received substantial loan guarantees from the Austrian government. The Austrian government's response stated that loans issued by insurance companies in Austria must meet certain strict requirements for investment security according to section 77 of the Insurance Supervisory Law of October 18, 1976. Because of these requirements, commercial loans by insurance companies must be guaranteed by the government or secured by a pledge of a real estate. The government guarantees insurance company loans to Voest-Alpine AG to enable the insurance companies to find larger-scale legally eligible investments for placement of their investment portfolios, rather than to enable Voest-Alpine AG to raise funds, which it is able to do through other sources. Accordingly, we preliminarily determine that this program does not provide subsidies to Voest-Alpine AG.

E. Local Subsidies To Reduce Moving and Worker Housing Costs—"Pendlerbeihilfe" Program

Petitioners alleged that enterprises willing to move from overcrowded industrial areas to development areas may receive subsidies to reduce moving and worker housing costs. The government of Austria's response stated

that their "Pendlerbeihilfe" program was established to cover a portion of the costs incurred by workers, who must commute to a distant new job, due to lay-offs by their prior employer. Workers are only eligible to participate in this program when housing is unavailable in the vicinity of their new job. This program is administered by the state office of the Federal Ministry of Social Affairs and directly benefits the individual worker; benefits do not accrue to the company. Because this program provides assistance to individual workers and not companies, we preliminarily determine that Voest-Alpine AG does not receive a subsidy under this program.

III. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Austria of oil country tubular goods did not use the following programs:

A. Income Tax Deferral on Export Sales

Petitioners alleged that the Austrian government provides an export subsidy by permitting exporters to deduct from their taxable income fifteen percent of receivables originating from exports. The response of Voest-Alpine AG stated that it does not benefit from this program

B. Export-Oriented Research Projects

Petitioners alleged that Voest-Alpine AG has received export-oriented research and development loans on preferential terms. The government of Austria's response stated that there are no government programs which promote export-oriented research projects. However, the response also stated that the Chamber of Commerce sponsors programs, which are available to a variety of industries, to promote exports. Since no loans were made to Voest-Alpine AG under the Chamber of Commerce's loan program, we preliminarily determine that this program was not used.

IV. Programs For Which Additional Information Is Needed

A. Reduced Tax Liability

Petitioners alleged that companies with new factories can deduct up to 40 percent of the cost of machinery and equipment from their quarterly tax liabilities. The response of the government of Austria stated that the Investment Premium Laws of 1982 and 1984 (Laws 110/82 and 128/84, respectively) allow for cash payments or income tax deductions for individuals or corporations that have invested in certain kinds of assets. The goverment of Austria's response stated that Voest-Alpine received premiums that are not limited to a specific enterprise or industry, or a group of enterprises or industries. However, because sections of the response are unclear, we preliminarily determine that additional information is needed.

B. Preferred European Recovery Program Loans for Regional Development

Petitioner alleged that European Recovery Program (ERP) loans are available on preferential terms in special development areas. The response of the government of Austria is summarized in section II.C. of this notice, entitled "Interest Subsidy Program." The response did not state, however, if preferential ERP loans are available for regional development on a selective basis. Therefore, we preliminarily determine that additional information is needed.

C. Interest Support by the State Government of Styria

Petitioners alleged that a number of local incentives are available to industries in Austria. Voest-Alpine AG, in its response, stated that it received interest support under this program in 1983 and 1984. Although the government's response stated that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, the eligibility criteria may limit this program to a certain group of enterprises or industries. Therefore, we preliminary determine that additional information is needed.

V. Program Preliminarily Found Not To Exist

According to the government response, the following program does not exist.

Local Tax Incentives in Coal Mining Areas

Petitioners alleged that coal mining communities reduce local taxes (i.e., payroll, trade tax and local fees) during the initial years of a company's operation.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Austria which are entered, or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register** and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise at 1.82 percent *ad valorem*.

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC conforms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response that cannot be verified for our final determination.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 27, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by June 19, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if

a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: May 24, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13208 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-433-401]

Certain Carbon Steel Products From Austria; Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain carbon steel products from Austria are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determinations. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of certain carbon steel products from Austria that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make our final determinations by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3963.

Preliminary Determinations

We have preliminarily determined that certain carbon steel products from Austria are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(b)) (the Act). For the 40 percent of total sales to the United States that were reported by the respondent, we made fair value comparisons based on the United States price and home market prices. The weighted-average margin for the reported sales is .002 percent. However, for sales to the United States which were not reported by respondent, we used the best information available. This was the margins in the petition. The simple average margin for the products under investigation is 55.3 percent.

Because the unreported sales constitute 60 percent of total sales, the weighted-average margin for all sales is 33 percent.

Case History

On December 19, 1984, we received a petition from the United States Steel Corporation on behalf of the domestic carbon steel flat-rolled products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of certain carbon steel products from Austria are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening material injury to a United States industry. The petition also alleged that sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the International Trade Commission (ITC) of our actions and initiated such investigations on January 14, 1985 (50 FR 1911). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of certain carbon steel products from Austria are materially injuring a U.S. industry (50 FR 6070). However, no indication of injury was found on imports of galvanized flat-rolled products and this product was dropped from the investigations.

We presented an antidumping questionnaire to counsel for Voest-Alpine AG, the sole Austrian producer of the products under investigation for export to the United States.

Products Under Investigation

The products under investigation are hot- and cold-rolled carbon steel flat-rolled products. A further description of the products is contained in the appendix to this notice.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

During the course of these investigations, respondent informed the Department that it had discovered that products subject to the investigations which had been sold through trading companies into the world market had ended up in the United States. Respondent did not report those sales in its response to our questionnaire. We requested background information on these sales as they represented approximately 60 percent of the sales to the United States during the period of investigation. After some delay, respondent provided information on May 17, 1985, that indicated that is should have reported full information on these sales.

For reported sales, we used the purchase price of the subject merchandise, as provided in section 772(b) of the Act, to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price based on the price to the (first) unrelated United States purchaser. We deducted brokerage charges, U.S. Duty, inland freight, ocean freight, and marine insurance, where appropriate.

Respondent requested that we include an adjustment to the U.S. price for any trading profits or losses from dealings with an intermediate unrelated foreign trading company on certain sales to the United States. We have requested additional information on this issue and will consider it in making our final determinations. However, we have not made the adjustment in our preliminary calculations.

For unreported sales, we have used the best information available. This is the simple average margin for the products under investigation from the petition, 55.3 percent.

Foreign Market Value

In accordance with section 773(a)(1), we used home market prices for calculating foreign market value. We made comparisons of "such or similar" merchandise based on grade, thickness, width and surface treatment categories selected by Commerce Department industry experts.

We deducted home market discounts. We adjusted for differences in packing and merchandise, where appropriate. The petitioners alleged that sales in the home market were at prices below the cost of production. We examined production costs, including materials, labor, and general expenses, and found some sales below cost. Where below-

cost sales constituted more than 10 percent of sales in any merchandise category, we eliminated them from our calculations. We still had sufficient home market sales for comparisons for all of the merchandise under investigation.

In calculating foreign market value, we made currency conversions from Austrian schillings to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the certified daily exchange rates.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by the respondent by using standard verification procedures, including examination of relevant sales and financial records of the company.

ITC Verification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We still allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to a U.S. industry before the later of 120 days after we make our preliminary affirmative determinations, or 44 days after we make our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain carbon steel products from Austria that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to these investigations exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Voest-Alpine	33
All others	33

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on July 10, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 3, 185. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

We will make our final determinations of whether these imports are being sold at less than fair value within 75 days of the date of publication of this notice in the **Federal Register.**

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 28, 1985.

Appendix

Scope of Investigations

The products under investigation are hot-rolled flat-rolled products and cold-rolled flat-rolled products.

The term "*hot-rolled flat-rolled products*" covers hot-rolled carbon steel products, whether or not corrugated or crimped, not cold-rolled, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; 01875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *Tariff Schedules of the United States, Annotated* (TSUSA), or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

The term "*cold-rolled flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; over 12 inches in width and 0.1875 inch in thickness, as currently provided for in item 607.8320 of the *TSUSA*, or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, 607.8360 of the *TSUSA*.

[FR Doc. 85–13232 Filed 5–31–85; 8:435 am]

BILLING CODE 3510-DS-M

[A–429–404]

Certain Carbon Steel Products From the German Democratic Republic; Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary determinations of sales at less than fair value.

SUMMARY: We preliminarily determine that certain carbon steel products from the German Democratic Republic (GDR) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–4198.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that certain carbon steel products from the GDR are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margins were based on the best information available,

as explained below in the section of this notice which describes our fair value comparisons and calculations. The margins for individual products investigated are listed in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by August 12, 1985.

Case History

On December 19, 1984, we received a petition from United States Steel Corporation, filed on behalf of the domestic producers of certain carbon steel products. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of certain carbon steel products from the GDR are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or are threatening material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We notified the ITC of our action and initiated these investigations on January 8, 1985 (50 FR 1913). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of certain carbon steel products from the GDR are materially injuring a U.S. industry.

On March 8, 1985, a questionnaire was presented to the Embassy of the GDR for transmission to Metallurgiehandel Ve Aussen-und-Binnenhandelsbetrieb der DDR (Metallurgiehandel).

On April 2, 1985, we learned from the Commerical Section of the Embassy of the GDR that Metallurgiehandel would not respond to the questionnaire.

As discussed under the "Foreign Market Value" section of this notice, we have preliminary determined that the GDR is a state-controled-economy country for the purpose of these investigations.

Scope of the Investigation

The products under investigation are carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products.

The term *"carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620 and 607.6625 of the Tariff Schedule of the United States Annotated *(TSUA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.*

The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel flat-rolled products, whether or not corrogated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness; a currently provided for in item 607.8320 of the *TSUS.*1; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355 or 607.8360 of the *TSUSA.*

The term *"hot-rolled carbon steel flat-rolled products"* covers hot-rolled carbon steel flat-rolled products, whether or not corrugated or cimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not cald; 0.1875 inch or more in thickness and over 8 inches in width; pickled, and as currently provided for in item 607.8320 of the *TSUSA;* and in coils, as currently provided in item 607.6610 of the *TSUSA.*

According to the petition, Metallurgiehandel accounted for all the exports of this merchandise to the United States. We investigated all imports of carbon steel products during the period July 1 through December 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act because respondent did not submit a response.

United States Price

We calculated the purchase price of certain carbon steel products as provided in section 772 of the Act, on the basis of the average f.o.b. values for the six month period of investigation as provided in the IM146, compiled, by the Bureau of the Census. We used these data as the best information available instead of the average IM146 values for an 18 month period which were provided in the petition.

Foreign Market Value

Petitioners alleged that the GDR is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of the GDR's economy, we have preliminarily concluded that the GDR is a state-controlled-economy country for purposes of these investigations. Central to our decision on this issue is the fact that the central government of the GDR strictly controls the prices and levels of production of the GDR carbon steel products industry, as well as the internal pricing of the factors of production.

Therefore, we calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was the constructed value data submitted in the petition. These data were based on alleged Austrian costs plus the statutory minimum profit of 8 percent.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in these investigations, if a timely response is received.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain carbon steel products from the GDR which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to these investigations exceeds the United States price.

This suspension of liquidation will remain in effect until further notice.

The margins for individual products investigated are as follows:

Product	Margin (percent)
Carbon Steel Plate	42
Cold-rolled carbon steel flat-rolled products	[redacted]
Hot-rolled carbon steel flat-rolled products	[redacted]

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on July 1, 1985, the U.S. Department of Commerce, Room B841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 21, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 28, 1985.

[FR Doc. 85-13233 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-401]

Certain Carbon Steel Products From Romania; Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary determinations of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cabron steel products from Romania are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: David D. Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 377-2239.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that certain carbon steel products from Romania are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins were based on the best information available, as explained below in the section of this notice which describes our fair value comparisons and calculations. The margins for individual products investigated are listed in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by August 12, 1985.

Case History

On December 19, 1984, we received a petition from United States Steel Corporation, filed on behalf of the domestic producers of certain carbon steel products. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of certain carbon steel products from Romania are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or are threatening material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We notified the ITC of our action and initiated these investigations on January 8, 1985 (50 FR 1916). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of certain carbon steel products from Romania are materially injuring a U.S. industry.

On March 12, 1985, a questionnaire was sent to Metalexportimport. On May 1, 1985, we received the response to the questionnaire. The response was not accompanied by a non-confidential summary or an agreement to release the confidential information under administrative protective order. On May 17, 1985 we received an agreement to release confidential information under administrative protective order. We found that the response did not provide adequate product descriptions for us to make sales comparisons of fair value. We have requested this information.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that Romania is a state-controlled-economy country for the purpose of these investigations.

Scope of the Investigations

The products under investigation are hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products.

The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel flat-rolled products, whether or not corrogated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness; as currently provided for in item 607.8320 of the Tariff Schedules of the United States Annotated (*TSUSA*); or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355 or 607.8360 of the *TSUSA*.

The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape;

not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, as currently provided for in item 607.8320 of the *TSUSA*; or under 0.1875 inch in thickness an over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

According to the petition, Metalexportimport accounted for all the exports of this merchandise to the United States. We investigated all imports of certain carbon steel products during the period July 1 through December 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act because the response did not have adequate product descriptions.

United States Price

We calculated the purchase price of certain carbon steel products as provided in section 772 of the Act, on the basis of the average f.o.b. values for the period of investigation as provided in the IM146, compiled by the Bureau of the Census. We used these data as the best information available instead of the average IM146 values for a 12 month period, which were provided in the petition.

Foreign Market Value

Petitioners alleged that Romania is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of Romania's economy, we have preliminarily concluded that Romania is a state-controlled-economy country for purposes of these investigations. Central to our decision on this issue is the fact that the central government of Romania strictly controls the prices and levels of production of Romania's carbon steel products industry, as well as the internal pricing of the factors of production.

Therefore, we calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was the constructed value data submitted in the petition. These data were based on Spanish costs plus the statutory minimum profit of 8 percent.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in these investigations, if a timely response is received.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain carbon steel products from Romania which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to these investigations exceeds the United States price.

This suspension of liquidation will remain in effect until further notice.

The margins for individual products investigated are as follows:

Product	Margin (percent)
Cold-rolled carbon steel, flat-rolled products	63
Hot-rolled carbon steel, flat-rolled products	[illegible]

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:30 p.m. on July 8, 1985, the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 1, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies

May 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13234 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-401]

Certain Welded Circular Carbon Steel Pipes and Tubes From Venezuela; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain welded circular carbon steel pipes and tubes from Venezuela are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC. 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that certain pipes and tubes from Venezula are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin for the respondent was based on the best information available, as explained below in the section of this notice which describes our fair value comparisons and calculations. The margin for the company investigated is listed in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 12, 1985.

Case History

On December 18, 1984, we received a petition from the Subcommittee of the Committee on Pipe and Tube Imports and its member companies, who produce standard pipe on behalf of the domestic producers of standard pipe. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of certain pipes and tubes from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on January 7, 1985 (50 FR 1614), and notified the ITC of our action. On February 1, 1985, the ITC determined that there is a reasonable indication that imports of standard pipe are materially injuring a U.S. industry.

On February 14, 1985, a questionnaire was presented to counsel for Conduven, the Venezuelan respondent. An incomplete questionnaire response was received on April 1, 1985. The response did not describe the individual products sold in sufficient detail to permit us to determine proper such or similar merchandise comparison groups. We notified the respondent on May 3, 1985 that we would require additional information on difference of merchandise adjustments, exchange rates, and English translations of certain information. We stated that, if they did not provide us with the required information, we would proceed to the preliminary determination using the best information available. We did not receive an adequate response to our deficiency letter in sufficient time to use in the preliminary determination. We are requesting additional information to correct the outstanding deficiencies.

Scope of Investigation

The product under investigation is small diameter circular welded carbon steel pipe and tube, with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925.

We limited our investigation to Conduven since it accounted for virtually all the exports of this merchandise to the United States. We investigated all sales of certain pipes and tubes during the period July 1, 1984 through December 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on best information available. We used best information available as required by section 776(b) of the Act for the reasons explained in the "Case History" section of this notice.

United States Price

We calculated the purchase price of certain pipes and tubes, as provided in section 772 of the Act, on the basis of average customs value for the period of investigation, as reported by the Bureau of Census IM145X. We used these data as the best information available instead of those provided in the petition in order to obtain a representative figure for the total period of investigation, since petitoner provided United States price information for only one month during the period of investigation.

Foreign Market Value

We calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was home market pricing information provided in the petition which listed prices for various sizes of standard pipe not over 4.5 inches in outside diameter, less a 14% discount, and converted to U.S. dollars using the September quarterly rate certified by the Federal Reserve Bank.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain pipes and tubes from Venezuela which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price.

This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers	Margin (percent)
Conduven	26.19
All other manufacturers/producers/exporters	26.19

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on July 12, 1985, at the U.S. Department of Commerce, Room 3708, 14th St. and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to

participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 5, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 28, 1985.

[FR Doc. 85-13236 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-402]

Certain Carbon Steel Products From Venezuela; Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain carbon steel products from Venezuela are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determinations. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of certain carbon steel products from Venezuela that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by August 12, 1985.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that certain carbon steel products from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margin for each product investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On December 19, 1984, we received a petition filed in proper form from the United States Steel Corporation, on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We initiated the investigation on January 14, 1985 (50 FR 1917), and notified the ITC of our action.

On January 28, 1985, the ITC found that there is a reasonable indication that imports of certain carbon steel products from Venezuela are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1642 February 1985).

We investigated the manufacturer C.V.G. Siderurgica del Orinoco, C.A. (SIDOR) who accounts for all Venezuelan exports of hot and cold-rolled carbon steel flat-rolled products to the United States. We examined 100 percent of the sales made by SIDOR during the period of investigation. It appears that a Canadian reseller sold all of the Venezuelan plate to the United States during the period of investigation.

Scope of Investigations

The products under investigation are: (1) Carbon steel plate, (2) hot-rolled carbon steel flat-rolled products and (3) cold-rolled carbon steel flat-rolled products.

1. The term "*carbon steel plate*" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, and 607.6625 of the *Tariff Schedules of the United States Annotated* (TSUSA). Semifinished products of solid rectangular cross section with width at least four times the thickness and processed only through primary mill hot-rolling are not included.

2. The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled and as currently provided for in item 607.8320 of the *TSUSA*; and not pickled and in coils; as currently provided in items 607.6610 or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

3. The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 or more in thickness; as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

With respect to carbon steel plate, our investigation revealed that all sales to the United States during the period of investigation (July-December, 1984) were of merchandise which was exported by SIDOR to Canada which entered the commerce of that country, and which was subsequently exported to the United States. Given the above set of circumstances, pursuant to section 773(g) of the Act, we are treating Canada as the country of exportation. Before making a final determination, we will attempt to determine the foreign market value by using Canada as the country of exportation. For the purposes of this preliminary determination we are assigning to carbon steel plate the same bonding rate we have found applicable to hot-rolled flat-rolled products.

With respect to cold-rolled flat-rolled products, SIDOR failed to provide a complete listing of its home market

sales. Therefore, for purposes of this preliminary determination, we are assigning to cold-rolled flat-rolled products the same bonding rate we have found applicable to hot-rolled flat-rolled products.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the FOB packed price to unrelated customers in the United States. We made deductions, where appropriate, for Venezuelan inland freight, handling and loading charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. We made comparisons of "such or similar" merchandise based on grade, thickness, width and surface treatment categories selected by Commerce Department industry experts.

We calculated the home market prices for each product on the basis of delivered prices to unrelated purchasers. From these prices, we deducted, where appropriate, Venezuelan inland freight. We made adjustments, where appropriate, for differences in credit and warranty expenses in accordance with § 353.15 of our Regulations (19 CFR 353.15). The Federal Reserve Bank of New York ceased certifying Venezuelan exchange rates in August 1984. Pursuant to § 353.56 of the Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank, for the dates for which there was a certified rate. For the period after the Federal Reserve Bank ceased certifying a Venezuelan exchange rate, we made necessary currency conversions using two rates published by the Central Bank of Venezuela.

SIDOR is required by the Venezuelan government to convert its dollar foreign exchange earnings at two different exchange rates. Seventy-five percent of SIDOR's dollar earnings are converted at the free-market rate prevailing in Venezuela. The remaining 25 percent is converted at a fixed rate of 7.5 bolivares to the dollar (an amount which reflects SIDOR's purchases of dollars for imported inputs which occur at the Bs. 7.5 rate). Thus, for the dates when the Federal Reserve Bank has not certified a rate, we have used, as best information available, the weighted-average of the two rates used by SIDOR when converting its dollar earnings into bolivares.

We have requested the Federal Reserve Bank to certify the Venezuelan exchange rates for the period after August 1984. We intend to use certified rates for our final determinations.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determinations.

Suspension of Liquidation

In accordance with section 773(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain carbon steel products from Venezuela that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the preliminary countervailing duty determinations on certain carbon steel products from Venezuela, we found export subsidies (50 FR 11227). If a level of export subsidies is found in the final countervailing duty determination on certain carbon steel products from Venezuela, it will be subtracted for deposit or bonding purposes from the dumping margins, if any, found in the final antidumping determinations on certain carbon steel products from Venezuela.

Manufacturer/producer/exporter	Weighted-average margin percentage
Carbon steel plate SIDOR	4.84
All others	4.84
Hot-rolled carbon steel flat-rolled products SIDOR	4.84
All others	4.84
Cold-rolled carbon steel flat-rolled products SIDOR	4.84
All others	4.84

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determinations or 45 days after we make our final affirmative determinations.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on June 28, 1985, at the United States Department of Commerce, Room B–841, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 21, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of

this notice's publication, at the above address and in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 28, 1985.

[FR Doc. 85–13235 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Financial Assistance Application Announcement; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $275,000 for the project performance period of September 1, 1985 to August 31, 1986. The MBDC will operate in the Sacramento Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $233,750 in Federal funds and a minimum of $41,250 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–85002–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 15018, San Francisco, California 94102, June 4, 1985 at 10:00 A.M..

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102, 415/556–6734.

Closing date: The closing date for applications is June 14, 1985. Applications must be postmarked on or before 5:00 pm–June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

May 23, 1985.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 85–13166 Filed 5–31–85; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcements; Tennessee

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive application under its Minority Business Development Center (MBDC) Program to operate and MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$275,000* for the project performance of *10/01/85* to *09/30/86.* The MBDC will operate in the *Memphis Tennessee* Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of *$233,750* in Federal funds and a minimum of *$41,250* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04–10–85029–01* for the *Memphis, Tennessee* MSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements include in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating is annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: Closing Date: The closing date for applications is *June 30, 1985.* Applications must be postmarked on or before *June 30, 1985.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street N.E., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of applications kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 28, 1985.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 85-13168 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications Announcements; North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at *$187,000* for the project performance of *10/1/85* to *9/30/86*. The MBDC will operate in the *Charlotte, North Carolina* Metropolitan Statistical Area (MSA).

The first year cost for the MBDC will consist of *$158,950* in Federal funds and a minimum of *$28,050* in non-Federal funds, (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04-10-85030-01* for the *Charlotte, North Carolina* MSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of business. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: Closing date: The closing date for applications is *June 30, 1985.* Applications must be postmarked on or before June *30, 1985.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 28, 1985.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 85-13169 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Fisheries Advisory Committee; Meeting That Is Partially Closed to the Public

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Time and Date: The meeting will convene June 24, 1985, 10:15 a.m. and adjourn at approximately 12:00 noon, June 26, 1985.

Place: NOAA Sand Point Facility, Seattle, Washington.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academia, and other national interests.

Matters To Be Considered:

Portions Open to the Public:

June 24, 1985, 10:00 a.m.-5:00 p.m., fishery financial assistance programs and habitat initiatives.

June 26, 1985, 9:00 a.m.-12:00 noon, review of current fishery data and summation of recommendations.

Portions Closed to the Public:

June 25, 1985, 9:00 a.m.-3:30 p.m. (Executive Session), current and future year budget/program priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on May 20, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION OR COPIES OF MEETING SUMMARIES CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, National Marine Fisheries Service, NOAA, Washington, D.C. 20235. Telephone: (202) 634-9563.

Dated: May 28, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 85-13153 Filed 5-31-85; 8:45 am]

BILLING CODE 3510-01-M

Pacific Coast Groundfish Fishery

Correction

FR Doc. 85–11857, beginning on page 20470 in the issue of Thursday, May 16, 1985, appeared in the Proposed Rules section; however, it should have appeared in the Notices section.

BILLING CODE 1505-01-M

Pacific Coast Groundfish Fishery

Correction

FR Doc. 85–11858, beginning on page 20420 in the issue of Thursday, May 16, 1985, appeared in the Rules and Regulations section; however, it should have appeared in the Notices section.

BILLING CODE 1505-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 85-3 85CA]

Adjustment of Cable Copyright Royalty Rates

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of Inquiry.

SUMMARY: This notice solicits comments on TBS's petition to adjust the cable copyright royalty rate for cable operators who want to carry WTBS, Atlanta, Georgia. Comments are solicited specifically, but not restricted to, TBS's standing to petition, the scope of the TBS petition, and the procedures to be followed in considering the petition. This notice is in response to a motion filed by the Motion Picture Association of America which requested a notice and comment proceeding.

DATES: Comments must be submitted by July 8. Reply comments must be submitted by August 8.

ADDRESS: Comments may be filed with or mailed to: Copyright Royalty Tribunal, 1111 20th Street, NW, Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, (202) 653–5175.

SUPPLEMENTARY INFORMATION: The Copyright Act of 1976 (Act) established the Copyright Royalty Tribunal (Tribunal) to make determinations concerning the adjustment of copyright royalty rates which cable operators must pay for the retransmission of nonnetwork distant broadcast signals. 17 U.S.C. 111, 801 (1976). Section 801(b)(2) of the Act authorizes the Tribunal to make three adjustments: (1) To adjust the rates established by the Act for those distant signals which a cable operator could legally carry under the regulations of the Federal Communications Commisson (FCC) in effect on April 15, 1976, but only to maintain the real constant dollar level of the royalty fees set by the Act; (2) to set the rates for those distant signals which, due to changes in FCC regulations regarding distant signal carriage, became legally available to cable operators after April 15, 1976; and (3) to set the rates for those distant signals which, due to changes in FCC regulations regarding syndicated and sports program exclusivity, became legally available to cable operators after April 15, 1976.

Section 804 of the Act establishes 1985 as the year in which the Tribunal can be petitioned to reconsider the cable royalty rates. The Tribunal was petitioned and has already concluded the inflation adjustment of the rates established by the Act. *1985 Inflation Adjustment for Cable Copyright Royalty Rates,* 50 FR 18480 (May 1, 1985).

On March 25, 1985, the Tribunal received a petition from Turner Broadcasting System, Inc. (TBS) to adjust the cable royalty rates, "for carriage of newly added distant broadcast signals as it is applied to carriage of WTBS, Atlanta, Georgia in certain circumstances." On April 8, 1985, the Motion Picture Association of America, Inc. (MPAA) filed a motion with the Tribunal requesting the Tribunal to establish a notice and comment proceeding for resolving certain questions raised by the TBS petition. Specifically, MPAA seeks resolution of six issues: the exact nature of the relief requested by TBS, whether TBS is an "owner or user of copyrighted works with a significant interest in the royalty rate," what rates would apply to carriage of WTBS under TBS' proposed regulation, who would bear the burden of proof, whether a WTBS rate would be a "discriminatory" rate, and whether the Tribunal should use the same procedures it recently adopted for the 1983 cable distribution proceeding.

The Tribunal believes that the notice and comment procedure requested by MPAA would assist the orderly disposition of the TBS petition. The Tribunal is especially mindful of its obligation under section 804(a)(2) which states, "The Tribunal shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested." However, the Tribunal believes that certain of MPAA's requested questions may be premature. For example, the question of whether creating a special classification for WTBS might result in discriminatory rates would be better addressed at the time of hearing than at this stage. Therefore, the Tribunal declines to propose MPAA's six questions as phrased, but will ask the following questions:

To TBS alone:

1. What is the exact nature of the relief requested by TBS?

2. How would it work?

To the public and TBS:

1. Is TBS an owner or user of copyrighted works with a significant interest in the royalty rate in which an adjustment is requested, as required by 17 U.S.C. 804(a)(2)?

2. Should the same procedures recently adopted in the 1983 distribution proceeding *(Notice Commencing 1983 Cable Distribution Proceeding,* 50 FR 13845 (April 8, 1985) be used for a TBS rate adjustment proceeding? Should TBS be required to put forward its case first, with a period for rebuttal cases to follow, or should all parties who intend to put in evidence be required to file their cases at the same time?

3. What burden of proof should TBS have to sustain to obtain the rate it seeks?

Comments are requested for the above specified questions, but comments may be submitted on any issue which an individual believes is important. To facilitate informed commenting, the entire TBS petition is printed following this notice. The motion by MPAA and the procedures of the 1983 cable distribution proceeding are available for inspection or copying at the Tribunal's offices, Suite 450, 1111 20th Street, N.W., Washington, D.C. during regular business hours. Comments are due by July 8, 1985. Reply comments are due by August 8, 1985.

Edward W. Ray,

Acting Chairman.

May 29, 1985.

Petition To Commence Proceeding To Adjust Copyright Royalty Rates for Cable Carriage of WTBS

Turner Broadcasting System, Inc. (TBS), pursuant to 17 U.S.C. 801(b)(2)(B) and 804(b), hereby petitions the Copyright Royalty Tribunal (CRT or Tribunal) to commence a proceeding solely for the purpose of adjusting the cable compulsory license royalty rate for carriage of newly added distant broadcast signals as it is applied to carriage of WTBS, Atlanta, Georgia in certain circumstances.

TBS is the owner of SuperStation WTBS, a UHF television station retransmitted via satellite to cable television systems nationwide. TBS owns the copyright in certain works, and is licensed to use other copyrighted works, contained in WTBS' broadcast. Accordingly, TBS has the requisite "significant interest" to petition for adjustment of the cable royalty rate as required by 17 U.S.C. 804(b). With respect to the carriage of WTBS, all Form 3 systems have the same interests as TBS. 37 CFR 301.62.

The Copyright Royalty Tribunal in 1982 adjusted the cable copyright royalty fees to reflect the Federal Communications Commission's repeal of its distant signal and syndicated exclusivity rules. 47 FR 52146 (Nov. 19, 1982), *aff'd National Cable Television Association, Inc. v. Copyright Royalty Tribunal*, 724 F. 2d 176 (D.C. Cir. 1983). Specifically, and as relevant to the instant petition, the CRT established a rate of 3.75 percent of gross subscriber receipts for the carriage of any distant signal over the number that would have been permitted under FCC rules in effect as of June 24, 1981. (Hereinafter "CRT decision"). This new rate applied only to cable systems obtaining semiannual gross receipts from subscribers of $214,000 or more ("Form 3" systems). *See generally* 37 CFR 308.2.

TBS's experiences under the CRT's decision have demonstrated that the post-deregulation 3.75% rate is not reasonable within the meaning of section 801(b)(2)(B) with respect to cable system carriage of WTBS. *First*, WTBS began to be distributed to cable systems by satellite in 1976. Substantially all contracts for programming into which WTBS had entered prior to 1976 have now expired. Contracts currently in effect were entered into between a willing buyer, TBS, and a willing seller. Each seller has been aware of WTBS's satellite distribution, and has contracted at free market prices voluntarily reached by the parties for exhibition of the programming. *Second*, these direct licensing fees paid by WTBS to copyright owners for renewal of rights or for purchase of initial rights have, in fact, increased to reflect the expanded audience WTBS now reaches nationally. *Third*, program suppliers, while voluntarily selling to WTBS, offer only those programs they view as suitable for exhibition by WTBS in its capacity as the "SuperStation"; hence, a "SuperStation" submarket of the current syndication market has been created with respect to WTBS. *Fourth*, the 3.75% rate has inhibited carriage of WTBS. A substantial number of Form 3 cable systems, representing more than 1.2 million subscribers, has discontinued carriage; hundreds of other cable systems have declined to carry WTBS.

The net result of these evolutionary events is that the imposition of the 3.75 percent rate for cable systems carrying WTBS as a "*post-Malrite*" signal represents a windfall double payment to copyright holders who had entered into voluntary program exhibition contracts with TBS at prices reflecting the value of the national SuperStation audience plus the statutory royalty rate. The 3.75 rate is unnecessary either to compensate copyright holders for additional cable use, since that compensation has been paid directly by TBS, or to protect copyright holders from any other alleged harm since all sales have been voluntarily contracted in a new, SuperStation syndicated programming submarket. In consequence, TBS respectfully requests that the CRT reduce the royalty rate applicable to those cable systems subject to the CRT's November 19, 1982 rate decision for carriage of WTBS from 3.75 percent of gross receipts to the applicable statutory rates, and to adopt the following regulation, to be codified at 37 CFR 308.2:

(e) Notwithstanding paragraph (a) of this Section, commencing with the second accounting period of 1985 and for each semiannual accounting period thereafter, (1) if the signal of WTBS, Atlanta, Georgia had been carried by a cable system during the first or second accounting period of 1984 and the cable system paid a royalty for the carriage of the WTBS signal of 3.75 per centum of the gross receipts of the cable system or (2) if a cable system began carrying the signal of WTBS, Atlanta, Georgia after January 1, 1985, then the cable system can elect to classify the signal of WTBS for royalty purposes as a "national distant signal." If the cable system classifies the WTBS signal as a "national distant signal," the royalty rate to be paid by a cable system for the carriage of the WTBS signal shall be computed as if the WTBS signal were subject to the rates established in 17 U.S.C. 111(d)(2)(B).

Finally, TBS requests that, in view of the Tribunal's considerable flexibility to establish its own procedures, the CRT limit this proceeding under section 801(b)(2)(B) to the consideration of the above regulation applicable to WTBS.

Respectfully submitted,

Turner Broadcasting Sytem, Inc.

March 25, 1985.

[FR Doc. 85-13223 Filed 5-31-85; 8:45 am]

BILLING CODE 1410-09-M

[CRT Docket No. 84-1 83CD]

Order Directing Partial Distribution of 1983 Cable Royalty Fees

On April 8, 1985, the Tribunal published in the **Federal Register** its determination that a controversy exists as to the distribution of the 1983 cable copyright royalty fees. *Notice Commencing 1983 Cable Distribution Proceeding*, 50 FR 13845 (April 8, 1985). By April 22, 1985, eight parties had filed notices of intent to participate in Phase I of the 1983 cable distribution proceeding, and by May 13, 1985 each Phase I claimant had filed its written direct case advancing their justification of the percentage of the royalty fund to which it believed it is entitled.

On May 21, 1985, the Phase I claimants—the Program Suppliers, the Joint Sports Claimants, the National Association of Broadcasters, the Public Television Claimants, the Music Claimants, the Devotional Claimants, the Canadian Claimants and National Public Radio—filed jointly a motion for a 50% distribution of the fund based upon the allocation to each Phase I claimant from the 1982 cable distribution proceeding. The Phase I claimants make it clear in their filing that none of the claimants necessarily agree that the 1982 percentage allocations are applicable in the 1983 proceeding. Each claimants reserves its right to seek a higher percentage award. However, the Phase I claimants do agree that retention of 50% of the 1983 fund is "an amount sufficient to satisfy all claims with respect to which a controversy exists. . . ." Section 111(b)(5)(C) of the Copyright Act of 1976. the Phase I claimants also agree that in the event any claimant is found to have received an overpayment from this partial distribution based upon the Tribunal's final determination, it will refund the overpayment.

The Tribunal orders that 50% of the 1983 cable copyright royalty fees constituting the 1983 fund as of June 27, 1985 will be distributed on June 27, 1985 solely to the agents designated by the Phase I claimants. In the event any claimant is required to refund any portion of this distribution, it will refund the overpayment with interest. The interest will be assessed at the same rate the money would have earned if it had remained in the 1983 fund.

The 50% distribution to be allowed at this time is based upon the final determination of Phase I of the 1982 cable distribution proceeding:

	Percent
Program Suppliers	69.2982
Joint Sports Claimants	14.8496
Public Television Claimants	5.1974
National Association of Broadcasters	4.4549
Music Claimants	4.2074
Devotional Claimants	1.000
Canadian Claimants	0.7425
National Public Radio	0.25
Total	100.0000

Edward W. Ray,
Acting Chairman.
May 29, 1985.
[FR Doc. 85-13224 Filed 5-31-85; 8:45 am]
BILLING CODE 1410-15-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Number

Report of Dental Correction (AFROTC Form 10).

AFROTC Form 10 is used as a record of dental corrections for AFROTC cadets. Pilot and navigator candidates are required to have any dental defects corrected to ensure they meet the standards for commissioning before they receive their commissioning examinations. The information is used to certify that the cadets meet the dental standards for commissioning requirements.

Individuals
Responses 7500
Burden hours 625

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from TSgt Thomas E. Lowther, AFROTC/RRF, Maxwell AFB, AL 36112-6663, telephone number (205) 293-5997.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
May 29, 1985.
[FR Doc. 85-13190 Filed 5-31-85; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Number

AFROTC Four-Year Scholarship Program Finalist Questionnaire (AFROTC Form 69A).

The questionnaire is used during the selection process for finalists competing for AFROTC four-year scholarships. It is filled out as part of an interview and requires applicants to respond to questions in their own handwriting. The questionnaire tests the applicants' ability to think through a question and respond in writing in a logical and grammatically correct manner.

Individuals
Responses 10,000
Burden Hours 5,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained by Captain John C. Sampson, AFROTC/RRUF, Maxwell AFB, AL 36112-6663, telephone number (205) 293-7783.

Dated: May 29, 1985.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 85-13193 Filed 5-31-85; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The Point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Control Number

Credentials Evaluation of Health Care Practitioners

This form is used to obtain personal and professional information from health care practitioners seeking to join or be employed by the Air Force to provide patient care so that their qualifications for doing so may be objectively evaluated.

Individuals
Responses 2,250
Burden hours 1,125

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer,

Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC. 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Capt. Jackie Smity, HQ USAF/SGQ, Bolling AFB, DC 20332–6188, telephone (202) 767–2159.

Dated: May 29, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–13192 Filed 5–31–85; 8:45 am]

BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

Change of location in meeting of the USAF Scientific Advisory Board Ad Hoc Committee Study on Artificial Intelligence published in **Federal Register** on April 18, 1985 (50 FR 15475). It will be held at the MITRE Corp., Bedford, MA (previously scheduled at the Pentagon, Washington, DC). Everything else remains the same.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Worita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–13318, Filed 5–31–85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whon comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained

Existing Collection in Use Without an OMB Number

Marksmanship Competition Rifle and Pistol (Individual and Team) Entry and Score Cards; DA Forms 1342, 1343, 1344, and 1345.

Department of the Army forms are used to record individual and team scores for the annual conduct of Excellence-in-Competition and National Matches competition. The score cards are used for computation and recording purposes.

Affected public
Responses 3,820
Burden Hours 216

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained by Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20310–0700, telephone (202) 695–5111.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 29, 1985.

[FR Doc. 85–13191 Filed 5–31–85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Deer Creek Reservoir Water Supply Project

AGENCY: U.S. Army Corps of Engineers, Army Department, DOD.

Sponsor: Wyoming Water Development Commission, Cheyenne, Wyoming.

ACTION: Notice of Intent to Prepare a draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to construct the Deer Creek Reservoir on Deer Creek, at tributary of the North Platte River located in east-central Wyoming. The dam site is located at the upper end of the Lower Deer Creek Canyon in Converse County approximately 18 miles southwest of Glenrock.

2. Existing water supplies are not expected to be sufficient to meet the needs of projected growth beyond the year 1990. This proposal would provide adequate domestic water supplies to meet needs through the year 2005. Alternatives being evaluated by the applicant include:

a. Increasing the capacity of existing reservoirs.

b. Construction of a new reservoir.

c. Trans basin diversion.

d. Use of ground water resources.

e. Conservation.

f. No action.

Alternatives available to the Corps of Engineers include:

a. Approve the permit application.

b. Denial of the permit.

c. Approve the permit with some modification.

3. To date, public involvement has included a public hearing held by the Wyoming Water Development Commission. No significant issues have yet been identified. The project will also comply with the requirements of the Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, Section 404 of the 1977 Clean Water Act, Executive Order 11988 on flood plains, and Executive Order 11990 on wetlands.

4. Scoping meetings for the DEIS will be held on Tuesday, June 11, 1985, at 7:00 p.m. (MST) in the City Council Chambers of the City of Casper located at 200 North David Street, and on Wednesday, June 12, 1985, at 7:00 p.m. (CST) in the Snyder Building of the University of Nebraska West Central Research Extension Center, North Platte, Nebraska. The participation of the public and all interested Government agencies is invited.

5. The Omaha District estimates that the DEIS will be released for public review in November 1985.

ADDRESS: Questions about the proposed action, DEIS, or scoping meetings should be directed to Richard Gorton; Chief, Environmental Analysis Branch; Omaha District, CE; 6014 U.S. Post Office and Courthouse; Omaha, Nebraska 68102, phone (402) 221–4605.

Dated: May 14, 1985.

John O. Roach,

Department of the Army Liaison Office.

[FR Doc. 85–12862 Filed 5–31–85; 8:45 am]

BILLING CODE 3710-JB-M

Intent To Prepare a Draft Supplement to the Tennessee Valley Authority's Final Environmental Impact Statement for the Proposed Development and Use of Mallard-Fox Creek Area in North Alabama

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft supplement to the final environmental impact statement (FEIS).

SUMMARY: The Nashville District Corps of Engineer (CE) is currently preparing a Detailed Project Report (DPR) on the development of the Morgan County Port in Decatur, Alabama, along the Tennessee River (River Mile 399.0). The study is being conducted under the authority of section 107 of the 1960 Rivers and Harbors Act, as amended.

The FEIS for the Morgan County industrial development was prepared by the Tennessee Valley Authority and is hereby adopted by the Corps of Engineers. The Louisville District CE is preparing the draft supplement to the FEIS at the request of the Nashville District CE. The supplement will address proposed port developemnt. The Tennessee Valley Authority is participating as a cooperating agency in the preparation of the supplement.

The action being considered by the Nashville District involves the dredging of a nine-foot (minimum) navigation channel to link the Morgan County Port with the Tennessee River navigation channel. Dredging would occur to elevation 538. It is estimated that approximately one million cubic yards of material will require excavation and disposal.

The draft supplement will cover a variety of issues including economics, land use, transportation and wetlands in addition to the actual dredging of the navigation channel. Any individual or group having comments regarding the contents of the draft supplement is requested to submit them to the Corps of Engineers at the address at the end of this notice within sixty days of the publication date of this notice.

DATE: It is estimated that the draft supplement will be released for public review on or before 1 October 1985.

ADDRESS: Questions regarding the considered action or the draft supplement should be directed to Dwayne G. Lee, Colonel, Corps of Engineers, 500 Federal Place, P.O. Box 59, Louisville, Kentucky 40201. Phone: (502) 582–5601.

By authority of the Secretary of the Army.

Dated: May 16, 1985.

Dwayne G. Lee,

Colonel, CE, District Engineer.

[FR Doc. 85–12436 Filed 5–31–85; 8:45 am]

BILLING CODE 3710–JB–M

Department of the Army

Intent To Grant a Limited Exclusive Patent License to Neurotherapeutics Corp.

The Department of the Army announces its intention to grant Neurotherapeutics Corporation, a corporation of the District of Columbia, a limited exclusive license under U.S. Patent No. 4,267,182, issued May 12, 1981, and U.S. Patent No. 4,434,168, issued February 28, 1984, both entitled "Narcotic Antagonists in the Therapy of Shock", by J.W. Holaday, et al.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency, 5611 Columbia Pike, Falls Church, VA 22041–5013.

For further information concerning this notice, contact: Lieutenant Colonel Francis A. Cooch, USALSA (JALS–PC), Nassif Bldg.—Room 332A, Falls Church, VA 22041–5013, Telephone No. (Area Code 202) 756–2434/2435.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

[FR Doc. 85–13170 Filed 5–31–85; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Discharge Review Board; Hearing Locations

In November 1975, the Naval Discharge Review Board commenced to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C. area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following NDRB itinerary for August 1985 through November 1985 has been approved, but remains subject to modification if required:

12 through 16 August 1985—San Diego, California

19 through 22 August 1985—San Francisco, California

23 through 27 September 1985—Chicago, Illinois

18 through 22 November 1985—Dallas, Texas

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C., or in a city nearer to their residence, should file an application with the Naval Discharge Review Board using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application the hearing location which is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address: Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Virginia 22203–1989.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and representatives will be mailed a notification of the date and place of their hearing when personal appearance has been requested.

For further information concerning the NDRB, contact: Captain R.A. Ways, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Virginia 22203–1989, (202) 696–4881.

Dated: May 29, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR Federal Register Liaison Officer.

[FR Doc. 85–13132 Filed 5–31–85; 8:45 am]

BILLING CODE 3810–01–M

Naval Research Advisory Committee; Closed meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the David W. Taylor Naval Ship Research and Development Center (DTNSRDC) Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on June 19, 1985, at the David W. Taylor Naval Ship Research and Development Center,

Carderock, Maryland. The meeting will commence at 8:30 A.M. and terminate at 4:00 P.M. on June 19. The entire meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of DTNSRDC. The agenda for the meeting will consist of technical briefings by the Review Team to the DTNSRDC management and discussion among the Review Team members to begin consolidating a draft report. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000. Telephone number (202) 696–4870.

Dated: May 29, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve. Federal Register Liaison Officer.

[FR Doc. 85–13133 Filed 5–31–85; 845; am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Training Program for Special Programs Staff and Leadership Personnel

AGENCY: Department of Education.

ACTION: Application Notice for Transmittal of Application for New Awards; and Establishment of Final Funding Priorities for Fiscal Year 1985.

SUMMARY: Applications are invited for new awards under the Training Program for Special Programs Staff and Leadership Personnel.

Authority for this program is contained in sections 417A and 417F of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1d)

The Secretary is authorized to make grants under this program to institutions of higher education, and other public and private nonprofit institutions and organizations.

The purpose of the grant awards is to improve the operation of the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Special Services for Disadvantaged Students, and Educational Opportunity Centers) by providing training for staff and leadership personnel employed in, or preparing for employment in, such programs and projects.

Effective Date: The priorities included in this notice take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

Closing Date for Transmittal of Applications: An application for a training grant must be mailed or hand delivered by July 19, 1985.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Room 5673, ROB #3, Attention: 84.103 (Training Program for Special Programs Staff and Leadership Personnel), 400 Maryland Avenue SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds: It is anticipated that up to $1,088,300 will be available for new awards under the Training Program for Special Programs Staff and Leadership Personnel in fiscal year 1985. It is estimated that these funds will provide for approximately eleven (11) training grant awards.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by June 4, 1985. Application packages may be obtained by contacting the Division of Student Services, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intented to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. (Approved by the Office of Management and Budget under control number 1840–0125, Expiration Date, 12/31/86.)

The Secretary suggests that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further suggests that only the information required by the application form be submitted.

Program Information: The Secretary is accepting applications for one year of funding to support a variety of training projects that respond to the training needs and priorities of the Special Programs Staff and Leadership Personnel. An applicant may submit more than one application for funding under this program, and the Secretary urges that separate applications be submitted for separate proposed training activities.

The applications for new awards will be evaluated competitively under this selection criteria for new awards, 34 CFR 642.31. In addition, applicants that have been funded within the previous three years to operate a training project for Special Programs Staff and Leadership Personnel will be evaluated on the basis of their prior experience under 34 CFR 642.32.

Applicable Regulations: Regulations applicable to this program are:

(a) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78; and

(b) Regulations governing the Training Program for Special Programs Staff and Leadship Personnel (34 CFR Part 642), and the final priorities included in this notice.

Funding Priorities

On February 5, 1985, the Secretary of Education published in the **Federal Register**, 50 FR 4997–4998, a notice of proposed funding priorities for training activities to be funded under the Training Program for Special Programs Staff and Leadership Personnel for Fiscal Year 1985. Under §§ 642.31(f) and 642.34 of the Training Program regulations, 34 CFR Part 642, the Secretary awards up to 8⅓ points to applicants that propose to carry out one or more of the priority activities.

Interested parties were given 30 days to submit comments, suggestions or recommendations regarding the proposed priorities. A total of nine comments were received. Favorable comments were received supporting all priorities. Other comments were received suggesting additional priorities. The Secretary decided to limit the priority activities to the proposed priorities because of the limited amount of funds available for training. The following is a summary of the comments received and the Secretary's response to the comments regarding all priorities.

Proposed Priority (1): Workshops for new Special Programs project directors (less than two years in their current positions) to improve their skills in areas such as supervision, program administration including evaluation, and compliance with Federal regulations in order to prevent mismanagement or marginal results.

Comments: One commenter suggested that the workshop should include the improvement of skills in the areas of: (a) Personnel preparation/inservice planning; (b) interviewing prospective employees; and (c) interpersonal/intercultural relations.

Response: No change has been made. Applicants requesting training project funds under the priority may include any of the topics cited above. Although not specifically stated, the priority does encompass such topics.

Proposed Priority (2): Workshops which enhance the skills of Special Programs instructional staff in providing basic skills development and developing effective individualized instructional techniques.

Comment: One commenter suggested the workshop include developing interpersonal skills in students.

Response: No change has been made. An applicant has the flexibility to include, under the proposed priority, those content areas that relate to the priority on basic skills development and developing effective individualized instructional techniques.

Proposed Priority (3): Workshops which provide Special Programs counselors and instructors with techniques and information on appropriate uses of standardized tests and student assessment procedures.

Comment: One commenter suggested that the priority include crosscultural counseling, intergroup relations, and parent counseling.

Response: No change has been made. Due to limited funds, enhancement of counselors' and instructors' skills in these areas must be provided through in-service training.

Proposed Priority (4): Workshops to enhance the skills of project staff who provide services to one or more of the following types of individuals: the physically handicapped or learning disabled; the adult learner; and students from rural and other non-urban environments.

Comments: Two commenters supported training for project staff who provide services to the physically handicapped or learning disabled, the adult learner and students from rural and other non-urban environments. One of the commenters also suggested that training on the speech handicapped should not be included with training on the learning disabled but treated as a separate category.

Response: No change has been made. Workshops designed to enhance the skills of staff who provide services to physically handicapped or learning disabled persons may also include training on specific disabilities.

Other Comments: Other comments received suggested adding the following training priorities:

(a) Training workshops which would provide staff with skills, techniques and informatin on effective student retention.

(b) Workshops to provide project directors and other personnel directly involved in resource development with skills to identify and secure program funding and support services from State and local resources as supplemental sources.

(c) Workshops to provide training for Special Programs' clerical personnel so that they can better contribute to assisting disadvantaged students and aiding in project continuity.

(d) Workshops to train and retrain health care administrators and clinical support staff at local health departments.

Response: With the exception of (d) above, each suggested addition to the priorities is eligible for funding under the Training Program and has merit. However, the Secetary has decided to limit the number of priorities due to the limited amount of funds available. The Secretary will consider applications for a Training Program project on (a), (b), and (c) above and other topics which are not listed as priorities if the applicant addresses another significant training need in the local area being served by the Special Programs.

The training of health care administrators and staff (see (d) above) is not an eligible project under the Training Program. Training under the Program is limited by statute to staff and leadership personnel employed or preparing for employment in projects under the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Special Services for Disadvantaged Students, and Educational Opportunity Centers.)

After careful consideration of the comments received, the Secretary is adopting the following priorities as the final priorities that will be used to evaluate applications for new awards in Fiscal Year 1985.

Funding Priorities for Fiscal Year 1985

(1) Workshops for new Special Programs project directors (less than two years in their current positions) to improve their skills in areas such as supervision, program administration including evaluation, and compliance with Federal regulations in order to prevent mismanagement or marginal results.

(2) Workshops which enhance the skills of Special Programs instructional staff in providing basic skills development and developing effective individualized instructional techniques.

(3) Workshops which provide Special Programs counselors and instructors with techniques and information on appropriate uses of standardized tests and student assessment procedures.

(4) Workshops to enhance the skills of project staff who provide services to one

or more of the following types of individuals: the physically handicapped or learning disabled, the adult learner, and students from rural and other non-urban environments.

The Secretary will consider applications for a Training Program project on topics other than those given priority if the applicant addresses another significant training need in the local area being served by the Special Programs. Those proposals will not receive any priority points.

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett, Division of Student Services, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245-2165.

(20 U.S.C. 1070d, 1070d-1d)

(Catalog of Federal Domestic Assistance Number: 84.103—Training Program for Special Programs Staff and Leadership Personnel)

Dated: May 28, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-13184 Filed 5-31-85, 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Criteria for the Allocation of 3.125 Percent (50 MW) of Transfer Capability on the California-Oregon Transmission Project Among Non-Federal Public Entities

AGENCY: Western Area Power Administration, Sacramento Area Office, DOE.

ACTION: Announcement of procedures to govern the allocation of 3.125 percent, approximately 50 MW, of transfer capability on the California-Oregon Transmission Project among non-Federal public entities. This document also is an announcement of call for applications for individual allotments from this transfer capability.

SUMMARY: On February 7, 1985, the Secretary of Energy issued his Memorandum of Decision (MOD) on the California-Oregon Transmission Project (Project). The MOD, published in the **Federal Register** on February 20 and 22, 1985 (50 FR 7102; 50 FR 7368), was based upon a full and complete review and consideration of the record of a public hearing held January 25, 1985, as well as all other comments and recommendations on a proposed Memorandum of Understanding (MOU) among the Project Participants (Participants) for the financing, construction, and operation of the Project. The text of the MOU was published in the **Federal Register** on January 3, 1985 (50 FR 420). The MOD, as further clarified by the Department of Energy's (DOE) letter of May 4, 1985, determined that the MOU represents an appropriate plan for development of the Project subject to the following modifications and conditions: (1) The United States will retain ownership of all existing towers and other facilities of the Central Valley Project (CVP) which remain after the upgrade. The DOE will grant the non-Federal Participants whatever licenses are necessary for installing new 500-kV insulators and conductors, modifying existing towers, and installing entire new towers. Ownership of all new insulators and conductors and all new towers will be retained by the non-Federal Participants; (2)(a) users of the 6.25 percent (100 MW) of Project transfer capability reserved to the Western Area Power Administration (Western) for the DOE laboratories, the Federal wildlife refuges and other Federal agencies shall pay Western reasonable transmission fees to be established by Western; (b) the Federal laboratories and wildlife refuges will not lay off Intertie transfer capability to other Federal agencies so long as the 100 MW of intertie capacity is required by such laboratories and wildlife refuges; (c) acceptable firm transmission service arrangements under reasonable rates, terms, and conditions shall be provided by the Participants to those laboratories, wildlife refuges, and agencies; and (3) 3.125 percent, approximately 50 MW, of Project transfer capability shall be made available for allocation by Western among the non-Federal public entities who responded to both the August 6, 1984 (49 FR 31335), and the January 3, 1985 (50 FR 420), **Federal Register** notices, excluding those entities who are MOU Participants or signatories or are represented by such Participants. This notice deals with the third condition of the MOD.

DATES: The following schedule shall apply to these procedures. Because of the expedited nature of these procedures, it should be noted that applications for an allocation are being requested prior to the announcement of the Final Applicant Eligibility Criteria. Western believes that the need to identify all prospective qualified applicants within the constricted schedule outweighs the need for a potential applicant to know the Final Applicant Eligibility Criteria. Western will publish in the **Federal Register** its determination of the eligible status of each applicant.

Public Comment Forum on Proposed Applicant Eligibility Criteria and Terms and Conditions—June 18, 1985 10 a.m. in the Sierra Room Holiday Inn-Holidome 5321 Date Ave., Sacramento, CA

Written Comments Due—Due no later than 4:30 p.m. local time on the thirtieth (30) day after the publication date of this **Federal Register** notice or if that day falls on a weekend or a holiday, then at the same time on the next following workday. Comments must be mailed or delivered to the address given below.

Applications for Allocation Filing Period—Due no later than 4:30 p.m. local time on the thirtieth (30) day after the publication date of this **Federal Register** notice or if that day falls on a weekend or a holiday, then at the same time on the next following workday. Applications must be mailed by certified mail or delivered to the address given below.

Announcement of Final Applicant Eligibility Criteria, Terms and Conditions, and Proposed Allocations—On or about August 1, 1985

Public Comment Forum on Proposed Allocations—On or about August 20, 1985. Location to be announced

Written Comments Due—Due 30 days after the announcement of the proposed allocations

Announcement of Final Allocations—On or about September 30, 1985

ADDRESS: For further information concerning the public comment forums contact, Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, U.S. Department of Energy, 1825 Bell Street, Sacramento, CA 95825, telephone No. (916) 440-2077.

Proposed criteria: The following criteria define the applicant eligibility criteria and the terms and conditions applicable to allocations of the 3.125 percent of the transfer capability of the Project. Western reserves the right to promulgate further criteria as necessary to interpret or implement any criteria set forth below.

I. *Proposed Applicant Eligibility Criteria:* Western will allocate the 3.125 percent of transfer capability in accordance with the following proposed criteria:

1. The applicant must be a non-Federal public entity and must qualify under Reclamation Law (particularly section 9(c) of the Reclamation Project

Act of 1939 (43 U.S.C. 485h(c)) as a preference entity.

2. The applicant must not be a Participant, signatory, nor represented by the Participants in the MOU.

3. The applicant or someone on its behalf must have filed a Statement of Interest pursuant to the **Federal Register** notice of August 6, 1984, and submitted written and/or oral comments pursuant to the **Federal Register** notice of January 3, 1985.

4. Applicants must, by the inservice date of the project, be either (a) an irrigation or water district or a group of such districts with pumping load for agricultural, municipal, or industrial purposes; or (b) a utility which owns and operates its electric system.

5. Preference will be given to applicants in the marketing area of the Sacramento Area Office of Western.

6. Entities similarly organized (e.g., irrigation and water districts) may form a Joint Powers Agency or similar organization (referred herein as a JPA) which will collectively represent its members in all matters necessary to obtain power service. The JPA must be authorized to enter into all participation and other agreements related to the Project.

a. The JPA must be formally organized and viable by within 3 months after the final allocations.

b. Western will accept applications from JPAs or proposed JPAs. Each member of the JPA or proposed JPA must meet all of the applicant eligibility criteria.

c. An allocation will be made to the JPA, not to the individual members.

d. Membership in a JPA shall be available on fair and reasonable conditions to any entity each of whose members meets all of the applicant eligibility criteria and is organized similarly to the members of the JPA.

II. *Proposed Terms and Conditions:* The following terms and conditions are proposed to apply to the entity receiving an allocation.

1. Allocations of transfer capability will be made in increments of no less than 0.0625 percent, or 1 MW.

2. Allottees may use the transfer capability to serve their own loads (or its member loads) but not the loads of other entities, provided that, the allottee may lay off its project transfer capability as may be provided in the participation agreement(s) for the Project, so long as the allottee retains net economic benefits proportionally equivalent to its allocation.

3. Within 3 months after the final allocations, each allottee must have entered into the applicable participation agreement(s) paid all up-front costs, and conclusively demonstrated its willingness and ability to pay its share of the construction costs and annual expenses of the Project, unless otherwise agreed between the successful allottee(s) and the Participant(s).

4. In the event that the allottee does not meet condition number 3 above, its allocation will be revoked and placed in the allocation pool to be made available for reallocation to other eligible applicants.

5. In the event that all of the 3.125 percent of transfer capability is not allocated or reallocated, such portion shall revert to the Project Participants, except Western on a pro rata basis for so long as that portion remains unallocated.

Section-By-Section Analysis: The rationale for the proposed allocation criteria and the proposed terms and conditions are given below in corresponding sequence.

I. Proposed Applicant Eligibility Criteria

1. The purpose of this criterion is to carry out the policy of the Secretary of Energy's Memorandum of Decision on the California-Oregon Transmission Project, dated February 7, 1985, and as clarified by the DOE letter of May 4, 1985 (which is available upon request at the address given above in this notice).

2. This criterion ensures that a Participant, signatory, or one represented by a Participant does not receive an allocation in addition to its present entitlement contained in the MOU.

3. The sum of requests for allocations from the 3.125 percent of transfer capability are expected to exceed that which is available. This criterion reflects the results of prior proceedings that provided the opportunity for entities to indicate their commitments and interest in participating in the Project.

4. The criterion will limit the potential applicants to those entities which are irrigation or water districts with pumping loads or utilities with bona fide electric utility responsibility. Under this criterion a "paper" organization; i.e., one with no electric utility responsibilities and that is not an irrigation or water district, is not eligible to be awarded an allocation for resale.

5. Western believes that the benefits of the 3.125 percent of the Project's transfer capability should stay within the marketing area of the Sacramento Area Office. The marketing area generally encompasses the Central Valley Project water basin, from the California-Oregon border in the north to a point about midway between Los Angeles and Santa Barbara, California, in the south, as well as the northern two-thirds of Nevada. The Project facilities and impacts are in northern and central California. Since there are far more requests for capacity in this area than can be met with the 3.125 percent, Western believes the benefits should accrue to the area.

6. Entities seeking transfer capability that have a common interest in participating in the Project and may wish to pool their financial and administrative resources by forming a JPA or similar organization. Western has proposed a 3-month deadline from the date of the final allocations as the cutoff date by which a JPA or similar organization must be formally organized because the viability of the Project in terms of participation and financing must be promptly determined. Any unreasonable delays would be detrimental to the Project. The condition that all members of a JPA or similar organization meet each of the criteria is necessary to ensure that only qualified applicants will benefit.

II. Proposed Terms and Conditions

1. Allocations of transfer capability in increments of not less than 0.0625 percent, or 1 MW, meet Intertie scheduling requirements in that power is normally scheduled in units of no less than 1 MW.

While an allocation of 0.0625 percent (1 MW) is possible, Western has a preference for marketing larger allocations because of administrative and operational considerations of Intertie scheduling. Scheduling 1 MW is possible; however, the time devoted to scheduling 1 MW is about the same for a large block of power. Thus, scheduling small blocks of power is not as cost effective as scheduling large blocks, and may even be cost prohibitive. Use of larger scheduling blocks should reduce direct (scheduling) and overhead costs associated with Intertie operations.

Another important consideration is the acquisition of a resource to load an allottee's transfer capability. Unless the allottee of a small allocation (1–5 MW) groups his allocation with others, that allottee may have difficulty finding any seller interested in dealing small amounts. The economics weigh against such transactions.

2. The list of entities which desire to have transfer capability is lengthy, and Western must provide a condition that only entities who will use the transfer capability beneficially will receive an allocation. However, an allottee may lay off its participation share as may be

provided in the participation agreement(s).

Since the conference report to Pub. L. 98–360 specifically referenced irrigation districts as eligible Participants, it is apparent that Congress intended for these public water districts, which consume large amounts of electricity, to share in the benefits anticipated from access to the power to be transmitted by the Project.

The Secretary's purpose in conditioning the MOU was to assure the opportunity to participate to those entities Congress had indicated would be eligible Participants. Since Congress intended for irrigation districts to have an opportunity to participate, the Secretary set aside a separate allotment for these parties that had not been afforded the opportunity to participate in the formation of the MOU. His primary intent was to ensure that any such entities which qualified and paid their pro rata participation share would receive net economic benefits proportionally equivalent to the other Participants. The MOD was not intended to impose wheeling precedents, but rather to ensure such Participants the full economic benefit of the bargain Congress had decided they were eligible to make.

While the authorizing legislation did not impose mandatory wheeling, neither did it prohibit wheeling should an allottee and an electric utility Participant agree. These economic arrangements must be worked out among the parties in conjunction with Western's allotment proceedings. In this way, the fundamental purpose of the Project—the fair and equitable allocation of the economic benefits of access to Northwest power—will be satisfied, while fulfilling Congress' intent as to eligible Participants in this Project.

3. The condition that the JPA or similar organization has entered into the applicable participation agreement(s), paid its share of appropriate up-front costs and demonstrated its willingness and ability to pay its proportionate share of the share of the construction costs and annual expenses of the Project within 3 months of the publication of the final allocations is to ensure that the Project proceeds as expeditiously as intended by the Congress and by the Secretary and the current Participants to the MOU. In accordance with section 2 above, the allottee(s) and the Participant(s) may agree to transmission or other arrangements that will afford equivalent economic benefits.

4. This condition provides for the ministerial procedure to maintain the availability of any unsubscribed allocation for reallocation.

5. This condition provides for the ministerial procedure to return any unallocated portion of the 3.125 percent to the Participants, except Western, on a pro rata basis.

Call for applications: Western calls for applications to be submitted by certified mail or by hand delivery to the Sacramento Area Office. If hand delivered, the application is to be brought to the Office of the Area Manager. The filing period closes on the thirtieth (30) day after the publication date of this **Federal Register** notice, or if that day falls on a weekend or holiday, then on the next following workday, and the application must be received at the Sacramento Area Office, 1825 Bell Street, Sacramento, California, no later than 4:30 p.m., local time. The application format is as follows:

Western Area Power Administration, Sacramento Area Office

Application for Power Allocation

Applicant's Name _____
Official Contact Person _____
Address _____
_____
_____
Phone ( ) _____

Application for:
Transfer Capability of ——— percent (—— MW)

The following to be completed by Western.
Certified Mail Receipt Number or hand delivered by: _____
Date Received: _____
Time: _____
Signed: _____

Six copies of the application are to be submitted. The information in the application should be submitted in the sequence listed below under Applicant Profile Data. If information is "not available," so indicate. If an area of data requested is "not applicable," so indicate. Western does not require the application to be spiral or perfect bound or with hard cover.

The burden of ensuring consistency of the content of all six copies rests with the applicant. Errors in data or missing information are not the responsibility of Western.

Applications deemed deficient by Western may be returned with a statement of deficiencies within a reasonable amount of time from the date the application was received by Western. The applicant must resubmit the corrected application within 5 working days of receipt of the returned application in order for the application to be considered eligible.

Applicant Profile Data

1. *Eligibility:* The applicant must submit and include demonstrable evidence that it meets each of the applicant eligibility. This includes: (a) A statement of eligibility as a preference customer under Reclamation Law and pertinent statutes, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); (b) a statement that the applicant is not a Participant, signatory, nor represented by the Participants in the MOU; (c) a statement that the applicant filed a Statement of Interest pursuant to the **Federal Register** notice of August 6, 1984, and submitted written and/or oral comments pursuant to the **Federal Register** notice of January 3, 1985; and (d) a statement of the applicant's status as a utility or an irrigation or water district with pumping load for agricultural, municipal, or industrial purposes.

2. *Organization:* A brief description of the organization that will interact with Western.

3. *Loads.*

a. Number and type of customers served: residential, commercial, industrial, military base, or agricultural.

b. Maximum demand and energy use for 1982, 1983, and 1984.

c. 1985–1995 projected monthly capacity and energy demand. Indicate forecasting method and basic assumptions.

4. *Resources.*

a. List of any owned generating resources—capacity and location.

b. List of power supply contracts—include amounts and term.

5. *Transmission:* Present points of interconnection and delivery voltage(s).

6. The name, address, and phone number of a contract person and the consulting firm, if used.

7. Any other information the applicant desires to include.

8. If the applicant is a JPA or proposed JPA it must provide the information requested above for each of its members or porposed members.

9. An affidavit with the signature and title of an appropriate official who is able to attest to the validity of the data submitted and who is authorized to submit the application. All statements in the application are subject to the provisions of 18 U.S.C. 1001.

Regulatory Requirements

Regulatory Flexibility Act of 1980

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available

for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that this rulemaking relates to an administrative service of allocating 3.125 percent of the Project transfer capability, and therefore is not a rule within the purview of the Regulatory Flexibility Act. Under 5 U.S.C. 6012(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

National Environmental Policy Act

Western is required to conduct an environmental evaluation of certain power marketing actions in compliance with the National Environmental Policy Act (NEPA) of 1969, and the DOE regulations published in the **Federal Register** (45 FR 20694, as amended). Under the DOE guidelines, Western will make an evaluation and determination of the possible environmental impacts of the proposed allocation.

Availability of information: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the development of these criteria will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, (916) 440–2084.

Issued at Golden, Colorado, May 24, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85–13158 Filed 5–29–85; 12:08 pm]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–2844–8]

Agency Paperwork Reduction Act Clearance Requests Completed by the Office of Management and Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The following information collection requests (ICRs), which the Agency submitted to the Office of Management and Budget (OMB) for review, have been given OMB clearance.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

EPA #0261; Notification of Hazardous Waste Activity—Amendment Based on Hazardous and Solid Waste Amendments (HSWA) of 1984, was approved 5/6/85 (OMB #2050–0028): expires 5/31/88)

EPA #0575; Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies, was approved on 5/6/85 (OMB #2070–0004; expires 5/31/88)

EPA #0801; Uniform Hazardous Waste Manifest for Generators and Transporters—Amendment Based on HSWA of 1984, was approved on 5/6/85 (OMB #2050–0039; expires 5/31/88)

EPA #0820; Generator Requirements—Amendments Based on HSWA of 1984, was approved on 5/6/85 (OMB #2050–0035; expires 5/31/88)

EPA #0829; Environmental Information Documents for the Construction Grants Program Facilities Plans and New Source (NPDES) Permits, was approved on 4/19/85 (OMB #2090–0016; expires 4/30/88)

EPA #0916; Annual Updates to National Emission Data System and Hazardous and Trace Emission System (NEDS and HATREMS), was approved on 5/14/85 (OMB #2060–0088; expires 10/31/86)

EPA #0970; Reporting and Recordkeeping Requirements for RCRA Permittees—Amendment Based on HSWA of 1984, was approved on 5/6/85 (OMB #2050–0037; expires 5/31/88)

EPA #0976; Biennial Reports for Hazardous Waste Generators and Treatment, Storage and Disposal Facilities, was approved on 5/6/85 (OMB #2050–0024; expires 5/31/88)

EPA #1011; Partial Updating of TSCA Inventory Data Base Production and Site Report, was approved on 5/6/85 (OMB #2070–0070; expires 11/30/87)

EPA #1038; Procurement Solicitations (RFPs and IFBs), was approved on 4/23/85 (OMB #2030–0006; expires 5/31/86)

EPA #1119; Administrative Controls for Blending and Burning of Hazardous Waste and Used Oil Fuels—Amendments Based on HSWA of 1984, was approved on 4/24/85 (OMB #2070–0047; expires 4/30/86)

EPA #1098; Generic Section 8(a) Chemical Rules, was approved on 4/25/85 (OMB #2070–0067; expires 5/31/86)

EPA #1235; Nonpoint Source Assessment Project, was approved on 4/8/85 (OMB #2040–0092; expires 9/30/85)

EPA #1241; Silvex/2,4,5–T Products: Claim for Indemnification, Request for Federal Disposal, was approved on 5/3/85 (OMB #2070–0071; expires 5/31/86)

Dated: May 28, 1985.

David Schwarz,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–13054 Filed 5–31–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

May 31, 1985.

Federal-State Joint Board to Meet Friday, June 7, 1985.

The Federal-State Joint Board will consider a draft *Recommended Decision and Order* concerning the Florida Commission's proposal for an experimental unified intrastate/interstate access tariff in *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78–72 and 80–26.

This meeting is open to the public and will take place immediately following the Commission meeting in Room 856, at 1919 M Street, NW., Washington, D.C.

Additional information concerning this meeting may be obtained from Margot Bester or Claudia Pabo of the Common Carrier Bureau, telephone number (202) 632–6363.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–13391 Filed 5–30–85; 3:33 pm]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter National Board Program Plan Amendment

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice expands the Emergency Food and Shelter National Board Program Plan's listing of localities selected for funding, which was published in 49 FR 42080 (October 23, 1984) and 50 FR 11754 (March 25, 1985).

Selections were based on unemployment data for the period June 1983 through May 1984 and poverty data from the 1980 census, and include jurisdictions, including balance of counties, with 750 to 999 unemployed persons and an 11 percent or higher poverty rate. Availability of funds previously allowed only jurisdictions with a 16.0 percent or higher poverty rate to receive awards under published criteria. Remaining unobligated funds were reallocated to qualifying jurisdictions with a 14.4 percent or higher poverty rate. Subsequently remaining funds were further reallocated to those qualifying jurisdictions with a 14.3 percent poverty rate on the basis of the highest rates of unemployment (9.5 percent or higher unemployment rates.)

There were 19 jurisdictions that qualified for award amounts as follows:

Arkansas. Boone County	$7 710
Georgia:	
Baldwin County	8.447
Chattooga County	8.064
Illinois. Wabash County	7.468
Indiana. Washington County	8.913
Kentucky:	
Jessamine County	7.570
Mercer County	8.195
Louisiana: West Baton Rouge Parish	8.335
Minnesota. Douglas County	9.155
Mississippi: Itawamba County	7.747
Missouri:	
Henry County	7.347
Webster County	7.925
South Carolina. Barnwell County	8.288
Tennessee: Marshall County	7 104
Texas:	
Guadalupe County	8.782
Panola County	7.384
Walker County	7.524
Utah: Washington County	7.319
Virginia. Carroll County	8.027

With funding of these additional counties, all monies available for the Emergency Food and Shelter National Board Program Plan have been allocated.

FOR MORE INFORMATION CONTACT: Laurence I. Broun, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 646–3652.

Dated: May 29, 1985.

Dennis Kwiatkowski,

Chairman, National Board for Emergency Food and Shelter.

[FR Doc. 85–13145 Filed 5–31–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which the notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 212–010320–009.

Title: Brazil/U.S. Gulf Ports Pooling Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

United States Lines (S.A.) Inc.

Empresa Lines Maritimas Argentinas S.A.

A. Bottacchi S.A. de Navegacion C.F.I.I.

Transportation Maritima Mexicana S.A.

Cylanco S.A.

Synopsis: This proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements. The parties have requested a waiver of the filing requirements of the Commission's regulations.

Agreement No. 212–010389–004.

Title: U.S Gulf Ports/Argentina Pooling Agreement

Parties:

United States Lines (S.A.) Inc.

Empresa Lines Maritimas Argentinas S.A.

A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: This proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements. The parties have requested a waiver of the filing requirements of the Commission's regulations.

Agreement No. 224–010763.

Title: Charleston Terminal Agreement.

Parties:

South Carolina State Ports Authority (Authority)

Evergreen Marine Corp. (Taiwan) Ltd. (Evergreen)

Synopsis: Agreement No. 224–010763 provides that Evergreen shall have the exclusive use of 70 acres at the Authority's North Charleston Terminal for their container operations. Evergreen will call at the North Charleston Terminal in consideration for the assessment of terminal charges by the Authority that are different than those contained in the Authority's Terminal Tariff No. 1–A. These charges are provided for in the agreement. Evergreen guarantees a minimum of 30,000 loaded TEU's through the facility per contract year. The initial term of the agreement shall commence on the day on which the Commission determines that the agreement is effective. The agreement shall run for five years with an option to extend its term for an additional five-year period. The parties have requested a shortened review period for the agreement.

Dated: May 29, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–13162 Filed 5–31–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Wachovia Corp., Winston-Salem, NC; Application To Engage in Nonbanking Activities

The Wachovia Corporation, Winston-Salem, North Carolina, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), and § 225.23(a)(3) of Regulation Y, 12 CFR 225.23(a)(3), for permission to engage *de novo*, through its wholly owned subsidiary, Wachovia Services, Inc. ("WSI"), in certain nonbanking activities. Applicant proposes to expand the student loan servicing activities previously approved for its subsidiary to encompass the following activities:

(1) WSI will provide state and governmental authorities (the "Authority") with regular reports that include information in the aggregate and by individual lenders concerning the volume of loan being serviced by WSI for the Authority, and the volume of loan commitments outstanding;

(2) Based on the volume of loans being serviced and commitments outstanding (and in consultation with a trustee and the Authority), WSI will prepare projections for approval by the Authority of student loans to be purchased and commitments to be

issued in the future, consistent with the amount of funds available to the Authority as a result of its sale of bonds;

(3) WSI will advise eligible lenders, borrowers and other interested parties of the Authority's student loan purchase program, including the criteria used by the Authority in purchasing student loans and the extent to which the Authority will be purchasing loans in the future based on the funds available; and

(4) WSI will meet with the Authority on a regular basis to keep the Authority advised of WSI's activities in connection with the purchasing and servicing of student loans on behalf of the Authority.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." Applicant believes that these activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto, because the activities are, in Applicant's opinion, either provided by banks or functionally similar to services provided by banks. Specifically, Applicant believes that these activities, in addition to the previously approved student loan servicing activities, are permissible under § 225.25(b) of Regulation Y because they are an integral part of: (1) Making, acquiring and servicing loans for the account of others, as permitted by § 225.25(b)(1); (2) rendering investment and financial advice, as permitted by § 225.25(b)(4); and (3) data processing, as permitted by § 225.25(b)(7).

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether allowing Applicant to engage in these activities can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact there are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Comments or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13127 Filed 5-31-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0486—Fuqua Industries, Inc.'s proposed acquisition of assets of Berkey Photo, Inc. and voting securities of four subsidiaries, (Berkey Photo, Inc., UPE).	May 7, 1985
(2) 85-0519—Berkey Photo, Inc.'s Proposed acquisition of voting securities of B and E Sales Company, Inc., (Joseph J. Bittker, UPE).	Do.
(3) 85-0520—Berkey Photo, Inc.'s proposed acquisition of voting securities of B and E Sales Company, Inc., (Philip L. Bittker, UPE).	Do.
(4) 85-0439—A. Jerrold Perenchio's proposed acquisition of voting securities of operating theatre subsidiaries of Loews Cinemas, Inc., (Loews Corporation, UPE).	May 8, 1985.
(5) 85-0472—Jepson Industries, Inc.'s (Robert S. Jepson, UPE) proposed acquisition of assets of Atlantic Industries, Inc., (Rubin Rabinowitz, UPE).	Do.
(6) 85-0488—LLC Corporation's proposed acquisition of voting securities of KEYCON Industries, Inc..	Do.
(7) 85-0499—Ames Department Stores, Inc.'s proposed acquisition of voting securities of G.C. Murphy Company.	Do.
(8) 85-0500—Ames Department Stores, Inc.'s proposed acquisition of voting securities of G.C. Murphy Company.	Do.
(9) 85-0501—Ames Department Stores, Inc.'s proposed acquisition of voting securities of G.C. Murphy Company.	Do.
(10) 85-0496—Zayre Corp's proposed acquisition of voting securities of Gaylords National Corporation.	May 9, 1985.
(11) 85-0497—Zayre Corp.'s proposed acquisition of voting securities of Gaylords National Corporation.	Do.
(12) 85-0517—Union Bank of Finland Ltd.'s proposed acquisition of voting securities of American Scandinavian Banking Corporation.	Do.
(13) 85-0476—William F. Farley's proposed acquisition of voting securities of Northwest Industries, Inc.	May 10, 1985
(14) 85-0477—William F. Farley's proposed acquisition of voting securities of Pogo Producing Company.	Do.
(15) 85-0511—Nortek, Inc.'s proposed acquisition of voting securities of Intertherm Inc..	Do.
(16) 85-0513—Itel Corporation's proposed acquisition of voting securities of Great Lakes International, Inc.	Do.
(17) 85-0515—William F. Farley's proposed acquisition of voting securities of Northwest Industries, Inc..	Do.
(18) 85-0487—Pacific Telesis Group's proposed acquisition of voting securities of Byte Shops Northwest, Inc..	May 13, 1985.
(19) 85-0504—Emhart Corporation's proposed acquisition of voting securities of Mite Corporation.	Do.
(20) 85-0505—Emhart Corporation's proposed acquisition of voting securities of Mite Corporation.	Do.
(21) 85-0549—William Lyon's proposed acquisition of voting securities of Senior Corporation.	Do.
(22) 85-0425—Riverway Securities Company, Inc.'s (Josephine E. Abercrombie, UPE) proposed acquisition of voting securities of Color Tile, Inc..	May 14, 1985.
(23) 85-0482—Elkem a/s' proposed acquisition of voting securities of Jebsens Metals, Inc., (A/S Kristian Jebsens Assurance Forretning, UPE).	Do.
(24) 85-0483—Elkem a/s' proposed acquisition of voting securities of Jebsens Metals, Inc., (A/S Kristian Jebsens Assurance Forretning, UPE).	Do.
(25) 85-0496—Ducommun Incorporated's proposed acquisition of voting securities of Thiem Industries, Inc.	Do.
(26) 85-0509—Lockheed Corporation's proposed acquisition of voting securities of Avicom International, Inc.	Do.
(27) 85-0535—Loews Corporation's proposed acquisition of voting securities of Universal Insurance Company, (Kirby Exploration Company, Inc., UPE).	Do.
(28) 85-0494—Occidental Petroleum Corp.'s proposed acquisition of assets of subsidiaries of Lexington Mineral Company, Inc., (Pond Fork Mine, Elk Creek Mine, Coal Mountain Mine), (Wallace G. Wilkinson, UPE).	May 15, 1985.
(29) 85-0534—Drew National Corporation's proposed acquisition of voting securities of Pratt Hotel Corporation.	Do.
(30) 85-0454—Brunswick Corporation's proposed acquisition of voting securities of Ico, Inc.	May 16, 1985.
(31) 85-0471—L.B. Foster Company's proposed acquisition of voting securities of Sterling Pipe and Supply Company.	Do.

Transaction	Waiting period terminated effective
(32) 85-0526—Hugin Group plc's proposed acquisition of assets of Litton Industries, Inc. and voting securities of Litton Electronics, Inc	Di
(33) 85-0533—Louis J. Rousselot's proposed acquisition of voting securities of The Victory Life Insurance Co. (Ashland Oil, Inc., UPE).	May 17, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-13144 Filed 5-31-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85E-0155]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tornalate Metered Dose Inhaler

Correction

In FR Doc. 85-12668, beginning on page 21667 in the issue of Tuesday, May 28, 1985, make the following correction: On page 21668, in the first column, in the sixth line of the third complete paragraph, "1987" should have read "1974".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Sale of Public Lands; Los Angeles, San Diego, and Riverside Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sales of Public Land: Los Angeles County, CA 17184, San Diego County, CA 17185, and Riverside County, CA 17186 in Southern California.

SUMMARY: The following described public lands have been examined and found suitable for disposal via direct sale at appraised market value pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1718).

County parcel No	Serial No.	Legal description	Acres	Appraised value
LA-1	CA 17184	T. 4 N, R 15W., Sec. 26: Lot 3	4.90±	$100
SD-2	CA 17185	T. 13 S, R 1W., Sec. 20: W½SW¼SE¼	20.00±	58,000
R-3	CA 17186	T. 5 S, R 2W., Sec. 18: SE¼, excepting that portion in patents 04690059 & 1141450.	137.79±	103,000

Purpose: The purpose of these sales is to dispose of public lands which because of location, lack of administrative access and/or existing private residential developments in the areas, make them difficult and uneconomic to manage as part of the public lands. The public interest will be well served by offering these lands for sale. The sale will be held August 13, 1985. Because of the need to recognize historic use, access and land ownership patterns, the lands described above will be sold by direct sale, as authorized under Title 43 of the Code of Federal Regulations, Part 2711.3-3, to the following individuals:

Parcel CA-17184 will be sold to Mr. Henry Warmuth, P.O. Box 2441, Canyon Country, California 91351. Parcel CA-17185 will be sold to Mr. Ed Malone, 9555 East Genesse Avenue, San Diego, California 92121. Parcel CA-17186 will be sold to Mr. Ken Brimlow, 652 East Culver Avenue, Orange, California, 92666.

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands described are hereby segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The sale will be carried out pursuant to FLPMA and existing Bureau policy, laws and regulations contained in 43 CFR 2711.3-3, direct sales.

A certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM for not less than 10% of the appraised value shall be received at the place of sale—California Desert District, 1695 Spruce Street, Riverside, California 92507, by 10:00 a.m. on the sale date. The payment shall be enclosed in a sealed envelope clearly marked as follows:

PUBLIC LAND SALE-DIRECT
(Sale and Parcel No.)
August 13, 1985

The remainder of the full purchase price shall be submitted within 180 days from the sale date. Failure to submit the balance of the full purchase price within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited. The land will than be offered competitively.

The authorized officer may refuse to accept an offer and withdraw a given parcel from sale, if he determines that comsummation of the sale would be inconsistent with the provisions of any existing law, or consummation of the sale would encourage or promote speculation in public lands.

In addition to the 10% down payment for the parcel, the purchaser will be required to deposit a $50.00 non-refundable filing fee for the mineral interests to be conveyed with the surface estate. The mineral interests being offered for conveyance have no known mineral value, except Parcel No. R-3, where the United States will reserve the geothermal resources portion of the mineral estate. Failure to deposit this filing fee will result in cancellation of the sale.

Lands to be transferred from the United States will be subject to the following reservations:

1. The patent will contain a reservation for a right-of-way for ditches or canals constructed by authority of the United States in accordance with 43 U.S.C. 945.

2. Parcel No. R-3: A reservation for geothermal resources to the United States together with the right to prospect for and develop geothermal resources pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

Detailed information concerning the sales, including the environmental analysis and land report are available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the California State Director, Bureau of Land Management, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: May 28, 1985.
Gerald E. Hillier,
District Manager.
[FR Doc. 85-13167 Filed 5-31-85; 8:45 am]
BILLING CODE 4310-40-M

[INT FSEIS 85-16]

Josephine and Jackson-Klamath Sustained Yield Units; Medford District of Southwestern Washington; Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final timber FSEIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, Medford District Office, has prepared a final supplement to the Final Timber Management Environmental Impact Statements (EISs) for the Josephine and Jackson-Klamath Sustained Yield Units on public land in the Medford District of southwestern Oregon. The Josephine and Jackson-Klamath Final EISs describe the environmental impacts of timber harvest practices for the Medford District and were made available to the public in October, 1978, and November, 1979, respectively.

This final supplement analyzes the environmental impacts of (1) An increase in clearcutting acreage with an associated decrease in shelterwood harvest acreage and (2) a shift in the criteria for determining the leave overstory in a shelterwood harvest system from the amount of stand basal area removed to leaving a desired number of trees per acre. Analysis indicates that, under this change in ratio of harvest practices, there would be an increase in adverse air emissions from slash burning for the Josephine Sustained Yield Unit (JSYU). All other impacts would be similar or less than those addressed for the proposed actions in the final EISs.

The draft supplemental EIS was filed with the EPA and made available to the public in October, 1984. The comment period was 60 days, and ended December 21, 1984. The final supplemental EIS will be filed with the EPA and made available to the public on May 31, 1985. The comment period will be 30 days, ending July 1, 1985. Comments received after the close of the formal comment period will be considered until the decision is made. Your written comments on the final SEIS should be sent to: District Manager, Attn: Mike Walker, Team Leader, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504. Telephone: (503) 776-4604.

Public reading copies of the Final SEIS will be available for review at the following locations:

Klamath County Library, Klamath Falls, Oregon
Josephine County Library, Grants Pass, Oregon
Coos County Library, Coquille, Oregon
Curry County Library, Gold Beach, Oregon
Douglas County Library, Roseburg, Oregon
Jackson County Library, Medford, Oregon
Rouge Community College Library, Grants Pass, Oregon
Library, Southern Oregon State College, Ashland, Oregon
Library, Oregon Institute of Technology, Klamath Falls, Oregon
Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah Street, Portland, Oregon
Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504
Library, University of Oregon, Eugene, Oregon
Library, Portland State University, 727 S.W. Harrison, Portland, Oregon
Library, Oregon State University, Corvallis, Oregon.

A limited number of copies are available upon request to the BLM Medford District Office.

Dated: May 21, 1985.
William G. Leavell,
State Director, Oregon.
[FR Doc. 85-13165 Filed 5-31-85; 8:45 am]
BILLING CODE 4310-33-M

Utah, San Rafael Resource Area; Preparation of Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource management plan and environmental impact statement; request for public comments; and call for coal resource information.

SUMMARY: A resource management plan (RMP) and acompanying environmental impact statement (EIS) are being prepared for the San Rafael Resource area (SRRA), Moab District, Bureau of Land Management. A 30-day public comment period on issues to be covered by the RMP/EIS is being held. A concurrent call for coal resource information is being made to solicit information on coal resource development potential. A public workshop will be held on June 13, 1985 at 7:00 p.m., at the Courthouse in Castle Dale, Utah to discuss planning issues.

FOR FURTHER INFORMATION CONTACT: Address comments and requests for further information to Sam Rowley, Area Manager, San Rafael Resource Area, Bureau of Land Management, P.O. Drawer AB, Price, UT 84501.

SUPPLEMENTARY INFORMATION: The San Rafael RMP/EIS will be prepared under 43 CFR Part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act and section 102 of the National Environmental Policy Act. This notice is intended to inform the public of the planning effort, and to invite public participation in identification of planning issues. This serves as the scoping notice (43 CFR 1501.7) to request public input on the scope of issues to be covered in the EIS.

The SRRA contains approximately 1.5 million acres in Emery County, Utah. Additionally, SRRA manages grazing and other public resources on portions of public lands, Forest Service lands, and National Park Service lands in Sevier and Wayne Counties, Utah.

The RMP/EIS will provide a comprehensive land use plan that will address management of all public resources in the SRRA. General planning issues anticipated are livestock management, wildlife habitat management, watershed management, recreation management, management of wild horses and burros, and management of wilderness study areas if not designated as wilderness by Congress. Resolution of issues will address management concerns for cultural resources, mineral resources, and off-road vehicle use.

As part of the RMP/EIS, lands subject to coal leasing will be examined to determine their unsuitability for all or specific types of mining. Lands within SRRA have previously been examined under the coal unsuitability criteria at 43 CFR Part 3461. The unsuitability criteria will be reviewed, and mining determinations may be revised in the RMP. This notice constitutes a call for coal resource information as provided at 43 CFR 3420.1-2 to solicit indications of interest and information on coal resource development potential for lands managed by SRRA. Proprietary data marked "confidential" will be treated accordingly.

The RMP/EIS will be prepared by an interdisciplinary team which will

include an archaeologist, an economist, a geologist, a hydrologist, a land use planner, a mining engineer, a range specialist, a realty specialist, a recreation planner, a soils scientist, a wildlife biologist, and a writer/editor. Other disciplines may also be represented.

The public is invited to comment on planning issues, the scope of the EIS, and coal resource information. Comments should be postmarked by July 1, 1985, 30 days from this notice, and addressed to the SRRA Area Manager. A public workshop will be held June 13, 1985 at 7:00 p.m., at the Courthouse in Castle Dale, Utah to discuss planning issues. Additional public participation will be invited throughout this planning effort as outlined in 43 CFR 1610.2.

Dated: May 31, 1985.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 85-13420 Filed 5-31-85; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Revised Regional Resource Plans; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction of Federal Register Notice (50 FR 19491).

SUMMARY: In FR Doc. 85-11100, beginning on page 19491 in the issue of Wednesday, May 8, 1985, the following corrections are necessary:

1. On page 19492, Figure 1 is replaced in its entirety and republished to correct the spelling of "mollusc" and to update the subtaxonomic listings (i.e., populations and subspecies).

2. On page 19493, Figure 2, the Virgin Islands should be included with Region 4.

FOR FURTHER INFORMATION CONTACT: Dennis Buechler, Project Manager for National Planning, Division of Program Plans, U.S. Fish and Wildlife Service (Room 2556), 18th and C Streets NW., Washington, D.C. 20240; telephone (202) 343-4902.

Dated: May 28, 1985.

F. Eugene Hester,

Acting Director, U.S. Fish and Wildlife Service.

FIGURE 1

National Species of Special Emphasis

Mammals

Grizzly Bear
Polar Bear
Black footed Ferret
Sea Otter
  Southern
  Alaskan population
Coyote
Gray Wolf
  Eastern
  Rocky Mountain
  Mexican
Pacific Walrus
West Indian Manatee

Birds

Brown Pelican
  Eastern
  California
Tundra Swan
  Eastern population
  Western population
Trumpeter Swan
  Interior population
  Pacific Coast population
  Rocky Mountain population
Greater White-fronted Goose
  Eastern Mid-continent population
  Western Mid-continent population
  Tule
  Pacific Flyway population
Snow Goose
  Greater
    Atlantic Flyway population
  Lesser
    Mid-continent population
  Western Central Flyway population
  Western Canadian Arctic population
  Wrangel Island population
Brant
  Atlantic population
  Pacific population
Canada Goose
  Atlantic Flyway population
  Tennessee Valley population
  Mississippi Valley population
  Eastern Prairie population
  Great Plains population
  Tall Grass Prairie population
  Hi-Line population
  Short Grass Prairie population
  Western Prairie population
  Rocky Mountain population
  Pacific population
  Lesser (Pacific Flyway population)
  Vancouver
  Dusky
  Cackling
  Aleutian
Northern Pintail*
Wood Duck
Black Duck
Mallard
Canvasback
  Eastern population
  Western population
Ring-necked Duck*
Redhead
California Condor
Osprey
Bald Eagle
  Southeastern population
  Chesapeake Bay population
  Northern population
  Southwest population
  Pacific States population
  Alaskan population
Golden Eagle
  Western population
Peregrine Falcon
  Eastern population
  Rocky Mountain-Southwestern population
  Pacific Coast population
  Alaskan populations (Arctic, American, and Peal's)
Attwater's Greater Prairie Chicken
Masked Bobwite
Clapper Rail
  Yuma
  Light-footed
Sandhill Crane
  Eastern population—Greater
  Mid-continent population—Lesser/Canadian/Greater
  Rocky Mountain population—Greater
  Lower Colorado population—Greater
  Centeral Valley population—Greater
  Pacific Flyway population—Greater
Whooping Crane
American Woodcock
Piping Plover*
Least Tern
  Interior
  Eastern
  California
Roseate Term*
White-winged Dove
Mourning Dove
Spotted Owl
  Northern
Red-cockaded Woodpecker
Kirtland's Warbler

Reptiles and Amphibians

American Alligator

Fish

Sea Lamprey
Sockeye Salmon (Alaskan)*
Coho Salmon
  Non-Alaskan U.S. stocks
  Alaskan stocks
Chinook Salmon
  Non-Alaskan U.S. stocks
  Alaskan stocks
Cutthroat Trout (Western U.S.)
Steelhead Trout
  Non-Alaskan U.S. stocks
  Alaskan stocks
Atlantic Salmon
Lake Trout (Great Lakes)
Striped Bass
Cui-ui

Species Groups of Special Emphasis

Seabird Group
Surface Feeding Duck Group
Bay Duck Group
Shorebird Group
Gull and Tern Group
Songbird Group
Heron and Allies Group
Hawiian Forest Bird Group
Hawaiian Water Bird Group
Blackbird and Starling Group
Endangered Freshwater Mollusc Group
Southwest Cactus Group
Sea Turtle Group
Pacific Salmon Group
Stream Trout Group
Great Lakes Percidae Group*
Upper Colorado River Endangered Fish Group
Desert Endangered Fish Group
Shad Group
Exotic Fish Group

*Species added during second RRP Planning cycle.

Reference: Federal Register Vol. 48, No. 237, December 8, 1983.

[FR Doc. 85-13163 Filed 5-31-85; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

Availability of Plan of Operations for the Purpose of Oil Drilling Operations; Big Cypress National preserve

In accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations, Big Cypress National Preserve has received from Exxon Company, U.S.A., a draft Plan of Operations for the purpose of oil drilling in the Pepper Hammock area of the Preserve. The public is invited to review and comment on the Plan of Operations, copies of which are available for review during normal business hours at Everglades National Park Headquarters, Route 9336, 12 miles south of Homestead, Florida; Big Cypress National Preserve, Ochopee, Florida; Miami-Dade Public Library System, Main Library, 1 Biscayne Boulevard, Miami, Florida; Collier County Public Library, 650 Central Avenue, Naples, Florida; and at the National Park Service, Southeast Regional Office, 75 Spring Street SW., Atlanta, Georgia. Comments received on or before July 3, 1985 will be entered into the official record. For further information, contact Pat Tolle, Management Assistant, Everglades National Park (305) 247-6211.

Dated: May 23, 1985.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 85-13130 Filed 5-31-85; 8:45 am]
BILLING CODE 4310-70-M

Hot Springs National Park, Garland County, AR; Draft General Management Plan/Development Concept Plan/Environmental Assessment

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations, and Part 516 of the Departmental Manual, the National Park Service has prepared a Draft General Management Plan/Development Concept Plan/Environmental Assessment for Hot Springs National Park, Garland County, Arkansas.

The Draft General Management Plan/Development Concept Plan/Environmental Assessment outlines a proposal and two alternative strategies for the rehabilitation and development, use, and long-term management of Hot Springs National Park. The park's present General Management Plan was approved in 1978. A concerted effort has been made to develop realistic and achievable proposals that will meet the park's most critical resource management needs, improve the overall quality of the visitor experience, respond to community concerns, and increase efficiency of park operations.

Copies of the Draft General Management Plan/Development Concept Plan/Environmental Assessment are available from Hot Springs National Park, Post Office Box 1860, Hot Springs, Arkansas 71902; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

A Public Meeting is scheduled for July 2, 1985, at 7:00 p.m., at Convention Auditorium, Convention Boulevard, Hot Springs, Arkansas.

Anyone wishing to submit comments on the Draft General Management Plan/Development Concept Plan/Environmental Assessment should provide them to the Superintendent, Hot Springs National Park, Post Office Box 1860, Hot Springs, Arkansas 71902, by July 19, 1985, or provide them at the Public Meeting.

Dated: May 23, 1985.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-13131 Filed 5-31-85; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Aero Mayflower Transit Co.; Predetermined Price Protection Tariff, Item; Hearing Date Correction

AGENCY: Interstate Commerce Commission.

ACTION: Change of oral hearing date; correction.

SUMMARY: At 50 FR 21516, 5-24-85, the Commission announced that an oral hearing will be held on the rejection of Aero Mayflower's Predetermined Price Protection Tariff Item. By a notice published on 5-31-85, the Commission changed the date of the oral hearing. This notice corrects that change by changing the month of July in the date section to the month of June.

DATES: Oral hearing will be heard at 9:30 on June 19, 1985, instead of June 12, 1985. All other dates remain the same.

FOR FURTHER INFORMATION CONTACT:

Neil S. Llewellyn, 202-275-7348

Charles E. Langyher, 202-275-7739

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: May 24, 1985.

By the Commission.

James H. Bayne,

Secretary.

[FR Doc. 85-13429 Filed 5-31-85; 8:45 am]
BILLING CODE 7035-01-M

Agricultural Cooperatives Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: May 29, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Farmland Foods, Inc.
(2) 6910 North Holmes, Kansas City, MO 64116
(3) P.O. Box 403, Denison, IA 51442
(4) Larry Schwarte or Craig Hollander, P.O. Box 403, Denison, IA 51442

(1) Harvest States Cooperatives
(2) P.O. Box 64594, St. Paul, MN 55164
(3) 1667 N. Snelling Ave., St. Paul, MN 55108
(4) R.J. Eichman, P.O. Box 64594, St. Paul, MN 55164

(1) Rockingham Poultry Marketing Cooperative, Inc.
(2) P.O. Box 275, Broadway, VA 22815
(3) Coop Drive, Broadway, VA 22815

(4) June M. Fahrney, P.O. Box 275, Broadway, VA 22815.

James H. Bayne,

Secretary.

[FR Doc. 85-13160 Filed 5-31-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Pursuant to Clean Air Act, Resource Conservation and Recovery Act, and Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on April 18 and May 29, 1985 two proposed consent decrees in *United States* v. *Metate Asbestos Corporation, et al.*, Civil Action No. 83-309 were lodged with the United States District Court for the District of Arizona. The complaint filed by the United States alleged violations of the Clean Air Act, Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act by Metate Asbestos Corporation, et al., due to asbestos contamination at the Mountain View Mobile Home Estates near Globe, Arizona. The complaint sought injunctive relief and cost recovery under CERCLA sections 104, 106, and 107, RCRA section 7003, and CAA section 303. The consent decrees provide requirements for the cleanup, perpetual monitoring and maintenance at the Jaquays site adjacent to Mountain View Mobile Home Estates and stipulated penalties for each day of delay in the performance of provisions set out in the decree; for a money judgment against certain defendants as cost recovery for the response action to be taken by the United States at the Mountain View Mobile Home Estates; and for the dismissal of certain parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Metate Asbestos Corporation*, et al., D.J. Ref. 90-5-1-1-2157.

The proposed consent decrees may be examined at the office of the United States Attorney, 120 W. Broadway, Tucson, Arizona 85702, and at the Region IX Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 85-13176 Filed 5-31-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506:

Date: June 27, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review Challenge Grants applications from Media Organizations, for projects beginning December 1, 1985.

The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-13161 Filed 5-31-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-2947]

Finding of No Significant Impact; Issuance of Special Nuclear Material License No. SNM-1886, Illinois Power Co.; Clinton, IL

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1886 to permit the receipt, possession, inspection, and storage of unirradiated nuclear fuel assemblies at the Clinton Power Station in Clinton, Illinois. The unirradiated fuel assemblies will be for eventual use in the Clinton Power Station, Unit 1, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM-1886. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 17th day of May 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85–13209 Filed 5–31–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–05985, License No. 37–00276–25, EA 85–57]

Pittsburgh Testing Laboratory; Order To Show Cause Why License Should Not Be Suspended and Modified; Immediately Effective

I

Pittsburgh Testing Laboratory, 850 Poplar Street, Pittsburgh, Pennsylvania (the "licensee") is the holder of specific byproduct material License No. 37–00276–25 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or the "NRC") pursuant to 10 CFR Parts 30 and 34. The license authorizes the use of byproduct material for the conduct of industrial radiography and related activities and is due to expire on May 31, 1986.

II

On August 27 and 29–31, 1984, an NRC inspection was conducted at the licensee's facilities in Cleveland, Ohio, and Pittsburgh, Pennsylvania. During the inspection, several violations of NRC requirements were identified. On February 26, 1985, an Enforcement Conference was conducted with the licensee to discuss the violations. These violations are currently under review by the Commission for appropriate enforcement action. As a result of investigations to date, the NRC has established that two individuals were permitted to act as radiographers in the performance of licensed radiography activities in February, March, and August 1984, even though the individuals had not been certified by the licensee in accordance with the licensee's procedures and 10 CFR Part 34.

Specifically, on May 15, 1985, during an interview conducted under oath by the NRC Office of Investigations (OI) with Mr. Richard D. Biasella, District Manager and Radiation Safety Officer (DM/RSO) for the Cleveland facility, the following was established:

(1) The DM/RSO for the Cleveland facility assigned an individual he knew was not certified in accordance with the licensee's procedures and 10 CFR Part 34 to perform licensed radiography activities at a field site in Ravenna, Ohio during February and March 1984. In addition, on August 1, 1984, he assigned another individual he knew was not certified in accordance with the licensee's procedures and 10 CFR Part 34 to perform licensed activities at a field site in Warren, Ohio. The latter individual had only been employed since July 30, 1984 with no previous radiographic experience. Further, this individual was given the licensee's written radiographer's assistant examination on July 30, 1984. Subsequently, it was determined that this individual failed the examination.

(2) DM/RSO gave false information to an NRC inspector during the August 1984 inspection when, in response to questions regarding the activities of an uncertified radiographer, he informed the inspector that the individual in question had never performed duties as a radiographer and had only assisted a certified radiographer on August 2, 1984. In fact, the DM/RSO had assigned the individual to perform the duties of a radiographer on August 1, 1984, and was aware that the individual had conducted an independent radiographic examination on that date and that no certified radiographer was present at the time the examination was performed.

(3) The DM/RSO falsified the training records of the individual who performed licensed radiography activities in February and March 1984, so as to indicate that the individual had received the required training.

(4) The DM/RSO told an NRC inspector during the August 1984 inspection that radiography had never been performed on the grounds of the licensee's Cleveland, Ohio facility, when, in fact, he knew that radiography had been performed on the grounds of the licensee's Cleveland facility during the spring of 1984.

III

In order that radiography does not create a radiation hazard to the radiographer, other workers and members of the public, radiographers must be trained and knowledgeable, and must adhere strictly to radiation safety requirements. 10 CFR Part 34 of the Commission's regulations establishes radiation safety requirements for radiography including specific training, testing, and documentation requirements for individuals performing radiographic operations. In violation of these requirements, including 10 CFR 34.31, the DM/RSO deliberately assigned uncertified individuals to perform radiographic operations. These actions, as well as his subsequent lack of candor with NRC inspectors, demonstrate that there is no longer reasonable assurance that the licensee will comply with Commission requirements while Mr. Biasella is the Radiation Safety Officer at the Cleveland facility. In addition, these actions raise substantial questions regarding whether Mr. Biasella would comply with Commission requirements in the performance or supervision or any licensed activities. Therefore, I am ordering: (1) The removal of Mr. Biasella from the position of Radiation Safety Officer of the Cleveland facility and from all involvement in the performance or supervision of NRC licensed activities;and (2) the suspension of all licensed activities at the Cleveland facility until the licensee can demonstrate that a qualified individual has been appointed as the Radiation Safety Officer, and authorized by the NRC, to oversee licensed activities at the Cleveland facility. In view of the potential for serious adverse effects to the health and safety of the public from the use of uncertified individuals to perform licensed radiography activities and in view of Mr. Biasella's willingness to use such individuals, I have determined pursuant to 10 CFR 2.202(f) that the public health and safety require that these actions be immediately effective.

IV

Accordingly, pursuant to sections 81, 161(b), 161(i), 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34, it is hereby ordered that effective immediately:

A. License No. 37–00276–25 is amended by adding the following condition: Mr. Richard D. Biasella shall not serve as a Radiation Safety Officer or in any other position involving the performance or supervision of any licensed activities including the supervision of any Radiation Safety Officer.

B. All licensed activities at, or originating from, the licensee's Cleveland, Ohio facility are suspended until such time as:

1. A qualified Radiation Safety Officer has been selected and assigned to replace Mr. Richard D. Biasella;

2. A description of the qualifications of that individual has been submitted to the Regional Administrator, NRC, Region I; and

3. The license has been amended to authorize the individual to perform the functions of the Radiation Safety Officer for the Cleveland, Ohio facility.

C. The licensee President shall notify in writing all personnel involved in the performance and supervision of licensed

activities at any District Office of this Order and of the importance of strict adherence to NRC requirements and complete candor with NRC personnel. The licensee shall certify to the NRC that each District Manager and RSO has read the notification and Order, and understands their contents.

D. The Regional Administrator, Region I, may relax or rescind any of the above provisions upon demonstration of good cause by the licensee.

V

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 20 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(b) by consenting to this Order. Upon the failure of the licensee to answer within the specified time, this Order shall be final without further proceedings.

The licensee or any other person who has an interest affected by this Order may request a hearing on this Order within 20 days of the date of its issuance. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall describe specifically, in accordance with 10 CFR 2.714(a)(2), the nature of the person's interest and the manner in which that interest is affected by this Order. An answer to this order or a request for hearing shall not stay the immediate effectiveness of section IV of this order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 24th day of May 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-13210 Filed 5-31-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Options Evaluation Task Force; Regular Meeting

AGENCY: Options Evaluation Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Update on Council's Decision Analysis Model;
- Public Comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Evaluation Task Force.

DATE: Thursday, May 30, 1985, 9:30 a.m..

ADDRESS: The meeting will be held at the Council Central Office at 850 S.W. Broadway; Suite 1100, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Wally Gibson, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-13126 Filed 5-31-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23709; 70-7114]

The Connecticut Light and Power Co.; Proposal To Borrow $50 Million for Generating Facilities; Exception From Competitive Bidding

May 28, 1985.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, subsidiary of Northeast Utilities ("NU"), a registered holding company, has filed a declaration with this Commission pursuant to section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) thereunder.

CL&P proposes to borrow up to $50 million pursuant to a February 14, 1985 Loan Agreement ("Agreement") between CL&P and the Connecticut Resources Recovery Authority (CRRA). The borrowings under the Loan Agreement are intended to provide funds for CL&P to finance CL&P's capital investment associated with the Mid-Connecticut Refuse-To-Energy Project ("Project"). CRRA is a specially chartered public instrumentality of the State of Connecticut, which is charged with the responsibility for implementing solid waste disposal and resource recovery systems, facilities and services, and for producing revenues from its resource recovery operations sufficient to make CRRA financially self-sustaining. CRRA proposes to construct and operate the Project at CL&P's South Meadow Station in Hartford, Connecticut and to generate revenues by selling steam to CL&P. In order to utilize such steam in the generation of electricity, CL&P will be required to refurbish two retired steam turbine generators and to make other changes at its South Meadow Station.

A series of four Agreement Documents ("Documents"), also dated February 14, 1985, set out the terms of the agreement, and provide, among other things, that CRRA will make an unsecured loan to CL&P for the amount of money necessary for CL&P to carry out the CL&P Scope of Work, associated primarily with refurbishment of the Electric Generating Facility. CL&P currently anticipates that the cost of performing the CL&P Scope of Work will not exceed $50 million, and borrowing under the Loan Agreement is intended to meet CRRA's obligations. The Documents provide that if the Connecticut Department of Public Utility Control or any successor agency shall not permit CL&P to recover from its ratepayers both a return of and return on all of CL&P's capital investment in the Electric Generating Facility in accordance with normal ratemaking principles, and if CRRA shall not elect to reimburse CL&P, on a current basis, for such costs, then a Project Termination shall be deemed to exist and CL&P shall be excused from all subsequent obligations to repay the principal, interest and commitment fees under the Loan Agreement to the extent of CL&P's unrecovered Project costs.

The Agreement contemplates that CL&P will requisition from CRRA reimbursement of its costs, not to exceed $50 million, for the CL&P Scope of Work as those costs are incured over the construction period of approximately three years. Following completion, the principal amount of all borrowings will be repaid to CRRA, subject to the cancellation right of CL&P, over a period of not more than 20 years. CL&P's payments of interest and commitment fees, and its repayments of principal, under the Agreement are intended to be matched as closely as possible to the payments that CRRA will be obligated to make for interest, commitment fees and principal on its underlying loan agreement(s) with its

lender(s). It is contemplated that CL&P will be informed of CRRA's plans for its placement of its own debt and that CL&P and CRRA will consult about alternative terms, with a mutual objective of achieving the lowest reasonable cost of financing consistent with the other requirements of the Agreement.

Additionally, the Agreement gives CL&P options to partially or fully reduce CRRA's loan commitment and to prepay loans, and provides for the disposition of Project properties in the event of termination of the Agreement.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 24, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary,

[FR Doc. 85-13218 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14542; File No. 812-6083]

Application and Opportunity for Hearing; Connecticut Mutual Life Insurance Co. et al.

May 28, 1985.

Notice is hereby given that Connecticut Mutual Life Insurance Company ("Company"), Panorama Separate Account ("Account"), a separate account of the Company registered as a unit investment trust under the Investment Company Act of 1940 ("Act"), and Connecticut Mutual Financial Services, Inc., the Account's principal underwriter (together "Applicants"), 140 Garden Street, Hartford, Connecticut 06154, filed an application on March 27, 1985, and an amendment thereto on May 24, 1985, for an order of the Commission, pursuant to sections 11(a), 11(c) and 26(b) of the Act, approving certain transactions arising from the elimination of one of the portfolios of an underlying series fund in which the Account invests in order to fund the variable annuity contracts issued by the Account. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

According to Applicants, the Company is a mutual life insurance company organized under the laws of Connecticut and licensed to do business in the District of Columbia and all fifty states. Applicants state that the Account was organized in 1981 and holds assets attributable to certain variable annuity contracts ("Contracts") registered with the Commission under the Securities Act of 1933. The Account, through five sub-accounts, invests in shares of Connecticut Financial Services Series Fund I ("Series Fund I"), an open-end management company of the series type that currently consists of five portfolios, two of which are involved in the proposed transactions.

Applicants state that under the terms of the Contracts, contractowners may allocate purchase payments among the five sub-accounts of the Account which invest in corresponding portfolios of Series Fund I, and may transfer amounts between the sub-accounts at their relative net asset value without limit during the contract's accumulation period and during the annuity period if payments are being made on a basis other than a life contingency. If an annuity option has been chosen that involves a life contingency, only one transfer per calendar year is allowed. The Company currently permits up to four transfers per calendar year without imposing any transaction charge; after the fourth transfer the Company imposes a $10 transfer charge.

Applicants propose to eliminate one of the sub-accounts of the Account that invests in shares of the Intermediate Bond Portfolio ("Discontinued Sub-account") pursuant to provisions of the Contracts, as disclosed in the Account's prospectus, which permit the Company to eliminate one or more sub-accounts or substitute shares of another investment company for those held by the Account. Applicants state that at least 30 days prior to July 12, 1985, contractowners who have allocated amounts to the Discontinued Sub-account will be notified in writing of the Company's intention to eliminate the sub-account and that they may transfer amounts currently allocated to the Discontinued Sub-account to the other sub-accounts until July 12, 1985, on which day the Discontinued Sub-account will be terminated, without incurring a transaction fee and without the transaction counting as one of the four free transfers permitted annually. Thereafter, according to the Application, amounts not transferred or otherwise withdrawn from the the Discontinued Sub-account will be automatically transferred to the sub-account that invests in the Income Portfolio. Applicants state that all transfers will be effected at net asset value.

Applicants believe that this proposed transaction might be deemed to involve an offer of exchange within the meaning of section 11 of the Act and a substitution of securities within the meaning of section 26(b). Although Applicants state that they do not concede the applicability of these sections, to resolve any uncertainty they request an order of the Commission approving the transactions.

In support of their application, Applicants assert that: (1) The sub-account is being eliminated because contractholders have shown minimal interest in it as an investment; (2) contractowners will have sufficient time to reallocate amounts allocated to the Discontinued Sub-Account without incurring a transaction charge or having the transaction count as one of their four free transfers for the year; (3) if no request to reallocate is received before June 14, 1985, amounts will be automatically transferred to the sub-account investing the portfolio most similar to that in which the discontinued sub-account invests; (4) all transfers will be at relative net asset value, a basis which the Commission has deemed consistent with the provisions of section 11 in adopting Rule 11a-2.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 21, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a

hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13159 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22082; File No. S7-787]

Summary Effectiveness and Additional Temporary Approval of Proposed Amendments to the Plan for the Designation of National Market System Securities Submitted by the National Association of Securities Dealers, Inc.

May 28, 1985.

On December 18, 1984, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission pursuant to Rule 11Aa2-1 under the Securities Exchange Act of 1934 ("Act") [1] proposed amendments to its "National Market System Securities Designation Plan with respect to NASDAQ Securities" ("Designation Plan").[2] The Designation Plan provides for the designation of securities meeting the criteria in Rule 11Aa2-1 for designation as National Market System Securities.

The proposed amendments primarily are intended to incorporate language changes reflecting amendments to Rule 11Aa2-1 that resulted in an expansion of the number of securities eligible for designation.[3] The proposed amendments also delete obsolete language, simplify procedures by which issuers apply for designation, and reflect changes in NASD procedures required to coordinate designation of OTC/NMS Securities with the Federal Reserve Board's administration of its OTC Margin List.[4]

On January 17, 1985, the NASD's amendments were temporarily approved for a period not to exceed 120 days from the publication of notice of approval. (For a complete description of the amendments, *see* Securities Exchange Act Release No. 21670; 50 FR 3610, January 25, 1985 ("release")) No comments were received regarding the release. The Commission stated at that time that "the maintenance criteria proposed by the NASD require further study before they can be approved on a permanent basis because the criteria are significantly lower than the newly-amended Tier 2 criteria". These issues remain largely unresolved. Accordingly, the NASD has resubmitted the proposed amendment and the Commission has determined to extend the period of effectiveness for another 120 days from the publication of notice of this release, while this area is studied further.

In accordance with the above, it is ordered, pursuant to section 11A of the Act and paragraph (d)(4) of Rule 11Aa2-1, that the NASD's amendments to the Designation Plan be, and hereby are, effective for a period not exceeding 120 days from the publication of notice of this release. In order to assist the Commission in determining whether to approve permanently the amendments before or upon the expiration of the 120 day period, interested persons are invited to submit their views to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, within 21 days from the date of publication of this notice in the **Federal Register.** The amendments to the Designation Plan will be available for public inspection in the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. All communications should refer to File No. S7-787.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(37).

John Wheeler,

Secretary.

[FR Doc. 85-13219 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] 17 CFR 240.11Aa2-1 ("Rule"). Pursuant to the Rule, certain actively-traded over-the-counter ("OTC") securities have been or will be designated as National Market System ("NMS") Securities. Upon designation, a NMS Security is deemed a "report" security, as that term is defined in Rule 11Aa3-1(a)(4) under the Act, and becomes subject to, among other things, the Commission's last sale reporting rule, Rule 11Aa3-1 under the Act.

[2] The Commission approved the NASD's Designation Plan on January 7, 1982. Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2226. Generally, the Designation Plan provides: (1) Procedures for designation of OTC/NMS Securities; (2) procedures for determining substantial compliance with Tier 2 criteria established in the Rule; (3) procedures and criteria for determining or suspending the NMS status of securities; and (4) procedures for publishing lists of OTC/NMS Securities.

[3] *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730.

[4] OTC/NMS Securities are automatically marginable pursuant to Regulation T under the Act. See Federal Reserve Docket R-0512 (August 30, 1984), 49 FR 35756.

[Release No. 34-22077; Filed No. SR-MSE-85-3]

Self-Regulatory Oraganizations; Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to Mandatory Posting of Issues

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1985, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XXX, Rule 1, Interpretations and Policies .01, Section I is hereby amended as follows:

Additional italicized—[Deletions Bracketed].

. . . . Interpretations and Policies:

.01 Committee on Specialist Assignment & Evaluation

ASSIGNMENT FUNCTION

I. EVENTS LEADING TO ASSIGNMENT PROCEEDINGS

Pursuant to Article XXX, Rules 1 and 8, the Committee may, when circumstances require, assign or reassign a security. Seven circumstances may lead to the need for assignment or reassignment of a security. They are:

1. New listing or obtaining unlisted trading privilege;
2. Specialist request:
3. Corporation request;
4. Split-up and/or merger of specialist units;
5. Fundamental change of specialist unit;
6. Unsatisfactory performance action; and
7. Disciplinary action.

The following guidelines have been adopted by the Committee for its use in the assignment or reassignment of stocks among specialists and co-specialists. These guidelines set forth the general policy of the Committee concerning the posting and allocation of stocks. They are not, however, rigid rules to be strictly followed regardless of unique circumstances. These guidelines form only the starting point of the Committee's deliberations; they will be applied in light of the facts in each individual case.

1 through 5. No change in text.

6. Unsatisfactory Performance Action.

(a) and (b) No change in text.

(c) Mandatory Posting. Semi-annually the Exchange's market share for the previous six month period (calculated as a percentage of the number of trades reported to the consolidated tape) in each security for which there is a registered specialist shall be compared with the market shares of the other market centers trading that security. If during any such period the Exchange's market share in any such security is less than the third largest and also less than the Exchange's average market share for all issues for which there is a registered specialist, that security shall be promptly posted for applications in accordance with the provisions of Article XXX, Rule 1.01.II, provided, however, that no security shall be posted unless the specialist in that security has been registered as such for six months or more; and provided further, that, although all qualified co-specialists, including the current co-specialist, may apply, when considering the factors specified in Article XXX, Rule 1.01.III, the Committee will give preference to a designated co-specialist who, during the period, was not a co-specialist in any security that is being posted at that time pursuant to this Rule.

7. No change in text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change provides for the semi-annual posting of issues assigned to co-specialists in which MSE ranks below three or more other exchanges by number of trades. The policy has been designed to improve overall performance, either through the dissemination of more competitive markets by the current co-specialist or reassignment to a different co-specialist and/or specialist unit.

The only issues which will be posted are those which have been assigned to the current specialist unit for the full six month period. Specialists will receive market share information on a monthly basis, giving them ample opportunity to request (subject to the approval of the Committee on Specialist Assignment and Evaluation) transfers of issues to stronger co-specialists within the unit prior to the semi-annual posting.

Once an issue is posted, any qualified co-specialist may apply including the current co-specialist. However, if there is competition among applicants with similar rankings in the measurements currently in use, the Committee will generally give preference to a co-specialist who is not losing that or any other issue in the current posting.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it will encourage the dissementation of more competitive markets by MSE, thereby promoting just and equitable prinicples of trade, and, in general, protecting investors and the public interest.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(c) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received Form Members, Participants or Others*

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propose rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public References Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authroity

Dated: May 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-13220 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22080; SR-NYSE-85-17]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Adoption of New Rule 412 (Customer Securities Account Transfers) and Rescission of Current Rule 412

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed adoption of new Rule 412 is intended to expedite the transfer of a customer's securities account by strengthening the procedures set forth in the current rule and requiring use of an automated system when both the carrying organization and the receiving organization are participants in a registered clearing agency having

automated customer securities account transfer capabilities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to provide for a more timely and efficient transfer of a customer's securities account between member organizations. Current Rule 412, "Customer Account Transfer Contracts," sets forth a ten day transfer procedure and a process for establishing fail contracts when security positions are not transferred within the prescribed time period. However, since the rule does not require the transfer procedure or the establishment of fails, delays in the transfer of customer's securities accounts for frequently experienced. Another common reason for transfer delays stems from disagreements between carrying and receiving member organizations over security positions or money balances shown on the transfer instruction.

New Rule 412 strengthens the procedures set forth in the current rule by requiring that customer securities account transfers must occur within ten business days. This ten business day time period includes a five business day period for validation of security positions and money balances in the account. During the five business day validation period, the carrying organization must either validate or take exception to the transfer instruction and report the security positions and money balance in the account to the receiving organization.

To promote timely validation, the new rule states that discrepancies in security positions or money balances are not a basis for taking exception to the transfer instruction. Therefore, the carrying organization must transfer whatever is reflected on its books. Validation may be denied only for such reasons as the carrying organization having no record of the account on its books or the transfer instruction not being signed or containing an improper signature. The actual transfer of the account must occur within five business days from the date of validation.

Fail contracts must be established by both the carrying organization and the receiving organization at the end of the ten business day period if the security positions in the account have not been transferred. These fail contracts must then be closed out within ten business days.

The new rule also provides that when both the carrying organization and the receiving organization are participants in a registered clearing agency (as defined in and registered in accordance with the Securities Exchange Act of 1934 (the "Act")) having automated customer securities account transfer capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished pursuant to Rule 412 and through such registered clearing agency. In this connection, the National Securities Clearing Corporation (NSCC), in conjunction with the Exchange, is developing an automated system for transferring customer securities accounts and plans to implement a "pilot" program shortly.

This automated system will debit/credit security positions and money balances from the carrying to the receiving organization and establish fails on non-transferred items. The Exchange will survey and enforce the rule and transfer process for its member organizations utilizing exception reports generated by the system.

Paragraph (f) of the new rule grants the Exchange the authority to exempt any member organization or class of member organization or any type of account, security or financial instrument from the provisions of the rule.

Such authority is necessry because of valid difficulties encountered in readily transferring certain accounts and assets (e.g., IRA and Keogh accounts, limited partnership interests, certificates of deposit) within the prescribed time periods. Also, in the event of a liquidation, merger, or acquisition of a member organization, it may not be practicable to apply the rule because of the large number of accounts that would have to be transferred and therefore, determinations will be made on a case-by-case basis. The Exchange is continuing to study whether certain financial instruments should be exempt from some or all of the requirements of the rule due to legitimate problems in transferring such instruments. The Exchange will issue written interpretations in this regard as appropriate.

To assist the Exchange in enforcing the rule, a provision is included that gives the Exchange authority to impose a late fee of up to $100 per securities account for each day a member organization fails to adhere to the time frames or procedures required by the rule and related published interpretations. This late fee generally will be imposed when patterns of dilatoriness in transfer of accounts are detected involving a particular member organization.

The proposed change is consistent with section 6(b) of the Act in that it fosters cooperation and coordination with persons engaged in regulating and processing information with respect to, and facilitating transaction in, securities. This is so because the procedures contained in the proposed rule are intended to expedite transfer of customer securities accounts between member organizations. The change also generally protects investors and the public interest by requiring expeditious transfer of accounts.

The provision of the rule authorizing the Exchange to impose a $100 late fee per account for each day a member organization fails to adhere to the time frames or procedures set forth in the rule is consistent with section 6(b)(1) of the Act because it is intended to foster the Exchange's capacity to enforce the rule.

New Rule 412 is also consistent with section 17A(a)(1) of the Act wherein Congress found that:

> The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

Finally, the amendments are consistent with section 17A(a)(1)(C) of the Act in that requiring use of an automated transfer system when both the carrying organization and the receiving organization are participants in a registered clearing agency having such capabilities applies new data processing and communications techniques to the area of customer securities account transfers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on an earlier version of this proposed rule change were solicited from the Exchange membership in September 1982 and those received are attached as Exhibit IB. In all, 24 letters representing the views of 17 member organizations and the NASD Uniform Practice Committee were received. A summary of the substance of the comments received including the significant issues raised and the Exchange response to these issues follows:

(1) *Comment:* To ensure that the rule operates effectively, account transfers should be processed by an indpendent third party such as the Exchange, Depository Trust Corporation, or National Securities Clearing Corporation.

Exchange response: The Exchange believes this suggestion has merit and has been working toward this goal. Therefore, a provision has been included in the current rule proposal which states that when both the carrying organization and the receiving organization are participants in a registered clearing agency having automated customer securities account transfer capabilities, the account transfer must be accomplished through the registered clearing agency.

(2) *Comment:* Financial Service Accounts should not be exempt from the mandatory time frames for transfer set forth in the rule.

Exchange response: The proposed new rule does not contain any exception for Financial Service Accounts. However, to limit potential member organization exposure with regard to credit/debit cards and unused checks, the Exchange will not object if member organizations require their return or an affidavit attesting to their loss or destruction before validating a transfer instruction.

(3) *Comment:* IRA and Keogh accounts that are not held by the member organization should be exempt from the Rule 412 requirements.

Exchange response: The Exchange recognizes that problems may arise in transferring IRA or Keogh accounts held by custodians or trustees over whom the Exchange does not have jurisdiction. The Exchange does not believe that exempting IRA and Keogh accounts is the answer. However, with regard to these accounts, the Exchange intends to further study appropriate time periods for validation and transfer and will publish an interpretation if an extension of the time periods is deemed appropriate.

(4) *Comment:* The rule should specifically provide that it applies to short option positions.

Exchange response: The new rule contains a provision which makes it clear that the rule applies to the transfer of short option positions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be witheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will be available for inspection and copying at the principal office of the above mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by June 24, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

May 28, 1985.

[FR Doc. 85-13221 Filed 5-31-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 43006]

Pan Aviation Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on June 18, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street SW., Washington, D.C. 20590, before the undersigned administrative law judge.

Dated at Washington, D.C., May 24, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85-13225 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85-036]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting; Cancellation

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of meeting.

SUMMARY: The meeting of the Lower Mississippi River Waterway Safety Advisory Committee scheduled for Tuesday, June 11, 1985, as published in Vol. 50 No. 90, page 19601 of the **Federal Register** on May 9, 1985, is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Commander R.A. Brunnell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Telephone number (504) 589-6901.

Dated: May 23, 1985.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 85-13197 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Circular 25.1455-1, Waste Water/Potable Water Drain System Certification Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This Notice announces the issuance of Advisory Circular (AC)

25.1455–1, Waste Water/Potable Water Drain System Certification Testing, which sets forth a specific method of compliance with the requirements of § 25.1455 of the Federal Aviation Regulations (FAR) pertaining to draining of fluids through drain masts when the fluids are subject to freezing.

DATE: Advisory Circular 25.1455–1 was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on March 11, 1985.

How to obtain copies: A copy of AC 25.1455–1 may be obtained by writing to the U.S. Department of Transportation, M–494.3, Subsequent Distribution Unit, Washington, D.C. 20590.

Issued in Seattle, Washington, on May 20, 1985.

Leroy A. Keith,

Manager, Aircraft Certification Division, ANM–100.

[FR Doc. 85–13187 Filed 5–31–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief; Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of Granting of Restoration of Federal Firearm Privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Paul M. Durham, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026, (202–566–7258).

SUPPLEMENTARY INFORMATION:

In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms, said privileges lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

ABLE, James O'Neal, Box 99, Highway 116, Ridgeland, South Carolina, convicted on August 28, 1968, in the Jasper County Court, Jasper County, South Carolina; and on January 13, 1976, in the United States District Court, Southern District of Georgia.

ABRAHAMSON, Joseph Douglas, Post Office Box 22073, Tucson, Arizona, convicted on November 7, 1980, in the Circuit Court, Green County, Missouri.

ACKER, Ray Allen, 1214 North High, Longview, Texas, convicted on September 14, 1979, in the United States District Court, Northern Judicial District, Dallas, Texas.

ADAMS, Edward Morley, Jr., 3976 Broadway Street, Macon, Georgia, convicted on June 8, 1971, in the Bibb County Superior Court, Macon, Georgia.

AGEE, Carl Wayne, 1246 East Minnesota Street, Indianapolis, Indiana, convicted on April 7, 1948, in the United States District Court, Western District of Missouri.

ALDER, Ricky Lynn, 8725 Old Madisonville Road, Hopkinsville, Kentucky, convicted on July 24, 1980, in the Christian Circuit Court, Hopkinsville, Kentucky.

AMALFITANO, John Joseph, 311 President Street, Brooklyn, New York, convicted on May 23, 1966, in the United States District Court, Southern District of New York.

AMTHOR, Robert Kelly, 4713 Spring Meadow Lane #5, Midland, Texas, convicted on June 17, 1983, in the United States District Court, Dallas, Texas.

ANDREWS, Arthur R., 138 Farrand Parkway, Highland Park, Michigan, convicted on January 8, 1982, in the Recorders Court, Detroit, Michigan.

ANTHONY, Harry Gaylord, Jr., 304 Margnec Road, Chestertown, Maryland, convicted on April 23, 1971, in the Circuit Court, Kent County, Maryland.

ARNOLD, Charles Ray, Route 3, Central City, Kentucky, convicted on November 3, 1976, in the United States District Court, Owensboro, Kentucky.

ARTHAUD, Melvin Gary, Route 2, Box 30, Seiling, Oklahoma, convicted on August 13, 1982, in the United States District Court, Western Judicial, Oklahoma City, Oklahoma.

BARBOUR, Lonnie Lowell, Route 1, Box 525, Callaway, Virginia, convicted on April 7, 1970, in the United States District Court, Southern District of Illinois.

BARKLEY, Otha Raymond, Post Office Box 7, Evans City, Pennsylvania, convicted on October 27, 1948, in the Court of Oyer and Terminer, Butler County, Butler, Pennsylvania; and on April 7, 1975, in the Court of Common Pleas, Butler County, Butler, Pennsylvania.

BARNHILL, Robert Edward, Jr., 300 Barrington Drive, Tarboro, North Carolina, convicted on December 3, 1980, in the United States District Court, Charlotte, North Carolina.

BELCHER, Robert L., Route 1, Caneys Branch, Chapmanville, West Virginia, convicted on January 19, 1980, in the United States District Court, Huntington, West Virginia.

BENGE, Odell, Route 1, Box 338, London, Kentucky, convicted on September 23, 1981, in the United States District Court, London, Kentucky.

BIGGS, Craig Kenneth, 3608 South East Madison, Albany, Oregon, convicted on November 17, 1977, in the Circuit Court, Linn County, Oregon.

BOHREN, Dean Richard, 2401 College Parkway, #805, Bellingham, Washington, convicted on July 18, 1980, in the Superior Court, Grays Harbor County, Washington.

BORREMANS, Michael Wayne, 3106 Waco Street, San Angelo, Texas, convicted on June 5, 1979, in the 51st Judicial District Court, Tom Green County, Texas.

BOWKER, James David, Route 2, Murray, Kentucky, convicted on March 4, 1981, in the Circuit Court, Calloway County, Murray, Kentucky.

BRAME, William Boyd, Post Office Box 33–0, Southmont, North Carolina, convicted in December 1962, in the Superior Court, Rockingham County, Wentworth, North Carolina; and on July 17, 1981, in the United States District Court, Greensboro, North Carolina.

BROCK, Debra Ann, HCR 1, Box 375, Springdale, Washington, convicted on August 29, 1979, in the Superior Court, Thurston County, Washington.

BRONSON, Steven J., 308 West Stevens, St. Paul, Minnesota, convicted on August 17, 1978, in the District Court, St. Paul, Minnesota.

BROWER, Jerome Sanford, 4055 LaJunta Drive, Claremont, California, convicted on February 23, 1981,in the United States District Court, Washington, DC.

BROWN, Richard Lee, Rural Delivery 1, Box 45 AA, Port Matilda, Pennsylvania, convicted on April 29, 1963, in the Court of Quarter Sessions, Centre County, Pennsylvania.

BUCKEYE, Robert David, 48 Scarlet Drive, Meadville, Pennsylvania, convicted on January 31, 1979, in the Court of Common Pleas, Crawford County, Pennsylvania.

BURGESS, Ernest Edward, Route 2, Box 117, Ramseur, North Carolina, convicted on December 7, 1982, in the United States District Court, Greensboro, North Carolina.

BURK, John Delano, 123 S Street, Thomaston, Georgia, convicted on June 6, 1969, in the Superior Court, Lamar County, Georgia.

CAMP, Donald Ray, 313 Southeast 11th Street, Pryor, Oklahoma, convicted on October 18, 1973, in the Circuit Court, Washington County, Fayetteville, Arkansas.

CARMALT James Dennis, Post Office Box 681, Stevensville, Maryland, convicted on March 31, 1972, in the Circuit Court, Fairfax County, Virginia.

CARPENTER, Michael Stephen, 1969 Payne Street, Louisville, Kentucky, convicted on February 7, 1974, in the Jefferson Circuit Court, Louisville, Kentucky.

CASON, Barry Dee, 470 North Broad Street, Globe, Arizona, convicted on July 10, 1974, in the Superior Court, State of Arizona.

CASTELLAW, Ronald Wade, 3507 Silerton Road, Silerton, Tennessee, convicted on December 9, 1977, in the United States District Court, Memphis, Tennessee.

CATES, John Carrington, 4102 Colgate, Garland, Texas, convicted on August 15, 1976, in the 185th District Court, Harris County, Texas.

CHESHEY, Dennis Lloyd, Rural Delivery 1, Route 40, Box 369, Granville, New York, convicted on December 16, 1975, in the Albany County Court, Albany, New York.

CUNNINGHAM, David Maxwell, 1849 South 106 East Avenue, Tulsa, Oklahoma, convicted on May 1, 1980, in the United States District Court, Tulsa, Oklahoma.

CUNNINGHAM, Joseph R., 2992 Seneca Boulevard, Waterloo, New York, convicted on July 26, 1982, in the Seneca County Court, New York.

CURRY, Judith Fortney, Route 1, Box 164–K, Monroe, Louisiana, convicted on April 6, 1978, in the United States District Court, Eastern District of Louisiana.

CURRY, Shelby Earl, Route 1, Box 164–K, Monroe, Louisiana convicted on April 6, 1978, in the Western District, Monroe, Louisiana.

DALTON, William H., Jr., 226 10th Street, Princeton, West Virginia, convicted on September 18, 1979, in the United States District Court, Bluefield, West Virginia.

DEAN, Joann, Box 844, Beaver, Oklahoma, convicted on April 11, 1983, in the United States District Court, Western Judicial District of Oklahoma.

DEAN, Virgil W., Box 844, Beaver, Oklahoma, convicted on April 11, 1983, in the United States District Court, Western Judicial District of Oklahoma.

DITTY, Douglas James, 823 Westwood Boulevard, Monroe, Michigan, convicted on May 16, 1961, in the Circuit Court, Monroe County, Michigan.

DOMINGUEZ, John Felix, 483 Maple Grove Way, Columbia, Missouri, convicted on October 5, 1982, in the Circuit Court, Randolph County, Moberly, Missouri.

EAGLETON, Willie Lee, 18 Berryhill Drive, Apartment 18-C, Columbia, South Carolina, convicted on June 29, 1982, in the General Sessions Court, Richland County, South Carolina.

EATON, John J., 458 Johnson Street, North Andover, Massachusetts, convicted on November 13, 1952, in the Lawrence County District Court, Massachusetts.

EDROD, Anthony Leonard, 4623 South High School Road, Indianapolis, Indiana, convicted on July 5, 1973, in the Superior Court, Franklin County, Indiana.

ESPOSITO, Pasquale, 204 East Third Street, Brooklyn, New York, convicted on March 9, 1979, in the United States District Court, Eastern District of New York.

EVANS, Wallace Gordon, Jr., 4510 Shoaf Road, Winton-Salem, North Carolina, convicted on November 8, 1979, in the Superior Court, Forsyth County, Winston-Salem, North Carolina.

FISHER, Lee James, 224–4th Workosky, Tonasket, Washington, convicted on August 15, 1977, in the Superior Court, Okanogan County, Washington.

FOGG, Edward Chambless III, 8150 Southwest 52 Avenue, Miami, Florida, convicted on November 6, 1980, in the United States District Court, Miami, Florida.

FROHRIEP, Wayne Emerson, 107 Canfield, Apartment 9, Mican, Michigan, convicted on March 7, 1977, in the Kalamazoo Circuit Court, Kalamazoo, Michigan.

FULLER, John Lemburg, Route 1, Box 21, Lampasas, Texas, convicted on September 28, 1979, in the United States District Court, Victoria Division, Southern District, Texas.

FUTRAL, James Robert, 1501 Northeast 27th Street, Wilton Manors, Florida, convicted on May 23, 1958, in the Cirminal Court, Broward County, Fort Lauderdale, Florida.

GAGER, Dennis F.L., Star Route 5, Box 153G, Dunnellon, Florida, convicted on March 8, 1963, in the 105th District Court, Kleburg County, Kingsville, Texas.

GARREN, James Michael, Route 9, Box 608 Spartanburg, South Carolina, convicted on November 22, 1977, in the Court of General Sessions, Spartanburg, South Carolina.

GARY, Frank, RFD 1, Box 254A, Capron, Virginia, convicted on May 22, 1978, in the Circuit Court, Southampton County, Virginia.

GIBBONS, Jerry Wayne, Route 1, Horse Cave, Kentucky, convicted on April 28, 1980, in the Circuit Court, Hart County, Munfordville, Kentucky.

GIBSON, Richard E., 13976 East County Road, 150 North, Greentown, Indiana, convicted on August 9, 1973, in the Northern Judicial District of Indiana.

GILLAND, Jimmy Dale, 3008 Woodrow Drive, Tarrant, Alabama, convicted on March 7, 1977, in the Circuit Court, Jefferson County, Birmingham, Alabama.

GINTHER, Thomas Evans, 7157 Chilacot Drive, Boise, Idaho, convicted on November 9, 1982, in the 4th Judicial Court, Idaho.

GIRTS, David Allan, 12040 12th North West, Seattle, Washington, convicted on May 24, 1982, in the Superior Court, King County, Washington.

GLIDEWELL, James DeWayne, 1121 Shelley Street, Albany, Kentucky, convicted on April 13, 1981, in the Superior Court, Camden County, Woodbine, Georgia.

GREGORY, Doyle Harrison, 1218 South 8th Avenue, Yakima, Washington, convicted on May 7, 1982, in the Superior Court, Yakima County, Washington.

GUMM, Gerald Richard, 510 Annette Street, Dodge City, Kansas, convicted on March 15, 1982, in the United States District Court, Kansas City, Kansas.

HANCOCK, Samuel C., West 20 Main, Spokane, Washington, convicted on September 25, 1978, in the United States District Court, Eastern District of Washington.

HARRIS, Richard Edward, 132–06 109th Avenue, South Ozone Park, New York, convicted on March 3, 1969, in the United States District Court, Southern District of New York.

HARRISON, A. Frank III, 14 Danridge Court, Columbia, South Carolina, convicted on November 9, 1979, in the United States District Court, Columbia, South Carolina.

HART, Margaret Hubbard, Route 1, Box 137, Covington, Virginia, convicted on December 11, 1978, in the Circuit Court, Hanover County, Virginia.

HARVEY, John W., 9013 Geneva Avenue, Montclair, California, convicted on April 13, 1931, in the United States District Court, District of New Mexico.

HENRY, John Patrick, 2701 Anna Street, North Platte, Nebraska, convicted on January 14, 1980, in the Lincoln County Court, North Platte, Nebraska.

HEYING, Dennis William, Route 1, Box 148, Lexington, Nebraska, convicted on May 21, 1980, in the District Court, Buffalo County, Kearney, Nebraska.

HODGES, Roberta Austin, Route 1, Box 696, Basset, Virginia, convicted on December 22, 1980, in the Circuit Court, Patrick County, Stuart, Virginia.

HOLT, Herman Wayne, Route 2, Box 284, Mansfield, Louisiana, convicted on October 17, 1977, in the 30th Judicial Court Beauregard Parish, Louisiana.

HORNE, William, 3102 Ferndale Avenue, Baltimore, Maryland, convicted on December 10, 1961, in the Baltimore Municipal Court, Western District.

HUGHES, Allen R., 1907 Westview Drive, Owensboro, Kentucky, convicted on August 13, 1974, in the Circuit Court, Daviess County, Kentucky.

HUGHES, Harry Jackson, Jr., Route 1, Box 334, Pulaski, Virginia, convicted on May 25, 1972, in the Circuit Court, Pulaski County, Virginia.

HULL, William Hollis, 332 Conkle Road, Hampton, Georgia, convicted in July 1972, in the Superior Court, Henry County, Georgia.

HUNLEY, Randall J., 730 West Stewart, Apartment 14, Owasso, Michigan, convicted on September 8, 1981, in the Circuit Court, Shiawassee County, Corunna, Michigan.

HUNT, Jack Robert, 908 Alvin Street, Pasadena, Texas, convicted on September 21, 1970, in the United States Disrict Court, Statesville, North Carolina.

HUNTER, Eric Randall, 14751 North Fairmont Drive, Edinburgh, Indiana, convicted on December 13, 1968, in the Bartholomew Circuit Court, Columbus, Indiana.

JACKSON, Kenneth L., 8621 Winchester Road, Fort Wayne, Indiana, convicted in October 1975, in the United States District Court, Fort Wayne, Indiana.

JACKSON, Ophelia, Route 7, Box 671, Montgomery, Texas, convicted on October 5, 1978, in the District Court, Montgomery County, Texas.

JENNINGS, Henry D., 6398 Hawfield Drive, Fayetteville, North Carolina, convicted on March 22, 1956, in the District Court, Greer County, Mangum, Oklahoma.

JOHNSON, Benny Meloyd, 463 Greene Avenue, Brooklyn, New York, convicted on September 15, 1977, in the Supreme Court Kings County, New York.

JOHNSON, Lyle, Rural Route 1, Box 69, Waukee, Iowa convicted on December 5, 1978, in the United States District Court, Des Moines, Iowa.

JOHNSON, Thurston E., Route 6, Box 28, Scottsville, Kentucky, convicted on May 26.

1976, in the Circuit Court, Barren County, Glasgow, Kentucky.

JONES, Clinton, Route 1, Hastings, Oklahoma, convicted on February 3, 1983, in the District Court, Oklahoma.

JONES, Daniel L., 4323 Fairview, Spokane, Washington, convicted on April 27, 1977, in the Supreme Court, Spokane, Washington.

JONES, James Vernon, 3007 McGough Drive, Mobile, Alabama, convicted on June 14, 1983, in the Circuit Court, Mobile, Alabama.

JONES, Sam Wade, 803 Sixth Avenue North, Columbus, Mississippi, convicted on March 13, 1975, in the United States District Court, Aberdeen, Mississippi.

KELLY, Ray McLeod, 592 North 2nd, Carrington, North Dakota, convicted on September 5, 1980, in the United States District Court, Fargo, North Dakota.

KERR, Michael James, 2865 Southeast Camwell Drive, Hillsboro, Oregon, convicted on August 8, 1983, in the Superior Court, Kitsap County, Washington.

KESSLER, Dane William, 6511 Lazy Street, Southwest, Olympia, Washington, convicted on August 5, 1981, in the Superior Court, Thurston County, Washington.

KETTINGER, Fred Lawrence, 1415 South Boston No. 5, Tulsa, Oklahoma, convicted on August 30, 1978, in the 124th Judicial District Court, Greg County, Texas.

KING, Robert Lee, Rural Delivery 2, Sager Road, Sinclairville, New York, convicted on March 13, 1964, in Chautauqua County, New York.

KLINGLESMITH, Floyd Eugene, Route 2, Box 326, Elizabethtown, Kentucky, convicted on April 4, 1959, in the Circuit Court, Hardin County, Elizabethtown, Kentucky.

KNOWLES, William David, 815 East 8th Street, Colby, Kansas, convicted on November 26, 1973, in the 4th Judicial District Court, El Paso County, Colorado; and on February 2, 1977, in the District Court, Thomas County, Kansas.

KNOX, William Warren, 725 Georgia Avenue, Norfolk, Virginia, convicted on November 29, 1979, in the Circuit Court, Norfolk, Virginia.

KOLB, Robert Lynn, 2318 Filer Avenue East, Twin Falls, Idaho, convicted on September 17, 1980, in the District Court, Twin Falls, Idaho.

KRITZMAN, Mark Charles, 60 Cook Drive, Apartment A4, Bad Axe, Michigan, convicted on October 27, 1978, in the Circuit Court, Huron County, Michigan.

KRUGER, Charles Edwin, 2202 Frontier, Security, Colorado, convicted on September 20, 1982, in the 4th Judicial District Court, El Paso, Colorado.

LALE, Horace Edwin, 7533 Melba Avenue, Canoga Park, California, convicted on November 14, 1957, in the Circuit Court, Jackson County, Kansas City, Missouri.

LAMELA, Felice, North Young Avenue, Marlboro, New York, convicted on July 26, 1973, in the Federal Court, Southern District, Foley Square, New York City, New York.

LAWE, Colin George, Box 349, Keshena, Wisconsin, convicted on December 18, 1962, in the Circuit Court, Menominee County, Shawano, Wisconsin; and on March 14, 1962, in the Circuit Court, Menominee County, Shawano, Wisconsin.

LEITE, Kenneth Ervin, 1015 30 Avenue North, St. Cloud, Minnesota, convicted on March 10, 1981, in the United States District Court, St. Paul, Minnesota.

LIA, Ralph, 261 Beach, 141st Street, Queens, New York, convicted on August 9, 1971, in the Criminal Court, Wayne County, Pennsylvania; and in Luzanne County Criminal Court, Pennsylvania.

LOVE, Ted Duane, 5326 Fulwell Drive, Corpus Christi, Texas, convicted on July 28, 1981, in the United States District Court, Corpus Christi, Texas.

LYLES, Gene Edwin, Route 2, Box 135, Keysville, Virginia, convicted on April 24, 1961, in the Circuit Court, Prince Edward County, Virginia; on June 6, 1961, in the Circuit Court, Charlotte County, Virginia; on June 6, 1961, in the Circuit Court, Charlotte County, Virginia; and on June 6, 1961, in the Circuit Court, Charlotte County, Virginia.

LYNN, Robert William, 6255 Windson Drive, Indianapolis, Indiana, convicted on June 9, 1961, in the Criminal Court, Division I, Marion County, Indiana.

MADDUX, Floyd Collier, Route 3, Box 460, Huntington, Texas, convicted on September 16, 1981, in the District Court, Angelina County, Texas.

MARTINEZ, Angel L., 306 Avenue P., Brooklyn, New York, convicted on May 25, 1962, in Nassau County Court, Mineola, New York.

MATEJOWSKI, Emmett Fredric, 1402 Emerson, Drawer N, McCamey, Texas, convicted on May 5, 1978, in the 206th Judicial District Court, Hidalgo County, Texas.

McCLAIN, WALTER Lee, 525 North San Jose, Abilene, Texas, convicted on December 29, 1980, in the 104th District Court, Taylor County, Texas.

McDONALD, Gerald Louis, 18530 Dodd Boulevard, Lakeville, Minnesota, convicted on June 5, 1974, in the District Court, Dakota County, Hasting, Minnesota.

McGUINN, James Emmet, Jr., Route 17, Box 169, Marshall, Virginia, convicted on November 29, 1976, in the Rappahannock County Court, Virginia.

McKIBBEN, Dana Clifton, Route 3, Oxford, Mississippi, convicted on July 7, 1978, in the United States District Court, Oxford, Mississippi; and on February 8, 1979, in the United States District Court, Oxford, Mississippi.

MERRIT, Raymond Cecil, 3086 Highway 97, Cantonment, Florida, convicted on May 24, 1977, in the Superior Court, Dodge County, Georgia.

MILLER, Gregory Conan, 670 North 1400 West, Salt Lake City, Utah, convicted on January 28, 1972, in the 3rd Judicial District Court, Salt Lake City, Utah.

MILLER, Troy L., Route 2, Box 109, Elk, Washington, convicted on January 30, 1980, in the Superior Court, Spokane County, Washington.

MORRIS, Benjamin Edgar, Route 3, Box 89, Rocky Mount, Virginia, convicted on October 19, 1981, in the Circuit Court, Franklin County, Virginia; and on November 9, 1981, in the Circuit Court, Franklin County, Virginia.

MORRIS, Eddie J., 6005 Avenue of Redwoods, College Park, Georgia, convicted on October 29, 1951, in the Superior Court, Fulton City, Georgia.

NEEMEYER, Frederick W. 3377 Fairlane Avenue, Columbus, Nebraska, convicted on March, 5, 1981, in the United States District Court, Judicial District, Nebraska.

NEWBERRY, Leslie Harman, 5823 South Shasta Circle, Littleton, Colorado, convicted on March 7, 1955, in the Arapahoe County Court, Littleton, Colorado.

NEWTON, Strother Lee, 900 Northside Drive, Fredericksburg, Virginia, convicted on December 10, 1976, in the Circuit Court, Stafford City, Virginia.

NUTTER, Michael Lee, 7311 South 99th East Avenue, #1302, Tulsa, Oklahoma, convicted on September 18, 1978, in the District Court, Harris County, Texas.

O'CONNELL, Donald Lee, 1651 Story Avenue, Apartment B, Louisville, Kentucky, convicted on April 26, 1974, in the Curcuit Court, Louisville, Kentucky.

OTLEY, Ronald Homer, Star Route 2, 13872, Burns, Oregon, convicted on June 9, 1980, in the United States District Court, Idaho.

PADGETT, John Robert, 400 Hickory Street, #46, Fort Collins, Colorado, convicted on July 17, 1979, by the Larimer County Grand Jury, Fort Collins, Colorado.

PARKER, Henry Clay, Route 4, Box 664, Wilkesboro, North Carolina, convicted on June 26, 1959, in the United States District Court, Wilkesboro, North Carolina.

PARKER, Richard Charles, Post Office Box 79, High Springs, Florida, convicted on September 13, 1976, in the 3rd Judicial Circuit Court, Lake City, Florida; on September 26, 1977, in the 8th Judicial Circuit Court, Trenton, Florida; and on January 23, 1978, in the 3rd Judical Circuit Court, Lake City, Florida.

PASQUALE, DeFeo Jr., 51 Havre Street, East Boston, Massachusetts, convicted on January 26, 1978, in the Superior Court, Boston, Massachusetts.

PATRICK, Michael Ray, 5124 West State, #27, Boise, Idaho, convicted on January 13, 1979, in the Superior Court, Spokane County, Washington.

PAXSON, Robert Lynn, Post Office Box 402, Waterview Shores, Lot E6, Seahawk Court, Grandy, North Carolina, convicted on June 21, 1982, in the Superior Court, Martin County, Williamston, North Carolina.

PEARCE, Robert Marline, 1450 Lehman Avenue, Bowling Green, Kentucky, convicted on December 22, 1978, in the United States District Court, Kentucky.

PEDERSON, James Peter, Route 2, Box 209, Fertile, Minnesota, convicted on March 2, 1981, in the 9th Judicial District Court, Crookston, Minnesota.

PEDIGO, Teresa S., 133 A First Street, Cave City, Kentucky, convicted on August 10, 1979, in the Circuit Court, Glasgow, Kentucky.

PETERS, Floyd F., Route 1, Box 147, Zavalla, Texas, convicted on April 15, 1981, in the Criminal District Court #1, San Augustine County, Texas.

PIEKNIK, John J., 5422 Statler Drive, Burton, Michigan, convicted on June 17, 1949, in the Circuit Court, Genesee County, Flint, Michigan.

POWELL, Floyd Lee, 2715 C Briarberry Circle, Birmingham, Alabama, convicted on May 14, 1979, in the United States District Court, Birmingham, Alabama.

PURCELL, Glenn N., 101 Glendale Avenue, Bayley, Georgia, convicted on April 15, 1982, in the United States District Court, Southern District, Brunswick Division, Georgia.

RAE, James Dilmus, Route 3, Phil Campbell, Alabama, convicted on November 22, 1968, in the United States District Court, Birmingham, Alabama.

REED, Charles W., 21270 Pitko, Mount Clemens, Michigan, convicted on July 8, 1947, in the Circuit Court, Macomb County, Michigan.

REKER, James Milo, 418 Carney Avenue, Mankato, Minnesota, convicted on April 16, 1979, in the 5th Judical District Court, Nobles County, Worthington, Minnesota.

RICHBURG, Ronald Lee, 80 Foal Drive, Fulton County, Roswell, Georgia, convicted on May 17, 1979, in the Middle District of Tennessee, Nashville Division.

ROBINSON, Charles Huston, Route 1, Box 495, Castlewood, Virginia, convicted on September 19, 1936, in the Circuit Court, Russell County, Virginia.

ROBINSON, Rodney Jay, 66 River Road, Tonasket, Washington, convicted on October 22, 1979, in the Superior Court, Okanogan County, Washington.

ROGERS, Billy Wayne, Route 4, Box 43, Paggot Road, Hopkins, South Carolina, convicted on April 29, 1977, in the Circuit Court, Christian County, Hopkinsville, Kentucky.

RUTTER, Lyle Wayne, Box 33, Limestone, Michigan, convicted on June 12, 1978, in the Circuit Court, St. Joseph County, St. Joseph, Michigan.

SCHIER, Robert Morton 888 East Clinton, Apartment 1088, Phoenix, Arizona, convicted on September 24, 1976, in the Superior Court, Maricopa County, Arizona.

SCHMIDT, Jerrell Jay, 124 West Missouri, Pierre, South Dakota, convicted on September 9, 1982, in the 6th Circuit Court, Pierre, South Dakota.

SCILLION, Bennie Dale, Route 1, Box 123 B, Boaz, Kentucky, convicted on June 3, 1980, in the Circuit Court, McCracken County, Paducah, Kentucky.

SCOTT, Kenneth Wayne, Route 3, Box 69, Kingsport, Tennessee, convicted on March 2, 1981, in the United States District Court, Greeneville, Tennessee.

SELLERS, Arthur Lee Jr., 301½ Clover Avenue, East Peoria Illinois, convicted on March 13, 1979, in the Circuit Court, Tazewell County, East Peoria, Illinois.

SERAFINO, Donald A., 17 Hanson Drive, Springfield, Massachusetts, convicted on May 11, 1961, in the Superior Court, Hampton County, Springfield, Massachusetts.

SHERMAN, James Ray, Route 1, Box 558 A, Springtown, Texas, convicted on July 30, 1962, in the Municipal Court, San Joaquin County, California.

SIMPSON, Dana Bruce, 109 Madison, Sedgewick, Kansas, convicted on October 20, 1970, in the United States District Court, Kansas.

SMITH Alonzo Dudley, 4901 Yellowstone, Apartment 2, Chubbuck, Idaho, convicted on August 11, 1978, in the Circuit Court, Umatilla County, Oregon.

STAMATOPULOS, Steven G., 27 Blaine Street, Allston, Massachusetts, convicted on January 24, 1978, in the District Court, Salem, Massachusetts.

STANDRING, Stephen Culpepper, 526 Pitkin Street, Fort Collins, Colorado, convicted on April 27, 1971, in the District Court, Larimer County, Fort Collins, Colorado.

STEED, Deven, Box 109, Knifley, Kentucky, convicted on November 19, 1979, in the Circuit Court, Taylor County, Campbellsville, Kentucky.

STEPHENS, Phillip Randolph, Route 3, Box 4, Clinton, Kentucky, convicted on September 20, 1979, in the Circuit Court, Calloway County, Murray, Kentucky.

STOKES, Douglas Wayne, Post Office Box 991, Colstrip, Montana, convicted on December 29, 1975, in the Superior Court, Silverbow County, Montana.

STOTTSBERRY, Paul H., Route 2, Box 32–B, Poteau, Oklahoma, convicted on July 25, 1978, in the United States District Court, Eastern Judicial District, Oklahoma.

STROZIER, Paul Lawrence, 2824 Northwood Avenue, Toledo, Ohio, convicted on January 14, 1972, in the Common Pleas Court, Lucas County, Ohio.

TATE, Terry Lee, Route 9, Box 283–E, Mount Airy, North Carolina, convicted on March 2, 1979, in the Superior Court, Surry County, North Carolina.

TAYLOR, Richard Wayne, 7105 Newcastle Place, Fort Worth, Texas, convicted on February 25, 1971, in the 185th District Court, Houston, Texas.

TERRY, Richard Clyde, Route 2, New Franklin Road, Post Office Box 2573, LaGrange, Georgia, convicted on August 11, 1971, in the Superior Court, Troup County, Georgia.

THEMAR, Rex Seldon, 105 Country Lane, Lake Dallas, Texas, convicted on April 16, 1982, in the United States District Court, Northern District, Texas.

TROLAND, John Thomas, Route 2, Box 601 A, Abilene, Texas, convicted on April 2, 1981, in the United States District Court, Northern District, Oklahoma.

TURNER, Willis Alexander, 300 South Princeton Avenue, Apartment 5, Lynchburg, Virginia, convicted on March 6, 1972, in the Lynchburg Corporation Court, Lynchburg, Virginia.

TYREE, Donnie R., Route 1, Box 102AAA, Gladstone, Virginia convicted on March 27, 1973, in the Circuit Court, Amherst County, Virginia.

VAN DE CASTLE, Edward Joseph, Jr., 1639 Wadsworth Way, Baltimore, Maryland, convicted on May 10, 1971, in the Municipal Court, Baltimore, Maryland.

VANEPS, Michael A., Box 387, Marble, Minnesota, convicted on August 18, 1978, in the District Court, Itasca County, Minnesota.

VIAL, Daniel Melvin, Post Office Box 750, Libby, Montana, convicted on June 26, 1981, in the Superior Court, Dallas, Texas.

VIAR, Danny Eric, Post Office Box 182, Ivanhoe, Virginia, convicted on May 9, 1975, in the Circuit Court, Wythe County, Virginia.

VIECELI, David J., 3006 South 49th Avenue, Omaha, Nebraska, convicted on November 2, 1982, in the District Court, Douglas County, Omaha, Nebraska.

VINING, Kelly Lavell, Jr., 60 #C, Colonial Drive, Monroe, Louisiana, convicted on March 5, 1979, in the Western District of Louisiana, Monroe, Louisiana.

WAGONER, Jesse Carlton, Post Office Box 412, Meadowbrook Lane, Martinsville, Virginia, convicted on January 2, 1957, in the Circuit Court, Franklin County, New York; and on September 20, 1973, in the United States Court, Western Judicial District, Roanoke Division, Virginia.

WALKER, Kenneth Wessley, 4801 Southeast 139th Street, Oklahoma City, Oklahoma, convicted on June 15, 1978, in the United States District Court, Oklahoma City, Oklahoma.

WALL, Hulon Avon, 1107 Xenia Street, Plainveiw, Texas, convicted on February 17, 1983, in the United States District Court, Austin, Texas.

WALLETTE, Walter James, North 3217 Nelson, Spokane, Washington, convicted on August 13, 1980, in the Superior Court, Spokane County, Washington.

WATTS, Larry Robert, Post Office Box 792, Boulder, Montana, convicted on December 16, 1976, in the Superior Court, Bannock County, Idaho.

WERNER, Alfred B., 5748 North Fairhill Street, Philadelphia, Pennsylvania, convicted on May 10, 1970, in the Municipal Court, Philadelphia, Pennsylvania.

WEST, Malcolm, Route 8, Box 11, Darks Mill Road, Columbia, Tennessee, convicted on May 23, 1980, in the United States District Court, Nashville, Tennessee; and on June 24, 1980, in the United States District Court, Nashville, Tennessee.

WEST, Virgil Edwin, Route 3, Box 296, Pryor, Oklahoma, convicted on June 28, 1982, in the United States District Court, Tulsa, Oklahoma.

WHITE, James Alfred, 2056 South Petersburg, Valley Springs, California, convicted on December 22, 1980, in the Superior Court, Calaveras County, California.

WHITE, Worth Dewayne, 4567 Hill Street Southeast, Smyrna, Georgia, convicted on April 5, 1976, in the Shelby County Court, Shelby County, Tennessee.

WILLIAMS, Wayne R., Route 1, Box 253, Madill, Oklahoma, convicted on July 1981, Eastern Judicial District, Oklahoma.

WILSON, William Arthur, Route 2, Box 5336, Wheatland, Wyoming, convicted on January 18, 1977, in the Second Judicial District Court, Wyoming.

WISE, Peter N., Sr., Post Office Box 164, Broad Run Road, Landenberg, Pennsylvania, convicted on August 18, 1961, in the Lancaster County Court, Lancaster, Oregon.

WORSLEY, Richard Edward, 3111 Arlington Place, Portsmouth, Virginia, convicted on July 9, 1973, in the Circuit Court, Portsmouth, Virginia.

WYLIE, Jay Michael, 202 Radio Road, Pearl River, Louisiana, convicted on July 16, 1981, in the Jefferson Parish, Louisiana.

WYLIE, Samuel M. III, Route 1, Box 49–C, Wadley, Alabama convicted on November 24, 1980, in the United States District Court, Montgomery, Alabama.

YALE, Stewart Irvin, 2433 Jenner Avenue, Bremerton, Washington, convicted on September 26, 1977, in the Superior Court, Kitsap County, Washington.

YANT, Brian James, 1320 Peach Street, Lincoln, Nebraska, convicted on November 1, 1977, in the District Court, Washington, County, Breham, Texas.

YOUSIF, Zouhair, 28841 Bella Vista, Farmington Hills, Michigan, convicted on November 12, 1982, in the United States District Court, Detroit, Michigan.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: May 28, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-13217 Filed 5-31-85; 8:45 am]

BILLING CODE 4910-31-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 106
Monday, June 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Tuesday, June 4, 1985, Following Public Hearing on Fiscal Year 1987 Priorities.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Fiscal year 1986 Operating Plan.

The Commission will consider the 1986 Operating Plan.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Sheldon D. Butts,

Deputy Secretary.

May 29, 1985.

[FR Doc. 85–13237, Filed 5–29–85; 5:06 pm]

BILLING CODE 6355–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

May 31, 1985.

The Federal Communications Commission [1] will hold an Open Meeting on the subjects listed below on Friday, June 7, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No. and Subject

Common Carrier—1—Title: By Direction Letter, requesting recommendations from the Alaska Public Utilities Commission. Summary: A request for recommendations from the Alaska Public Utilities Commission regarding an appropriate policy governing the ownership and operation of toll interconnect facilities in Alaska's Bush communities.

Common Carrier—2—Title: Petition for Declaratory Ruling filed by Ameritech Mobile Communications, Inc. Summary: The Commission will consider a Petition for Declaratory Ruling requesting the elimination of the cellular Headstart Doctrine.

Mass Media—1—Title: Amendment of Parts 73 and 97 of the Commission's Rules Concerning Rebroadcasts of Transmissions of Nonbroadcast Radio Stations. Summary: The Commission will consider a *Report and Order* concerning revisions to its rules for rebroadcasts of transmissions of nonbroadcast radio stations (BC Docket 79–47).

Mass Media—2—Title: Reexamination of "Single Majority Stockholder" and the "Minority Incentive" Provisions of Section 73.3555 of the Commission's Rules and Regulations. Summary: The Commission will consider issuing a Notice of Proposed Rule Making to review the interrelationship between the "Single Majority Stockholder" and the "Minority Incentive" provisions of the media multiple ownership rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 13390 Filed 5–30–85; 3:33 pm]

BILLING CODE 6712–01–M

[1] The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

3

FEDERAL ENERGY REGULATORY COMMISSION

May 23, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C 552b:

TIME AND DATE: Approximately 1:00 (following open meeting) May 30, 1985.

PLACE: 825 North capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTER TO BE CONSIDERED:

(1) Oroville-Wyandotte Irrigation District.
(2) Deep River Hydro, Inc.
(3) Clifton Power Corporation, Docket Nos. IN84–1–000 and EL84–3–000.
(4) Applied Energy Services, Inc., v. Oklahoma Corporation Commission, Docket No. EL85–25–000.
(5) F.G. Holl.
(6) Mid-Louisiana Gas Company.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13258 Filed 5–30–85; 10:57 pm]

BILLING CODE 6717–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 29, 1985.

TIME AND DATE: 10:00 a.m., Thursday, June 6, 1985.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. The Secretary of Labor, MSHA on behalf of Robert A. Ribel v. Eastern Associated Coal Corp., Docket No. WEVA 84–33–D. (Issues include whether the administrative law judge properly concluded that the operator discharged the miner in violation of the Mine Act and whether the judge properly denied attorney fees to the miner's privately retained counsel.)

TIME AND PLACE: Immediately following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above listed item.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any

handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–13353 filed 5–30–85; 12:23 pm]

BILLING CODE 6735–01–M

5

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 11:00 a.m., June 6, 1985.

PLACE: 1201 Connecticut Avenue, NW., Washington, D.C. 20036.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 15405, Mar. 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Walter R. Roberts Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, D.C. 20036, 202–254–8040.

Walter R. Roberts,

Executive Director.

[FR Doc. 85–13329 Filed 5–30–85; 12:01 pm]

BILLING CODE 6155–01–M

6

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

Matters to be considered:

Open Session

I. Call to Order
II. Resolution to Close Meeting

Closed Session

III. Great Plains—Negotiation Strategy

TIME AND DATE: 11:30 a.m., June 3, 1985.

PLACE: 2121 K Street, NW., Room 503 Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. March Coleman, Assistant General Counsel-Corporate & Litigation, at (202) 822–6571.

U.S. Synthetic Fuels Corporation.

March Coleman,

Assistant General Cournsel—Corporate & Litigation.

May 31, 1985.

[FR Doc. 85–13483 Filed 6–31–85; 11:24 am]

BILLING CODE 0000–00–M

federal register

Monday
June 3, 1985

Part II

Environmental Protection Agency

40 CFR Part 133
Secondary Treatment Regulation, Final Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 133

[WH-FRL-2799-8]

Secondary Treatment Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On September 20, 1984, the EPA published in the **Federal Register** (49 FR 36986—37009) amendments to the secondary treatment regulation (40 CFR Part 133) and related revisions of the National Pollutant Discharge Elimination System (NPDES) Permit requirements (40 CFR Part 122). In addition, EPA issued on the same date (September 20, 1984) a notice soliciting additional public comment on the issue of modifying the percent removal requirement of the secondary treatment regulation (49 FR 37010—37014). The Agency has reviewed all comments and is today promulgating final amendments to the percent removal requirements.

EFFECTIVE DATE: In accordance with 40 CFR 100.01 (45 FR 26048–4/17/80), this regulation will be considered issued for purposes of judicial review at 1:00 pm Eastern time June 17, 1985. The final regulation shall become effective July 17, 1985. In order to assist EPA with correcting any typographical errors, incorrect cross references, and similar technical errors, comments of a technical or nonsubstantive nature on the final regulation may be submitted on or before August 5, 1985. The effective date of this regulation will not be delayed by consideration of such comments.

Under section 509(b)(1) of the Clean Water Act (the Act), any petition for judicial review of this regulation must be filed in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Act, the regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce its requirements.

ADDRESSES: The record for this rulemaking will be available for public review in the EPA's Public Information Reference Unit, Room 2004, 401 M St., Washington, D.C., 20460. Copies of the "Technical Support Document for Regulations under Section 304(d)(4)," may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487–6000.

FOR FURTHER INFORMATION CONTACT: James Wheeler, Municipal Facilities Division (WH–595), Environmental Protection Agency, Washington, D.C., 20460, (202) 382–7369.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section of this preamble describes the legal authority and background for these amendments, summarizes the final amendments, responds to public comments received on the proposed rulemaking, and gives highlights on implementation of the regulation as amended. The abbreviations, acronyms and other terms used in the **SUPPLEMENTARY INFORMATION** section are defined in Appendix A of this notice.

A more detailed discussion of the data collection and analysis which supports all of the amendments to the secondary treatment regulations may be found in the **Federal Register** notices for the proposed and final amendments (48 FR 52258–11/16/83, 48 FR 52272–11/16/83 and 49 FR 36986–9/20/84). This information is still pertinent, but is not reprinted to avoid duplication. These notices should be consulted for further information on these topics.

Information in this preamble is presented in the following order:

I. Introduction
  A. Statutory Authority
  B. Previous Regulation
  C. Request for comments on Preferred Options to Amend the Percent Removal Requirements (November 16, 1983).
  D. Additional Request for comments on the Selected Options to Amend the Percent Removal Requirements (September 20, 1984).
II. Summary of Final Regulation
III. Response to Comments on the Proposed September 20, 1984 Amendments to the Percentage Removal Requirements
IV. Process for Revising NPDES Permits
  A. General Discussion
  B. Impact of Percent Removal Requirements
V. Regulatory Review
  A. Executive Order 12291
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act

List of Subjects

Appendix A.—Abbreviations, Acronyms and terms used in this notice.

I. Introduction

A. Statutory Authority

Section 301(b)(1)(B) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(b)(1)(B), requires that publicly owned treatment works (POTWs) achieve effluent limitations based upon secondary treatment as defined by the Administrator of EPA pursuant to section 304(d)(1) of the Act. Section 304(d)(1), 33 U.S.C. 1314(d)(1), requires that the Administrator publish information on the degree of effluent reduction attainable through the application of secondary treatment within 60 days of enactment and from time to time thereafter.

B. Previous Regulation

Final amendments to the secondary treatment regulation were promulgated on September 20, 1984 (49 FR 37006). That regulation includes: (1) A definition of secondary treatment; (2) a definition of "significant biological treatment;" (3) a definition of "facilities eligible for treatment equivalent to secondary treatment;" and (4) provisions which define the effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment.

The final rulemaking also provided permitting authorities the option to substitute $CBOD_5$ for BOD_5 by: (1) Defining the level of effluent quality achievable by application of secondary treatment in terms of $CBOD_5$, and (2) allowing the $CBOD_5$ parameter to be used for setting effluent limitations for treatment equivalent to secondary treatment.

C. Request for Comments on Proposed Options to Amend the Percent Removal Requirements (November 16, 1983)

In the Preamble of the November 16, 1983 Notice of Proposed Rulemaking (48 FR 52258), the Agency requested information on any problems caused by the existing 85 percent removal requirement which is part of the definition of secondary treatment (40 CFR Part 133). In addition, the Agency solicited comments on five options for modifying the percent removal requirement.

The percent removal requirements were originally established to achieve two basic objectives: (1) To encourage municipalities to correct excessive infiltration/inflow (I/I) problems in their sanitary sewer systems, and (2) to help prevent intentional dilution of influent wastewater as a means of meeting permit limits. The Agency retains these objectives, but recognized the need for adjustment of the percent removal requirements in some cases. This need was reflected in the findings of the Agency's 1978 study of the I/I programs which concluded that: (1) The I/I program had not been as successful in reducing excessive I/I as expected; (2) many treatment systems without excessive I/I have influent strengths of less than 200 mg/l for BOD and SS; (3) certain treatment technologies cannot achieve 85 percent removal under all conditions; and (4) retention of the

current percent removal requirement could cause overly stringent levels of treatment and use of expensive advanced treatment processes in some cases.

Based on these conclusions, the Agency developed and proposed the following five options, expressing a preference of either Option 1 or 4.

(1) Eliminate the mandatory requirement, but provide substitute language allowing and NPDES permitting authority to establish percent removal requirements for BOD_5 and SS;

(2) Modify the requirement so that it applies on an annual average basis instead of applying on a 30-day average basis;

(3) Modify the requirement to provide for a percent removal of BOD_5 and SS on a 30-day average that is less than 85 percent;

(4) Retain the 85 percent removal requirement, but allow the substitution of either a flow limit or a mass loading limit for BOD_5 and SS; and

(5) Determine percentage removal requirements on a case-by-case basis using the design removal efficiency for BOD_5 and SS.

The Agency supported Option 1 because it provided the permitting authority the greatest flexibility in adjusting the percent removal requirement for facilities that are meeting 30 mg/L BOD_5 and SS, but that cannot meet the percent removal requirement. The Agency supported Option 4 because retaining the 85 percent removal requirement, except for case-by-case substitution of flow or mass loading limits, would provide flexibility and, at the same time, encourage cost effective I/I reduction. Under both Options 1 and 4, the percent removal requirement would remain unchanged for those facilities that do not need relief.

D. Additional Request for Comments on the Selected Option to Amend the Percent Removal Requirements (September 20, 1984)

The overwhelming consensus of commenters on the November 1983 notice favored providing relief from the percent removal requirement, either by eliminating its mandatory application (Option 1) or by allowing substitution on a case-by-case basis of a flow limit or mass loading limit (Option 4). This consensus recognized that the original objective of the percent removal requirement, to encourage correction of excessive I/I, could be achieved more effectively through one of the above options.

Some commenters stated that all of the options for modifying the percent removal requirement (with the possible exception of Option 4) would cause an increase in the permissible discharge of BOD_5 and SS. They believed that the discharger, not the permitting authority, should show that the increase in BOD_5 and SS resulting from adjustment of percent removal requirements would not cause water quality problems. Some commenters noted that EPA must propose a specific percent removal amendment in the **Federal Register** before promulgating a final rule.

Based on the comments received on the proposed options and further Agency study of the issue, the Agency proposed selection of Option 4, modified to delete flow limits, as an amendment of the percent removal requirements in 40 CFR Part 133. On September 20, 1984, the Agency published a notice discussing the proposed option and soliciting additional public comments thereon (49 FR 37010–37014).

II. Summary of Final Regulation

Today's final rulemaking includes the following provisions:

—Requires a thirty (30) day average of not less than 85 percent removal for BOD_5, $CBOD_5$ and SS for conventional secondary treatment processes (e.g., conventional activated sludge treatment).

—Requires a thirty (30) day average of not less than 65 percent removal for BOD_5, $CBOD_5$ and SS (except SS limits for waste stabilization ponds) for treatment processes equivalent to secondary treatment (e.g., trickling filters).

—Provides special consideration for lowering the percent removal requirements or for substituting a mass limit for percent removal for certain POTW's that cannot meet the minimum percent removal due to less concentrated influent conditions.

—Treatment plants can apply for a permit adjustment in percent removal under this special consideration only if: (1) The treatment plant is consistently meeting or will consistently meet (for new plant) its other permit effluent concentration limitations, but its percent removal requirements cannot be met due to less concentrated influent; (2) to meet the percent removal requirement would require significantly more stringent effluent limitations than would otherwise be required by the concentration based standard; and (3) the less concentrated influent is not the result of "excessive" I/I.

Today's rulemaking also promulgates the percent removal requirements for treatment equivalent to secondary as final amendments. Those amendments (§ 133.105(a)(3), (b)(3), and (c)(1) (iii)) were published in interim final amendments in the September 20, 1984 rulemaking because the Agency was soliciting additional public comments on the percent removal requirement (49 FR 36986–9/20/84, 37007–9/20/84). The 65 percent removal requirements published as interim final amendments are being promulgated as final amendments in today's rulemaking.

III. Response to Additional Comments on the proposed September 20, 1984 Amendment to the Percentage Removal Requirements

The Agency has responded to all comments, which are available for inspection at EPA's Central Docket. Comments received on the original Notice of Proposed Rulemaking (48 FR 52258–11/16/83) were addressed in the Preamble of the September 20, 1984, request for additional comments (49 FR 3701–9/20/84), but were also considered in this final rulemaking. This section of the preamble will set out and address only the additional comments received on the September 20, 1984 notice.

(1) One commenter suggested that the 85 percent removal criterion be eliminated. This was based on the demonstrated ability of conventional secondary treatment processes to reliably achieve 30/30 mg/1 effluent BOD_5 and SS levels with normal domestic influent loading of 125 to 250 mg/1, and on the lack of direct correlation between influent strength and effluent quality.

The Agency does not concur. The Agency believes that most properly designed and operated secondary treatment plants can and should achieve 85 percent removal, or (a minimum) 65 percent removal in the case of treatment equivalent to secondary, over a wide range of influent conditions. Unnecessarily eliminating these requirements on a blanket basis could lead to less treatment in some cases and increased discharge of pollutants. These amendments, however, provide the flexibility to lower the percent removal requirement or substitute a mass limit in appropriate cases where the otherwise applicable percent removal cannot be achieved without advanced treatment due to less concentrated influent conditions.

(2) One commenter suggested dropping the use of the definition of excessive I/I found in 40 CFR 35.2005(b)(16) of the Construction Grant

Regulations and the additional criterion for non-excessive inflow of less than 275 gallons per capita per day (gpcpd) from the proposed secondary regulation. The commenter believes this amendment would lead to required I/I evaluations for many small communities where the I/I problems are well known but where I/I studies may not have been formally completed.

The Agency understands the commenter's concern but unnecessary I/I evaluations can be avoided without changing the definition. Sewer system evaluations of I/I are required to satisfy the construction grant requirements for funding. This amendment does not require new sewer system evaluations for every plant. All treatment facilities that have received, or will apply for construction grant assistance, must meet the requirements of the applicable construction grant regulations for demonstrating non-excessive I/I. The construction grant regulations apply to many treatment facilities that may be eligible for a change in the percent removal limit under this amendment. These regulations require demonstration by the grantee that the sewer system is not or will not be subject to "excessive" I/I in accordance with 40 CFR 35.2005(b)(c). These provisions set limits, including 120 gpcpd for base flow plus infiltration and 275 gpcpd for base flow plus infiltration plus inflow to be used as initial screening levels to check the separate sewer system for excessive I/I and to determine if additional evaluation is needed before a grant is awarded. If non-excessive flows were determined correctly, provided no major changes have occurred in the sewer system, then the previous grant determination will satisfy the non-excessive I/I requirements of (§ 133.103(d)(3)).

Non-grant funded treatment facilities and facilities funded before I/I requirements were imposed must either meet the 120 gpcpd and 275 gpcpd criteria for non-excessive I/I or demonstrate to the satisfaction of the permitting authority that the higher flows with less concentrated influent are not the result of excessive I/I. For example, plants with base flows and infiltration rates of less than 120 gpcpd and peak storm flows of less than 275 gpcpd would normally satisfy the requirements of § 133.103(d)(3). These flows can generally be obtained by simple flow monitoring and population calculations. Plants with less concentrated effluents and flows significantly higher than the 120 gpcpd and 275 gpcpd criteria must demonstrate to the permitting authority that the less concentrated influent are not the result of excessive I/I and do not cause chronic operating problems. This demonstration should include information on the condition of the sewer system, flow monitoring data, and reasons for the high flows. In most of these cases, a full sewer system evaluation survey and rehabilitation/correction plan would not be necessary.

(3) Another commenter recommended elimination of the percent removal requirement at the discretion of the permitting authority. This was based on a concern that the permitting authority needed more flexibility in dealing with complex problems, and the additional requirements that might be placed on municipalities to submit documents on I/I as defined in 40 CFR 35.2005(b)(16).

The Agency does not concur with this comment for the reasons discussed above. Also, to ensure the equity of the permit system, criteria must be established as a basis for adjusting the permit and applied to all cases. The Agency believes that the 120 gpcpd and 275 gpcpd flow criteria discussed above are reasonable and fair means of determining excessive I/I.

We note that by definition it is always cost-effective to remove excessive I/I. Therefore, locating and eliminating excessive I/I would benefit the community through cost savings realized over the long run. The final regulation encourages communities to eliminate excessive flows, and at the same time, gives the permitting authorities the flexibility necessary to deal with unusual situations.

(4) One commenter asked how the excessive infiltration requirements defined in 40 CFR 35.2120(c)(2)(i), would be applied to a treatment plant currently under construction and whether such plants would be required to eliminate excessive infiltration even though the plant had been designed to treat the flows and infiltration reduction had been found non-cost-effective.

A treatment plant currently under construction may be eligible for percent removal adjustment under this amendment if it meets all of the necessary conditions. For plants that have not yet completed construction, the permittee must satisfactorily demonstrate that the facility will consistently meet its other permit effluent concentration limits, but that its percent removal requirements cannot be met due to less concentrated influent. The permittee must also demonstrate that to meet the percent removal requirements the treatment works would have to provide significantly lower effluent concentrations (a difference of more than 5 mg/1 BOD_5) than would otherwise be required by the concentration based standard or would require significant construction or other significant capital expenditures. In addition, the permittee must demonstrate that the less concentrated influent is not due to "excessive" I/I.

If the plant was grant funded, the permittee should have already demonstrated that the less concentrated influent was not due to "excessive" I/I, and no additional information should be required to meet the flow conditions for permit adjustment under this amendment. If the plant were not grant funded, then the permittee must provide information as required by the permitting authority to show that the I/I is non-excessive before the percent removal requirements can be adjusted under this amendment.

(5) One commenter recommended that the proposed regulation allowing an optional mass limit be deleted. This was based on the contention that the proposed substitution conflicts with current NPDES permit regulations (40 CFR 122.45(b)(1) and (f)) which require permits to include mass loading limits based on design flow.

The Agency agrees that mass flow limits are based on design flow. The special condition, however, does not conflict with the Part 122 regulations. If mass limits as well as the required concentration limits are included in the POTW's permit, they must be based on the design flow (40 CFR 122.45(b)(1)). If the permitting authority decides to adjust the percent removal requirement, in accordance with these amendments, an adjusted percent removal limit based upon actual plant performance, or expected performance (for new plants) must be calculated. This percent removal can then be converted into a mass limit using the influent concentration values the design flow or existing mass loading. The permitting authority can insert the adjusted mass limit in the permit, in lieu of the percent removal requirement, if it so desires. The permit modification procedures under 40 CFR 122.62(a)(3) must be followed unless the permit has expired or a new discharge permit is being issued. Where concentration limits are also expressed as a mass limit in the current permit, the adjusted percent removal can be implemented by adjusting the mass limit.

(6) Another commenter expressed concern about the change in wording from the original preferred option (November 16, 1983, FR 52770) which allowed "substituting the percent removal requirements with either a flow

or mass loading limit." The commenter noted that the proposed regulation allows "substituting the percent removal with either a lower percent removal or a mass loading limit." The commenter was concerned that, without a flow limit, some communities with high I/I flows would be able to meet the permit limits for concentration and mass loading limits because of the dilution effect of the I/I.

The Agency dropped the substitution of a flow limit in place of the percent removal because it is not an appropriate substitution for the effluent quality based secondary treatment standards. Both percent removal and mass limits address the quality of the effluent (i.e., percent of the pollutant removed or pounds of pollutant discharged). A flow limit, on the other hand deals only with quantity (i.e., amount of water discharged).

Treatment plants that experience a dilution effect of I/I, and cannot meet the effluent concentration requirements or plants that have low influent concentrations due to excessive I/I are not eligible for permit adjustment under these amendments. These amendments only allow the permitting authority to adjust percent removal or substitute a mass loading limit for percent removal.

Although flow limits are not a requirement of these amendments, neither this amendment nor the NPDES regulation prohibits inclusion of an influent or effluent flow limit as a condition of the permit.

(7) One commenter noted that neither the response to comments nor the secondary treatment regulation addresses treatment works which handle large increases in wet weather flows from separate sewers with prohibitive costs for either sewer rehabilitation or treatment. In this case, sewer overflows do not meet the concentration limits for secondary treatment.

The Agency agrees that this final regulation does not apply to the commenter's case because it allows adjustment only of the percentage removal requirement and not the concentration limits of BOD_5 and SS. Under the final secondary treatment and construction grant regulations, these concentration limits must be met either through rehabilitating the sewer system to prevent overflows and bypasses or conveying and treating these flows.

(8) Another commenter requested clarification of the proposed special condition (40 CFR 133.103(d)) to confirm that it applies only to separate sanitary sewer systems and not combined sewers.

The Agency concurs and has added the words "in Separate Sewers" to the title of the special condition.

(9) Another commenter recommended that the percent removal requirement for secondary treatment include an absolute minimum percent limit. This suggestion recognizes that the typical treatment level for high rates of inflow is primary settling and that, on this basis, the minimum removal should be 50–60 percent.

The Agency agrees that primary settling processes can achieve 50–60 percent BOD removal under normal flow conditions. However, such removal may not always be attained during high flow periods. Further, it would not be appropriate to set a minimum value for secondary treatment based on the performance of a primary treatment process. We thus believe that the permitting authority should have sufficient flexibility to adjust the 85 or 65 percent removal requirements on a case-by-case basis without the constraint of an arbitrary percentage floor.

IV. Process for Revising NPDES Permits

A. General Discussion

Under this final rule, NPDES permitting authorities would be allowed to modify the percent removal requirement in existing secondary treatment permits on a case-by-case basis, based on the removal capability of the treatment plant, influent wastewater concentration and the I/I situation. The concentration limits in the permit would remain unchanged.

Due to the number of municipal permits that could potentially be impacted by this regulation, the preferred method of implementation would be to revise the percent removal limitation during the normal period for permit reissuance. Permittees who wish to request permit modification prior to reissuance may do so, but must submit their requests for modification within 90 days of the effective date of this regulation (40 CFR 122.62).

In no case shall a permit be adjusted where the permitting authority determines that adverse water quality impacts will result from a change in permit limits. The Agency's NPDES permit regulations already require that any permit effluent limitations result in compliance with applicable water quality standards, state effluent requirements, and other provisions of the Act (40 CFR 122.44 and 40 CFR 124.53).

B. Impact of the Percent Removal Requirements

In addition to providing requirements for percent removal for secondary treatment and for treatment equivalent to secondary treatment, these amendments also provide special consideration for the adjustment in the percent removal for facilities with less concentrated influent. In order to be eligible for a permit adjustment for percent removal these facilities must meet all of the requirements in section 133.103(d) which requires the permittee to demonstrate that: (1) It is meeting, or will meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated wastewater influent; (2) to meet the percent removal requirements, it would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards and (3) the less concentrated influent is not due to excessive I/I.

The term "significantly more stringent limitations" is defined in the new paragraph § 133.101(m) to mean: (1) BOD_5 and SS limitations necessary to meet the percent removal requirement would have to be at least 5 mg/1 more stringent than the otherwise applicable concentration-based limitations (e.g., less than 25 mg/1 in the case of the secondary treatment limits for BOD_5 and SS), or (2) the percent removal limitations in §§ 133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditure. Costs for operation, maintenance or replacement (as defined in 40 CFR 35.2005(b)(30)&(36)) necessary to meet the applicable percent removal requirements would not be grounds for consideration of an adjustment.

Although these provisions would allow the percent removal requirement for equivalent technologies to be adjusted below 65 percent in certain extreme cases where very dilute influents occur during wet seasons, the 65 percent removal criterion would still be used in determining whether a facility is providing "significant biological treatment" (40 CFR 133.101(k)).

If a treatment facility would not have to "achieve significantly more stringent limitations" (as defined above) in order to meet its percent removal requirements, the treatment works would have to meet the applicable percent removal requirement (i.e., 85 percent or 65 percent, respectively). Agency experience has shown that well

designed, operated and maintained secondary and equivalent facilities which are otherwise meeting their BOD_5 and SS concentration limits generally will be able to achieve somewhat more stringent limitations without using advanced treatment processes. For example, activated sludge processes, operated at or under their design loadings, are generally capable of achieving effluents of at least 25 mg/l for BOD and SS, particularly when the influent concentrations for these parameters are less than 200 mg/l.

To show that the less concentrated influent wastewater is not the result of excessive I/I, the POTW authority would be required to submit information to the permitting authority that documents the flow to the facility (based on representative facility flow records and discharge monitoring reports) and the population of the service area. A minimum of one year of plant data which covers all seasons should be submitted to the permitting authority to verify the influent wastewater concentration and I/I situation. This information must demonstrate that the influent flows do not exceed the 120 and 275 gpcpd criteria applied to non-excessive infiltration and non-excessive inflow. Should the flows exceed either of these criteria, the demonstration of non-excessive I/I must include information satisfactory to the permitting authority on the condition of the sewer system and reasons infiltration or inflow cannot be reduced cost effectively. Information submitted for either of the above cases must verify that the facility does not have chronic operational problems due to hydraulic overloading.

Treatment facilities that have received or will receive construction grant assistance must comply with all of the applicable grant conditions including demonstration that the facility is not or will not be subject to "excessive" I/I (40 CFR 35.2005(b)(15). If the non-excessive flow were determined correctly, provided no major changes have occurred in the sewer system, then the previous grant determination should satisfy the non-excessive I/I requirements of this amendment.

Non-grant funded treatment facilities and facilities funded before I/I requirements were imposed must, nevertheless, either meet the 120 gpcpd and 275 gpcpd criteria for non-excessive I/I or demonstrate to the satisfaction of the permitting authority that the higher flows with less concentrated influent are not the result of "excessive" I/I. This does not mean that full sewer system analysis would be required.

The following guidance on conducting a sewer evaluation survey and cost-effectiveness analysis has been published by EPA: The 1975 "Handbook for Sewer System Evaluation and Rehabilitation" (EPA 430/9–75–021), "Construction Grants 1985 (CG–85)" (EPA 430–9–84–004) and "Handbook of Procedures" (EPA 430/9–84–003). This guidance is available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

When adjusting the percent removal requirement for a particular facility, the permitting authority would base the revised percent removal requirement or mass loading on the values achievable through proper operation and maintenance of the facility. In cases where less concentrated influents are a result of seasonal increases in flow, the permitting authority should consider seasonal permit limits with an adjusted percent removal requirement only during those periods when increased flows or lower influent concentrations are occurring (e.g., lower percent removal or mass limits would apply only during certain months). An example of such a condition is the seasonal increase in flow from the elevated groundwater levels during wet seasons.

This final rule recognizes that the percent removal requirement is a valuable regulatory tool but will allow for substitution of a lower percent removal or a mass loading limit since either can represent a given effluent quality. This flexibility provides relief to facilities that are experiencing various degrees of less concentrated influent and cannot meet the present percent removal requirement without significant additional construction.

The Agency believes that this amendment will better reflect the influent strengths actually occurring and recognizes the limited effectiveness of I/I correction. There will be greater flexibility given to the permitting authority by allowing use of case-by-case analysis to adjust the percent removal requirements where the 85 percent requirement cannot be met. This case-by-case analysis has been successful in allowing special consideration for adjusting percent removal requirements for combined sewer systems (§ 133.103(a)).

Under these amendments the adjustments of the percent removal requirements in NPDES permits would be made on a case-by-case basis, based on the removal capability of the POTW, influent wastewater concentration and the I/I situation. The concentration limits in the permit would remain the same.

Where concentration limits are also expressed as a mass limit in the current permit, the adjusted percent removal limit can be implemented by adjusting the mass limit.

V. Regulatory Reviews

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the regulation impact analysis requirements of the Order or whether it may follow other development procedures. The Agency has determined that this regulation is not a major rule within the scope of E.O. 12291. This final rulemaking was submitted to the Office of Management and Budget (OMB) for review as required under E.O. 12291.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit a copy of any proposed rule which contains a collection of information requirement to the Director of OMB for review and approval. The Agency determined that this regulation does not significantly increase the data collection of information requirements (OMB Control Number 2040–0051).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA to assess the impact of its regulatory proposals on "small entities." No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The secondary treatment amendments promulgated today will allow permitting authorities to modify percent removal requirements for some small communities. Where requirements are modified, the operation and maintenance costs of existing facilities may be reduced. The estimates of the ultimate benefits that will accrue to small communities as a result of these amendments are uncertain because of the flexibility provided and inherent resulting difficulties in estimating cost impacts. Although precise quantification of costs and benefits is not possible, the Agency believes that this rulemaking will result in cost savings.

The Agency believes that today's regulation will not result in any significant economic impact on small communities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that

this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 133

Publicly owned treatment works, Waste treatment and disposal, Water pollution control.

Dated: May 13, 1985.

Lee M. Thomas,

Administrator.

Appendix A—Abbreviations, Acronyms and Terms Used in This Notice

Act—The Clean Water Act.
Agency—The United States Environmental Protection Agency.
BOD—A pollutant parameter for the biochemical oxygen demand of wastewater, which typically includes both a carbonaceous and a nitrogenous portion.
BOD_5—The BOD exerted in a 5-day period.
CBOD—The carbonaceous portion of the BOD of wastewater.
$CBOD_5$—The CBOD exerted in a 5-day period.
CG–85—EPA guidance document entitled "Construction Grants—1985, July 1984."
CWA—The Clean Water Act.
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217) and the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97–117).
EPA—The United States Environmental Protection Agency.
gpcpd—Gallons per capita per day.
I/I—Infiltration and inflow.
mgd—Millions gallons per day.
mg/l—Milligrams per liter.
NBOD—The nitrogenous portion of the BOD of wastewater.
NPDES permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.
OMB—Office of Management and Budget.
POTW—Publicly owned treatment works.
SS—Suspended solids.
TF—Trickling filter.
Technical Support Document—"Technical Support Document for Regulations under section 304(d)(4)."
WSP—Waste stabilization pond.
1981 Amendments—The Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97–117).

For the reasons set forth in the preamble, EPA is amending 40 CFR, Part 133 as follows:

PART 133—SECONDARY TREATMENT REGULATION

1. The authority section in Part 133 reads as follows:

Authority: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501 of the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981; 33 U.S.C. 1311(b)(1)(B), 1314(d) (1) and (4), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117.

2. Section 133.101 is amended by adding the new paragraphs (m) and (n) as follows:

§ 133.101 Definitions.

* * * * *

(m) "Significantly more stringent limitation" means BOD_5 and SS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations (e.g., less than 25 mg/l in the case of the secondary treatment limits for BOD_5 and SS), or the percent removal limitations in §§ 133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditure.

(n) "State Director" means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director.

3. Section 133.102 is not amended by this action, but the percent removal requirements for secondary treatment are restated here for completeness:

§ 133.102 Secondary Treatment.

* * * * *

(a) * * *

(3) The 30-day average percent removal shall not be less than 85%.

(4) * * * (iii) The 30-day average percent removal shall not be less than 85%.

(b) * * *

(3) The 30-day average percent removal shall not be less than 85%.

4. Section 133.103 is amended by adding a new paragraph (d) as follows:

§ 133.103 Special Considerations.

* * * * *

(d) *Less Concentrated Influent Wastewater For Separate Sewers.* The Regional Administrator or, if appropriate, State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 102.105(a)(3), 133.105(b)(3) and 133.105(e)(4)(iii) provided that the permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater, (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards, and (3) the less concentrated influent wastewater is not the result of excessive I/I. The determination of whether the less concentrated wastewater is the result of excessive I/I will use the definition of excessive I/I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

[FR Doc. 85–12970 Filed 5–31–85; 8:45 am]

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June 3, 1985

Part III

Department of Education

34 CFR Part 650

National Graduate Fellows Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 650

National Graduate Fellows Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to govern the National Graduate Fellows Program. The regulations are needed to implement Title IX, Part C of the Higher Education Act of 1965, as amended by the Education Amendments of 1980, 20 U.S.C. 1134h–1134k. These regulations specify how an individual applies for a fellowship, what conditions must be met by a fellow for continued eligibility, and how the amount of a fellowship will be determined. In addition, these regulations describe the responsibilities of the National Graduate Fellows Program Fellowship Board (the Fellowship Board).

DATES: Comments must be received on or before July 3, 1985.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Joel D. West, Chairman, National Graduate Fellows Program Task Force, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB–3), 400 Maryland Avenue SW., Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Charles Griffith, Director, Division of Higher Education Incentive Programs, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB–3) 400 Maryland Avenue SW., Washington, D.C. 20202, telephone (202) 245–3253.

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program is authorized under Title IX, Part C, of the Higher Education Act of 1965, as amended. The statute provides for fellowships to be awarded to students to study at the doctoral level in selected fields of the humanities, arts and social sciences. Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program are vested in the Fellowship Board. The Fellowship Board is composed of individual representatives of both public and private institutions of higher education appointed by the President. The proposed regulations do not establish rules on matters for which the Fellowship Board has responsibility.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This program awards fellowships to students for study at the doctoral level in selected fields. Individuals are not considered to be small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

Section 650.44(b) contains information collection requirements. As required by section 350(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3022, ROB–3, 7th and D Streets SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and Universities, Education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.173; National Graduate Fellows Program)

Dated: May 30, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 650 to read as follows:

PART 650—NATIONAL GRADUATE FELLOWS PROGRAM

Subpart A—General

Sec.
650.1 What is the National Graduate Fellows Program?
650.2 Who is eligible to apply for a fellowship under this program?
650.3 What regulations apply to the National Graduate Fellows program?
650.4 What definitions apply to the National Graduate Fellows program?
650.5 What does a fellowship award include?

Subpart B—How Does an Individual Apply for a Fellowship?

650.10 How does an individual apply for a fellowship?

Subpart C—How Are Fellows Selected?

650.20 What are the selection procedures?

Subpart D—What Conditions Must Be Met by Fellows?

650.30 Where may fellows study?
650.31 What is the duration of fellowship?
650.32 What conditions must be met by fellows?
650.33 May fellowship tenure be interrupted?
650.34 May fellows make changes in institution or field of study?
650.35 What records and reports are required from fellows?

Subpart E—What Are the Administrative Responsibilities of the Institution?

650.40 What institutional agreements are needed?
650.41 How are institutional allowances to be administered?

Sec.
650.42 How are stipends to be administered?
650.43 How are disbursement and return of funds made?
650.44 What records and reports are required from institutions?

Authority: Part C of Title IX of the Higher Education Act, as amended by Pub. L. 96–374, 94 Stat. 1367 (20 U.S.C. 1134h–1134k), unless otherwise noted.

Subpart A—General

§ 650.1 What is the National Graduate Fellows Program?

Under the National Graduate Fellows Program the Secretary awards fellowships to students for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(20 U.S.C. 1134h)

§ 650.2 Who is eligible to apply for a fellowship under this program?

An individual is eligible to apply for a fellowship under the National Graduate Fellows Program if the individual—

(a) At the time of application, is eligible to begin or has begun graduate study at the doctoral level at an accredited institution of higher education;

(b)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; and

(c) Meets any additional eligibility requirements established by the Fellowship Board.

(20 U.S.C. 1134h–1134k)

§ 650.3 What regulations apply to the National Graduate Fellows Program?

The following regulations apply to this program:

(a) The regulations in this Part 650.

(b) The regulations in EDGAR 34 CFR and Parts 74 and 75, except for the following provisions in EDGAR 34 CFR Part 75, which do not apply:

(1) Subpart C—How to apply for a grant.

(2) Subpart D—How grants are made.

(3) Sections 75.580–75.592 of Subpart E.

(c) For the purposes of the regulations in this part, the terms "grantee" and "recipient", as used in EDGAR, mean an institution of higher education that administers a fellowship award under this part.

(20 U.S.C. 1134h)

§ 650.4 What definitions apply to the National Graduate Fellows Program?

The following definitions apply to terms used in this part:

"Act" means the Higher Education Act of 1965, as amended.

"Fellow" means a fellowship recipient under this part.

"Fellowship" means an award made to a person for graduate study under this part.

"Fellowship Board" means the National Graduate Fellows Program Fellowship Board, composed of individual representatives of both public and private institutions of higher education who are appointed by the President to establish general policies for the program and oversee its operation.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Act.

"Satisfactory progress" means a fellow's progress, in the program for which the fellowship is awarded, that meets or exceeds the institution's norms or standards for doctoral student advancement, as verified by a certified report from the institution to the Secretary.

"Secretary" means Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Stipend" means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(20 U.S.C. 1134h–1134k)

§ 650.5 What does a fellowship award include?

The Secretary awards fellowships consisting of the following:

(a) A stipend paid to the fellow, based upon an annual determination of the fellow's financial need, as set forth in § 650.42.

(b) An annual allowance paid to the institution in which the fellow is enrolled, of (1) $6,000.00, or (2) tuition and other expenses otherwise required by the institution as part of its instructional program, whichever is less.

(20 U.S.C. 1134j)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 650.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the Federal Register.

(20 U.S.C. 1134h)

Subpart C—How Are Fellows Selected?

§ 650.20 What are the selection procedures?

(a) The Fellowship Board establishes criteria for the selection of fellows.

(b) Each year the Fellowship Board selects specific fields of study, and the number of fellows in each field (within the humanities, arts and social sciences), for which fellowships will be awarded.

(c) The Fellowship Board appoints panels of distinguished members in each field to evaluate applications.

(d) The Fellowship Board may make awards of the fellowships each year in two or more stages, taking into account at each stage the amount of funds remaining after the level of funding for awards previously made has been established or adjusted.

(20 U.S.C. 1134i)

Subpart D—What Conditions Must Be Met by Fellows?

§ 650.30 Where may fellows study?

A fellow may use the fellowship only for enrollment in a doctoral program at an institution of higher education which is accredited by an accrediting agency or association recognized by the Secretary, which accepts the fellow for graduate study, and which has agreed to comply with the provisions of this part applicable to institutions.

(20 U.S.C. 1134h–1134k)

§ 650.31 What is the duration of a fellowship?

(a) An individual may receive a fellowship under this program for up to 48 months or until receiving the doctoral degree being sought, whichever occurs first.

(b) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(20 U.S.C. 1134h)

§ 650.32 What conditions must be met by fellows?

In order to continue to receive payments under a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded, as determined by the institution of higher education;

(c) Not engage in gainful employment during the period of the fellowship except on a part-time basis, for the institution of higher education at which the fellowship was awarded, in teaching, research, or similar activities approved by the Secretary; and

(d) Begin study under the fellowship in the academic year specified in the fellowship award.

(20 U.S.C. 1134h–1134k)

§ 650.33 May fellowship tenure be interrupted?

(a) A fellow may interrupt periods of study under the fellowship for a period of up to 12 months for the purpose of work, travel or independent study (not part of the fellow's program at the institution of higher education) away from the institution of higher education at which the fellow is enrolled only if—

(1) The work, travel, or independent study is a supportive of the fellow's academic program;

(2) The leave of absence is approved by the institution at which the fellow is enrolled; and

(3) The leave of absence is approved by the Secretary.

(b) The Secretary makes no awards to the fellow or the institution during the leave of absence.

(20 U.S.C. 1134h)

§ 650.34 May fellows make changes in institution or field of study?

After an award is made, a fellow may not make any change in the field of study or institution attended without the prior approval of the Secretary.

(20 U.S.C. 1134k)

§ 650.35 What records and reports are required from fellows?

Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(20 U.S.C. 1134k)

Subpart E—What Are the Administrative Responsibilities of the Institution?

§ 650.40 What institutional agreements are needed?

Students enrolled in an otherwise eligible institution of higher education may receive fellowships only if the institution enters into an agreement with the Secretary to comply with the provisions of this part.

(20 U.S.C. 1134h–1134k)

§ 650.41 How are institutional allowances to be administered?

(a) An institution shall treat the institutional allowance paid by the Secretary to the institution on behalf of a fellow as full payment by the fellow, for the period covered by the allowance, for tuition and other expenses otherwise required by the institution as part of its instructional program.

(b) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution a pro rata share of the allowance.

(20 U.S.C. 1134j)

§ 650.42 How are stipends to be administered?

(a) An institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs (34 CFR Parts 674, 675, and 676), except that for this purpose any instructional costs covered by the institutional allowance under § 650.41 may not be treated as costs of attendance.

(b) The institution shall pay the fellow the stipend, in the amount of his financial need or $10,000, whichever is less, from funds advanced to the institution for this purpose by the Secretary. However, the institution shall not pay a stipend to a fellow whose adjusted family income, as calculated under paragraph (a), exceeds $32,500. The institution shall return to the Secretary any unused funds advanced for a stipend at the time and in the manner as may be specified by the Secretary.

(c) If a fellow is enrolled for less than a full academic year, the institution shall pay the student a pro rata share of the stipend.

(20 U.S.C. 1134j)

§ 650.43 How are disbursement and return of funds made?

(a) An institution shall disburse a stipend to a fellow in installments. No fewer than two installments per academic year may be made. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at the time and in such manner required by the Secretary.

(b) A fellow who withdraws from an institution before completion of an academic period for which a stipend installment has been paid to him shall return to the institution a prorated portion of the stipend installment, as determined by the Secretary. The institution shall return the funds to the Secretary at the time and in the manner required by the Secretary.

(c) If a fellow withdraws from an institution before completion of an academic period, the institution shall refund to the Secretary a prorated portion of the institutional allowance it received with respect to that student at the time and in the manner required by the Secretary

(20 U.S.C. 1134j)

§ 650.44 What records and reports are required from institutions?

(a) An institution shall provide to the Secretary, prior to receipt by such institution of funds for disbursement to a fellow, a certification from an appropriate official at the institution stating whether that fellow is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

(b) An institution shall keep such records as are necessary to establish the timing and amount of all disbursements of stipends.

(20 U.S.C. 1134k)

[FR Doc. 85–13371 filed 5–31–85; 8:45 am]
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This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

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Rules and Regulations

Federal Register
Vol. 50, No. 107
Tuesday, June 4, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 347]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 347 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 7–June 13, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 347 (§ 908.647) is effective for the period June 7–June 13, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on May 28, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that the current level of domestic demand is not expected to continue during the next two weeks. Wholesale and retail inventories of Valencia oranges are high, and significant competition from deciduous fruit has begun.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing Agreements and Orders, California, Arizona, Oranges (Valencia).

1. The authority citation for Part 7 CFR 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.647 is added to read as follows:

§ 908.647 Valencia Orange Regulation 347.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 7, 1985, through June 13, 1985, are established as follows:

(a) District 1: 280,000 cartons;
(b) District 2: 420,000 cartons;
(c) District 3: Unlimited cartons.

Dated: May 30, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–13412 Filed 6–3–85; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85–036]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by including Medina County, Texas, in the portion of Texas designated as Class B rather than in the portion of the State designated as Class C. This action is necessary because it has been determined that Medina County together with the previously designated Class B Area of Texas meets the standards for Class B. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from Medina County, Texas.

DATES: Effective date of the interim rule is June 4, 1985. Written comments must be received on or before August 5, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella

infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

The State of Texas is divided into a Class B Area and a Class C Area. Prior to the effective date of this document, Medina County was included in the Area of Texas designated as Class C. This Area of Texas was designated as Class C rather than a higher classification because of the herd infection rate and the program reactor rate. The State of Texas has requested that the boundary line separating the Class B and Class C Counties be changed to include Medina County within the Class B Area. To attain and maintain Class B status, a State or Area must, among other things, maintain a 12 consecutive month adjusted MCI reactor prevalence rate not to exceed three reactors per 1,000 cattle tested (0.30 percent), and must maintain an accumulated 12-month herd infection rate for brucellosis in cattle not to exceed 15 herds per 1,000 (1.5 percent). A review of brucellosis program records establishes that Medina County together with the previously designated Class B Area of Texas meets the standards for Class B.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Texas reduces testing and other requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immeditate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from Medina County, Texas.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(c) is amended by adding "Medina," after "Maverick," in the list of Texas counties.

3. Section 78.20(d) is amended by removing "Medina," from the list of Texas counties.

Done at Washington, D.C., this 29th day of May 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–13300 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of reducing discount rates. The action was taken against the background of relatively unchanged output for some time in the industrial

sector of the economy, stemming heavily from rising imports and a strong dollar. Price pressures, while clearly a continuing concern in some areas, appear to remain relatively well contained in goods-producing sectors of the economy, and sensitive commodity prices are generally at the lowest levels in about two years. Growth of the monetary aggregates has slowed appreciably, although M1 has remained somewhat above the path implied by the annual target.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3257), or Joy W. O'Connell, TDD (202 452-3244).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Credit Unions, Foreign banks.

For the reasons outlined above, the Board of Governors amends Part 201 as set forth below:

PART 201—[AMENDED]

1. The authority citation for 12 CFR Part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 et seq., 347c, 348 et seq., 374, 374a, and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d), unless otherwise noted.

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7.5	May 20, 1985
New York	7.5	May 20, 1985.
Philadelphia	7.5	May 24, 1985.
Cleveland	7.5	May 21, 1985
Richmond	7.5	May 20, 1985.
Atlanta	7.5	May 20, 1985.
Chicago	7.5	May 20, 1985.
St. Louis	7.5	May 21, 1985.
Minneapolis	7.5	May 20, 1985.
Kansas City	7.5	May 20, 1985.
Dallas	7.5	May 20, 1985.
San Francisco	7.5	May 21, 1985.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8	May 20, 1985.
New York	8	May 20, 1985.
Philadelphia	8	May 24, 1985
Cleveland	8	May 21, 1985.
Richmond	8	May 20, 1985.
Atlanta	8	May 20, 1985.
Chicago	8	May 20, 1985.
St. Louis	8	May 21, 1985.
Minneapolis	8	May 20, 1985.
Kansas City	8	May 20, 1985.
Dallas	8	May 20, 1985.
San Francisco	8	May 21, 1985.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7.5	May 20, 1985
New York	7.5	May 20, 1985.
Philadelphia	7.5	May 24, 1985.
Cleveland	7.5	May 21, 1985.
Richmond	7.5	May 20, 1985.
Atlanta	7.5	May 20, 1985
Chicago	7.5	May 20, 1985.
St. Louis	7.5	May 21, 1985.
Minneapolis	7.5	May 20, 1985.
Kansas City	7.5	May 20, 1985
Dallas	7.5	May 20, 1985
San Francisco	7.5	May 21, 1985.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period, the time period in which each rate under the structure is applied may be shortened, and the rate may be established on a more flexible basis, taking into account rates on market sources of funds.

By order of the Board of Governors of the Federal Reserve System, May 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13276 Filed 6-3-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 85-420]

Rescission of Accounting Rule for Financial Options

Dated: May 24, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board is rescinding a newly adopted accounting rule (and reinstating the prior rule) pertaining to financial options transactions engaged in by institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The Board instead will solicit the public's views on this subject, *see* companion Board Resolution No. 85-421, published elsewhere in this edition of the **Federal Register.**

EFFECTIVE DATE: April 24, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Pomeranz, Policy Analyst, Office of Policy and Economic Research, (202) 377-6209; M. Christian Mitchell, Accounting Fellow, Office of Examinations and Supervision, (202) 377-6837, or Joseph Longino, Attorney, Office of General Counsel, (202) 377-6446; Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 563

Savings and loan associations, Savings banks, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

1. The authority for 12 CFR Part 563 continues to read:

Authority: Sec. 409, 49 Stat. 160, secs. 402, 403, 407, 48 Stat. 1256, 1256, 1260, as amended (12 U.S.C. 1725, 1726, 1730), sec. 5A, 47b Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

2. Revise paragraphs (g) (2) and (3) of § 563.17-5 as follows:

§ 563.17-5 Financial options transactions.

* * * * *

(g) *Accounting.*

* * * * *

(2) *Option commitment fee.* The option commitment fee paid or received shall be amortized to income or expense over the term of the option, except as

provided in subparagraph (3)(ii) of paragraph (g) of this section.

(3) *Options contracts.*

(i) Gains or losses on options contracts that are matched with assets or liabilities carried at the lower of cost or market value or carried at market value shall be considered in determining the market value of the asset or liability.

(ii) Options positions that are matched with assets or liabilities carried at cost or to be carried at cost shall be accounted for as follows:

(*a*) If a commitment fee will be or has been received with respect to the matched asset, the option commitment fee shall be treated as an adjustment of such fee. The adjusted commitment fee shall then be treated as a fee paid or received in connection with the matched asset;

(*b*) If a commitment fee has not been received with respect to a matched asset, the option commitment fee shall be amortized to income or expense over the commitment period by the straight-line method;

(*c*) Any resulting gain or loss from an option position shall be treated as a discount or premium on the matched asset or liability;

(*d*) In the event that the cash market or forward commitment position with which an option is matched is sold or will not occur, the option shall be marked to market.

(iii) The immediate exercise value of short puts and other unmatched option positions shall be carried at their current market value.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-13388 Filed 6-3-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-38-AD; Amdt. 39-5077]

Airworthiness Directives; British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On March 15, 1985, the FAA issued telegraphic Airworthiness Directive T85-05-51, effective upon receipt, to all known U.S. operators of British Aerospace Model BAe-146 airplanes. The airworthiness directive (AD) required and inspection for fuel leakage into the passenger cabin from the center fuel tank and limits the amount of fuel allowed in that tank. On March 22, 1985, AD T85-05-51 was revised, as a result of further investigation, to require the center fuel tank to be drained and the airplane not dispatched with center tank fuel until a specified modification is incorporated. This action was prompted by reports of center tank fuel leaking into the passenger cabin. This action publishes telegraphic AD T85-05-51 R1.

DATES: Effective June 24, 1985.

This AD was effective earlier to all recipients of telegraphic T85-05-51 R1 dated March 22, 1985. Compliance required before further flight after the effective date of this AD, if not already accomplished.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to British Aerospace, Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dean Klempel, Standardization Branch, ANM-113, Seattle Aircraft Certification Office; telephone (206) 431-2907. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain BAe Model 146 airplanes.

Several incidents have been reported of fuel leaking from the wing center fuel tank into the passenger cabin as a result of inadequate sealing of the tank. This situation has the potential to become a fire hazard.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, telegraphic AD T85-05-51 was issued March 15, 1985, which requires inspection to detect fuel leaking into the passenger cabin; cleaning, as necessary; and limiting the fule carried in the center tank to 2,000 pounds if no leaks are detected, and zero fuel if leaks are detected. Based on further investigation by the CAA, AD T88-05-01 was revised March 22, 1985, further limiting the amount of fuel carried in the center tank to zero for all airplanes until British Aerospace Modification HCM00650A has been incorporated.

Since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 146 airplanes certificated in all categories on which Modification HCM00650A has not been accomplished. Compliance is required before further flight after the effectice date of this airworthiness directive (AD). To prevent fuel leaks into the passenger cabin and prevent potential fire, accomplish the following, unless previously accomplished:

A. Before further flight:

1. Drain Center fuel tank, and

2. Incorporate the following information into the airplane flight manual and provide to flight crews: DO NOT DISPATCH WITH FUEL IN THE CENTER TANK.

B. Within 48 hours after the effective date of this AD, modify the airplane in accordance with BAe 146 Alert Service Bulletin 28-A3,

Revision 2, dated March 25, 1985, paragraph 2A.

C. Incorporation of British Aerospace Modification HCM00650A terminates the requirement to comply with paragraph A. and B., above, of this directive.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Compliance with Paragraph A.2. of this directive may be effected by including a copy of the AD in the airplane flight manual and operating manual.

This amendment becomes effective June 24, 1985. It was effective earlier to all recipients of telegraphic AD 85–05–51 R1, issued March 22, 1985, which contained this amendment.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletin, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–13242 Filed 6–3–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–28]

Designation and Alteration of Airways; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Government of Canada has requested Federal Airway V–495 be extended from Victoria, BC, Canada, to Abbotsford, BC, Canada, via Bellingham, WA; and to designate new low frequency airway Amber 16 between White Rock, BC, Canada, and Active Pass, BC, Canada. These airways are in support of the Vancouver, BC, Canada's Area Control Center Flow Management Programs and which improves the flow of traffic in that area.

DATE: Effective date—0901 GMT, August 1, 1985.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to § 71.105 and § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to permit the Government of Canada to extend V–495 from Victoria, BC, Canada, to Abbotsford, BC, Canada, and designate new low frequency airway A–16 between White Rock, BC, Canada, and Active Pass, BC, Canada. This action was initiated by the Government of Canada to enhance the flow of traffic in and around the Vancouver, BC, area, and affects only a small segment of United States airspace. Airways V–495 and Amber 16 (A–16) have been flight checked and approved for operations. This action supports the Government of Canada's programs to improve the flow of traffic in that area. Sections 71.105 and 71.123 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

Under the circumstances presented, the FAA concludes that an action by the Government of Canada to extend V–495 from Victoria, BC, Canada, to Abbotsford, BC, Canada, and designate new airway A–16 between White Rock, BC, Canada, and Active Pass, BC, Canada, with only a 17-mile segment within the United States, is a minor, technical matter in which the public is not particularly interested. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Colored airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. Section 71.105 is amended as follows:

A–16 [New]

From White Rock, BC, NDB, Canada, to Active Pass, BC, NDB, Canada. The airspace within Canada is excluded.

3. § 71.123 is amended as follows:

V–495 [Amended]

By removing the words "From Victoria, BC, Canada," and substituting the words "From Abbotsford, BC, NDB, Canada, via Bellingham, WA; Victoria, BC, Canada;"

Issued in Washington, D.C., on May 28, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–13247 Filed 6–3–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–AWA–29]

Establishment of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes three Federal Airways: V–549, V–551 and V–553. The new airways are established in controlled airspace where there were frequent requests made to air traffic control for direct routings between navigational aids.

EFFECTIVE DATE: 0901 GMT, August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On December 10, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish three VOR Federal Airways, V–549, V–551 and V–553 (49 FR 48054). The proposal was based on recommendations of airspace users. The new airways were proposed to be established where there were frequent requests for direct routings.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received from the Air Force objecting to the establishment of V–551 and V–553. The objection was that the two airways would encourage the use of airspace associated with the Ada East and Ada West Military Operations Areas (MOAs). The Air Force stated that establishment of airways through MOAs aggravates a longstanding problem of priority use of MOAs. The Air Force explained that it is essential that MOA operations not be restricted or denied to allow airway traffic to transit a MOA. Denials result in ineffective or cancelled training which wastes DOD manpower and fiscal resources. From the point of view of civil operators, if IFR aircraft are denied airway clearance, DOD is viewed as interfering with the orderly flow of traffic. The Air Force also stated that the publication of airways through MOAs encourages civil VFR pilots to fly through active MOAs, a practice which is legal but which the Air Force would like to minimize.

The following is the FAA analysis and findings regarding the Air Force objection. The altitude of the MOA is 7,000 feet MSL and above. The annotated data on the aeronautical charts indicate that it will be used during the day on Monday through Friday with occasional use on Saturday and Sunday.

A review of the Ada East and Ada West traffic data revealed that the MOAs were used a total of 323 times during 1984. The average time of use was between one and two hours per flight. These sorties are normally flown between 1500–1600 and 2000–2200 GMT.

Preliminary data from FAA's Flight Inspection Field Office (FIFO) indicates that the minimum en route altitude along the three airways would be between 3,300 and 3,900 feet.

Based on the data presented, the airways to which the Air Force objects, V–551 and V–553, can be used at all times, including times when the MOA is "hot" at cardinal altitudes of 4,000, 5,000 and 6,000 feet. The airways could also be used anytime that the military is not scheduled to use the areas. The military used the MOAs a maximum of 646 hours during 1984. This would have allowed public use of the airspace/airways approximately 93 percent of the available time without adversely affecting the military's mission. For the above reasons, the FAA finds that a significant operational advantage can be gained by establishment of V–551 and V–553.

The issue of "priority use" of MOAs is a policy level issue more appropriate as a candidate for review in FAA's National Review of Special Use Airspace (SUA). The objectives of this national review are to examine policies, management, use and effectiveness of SUA. Accordingly, a general dialogue on this issue is outside the scope of the airspace docket.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes three new Federal Airways as follows: V–540 is established between Hays and Mankato, KS, VORTACs; V–551 between the Salina and Mankato, KS, VORTACs; and V–553 between the Salina, KS, and Pawnee City, NE, VORTACs.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. § 71.123 is amended as follows:

V–549 [New]

From Hays, KS; to Mankato, KS.

V–551 [New]

From Salina, KS; to Mankato, KS.

V–553 [New]

From Salina, KS; to Pawnee City, NE.

Issued in Washington, D.C. on May 28, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–13248 Filed 6–3–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–AGL–12]

Realignment of VOR Federal Airway V–12; Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes V–12N between Appleton and Dayton, OH. The airway is no longer used as an arrival route to Dayton, OH, and is seldom filed by pilots. Revocation also helps to simplify the route structure.

EFFECTIVE DATE: 0901 G.M.T., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On March 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke V–12N between Appleton and Dayton, OH (50 FR 10979). The airway is no longer used as an arrival route to Dayton, OH, and is seldom filed by pilots. If filed, it is necessary to reclear aircraft to conform to existing arrival/departure flows. Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes V–12N between Appleton and Dayton, OH. The action is taken in the interest of airspace efficiency and is consistent with FAA's agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. § 71.123 is amended as follows:

V–12 [Amended]

By removing the words "including a N alternate from Dayton to Appleton via INT Dayton 068° and Rosewood, OH 083° radials;"

Issued in Washington, D.C., on May 28, 1985.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–13245 Filed 6–3–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–AGL–6]

Alteration of Transition Area; Litchfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Litchfield, Illinois, transition area to provide airspace necessary to accomodate existing conditions.

The intended effect of this action is to ensure segregation of aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 G.M.T, August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

History

On Friday, March 8, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Litchfield, Illinois, transition area (49 FR 9453). Runway 27 was inadvertently referenced in lieu of Runway 09, but the affected airspace area as described remains unchanged.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Litchfield, Illinois, transition area to provide airspace necessary to accommodate the existing Litchfield NDB RWY 9 standard instrument approach procedure.

FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Litchfield, IL

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Litchfield, Illinois, Municipal Airport (latitude 39°09'50"N, longitude 89°40'36"W), and within 3 miles each side of the 079° bearing from the Litchfield NDB (LTD), extending from the 5-mile radius to 8 miles east of the Litchfield Airport, and within 3 miles each side of the 274° bearing from the Litchfield NDB (LTD), extending from the 5-mile radius to 8 miles west of the Litchfield Municipal Airport.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a) (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69.)

Issued in Des Plaines, Illinois, on May 16, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85–13243 Filed 6–3–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–ACE–04]

Designation of Transition Area, Sibley, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Sibley, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Sibley Municipal Airport, Sibley, Iowa, utilizing the Sibley Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Sibley Municipal Airport, Sibley, Iowa, utilizing the Sibley NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of transition area at Sibley, Iowa, at or above 700 feet above the ground within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 13187 of the **Federal Register** dated April 8, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Sibley, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continue to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.65); 49 CFR 1.47.

2. By amending § 71.181 as follows:

Sibley, Iowa

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Sibley Municipal Airport (latitude 43°22'30"N, longitude 95°45'15"W) and within 3 miles each side of the Sibley NBD (ISB) (latitude 43°22'05"N, longitude 95°45'08"W) 188° bearing extending from the 5 mile radius to 8.5 miles southwest of the Sibley NDB and within 3 miles each side of the Sibley NDB 334° bearing extending from the 5 mile radius to 8.5 miles northwest of the Sibley NDB, excluding the portion which overlies the Sheldon, Iowa transition area.

Issued in Kansas City, Missouri on May 24, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-13244 Filed 6-3-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 40668-5071]

Foreign Trade Statistics; Amendments to the Foreign Trade Statistics Regulations

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Foreign Trade Statistics Regulations (FTSR) to incorporate additional Shipper's Export Declaration (SED) data requirements and other changes resulting from the redesign of the SEDs and their continuation sheets. This rule also amends the FTSR to raise the value limit of the present exemption from SED filing requirements from $500 to $1000 except for shipments through the U.S. Postal Service for which the exemption will remain at $500.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Barry M. Cohen, Chief, Foreign Trade Division, Bureau of the Census, (301) 763-5342.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking, published in the **Federal Register** on December 10, 1984, (48055-48058), proposed amending the FTSR to require three new items of information to be reported on the SED; state of origin, parties to transaction, and containerization; to raise the value limit for the exemption from SED filing requirements; and to reflect the redesign of the SED forms. Because these amendements affected the reporting requirements, interested persons were given 60 days from the date of publication in the **Federal Register** (December 10, 1984 to February 8, 1985) to submit their comments regarding the notice.

The SEDs are the source documents from which the Census Bureau collects and compiles the official export statistics. The revisions are necessary to accommodate the needs of data users and provide for the proper reporting of the required data. The Census Bureau will allow exporters 6 months from the effective date to exhaust supplies of old SEDs.

Discussion of Major Comments

The Census Bureau received 32 comments regarding the proposed amendments to the FTSR. Of these comments, none voiced objections to deleting the instructions from the

reverse side of the SED, or increasing the value limit for the basic exemption from SED filing requirements from $500 to $1000.

Twenty-five of the respondents commented on the proposal to require the reporting of the state of origin of exports. Most of these expressed the opinion that while origin of export data are desirable they should be collected at a geographical level more detailed than state, specifically by 3–digit ZIP Code. The Census Bureau understands the need for more detailed point-of-origin export data. However, in determining the geographical level at which data on the origin of exports should be compiled, the Census Bureau had to consider the need for maintaining the confidentiality of the SED and its contents as provided for under Title 13 of the United States Code. The release of data at the ZIP Code level could disclose confidential information contained on an individual SED. This disclosure would affect adversely the competitive position of U.S exports in foreign markets and undermine the credibility of the Census Bureau's legal mandate to keep statistical reports confidential.

In the box designated for the name and address of the exporter (shipper) a specific location for the ZIP Code will be provided. This assures, without added burden, receipt of the ZIP Code data necessary to let the Census Bureau develop a pilot program using San Diego, California and New Orleans, Louisiana to examine the quality and feasibility of collecting, "Shipper's ZIP Code" data.

The regulation containing the definition of "State of origin and Foreign Trade Zone number" (§ 30.7(t)) is being revised to incorporate comments concerning individual SEDs covering shipments of multistate origin. In these instances exporters should report the state of the commodity of the greatest value or if such information is not known the state in which the commodities are consolidated for export. Furthermore, it will be necessary to report only Foreign Trade Zone number when merchandise is being exported from a U.S. Foreign Trade Zone. The requirement for reporting the state location of the Zone is being dropped as it is redundant. To avoid confusion with other reports, the heading has been retitled "Point (state) of origin or Foreign Trade Zone number."

The comments dealing with the collection of information on transactions between related parties centered on the anticipated difficulty in obtaining such information. We have revised the instructions for preparing the SED to clarify further the requirements for reporting information on transactions between related parties. These requirements tie to the definition of related party transactions used in other Commerce Department questionnaires. While we realize that exporters may experience some initial problems, exporters will benefit from the elimination of a substantial amount of duplicate reporting on other Commerce Department questionnaires.

The comments opposing the reporting of containerization data were based on problems relating to the containerization of goods by the exporting carrier without the knowledge of the exporter or forwarder at the time the SED is prepared and signed. When preparing the SED, the exporter or forwarder should report this information as known at that time. To assure accurate reporting, the exporting carrier will be responsible for making sure this item of information is correct. Those exporters and forwarders participating in the Census Bureau's monthly reporting program should report this information as known to them at the time they submit their reports.

The horizontal SED, Form 7525-V-Alternate (Intermodal), designed primarily for waterborne shipments, allows the simultaneous preparation of commercial and governmental shipping documents via an aligned standard international master.

The vertical SED, Form 7525-V, redesigned to align with an accepted version of the Canadian Customs Invoice, thus the United Nations Layout Key, provides the exporting community with a second choice for the preparation of export documents in a one-run document set. This should ease measurably document preparation and improve the quality of the data reported by assuring the consistency of information appearing on all documents.

The aligning of the SED forms to other shipping documents offers cost savings and reduces the overall reporting burden to shippers. In addition, the increase in value exemption for filing SEDs from $500 to $1000 reduces the respondent reporting burden and more than offsets any increase resulting from the requirement of three additional data items.

Some exporters expressed concerns dealing with the cost of modifying their computer programs that generate the "paper" SEDs. These exporters or agents should consider the Census Bureau's program whereby exporters can report their data electronically and eliminate the need for filing individual SEDs.

To those commentors concerned about the possible disclosure of their data through the publication of the additional data elements, we will make every effort to avoid such problems through a system of prior review and to deal immediately with any cases brought to our attention.

The Census Bureau collects and publishes foreign trade statistics under the legislative authority of Chapter 9 of Title 13 of the United States Code, the Census Act. This authority provides for the exemption from disclosure of the SED, wherever located, unless the Secretary of Commerce determines that such exemption would be contrary to the national interest.

Section 30.91 of the FTSR, which is written pursuant to Title 13, outlines the confidentiality provisions of the SED and its contents.

Even though these legal provisions protect the SED itself as opposed to the publication of statistical data, the Census Bureau has developed procedures for limiting disclosure in the published statistics. Individual cases of disclosure that are brought to the Census Bureau's attention are handled on a case-by-case basis. In such cases, the Census Bureau attempts to work out a mutually satisfactory solution, which does not distort data.

Regulatory Impact Analysis and Information Collection

These amendments do not meet the criteria set forth in section 1(b) of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Under the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that these amendments will not have a significant economic effect on a substantial number of small entities because the preparation of SEDs is small compared to the total cost of exporting. These amendments are subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). There will be a decrease in the reporting burden resulting from raising the value exemption for SED filing that more than offsets any increase from the requirement that three additional items of data be reported on the SEDs. The collection of this information has been approved by the Office of Management and Budget under control numbers 0607–0001, 0607–0018, 0607–0150, and 0607–0152.

This Final Rule is being made effective immediately because it raises the value limit for the exemption from SED requirements from $500 to $1000

List of Subjects in 15 CFR Part 30

Census Bureau, Economic statistics, Foreign trade, and Reporting and recordkeeping requirements.

Amendments to the Regulations

The Foreign Trade Statistics Regulations (15 CFR, Part 30) are amended as set forth below.

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: Secs. 30.1 to 30.95 issued under R.S. 161; (5 U.S.C. 301); Reorganization Plan No. 5 of 1950, 15 FR 3174, 64 Stat. 1263; Department of Commerce Order No. 85, June 21, 1962, 27 FR 6397. Interpret or apply 76 Stat. 951, 77A Stat. (13 U.S.C. 301–307; 19 U.S.C. 1202, 1484(e)), unless otherwise noted.

1a. Section 30.3 is amended by revising the fourth sentence of paragraph (b) to read as follows:

§ 30.3 Shipper's Export Declaration forms.

* * * * *

(b) * * * Privately printed Shipper's Export Declaration forms must conform strictly to the respective official form in size, wording, color, quality (weight of paper stock), and arrangement, including the Office of Management and Budget Approval Number printed in the upper-right hand corner of the face of form. * * *

2. Section 30.7 is amended by revising paragraph (a), the heading for (d), paragraph (d)(2), the heading for (i), paragraph (i) introductory text and (1), the first sentence of (i)(2), and the first sentence of (q)(1); removing paragraphs (1)(2) and (1)(3) and redesignating (l)(1) as (l) as set out below; and adding paragraphs (t), (u), and (v) to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

* * * * *

(a) *Port of export.* The name of the U.S. Customs port of exportation shall be entered in terms of Schedule D, *Classification of Customs Districts and Ports.* (See § 30.20(c) for definition of port of exportation.) For shipments by mail, the name of the Post Office where the package is mailed shall be inserted in the space for U.S. port of export.

* * * * *

(d) *Name of exporter and exporter's Employer Identification Number.*

(1) * * *

(2) *Exporter's Employer Identification Number.* Exporters (or their agents shall report the exporter's Internal Revenue Service Employer Identification Number (EIN). If no internal Revenue Service EIN has been assigned, the exporter's Social Security Number (SSN), preceded by the symbol "SS," should be reported. The exporter's SSN shall be reported if, and only if, no Internal Revenue EIN has been assigned to the exporter. If neither an Internal Revenue Service EIN nor an SSN has been assigned, for example, in case of a foreign entity as the exporter, the EIN or SSN reporting requirement does not apply.

* * * * *

(i) *Country of destination.* Country of destination shall be reported on the Shipper's Export Declaration in terms of the names designated in Schedule C–E, *Classification of Country and Territory Designations for U.S. Export Statistics,* as follows:

(1) For shipments under validated export licenses, the country of ultimate destination shown on the export decaration shall conform to the country of ultimate destination as shown on the license.

(2) For shipments not moving under validated export license, the country of ultimate destination as known to the exporter at the time or exportation shall be shown on the export declaration.

* * *

* * * * *

(l) *Description of commodities and Schedule B number.* The correct commodity number as provided in Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States,* shall be entered in the space provided on the Shipper's Export Declaration form, and a description of the merchandise shall be supplied in the "Description of Commodities" column in sufficient detail to permit the verification of the Schedule B commodity number. The name of the commodity, in terms which can be identified or associated with the language used in Schedule B (usually the commercial name of the commodity), and any and all characteristics of the commodity which distinguish it from commodities of the same name covered by other Schedule B classifications shall be clearly and fully stated. Careful reference to the Schedule B classification scheme for related commodities as well as for the commodity being shipped is necessary in order to establish which particular characteristics must be stated in the description to permit verification of the correct Schedule B commodity number and to eliminate any question that some other commodity number might apply. A description of commodities in the kind of detail specified above is a separate requirement, and the furnishing of the correct Schedule B commodity number does not relieve the exporter of furnishing, in addition, a complete and accurate commodity description in accordance with this requirement. If the shipment is moving under a validated license, the description shown on the export declaration shall conform with that shown on the validated export license. However, where the description on the license does not state all of the characteristics of the commodity which are needed to completely verify the commodity number, as described above, the missing characteristics, as well as the description shown on the license, shall be stated in the commodity description on the Shipper's Export Declaration.

* * * * *

(q) *Value.* (1) In general, the value to be reported on the Shipper's Export Declaration shall be the value at U.S. port of export (selling price or cost if not sold, including inland freight, insurance, and other charges to U.S. port of export) (nearest whole dollar; omit cents figures). * * *

* * * * *

(t) *Point (state) of origin or Foreign Trade Zone number.* (Not required for in-transit merchandise documented on Form 7513.)

(1) The state in which the merchandise actually begins its movement in international trade; that is, the state in which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show Georgia as the state of origin. This may not be the state where the merchandise was produced, mined, or grown, or necessarily the state where the exporter is located. The state designation to be shown shall be the U.S. Postal Service's standard two-letter state abbreviation.

(2) For shipments of multistate origin, reported on a single SED, report state of the commodity of the greatest value or, if such information is not known at the time of export, the state in which the commodities are consolidated for export.

(3) For merchandise exported from a U.S. Foreign Trade Zone, the letters "FTZ" followed by the Foreign Trade Zone number shall be reported.

(u) *Containerized.* (Not required for in-transit merchandise documented on Form 7513.) This information is required to be shown for vessel shipments only. A containerized shipment is one transported in any size van-type

container such as 8' x 8' x 20' or 8' x 8' x 40'. Cargo originally booked as *containerized cargo* as well as that placed in containers at the vessel operator's option shall be included.

(v) *Parties to transaction.* (Not required for in-transit merchandise documented on Form 7513.) An export between related parties is one

(1) From a U.S. person (U.S. exporter) to a foreign business enterprise (foreign consignee) in which at anytime during the fiscal year, the U.S. person owned or controlled, directly or indirectly, 10 percent or more of the voting securities of the foreign enterprise, if an incorporated business enterprise; or an equivalent interest, if an unincorporated business enterprise, including a branch; or

(2) From a U.S. business enterprise (U.S. exporter) to a foreign person (foreign consignee) that, at anytime during the fiscal year, owned or controlled, directly or indirectly, 10 percent or more of the voting securities of the U.S. business enterprise, if an incorporated business enterprise; or an equivalent interest if an unincorporated business enterprise, including a branch.

3. Section 30.9 is amended by revising the sixth sentence to read as follows:

§ 30.9 Requirements for separation and alignment of items on Shipper's Export Declaration.

* * * If the exporter desires to record the imported components separately on the export declaration for purposes of indentification with a temporary import bond, a notation may be made in the "Description of Commodities" column as to the imported components that have been incorporated in the exported commodity. * * *

4. Section 30.10 is amended by revising the last sentence to read as follows:

§ 30.10 Continuation sheets for Shipper's Export Declaration.

* * * The following statement with the blank filled in as appropriate shall be inserted on the last line of the description column of the Shipper's Export Declaration itself:

"This declaration consists of this sheet and No. ——— continuation sheets."

5. Section 30.22 is amended by revising paragraph (b) to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.

(a) * * *

(b) The exporting carrier shall be responsible for the accuracy of the following items of information (where required) on the declaration: Name of carrier (including flag, if vessel carrier), foreign port of unloading, bill of lading or air waybill number, and whether or not containerized.

* * * * *

6. Section 30.55 is amended by revising paragraph (h) to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Shipments (except shipments requiring a validated export license, and excluding shipments through the U.S. Postal Service) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries prohibited by the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368–399), * where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is $1000 or under: *Provided however,* that this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $1000-and-under shipments.

* * * * *

(Title 13, United States Code, sec. 301–307; and Title 5, United States Code, sec. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765)

John G. Keane,

Director, Bureau of the Census.

I Concur:

J.M. Walker, Jr.,

Assistant Secretary, Department of the Treasury.

May 1, 1985.

[FR Doc. 85–13044 Filed 6–03–85; 8:45 am]

BILLING CODE 3510–07–M

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15 CFR Part 50

[Docket No. 50470–5070]

Fee Structure for Age Search and Citizenship Information

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is hereby amending Title 15, Code of Federal Regulations, Chapter 1 § 50.5, fee structure for age search and citizenship information to increase the fee for an age search from $12.00 to $15.00. This change is being made to recover the increase in cost to process a request. Title 13, United States Code, requires recovery of the costs. No transcript of any record will be furnished which would violate statutes requiring that information furnished to the Bureau of the Census be held confidential and not used to the detriment of the person to whom it relates.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Francis N. Allai, Bureau of the Census, Pittsburg, Kansas 06762 (316) 231–7100.

SUPPLEMENTARY INFORMATION: This is not a major rule within the meaning of Section 1 of the Executive Order 12291. It will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), it has been determined that notice and opportunity to comment on this schedule of fees are unnecessary because this is a minor rule, making a technical amendment to adjust the agency's fee structure to recover the actual cost for searching the records and furnishing information therefrom. The actual or estimated cost recovery is required by 13 U.S.C. 8(a). This cost increase is minimal, reflecting the actual increased costs for searching and furnishing the information, and funds for this purpose are not available from any other source. Requests for searches should be directed to the Bureau of the Census, Pittsburg, Kansas 06762.

Since notice and opportunity to comment are not required by the APA or any other law, this rule is not a "rule" within the meaning of the Regulatory Flexibility Act and neither an initial nor final regulatory flexibility analysis will be prepared.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the APA and other relevant law.

This rule does not impose an information collection requirement for purposes of the Paperwork Reduction Act.

The legal authority is Title 13, United States Code.

List of Subjects in 15 CFR Part 50

Census data.

1. The authority citation for 15 CFR Part 50 continues to read as follows:

Authority: Sec. 3 49 Stat. 293, as amnended; 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended, sec. 1, 49 Stat. 292, sec. 8, 60 Stat. 1013, as amended, 15 U.S.C. 192, 189a, 13 U.S.C. 8, unless otherwise noted.

PART 50—[AMENDED]

2. 15 CFR Part 50 is amended by revising § 50.5 to read as follows:

§ 50.5 Fee structure for age search and citizenship information.

Type of service	Fee
Searches of not more than two censuses for one person and one transcript of the more appropriate record	$15
Each additional copy of census transcript	[illegible]
Each full schedule (entire household) requested	[illegible]

NOTE.—The $4.00 for each full schedule requested is in addition to the fee increase to $15.00.

Dated: April 30, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-13045 Filed 6-[illegible]-85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

15 CFR Parts 370, 372 and 399

[Docket No. 50463-5063]

Clarifications to the Export Administration Regulations

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes three clarifications to export policy.

(1) "Southern Rhodesia" is removed from the country group listings because that country designation is outdated, and "Outer Mongolia" is revised to read "Mongolian People's Republic", the proper designation for that country.

(2) Exporters are asked to include with their export license application two additional copies of the technical specifications of the commodities they wish to export.

(3) A listing of the commodities under Department of Commerce export controls is amended by inserting two paragraphs inadvertently omitted when the listing was revised from a column format to a paragraph format (47 FR 58121-58194, December 29, 1982).

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Betty A. Ferrell, Exporter Assistance Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this regulation invokes a foreign affairs function of the United States, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable.

2. This rule contains no new information collection requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The existing application requirement referenced in this rule has been approved by the Office of Management and Budget under approval number 0625-0001.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C., and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs functions of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 370, 372 and 399

Administrative practice and procedure, Exports.

Accordingly, the Export Administration regulations (15 CFR Parts 370, 372 and 399 are amended as follows:

PART 370—[AMENDED]

1. The authority citation for 15 CFR Part 370 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985).

2. Supplement No. 1 to Part 370, "Country Groups", is amended by removing "Southern Rhodesia" from Country Group V, and by revising "Outer Mongolia" in Country Group Y to read "Mongolian People's Republic."

PART 372—[AMENDED]

3. The authority citation for 15 CFR Part 372 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985).

4. Supplement No. 1 to Part 372, "Instructions for preparing an application for a validated license", is amended by adding the following two sentences to the end of Item 9(b):

(You should include an original and two copies of your technical specifications on applications for exports to Country Groups Q, W and Y, and the People's Republic of China. The additional copies will be sent to other Government agencies reviewing the transaction and will assist in speeding the licensing determination).

PART 399—[AMENDED]

5. The authority citation for 15 CFR Part 399 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985).

4. In Commodity Group 3, General Industrial Equipment, of supplement No. 1 to section 399.1 (the Commodity Control List), ECCN 2317A is amended by inserting a *Validated License Required* paragraph between the *Unit* paragraph and the *GLV $ Value Limit* paragraph reading—

"*Validated License Required:* Country Groups QSTVWYZ."

5. In Commodity Group 9, Miscellaneous, of Supplement No. 1 to § 399.1 (the Commodity Control List), ECCN 5998B is amended by inserting a *Validated License Required* paragraph between the *Unit* paragraph and the *GLV $ Value Limit* paragraph, reading—"*Validated License Required:* Country Groups QSTVWYZ".

Dated: April 24, 1985.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-12907 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 50454-5054]

Synthetic Organic Agricultural Chemicals; Amendment to the Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule removes national security controls on two synthetic organic agricultural chemicals. The Department of Commerce, in consultation with the Department of Defense, has determined that such controls are no longer necessary. These chemicals are removed from entry 4707B of the Commodity Control List and are added to entry 6799G. As a result, a validated license now is required to export these chemicals to country Groups S and Z only.

EFFECTIVE DATE: June 4, 1985. Comments must be received by the Department by August 5, 1985.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Assistance Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Larry Hanrahan, Exporter Assistance Division (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation To Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in developing final regulations. Accordingly, interested persons who desire to comment are encourage to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule reduces the burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* by eliminating the requirement for a validated license under certain circumstances. The collection of this information has been approved by the Office of Management and Budget under control number 0625-0001.

3. Because a notice of proposed rulemaking is not required for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of the Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of the order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

The period for submission of comments will close August 5, 1985. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part of all of the materials be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and material will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspecton.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4102 U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, D.C. 20230.

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects in 15 CFR Part 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Part 399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513 March 29, 1985).

2. In Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, of the Commodity Control List (Supplement No. 1 to § 399.1), ECCN 4707B is amended by revising paragraph (b)(1) of the "List of Chemicals. . ." to read as follows: 4707B (a) Chemicals, as described in this entry: (b) Synthetic organic agricultural chemicals, as described in this entry.

* * * * *

(b) * * *

(1) Alkyl aryl carbamates (including isopropyl N-phenyl-carbamate and isopropyl N-(3-chlorophenyl) carbamate), except 2, 2-dimethyl 1, 3-benzodioxol-4-ol methylcarbamate and 1-naphthyl N-methyl carbamate.

* * * * *

(2) In Interpretation 24, Chemicals, of Supplement No. 1 to § 399.2, under the heading of: "Organic Chemicals", the word "Bendiocarb" is inserted between "Behenic acid" and "Benzaldehyde"; and the word "Carbaryl" is inserted between "N-Carbamoylarsanilic acid" and "Carbazole".

(3) In interpretation 24, Chemicals, of Supplement No. 1 to § 399.2, under the

heading of "chemical preparations and compounds, miscellaneous related materials and products, n.e.s., as follows:" the entry between "Ink thinners for cellophane printing" and "Inulin" is revised to read as follows:

Inorganic and organic insecticides, pesticides, defoliants, herbicides, fumigants, agricultural chemicals and similar products (including 2, 2-dimethyl-1, 3 benzodioxol-4-ol methyl carbamate and 1-naphthyl N methylcarbamate), n.e.s., *except organic phosphate insecticides and pesticidal compounds containing 75 percent by weight of organic phosphates.*

Dated: April 2, 1985.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-12908 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3154]

Young & Rubicam/Zemp, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a St. Petersburg, Fla. advertising agency, among other things, to cease, in connection with the advertising and sale of the Ecologizer CA/90 Series 2000 Air Treatment, representing falsely through the use of terms such as "eliminates", or by other means, that the portable household air cleaning appliance removes substantially all or most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean the air of formaldehyde gas or tobacco smoke; and from representing the performance characteristics of any air cleaning appliance unless it possesses and relies upon competent and reliable substantiating evidence for such claims. Respondent is additionally required to cease failing to maintain written records of both substantiating materials and materials that contradict or qualify performance claims for a period of three years.

DATE: Complaint and Order issued May 10, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/B-411-5, Washington, D.C. 20580. (202) 376-3648.

SUPPLEMENTARY INFORMATION: On Tuesday, Feb. 5, 1985, there was published in the **Federal Register**, 50 FR 4990, a proposed consent agreement with analysis In the Matter of Young & Rubicam/Zemp, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: 13.10 Advertising falsely or misleadingly; 13.10-5 knowingly by advertising agent; 13.170 Qualities or properties of product or service; 13.170-16 Cleaning, purifying; 13.190 Results; 13.205 Scientific or other relevant facts; 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements; 13.533 Corrective actions and/or requirements; 13.533-45 Maintain records. Subpart—Disseminating Advertisements, Etc.: 13.1043 Disseminating advertisements, etc. Subpart—Misrepresenting Oneself and Goods—Goods: 13.1710 Qualities or properties; 13.1730 Results; 13.1740 Scientific or other relevant facts; 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: 13.1885 Qualities or properties; 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Household air cleaning appliances. Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85-13374 Filed 6-3-85; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0135]

Reactive Blue No. 19; Listing as a Color Additive for Use in Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 9, 1985, for a regulation listing Reactive Blue No. 19 as a color additive for coloring contact lenses. This action responds to a petition filed by Ciba Vision Care.

EFFECTIVE DATE: April 9, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of March 8, 1985 (50 FR 9424), FDA amended the color additive regulations to provide for the safe use of Reactive Blue No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4[(3-[(2-(sulfooxy)ethyl]sulfonyl]phenyl)-amino)-disodium salt] (CAS Reg. No. 2580-78-1), chemically bonded to the lens polymer, poly(hydroxyethyl methacrylate), to produce tinted contact lenses. The final rule amended § 73.3121 (21 CFR 73.3121) by adding Reactive Blue No. 19 to the list of reactive dyes in paragraph (a).

In the final rule, FDA gave interested persons until April 8, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of March 8, 1985, for Reactive Blue No. 19 should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to

the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of March 8, 1985. Accordingly, the final rule amending § 73.3121 to provide for the safe use of Reactive Blue No. 19 in coloring contact lenses became effective April 9, 1985.

Dated: May 23, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-13471 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-85-1224; FR-2079]

Section 8—Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD .

ACTION: Notice of effective date.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on April 26, 1985 (50 FR 16612) which amends the section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all market areas, in compliance with the requirements of section 8(c)(1) of the U.S. Housing Act of 1937. The rule provided for a 30-day public comment period from the date of publication, and the effective date provision of the rule stated that, after the comment due date of May 28, 1985, a notice of the effective date of the rule would be published in the **Federal Register.**

HUD has determined not to make any changes at this time in the Fair Market Rents published on April 26, 1985. Accordingly, all of the Fair Market Rents published in the **Federal Register** on April 26, 1985, will become effective as provided under "**EFFECTIVE DATE,**" below.

However, HUD will carefully evaluate all comments received, whether during or after expiration of the public comment period, to determine whether any further revision of the Fair Market Rent schedules should be made. If this evaluation indicates a need to make any further revision of the Fair Market Rent schedules for particular market areas, HUD will publish a revision of those schedules at a future date.

EFFECTIVE DATE: The effective date for the interim rule published April 26, 1985 at 50 FR 16612 is June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief, Valuation Branch, Department of Housing and Urban Development, Room 6146, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 426-7624. This is not a toll-free number.

Dated: May 29, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-13428 Filed 6-3-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[T.D. 8028]

Information Returns Required by Officers, Directors and Shareholders of Foreign Personal Holding Companies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amendments made to the Internal Revenue Code of 1954 by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) which concern information returns required of officers, directors, and shareholders of foreign personal holding companies. While the changes expanded the number of persons required to file information returns for foreign personal holding companies, they also simplified the reporting requirements with respect to foreign personal holding companies and gave the Secretary the authority to set the return due dates and to waive duplicative filings. TEFRA also provided a new $1,000 civil penalty for failure to file a proper and timely foreign personal holding company information return.

DATES: The amendments are effective July 5, 1985 for taxable years of foreign corporations beginning after September 3, 1982. Taxpayers who are required to file under section 340 of TEFRA and who have compiled information based on the old Forms 957 and 958, which were replaced by Form 5471, may file the old forms instead of Form 5471 for taxable years ending on or before November 30, 1983. (See announcement 83-56, 1983-13 I.R.B. 92.)

FOR FURTHER INFORMATION CONTACT: Marnie J. Carro of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington D.C. 20224, (Attention: CC:LR:T) (202-566-3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1984, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6035 and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6679 of the Internal Revenue Code of 1954 (49 FR 35145).

These amendments were proposed to conform the regulations to changes made to sections 6035 and 6679 by Section 340 of TEFRA (96 Stat. 633, 634). A public hearing was neither requested nor held. One public comment was received. After consideration of this comment, the regulations are being published as they appeared in the notice of proposed rulemaking except for minor clarifying changes.

TEFRA simplified the reporting requirements that section 6035 imposes with respect to foreign personal holding companies. Prior to its amendment, section 6035 and the regulations thereunder required U.S. officers and directors of foreign personal holding companies to file two annual returns.

The first information return was filed on Form 957 and concerned the stock structure and identity of the shareholders of the corporation. The second information return was filed on Form 958 and concerned the foreign personal holding company's income and deductions for the taxable year, as well as undistributed foreign personal holding company income. In addition, any U.S. shareholder who had not already filed as a director or officer and who held 50% or more of the corporation's stock was required to file Form 957.

Because the various returns of officers, directors, and 50% shareholders suffered from overlapping coverage, as well as inconveniently staggered filing dates; TEFRA combined the filing requirements and gave the Service flexibility in setting return due date and waiving duplicative filings. Forms 957 and 958 have now been incorporated into Form 5471. TEFRA also expanded its reporting requirements to each United States citizen or resident who is a 10-percent (rather than 50-percent) shareholder of a foreign personal holding company as well as to officers

and directors who are U.S. citizens or residents.

The regulations provide that Form 5471 is to be filed with the income tax return of the person required to file. In addition, the regulations provide that one person may file Form 5471 and the applicable schedules for other persons who have the same filing requirements. A person who does not file Form 5471 because another person has agreed to file the information on his behalf must attach a statement to his return identifying such person and he still remains liable under the penalty provisions if that other person fails to file a proper return.

Information required by the regulations includes corporate, shareholder income information. The required shareholder information includes the names and addresses of all persons who held shares, options, and convertible securities during the taxable year; a description of each class of shares and the total number of shares of each class outstanding at the beginning and end of the taxable year; the number of shares of each class, option, or convertible security held by each person; and any changes in the holdings of shares, options, or convertible securities during the year. Required income information includes the foreign personal holding company's gross income, deductions, credits, taxable income, and undistributed foreign personal holding company income for the year.

In addition to the criminal penalties imposed by existing law for failure to file a return and filing a false or fraudulent return, TEFRA imposed by an amendment under section 6679 a $1,000 civil penalty for failure to file a proper foreign personal holding company information return. This penalty does not apply, however, if the failure is shown to be due to reasonable cause.

Discussion of Comment

Under § 1.6035–1(b)(2)(ii) and (b)(4) as proposed, an individual who does not own 10 percent or more in value of the outstanding stock directly, but is required to file solely by attribution of another United States person's stock ownership, is excused from filing if the direct owner who is an individual furnishes all the information required. The excused filer is required to file a statement with his income tax return indicating that such requirement has been or will be satisfied. In this context, the comment suggested that the regulations exempt from the filing requirements all individuals who directly own no stock of a foreign corporation. The final regulations do not adopt this suggestion because the statute requires that any individual who owns directly or *indirectly* 10 percent or more in value of the outstanding stock of a foreign corporation file a foreign personal holding company information return.

Certification of Nonapplicability of Regulatory Flexibility Act of 1980 and Executive Order 12291

The Secretary of the Treasury has certified that these regulations will not have a significant economic impact on a substantial number of small entities and are, therefore, not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6). Accordingly, a Regulatory Flexibility Analysis is not required and has not been prepared. The Commissioner of Internal Revenue has determined that these regulations are not major regulations subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required and has not been prepared.

Paperwork Reduction Act

The collection of information contained in these regulations has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Marnie J. Carro of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1 Through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigation, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1, Part 301, and Part 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 continues in part to read:

26 U.S.C. 7805 and 26 U.S.C. 6035 (a), (d), and (e) * * *.

The authority citation for Part 1 is amended by adding:

Sections 1.6035–1 through –3 also issued under 26 U.S.C. 6035 (a), (d), and (e).

Par. 2. Section 1.6035–1 is revised to read as follows:

§ 1.6035–1 Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.

(a) *Requirement of returns*—(1) *In general.* For taxable years of a foreign personal holding company beginning after September 3, 1982, each United States citizen or resident who is an officer, director, or 10-percent shareholder of the foreign personal holding company (as defined in section 552) shall file with his income tax return, on or before the date that return is due, Form 5471 and the applicable schedules to be completed in accordance with the instructions setting forth corporate, shareholder, and income information for the foreign personal holding company's annual accounting period that ends with or within the officer's, director's, or shareholder's taxable year.

(2) *General corporate information.* The general foreign personal holding company information required by this section with respect to each taxable year is as follows:

(i) The name and address and employer identification number (if any) of the corporation;

(ii) The kind of business in which the corporation is engaged;

(iii) The date of its incorporation;

(iv) The country under the laws of which the corporation is incorporated;

(iv) A description of each class of stock issued and outstanding by the corporation for the beginning and end of the annual accounting period;

(vi) The number of shares and par value of common stock of the corporation issued and outstanding as of the beginning and end of the taxable year;

(vii) The number of shares and par value of preferred stock of the corporation issued and outstanding as of

the beginning and end of the taxable year, the rate of dividend on such stock and whether such dividend is cumulative or noncumulative; and

(viii) Any other information required by the appropriate form and its instructions.

For purposes of this paragraph, the term "share" includes any security convertible into a share in the corporation and any option granted by the corporation with respect to any share in the corporation.

(3) *Shareholder information.* The shareholder information required by this section is as follows:

(i) The name, address and taxpayer identification number (if any) of each person, whether foreign or U.S., who was a shareholder during the taxable year and the class and number of shares held by each, together with an explanation of any changes in stock holdings during the taxable year,

(ii) The name and address of each holder during the taxable year of securities convertible into stock of the corporation and the class, number, and face value of the securities held by each, together with and explanation of any changes in the holdings of such securities during the taxable year,

(iii) The name and address of each holder during the taxable year of any option granted by the corporation with respect to any share in the corporation, and a full description of the options held by each, together with an explanation of any changes in the holdings of such options during the taxable year, and

(iv) Any other information required by the appropriate form and its instructions.

(4) *Income information.* The income information required by this section is the gross income, deductions and credits, taxable income, foreign personal holding company income, and undistributed foreign personal holding company income for the taxable year and other information required by the appropriate form and its instructions.

(b) *Persons required to file return*—(1) *In general.* The determination of whether a United States citizen or resident is person who is an officer, director, or 10-percent shareholder required to file a return with respect to any foreign corporation is made as of the date that Form 5471 is required to be filed. If there is no such person required to file on that date (because, for example, the corporation has been dissolved), then filing is required of the persons who were officers, directors or 10-percent shareholders on the last day of the most recent taxable year of the corporation for which there was such a person who was a United States citizen or resident.

(2) *10-percent shareholder.* (i) The term "10-percent shareholder" means any individual who owns directly or indirectly (within the meaning of section 544) 10 percent or more in value of the outstanding stock of a foreign corporation.

(ii) An individual who does not own 10 percent or more in value of the outstanding stock directly but is required to file solely by attribution of another United States person's stock ownership is excused from filing if the direct owner that is an individual furnishes all the information required.

(3) *Two or more persons required to submit the same information.* If two or more persons are required to furnish the information for the same foreign personal holding company for the same period, one person may make one return on Form 5471. The single Form 5471 may be filed with the income tax return of any one of the persons and shall disclose the name, address, and identifying number of each other person or persons on whose behalf the return is filed. Each person on whose behalf the return is filed remains liable for any penalties imposed under sections 6679, 7203, 7206, and 7207.

(4) *Statement required.* Any United States citizen or resident required to furnish information under this section with his return who does not do so by reason of the provisions of subparagraph (2)(ii) or (3) of this paragraph shall file a statement with his income tax return indicating that such requirement has been or will be satisfied and identifying the return with which the information was or will be filed and the place of filing.

(c) *Separate returns for each corporation.* If a person is required to file returns under section 6035 and this section with respect to more than one foreign personal holding company, separate returns must be filed with respect to each company.

(d) *Corrective filing.* If an information return with respect to a taxable year of a foreign personal holding company beginning after September 3, 1982, is filed before [date which is 30 days after the date of publication of a Treasury decision in the **Federal Register**] and that return does not contain all of the information required by this section, then the filer of the return shall file an amended information return containing all of such information within 90 days after June 4, 1985.

(e) *Penalties*—(1) *Criminal penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) *Civil penalties.* For civil penalties for failure to file a proper foreign personal holding company information return, see section 6679 and the regulations thereunder.

Par. 3 Section 1.6035–2 is revised to read as follows:

§ 1.6035–2 Returns of U.S. officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(a) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035–1 (Rev. as of April 1, 1981).

Par. 4 Section 1.6035–3 is revised to read as follows:

§ 1.6035–3 Returns of 50-percent U.S. shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(b) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035–2 (Rev. as of April 1, 1961).

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6035–1 . . . 1545–0704" "§ 1.6035–2 . . . 1545–0704".

Par. 7. The authority citation for Part 301 continues to read as follows:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

Par. 8. Section 301.6679–1 is amended as follows:

1. The section heading is revised to read as follows: "Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 3, 1982".

2. Paragraph (a)(1) is revised as set forth below.

3. Paragraph (a)(2) is amended by removing "section 6046 and § 1.6046–1," and adding in its place "section 6035, 6046, or 6046A,".

4. The third sentence of paragraph (a)(3) is amended by removing "section 6046" and adding in its place "section 6035, 6046, or 6046A".

§ 301.6579–1 Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 3, 1982.

(a) *Civil penalty*—(1) *In general.* In addition to any cirminal penalty provided by law, each United States citizen, resident or person filing a separate or joint information return or on whose behalf a return is filed, pursuant to sections 6035, 6046, or 6046A, and the regulations thereunder, who fails to file such a return within the time provided, or who files a return which does not show the required information, shall pay a penalty of $1,000, unless such failure is shown to be due to reasonable cause.

* * * * *

This Treasury decision is issued under the authority contained in Code sections 6035 (a), (d), and (e) (96 Stat. 633, 26 U.S.C. 6035 (a), (d), and (e)), 6679 (96 Stat. 634; 26 U.S.C. 6679), and 7805 (68A Stat. 917, 26 U.S.C. 7805). Approved by the Office of Management and Budget under control number 1545–0704.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: May 20, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–13277 Filed 6–3–85; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5, 19, and 252

[T.D. ATF–198; correction]

Implementing the Distilled Spirits Tax Revision Act and Portion of Crude Oil Windfall Profit Tax Act

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision); correction.

SUMMARY: This document corrects errors made in FR Doc. 85–4200, published in the **Federal Register** on March 1, 1985, at 50 FR 8455, which implemented the Distilled Spirits Tax Revision Act of 1979 and the Crude Oil Windfall Profit Tax Act of 1980.

FOR FURTHER INFORMATION CONTACT: Richard Langford, Distilled Spirits and Tobacco Branch, (202) 566–7531.

SUPPLEMENTARY INFORMATION:

Paragraph 1. In the middle column of page 8464 § 5.42(b)(3)(vi) Prohibited Practices should read:

§ 5.42 Prohibited Practices

* * * * *

(b) * * *

(3) * * *

(vi) Bottles at 100 degrees of proof.

(4) * * *

* * * * *

Paragraph 2. In the left-hand column on page 8470 in the fifth line of § 19.23 "as described" should read "are described".

Paragraph 3. In the left-hand column of page 8472 in § 19.44 in the first sentence remove the word "shall".

Paragraph 4. In the right-hand column of page 8474 in the fifth line of § 19.79 replace the word "spirit" with "spirits".

Paragraph 5. In the right-hand column of page 8477 in the fourth line of § 19.151(a) replace "ony" with "only".

Paragraph 6. In the middle column of page 8481 in the ninth line of § 19.185 replace the word "relected" with reflected".

Paragraph 7. In the left-hand column of page 8482 in § 19.191 in the 11th line replace "§ 19.152(1)(4)" with "§ 19.152(l)(4)".

Paragraph 8. In the middle column of page 8484 in § 19.231 in the fourth line from bottom of column replace "of" with "or".

Paragraph 9. In the chart on page 8486 in chart entry (a)(1)(ii)(B) replace "not over 500,000 proof gallons" with "not over 50,000 proof gallons".

Paragraph 10. In the left-hand column on page 8492 in § 19.333 in the 21st line replace "spitits" with "spirits".

Paragraph 11. In the middle column of page 8502 in § 19.523(b) in the 10th line "§§ 19.523a or 19.524" should read "§§ 19.524 or 19.525".

Paragraph 12. In the middle column of page 8502 in § 19.524(a)(1) in the 13th line the reference to "§ 19.524" should read "§ 19.525".

Paragraph 13. In the right-hand column of page 8502 in § 19.525(b)(3) in the 10th line the reference to "§ 19.524" should read "§ 19.525".

Paragraph 14. In the middle column of page 8506 in § 19.583(b)(3) in the second line replace "andstamps" with "and stamps".

Paragraph 15. In the middle column of page 8507 in § 19.593(c) in the last line replace "with in" with "within".

Paragraph 16. In the right-hand column of page 8510 in the chart in § 19.612 the words "Tare", "Tax Determined", and "Wine Spirits Addition" should be flush with the right margin.

Paragraph 17. In the right-hand column of page 8517 in § 19.736(a)(7) in the second line replace "fuel" with "fusel".

Paragraph 18. In the left-hand column of page 8559 in the Table of Sections remove "252.104a Certificate of Authenticity".

Paragraph 19. In the middle column of page 8562 in § 252.220 in the third line remove "§ 252.119" and replace with "§ 252.219".

Signed: May 24, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85–13216 Filed 6–3–85; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 281

Land Disposal; Sale of Lands Pursuant to Section 10 of the Act Approved March 1, 1911

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The regulations at 36 CFR Part 281 were promulgated in 1955 to implement section 10 of the Weeks Act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 480). Section 10 provides for the sale of small areas of land that are chiefly valuable for agriculture which may have been acquired as part of a larger tract for National Forest purposes. Since the regulations were promulgated, the Forest Service has not had a single instance requiring application of these regulations, and there is no foreseeable need for them Therefore, the Agency removes Part 281 from the Code of Federal Regulations.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Paul R. Haarala, Lands Staff, (703) 235–2161.

SUPPLEMENTARY INFORMATION: Over 27 million acres were acquired for National Forest purposes under the authority of the Weeks Act. Over 20 million acres acquired prior to 1961 were in poor condition because of excessive timber cutting, fire damage, and erosion form tillage of lands unsuitable for agriculture.

The Agency has found no need for past use of the Weeks Act sale regulations on these acquired lands, and anticipates no future use since current Federal land acquisition programs preclude acquiring lands that are chiefly valuable for agricultural purposes.

A notice of proposed rulemaking to remove Part 281 from the Code of Federal Regulations was published on September 14, 1984, 49 FR 36112. No comments were received.

Removal of Part 281 has been reviewed under relevant USDA procedures, Executive Order 12291, and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), and it has been determined that:

(1) This does not constitute a major regulatory action;

(2) No effect on the economy will result from the removal of this regulation;

(3) This action will not have a significant economic impact on a substantial number of small entities;

(4) It does not directly or indirectly result in information collection requirements or requests or impose any paperwork burden; and

(5) It does not affect the environment; therefore, an environmental assessment or impact statement is not required.

List of Subjects in 36 CFR Part 281

Administrative practice and procedure, National forests, Public lands—sales.

PART 281—[REMOVED]

Therefore, Chapter II of Title 36 is hereby amended by removing Part 281—Land Disposal.

Dated: March 26, 1985.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 85-13298 Filed 6-3-85; 8:45 am]

BILLING CODE 3410-11-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. E-81]

Acquisition of Systems Furniture

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation sets forth basic policy concerning the acquisition of systems furniture by Federal executive agencies. Detailed guidance will be issued in a GSA FPMR bulletin to be published by the Office of Federal Supply and Services. The regulation supersedes FPMR Temporary Regulation E-76 and provides for continued monitoring of systems furniture acquisitions by GSA for the purpose of tracking agency demand and evaluating its impact upon procurement and administrative management policy. The information collected will be evaluated and form the basis for determining the most cost effective and economical methods for procuring and employing systems furniture within the Federal Government.

DATES: Effective date: June 4, 1985.

Expiration date: June 30, 1986.

Comments due on or before: October 31, 1985.

ADDRESS: Comments should be addressed to: General Services Administration (FN), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Rowan, Furniture Commodity Center, Office of Federal Supply and Services (703-557-8473).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c) 63 Stat. 390; (40 U.S.C. 486(c)))

In 41 CFR Ch. 101, the following temporary regulation is added to the Appendix to Subchapter E to read as follows:

Federal Property Management Regulations, Temporary Regulation E-81

May 2, 1985.

To: Heads of Federal agencies

Subject: Acquisition of systems furniture

1. *Purpose.* This regulation sets forth basic policy concerning the acquisition of systems furniture.

2. *Effective date.* This regulation is effective upon publication in the **Federal Register.**

3. *Expiration date.* This regulation expires June 30, 1986.

4. *Applicability.* The provisions of this regulation apply to all Federal executive agencies.

5. *Background.* In March of 1982, GSA issued FPMR Temporary Regulation E-76 (hereafter referred to as E-76) which established controls over acquisition of systems furniture by Federal agencies. The controls were designed to ensure that each proposed acquisition is cost effective for the Government based upon comprehensive space and property management planning and cost analysis. Additionally, GSA has been able to gather information concerning agency demand, procurement costs, and procurement methods and practices as well as space savings that can be attributed to systems furniture. Based upon an evaluation of the information, GSA has concluded that systems furniture should continue to be available for agency procurement whenever its proposed application is demonstrated to be cost effective for the Government; and, that changes in the procurement methodology and administrative processes set forth in E-76 are required in the interest of efficiency and economy.

6. *Definition.* For the purposes of this temporary regulation "systems furniture" consists of interconnecting panel assemblies and work surfaces, storage units and other major components which are panel supported.

7. *Basic policy.* GSA contacts for systems furniture, covered under Federal Supply Schedule FSC 71, Part II, Section E, are available for use by executive agencies only when the planned use of the furniture will result in the most efficient and cost effective assignment and/or utilization of Government-controlled office space. Executive agencies are required to obtain procurement authorization from the GSA Office of Federal Supply and Services (FSS) in accordance with this regulation.

8. *Management responsibilities.*

a. The Assistant Administrator for FSS is responsible for providing program direction, authorizing procurements of systems furniture, and promoting maximum competition for Government business. In this connection, FSS shall issue guidance concerning justification requirements, processing of authorization requests, and procurement methodology. The Assistant Administrator may grant a general waiver from the requirement to obtain GSA authorization to any agency, or major subunit thereof, upon demonstration and certification by the agency head that procurement, space and property management programs and controls have been established to ensure compliance with the spirit and intent of this regulation.

b. Agency approving officials are responsible for ensuring that systems furniture projects are fully planned and coordinated, and that forecasted savings are attained. Proposed procurements of $500,000 or more should be approved by the agency head; for less, by an Assistant Secretary, or equivalent level. For the Department of Defense, proposed procurements of less than $500,000 may be approved by the commanding officer of a major claimant

command. These authorities may be redelegated as determined by the agency head. Agencies should notify the Director, Furniture Commodity Center, at the following address: General Services Administration (FN), Washington, DC 20406, of their delegations to avoid delay in processing requests.

9. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration (FN), Washington, DC 20406, not later than October 31, 1985, for consideration and possible incorporation into a permanent regulation. Requests for general information and guidance should also be submitted to the above address.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-13346 Filed 6-3-85; 8:45 am]

BILLING CODE 6820-24-M

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41 CFR Part 101-8

[FPMR Amdt. A-37]

Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Organization and Personnel, GSA.

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of the Age Discrimination Act of 1975, as amended, and the general, government-wide regulation published in the Federal Register on June 12, 1979 (44 CFR 33776), codified at 45 CFR Part 90. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. Notwithstanding these exceptions, the Act applies to persons of all ages. This regulation is designed to guide the actions of recipients of General Services Administration (GSA) Federal financial assistance. The regulation incorporates standards for determining age discrimination as set forth in the 45 CFR Part 90. It discusses the responsibilities of GSA officials, investigation, conciliation, and enforcement procedures GSA will use to ensure compliance with the Act. The proposed rule was published in the Federal Register on December 13, 1983 (48 CFR 55485). No comments were received.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Grant B. Williams, Jr., Director, Office of Civil Rights, General Services Administration, 18th & F Streets, NW., Washington, D.C. 20405, or Frances L. Coleman (202) 566-1368. Persons with impaired vision may obtain cassette copies of this rule by contacting one of the above individuals.

SUPPLEMENTARY INFORMATION: (a) In November 1975 Congress enacted the Age Discrimination Act (42 U.S.C. 6101 et seq.) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Act prohibits discrimination on the basis of age in all programs and activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying, or limiting services, or otherwise discriminate on the basis of age.

(b) Like other Federal financial assistance civil rights statutes, the Act applies only to programs or activities where there is an intermediary (recipient) between the Federal financial assistance and the final beneficiary of that assistance. The Act does not apply to programs of direct Federal financial assistance such as the Social Security Program.

(c) The Act requires each department or agency that operates programs of Federal financial assistance to issue proposed and then final regulations, which must be consistent with the general regulation (45 CFR Part 90).

(d) The amendments to the Act added a requirement that the Secretary, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare), approve the final age regulation of all Federal agencies.

List of Subjects in 41 CFR Part 101-8

Age, Discrimination, Federal financial assistance.

41 CFR Part 101-8 is amended as follows:

PART 101-8—NONDISCRIMINATION IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Subpart 101-8.7 reads as follows:

Authority: 42 U.S.C. 6101 et seq.

2. The table of contents for Part 101-8 is amended by adding the following Subpart:

Subpart 101-8.7—Discrimination Prohibited on the Basis of Age

Sec.

101-8.700 Purpose of the Age Discrimination Act of 1975.
101-8.701 Scope of General Services Administration's age discrimination regulation.
101-8.702 Applicability.
101-8.703 Definitions of terms.
101-8.704 Rules against age discrimination.
101-8.705 Definitions of normal operation and statutory objectives.
101-8.706 Exceptions to the rules against age discrimination.
101-706-1 Normal operation.
101-706-2 Reasonable factors.
101-8.707 Burden of proof.
101-8.708 Affirmative action by recipient.
101-8.709 Special benefits for children and the elderly.
101-8.710 Age distinctions contained in General Services Administration regulation.
101-8.711 General responsibilities.
101-8.712 Notice to subrecipients and beneficiaries.
101-8.713 Assurance of compliance and recipient assessment of age distinctions.
101-8.714 Information requirements.
101-8.715 Compliance reviews.
101-8.716 Complaints.
101-8.717 Mediation.
101-8.718 Investigation.
101-8.719 Prohibition against intimidation or retaliation.
101-8.720 Compliance procedure.
101-8.721 Hearing.
101-8.722 Decision and Notices.
101-8.723 Remedial action by recipient.
101-8.724 Exhaustion of administrative remedies.
101-8.725 Alternate funds disbursal.

3. Subpart 101-8.7, consisting of §§ 101-8.700 through 101-8.725 is added to read as follows:

Subpart 101-8.7—Discrimination Prohibited on the Basis of Age

§ 101-8.700 Purpose of the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975, as amended, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

§ 101-8.701 Scope of General Service Administration's age discrimination regulation.

This regulation sets out General Services Administration's (GSA) policies and procedures under the Age Discrimination Act of 1975, as amended, in accordance with 45 CFR Part 90. The Act and the Federal regulation permits Federal financial assistance programs and activities to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 101-8.702 Applicability.

(a) The regulation applies to each GSA recipient and to each program or activity operated by the recipient that

benefits from GSA Federal financial assistance.

(b) The regulations does not apply to:

(1) An age distinction contained in that part of Federal, State, local statute or ordinance adopted by an elected, general purpose legislative body that:

(i) Provides any benefits or assistance to persons based on age;

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization or any labor-management apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act (CETA) (29 U.S.C. 801 et seq.).

§ 101–8.703 Definitions of terms.

(a) As used in these regulations, the term: "Act means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words that imply a particular age or range or ages (for example, "children," "adult," "older person," but not "student").

(f) "Agency" means a Federal department or agency empowered to extend Federal financial assistance.

(g) Agency Responsible Officials:

(1) "Administrator" means the Administrator of General Services.

(2) "Director, Office of Civil Rights" means the individual responsible for managing the agency's nondiscrimination Federal financial assistance program, or his or her designee.

(h) "Federal financial assistance" means (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the services of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purposes of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(i) "GSA" means the United States General Services Administration.

(j) "Primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

§ 101–8.704 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 101–8.706 of this regulation

(a) *General rule.* No person in the United States may on the basis of age, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from GSA.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangement, use age distinctions or take any other actions that have the effect on the basis of age, of:

(1) Excluding individuals from participating in, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individual opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The forms of age discrimination listed in paragraph (b) of this section are not necessarily a complete list.

§ 101–8.705 Definition of normal operation and statutory objective.

The terms "normal operation" and "statutory objective" are defined as follows:

(a) "Normal operation" means the operation of a program or activity without significant changes that would inhibit meeting objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 101–8.706 Exceptions to the rules against age discrimination.

§ 101–8.706–1 Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic must be measured or approximated for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic can be reasonably measured or approximated by the use of age; and

(d) The other characteristic is impractical to measure directly on an individual basis.

§ 101–8.706–2 Reasonable factors other than age.

(a) A recipient is permitted to take an action, otherwise prohibited by § 101–8.706–1, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 101–8.707 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 101–8.706 is the recipient's.

§ 101–8.708 Affirmative action by recipient.

Even in the absence of a finding of age discrimination, a recipient may take affirmative action to overcome the effects resulting in limited participation in the recipient's program or activity.

§ 101–8.709 Special benefits for children and the elderly.

If a recipient's program provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program,

notwithstanding the provisions of § 101–8.705.

§ 101–8.710 Age distinctions contained in General Services Administration regulation.

Any age distinctions contained in a rule or regulation issued by GSA are presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies. The GSA regulation 41 CFR 101–44.207(a) (3) through (27), describes specific Federal financial assistance programs which provide assistance to all age groups. However, the "Child Care Center" program servicing children through age 14, and "Programs for Older Individuals", are the only two programs where age distinctions are provided.

§ 101–8.711 General responsibilities.

Each recipient of Federal financial assistance from GSA is responsible for ensuring that its programs and activities comply with the Act and this regulation and must take steps to eliminate violations of the Act. A recipient is also responsible for maintaining records, providing information, and affording GSA access to its records to the extent GSA finds necessary to determine whether the recipient is complying with the Act and this regulation.

§ 101–8.712 Notice to subrecipients and beneficiaries.

(a) If a primary recipient passes on Federal financial assistance from GSA to subrecipients, the primary recipient provides to subrecipients, written notice of their obligations under the Act and this regulation.

(b) Each recipient makes necessary information about the Act and this regulation available to its program beneficiaries to inform them about the protections against discrimination provided by the Act and this regulation.

§ 101–8.713 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from GSA signs a written assurance as specified by GSA that it intends to comply with the Act and this regulation.

(b) Recipient assessment of age distinctions.

(1) As part of a compliance review under § 101–8.715 or complaint investigation under § 101.8.718, GSA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from GSA to assess the recipient's compliance with the Act.

(2) If an assessment indicates a violation of the Act and the GSA regulation, the recipient takes corrective action.

§ 101–8.714 Information requirements.

Each recipient must:

(a) Keep records in a form and containing information that GSA determines necessary to ensure that the recipient is complying with the Act and this regulation.

(b) Provide to GSA upon request, information and reports that GSA determines necessary to find out whether the recipient is complying with the Act and this regulation.

(c) Permit reasonable access by GSA to books, records, accounts, facilities, and other sources of information to the extent GSA finds it necessary to find out whether the recipient is complying with the Act and this regulation. GSA adopts HHS policy regarding the kinds of data and information recipients are expected to keep (45 CFR 90.34). This policy is parallel to compliance information sections in the Title VI, Title IX, and Section 504 implementation regulations. While recognizing the need for enough data to assess recipient compliance, GSA is committed to lessening the data gathering burden on recipients. GSA further recognizes that there is no established body of knowledge or experience to guide the assessment of age discrimination. This regulation, therefore, does not impose specific data requirements upon recipients, rather, it allows GSA to be flexible in deciding what kinds of data should be kept by recipients, based on what kinds of data prove useful as GSA gains experience with the Age Discrimination Act, and age discrimination issues become clearer.

(d) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 59–511), the reporting and record keeping provisions included in this regulation will be submitted, for approval, to the Office of Management and Budget (OMB). No data collection or record keeping requirement will be imposed on recipients or donees without the required OMB approval number.

§ 101–8.715 Compliance reviews.

(a) GSA may conduct compliance reviews and use similar procedures to investigate and correct violations of the Act and this regulation. GSA may conduct the reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and this regulation has occurred.

(b) If a compliance review indicates a violation of the Act or this regulation, GSA attempts to achieve voluntary compliance with the Act. If compliance cannot be achieved, GSA arranges for enforcement as described in § 101–8.720.

§101–8.716 Complaints.

(a) Any person, individually or as a member of a class (defined at 101–8.703(e)) or on behalf of others, may file a complaint with GSA alleging discrimination prohibited by the Act or this regulation based on an action occurring after July 1, 1979. A complainant must file a complaint within 80 days from the date the complainant first has knowledge of the alleged act of discrimination. However, for good cause shown, GSA may extend this time limit.

(b) GSA considers the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) GSA attempts to facilitate the filing of complaints if possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes the action or practice complained of, and is signed by the complainant;

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint;

(3) Notifying the complainant and the recipient (or their representative) of their right to contact GSA for information and assistance regarding the complaint resolution process.

(d) GSA returns to the complainant any complaint outside the jurisdiction of this regulation, and states the reason(s) why it is outside the jurisdiction of the regulation.

§ 101–8.717 Mediation.

(a) GSA promptly refers to the mediation agency designated by the Secretary, HHS, all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and this regulation, unless the age distinction complained of is clearly within an exception; and

(2) Contain the information needed for further processing.

(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgement that an agreement is not possible. Both parties

need not meet with the mediator at the same time.

(c) If the complainant and the recipient agree, the mediator will prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator must send a copy of the agreement to GSA. GSA takes no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation proceeds for a maximum of 60 calendar days after a complaint is filed with GSA. Mediation ends if:

(1) 60 calendar days elapse from the time the complaint is filed; or

(2) Before the end of the 60 calendar-day period an agreement is reached; or

(3) Before the end of that 60 calendar-day period, the mediator finds that an agreement cannot be reached.

Note.—The 60 calendar day period may be extended by the mediator, with the concurrence of GSA, for not more than 30 calendar days if the mediator determines that agreement is likely to be reached during the extension period.

(f) The mediator must return unresolved complaints to GSA.

§ 101–8.718 Investigation.

(a) *Informal investigation.* GSA investigates complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement. As part of the initial investigation, GSA uses informal factfinding methods, including joint or separate discussions with the complainant and the recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. GSA may seek the assistance of any involved State program agency. GSA puts any agreement in writing and has it signed by the parties and an authorized official designated by the Administrator or the Director, Office of Organization and Personnel. The settlement may not affect the operation of any other enforcement efforts of GSA, including compliance reviews and investigation of other complaints that may involve the recipient. The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If GSA cannot resolve the complaint through informal investigation, it begins to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, GSA attempts to obtain voluntary compliance. If GSA cannot obtain voluntary compliance, it begins enforcement as described in § 101–8.720.

§ 101–8.719 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act of this regulation; or

(b) Cooperates in any mediation, investigation, hearing, conciliation, and enforcement process.

§ 101–8.720 Compliance procedure.

(a) GSA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from GSA under the program or activity involved where the recipient has violated the Act or this regulation. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceeding to enforce any rights of the United States or obligations of the recipients created by the Act or this regulation, or

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that has the effect of correcting a violation of the Act or this regulation.

(b) GSA limits any termination to the particular recipient and program or activity or part of such program and activity GSA finds in violation of this regulation. GSA does not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from GSA.

(c) GSA takes no action under paragraph (a) until:

(1) The administrator advises the recipient of its failure to comply with the Act and this regulation and determines that voluntary compliance cannot be obtained, and

(2) 30 calendar days elapse after the Administrator sends a written report of the grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator files a report if any action is taken under paragraph (a) of this section .

(d) GSA may also defer granting new Federal financial assistance from GSA to a recipient when a hearing under § 101–8.721 is initiated.

(1) New Federal financial assistance from GSA includes all assistance for which GSA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from GSA does not include assistance approved before the beginning of a hearing.

(2) GSA does not begin a deferral until the recipient receives notice of an opportunity for a hearing under § 101–8.721. GSA does not continue a deferral for more than 60 calendar days unless a hearing begins within that time or the time for beginning the hearing is extended by mutual consent of the recipient and the Administrator. GSA does not continue a deferral for more than 30 calendar days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) GSA limits any deferral to the particular recipient and program or activity or part of such program or activity GSA finds in violation of these regulations. GSA does not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not, receive Federal financial assistance from GSA.

§ 101–8.721 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action; and either fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible GSA official that the matter be scheduled for hearing or advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause.

The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written

information and argument for the record. The failure of an applicant or recipient to request a hearing for which a data has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act, and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at GSA in Washington, D.C., at a time fixed by the Director, Office of Civil Rights (OCR), unless he or she determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and GSA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevent evidence on the issues as stated in the notice for hearing or as determined by the Officer conducting the hearing at the outset of or during the hearings. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advances on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated of Joint Hearings.* In cases in which the the same or related facts are asserted to constitute non-compliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part, and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible GSA official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 101–8.722.

§ 101–8.722 Decisions and notices.

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Agency designated reviewing authority for final decision. A copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for GSA may, within the period provided for in the rules of procedure issued by GSA official, file with the reviewing authority exceptions to the initial decision, with his or her reasons therefore. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue a decision including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 101–8.721(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Administrator.* If the Administrator has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for GSA may request the Administrator to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible GSA official.

Such review is not a matter of right and shall be granted only where the Administrator determines there are special and important reasons therefor. The Administrator may grant or deny such request, in whole or in part. He or she may also review such a decision in accordance with rules of procedure issued by the responsible GSA official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of GSA when the Administrator transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation,

including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible GSA official that it will fully comply with this regulation

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that is will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible GSA official determines that those requirements have been satisfied, he or she shall restore such eligibility.

(3) If the responsible GSA official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 101–8.723 Remedial action by recipient.

If GSA finds a recipient discriminated on the basis of age, the recipient must take any remedial action that GSA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that discriminated, GSA may require both recipients to take remedial action.

§ 101–8.724 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 calendar days elapse after the complainant files the complaint and GSA makes no finding with regard to the complaint; or

GSA Issues a finding in favor of the recipient.

(b) If GSA fails to make a finding within 180 days or issues a finding in favor of the recipient, GSA must:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant must give 30 calendar days notice by registered mail to the Secretary, HHS, The Administrator, the Attorney General of the United States, and the recipient;

(iv) That the notice must state the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 101–8.725 Alternate funds disbursal.

If GSA withholds Federal financial assistance from a recipient under this regulation, the Administrator may disburse the assistance to an alternate recipient; any public or nonprofit private organization; or agency or State or political subdivision of the State. The Administrator requires any alternate recipient to demonstrate:

(a) The ability to comply with this regulation; and

(b) The ability to achieve the goals of the Federal Statutes authorizing the program or activity.

Dated: May 2, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–13347 Filed 6–3–85; 8:45 am]

BILLING CODE 6820–30–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 78

[MM Docket No. 84–886; RM–4328; FCC 85–258]

Licensing Procedures and Reporting Requirements in the Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action implements a one-step licensing process and deletes or modifies several filing and reporting requirements for applicants and licensees in the Cable Television Relay Service (CARS). The changes include deleting the annual reporting and 30-day notification requirements of CARS licensees who supply programming to other users; eliminating the need to file for transfer of assignment or control when no actual ownership change occurs in the licensee or its ultimate controlling entity; deleting the requirement of FCC Form 327, Schedule E, to list all communities served from each receive site of the proposed CARS station. These changes will serve the public interest by encouraging more expeditious service which should result in reduced processing delays and reporting burdens.

EFFECTIVE DATE: June 28, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sharon A. Briley, Mass Media Brureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 78

Cable television.

Report and Order (Proceeding Terminated)

In the matter of amendment of Part 78 of the Commission's Rules Concerning Licensing Procedures and Reporting Requirements in the Cable Television Relay Service; MM Docket No. 84–886, RM–4328, FCC 85–258.

Adopted: May 13, 1985.

Released: May 22, 1985.

By the Commission.

Introduction

1. In this *Report and Order*, we are amending several rules and policies pertaining to stations in the Cable Television Relay Service (CARS). Specifically, we are taking the following actions: (1) Adopting a one-step licensing application process; (2) streamlining filing requirements for assignment or transfer of control applications; (3) eliminating the requirement that CARS applicants identify authorized program distribution facilities to be served; and (4) deleting the annual reporting requirements of certain CARS licensees.

Background

2. On January 7, 1983, Westinghouse Broadcasting and Cable, Inc. (Group W) filed a "Petition for Rulemaking" requesting several modifications to the current licensing procedures and reporting requirements for CARS facilities. In addition, Group W requested that the Commission address the allocation of additional spectrum to CARS, the need for certain technical and operational regulations, and the eligibility of master antenna television (MATV) systems for CARS licensees.

3. In response to Group W's petition, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above-captioned proceeding.[1] In the *Notice*, we proposed to: (1) Consolidate the two-step construction permit (CP) and licensing process into a one-step licensing process; (2) require licensees to file only one application for approval of assignment or transfer of control for all CARS authorizations affected; (3) require applications for approval of assignment or transfer of control to be filed only where a change occurs in the identity of the licensee or its ultimate controlling entity; (4) eliminate the requirement of FCC Form 327, Schedule E, to list all cable television communities served from each receive site of a proposed CARS station; and (5) delete the annual reporting requirement for CARS licensees who supply programming to others on a nonprofit, cost sharing basis. We also addressed Group W's concerns regarding the assignment of additional spectrum to CARS; the need for certain technical operational regulations; and the eligibility of MATV systems for CARS licenses. We indicated that Group W's first two concerns are more appropriate to consider as part of General Docket No. 82-334.[2] With respect to the eligibility of MATV systems for CARS licenses, we indicated that our prior opinion in *Cable Dallas I* would apply to such cases.[3]

4. We receive comments or replies from nine parties all of which are CARS microwave licensees or their representatives.[4] Westinghouse Broadcasting and Cable, Inc. (Group W), the original petitioner, filed a separate "Petition for Limited Reconsideration" which we are treating herein as a comment.[5]

Discussion

5. *Licensing Requirements.* In the *Notice*, we indicated that the current CARS licensing process appears unnecessarily burdensome and duplicative and proposed to replace it with a simplified one-step procedure. Under this proposal, the current construction permit and license steps would be combined and the CARS station licensee would be required to become operational within one year of the date of the license grant. We also requested comment concerning whether there is a need to require licensees to notify the Commission when construction of the station is complete.

6. All commenting parties support the proposal to combine the construction permit and license phases of the current CARS licensing process. Commenting parties agree with our initial finding that the current process is unnecessarily duplicative and burdensome. They differ, however, on the length of time that should be allowed for a CARS station to become operational. ATC, Gill Industries, TCI, and CBS/Black Hawk Cable concur with the one-year proposal. Group W and Heritage basically support the one-year time limit, however, Group W describes this as the "minimum acceptable" period and Heritage urges that provisions be made for extensions of time upon appropriate showings. The CARS users and the NCTA request an 18-month limit. They cite franchising process delays, equipment availability, and weather conditions as reasons for the need for additional time.

7. With respect to whether new licensees should be required to notify the FCC upon completion of construction, six parties believe that some type of notification is useful for frequency coordination purposes. ATC mentions the requirement contained in § 78.36 of our rules for prior coordination of channels in the 12.7–13.25 GHz band. It suggests that new licensees be required to submit either a letter or postcard a short time following completion of construction. Heritage and the CARS users, however, believe that notification is an unnecessary reporting obligation. Heritage notes that such reporting is not required for broadcast auxiliary stations and other licensees.

8. After consideration of the record before us, we find that the public interest would be better served by a one-step licensing procedure that eliminates the requirement for construction permits. This would facilitate more expeditious and efficient processing of CARS applications, and thereby enable stations to commence operation sooner and reduce the administrative burden of the licensing process on applicants and the Commission. Accordingly, we are adopting a new CARS licensing procedure that combines the separate CP and license applications into a single license application.[6] The new CARS licensing procedure will be similar to the one-step licensing plans we have already instituted for other services associated with mass media communications including remote pick-ups, studio-to-transmitter links, intercity relays, TV auxiliary stations, and ITFS facilities. In order to avoid disruption of CARS licensing activity currently in process, we will continue to process all pending CARS applications and outstanding construction permits according to the existing two-step procedure.

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[1] *See Notice of Proposed Rule Making* in MM Docket No. 84-886, 49 FR 38160, adopted September 13, 1984.

[2] In General Docket No. 82-334, we currently are addressing the matter of a comprehensive spectrum utilization policy for terrestrial microwave services. *See First Report and Order* in General Docket No. 82-334, 48 FR 50722 (1983).

[3] The *Notice of Proposed Rule Making* in MM Docket No. 84-1296, 49 FR 48765 (1984) implementing certain provisions of the Cable Communications Policy Act, Pub. L. 98-549, § 1 *et seq.*, 98 Stat. 2779 (1984), addresses the definition of the term "cable system" and proposes to permit certain MATV or SMATV systems to qualify as a cable system under this definition.

[4] Parties filing comments and/or replies are: American Television and Communications Corporation ("ATC"); CBS/Black Hawk Cable Communications Corp.; Gill Industries; Heritage Communications, Inc.; National Cable Television Association ("NCTA"); 29 CARS microwave users (CARS users); Tele-Communications, Inc. ("TCI"); Video Services Group of Centel Communications Company ("Centel"); and Group W.

[5] Under the Commission's rules, petitions for reconsideration may be filed only on final Commission actions. *See* 47 CFR 1.429.

[6] Section 319(d) of the Communications Act has been amended to allow the Commission to eliminate the requirement for construction permits for certain types of stations, including privately-owned fixed microwave facilities such as CARS stations, if grant of a separate CP would not serve the public interest. *See* 47 U.S.C. 319(d), as amended by the Communications Amendments Act of 1982, Pub. L. 97-259.

9. We continue to believe that one year is a sufficient period for licensees to complete construction and commence operation under normal circumstances. Thus, we are adopting a requirement that a CARS licensee complete construction and make the station fully operational within one year of the date the license is granted. However, in cases where additional time is needed, we may grant extensions for good cause and upon appropriate showing. In general, licensees will be required to submit requests for extensions of time at least 30 days prior to the expiration of the one year period. We also have decided to require CARS licensees to notify the Commission when the station commences operation. This notification may be in either letter or postcard form and *must* be submitted on or before the expiration date of the one year construction period. If notification that the station has commenced operation is not submitted within this period, the station license will be automatically forfeit. We believe this notification requirement is necessary to provide accurate records of actual CARS channel usage for frequency coordination purposes and that it does not impose a significant burden on licensees.

10. *Assignment and Transfer of Control.* In the *Notice*, we proposed to simplify certain aspects of the procedure for applying for assignment or transfer of control of CARS stations. In cases involving transfer of control of two or more stations from one party to another single party, we proposed to permit applicants to prepare a single CARS license application form (FCC Form 327) that identifies all of the stations to be affected by the action and to submit a copy of the combined application for each individual station. We also proposed to require filing of applications for assignment or transfer of control only where there is a change in the ownership of the licensee or the ultimate controlling entity of the licensee. For example, under this procedure, we would not require notification if there were merely a change in the structure of intermediate corporate entities without a change in ownership of the licensee or the ultimate controlling entity of the licensee. We requested comment concerning any implications these proposals may have with respect to section 310(d) of the Communications Act.

11. All commenting parties support the proposal that a single FCC Form 327 be filed for all CARS stations affected by an assignment or transfer of control. In addition, ATC, the CARS users, Group W, NCTA, and TCI suggest that the Commission adopt a procedure whereby a licensee notifies the Commission in writing of any change which does not affect an assignment or transfer of control. Heritage states that a name change in a corporate licensee should be subject only to a notification requirement; but, it believes that Commission approval is required under section 310(d) of the Communications Act for "all transfers, including *pro forma* transfers of control and assignments."

12. After consideration of the record on this issue, we have decided to revise the requirements with respect to assignment or transfer of control of CARS licenses in the manner proposed in the *Notice*. We believe that the current procedure that requires a licensee transferring two or more CARS stations to a single party to submit individual FCC Form 327 transfer applications for each station is unnecessarily burdensome and may cause needless administrative delays. Similarly, we see no need for FCC approval in cases where ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee. Section 310(d) requires Commission approval only when a license is transferred to another person or when control of a corporation holding a license is transferred.[7] Thus, section 310(d) does not appear to require FCC approval of ownership changes that do not involve a change in the identity or controlling interest of the licensee. *Pro forma*, or "short form," assignments or transfers of control which do involve such changes will continue to require approval.

13. Under the new procedures, CARS licensees transferring multiple stations to a single party will prepare a single FCC Form 327 application that lists each station to be transferred. The licensee will then submit one copy of this combined application for each CARS station listed thereon. For example, if five stations are being transferred, the licensee would submit five copies of the same combined FCC Form 327.

14. Also, we no longer will require the filing of requests for approval of CARS station ownership changes that do not affect the identity or controlling interest of the licensee.[8] Thus, CARS licensees will not be required to notify the Commission at all of such transfers of ownership. In all cases of ownership transfer, the party holding the controlling interest in the licensee shall be determined in accordance with current Commission policy. *See, e.g., News International, PLC*, 97 FCC 2d 349, 355 (1984).

15. *Identification of communities served.* Section 78.1 of the Commission's rules provides that CARS stations are to be authorized for the purpose of relaying signals to cable television systems, TV translator stations, and low-power TV stations.[9] In order to ensure that CARS facilities are used in accordance with their authorized purposes, applicants for CARS stations are required to list all such authorized distribution facilities to be served from each receive site on the license application. This information is submitted on Schedule E of FCC Form 327. In addition, licensees are required under § 78.1(e)(6) of the rules to provide the Commission 30 days advance notice when program material relayed over a CARS facility is to be supplied to any cable system that has not been specified in the license application or on a prior notification to the Commission.[10]

16. In the *Notice*, we proposed to eliminate the requirement to list all authorized distribution facilities served by each receive site of the proposed station on the license application. We stated that the identification of one authorized distribution facility appears to be sufficient to verify compliance with the rules. Consistent with this interpretation, we also proposed to delete the rule requiring 30 day advance notification when program material is to be provided to distribution facilities not previously reported to the Commission.

17. The commenting parties unanimously support these proposals and concur with our initial opinion that identification of a single authorized program distribution facility is sufficient to demonstrate that the CARS station is being used for its intended purpose. Commenters offer alternative suggestions with respect to the single program distribution facility that would be identified under the revised requirement. NCTA, Group W, and Heritage suggest that any cable system

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[7] Section 310(d) of the Communications Act provides, in relevant part, that "[n]o . . . station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. 310(d).

[8] We wish to emphasize that in cases involving changes in the identity or controlling interest of the licensee, we will continue to require the licensee to apply for FCC approval on FCC Form 327.

[9] *See* 47 CFR 78.1.

[10] *See* 47 CFR 78.11(e)(6).

served from the receive site would be satisfactory to verify compliance with § 78.1. ATC, Gill Industries, the CARs users, and Centel submit that the cable community unit specified be either the community with the largest number of subscribers (the "dominant" community) or the lead or headend community (the "primary" community) where CARS stations serve a large cable system. Centel also suggests that applicants should be permitted to list additional cable communities in [illegible] where notice of CARS station operation might be helpful in other activities such as frequency coordination.

18. After full consideration of the record on this issue, we have determined that certification by the applicant that at least one cable system, TV translator, or low power TV station will be served by the CARS station is sufficient to demonstrate that the station will be used for authorized purposes under § 78.1. We find no regulatory need for the identity of any specific authorized program distribution facility served from a CARS receive site. Accordingly, we are replacing Schedule E of FCC Form 327 with a statement that the CARS applicant certifies the station will provide service to at least one authorized program distribution facility.

19. *Annual reporting requirement.* We proposed to eliminate the § 78.11(f) requirement that CARS licensees who supply program material to cable television systems or television translator stations either without charge or on a nonprofit, cost sharing basis, file annual reports containing financial statements and user service information.[11] In the *Notice*, we indicated that we believe that the record keeping requirement of § 78.11(d)(2) adequately serves the purpose of documenting the no-charge or nonprofit, cost-sharing nature of such CARS service. These records must be maintained by the licensee and must be available for inspection by the Commission. The commenting parties unanimously support our initial proposal. We find that regular collection of the information provided in the annual reports is not necessary for any regulatory purpose. Accordingly, we are eliminating § 78.11(f) as proposed.

20. *Frequency allocation and other technical matters.* In the *Notice*, we stated our belief that it would be more appropriate to address Group W's concerns relating to additional frequencies for CARS use, the sharing of excess capacity, and other technical and operational matters as part of a comprehensive spectrum utilization policy for terrestrial microwave services. Such policies are currently under consideration in General Docket No. 82-334.[12] Group W, with supporting comments filed by NCTA, reiterates several requests which it alleges that the Commission has not addressed adequately in the *Notice*. Specifically, Group W requests that the Commission: (1) Permit temporary operation of less than 30 days without prior authorization; (2) permit CARS licensees to share excess capacity; (3) permit non-adjacent K channels to be authorized; (4) permit changes in the height of the radiating element of a transmitting antenna and the height of a receiving antenna without Commission approval; (5) permit minor horizontal site location changes without prior approval; (6) permit a decrease or increase in authorized operating power of less than three dB without prior approval; and (7) authorize new channel alignment to accommodate 6 MHz spacing for the use of harmonically related carriers by Local Distribution Service (LDS) stations.

21. We continue to believe that it is more appropriate to address the above technical concerns in the context of the comprehensive review of spectrum utilization policies for terrestrial microwave services in General Docket No. 82-334. We intend to consider the technical and operational aspects of CARS microwave services in a further notice of proposed rule making in General Docket No. 82-334. Accordingly, we are not addressing such issues in this proceeding.

22. *Processing of Applications.* Group W asserts that the Commission appears to delay processing an application for CARS facilities when another application is subsequently filed for different facilities at the same station. It claims that action is delayed on the first application until the subsequently filed application is also ready to be acted upon. Group W urges that this practice be eliminated because it causes unnecessary delays in the commencement of new and improved services to the public.

23. The Commission continuously reviews and revises its internal procedures with respect to the processing of license applications. While we believe that our current procedures for handling CARS applications are appropriate, we will consider Group W's concern and will examine these procedures to determine whether they include practices that could lead to unnecessary delays. If such practices are found, we will implement appropriate changes to expedite final action on CARS applications.

Conclusion

24. The decisions we are making today will serve to reduce delays in licensing CARS facilities and to eliminate unnecessary reporting requirements for CARS licensees. Accordingly, we are amending our rules to: (1) Implement a one-step licensing process for CARS applicants; (2) permit the filing of a single FCC Form 327 listing all CARS authorizations affected by an assignment or transfer of control; (3) eliminate the requirement to file for an assignment or transfer of control in cases where no actual change in ownership has occurred in either the licensee itself or the ultimate controlling parent; (4) eliminate the need to identify all community units to be served from each receive site of a proposed CARS station and replace it with a requirement that the applicant certify that the CARS station will serve at least one authorized program distribution facility; and (5) delete the requirement for CARS operators who provide program material to cable television systems or translator stations on a nonprofit, cost sharing basis to file annual reports and to notify the Commission 30 days prior to providing such programming.

25. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules

The rule changes we are adopting will reduce delays and other costs for both licensees and the Commission.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. *Issues Raised.* The commenting parties raised no issues or concerns in response to the initial regulatory flexibility analysis.

B. *Assessment.* The Commission views the absence of specific claims of adverse impact with respect to its CARS proposals as indicative of their lack of potential for negative effects on small businesses.

C. *Changes made as a result of such comments.* None.

III. Significant Alternatives Considered and Rejected

The Commission's alternative was not to revise its filing and reporting requirements. Lack of action, however,

[11] *See* 47 CFR 78.11(f).

[12] *See* Footnote 1, *supra*.

would result in continued delays and none of the benefits which could accrue to all CARS licensees as a result of the changes.

Paperwork Reduction Act

26. The recommended changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose modified requirements and reduce the burden on the public. Implementation of these changes will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

27. Authority for adoption of the rules contained herein is contained in sections 2, 4(i), 303 and 319 of the Communications Act of 1934, as amended.

28. Accordingly, it is ordered that, Part 78 of the Commission's Rules and Regulations is amended effective June 28, 1985, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 78—[AMENDED]

Part 78 of Title 47 of the Code of Federal Regulations in amended as follows:

The authority citation for Part 78 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

1. 47 CFR 78.11 is amended by removing paragraph (e), removing and reserving paragraph (f), removing the reserved paragraph (h), and redesignating paragraph (i) as paragraph (e).

2. 47 CFR 78.15 is amended by revising paragraphs (b) and (c) and retaining the "Note" to read as follows:

§ 78.15 Contents of applications.

* * * * *

(b) An application for a CARS studio to headend link or LDS station license shall contain a statement that the applicant has investigated the possibility of using cable rather than microwave and the reasons why it was decided to use microwave rather than cable.

Note.—* * *

(c) CARS applicants must follow the procedures prescribed in Subpart I of Part 1 of this chapter (§§ 1.1301 through 1.1319) regarding the filing of environmental impact narrative statements, unless Commission action authorizing construction of a CARS station would be a minor action within the meaning of Subpart I of Part 1 of this chapter.

3. 47 CFR 78.20 is amended by revising paragraph (a) to read as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, D.C. are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

* * * * *

4. 47 CFR 78.22 is amended by revising paragraph (c) to read as follows:

§ 78.22 Objections to applications.

* * * * *

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, any person may file informal objections to the grant. Such objections may be submitted in letter form (without extra copies) and shall be signed by the objector. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of this chapter shall not be applicable to any objections duly filed pursuant to this paragraph.

5. 47 CFR 78.23 is revised to read as follows:

§ 78.23 Equipment tests.

(a) Following the grant of a CARS license, the licensee, during the process of construction of the station, may, without further authority from the Commission, conduct equipment tests for the purpose of such adjustments and measurements as may be necessary to assure compliance with the terms of the authorization, the technical provisions of the application therefore, the rules and regulations, and the applicable engineering standards.

(b) The Commission may notify the licensee to conduct no tests or may cancel, suspend, or change the date for the beginning of equipment tests as and when such action may appear to be in the public interest, convenience, and necessity.

(c) The test authorized in this section shall be conducted only as a necessary part of construction.

§ 78.25 [Removed]

6. 47 CFR 78.25 is removed in its entirety.

7. 47 CFR 78.27 is revised to read as follows:

§ 78.27 License conditions.

(a) Authorizations (including initial grants, modifications, assignments or transfers of control, and renewals) in the Cable Television Relay Service to serve cable television systems, shall contain the condition that such cable television systems shall operate in compliance with the provisions of Part 76 (Cable Television Service) of this chapter.

(b) CARS stations licensed under this subpart are required to commence operation within one year of the date of the license grant.

(1) The licensee of a CARS station shall notify the Commission in writing when the station commences operation. Such noitification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

(2) CARS licensees needing additional time to complete construction of the station and commence operation shall request an extension of time 30 days before the expiration of the one year construction period. Exceptions to the 30-day advance filing requirement may be granted where unanticipated delays occur.

8. 47 CFR 78.35 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 78.35 Assignment or transfer of control.

(a) No assignment of the license of a cable television relay station or transfer of control of a CARS licensee shall occur without prior FCC authorization.

* * * * *

(c) Licensees of CARS stations are not required to submit applications for assignment or transfer of control or otherwise notify the FCC in cases where the change in ownership does not affect the identity or controlling interest of the licensee.

9. 47 CFR 78.51 is amended by revising paragraph (c) to read as follows:

§ 78.51 Remote control operation.

* * * * *

(c) The Commission may notify the licensee not to commence remote control operation, or to cancel, suspend, or change the date of the beginning of such operation as and when such action

may appear to be in the public interest, convenience, or necessity.

10. 47 CFR 78.53 is amended by revising paragraph (c) to read as follows:

§ 78.53 Unattended operation.

• • • • •

(c) The Commission may notify the licensee not to commence unattended operation, or to cancel, suspend, or change the date of the beginning of such operation as and when such action may appear to be in the public interest, convenience, or necessity.

11. 47 CFR 78.63 is amended by revising the introductory text to read as follows:

§ 78.63 Inspection and maintenance of tower marking and associated control equipment.

The licensee of any CARS station which has an antenna structure required to be painted or illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and/or Part 17 of this Chapter, shall operate and maintain the tower marking and associated control equipment in accordance with the following:

• • • • •

12. 47 CFR 78.69 is amended by revising the introductory text to read as follows:

§ 78.69 Station records.

Each licensee of a CARS station shall maintain records showing the following:

• • • • •

13. 47 CFR 78.113 is amended by revising paragraph (a) to read as follows:

§ 78.113 Frequency monitors and measurements.

(a) The licensee of each CARS station shall employ a suitable procedure to determine that the carrier frequency of each transmitter is maintained within the tolerance prescribed in § 78.111 at all times. The determination shall be made, and the results thereof entered in the station records: when a transmitter is initially installed; when any change is made in a transmitter which may affect the carrier frequency or the stability thereof; or in any case at intervals not exceeding one year.

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[FR Doc. 85-13393 Filed 6-3-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 81

[PR Docket No. 84-938; FCC 85-273]

Maritime Accounting Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules concerning accounting procedures for public coast stations in the Maritime Services. The purpose of the amendment is to implement international accounting requirements. The effect of the amendment is to establish internationally recognized accounting procedures in the United States.

EFFECTIVE DATE: July 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert P. DeYoung, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 81

Coast stations, Telegraph, Telephone.

Report and Order; Proceeding Terminated

In the Matter of Maritime Accounting Procedures, PR Docket No. 84-938.

Adopted: May 17, 1985.
Released: May 23, 1985.

By the Commission.

1. The *Notice of Proposed Rule Making* (Notice) in this proceeding was initiated to implement a requirement that public coast stations recognize International Accounting Authority Identification Codes (AAIC's) in order to be included in the International List of Coast Stations.[1] For the reasons set forth below, we are amending the rules substantially as proposed.

2. The International Telecommunication Union publishes an International List of Coast Stations which all ships compulsorily fitted with radiotelegraph are required to carry. By consulting this list, a ship can determine the location of a coast station, its operating frequencies and hours of service. The 1979 World Administrative Radio Conference (79 WARC) changed the procedures which govern accounting practices in the Maritime Mobile Service and the Maritime Mobile-Satellite Service. That Conference repealed former Article 38, 39, 40 and 40A in Chapter IX of the International Radio Regulations and replaced them with a new Article 66. Numbers 5086 through 5091 of Article 66 established AAIC's as the method for a ship to identify itself for accounting purposes to public coast stations worldwide.[2] Under Article 66 and CCITT Recommendations a vessel will expect any coast station in the list to accept AAIC's for billing and accounting purposes.

3. Historically some U.S. coast stations, particularly VHF stations which primarily provide local area service, have provided in their tariffs that vessels must open an individual account prior to obtaining service. Often these tariffs require payment of a subscriber fee or security deposit and use of a local account identifier. Because ships now expect coast stations listed in the international List of Coast Stations to accept AAIC's we proposed a rule to provide that those stations which do not would not be included in the international List of Coast Stations.

4. Comments on the proposed rule were filed by Amoco Transport Company (AMOCO), Mobile Marine Radio, Inc. (MMR), RCA Communications, Inc. (RCA) and TRT Telecommunications Corporation (TRT). AMOCO operates ships while MMR, RCA and TRT operate coast stations.

5. AMOCO supported the proposal to require coast stations to recognize AAIC's but opposed the provision which would permit coast stations to elect not to do so and thus not to be included in the List of Coast Stations. AMOCO did not elaborate. The flexibility for a coast station to make such an election is reasonable. The only coast stations which typically refuse to accept AAIC's by tariff are VHF coast stations which provide short range, local area service. These kinds of coast stations might well find that complying with the accounting procedures of the ITU is not worth the effort since the bulk of their business is with a local customer base. High seas coast stations, on the other hand, such as those operated by MMR, RCA and TRT, derive much of their business from ships on international voyages and thus would want to be included in the List of Coast Stations.

6. This fact is reflected in the comments of MMR, RCA and TRT all of which supported the concept but objected to the broad wording of the proposed rule. MMR, RCA and TRT expressed their concern that a literal reading of the proposed rule might result in their removal from the List of Coast

[1] See *Notice of Proposed Rule Making*, PR Docket No. 84-938, released October 4, 1984 (FCC 84-468), 49 FR 40193.

[2] Detailed provisions are contained in CCITT Recommendation D. 90/F. 111, *Charging, Accounting and Refunds in the Maritime Mobile Service and Maritime Satellite Service*. Article 66 makes this recommendation binding.

Stations if they refuse to accept an AAIC under any circumstances. They pointed out that some ships and some AAIC's do not pay their bills and that a coast station should not be required to accept traffic from a known bad credit risk. We concur with the views of these commenters. We did not intend to require coast stations to accept bad credit risks. The concern arises from the use of the word "accept" in the proposed rule. As the text of the Notice indicates, however, our intention was to remove from the list only those coast stations which categorically declined to "recognize" AAIC's and which required the opening of a local account by tariff. We have revised the wording of the final rule to resolve this ambiguity.

7. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The United States and its coast stations are currently subject to international accounting procedures. The proposed rule provides that any U.S. coast station which does not wish to comply may simply elect not to be included in the international List of Coast Stations.

8. The amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

9. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r), the Commission's rules are amended as set forth in the attached Appendix, effective July 1, 1985.

10. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. It is further ordered, that this proceeding is terminated.

12. Regarding questions on matters covered in this document contact Robert DeYoung (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 49 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609.

2. Section 81.179 is amended by adding a new paragraph (f) to read as follows:

§ 81.179 Message charges.

* * * * *

(f) In order to be included in the ITU List of Coast Stations public coast stations must recognize international Accounting Authority Identification Codes (AAIC) for purposes of billing and accounts settlement in accordance with Article 66 of the international Radio Regulations. Stations which elect not to recognize international AAIC's will be removed from the international List of Coast Stations.

[FR Doc. 85–13395 Filed 6–3–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

Spread Spectrum Techniques in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document amends the Technical Regulations and Operating Requirements and Procedures governing the Amateur Radio Service to authorize spread spectrum transmissions. Action has been taken in order to provide licensees in the Amateur Radio Service with the opportunity to experiment with and take advantage of spread spectrum communication systems.

EFFECTIVE DATE: June 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Marcus, Chief, Technical Analysis Division, Office of Science and Technology, Washington, DC 20554, (202) 632–7040.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio, Modulation techniques, Spread spectrum.

Report and Order (Proceeding Terminated)

In the matter of Amendment of Parts 2 and 97 of the Commission's Rules and Regulations to authorize spread spectrum techniques in the Amateur Radio Service; Gen. Docket No. 81–414; FC 85–246.

Adopted: May 9, 1985.

Released: May 24, 1985.

By the Commission.

Introduction

1. The Commission adopted a *Notice of Inquiry and Proposed Rule Making* ("Notice") on 30 June 1981 on its own motion [1] proposing changes in its Rules and Regulations to permit the use of spread spectrum emissions [2] in the Amateur Radio Service. Comments were received until 1 March 1982 and reply comments until 15 April 1982. In this *Report and Order* we are adopting our proposals as modified below and terminating the proceeding.

2. It is the Commission's intent to provide licensees in the Amateur Radio Service with the opportunity to experiment with and take advantage of this technology which has been, until now, almost entirely limited to costly military systems. Spread spectrum transmissions have been implicitly prohibited by Commission's Rules without regard to the potential benefits which might accrue to the public interest from their use. These benefits may include:

- Reduced power density thus reducing interference to narrow band communication systems;
- Significant improvements in communication under conditions with poor signal to interference ratio;
- Improved communication performance in selective fading and multipath environments;
- Multiple, nearly independent communication channels functioning simultaneously in the same spectrum.

The final rules adopted today authorize amateurs to develop, test, and operate low cost spread spectrum systems. This action is consistent with the basis and purpose of the Amateur Radio Service expressed in § 97.1 of the Rules. By removing regulatory barriers to innovation, we believe that technical advances in radio technology can be stimulated, forwarding our goals as stated in sections 7(a) and 303(g) of the

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[1] See *Notice of Proposed Rule Making*, 87 FCC 2nd 972 (1981), 46 FR 49617 (7 October 1981).

[2] Spread spectrum systems were originally developed for military applications where covertness and jam resistance were sought. In a spread spectrum system, an information signal is combined with a much wider bandwidth noise-like signal to yield a transmitted signal which is both broad band and noise-like. At the receiver, a copy of the original noise-like signal is used to derive the information signal. Because the energy of the transmitted signal is dispersed in the spreading process, it is less likely to cause interference in narrowband receivers than a conventional signal of the same power. For further information, *see* "The ARRL Handbook for the Radio Amateur (1985 edition)," pp. 21–6 through 21–9. *See also* Spread Spectrum Techniques, Report 651–1, CCIR Volume 1, Kyoto, 1982.

Communications Act of 1934, as amended.

3. While this proceeding deals only with the use of spread spectrum transmissions in the Amateur Radio Service, we expect that the experience gained, especially on the subject of compatibility between spread spectrum transmissions and conventional narrow band systems, can be used in our more general rule making dealing with spread spectrum[3] and will be a stimulus to the general radio technology community.

Discussion

4. Commenting parties focused primarily on the issues identified in the questions posed in the Notice. These dealt with interference and monitoring. In addition, comments were received dealing with frequencies available and eligibility of licensees to use spread spectrum transmissions.

5. *Intra-service interference.* Concerns were raised by commentors about the potentials for extensive, broadband interference from spread spectrum transmissions. Mathematical modeling and various experiments[4 5 6 7 8 9] indicate that, in some cases, there is a risk of causing intra-service interference. However, they also indicate that there are conditions under which spread spectrum transmissions can be compatible with existing modes of communication. We believe that amateurs should be permitted the freedom to experiment and to add to the body of knowledge on this subject. The Amateur Radio Service has a long history both of experimentation and frequency sharing among licensees. We believe that this tradition is adequate to prevent intra-service interference in most cases. However, to emphasize both the experimental nature of spread spectrum as well as some of the potential benefits associated with it (see paragraph 2), we are authorizing such transmissions on the condition that they not cause harmful interference to and accept all interference from stations operating with emissions previously authorized. Additionally, we are persuaded by the comments that the broad allocations to the Amateur Radio Service above 420 MHz lend themselves better to power dispersing techniques than lower frequency bands, thus reducing the interference potential of spread spectrum transmissions. (See paragraph 12.) Therefore, frequency bands above 420 MHz will be authorized.

6. *Inter-service interference.* The National Association of Broadcasters (NAB) raised the subject of interference to television channel 2 (54–60 MHz) related to spread spectrum operation in the adjacent band (50–54 MHz) allocated to the Amateur Radio Service. NAB's principal concern was that uncontrolled amateur transmissions might fall outside the allocated band into channel 2. The Commission believes that NAB's concerns are not well founded. First, rather simple transmitter output filters can be used by amateur licensees to prevent positively out of band emissions. Second, licensees in the Amateur Radio Service have had no significant history of operating outside the allocated bands. However, NAB's concerns are moot, as the Commission is not now authorizing spread spectrum transmissions in the 50–54 MHz band. In other frequency bands where the Amateur Radio Service has successfully shared allocations with different services, we expect no worsening of interference since the power density associated with spread spectrum transmission is much lower than the power density from currently existing narrow band transmissions having the same total effective radiated power.

7. *Monitoring.* Several parties expressed concern that the Commission and amateur licensees might not be able to monitor readily the station identification and content of spread spectrum transmissions. In PR Docket No. 81–699, the Commission dealt with the related matter of non-standard digital codes in the Amateur Radio Service.[10] In that *Report and Order* we stated,

> In balancing our objectives of encouraging new technologies against ensuring our enforcement capability, it must be recognized that there is an incompatibility between authorizing experimentation with 'exotic' technologies and the employment of channel monitoring as an enforcement tool. Our ability to verify that the content of messages complies with our rule requirements will be hindered by the broad relaxation of regulatory constraints that we are ordering in this proceeding. However, the Commission [agrees] . . . that special provisions we are including in the final rules, as well as existing provisions that identification be made in plain English or the international Morse code, should, when combined with the zealous effort of the amateur community to protect their allocated frequency bands, provide adequate protection against unauthorized operation in the service.

In this matter, we are authorizing a new "exotic" technology, spread spectrum, with certain constraints intended to reduce the conflict between experimentation and monitoring. These are requiring station identification that can be received with common narrow band receivers (see paragraph 9) and limiting the spreading sequences and methods (see paragraph 10).

8. We recognized that more detailed standards than those given in the adopted rules are needed for amateur interoperability and self-monitoring on a convenient basis. We are reluctant to adopt more detailed monitoring standards as they might inhibit experimentation. However, we are delaying the effective date of the rule change by one year in order to give the amateur community time to develop initial voluntary interoperability standards as they have done recently in packet radio. In this interim period we are continuing our policy of granting STA's to those who wish to experiment in this area.

9. *Station identification.* As in the case of unspecified digital codes discussed in Docket No. 81–699, common narrow band methods of station identification will be required. Based upon our experience with Del Norte,[11] we have added an additional option for spread spectrum transmissions. Stations will be permitted to identify by varying the emission while in the spread spectrum mode of operation so that CW, SSB, and/or narrow band FM receivers, which might be victims of interference, can receive the station identification.

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[3] *See Notice of Inquiry* [in GEN Docket No. 81–413], 87 FCC2d 876, 48 FR 51259 (19 October 1981), and *Further Notice of Inquiry and Notice of Proposed Rule Making*, 49 FR 21951 (24 April 1984). The *Further Notice* proposes to authorize spread spectrum transmissions in three contexts, certain law enforcement applications, low power unlicensed (Part 15) devices above 70 MHz, and moderate power devices in three ISM bands.

[4] Feinstein, Hal and Paul Rinaldo, AMRAD Report to the FCC on Spread Spectrum Experiments, 3 October 1983.

[5] Report of Experience of Del Norte Technology, Inc., attached to Reply Comments of Del Norte Technology, Inc. in GEN Docket No. 80–135 [In the matter of revisions of Parts 2 and 90 of the Commission's Rules and Regulations to permit inland assignment of frequencies in the 420–450 MHz band for non-Government radiolocation, 47 FR 34415 (9 August 1982)].

[6] Comments of the American Radio Relay League in Response to Further Notice of Proposed Rule making, Appendix A, in GEN Docket No. 80–135.

[7] Report of Brian Elliott, Ph.D., on Hewlett-Packard's experience with wireless data terminals, 26 October 1984, attached to the reply comments of Hewlett-Packard Company in GEN Docket No. 81–413.

[8] Memorandum to Chief, Research and Analysis Division from Chief, Research Branch on the subject of Del Norte Spread Spectrum Demonstration on January 29, 1981, dated 19 February 1981

[9] Considerations of Interference from Spread-spectrum Systems to Conventional Voice Communications Systems, Report 652, CCIR Volume 1, Kyoto, 1982.

[10] *See* PR Docket No. 81–699, In the matter of the use of additional digital codes in the Amateur Radio Service, 47 FR 42751 (29 September 1982).

[11] *See* footnote [5].

We expect amateurs transmitting spread spectrum to select the frequency used for narrow band station identification taking into consideration the need to minimize interference to other amateur operations and to facilitate reception of station identification by other amateurs.

10. *Spreading sequences and methods.* Section 97.117 of our Rules prohibits "the transmission by radio of messages in codes or ciphers in domestic and international communications to or between amateur stations." The intent behind this rule is to prohibit encrypted communications in this service. A spread spectrum transmission that uses an unknown spreading sequence is intrinsically an encrypted communication. We proposed to allow as spreading sequences only the output of one of three specified linear feedback shift registers.[12] Thus a party interested in monitoring a transmission could do so by a short process of elimination with appropriate equipment. In order to eliminate ambiguity in the implementation of spread spectrum that might complicate monitoring, we have added a few details beyond what was given in the notice.[13] We are satisfied that our limitations of spreading sequences are sufficient, for domestic purposes, to see that spreading functions remain within the realm of codes and do not overstep the bounds of becoming ciphers which are prohibited by § 97.117. Use of additional, more complex spreading sequences including Gold codes suggested in the Comments by Leon Scaldeferri, overstep the bounds of becoming a cipher and, therefore, are not authorized. We proposed no limitations on spreading methods. However, after further consideration, we feel that a spread spectrum transmission that uses a complex method of dispersing the transmitted energy is also intrinsically an encrypted communication and, thus, oversteps the bounds of becoming a cipher. Therefore, the final rules limit spreading methods to frequency hopping and direct sequence only.

[12] Information about linear feedback shift registers may be found in: Dixon, R.C., *Spread Spectrum Systems*, Chapter 3, John Wiley & Sons, Inc., New York, 1976; Pickholz, Raymond L., Donald L. Schilling, and Laurence B. Milstein, "Theory of Spread-Spectrum Communications—A Tutorial", *IEEE Transactions on Communications*, Vol. *COM-30*, pp. 855–884, May 1982.

[13] These details describe how the spreading sequences are used to increase the information rate of the signal to be transmitted. In the case of direct sequence transmissions, the licensee may select a value of m to be used in m-ary modulation. In the case of frequency hopping, the licensee may choose the number of frequencies, x. (See the new Section 97.71(d) in the Appendix.) While both m and x are the choices of the licensees, their values can be determined by observing transmitted signals.

11. *International communication.* In addition to the clear message requirements of § 97.117 of our Rules, the ITU Radio Regulations require that all international communication between radio amateurs be in plain language.[14] The Commission has, in the past, applied a more stringent test of what is and what is not plain language for purposes of international communications than for domestic communications. In Docket No. 81–899, the Commission recognized the desirability of international communication, but limited the codes authorized to internationally recognized codes recommended by the CCITT. Later, AMTOR, a commonly recognized amateur version of a CCIR recommended communication protocol, was authorized.[15] Until such time as spreading functions and spread spectrum transmissions become well recognized internationally, the Commission cannot consider authorizing its use for general international communication. Accordingly, we are authorizing spread spectrum transmissions for domestic communication. However, in the future the U.S. Government may conclude arrangements with other administrations as permitted by the ITU Radio Regulations.[16]

12. *Frequencies.* In the *Notice*, we proposed that spread spectrum transmissions be limited to the 50, 144, and 220 MHz bands. E. Miles Brown and Luther G. Schimpf pointed out in their comments that these bands would allow only about 30 dB effective reduction in power density due to their limited bandwidth, probably not enough to prevent interference from strong spread spectrum transmissions in most cases. John A. Carroll observed in his comments that the large amateur frequency allocations above 420 MHz are more attractive places for spead spectrum operations because they provide significant additional bandwidth over which to disperse the transmitted power. For these reasons, we are modifying our original proposal and authorizing spread spectrum transmissions in all amateur allocations above 420 MHz except as previously noted.

13. *Eligibility.* In the *Notice*, we proposed to limit eligibility for spread spectrum transmissions to Advanced and Amateur Extra licensees. Several parties commented that this was overly restrictive and unjustified. We agree with these observations and are authorizing in the Final Rules spread spectrum transmissions for all licensees eligible for the frequencies where spread spectrum is permitted.

[14] No. 2732 of the ITU Radio Regulations, Geneva, 1979.

[15] *See* RM–4122, *Order*. In the matter of Authorization of the digital code "AMTOR" for use by stations in the Amateur Radio Service, 48 FR 7457 (1983).

[16] No. 2734 of the ITU Radio Regulations, Geneva, 1979.

Conclusion

14. Accordingly, it is ordered that Part 97 of the Commission's Rules and Regulations, 47 CFR Part 97, is amended as set forth in the Appendix effective 1 June 1986. It is further ordered that this proceeding is terminated. This action is taken pursuant to authority contained in Sections 4(i) and 303 of the Communications Act, as amended. Further information on this matter may be obtained from Dr. Michael Marcus, Chief, Technical Analysis Division, Office of Science and Technology, Washington, DC 20554, telephone (202) 632–7040.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART—[AMENDED]

Part 97 of the Commission's Rules and Regulations, 47 CFR Part 97, is amended as follows:

1. The authority citation for Part 97 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. In § 97.3, Definitions, add a new paragraph (cc) as follows:

§ 97.3 Definitions.

* * * * *

(cc) *Spread spectrum transmission.* An information bearing transmission in which information is conveyed by a modulated RF carrier and where the bandwidth is significantly widened, by means of a spreading function, over that needed to transmit the information alone.

3. Add a new § 97.71, Spread spectrum communications, as follows:

§ 97.71 Spread spectrum communications.

(a) Subject to special conditions in paragraphs (b) through (i) of this section, amateur stations may employ spread spectrum transmissions to convey information containing voice, teleprinter, facsimile, television, signals for remote control of objects, computer programs, data, and other communications including communication protocol elements.

Spread spectrum transmissions must not be used for the purpose of obscuring the meaning of, but only to facilitate communication.

(b) Spread spectrum transmissions are authorized on amateur frequencies above 420 MHz.

(c) Stations employing spread spectrum transmissions shall not cause harmful interference to stations of good engineering design employing other authorized emissions specified in the table. Stations employing spread spectrum must also accept all interference caused by stations of good engineering design employing other authorized emissions specified in the table. (For the purposes of this subparagraph, unintended triggering of carrier operated repeaters is not considered to be harmful interference. Nevertheless, spread spectrum users should take reasonable steps to avoid this situation from occurring.)

(d) Spread spectrum transmissions are authorized for domestic radio communication only (communication between points within areas where radio services are regulated by the U.S. Federal Communications Commission), except where special arrangements have been made between the United States and the administration of any other country concerned.

(e) Only frequency hopping and direct sequence transmissions are authorized. Hybrid spread spectrum transmissions (transmissions involving both spreading techniques) are prohibited.

(1) Frequency hopping. The carrier is modulated with unciphered information and changes at fixed intervals under the direction of a high speed code sequence.

(2) Direct sequence. The information is modulo–2 added to a high speed code sequence. The combined information and code are then used to modulate a RF carrier. The high speed code sequence dominates the modulation function, and is the direct cause of the wide spreading of the transmitted signal.

(f) The only spreading sequences which are authorized must be from the output of one binary linear feedback shift register (which may be implemented in hardware or software).

(1) Only the following sets of connections may be used:

Number of stages in shift register	Taps used in feedback
7	[7,1]
13	[13,4,3,1]
19	[19,5,2,1]

(The numbers in brackets indicate which binary stages are combined with modulo-2 addition to form the input to the shift register in stage 1. The output is taken from the highest numbered stage.)

(2) The shift register must not be reset other than by its feedback during an individual transmission. The shift register output sequence must be used without alteration.

(3) The output of the last stage of the binary linear feedback shift register must be used as follows:

(i) For frequency hopping transmissions using x frequencies, n consecutive bits from the shift register must be used to select the next frequency from a list of frequencies sorted in ascending order. Each consecutive frequency must be selected by a consecutive block of n bits. (Where n is the smallest integer greater than $\log_2 x$.)

(ii) For a direct sequence transmissions using m-ary modulation, consecutive blocks of $\log_2 m$ bits from the shift register must be used to select the transmitted signal during each interval.

(g) The station records shall document all spread spectrum transmissions and shall be retained for a period of one year following the last entry. The station records must include sufficient information to enable the Commission, using the information contained therein, to demodulate all transmissions. The station records must contain at least the following.

(1) A technical description of the transmitted signal.

(2) Pertinent parameters describing the transmitted signal including the frequency or frequencies of operation and, where applicable, the chip rate, the code, the code rate, the spreading function, the transmission protocol(s) including the method of achieving synchronization, and the modulation type;

(3) A general description of the type of information being conveyed, for example, voice, text, memory dump, facsimile, television, etc.;

(4) The method and, if applicable, the frequency or frequencies used for station identification.

(5) The date of beginning and the date of ending use of each type of transmitted signal.

(h) When deemed necessary by an Engineer-in-Charge of a Commission field facility to assure compliance with the rules of this part, a station licensee shall:

(1) Cease spread spectrum transmissions authorized under this paragraph;

(2) Restrict spread spectrum transmissions authorized under this paragraph to the extent instructed;

(3) Maintain a record, convertible to the original information (voice, text, image, etc.) of all spread spectrum communications transmitted under the authority of this paragraph.

(i) The peak envelope power at the transmitter output shall not exceed 100 watts.

4. In § 97.84, Station identification, add new paragraph (g)(5) as follows:

§ 97.84 Station identification.

* * * * *

(g) * * *

(5) When transmitting spread spectrum, by narrow band emission using the method described in paragraphs (g)(1) or (g)(2) of this section, narow band identification transmissions must be on only one frequency in each band being used. Alternatively, the station identification may be transmitted while in spread spectrum operation by changing one or more parameters of the emission in a fashion such that CW or SSB or narrow band FM receivers can be used to identify the sending station.

* * * * *

[FR Doc. 85–13396 Filed 6–3–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–18, Notice 26; and Docket No. 74–14, Notice 40]

Federal Motor Vehicle Safety Standards Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration and petitions for rulemaking.

SUMMARY: This notice responds to three petitions for reconsideration and two related petitions for rulemaking concerning an amendment to Standard No. 101, *Controls and Displays*, published in July 1984 (49 FR 30191). That notice amended several of the identification requirements of the standard for the purposes of improving safety by providing for the use of the easily recognizable international symbols and relieving unnecessary restrictions on manufacturers by providing additional flexibility in their ability to identify controls and displays. In response to one of the petitions, the agency has eliminated a requirement that the horn control symbol be perceptually upright. In response to another petition, the agency is

permitting use of the words "FASTEN BELTS" or "FASTEN SEAT BELTS" as an alternative to the seat belt warning symbol in informational readout displays. A conforming amendment is being made to Standard No. 208, *Occupant Crash Protection*. The petitions are otherwise denied. However, in the near future, the agency plans to publish a separate notice of proposed rulemaking which will fully address the issue of the use of telltales in informational readout displays, one of the major issues raised by one of the petitions for reconsideration.

DATES: The amendments are effective on June 4, 1985. Any petition for reconsideration must be received by July 5, 1985.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number and be submitted by July 5, 1985 to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Neill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–1750).

SUPPLEMENTARY INFORMATION: On July 27, 1984, NHTSA published in the **Federal Register** (49 FR 30191) a final rule amending Standard No. 101, *Controls and Displays*. The notice amended several of the identification requirements of the standard for the purposes of improving safety by providing for the use of easily recognizable, international symbols and relieving unnecessary restrictions on manufacturers by providing additional flexibility in their ability to identify controls and displays.

The final rule followed two notices of proposed rulemaking (NPRM's) to amend Standard No. 101. As discussed in the July 1984 notice, the final rule did not address all of the amendments proposed by the two notices. The notice explained that the agency was postponing a final decision on some of the proposed amendments pending completion of an ongoing examination by the agency of issues relating to Standard No. 101. The notice stated that the agency's examination of the standard was expected to result in a new notice of proposed rulemaking.

The agency received three timely petitions for reconsideration of the final rule. The petitions requested changes in the requirement that the horn control on passenger cars and other vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds of less be identified by the International Standards Organization (ISO) horn symbol. Some of the petitions also requested that the agency adopt some of the amendments that were proposed by the two NPRM's but not adopted or addressed in the July 1984 final rule, rather than waiting for the completion of the agency's examination of issues relating to Standard No. 101.

The agency also received two petitions for reconsideration of the final rule, after the closing date for such petitions. Under the agency's procedural rules, such petitions are considered petitions for rulemaking rather than petitions for reconsideration. See 49 CFR 553.35(a).

This notice responds to all five petitions. The notice will first address the issues raised by the petitions for reconsideration with respect to the horn control identification requirement. It will then consider the requests to adopt at this time some of the additional proposals on which action has been deferred. Finally, the notice will address the two petitions for rulemaking.

Horn Control

The July 1984 final rule requires that the horn control on passenger cars and other vehicles with a GVWR of 10,000 pounds or less be identified by the ISO horn symbol, a picture of a horn or bugle. The agency noted that it has received a number of complaints over the years about difficulty in locating the horn, especially in panic situations. The agency noted that since location of the horn is not standardized either by industry practice or by regulation, identification of the horn can provide important safety benefits at a minimal cost.

As with the identification required for most other controls, the rule specified that the horn symbol must be perceptually upright. In response to comments on the NPRM that it is impossible for symbols on the steering wheel to be perceptually upright at all times, the agency included a provision that the horn symbol need be perceptually upright only when the vehicle, aligned to the manufacturer's specification, has its wheels positioned for the vehicle to travel forward, i.e., when the steering wheel is centered. The rule excluded narrow ring-type horn controls from the identification requirement since there may not be sufficient space on or adjacent to such controls for the horn symbol.

A petition for reconsideration submitted by Toyota requested that the agency eliminate the perceptually upright requirement for the horn control symbol. The petitioner argued that the provision for a horn control symbol, without the perceptually upright requirement, would accomplish the agency's intentions for accident avoidance. That company also stated that it is difficult to place a perceptually upright symbol on the type of narrow button that is typically used on a vertical spoke of a steering wheel hub. Toyota noted that while the symbol could be located adjacent to the control in such a situation, the cost would be three times more than if the symbol were simply located on the button.

After carefully evaluating Toyota's arguments, the agency has decided to drop the perceptually upright requirement for the horn control symbol. This decision was based on two considerations. First, unlike some symbols which must be properly oriented in order to be understood, the horn symbol is readily recognizable in any orientation. Second, a horn symbol may be printed larger and therefore be more easily perceived if it can be oriented along the longer axis of the horn button, spoke of the wheel, or along the rim of the steering wheel.

A petition for reconsideration submitted by Mercedes-Benz requested that the agency exclude passenger car horn controls located in/on the steering wheel hub from the identification requirement, provided that the horn control can be activated by pressing anywhere on the hub surface, and that there are no other controls incorporated in the hub. The petitioner argued that complaints about difficulty in finding the horn control must be attributed to controls located on stalks or other areas of the steering column rather than in the usual and conventional location in the steering wheel hub. Mercedes argued that the location in the steering wheel hub is the most obvious and the nearest and quickest to reach and to activate in an emergency situation, and that even a driver who is not familiar with a car will intuitively expect the horn control to be in the hub and check there first.

After carefully evaluating Mercedes' arguments, the agency declines to grant that company's request. The preamble to the final rule raised many concerns that are not answered by Mercedes' amendment:

> For other than heavy duty vehicles, the agency does not agree that identification is unnecessary when the horn control is located on or near the steering wheel. First, horn control location within the steering wheel area may vary significantly from vehicle to vehicle, making it difficult to find the horn control in an emergency situation. Second, to the extent that manufacturers locate the horn

control elsewhere, e.g., on various stalks, drivers are less likely to expect the horn in what was once the traditional location. Moreover, the absence of a horn symbol in the steering wheel area will alert drivers to look elsewhere. Finally, controls other than the horn, such as a cruise control, may be located on or near the steering wheel, making it more difficult to find a horn control in that same general area.

The primary concern is that as manufacturers place horn controls in areas other than what was once the traditional location, drivers' expectations as to location also change. For example, a driver whose last car had the horn control on the stalk may check that location first when driving an unfamilar car. Younger drivers may never have encountered a horn control on the steering wheel hub. Also, in the absence of a horn symbol at the steering wheel center, drivers may decide they should look elsewhere for the horn control rather than trying to activate a nonexistent control.

Suggestions for Additional Amendments

Two petitions for reconsideration requested that the agency adopt certain amendments to Standard No. 101 at this time, rather than awaiting completion of its examination of issues relating to the standard. A petition submitted by BMW requested three amendments: (1) Adopt proposed language to permit the use of telltales in informational readout displays, (2) permit, as proposed, the use of the words "FASTEN BELTS" or "FASTEN SEAT BELTS" as an alternative to the seat belt warning symbol in informational readout displays, and (3) permit sequencing of messages in informational readout displays in the event of a need to display more than one telltale at the same time. Mercedes-Benz requested that the agency (1) permit, as proposed, use of the ISO brake failure symbol instead of the word "BREAK" for brake displays, and (2) permit use of the ISO antilock symbol instead of the words "ANTILOCK" or "ANTI-LOCK" in vehicles having separate indicator lamps for that function.

The amendments requested by BMW all relate to the issue of placing telltales in informational readout displays. As discussed below, the agency has decided not to adopt the specific amendments previously proposed on this subject. This decision is largely based on the agency's analysis of comments provided by a number of manufacturers. The forthcoming separate NPRM will address the problems identified by the commenters.

The agency has also decided to adopt a final rule to permit, as proposed, the use of the words "FASTEN BELTS" or "FASTEN SEAT BELTS" as an alternative to the seat belt warning symbol in informational readout displays. The agency has decided not to adopt the other amendments requested by the BMW and Mercedes petitions. These decisions are also discussed below.

Standard No. 101's light intensity requirements for displays differ depending upon whether the display is a gauge or a telltale *and* whether the display is an informational readout display.[1] The background for this latter distinction is as follows. The 1976 NPRM for the current version of Standard No. 101 did not distinguish between traditional displays and informational readout displays. That NPRM proposed the following requirements for all displays: (1) Light intensities for gauges and their identification must be continuously variable from a position at which either there is no light emitted or the light is barely discernible to a driver who has adapted to dark ambient roadway conditions to a position providing illumination sufficient for the driver to identify the display readily under all daytime and nighttime conditions, and (2) The light intensity of each telltale shall not be variable and shall be such that, when activated, that telltale and its identification are visible to the driver under all daytime and nighttime conditions. See 41 FR 46460–46462.

The 1978 final rule adopted by the agency included language very similar to the proposed language in these areas. However, that final rule also added the term "informational readout display" and specified a number of requirements for informational readout displays. Among other things, the final rule included a requirement that informational readout displays must have at least two light intensity levels, a higher one for daytime use and a lower one for nighttime use. While the preamble did not discuss the light intensity requirements for informational readout displays, the preamble did explain that the agency was adopting a requirement to allow the use of words or symbols to permit the continued development of informational readout displays. See 43 FR 27541–27544.

Subsequent to that 1978 final rule, the agency received a petition for rulemaking from General Motors to permit incorporation of telltales in informational readout displays. In response to that petition, the agency published an NPRM in the **Federal Register** (47 FR 4541) on February 1, 1982. As discussed by that notice, section S5.3.3 of Standard No. 101 requires that the light intensity of telltales be invariable and must be sufficient to permit drivers to see them under any lighting conditions. The purpose of that requirement is to ensure that telltales are visible to the driver at all times when the vehicle is being operated. The same section, however, requires that informational readout displays have variable light intensity. Specifically, they must have at least two light intensity values, a relatively high one for daytime use and a relatively low one for nighttime use. The notice concluded that even though other parts of the standard were written to encourage the use of informational readout displays, the standard's light intensity requirements prevent informational readout displays from being used for telltales.

In order to resolve the discrepancy and permit the use of telltales in informational readout displays, the agency proposed the following requirement:

> Telltales and gauges incorporated into informational readout displays—
>
> (a) Shall have not less than two levels of light intensity, a higher one for day and a lower one for nighttime conditions.
>
> (b) In the case of telltales and gauges not equipped with a variable light intensity control, shall have a light intensity at the higher level provided under paragraph (a) of this section whenever the headlamps are not illuminated.
>
> (c) In the case of telltales and gauges equipped with a variable light intensity control, shall be visible to the driver under all daytime and nighttime conditions when the illumination level is set to its lowest level.

Two comments received in response to the February 1982 notice questioned the conclusion that the standard's light intensity requirements prevent informational readout displays from being used for telltales. Ford commented that it has interpreted the standard to permit the use of telltales with single intensity illumination, as required for all telltales by section S5.3.3, when incorporated into informational readout displays. VDO–ARGO simply stated that it does not believe that the current

[1] By way of background information, the term "display" in Standard No. 101 refers to gauges and telltales. "Telltale" is defined as a display that indicates, by means of a light-emitting signal, the actuation of a device, a correct or defective condition, or a failure to function. The term "gauge" is defined as a display listed in the standard (S5.1 or Table 1) that is not a telltale. All displays in Standard No. 101 are thus gauges or telltales. Informational readout displays are a type of display which use technologies such as light-emitting diodes or liquid crystals, and which may display one or more than one type of information or message. As a type of display, the term informational readout display necessarily refers to gauges and/or telltales.

regulations preclude the installation of telltales within an informational readout display.

Commenters expressed a number of concerns about the specific proposal. Some of these related to the proposed requirement that telltales and gauges incorporated into informational readout displays be visible to the driver under all daytime and nighttime conditions when the illumination level is set to its lowest level. Chrysler states that its experience indicates that any illumination level which is bright enough to be visible to the driver during the day would be so bright at night that it would be unacceptable to most drivers and may be a safety hazard. That company's comments indicated that, because of this problem, it may be impossible for manufacturers to meet a requirement that telltales and gauges in informational readout displays always be visible.

According to Chrysler, it is current practice to provide two levels of illumination by means of the headlamp switch, headlamps off—daytime level, headlamps on—nighttime level. A limitation of this arrangement, however, is that the display illumination is switched from the daytime to the nighttime level whenever the headlamps are turned on, regardless of ambient lighting conditions. Thus, the minimum level of display illumination intensity for night driving is established during daytime conditions with headlamps on, with the result that the display may not be visible to the driver. According to Chrysler, driving with headlamps on is not an infrequent occurrence, even in the presence of bright sunlight. That commenter noted that while it might be possible to incorporate a photosensitive device to reliably sense daytime and nighttime conditions, neither it, nor to its knowledge any other company, had been able to develop a device which will function properly under all conditions. Similar comments were also received from other manufacturers.

Ford expressed concern that the proposed language would cause changes in the Ford electronic instrument panels now in production for three model years by prohibiting single high intensity electronic telltales. (As noted above, Ford has assumed that the standard permits the use of telltales with single intensity illumination when incorporated into informational readout displays.) Volkswagen also expressed concern that single intensity telltales would be prohibited. That company stated that some emergency warning telltales should be sufficiently obvious and blatant to immediately attract the driver's attention, which is best accomplished by single intensity telltales.

After carefully considering the comments, the agency has decided not to adopt the requirements as proposed. The agency agrees that single intensity telltales should not be prohibited in informational readout displays, since such telltales may be optimally effective for attracting attention. The agency recognizes the problems cited by Chrysler concerning the proposed requirement that gauges and telltales incorporated into informational readout displays be visible under all daytime and nighttime driving conditions. A requirement that gauges and telltales be visible under all lighting conditions when the light intensity is set at its lowest level could result in problems of glare at night, particularly for gauges, since they are ordinarily activated. On the other hand, the agency is concerned, in the absence of such a requirement, about the possibility of drivers inadvertently turning off important safety telltales, such as the brake warning telltale, by driving with headlamps on during the daytime.

The agency tentatively agrees in a general way with the view expressed by some commenters that greater flexibility for manufacturers is appropriate in this area. This issue will be addressed by the forthcoming separate NPRM.

As noted above, some manufacturers have interpreted Standard No. 101's light intensity requirements for telltales and gauges incorporated into informational readout displays differently than the agency and have produced vehicles for several years with informational readout displays which incorporate telltales. Ford, for example, has interpreted the standard to permit the use of telltales with single intensity illumination when incorporated into informational readout displays. Until the agency has completed the rulemaking action which is the subject of the forthcoming separate NPRM, it will not take any enforcement action against manufacturers under section S5.3.3 of Standard No. 101 on the basis of whether the light intensity of informational readout displays, including telltales and/or gauges incorporated into informational readout displays, is invariable or variable. The agency will continue to enforce the requirement that, when activated, telltales and their identification be visible to the driver under all daytime and nighttime conditions, as well as all other requirements of the standard.

As indicated above, BMW's petition requested that the agency permit, as proposed by the February 1982 NPRM, the use of the words "FASTEN BELTS" or "FASTEN SEAT BELTS" as an alternative to the seat belt warning symbol in informational readout displays. The NPRM explained that Standard No. 101 was expressly written to permit words in place of symbols in informational readout displays. Section S5.2.3 of the standard states that informational readout displays may be identified by the symbol designated in column 4 of Table 2 or by the word or abbreviation shown in column 3. While column 4 of Table 2 designates the seat belt warning symbol, column 3 of the table refers to FMVSS 208. That standard only permits the use of the words "FASTEN BELTS" or "FASTEN SEAT BELTS" for vehicles manufactured before September 1, 1980. The NPRM stated that a conforming amendment was being proposed to correct that anomaly and permit those words to be used for the seat belt telltale incorporated in an informational readout display.

Commenters generally supported this proposal. While the issue of the circumstances under which telltales may be incorporated into informational readout displays will remain unresolved until the agency completes the rulemaking action noted above, the agency considers it appropriate to make this amendment at this time. The agency has determined that the standard should permit specified words to be used in place of the seatbelt warning symbol, in informational readout displays. The agency is accordingly adopting the proposal as a final rule at this time.

In its petition for reconsideration and a related request for interpretation, BMW expressed concern at Standard No. 101's requirements for informational readout displays where more than one telltale occupies the same space. This concern arises from the fact that if the underlying conditions for activation of more than one such telltale occur at the same time, information for messages beyond the first can be provided to drivers only if some method of either sequencing messages or cancelling earlier messages is provided. BMW's petition for reconsideration requested that sequencing of messages be permitted in circumstances where there is a need to display more than one telltale at the same time. BMW's request for interpretation asked whether the standard already permits such sequencing of telltales. That company also requested clarification of an earlier interpretation issued by the agency. BMW noted that the agency has concluded that telltales cannot be

cancellable since Standard No. 101 requires that (1) they must be visible to the driver under all daytime and nighttime conditions, and (2) they must not be variable in light intensity. BMW asked whether that requirement applies to all telltales or just those listed in the standard.

Standard No. 101's requirements for displays are only applicable to the displays listed in the standard. Section S5, *Requirements*, states that . . . each passenger car, multipurpose passenger vehicle and truck or bus less than 10,000 pounds GVWR with any display listed in S5.1 or in column 1 of Table 2, shall meet the requirements of this standard for the location, identification, and illumination of *such . . . display*." (Emphasis added.) Telltales are a type of display. The requirements of Standard No. 101 which prevent telltales from being cancellable are thus only applicable to telltales listed in the standard. Accordingly, Standard No. 101 does not prohibit telltales not listed in the standard from being cancellable.

BMW's question concerning whether Standard No. 101 permits sequencing of telltales is germane only if using informational readout displays as telltales is itself permissible since the sequencing of telltales in the same spot in a display necessitates application of that type of technology. The previously discussed enforcement policy permitting the use of informational readout displays as telltales makes that question now germane. There is no requirement in Standard No. 101, other than those relating to the use of informational readout displays as telltales, that precludes sequencing. Therefore, designs which use sequencing telltales in informational readout displays may be used for the duration of that enforcement policy.

The agency emphasizes, however, that its consideration of sequencing for the first time in the context of a rulemaking proceeding, i.e., the proceeding relevant to the separate forthcoming NPRM, has led to the identification of various safety concerns about that design. Those concerns will be discussed in that proposal.

As indicated above, Mercedes-Benz requested that the agency permit, as proposed, use of the ISO brake failure symbol instead of the word "BRAKE" for brake displays. The agency proposed adoption of this symbol in an NPRM published in the **Federal Register** (47 FR 49999) on November 4, 1982.

The notice explained that the requirements for a brake display are primarily included in Standard No. 105, *Hydraulic Brake Systems*, which is referenced by Standard No. 101. Under Standard No. 105, a manufacturer must provide a brake warning indicator lamp which activates under certain conditions, including (among others) specified types of gross loss of pressure and on application of the parking brake. The requirements may be met by a single common indicator lamp with a lens labeled "Brake", or by separate indicator lamps. Separate labeling requirements are provided for separate indicator lamps.

In proposing adoption of the ISO brake failure symbol, the agency noted that it is part of a family of brake symbols under development by that organization. The basic brake symbol can be described as a circle with parentheses, representing brake shoes, on each side. The symbol for brake failure includes an exclamation mark inside the circle.

Mercedes' petition cited the November 1982 NPRM for suggesting an anticipated safety benefit resulting from the fact that symbols convey information more quickly and with less chance of human error, particularly for the large foreign language speaking population, an anticipated cost benefit for manufacturers selling vehicles in and outside the United States, and promotion of international harmonization.

While the agency addressed most of the amendments proposed by the November 1982 NPRM in its July 1984 notice, it decided to include the issue of the brake failure symbol in its examination of issues relating to Standard No. 101. Since the agency has now reached a conclusion with respect to that issue, it will address the issue in this notice. As discussed below, the agency has decided not to adopt the brake failure symbol in place of the word "BRAKE".

In proposing adoption of the ISO brake failure symbol, the agency stated that symbols are adopted by the ISO only after extensive international testing as to recognizability and suitability. The November 1982 NPRM specifically requested comments on the recognizability of the brake failure symbol. The NPRM also requested comments on whether there should be a requirement for owner's manuals to explain the brake failure symbol.

While manufacturer comments supported adoption of the ISO brake failure symbol, the comments called into question the agency's statement about ISO testing as to recognizability. General Motors stated:

> One school of thought in the design of symbols holds that they should be immediately recognizable without training. This position led to the studies to which NHTSA alludes when saying that ISO symbols are only adopted "after extensive international testing as to their recognizability and suitability." However, our observation of recent ISO symbol development has revealed a tendency to agree upon symbols by consensus, without any testing to assure recognizability. Whether caused by a lack of funding for testing or by a shift in philosophy, the result is a greater probability that the symbols must be learned.

A study published by the Society of Automotive Engineers, Investigation into the Identification and Interpretation of Automotive Indicators and Controls, found the percentage recognition of statement and function of the ISO brake symbol to be only 26 percent and 21 percent, respectively, while the percentage recognition of statement and function of the word "Brake" are 87 percent and 52 percent, respectively. Given the extremely low percentage recognition for the ISO brake symbol compared to the word "Brake" and the importance for safety of drivers understanding the meaning of the brake indicator lamp, the agency does not consider it appropriate to adopt this particular ISO symbol, even if an explanation is provided in owner's manuals. Many drivers might not read their owner's manual, and drivers other than original owners would be still less likely to read or even have access to the owner's manual.

Mercedes also requested that that agency adopt a related symbol for an antilock system. That symbol is the same as the ISO brake failure symbol except that the exclamation mark is replaced by the letters ABS. Mercedes stated that the use of "ABS" as an abbreviation for "Antilock Braking System" is widespread and well known to the public and that, therefore, recognition problems are not to be expected. Mercedes did not provide any support for its contention that ABS is well known to the public as an abbreviation for antilock braking system. In any event, the agency did not propose this symbol and therefore, based on lack of notice, cannot consider the symbol for purposes of a final rule.

Petitions for Rulemaking

As indicated above, two petitions for reconsideration submitted to the agency after the closing date are being treated as petitions for rulemaking, in accordance with agency regulations.

A petition submitted by Fiat was largely along the lines of the request by Mercedes to exclude horn controls located on the steering wheel hub from the identification requirement. In addition to some of the same arguments

made by Mercedes, Fiat emphasized the agency's decision to exclude horns on heavy duty trucks from the requirement.

The agency does not agree that its decision with respect to heavy duty trucks necessitates the same decision for other vehicles. The location of horn controls on heavy duty trucks appears to be more standardized than for other vehicles. Also, the agency may adopt different requirements for different types of vehicles based on many considerations, such as different driver populations, difference in magnitude of a safety problem, etc.

The other petition was submitted by a private individual, Mr. C.R. Blydenburgh. That petitioner argued that the July 1984 final rule should be delayed pending rulemaking for standardized location of controls and displays, a subject which he cited as being included in NHTSA's five year plan published in 1979. The petitioner argued that such standardization of controls and displays is necessary to avoid driver confusion when driving different vehicles. The petitioner asserted that the extended use of international symbols is counterproductive in terms of safety as it fails to utilize two important human characteristics, habit and instinct. The petitioner did not, however, address any of the specific amendments made by the July 1984 final rule or the notice's discussion of those amendments, or offer any support for an allegation that the rule could adversely affect safety.

The agency rejects the petitioner's allegation that the rule could adversely affect safety, for the reasons discussed in the July 1984 notice. While the subject of standardized location of controls and displays was included in NHTSA's five year plan published in 1979, potential action on that subject is not relevant to the issuance of the July 1984 final rule. Thus, Mr. Blydenburgh's petition will be addressed separately at a subsequent date.

For the reasons discussed above, the petition submitted by Toyota is granted, the petition submitted by BMW is granted in part and denied in part, and the other petitions, except for Mr. Blydenburgh's for which action will be determined at a later date, are denied.

The amendments are effective immediately. The agency notes, however, that the requirement that horn controls be identified by the ISO horn symbol does not become mandatory until September 1, 1987. The agency finds good cause for an immediate effective date since the amendments relieve restrictions, while reducing compliance costs and having no adverse impacts on safety.

The agency has evaluated the economic and other effects of this final rule and determined that they are neither major as defined by Executive Order 12291 nor significant as defined by the Department's Regulatory Policies and Procedures. The agency has determined that the economic effects of this final rule are so minimal that a full regulatory evaluation is not required. Since the amendments relieve restrictions, they conceivably could result in some nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Since the amendments impose no new requirements and do not result in any significant cost impacts, I certify that the amendments will not have a significant economic impact on a substantial number of small entities.

Finally, the agency has analyzed the effects of this action under the National Environmental Policy Act. The agency has determined that the final rule will not have a significant effect on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

1. S5.2.1.1 is revised to read as follows:

S5.2.1.1 The identification of the following need not appear to the driver perceptually upright:

(a) A master lighting switch or headlamp and tail lamp control that adjusts control and display illumination by means of rotation, or any other rotating control that does not have an off position.

(b) A horn control.

2. Table 2(a) is amended by revising the designation for identifying words or abbreviation for the Seat Belt Telltale, contained in column 3, to read:

Fasten Belts or Fasten Seat Belts. Also see FMVSS 208.

3. Table 2 is amended by revising the designation for identifying words or abbreviation for the Seat Belt Telltale, contained in column 3, to read:

Fasten Belts or Fasten Seat Belts. Also see FMVSS 208.

§ 571.208 [Amended]

1. The first sentence of S4.5.3.3(b) is revised to read as follows:

In place of a warning system that conforms to S7.3 of this standard, be equipped with the following warning system: At the left front outboard designated seating positions (driver's position), be equipped with a warning system that activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position) when condition (A) exists simultaneously with either condition (B) or condition (C), and that activates a continuous or flashing warning light, visible to the driver, displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts".

2. The first sentence of S7.3 is revised to read as follows:

A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that activates, for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position), a continuous or flashing warning light, visible to the driver, displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts", when condition (a) exists, and a continuous or intermittent audible signal when condition (a) exists simultaneously with condition (b).

Issued on May 29, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-13400 Filed 6-3-85; 8:45 am]

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Proposed Rules

Federal Register
Vol. 50, No. 107
Tuesday, June 4, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 85-421]

Accounting for Financial Options

Dated: May 24, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board has rescinded the accounting portion of a final rule adopted on April 18, 1985, pertaining to financial options transactions engaged in by insured institutions, and is instead soliciting public comment in order to ascertain whether to issue a proposal in this area.

DATE: Comments will be received until August 2, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Robert J. Pomeranz, Policy Analyst, Office of Policy and Economic Research, (202) 377-6209; M. Christian Mitchell, Accounting Fellow, Office of Examinations and Supervision, (202) 377-6837, or Joseph Longino, Attorney, Office of General Counsel, (202) 377-6446; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1985, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), amended 12 CFR 563.17-5 of its Insurance Regulations pertaining to financial options transactions to authorize institutions whose accounts are insured by the FSLIC ("insured institutions") to enter into over-the-counter options transactions with primary dealers. In connecton with those amendments, the Board revised the accounting procedure for "short call" option positions. The regulation formerly permitted an institution that entered into a short-call option matched against a specific asset, liability, or an intended cash-market transaction, to defer any realized losses over the estimated life of the matched item while recognizing the option commitment fee as income over the term of the option. As amended, the regulation required that fees received in conjunction with such options, as well as any related gains and losses, be deferred and amortized over the life of the hedged item. The intent of this amendment was to discourage institutions from entering into short-call option positions to take advantage of the favorable accounting treatment rather than for sound economic reasons, and to remove an incentive which may make some institutions reluctant to close out their short-call option positions even when losses are increasing in order to continue to record the commitment fee as income. *See* Board Resolution No. 85-293, April 18, 1985, 50 FR 16459, April 26, 1985.

Upon further consideration, the Board has today rescinded the April 1985 amendment to the accounting rule and reinstated the prior rule (*See* Board Resolution No. 85-420, May 24, 1985, published elsewhere in this edition of the **Federal Register**), and has determined instead to solicit public comment on this matter.

Discussion

The prior accounting regulation, reinstated today, requires that the option premium be divided into two components—the immediate exercise value (intrinsic value) and the option commitment fee (time value). Under this approach, if the transaction involves a long put or call, the option commitment fee (paid by the institution) is recognized as an expense over the term of the option. If the transaction involves a short-call or short put, the option commitment fee (received by the institution) is recognized as income over the term of the option. When an option is matched against a specific asset, liability, or an intended cash-market transaction any realized gains or losses are deferred over the estimated life of the matched item. When an option is unmatched, it must be carried on the books at its immediate exercise value. Unmatched options normally involve short put and long-call option positions.

The Board is concerned that this accounting technique may fail to recognize the economic substance of certain short-call option transactions. As noted above, the option commitment fee is determined at the time the position is established and is recognized as income over the term of the option, while any losses (realized by exercise of the option contract at its expiration or unrealized by virtue of holding the hedged asset at historical cost) are deferred over the term of the matched or hedged asset. Accordingly, an institution may engage in short-call option transactions for the resulting accounting treatment rather than for overall economic enhancement of the instituion's financial position. Moreover, even when losses are increasing, some institutions may be reluctant to close our their short-call positions since they may continue to recognize the commitment fee as income.

The seller of a short-call option sells a right, but not an obligation, to the option holder to purchase a security (or a futures contract if the option is for a futures contract) from the seller for a set period of time. There are three possible outcomes from selling these call option contracts when not offset prior to their expiration:

1. Interest rates remain stable for the term of the contract so that the option holder has no incentive to exercise the option. The seller of the option would retain the fee (which, under the Board's regulations, would have been recognized as income to the extent of the portion of the fee representing the commitment fee), while the market value of the matched asset would have remained stable.

2. Interest rates decline and the market value of the option contract increases, resulting in a gain for the holder of the option and a loss for the seller. In this situation, the seller would either deliver the cash-market security or offset the option position in the market. (The loss incurred by the seller to offset the position may exceed the amount of the fee originally received.) Assuming that there was a high degree of correlation between the option

contract and the cash-market investment, the loss of the offset of the option contract would be almost entirely mitigated by the cash-market gain.

3. Interest rates increase and the holder of the option has no incentive to exercise the option. The option would expire unexercised, the market value of the cash-market instrument would have declined and the option fee would be retained by the option seller (again the commitment fee portion of the option fee would have been recognized as income over the option term).

To an insured institution selling short-call option contracts, the first outcome would be the most favorable. The market value of the cash-market security would remain constant while the institution would collect the option fee. In the second possible outcome, assuming a high degree of correlation between the option contract and the cash-market instrument, the institution would recognize a net gain (represented by the amount of fee received), but less than the economic enhancement that would have resulted if the institution had not sold the call (due to the increase in the market value of the cash-market position). The third possible outcome presents the least desirable result because the fee income would not offset the decline in value of the cash-market instrument.

The regulatory concern with short-call option writing is that the potential for gain is limited to the fees received while the potential for loss is very large. In addition, as noted in the third possible outcome, the commitment fee is realized as income while the loss on the cash-market security would be recognized over the life of the security through a below-market rate of return. The economic reality of short-call option writing appears to be the elimination of all gain potential in excess of the option fee while retaining all loss potential in excess of the fee.

The Board believes that the current accounting for covered call option contracts may not adequately reflect the economics of these transactions. Accordingly, it seeks the public's views on all the related accountancy aspects of short-call option transactions engaged in by insured institutions, and particularly seeks comment on the following issues:

1. Should the Board prohibit short-call option transactions completely, on the grounds that they contain speculative elements and may enhance risk, and there are effective hedging techniques that are available to thrifts to control and/or minimize this exposure to interest-rate risk?

2. Does the current accounting for short-call option transactions that are matched against specific assets, liabilities or intended cash-market transactions, reflect the economic substance of the transactions?

3. If short-call option contracts have a place in the reduction of an institution's exposure to interest-rate risk, but the current accounting fails to reflect the economics of the transaction:

a. Should the Board require that all short-call option contracts be recorded at market?

b. Should the Board require that all short-call option contracts and matched asset or liability positions be jointly marked to market?

c. Should the Board require deferral accounting for all fees received on short-call option contracts?

d. Should the Board authorize different accounting when call option contracts are matched against assets with book values that approximate market value as opposed to those where book value is substantially in excess of market value? If so, what accounting should be used for each?

e. Do call options on futures contracts function in a manner similar to cash-market call option contracts such that the accounting for these contracts should be the same as that used for cash-market call option contracts?

4. If the Board determines to change the accounting requirements for call option contracts, to what extent, if any, should the Board provide a "saving" clause for transactions entered into or committed to before a certain date?

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-13389 Filed 6-3-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-5]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publicatien of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before August 5, 1985.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 24545, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 28, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petition for Rule Making to the Administrator of the Federal Aviation Administration

[Docket No. 24545]

Petitioner, the Experimental Aircraft Association, Paul Poberezny, President

References

Federal Aviation Regulations, Part 11, § 11.15(a).
Federal Aviation Regulations, Part 21, § 21.17(a)(1).
March 5, 1985.

Proposal

To amend Federal Aviation Regulations, Part 21, § 21.17(a)(1) as necessary to permit the use of previously effective airworthiness

standards and procedures for type certification of airplanes not more than two-place having a single engine of not more than 100 horsepower.

Summary of the Petition for Publication in the Federal Register

Federal Aviation Regulations (FAR) 21.17 designates the requirements with which an applicant for a type certificate must show compliance for issuance of type certificates for aircraft, aircraft engines, or propellers. Unless otherwise specified by the Administrator (FAR 21.17(a)(1)(i)), or unless compliance with later effective amendments is elected or required (FAR 21.17(a)(1)(ii)), the applicant for a type certificate must show that the aircraft, aircraft engine, or propeller meets "the applicable requirements of this subchapter that are effective on the date of application for that certificate." The Experimental Aircraft Association (EAA) herewith petitions the Administrator of the Federal Aviation Administration (FAA) to amend FAR 21.17(a)(1) as necessary to permit the use of previously effective requirements and procedures for type certification of airplanes not more than two-place having a single engine of not more than 100 horsepower, hereafter for convenience referred to as recreational/training airplanes.

The EAA strongly believes that it is in the public interest to seek, find, and initiate action leading to revival of a dying United States industry, and to promote the re-growth of a segment of general aviation that is being stifled because of high initial investment and operating costs, and the lack of suitable new airplanes. The industry in jeopardy is the design, FAA type certification, and production of two-place, single engine airplanes for recreation and pilot training. Similar airplanes were designed and built under airworthiness standards and procedures in effect prior to FAR Part 23, such as U.S. Department of Commerce Aeronautics Bulletin No. 7–A (Aero Bulletin 7–A), dating back as far as 1934. The high costs involved in obtaining FAA type certification of these types of airplanes under the Standards and procedures of FAR's 21 and 23 has effectively shut them out of general aviation as it exists today. The rapid growth of the ultralight vehicle movement under FAR Part 103 is positive evidence that a significant segment of the U.S. population is eager to participate in sport aviation. While ultra light vehicles have filled a void, the designs of the vehicles are now at the upper end of the weight range for operation under FAR Part 103, and it has become evident that standards to permit FAA certification of these airplanes are imperative. Adoption of this EAA proposal would, therefore, provide standards and procedures for ultralight type of airplanes as well as airplanes of a type that were designed and certificated under Aero Bulletin 7–A.

It is the firm opinion of the EAA that allowing the type certification of recreational/training airplanes under the simpler standards and procedures of Aero Bulletin 7–A would lower costs to the degree that renewed interest would be generated in designing and building such airplanes, thereby leading to rejuvenation of the segment of general aviation that is almost dead. The EAA also believes that granting this request would be in the public interest because the stimulation it would give to the ailing industry would create new investment and sorely needed jobs. The EAA wholeheartedly endorses a public statement made by the FAA Administrator in late 1984 that "General Aviation is as important a part of our nation's transportation system as any other segment." Furthermore, the EAA also supports the current rule making action concerning establishment of a new primary category of aircraft. This petition to amend FAR 21.17(a)(1) does not conflict with the primary category proposal. It is intended only to provide a readily available, simplified means for type certification of a very limited class of airplanes at the lowest size and power range of those that would be eligible for primary category certification.

Adoption of the action requested would have no adverse effect on safety, since the proposed amendment would be applied only to two-place, single engine airplanes similar to types that were approved in past years under previously effective regulations. Many of these airplanes designed and built five decades ago are still flying today with Standard Airworthiness Certificates—a testimony to the soundness of the standards and procedures of Aero Bulletin 7–A for those types of airplanes. The EAA believes that changes to the regulations over the years were made to accommodate advances in technology that led to ever larger, multi-engine, highly sophisticated aircraft, intended for business aviation and air carrier operations, rather than to enhance the safety of two-place, single engine airplanes of simple design and construction. Thus, the early versions of the airworthiness standards and procedures have been shown over the years to have been adequate to ensure a high level of safety for such airplanes, therefore, there is no reason to believe they would not be adequate today to ensure the same level of safety for recreational/training airplanes.

The EAA, therefore, petitions the Administrator of the FAA to amend FAR 21.17(a)(1) to read as follows:

21.17(a)——

(1) The applicable requirements of this subchapter that are effective on the date of application for that type certificate, or, in the case of an airplane not more than two-place having a single engine of not more than 100 horsepower any previously effective requirements, unless——

* * * * *

Note.—This petition was previously published in abbreviated form in summary notice No. PR–85–4 [50 FR 18869; May 3, 1985]. It is being republished at the request of the EAA in order to provide additional information.

[FR Doc. 85–13249 Filed 6–3–85; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–47–AD]

Airworthiness Directives; Boeing Model 727–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for corrosion of the lower surface of the wing center section which forms the upper wall of the ram air plenum chambers on Boeing Model 727–200 airplanes. This action is the result of reports of corrosion progressing through the lower skin into the center wing fuel tank which will permit fuel to enter the ram air duct and fuel vapor to enter the passenger compartment through the air conditioning sysem.

DATES: Comments must be received on or before July 29, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–47–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest

Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-47-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discusssion

There have been numerous reported incidents of corrosion of the lower surface of the wing center section which forms the upper wall of the air conditioning ram air plenum chambers. One recent incident resulted from the corrosion progressing through the lower skin into the center wing fuel tank. This incident permitted entry of fuel into the ram air duct and fuel vapors into the passenger compartment through the air conditioning system.

Since this condition is likely to exist or develop on other airplanes of this same type design an AD is proposed that would require the operators to periodically inspect all Model 727-200 airplanes for evidence of corrosion. If corrosion is detected it must be removed and the skin repaired.

It is estimated that 861 airplanes would be affected by this AD, that it would take approximately 22 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $757,680.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727-200 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727-200 series airplanes, certificated in all categories.

To detect corrosion of the wing lower skin that could result in fuel entering the ram air plenum chamber accomplish the following:

A. On aircraft with more than 10,000 hours or 4 years time in service, whichever occurs first, accomplish the following within the next 1,500 hours or 1 year time in service, whichever occurs first after the effective date of this AD:

1. Visually inspect the upper wall of the air conditioning ram air plenum chamber for corrosion in accordance with Part II of Boeing Service Bulletin 727-51-17, dated April 26, 1974, or later FAA approved revision.

2. If corrosion is detected, repair and refinish in accordance with Figure 3 of the Boeing Service Bulletin 727-51-17 dated April 26, 1974, or later FAA approved revision, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Repeat the procedures required in paragraph A., above, at intervals not to exceed 7,500 hours or 4 years time in service, whichever occurs first.

C. Inspections accomplished in accordance with Part II of Boeing Service Bulletin 727-51-17 prior to the effective date of this AD satisfy the initial inspection requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certificaion Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents also may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-13240 Filed 6-3-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-48-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of the pylon inboard and outboard midspar attach fitting lugs or spring beam aft lugs, as appropriate, for cracks. The proposed AD is prompted by a recent report of failure of both inboard midspar fitting lugs of one inboard pylon. This condition, if not corrected could result in separation of the engine from the airplane.

DATES: Comments must be received on or before July 29, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle,

Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–2923. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–48–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Recent inspections have revealed cracking of the pylon midspar fittings. One operator has reported finding both inboard midspar fitting lugs of one inboard pylon broken. The cracking was determined to be the result of fatigue cracking initiating at corrosion pits in the bore surface of the fitting outer lug. Failure of the midspar fitting lugs or the spring beam aft lugs could result in separation of the engine. Both sets of lugs are of the same design.

Boeing has issued Service Bulletin 747–54–2100, which defines the specific inspection procedures to be used to check for cracks in the pylon midspar fitting lugs or spring beam aft lugs on certain Boeing Model 747 series airplanes.

Since these conditions are likely to exist or develop in other airplanes of the same type design, an AD is proposed that would require inspection, repair, and/or replacement, as necessary, of the pylon midspar fitting lugs or spring beam aft lugs of certain Boeing Model 747 series airplanes.

It is estimated that 160 airplanes would be affected by this AD, that it would take approximately 56 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $358,400.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 747–54–2100 dated June 20, 1983. To prevent failure of the pylon midspar fitting lugs or springs beam aft lugs, as appropriate, accomplish the following, unless already accomplished:

A. Perform an ultrasonic inspection of the inboard and outboard midspar fitting lugs or spring beam aft lugs of each pylon for cracks in accordance with Boeing Service Bulletin 747–54–2100 dated June 20, 1983, or later FAA approved revisions, in accordance with the following schedule:

1. On airplanes that have accumulated less than 30,000 flight hours as of the effective date of this AD, inspect within 18 months after the effective date of this AD or prior to the accumulation of 25,000 flight hours, whichever occurs later.

2. On airplanes that have accumulated 30,000 to 40,000 flight hours as of the effective date of this AD, inspect within 12 months after the effective date of this AD.

3. On airplanes that have accumulated over 40,000 flight hours as of the effective date of this AD, inspect within 6 months after the effective date of this AD.

4. On airplanes that have had replacement of the midspar fitting or its lug bushings, or the spring beam or its aft lug bushings, inspect these lugs within 18 months after the effective date of this AD or within 25,000 flight hours after such replacement, whichever occurs later.

B. Repeat the inspection required by paragraph A., above, at intervals not to exceed 3,000 flight hours.

C. If any cracking is found in the lugs, replace the affected midspar fitting or spring beam prior to further flight.

D. Installation of new bushings of the new design in accordance with Boeing Service Bulletin 747–54–2100, dated June 20, 1983, or later FAA approved revisions, is terminating action for this AD.

E. On request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD, if the request contains substantiating data to justify the adjustment period.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124–2207. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 28, 1985.

Wayne J. Barlow,
Acting Director, Northwest Mountain Region.

[FR Doc. 85–13241 Filed 6–3–85; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 821 0129]

Multiple Listing Service of the Greater Michigan City Area, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require an Indiana firm providing a multiple listing service to member real estate brokers doing business in LaPorte County, Ind., among other things, to cease fixing, establishing or maintaining commission rates for brokerage services; urging its members to charge the customary market rate of commission; taking adverse action against nonconforming brokers; or otherwise engage in conduct having the tendency to restrain competition in the real estate brokerage market. The company would also be barred from interfering with any statement disseminated in an advertisement that truthfully refers or relates to another broker's business practices; restricting a broker from offering or accepting an exclusive agency listing, reserve clause listing or open listing; and restraining a broker's participation or involvement in a competitive organization or service. The firm would be further required to properly publish exclusive agency listings or reserve clause listings in its multiple listing service; timely amend its by-laws, Code of Ethics, rules and regulations, and similar data in accordance with the terms of the order; and provide area real estate brokers with a prescribed statement setting forth those terms. Additionally, the order would prohibit the company from improperly denying or delaying a membership application; require the firm to provide rejected applicants with a written notice of denial together with the reasons for the denial; and keep all data relating to membership applications for a specified period of time.

DATE: Comments must be received on or before August 5, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur N . Lerner, FTC/P–1038, Washington, D.C. 20580. (202) 724–1341.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Real estate brokerage services, Trade practices.

[File No. 821 0129]

Agreement Containing Consent Order To Cease and Desist

In the matter of Multiple Listing Service of the Greater Michigan City Area, Inc., a corporation, also trading and doing business as Multiple Listing Service of Laporte County, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Multiple Listing Service Of The Greater Michigan City Area, Inc., and it now appearing that Multiple Listing Service Of The Greater Michigan City Area, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Multiple Listing Service Of The Greater Michigan City Area, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5450 North Johnson Road, in the City of Michigan City, State of Indiana.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to prosposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

1. "Multiple listing service" shall mean a clearinghouse through which member real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with members who locate purchasers.

2. "Member" shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondent Multiple Listing Service Of The Greater Michigan City Area, Inc.

3. "Applicant" shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed by the Indiana Real Estate Commission as a real estate broker within the State of Indiana and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

4. "Market" shall mean the provision of real estate brokerage services for residential properties located in LaPorte County, Indiana.

5. "Listing" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

6. "Exclusive right to sell listing" shall mean any listing under which the property owner agrees to pay the broker a certain commission if the property is sold, regardless of who locates the purchaser.

7. "Reserve clause listing" shall mean any exclusive right to sell listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a commission to the broker.

8. "Exclusive agency listing" shall mean any listing under which the property owner agrees to pay the broker a certain commission if the property is sold through any real estate broker, but, if the owner locates the purchaser independently of any real estate broker, the owner owes a reduced commission or no commission to the broker.

9. "Open listing" shall mean any listing under which the property owner grants the broker a nonexclusive agency to locate a purchaser for the property, such that the owner is free to enter into other open listings with other real estate brokers and owes a commission only to the broker who locates the purchaser.

I

It is ordered that respondent Multiple Listing Service of the Greater Michigan City Area, Inc., and its directors, officers, committees, representatives, agents, employees, subsidiaries, successors, and assigns, directly or indirectly or through any device, in or in connection with respondent's operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Fixing, establishing, or maintaining any rate, range or amount of commission for real estate brokerage services, or otherwise restraining price competition among real estate brokers, including but not limited to:

1. Requiring, urging, recommending, or suggesting that any broker charge for brokerage services only such commissions or commission rates as are in accordance with local practice in similar transactions;

2. Requiring, urging, recommending, or suggesting that any listing filed with respondent's multiple listing service provide for payment of a commission in accordance with the customary practices within the market;

3. Requiring, urging, recommending, or suggesting that any broker refrain from charging or advertising any commission or commisison rate below what is customarily charged or prevailing in the market; or

4. Taking or threatening any action that has the purpose or effect of penalizing, discriminating against, or interfering with any broker's charging or advertising any commission or commission rate below what is customarily charged or prevailing in the market.

B. Declaring to be unethical or otherwise restricting or interfering with any statement in a generally disseminated advertisement by a broker that truthfully refers or relates to the business practice of any other real estate broker, such as truthful comparisons of commissions, commission rates, operating costs, services, methods of operation, or brokerage terms or conditions. Generally disseminated advertisements shall include any advertisement through the media, through printed distributions covering a particular geographic area or a particular association of persons, or through other general means.

C. Adopting any policy or taking any other action that has the purpose or effect of:

1. Requiring that any applicant or prospective applicant must have been engaged to any degree or in any manner or capacity in real estate brokerage for any period of time before becoming eligible for membership in respondent's multiple listing service;

2. Requiring that any prospective applicant, applicant, or member must:

a. engage in real estate brokerage full time;

b. derive any particular amount or portion of income from real estate brokerage; or

c. Operate from an established place of business at a nonresidential location;

3. Restricting the acceptance of any membership applicaiton for processing to unreasonably infrequent or limited periods of time during the year;

4. Unreasonably delaying action on any membership applicaiton or the induction of any new member; or

5. Discriminating against any prospective applicant, applicant, or member that is a new entrant in the market or new to respondent's multiple listing service;

Provided, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

D. Restricting or interfering with:

1. Any broker's offering or acceptance of any exclusive agency listing or reserve clause listing; or

2. The publishing on respondent's multiple listing service of any exclusive agency listing or reserve clause listing of a member.

E. Publishing on respondent's multiple listing service any exclusive agency listing or reserve clause listing:

1. In any manner different from the publishing of any exclusive right to sell listing; or

2. In any category separate from exclusive right to sell listings;

Provided, however, that nothing contained in subparts I.D. or I.E. shall prohibit respondent from: (a) including a simple designation that a published listing is an exclusive agency listing or reserve clause listing rather than an

exclusive right to sell listing; (b) charging a reasonable and nondiscriminatory fee based on costs for any service it provides; and (c) applying reasonable terms and conditions equally applicable to, and not discriminatory in their impact upon, the publication of any listing, whether exclusive agency, reserve clause, or exclusive right to sell.

F. Prohibiting any broker from entering into any open listing.

G. Restricting or interfering with any broker's development of, or participation or involvement in, any organization, service, or venture that competes in any way with respondent's multiple listing service.

H. Restricting or interfering with any member and property owner cancelling a listing before the listing's expiration date; provided, however, that nothing contained in this subpart shall prohibit respondent from: (1) requiring three days advance notice of the cancellation, including a copy of the cancellation agreement; (2) charging a reasonable and nondiscriminatory fee for any service it provides if the property subject to the cancelled listing is sold before the original expiration date of the listing and said fee is not otherwise owed to respondent by another member; and (3) charging a reasonable and nondiscriminatory fee based on costs for any service it provides.

II

It is further ordered that respondent Multiple Listing Service Of The Greater Michigan City Area, Inc., shall:

A. Within sixty (60) days after this Order becomes final, amend its by-laws, code of ethics, and rules and regulations and any other of its materials to conform to the provisions of this Order.

B. Within thirty (30) days after this Order becomes final, make its best efforts to distribute an announcement in the form shown in Appendix A to the principal(s) of each real estate brokerage firm doing business in LaPorte County, Indiana (including each member and including any other brokerage firm listed in the most current telephone yellow page directories for Michigan City and the city of LaPorte), including a sufficient number of copies to permit each real estate broker and salesperson associated with any such firm to receive the announcement.

C. For a period of five (5) years after this Order becomes final, furnish promptly a copy of this Order to:

1. Any person who inquires in writing about, or who submits an application for, membership in respondent's multiple listing service; and

2. Any other person who requests a copy.

III

It is further ordered that respondent Multiple Listing Service Of The Greater Michigan City Area, Inc., shall:

A. Within sixty (60) days after this Order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this Order.

B. For a period of ten (10) years after this Order becomes final:

1. Provide to any applicant who has been denied membership prompt and clear written notice of the denial, specifying the membership requirements not met and explaining in what manner the requirements are not met; and

2. Keep all documents that discuss, refer, or relate to any denied or approved application for a period of five (5) years from the final decision on such application, maintaining all such documents in one separate file segregated by the names of the applicants.

C. For a period of ten (10) years after this Order becomes final, make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to determining whether respondent has been and is complying with this Order, including but not limited to the documents required to be kept by subpart III. B. of this Order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

E. Require as a condition of sale or transfer of all, or a substantial part, of respondent's business or assets to any other person seeking to perform essentially the same services as respondent in LaPorte County, Indiana that such successor or transferee file promptly with the Federal Trade Commission a written agreement to be bound by the terms of this Order; provided, however, that if respondent wishes to present to the Commission any reasons why this Order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth such reasons prior to the consummation of the succession or transfer.

IV

It is further ordered that nothing in this Order shall be construed to exempt respondent from compliance with the antitrust laws or the Federal Trade Commission Act, and the fact that any activity is not prohibited by this Order shall not bar a challenge to it under such laws and statute.

[Date]

Appendix A

[Respondent's Regular Letterhead]

Announcement

As you may be aware, the Multiple Listing Service Of The Greater Michigan City Area, Inc., has entered into a consent agreement with the Federal Trade Commission that has now become final. The following is a brief summary of the provisions of the order issued pursuant to the consent agreement:

1. *Commission rates and advertising:* The MLS will not maintain any rate or amount of commission or fee for real estate brokerage services or restrain competition among member firms in any manner. Any member will be free to charge any commission rate and to engage in general truthful advertising of any type, including comparative advertising of rates or of other terms and services.

2. *Eligibility for membership:* The MLS will not require as a prerequisite for membership that a broker have owned and operated a business for a one year period or any other time period. In addition, the MLS will not require any applicant or member to be engaged full time in real estate brokerage, to operate from an office outside of the home, or to avoid participating in any other organization that competes with the MLS. Applications will be accepted and acted upon without unreasonable delay. If any membership application is denied, the MLS will promptly provide to the applicant a written explanation of the specific reasons for the denial.

3. *Property listings that limit or differ from an exclusive right to sell arrangement:* Members will be free to enter into any exclusive agency listing[1] or reserve clause listing.[2] The MLS will publish all listings of these types with notice that the listing is an exclusive agency listing or reserve clause listing rather than a standard exclusive right to sell listing.[3] Members also will be free to

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[1] Under an exclusive agency listing, the owner owes a reduced commission or no commission to the broker if the owner locates the purchaser independently of any real estate broker.

[2] According to the order, a reserve clause listing is any exclusive right to sell listing that includes a provision reserving the owner's right to sell to designated persons without owing a commission to the broker.

[3] The MLS may charge the listing member a fee to cover the cost of publishing the listing upon a sale where no brokerage commission is due.

enter into any open listing. Under the order, the MLS will be free to allow or to disallow publication of open listings.

4. *Cancellation of listings:* The MLS will not prohibit the cancellation of a listing before its expiration date. However, the MLS may require three days advance notice of the cancellation. In addition, the MLS may still charge the member a regular service fee if the property subject to a cancelled listing is sold before the original expiration date of the listing, so long as that fee is not otherwise owed to the MLS by another member. In lieu of levying any such charge, the MLS may simply charge each member cancelling a listing a fee to cover the cost of publishing that listing.

The FTC is not endorsing any practice of the MLS that has not been challenged. For more specific information, you should refer to the FTC order itself. A copy of the order will be furnished to any person upon request.

President, Multiple Listing Service of the Greater Michigan City Area, Inc.

Analysis of a Revised Proposed Consent Order To Aid Public Comment

After considering the public comments that were received, the Federal Trade Commission has withdrawn its acceptance of an agreement to a proposed consent order from the Multiple Listing Service of the Greater Michigan City Area, Inc. ("MLS") and has accepted a new agreement from the MLS containing a revised proposed order. The revised agreement would settle charges by the Commission that the MLS, through various acts and practices, has restrained competition among residential real estate brokers in LaPorte County, Indiana.

The current version of the proposed order differs from the original version published in the **Federal Register** on May 18, 1984 (49 FR 21073) in that provisions have been added to prohibit the MLS from refusing to publish "exclusive agency listings" on its multiple listing service. The following analysis discusses these new provisions.

The revised proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the original proposed order has been revised. It includes all the original allegations [4] and adds new allegations. The new allegations state that MLS members have conspired through the MLS to unlawfully prohibit members from publishing "exclusive agency listings" on its multiple listing service, unreasonably limiting the multiple listing service to only "exclusive right to sell listings". As described in the complaint, an "exclusive agency listing" is a brokerage service contract where the propety owner agrees to pay a certain commission if the property is sold through a broker, but, if the owner locates the purchaser independently of any broker, no commission or a reduced commission is due. This is in contrast to an "exclusive right to sell listing." As described in the complaint, an "exclusive right to sell listing" is a brokerage service contract where the property owner agrees to pay a certain commission if the property is sold, regardless of who locates the purchaser.

The complaint alleges that the purposes or effects of the MLS's refusal to publish exclusive agency listings have been to unreasonably restrain competition in one or more of the following ways, among others:

1. Restrain price competition among brokerage firms;

2. Restrain competition among brokerage firms based on willingness to accept different contract terms that may be attractive and beneficial to consumers;

3. Substantially limit the ability of consumers to negotiate lower prices for brokerage services and brokerage contract terms that may be more advantageous than an exclusive right to sell listing;

4. Subsantially limit the ability of residential property sellers to compete with real estate brokers in locating purchasers; and

5. Substantially limit consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services.

The Proposed Order

The revised proposed order includes all the provisions contained in the original proposed order [5] and incorporates new provisions relating to exclusive agency listings.

The revised proposed order would prohibit the MLS from restricting or interfering with any broker's offering or acceptance of an exclusive agency listing or with the publishing on the MLS's multiple listing service of any exclusive agency listing of a member. It would also prohibit the MLS from publishing exclusive agency listings in any manner different from the publishing of any exclusive right to sell listing or in any category separate from exclusive right to sell listings. It is expressly provided, though, that the MLS designate that a published listing is an exclusive agency listing rather than an exclusive right to sell listing. It is also expressly provided that the MLS may charge a reasonable, nondiscriminatory publication fee based on costs for any service provided. Since the MLS charges a publication fee only if a commission is earned, this proviso assures that the MLS can recover its costs if the seller locates his or her own purchaser under an exclusive agency listing and no commission is owed. Finally, it is also expressly provided that the MLS may reasonably regulate the publication of exclusive agency listings so long as the regulations being maintained apply equally to all published listings and do not have a discriminatory impact upon exclusive agency listings.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.

Emily H. Rock,

Secretary.

[FR Doc. 85-13373 Filed 6-3-85; 8:45 am]

BILLING CODE 6750-01-M

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[4] Various minor and technical revisions have been made to the phrasing of certain allegations of the original complaint to clear up miscellaneous ambiguities and to make the complaint more readable.

[5] Various minor and technical revisions have been made to the phrasing of certain provisions of the original proposed order to clear up miscellaneous ambiguities and to make the order more readable.

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16 CFR Part 13

[File No. 821 0076]

Orange County Board of Realtors, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent

agreement, accepted subject to final Commission approval, would require, among other things, that an Orange County, N.Y. Board of Realtors and its wholly-owned subsidiary, which provides a multiple listing service for its member real estate brokers, cease restricting or interfering with any broker's offering or acceptance of an exclusive agency listing or with the publishing of such listing on the multiple listing service. The companies would be further required to publish exclusive agency listings in a non-discriminatory manner, and to timely amend their by-laws, rules and regulations, and other materials to conform to the provisions of the order.

DATE: Comments must be received on or before August 5, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur N. Lerner, FTC/P–1038, Washington, D.C. 20580, (202) 724–1341.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Real estate brokerage services, Trade practices.

[File No. 821 0076]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Orange County Board of Realtors, Inc., a coroporation, and Multiple Listing Service of the Orange County Board of Realtors, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Orange County Board of Realtors, Inc., and its wholly-owned subsidiary, the Multiple Listing Service of the Orange County Board of Realtors, Inc., and it now appearing that the Orange County Board of Realtors, Inc., and the Multiple Listing Service of the Orange County Board of Realtors, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the Orange County Board of Realtors, Inc., the Multiple Listing Service of the Orange County Board of Realtors, Inc., by their duly authorized officers, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondents are organized, existing and doing business under and by virtue of the law of the State of New York, with their offices and principal places of business located at 50 North Church Street, in the City of Goshen, State of New York.

2. Proposed respondents admit all the jurisdictional facts set forth in paragraphs 3 and 14 of the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

1. "Member" shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc.

2. "Listing" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

3. "Exclusive right to sell listing" shall mean any listing under which the property owner appoints the broker as his or her exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether by the broker or any other person including the owner.

4. "Exclusive agency listing" shall mean any listing under which the property owner appoints a broker as his or her exclusive agent for the sale of the

property at an agreed commission, but reserves the right to sell the property personally with no commission owed or at an agree reduction in the Commission.

I

It is ordered that each respondent and its directors, officers, committees, representatives, agents, employees, subsidiaries, successors, and assigns, directly or indirectly or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

1. Any broker's offering or acceptance of any exclusive agency listing; or

2. The publishing on respondents' multiple listing service of any exclusive agency listing of a member.

B. Publishing on respondents' multiple listing service any exclusive agency listing:

1. In any manner different from the publishing of any exclusive right to sell listing; or

2. In any category separate from exclusive right to sell listings;

provided, however, that nothing contained in subparts I.A. or I.B. shall prohibit respondents from: (a) Including a simple designation, such as a code or symbol, that a published listing is an exlusive agency listing; and (b) applying reasonable terms and conditions equally applicable to, and not discriminatory in their impact upon, the publication of any listing, whether exclusive agency or exclusive right to sell.

II

It is further ordered that each respondent shall:

A. Within sixty (60) days after this Order becomes final, amend its by-laws and rules and regulations and any other of its materials to conform to the provisions of this Order.

B. For a period of five (5) years after this Order becomes final, furnish promptly a copy of this Order to any person who requests a copy.

C. For a period of ten (10) years after this Order becomes final, make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to determining whether either respondent has been and is complying with this Order.

III

It is further ordered that respondents shall jointly:

A. Within thirty (30) days after this Order becomes final, furnish a copy of this Order to each member of the mutliple listing service.

B. Within sixty (60) days after this Order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which respondents have complied and are complying with this Order.

C. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in either respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in either corporation that may affect compliance obligation arising out of this Order.

Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc.

[File No. 821-0076]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Orange County Board of Realtors, Inc. ("Orange County Board") and its wholly-owned subsidiary, the Multiple Listing Service of the Orange County Board of Realtors, Inc. ("Orange County MLS" or "MLS"). The agreement would settle charges by the Commission that the proposed respondents, through certain acts and practices, have restrained competition among residential real estate brokers in Orange County, New York in violation of Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issurance by the Commission along with the proposed order. It alleges that the Orange County Board and its MLS, acting as a combination of their members, have been unlawfully prohibiting MLS members from publishing "exclusive agency listings" on the multiple listing service, unreasonably limiting the multiple listing service to only "exclusive right to sell listings." As described in the complaint, an "exclusive agency listing" is a brokerage contract in which the property owner appoints a broker to be the exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally without owing a commission or at an agreed reduction in commission. This is in contrast to an "exclusive right to sell listing." As described in the complaint, an "exclusive right to sell listing" is a brokerage contract in which the property owner appoints a broker to be his or her exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether by the broker or any other person including the owner.

The complaint states that the Orange County MLS is a multiple listing service for member real estate brokerage firms doing business in Orange County, New York.[1] According to the complaint, only members of the Orange County Board may be members of its wholly-owned subsidiary, the Orange County MLS, and the Orange County Board controls the acts and practices of its MLS.

The complaint states that the Orange County MLS is the only multiple listing service serving Orange County, New York and that the vast majority of the full-time brokerage firms in the county are MLS members. It is alleged that, for each year since at least 1974, the vast majority of the total dollar volume of residential real estate sales in Orange County involved listings (brokerage contracts) published on the Orange County MLS. It is also alleged that publication of listings on the Orange County MLS is generally considered by property sellers and their brokers to be the fastest and most effective and convenient means of obtaining the broadest market exposure for residential property in Orange County.

The complaint states that the refusal by the proposed respondents to publish exclusive agency listing on their MLS has effectively prevented property owners and brokers from entering into such brokerage contracts—those that allow the owner to pay less or no

[1] As described in the complaint, each MLS member firm agrees to submit all of its Orange County exclusive right to sell residential property "listing" (brokerage contracts) for publication on the multiple listing service to the entire MLS membership and to share brokerage commissions with those member firms that successfully locate purchasers for properties it has listed.

commission if the owner locates the buyer independent of any broker.

The complaint states that the purposes or effects of the refusal by the Orange County Board and its MLS to publish exclusive agency listings have been to unreasonably restrain competition in one or more of the following ways, among others:

1. Restrain price competition among brokerage firms;

2. Restrain competition among brokerage firms based on willingness to accept different contract terms that may be attractive and beneficial to consumers;

3. Substantially limit the ability of consumers to negotiate lower prices for brokerage services and brokerage contract terms that may be more advantageous than an exclusive right to sell listing;

4. Substantially limit the ability of residential property sellers to compete with real estate brokers in locating purchasers; and

5. Substantially limit consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services.

The Proposed Order

The proposed order would prohibit the Orange County Board and its MLS from restricting or interfering with any broker's offering or acceptance of an exclusive agency listing or with the publishing on their multiple listing service of any exclusive agency listing of a member. It would also prohibit respondents from publishing exclusive agency listings in any manner different from the publishing of any exclusive right to sell listing or in any category separate from exclusive right to sell listings.

Two provisos appear in the proposed order.

One proviso states that the Orange County Board and its MLS may designate in the multiple listing service publication that a published listing is an exclusive agency listing. This proviso is phrased a bit more specifically than the comparable proviso appearing in a companion proposed consent order from the Multiple Listing Service of the Greater Michigan City Area, Inc. ("Michigan City MLS" consent order), which also addresses multiple listing service refusal to publish exclusive agency listings. However, the two provisos are identical in substance. The difference in wording is a product of negotiations with different parties.

The second proviso in the proposed order states that the Orange County Board and its MLS may reasonably regulate the publication of exclusive agency listings so long as the regulations apply equally to all published listings and do not have a discriminatory impact upon exclusive agency listings.

In addition to the one difference already noted, the provisions of this proposed order differ from the comparable provisions of the proposed consent order from the Michigan City MLS in several other respects.

The proposed *Michigan City MLS* order includes an additional proviso that does not appear in this proposed order. This proviso, which states that the Michigan City MLS may charge a reasonable, nondiscriminatory fee based on costs for any service it provides, relates to the special manner in which the Michigan City MLS levies service charges for publishing listings.[2] This proviso would be superfluous in the *Orange County MLS* order.[3]

In addition, while their import is the same, the definitions of "exclusive right to sell listings" and "exclusive agency listings" in the instant proposed order are phrased slightly differently from those in the proposed *Michigan City MLS* order. The differences are a result of separate negotiations. Also, as a result of negotiation, and unlike the proposed *Michigan City MLS* order, the term "multiple listing service" is not defined in this proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed consent order has been entered into for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint.

Emily H. Rock,

Secretary.

[FR Doc. 85-13372 Filed 6-3-85; 8:45 am]

BILLING CODE 6750-01-M

[2] Unlike the flat (noncontingent) publication fee charged by the Orange County MLS, the Michigan City MLS charges a publication fee only if a commission is earned. The special proviso was included in the *Michigan City MLS* order to assure that the Michigan City MLS can recover its costs if the property owner independently locates the purchaser under an exclusive agency listing and no commission is owed.

[3] Under subparagraph I.B.2(b) of the proposed *Orange County MLS* order, the Orange County MLs would be free to charge for publishing an exclusive agency listing the same flat fee it charges for publishing an exclusive right to sell listing.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22083; File No. S7-24-85]

Proposed Rule Amendment to Rule 15Bc7-1 To Make Composite Compliance Examination Information Available to the Municipal Securities Rulemaking Board

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and solicitation of public comments.

SUMMARY: At the request of the Municipal Securities Rulemaking Board, the Commission is proposing to amend its rule governing the availability to the Board of copies of reports of compliance examinations of municipal securities brokers and municipal securities dealers. The amendment would permit examining authorities to submit certain composite information derived from compliance examinations in lieu of individual examination reports to the Commission to be made available to the Board.

DATE: Comments to be received by July 15, 1985.

ADDRESS: All comments should be submitted in triplicate and addressed to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272-2409, Room 5193, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 15B(c)(7) of the Securities Exchange Act of 1934 ("Act") requires that copies of reports of compliance examinations of municipal securities brokers and municipal securities dealers made by the Commission, or furnished to it by the National Association of Securities Dealers, Inc. ("NASD") or by the appropriate bank regulatory agencies,[1]

[1] Examinations are performed by five entities. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, as appropriate regulatory agencies, examine municipal securities dealers which are banks or separately identifiable departments or divisions of banks (as defined in MSRB rule G-1) regulated by those agencies. The NASD conducts compliance examinations of its members. The Commission is the appropriate regulatory agency for, and routinely examines municipal securities brokers and the remaining municipal securities dealers that are not members of the NASD.

shall, on request, be made available to the Municipal Securities Rulemaking Board ("MSRB") subject to such limitations as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors. In response to a written request by the MSRB for copies of examination reports and in order to implement the requirements of section 15B(c)(7), the Commission adopted Rule 15Bc7–1 on October 16, 1979.[2] The Rule makes information from reports of examinations available to the MSRB, subject to limitations designed to protect the confidentiality of such information, and establishes procedures for furnishing the information to the MSRB. The information provided to the MSRB pursuant to the Rule was intended to be a source of current data which the MSRB could use to monitor the activities of municipal securities professionals in analyzing the need for rulemaking.

The MSRB recently has informed the Commission that the information it receives pursuant to the rule, *i.e.*, summary descriptions of each examination, is not as useful to the MSRB as would be a report reflecting composite information derived from compliance examinations occurring over a specific period. Accordingly, the MSRB has requested that the Rule be amended to permit the NASD and the bank agencies to provide to the Commission more generalized, composite statistical and analytical data on compliance examinations in lieu of individual examination reports or the present summary compliance reports. The Commission, therefore, is proposing to amend Rule 15Bc7–1 to permit the periodic filing of composite information instead of the more frequent submission of information reflecting individual compliance examinations.

The amendment would allow the examining authorities to submit, in place of full examination reports, two copies of the cumulative report to the Commission, one for the Commission's use and the other to be furnished to the MSRB. Both copies would be required not to identify the firms which are the subject of the reports; [3] however, the amendment would authorize the Commission to request for its own use such identities as well as the full examination reports.

[2] *See* Securities Exchange Act Release No. 16282 (October 16, 1979), 44 FR 61944. The Rule was proposed for comment in Securities Exchange Act Release No. 15885 (May 30, 1979), 44 FR 32616.

[3] The proposed amendment would require that composite reports not identify any municipal securities broker or municipal securities dealer or associated person that is the subject of an examination report and that the MSRB take steps to ensure the confidentiality of the information it receives.

I. Regulatory Flexibility Act Consideration

Section 603(a) [4] of the Administrative Procedure Act,[5] as amended by the Regulatory Flexibility Act ("RFA"), [6] generally requires the Commission to undertake a regulatory flexibility analysis of the impact of a rule or amendment on "small entities," unless exempted under section 605(b) on the basis that the rule or rule amendments would not have a significant impact on a substantial number of small entities. The amendments' primary effect would be to provide the MSRB and the examining authorities a more efficient method of making available to the MSRB information regarding compliance examinations of municipal securities brokers and municipal securities dealers. Because the MSRB and the examining authorities are not small entities for purposes of the RFA, the Chairman of the Commission has certified that the Rule amendments, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

II. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15B, 17, and 23 thereof, 15 U.S.C. 78*o*–4, 78q, and 78w, the Commission proposes to amend § 240.15Bc7–1 in Chapter II of Title 17 of the Code of Federal Regulations as follows:

Note.—Arrows indicate text proposed to be added. Brackets indicate text proposed to be deleted.

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted. Secs. 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78e, 78m, 78o. Secs. 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. Secs. 240.15b10–1 to 240.15b10–9 also under secs. 15, 17 48 Stat, 895, 897, sec. 203, 49 Stat. 1076, sec. 8, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt., unless otherwise noted.

[4] 5 U.S.C. 603(a).

[5] 5 U.S.C. 551, *et seq.*

[6] Pub. L. No. 96–354, 94 Stat. 1164, (September 19, 1980).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. By revising § 240.15Bc7–1 as follows:

§ 240.15Bc7–1 Availability of examination reports.

(a) Upon written request, copies of any report of an examination of a municipal securities dealer made by the Commission or furnished to it by an appropriate regulatory agency pursuant to section 17(c)(3) of the Act or by a national securities association pursuant to section 15(B)(c)(7)(B) of the Act shall be made available to the Municipal Securities Rulemaking Board (the "Board") by the Commission [within thrity days after receiving such report,] ►, upon written request,◄ subject to the following limitations:

(1) The Board shall establish by rule and shall maintain adequate procedures for ensuring the confidentiality of any information made available to it by the Commission pursuant to section 15(B)(c)(7)(B) of the Act;

(2) Information made available to the Board shall not identify any municipal securities broker, municipal securities dealer, or associated person which is the subject of [an] ►a non-public◄ examination report;

[(3) * * *]
[(4) * * *]

(b) [* * *] ►If information to be made available to the Board is furnished to the Commission on a separate form prepared by an appropriate regulatory agency other than the Commission or by a national securities association, that form, rather than a copy of any report of an examination, will be made available to the Board, provided that the conditions set forth in this paragraph are satisfied. Within sixty days of every six month period ending May 31 and November 30, each appropriate regulatory agency or national securities association making available information on a separate form shall furnish to the Commission two copies of a form containing the information set forth in paragraphs (b)(1) through (b)(8) of this section. One copy of the form shall be made promptly available to the Board. Copies of any forms furnished pursuant to this paragraph shall not identify any municipal securities broker, municipal securities dealer, or associated person which is the subject of an examination from which information was derived for the form; however, the Commission may obtain

for its own use, upon request, the identity of any such examinee or the full examination reports. Furnished forms shall include the following information.◄

(1) [* * *] ►The report period.◄

(2) [* * *] ►(i) With respect to a national securities association, the number of examinations which formed the basis of the report and, of these examinations, the number which were routine, special, and financial/operational. (ii) With respect to an appropriate regulatory agency which is a bank agency, the number of examinations which formed the basis of the report and, of these examinations, the number which were routine, special, and financial/operational. The number of examinations which formed the basis of the report of bank dealers and the number of examinations of separately identifiable departments or divisions of banks effecting municipal securities transactions.◄

(c) Copies of any report of an examination of a municipal securities broker or municipal securities dealer made by the Commission or furnished to it pursuant to section 15B(c)(7)(B) or section 17(c)(3) of the Act, or separate forms made available to the Commission pursuant to paragraph [(a)(3) or paragraph (a)(4)] ◄(b)►of this section will be maintained in a nonpublic file.

By the Commission.

John Wheeler,

Secretary.

May 28, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 15Bc7–1 set forth in Securities Exchange Act Release No. 22083, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendment, if adopted, would only affect the Municipal Securities Rulemaking Board, Commission, National Association of Securities Dealers, Inc., Federal Reserve Board, Comptroller of the Currency, and Federal Deposit Insurance Corporation, all which are not small entitities for purposes of the Regulatory Flexibility Act.

Dated: May 29, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–13447 Filed 6–3–85; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM85–17–000 (Phase I)]

Regulation of Electricity Sales-for-Resale and Transmission Service

Issued: May 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to evaluate its present policies toward wholesale electricity transactions and transmission service. The Commission's objective is to evaluate how its policies promote, or whether they impede, efficiency in electricity markets, and to determine whether there are available alternatives to, or possible revisions of, those policies which would further promote efficiency in the electronic utility industry.

Our inquiry will be conducted in two phases. This notice addresses our regulation of coordination transactions and transmission service. A subsequent notice will be issued in four to seven weeks that will address requirements service. Our regulation of requirements service is being treated separately because the nature of this service and thus the issues associated with it are very different from those of transmission and coordination.

DATES: Comments must be filed by 4:30 p.m. EDT on August 9, 1985. A public conference will be held on September 18, 1985. Requests to participate in the conference must be received by August 9, 1985.

ADDRESS: Comments and requests to participate in the conference should refer to Docket No. RM85–17–000 (Phase I) and be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426. The conference will be held in Hearing Room A at the above address.

FOR FURTHER INFORMATION CONTACT: Wilbur C. Earley, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426, (202) 357–8286.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to evaluate its present policies toward wholesale electricity transactions and transmission service. The Commission's objective is to evaluate how its policies promote, or whether they impede, efficiency in electricity markets and to determine whether there are available alternatives to, or possible revisions of, those policies which would further promote efficiency in the electric utility industry.

While the Commission's jurisdiction over electricity is limited to interstate transmission and sales-for-resale,[1] that jurisdiction is significant and has efficiency implications for utilities and customers across the country. The Commission directly regulates about 29 percent of all kilowatt-hours sold or exchanged in the United States. Since the Commission regulates wholesale sales, the effect of its regulation is eventually felt in practically all end-use customers' rates.

Efficiency in electricity supply is attained through a variety of operating and investment decisions. It requires purchasing fuel and other inputs at lowest possible cost, properly maintaining existing plants to avoid costly outages, dispatching plants on an economic basis, installing the right amount and type of generating and transmission capacity at minimum cost, and retiring plants that are economically obsolete.

Supplying electricity efficiently also requires efficiency in exchange. The latter will result if utilities take advantage of opportunities to trade with each other. Such voluntary coordination transactions can have both long- and short-term benefits. They can lower the total amount of capacity required to supply a given level of electricity and can lower operating costs by substituting relatively low-cost energy for that from generators with high running costs. The nation benefits because such trade leads to a more efficient allocation of resources—electricity is produced using fewer and less costly resources.

By implementing policies that encourage an efficient supply of electricity, the Commission helps to ensure reasonable consumer rates. This can be accomplished by providing utilities with incentives to make efficient investment and operating decisions. And, where electricity markets are competitive, utilities and their customers can benefit from the flexibility to respond to market forces. competition can be a valuable complement to regulation. Traditional regulation is essentially reactive. Its success can be

[1] Federal Power Act, section 201, 16 U.S.C. 824a.

questionable during times of changing industry conditions. Competition, on the other hand, encourages firms to make efficient decisions with a mimimun of regulatory intervention. Regulation should allow utilities to respond to market conditions, where possible, in a manner consistent with the public interest.

Efficiency also requires that consumers receive price signals that reflect the cost of their consumption decisions. A failure in this respect will result in too few or too many of society's resources being devoted to electricity production.

This inquiry is organized around the three major types of electricity transactions under our jurisdiction. The Commission regulates interstate transmission and sales-for-resale. One of the major types of jurisdictional transactions is *transmission service.* The other two major types of transactions are *coordination services* and *requirements service,* both of which are categories of sales-for-resale or wholesale sales.

Coordination transactions are sales or exchanges of specialized electricity services that allow buyers to realize cost savings or reliability gains that are not attainable if they rely solely on their own resources. For sellers, these transactions provide opportunities to earn additional revenue, and to lower customer rates, from capacity that is temporarily excess to native load capacity requirements. Transactions are voluntary and the seller's obligation is limited.[2]

Requirements service is a long-term supply of firm power to meet all or part of the buyer's load requirements, including load growth. Sellers undertake a relatively open-ended commitment to provide service. Utilities must plan and build generation and transmission capacity to meet this commitment. From the seller's perspective, requirements service is essentially the same as retail service with the primary difference being that delivery is typically made at transmission voltages. Requirements customers are considered part of the seller's native load. Buyers are typically municipally or cooperatively owned distributors that resell the power to end-use customers.

Our inquiry will be conducted in two phases. This notice addresses our regulation of coordination transactions and transmission service. A subsequent notice will be issued in four to seven weeks that will address requirements service. Our regulation of requirements service is being treated separately because the nature of this service and thus the issues associated with it are very different from those of transmission and coordination.

[2] For a comprehensive discussion of the functioning of coordination markets, *see* Stanley Besen and Jan Paul Acton, *The Economics of Bulk Power Exchanges,* Rand Corporation, May 1985. This report was prepared under a contract with the Commission and is available from our Division of Public Information.

II. Coordination Transactions

A. Pricing

The Commission's general policy is to encourage coordination transactions because they lower the costs of providing electricity to native load customers and improve reliability.[3] In this section of the inquiry, we want to examine two aspects of our regulation: pricing and the distribution of gains realized from coordination trade.

1. Current Commission Practices

In determining coordination rates, the Commission allows an energy charge to recover incremental variable costs, plus an additional rate component in the form of either a reservation charge or an adder. The additional component allows sellers to recover more than production costs. Because coordination transactions are sales of opportunity using capacity built for native load that is temporarily excess, only incremental variable costs are incurred by the seller. No fixed costs are incurred because coordination customers do not cause generating capacity to be built. However, a charge in excess of incremental variable costs is necessary; without it a potential seller would have no reason to transact.

Under the Federal Power Act and our regulations, the Commission has flexibility in determining the size of the additional rate component.[4] As a result, the Commission has developed and applies certain general rules in evaluating the reservation charges and adders proposed in coordination rate filings.

a. *Reservation Charges.* Capacity or reservation charges are set at a certain level per kilowatt or per kilowatt-hour. When such charges are set on a per kilowatt basis, they are paid to the seller whether or not energy is taken by the buyer.

The Commission generally allows reservation charges that do not exceed the annualized cost of the generating units expected to provide the service. Where service is provided from system resources, the benchmark is the fully distributed cost of the seller's system capacity. As such, the coordination buyer makes a contribution to the seller's fixed costs and pays no more than the seller's native load customers for the use of the capacity. Reservation charges have typically been filed as specific rates, meaning that utilities must file again with the Commission before they can be changed. More recently, however, the Commission has permitted pricing flexibility by accepting ceiling rates set at or below the benchmark rate, thereby giving utilities the flexibility to charge less than the ceiling price without filing for a new rate.[5] This permits companies to adjust prices in response to changing market conditions and thus make sales that might otherwise be lost while waiting for approval of a price change.

The Commission also allows rates that can exceed the benchmark rate when utilities ask for them and circumstances indicate they are justified.[6] For example, for sales from system resources we have allowed reservation charges based on the newest or most expensive generating unit for three reasons. First, that unit probably caused the excess capacity situation which made the sale possible. Second, the rates appeared to be cheaper than the competitive market alternatives the buyers faced, thus saving the buyers money. If they were not cheaper, no purchase would have been made. Third, the seller's latest unit can be viewed as a measure of the cost of installing capacity in the region and might serve as a reasonable proxy for the value derived by the buyer in choosing to purchase rather than build. In addition, the Commission has permitted reservation charges above the benchmark based on the demonstrated opportunity costs of the seller and has also considered service reciprocity, economic incentives, and regional prices in setting the rates for coordination services.

b. *Split-the-Savings Adders.* For economy energy sales the Commission has a long standing practice of accepting split-the-savings adders as a rate component.[7] Under this formula, a price

[3] *See* Opinion No. 203, Public Service Company of New Mexico, 25 FERC ¶ 61,469 (1983) at 62,038.

[4] 18 CFR 35.12(b)(2)(i), 35.13(a)(2)(i)(D) and (h)(37).

[5] *See,* for example, Florida Power Corporation, Rate Schedule FERC No. 88, accepted for filing by letter order dated February 21, 1980, Docket No. ER80-152, Pennsylvania Power and Light Company, Rate Schedule No. 75, accepted for filing by letter order dated November 16, 1982, Docket No. ER82-815 *and* Connecticut Light and Power Company, Rate Schedule FERC No. 324, accepted for filing by letter order dated August 22, 1984, Docket No. ER84-515.

[6] *See,* for example, Pacific Power and Light Company, 27 FERC ¶ 61,080 (1984).

[7] Economy energy is unconditionally interruptible energy supplied during a period, usually one hour,

Continued

per kilowatt-hour is set midway between the seller's incremental and the buyer's decremental variable costs. The Commission allows such a formula as an incentive for the seller to make economy energy available and because it divides transaction benefits equally between the buyer and seller.[8] Since the spread between the costs of the buyer and seller can be large, however, split-the-savings adders can constitute another situation in which rates can exceed the benchmark described above. Recently, the Commission has also allowed utilities the flexibility to charge less than a split-the-savings rate for hourly economy if it will enhance chances for a sale.

Based on current practices, we would like commenters to consider two options. One is to continue our practice of applying our standards, as described above, on a case-by-case basis. A second option is to codify our current standards and the criteria used to deviate from them. This could provide more certainty to utilities as to the rate they can expect the Commission to approve.

2. Alternatives to Current Practices

The Commission is also interested in considering a different approach to determining coordination rates. We encourage these transactions because of the benefits the customers of both the seller and buyer receive. Perhaps we should allow that rate which most facilitates a sale and produces maximum benefits to buyers and sellers as a whole, without regard to the size of the fixed cost contribution. Determining prices by other criteria may hinder optimal resource allocation. Once administered price ceilings are reached, sellers may become indifferent to the value of the commodity to different potential buyers and resort to some other allocation method such as first-come-first-served. Non-market approaches do not guarantee that the utilities who actually get the coordination service are the ones who value it the most. This can be inefficient in that the highest cost generation may not get displaced by the seller's lower cost energy.

In addition, the Commission wants to consider the relationship between the benefits of coordination trade and risk. The Commission is interested in receiving comments regarding whether there is any risk associated with making coordinated sales. The capacity committed to coordinated sales is temporarily excess to native load requirements. It is the sellers, not buyers, who have incurred the financial risks associated with building the capacity that is used in these sales. Projects may not be completed, plants may be uneconomic, or the capacity may be substantially in excess of needs. In any of these situations, either stockholders or ratepayers of the selling utility are at risk for the incurred costs. Since it is the sellers who have incurred the risks of building capacity that is eventually made available on coordinated markets, perhaps sellers should be able to rely to a greater extent on market forces to establish the value of that capacity.

We therefore want to consider two alternatives to current policies and practices. The first option would be to allow any negotiated or market-determined rate, contingent on the existence of sufficient competition. Sufficient competition exists when sellers and buyers have viable alternatives. The buyer's decremental costs would in effect be the price ceiling and the buyer and seller would have to thoroughly delineate all viable alternatives.

The second option would be to allow the buyer's decremental costs to be the price ceiling without reference to market conditions. Under this option, sellers may charge whatever the buyers are willing to pay.

The Commission is interested in receiving responses to the following specific questions.[9]

1. What factors should guide the Commission in evaluating its regulation of coordination services?

2. Which of the Commission's filing and pricing policies for coordination sales are promoting or inhibiting the operation of bulk power markets? Can examples be provided? Are there factors beyond the Commission's control that interfere with the operation of bulk power markets? Please identify them.

3. Are the Commission's general practices on coordination pricing clearly understood in the industry? Does the Commission need to improve the way information about current practices is disseminated? When a utility files a coordination rate, is there sufficient certainty about how the Commission will treat the request?

4. Should the Commission continue the current pricing practices for coordination sales? Why? Do they result in an efficient allocation of capacity and energy among potential buyers? Do they result in an equitable distribution of gains among buyers and sellers?

5. Should the Commission consider setting price zones that are based on regional costs rather than company-specific costs?

6. How competitive are coordination markets? Are some coordination markets more competitive than others? What standards and procedures would allow the Commission to assess the competitiveness of a particular coordination market? How should the Commission account for changes in market conditions over time? What problems are being encountered that inhibit competitive coordination markets? Is transmission access a problem? Is the information exchanged among utilities adequate for markets to be competitive?

7. Should the Commission approve wider price zones for sales that are made in competitive coordination markets? For example, should the Commission give wider zones to utilities that voluntarily agree to provide transmission service to other potential sellers of the same coordination service? Would wider zones better allocate services among potential buyers and gains among buyers and sellers than the present standards?

8. For coordination sales that occur in competitive markets, should the buyer's decremental cost serve as the price ceiling? Please explain. Would allowing such a price ceiling in competitive markets allow prices to better allocate capacity and energy among potential buyers and the gains of trade among buyers and sellers than the current price ceiling standards?

9. Should the buyer's decremental cost serve as the price ceiling regardless of the competitiveness of the market? Please explain. Would the allocation of capacity among potential buyers be less efficient than if competitive market conditions were required for such a price ceiling? Would the allocation of benefits among buyers and sellers be less equitable than under competitive market conditions?

10. Should the same price ceiling standards be used for both economy and reliability transactions? If not, what distinctions in standards should be made between the two types of trades?

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when the seller's incremental energy cost is less than the buyer's decremental energy costs.

[8] *See* American Electric Power Service Corporation, 8 FERC ¶ 61,068 at 61,232 (1979). *See also* Final Rule, Filing of Rate Schedules; Regulations Limiting Percentage Adders in Electric Rates for Transmission Service [Reg. Preambles 1977–1981] FERC Stat. & Reg. ¶ 30,153 at 31,033 n. 7 (1980); Commonwealth Edison Company, 23 FERC ¶ 61,219 at 61,472 (1983).

[9] Many of these questions, and those that follow in the next section, address issues that are being examined in the Southwest experiment. They are being asked now so the Commission will be in a better position to assess the significance of the results obtained from the experiment.

Will a distinction create inefficiencies or distorting in electricity markets?

11. Are coordination services provided with varying degrees of firmness? Please explain. If the answer is yes, how are the varying degrees of firmness reflected in prices?

12. What function is performed by reservation charges? What factors are considered in setting reservation charges? Have there been instances where a coordination service was interrupted or curtailed to a customer that had paid a reservation charge? Please describe.

13. The Commission would like commenters to consider having all coordination services sold in a spot market. Instead of two part rates that include a reservation charge, one part rates would be used. This rate would vary so as to clear the market in relatively short periods. Please comment on this method. Would it enhance efficiency compared to the use of reservation charges?

14. Giving coordination service sellers wider pricing flexibility could lead to price discrimination in that sellers could charge different prices for the same service to different customers. Under what circumstances will pricing flexibility lead to price discrimination? Is such price discrimination undesirable? Are there circumstances when price discrimination can lead to improvements in economic efficiency or otherwise be beneficial?

15. Do transactions among affiliated companies is a holding company system raise any special concerns about increased pricing flexibility? Please explain.

B. Distribution of Gains

As we have indicated, the price at which a trade is made determines how transaction benefits are allocated between buyer and seller. There is also a second allocation—the division of benefits between a utility's stockholders and its requirements customers. This second split is the focus of this section of the inquiry.

In deciding on this second allocation, we believe that particular attention should be paid to two questions. First, what will be the effect on the utility's incentive to participate in coordination purchases and sales? And second, is the distribution of transaction benefits consistent with the distribution of risk?

We will discuss coordination *sales* first. A coordination sale produces benefits to the selling utility to the extent that price exceeds the incremental cost of making the sale. Currently, utilities estimate coordination sales revenues for a future test period in requirements rate cases. The revenue estimates for coordination sales are credited to the cost of service to lower requirements rates. Requirements customers thus realize all of the *estimated* gains. To the extent the actual revenues from coordination sales differ from the estimates, the utility's stockholders benefit or lose because no adjustments are made for estimation errors. Whether stockholders gain or lose, and by how much, is uncertain *a priori*.

The incentive effects of this scheme are clear. The utility stands to lose money if actual coordination sales revenue falls short of the estimate. On the other hand, all benefits above the estimate are retained by stockholders. Utilities are therefore provided with an incentive to maximize coordination sales.

This approach can potentially result in a distribution of benefits between requirements customers and stockholders that may not be directly related to the distribution of risk. Most of the incremental costs of making a coordination sale are fuel costs. These are billed to coordination customers and credited to requirements customers through the fuel adjustment clause (FAC). There is little or no risk to requirements customers or stockholders here. The capacity used to make coordination sales is paid for by requirements customers in fixed rates as long as the capacity is included in the rate base. Requirements customers are at risk in the sense that they must pay for the capacity whether or not it is marketed through a coordination sale, but they receive only the benefits of the estimated coordination revenues used to set base rates. All gains above the estimate go to the utility, not customers. The only risk of the selling utility actually losing money lies in not meeting the coordination sales estimate. That estimate is made by the utility and can be difficult for regulators to challenge.[10] The risk is thus in part determined by the utility's own forecast.

We will now turn to coordination *purchases*. There are two types of benefits produced by coordination purchases: economic and reliability. Economic power purchases lower the costs of producing electricity. Such savings occur primarily through fuel costs. Benefits are quantified in dollar terms as the difference between avoided cost and the cost of the purchase. Under our present rules, all benefits are passed to customers.

The costs of all short-term economic purchases are recoverable through the FAC.[11] Longer-term purchase costs must be estimated in a rate case and included in fixed rates. There is little likelihood of estimation error because the terms of such purchases are likely to be known in advance. If, however, a utility underestimates purchase expenses, the loss is limited to the non-fuel portion of the additional purchase expense because the fuel cost portion is recoverable through the FAC. Although requirements customers bear the risk of overestimates, estimation errors should be minor.

Utilities have an incentive to make economic purchases because they lower customer rates. Lower rates will help increase sales to, and retain the loads of, price sensitive customers. Under current Commission practices, however, utilities could profit from overestimates of long-term purchase expenses used in setting base rates. This may conflict with the rate reduction incentive to maximize economic purchases. The Commission is interested in receiving comments on the nature and extent of this potential conflict.

The other major benefit of coordination purchases is reliability gains. Reliability purchases are made when a utility has insufficient generating capacity to meet either its load or its reserve margin. Purchases are thus made to avoid service outages or decrease their probability. These reliability benefits are difficult to quantify, but they all go to requirements customers.

Utilities are subject to some risk in making unanticipated reliability purchases. Such purchases would not be forecasted in requirements rate proceedings and thus their cost would not be recovered in base rates. Under our present FAC rules, cost recovery is limited to the fuel cost portion of reliability purchase expenses. The rest is paid by the utility. Requirements customers compensate utilities for providing adequate capacity. Part of that compensation is a risk premium. Unexpected reliability purchases are implicitly one of the risks it covers.

Some utilities may, however, *plan* to meet capacity requirements to some extent with long-term purchases. The

[10] A rigorous test of the estimate's accuracy would require the identification of all sales that could be made but which are not included in the estimate. This would require hourly information on expected load, costs and operating conditions for the utility and for many, if not all, of its neighboring systems.

[11] For a discussion of our policy on economic purchase costs, *see* Order No. 352, Final Rule, *Treatment of Purchase Power in the Fuel Cost Adjustment Clause for Electric Utilities*, 25 FERC ¶ 61,378 (1983).

expense of such purchases could be estimated and recovered in base rates. The probability of estimation errors with these capacity charges is remote and thus entails little risk and little likelihood of overrecovery.

The Commission would like comments on the following questions concerning the allocation of coordination benefits and risk between stockholders and ratepayers and how that allocation can best be made:

16. What are the positive and negative aspects of the Commission's present practices concerning the distribution of coordination transaction benefits? How do they affect the incentives to buy and sell coordination service? What risks, if any, do utilities incur in making coordination sales and purchases? Do the Commission's present practices result in a distribution of benefits between requirements customers and stockholders that is consistent with risk incurrence? Please explain the basis of your answer.

17. Should the Commission establish a specific distribution of coordination trade benefits between stockholders and requirements customers? Please explain. If the answer is yes, what distribution do you suggest? How would this distribution affect requirements customer rates? What mechanism would best facilitate the suggested distribution? Would the FAC be an appropriate mechanism? Please explain.

18. Does lowering requirements customer rates and meeting least-cost regulatory scrutiny provide sufficient incentive for utilities to maximize the benefits to be gained from coordination transactions?

19. Should the distribution of benefits be the same for all types of coordination transactions? For example, should purchases be treated differently than sales? Should different types of sales be treated differently? Should different types of purchases be treated differently?

20. How would any policy changes regarding the distribution of coordination benefits affect competition and efficiency?

III. Transmission

Interest in transmission service has increased recently because of current industry conditions. Marketing excess capacity, exploiting cost differences between utilities, and the growth of non-utility capacity sources have made transmission important to many of the traditional and non-traditional industry participants. Although transmission service has increased more than three times as fast as retail sales in the past decade or so, there is some concern that the present supply and access conditions are inadequate.

Availability of transmission services is a necessary element to competitive electricity markets. The extent to which there is such availability is influenced by three factors: (1) an adequate supply of transmission facilities, (2) transmission service pricing, and (3) institutional access arrangements.

First, with respect to the supply of facilities, the Commission can provide strong incentives for utilities to invest in new transmission capacity through the rates that are allowed for transmission service. But state and local authorities also influence the supply of transmission capacity through their siting and certification authority and their decisions on how costs are treated in retail rates.

Second, with respect to pricing, the Commission directly regulates the rates for the transmission of electricity in interstate commerce. The Commission generally approves rates that do not exceed average embedded transmission costs, but it has approved some transmission prices that are market or value based. For example, instead of a specific rate some utilities charge a percentage of the benefits of economy energy transactions transmitted through their systems.[12]

We have also approved a settlement agreement among power pool members for a rate for using excess transmission capacity to import economic power from outside the pool. The rate is based on a projection of the revenues a member could realize by importing the power itself and then selling it to other pool members at a split-savings price, instead of letting those other members use the excess transmission capacity.[13] And in another case, we accepted a settlement agreement involving a sale of excess transmission capacity by a power pool member where the rate was determined by a sealed bid procedure open to the other transmission system owners in the pool.[14]

The Commission desires to explore the area of transmission service pricing. One aspect of this is determining the proper cost basis for rates. Many transmission rates now ignore non-transmission costs. Transmission service affects power flows and losses on a utility's entire system and possibly those of other utilities. Generation as well as transmission costs are affected.[15] Prices that reflect transmission costs alone and ignore these non-transmission costs do not accurately reflect the real cost of providing transmission service.

Another transmission pricing issue to consider is the relevance of cost based prices for certain transmission services. Transmission service may be needed to permit economy type coordination transactions to take place. These transactions produce a pool of benefits equal to the difference between the seller's incremental cost and the buyer's avoided cost less transmission costs. From an efficiency perspective, the important consideration is that the transmission service is performed so the economy transaction can occur and produce benefits to society. How the pool of benefits is allocated among buyer, seller, and transmission agent may not be important as long as the participants agree to it and all of the cost-saving trades are made. The resources used in generating the energy are the same regardless of the benefit split.

Third, access arrangements are an important factor to the availability of transmission services. The Commission's authority to order transmission access is limited. It would therefore like to identify any impediments to voluntary transmission arrangements and to determine what, if anything, the Commission can do to remove those impediments.

Some restrictions on transmission access may be necessary. For example, some degree of restriction may be necessary to assure efficient and reliable system planning and operation. Transmission service affects the dynamics of a bulk power system. Generation dispatch and transmission line loadings are affected, as are line losses. And if a request is for long-term firm service, additional capacity may have to be added. For these reasons, requests for transmission service may have to be evaluated on a case-by-case basis and adequate notice requirements or other conditions may have to be imposed.

Performing transmission service for native load customers may mean the transmitting utility would lose load. This could result in either the utility or its

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[12] *See*, for example, Interconnection Agreement between the Pennsylvania-New Jersey-Maryland Interconnection and the New York Power Pool, Pennsylvania Power and Light Company, Rate Schedule FERC No. 66, accepted for filing by letter order dated October 29, 1980. Docket No. ER80-509.

[13] *See*, Pennsylvania-New Jersey-Maryland Interconnection 28 FERC ¶ 61,205 (1984).

[14] *See*, Baltimore Gas and Electric Company, 28 FERC ¶ 61,096 (1984).

[15] *See* Oak Ridge National Laboratory, *Analysis of Power Wheeling Transactions*, 1984, Chapter 2. This report was prepared under a contract with the Commission. It is available from our Division of Public Information.

remaining native load customers paying for capacity that was built for those the service would benefit. Another consequence is that the capacity used in providing transmission service could be used to make short-term opportunity sales in coordination markets and thus earn additional revenue to lower native load rates.

The availability of transmission service can be vital to developing efficient and competitive electricity markets. To gain a better understanding about transmission pricing and aaccess conditions, the Commission requests comments on the following questions:

21. Is the demand for transmission services being met? If not, why?

22. Does the Commission's regulation impede voluntary transmission arrangements? How? What can the Commission do to promote more voluntary transmission arrangements?

23. How should transmission services be priced? Should transmission services be priced according to their degree of firmness? How can this be accomplished?

24. Are there efficiency reasons for requiring cost-based rates for transmission service for purely economy transactions? If cost-based rates were not required for such transactions, could a transmission agent set a price that would preclude some otherwise efficient trades? Please describe the conditions under which this could happen.

25. Please comment on the desirability of allowing excess transmission capacity to be sold or auctioned to the highest bidder. How would such auctions affect the efficiency with which electricity is produced and transmitted? Would auctions lead to an undesirable redistribution of income between utilities? How would auctions affect the wholesale customer rates of the buyer and seller of transmission capacity.

26. Consider the following hypothetical. Utility A, a low-cost generator, wants to sell energy to Utility C, a high-cost generator. The transaction must be transmitted across the system of Utility B, whose generation costs fall between A's and C's. But Utility B refuses to transmit the energy and, instead, insists on buying the energy from A and reselling it to C at a mark-up. Does Utility B's behavior result in any efficiency losses? Please explain. If there are no efficiency losses, are there any negative aspects to B's behavior? How common is such behavior in actual practice?

27. Consider another hypothetical. A wholesale requirements customer of utility O wants to shift its load to Utility P because P has lower average cost rates. Utility O would have to transmit the power from P to the customer. Assume that both utilities (O and P) are either members of the same centrally dispatched power pool or they closely coordinate their generation resources with each other such that the generation dispatch is not affected by the load shift. Are any efficiency gains accomplished by Utility O providing the transmission service? Please describe any positive or negative effects associated with the transmission service.

28. Under what circumstances would expanded access to transmission services not be desirable?

29. What are the appropriate nonprice terms and conditions for transmission service?

30. Do our pricing policies create any disincentives to transmission investment? What can the Commission do to encourage proper transmission investment?

31. Transmitting energy from one utility to another can have effects on the systems of utilities not directly involved in the transaction, i.e., third-party effects. Some third-party effects can involve line losses, generating costs and transfer capability. Can third-party effects be significant? Describe all of the possible third-party effects. How can third-party effects be identified and quantified? How can they be reflected in transmission rates?

IV. Request for Public Comments

A. Procedure for Filing Written Comments

The Commission invites all interested persons to submit written comments, data, views, or arguments on issues raised in this notice. While the Commission desires comments on the specific questions posed in this notice, parties are encouraged to comment on *any* aspect of the issues raised in the discussion. Commenters should not feel obligated to respond to every question. Responses can be limited to the questions that address the commenter's principal concerns. To the extent that several groups or individuals may have similar interests, they are encouraged to file joint comments.

To facilitate the Commission's comment analysis and preparation for a public conference, commenters are urged to provide a 3–5 page executive summary of their positions on the issues raised in Phase I of this inquiry. Additionally, commenters should double space their comments, provide a concise description identifying the commenter, and use the same numbering system as the Commission's inquiry when answering questions.

All comments must be received by the Commission by 4:30 p.m. EDT on August 9, 1985. Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM85–17–000 (Phase I). An original and 14 copies should be filed.

All comments will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during regular business hours. Copies of comments will be available for purchase.

B. Public Conference

A public conference to discuss Phase I issues will be convened at 10:00 a.m. on September 18, 1985, in Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Another conference to discuss Phase II issues will be convened on a date to be announced in the forthcoming Phase II notice.

The Phase I public conference will not be of a judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross examination of persons presenting statements. However, the Commissioners may question these persons. In addition, anyone may submit to the conference moderator questions to be asked of persons on the participant panels. The moderator will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the moderator at the conference. Transcripts of the conference will be available in the public file for this proceeding, Docket No. RM85–17–000 (Phase I) in the Commission's Office of Public Information, and may be ordered from that office.

Requests to participate in the conference must be received by August 9, 1985. Requests must be in writing and submitted to the Office of the Secretary, and should request the amount of time required for the oral presentation. Requests must be filed separately from any comments filed in this proceeding. Persons participating at the conference should bring 50 copies of their statement to the conference. A list of the participants in the conference will be available in the Commission's Office of Public Information and at the conference

on the morning the conference is convened.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13419 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1305 and 1307

Registration of Manufacturers, Distributors and Dispensers of Controlled Substances; Registration Regarding Ocean Vessels

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action was necessitated by the closing of the U.S. Public Health Service (USPHS) hospital and clinic system and the discontinuance of form HSA-590, previously issued to certain maritime interests by those hospitals and clinics. This action amends 21 CFR 1301.28 by deleting all references to HSA-590, Authorization to Purchase Controlled Substances for Vessels, and by making corresponding amendments to the Order Form provisions of 21 CFR Part 1305 and miscellaneous provisions of 21 CFR Part 1307. In addition, this action will establish a new procedure whereby the master or first officer of certain vessels may purchase controlled substances for medical use aboard such vessels. It will also provide for flexibility in determining the location at which a medical officer employed by the owner or operator of certain vessels, aircraft or other entities may obtain a registration from this agency.

DATE: Comments should be received on or before July 5, 1985.

ADDRESSES: Send comments in quintuplicate to: Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street, Northwest, Washington, D.C., 20537. Attention: Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: G.T. Gitchel, Chief, Diversion Operations Section, 1405 I Street, Northwest, Washington, D.C., 20537, telephone number (202) 633-1216.

SUPPLEMENTARY INFORMATION:

List of Subjects

21 CFR 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

21 CFR Part 1305

Drug traffic control, Reporting requirements.

21 CFR Part 1307

Drug traffic control.

The USPHS hospital and clinic system was closed effective October 1, 1981. DEA was notified by the PHS that it had no plans to continue issuing form HSA-590 and that no other agency would issue forms. Accordingly, the DEA initiated certain interim procedures to provide those vessels which had previously utilized form HSA-590 with a method of obtaining controlled substances. This was necessary because after the discontinuance of the form HSA-590, the only method remaining in the regulations (21 CFR 1301.28) for vessels, aircraft or other entities to purchase controlled substances was that they be acquired and dispensed under the general supervision of a medical officer who was licensed in a state as a physician, employed by the owner or operator of the vessel, aircraft or other entity, and registered under the Controlled Substances Act at the location of the principal office of the owner or operator of the vessel, aircraft or other entity.

While the above method is satisfactory in most instances, it does not provide a procedure for the puchase of controlled substances for vessels when no medical officer is employed by the owner or operator of a vessel, or in the event such medical officer is not accessible and the acquisition of controlled substances is required. With the discontinuance of form HSA-590, it is necessary to amend 21 CFR 1301.28 to delete all reference to that form and to provide a new procedure whereby vessels may acquire controlled substances under the above described circumstances.

Ocean going vessels purchase only limited quantities of controlled substances and this amendment affects only those vessels whose owners do not presently employ a registered medical officer to purchase controlled substances. This action is intended to clarify existing procedures and to assist the affected maritime interests, and their suppliers, by providing an alternative method of obtaining necessary controlled substances. Moreover, it will also assist those vessels whose owners wish to employ a registered medical officer by authorizing that a medical office may be registered at a location other than the principal office of the owner or operator.

Accordingly, the Deputy Assistant Administrator of the DEA, Office of Diversion Control, hereby certifies that this amendment will have no significant negative impact upon small businesses or other entitities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 501 et seq. Pursuant to Executive order 12291, sections 3(c)(3) and 3(e)(2)(c) this notice of proposed rulemaking has been reviewed by the Office of Management and Budget.

Pursuant to the authority vested in the Attorney General by the Controlled Substances Act, 21 U.S.C. 801, et seq., and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, the Deputy Assistant Administration hereby proposes that Title 21 of the Code of Federal Regulations, Parts 1301, 1305 and 1307, be amended as follows:

1. The authority citation for Part 1301 is revised to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. The authority citation for Part 1305 is revised to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b).

3. The authority citation for Part 1307 is revised to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b).

PART 1301—[AMENDED]

§ 1301.28 Registration regarding ocean vessels. [Amended]

4. Paragraph (a) is amended by replacing the words, "or the master of the vessel" with the words, "or the master or first officer of the vessel."

5. Paragraph (b) is revised to read:

(b) A medical officer shall be: (1) Licensed in a state as a physician; (2) Employed by the owner or operator of the vessel, aircraft or other entity; and (3) Registered under the Act at either of the following locations:

(i) The principal office of the owner or operator of the vessel, aircraft or other entity or

(ii) At any other location provided that the name, address, registration number and expiration date as they appear on his Certificate of Registration (DEA Form 223) for this location are maintained for inspection at said principal office in a readily retrievable manner.

6. Paragraph (c) is revised to read:

(c) A registered medical officer may serve as medical officer for more than one vessel, aircraft, or other entity under a single registration, unless he serves as medical officer for more than one owner or operator, in which case he shall either maintan a separate registration at the location of the principal office of each such owner or operator or utilize one or more registration pursuant to paragraph (b)(3)(ii) of this section.

7. Paragraph (d) is revised to read:

(d) If no medical officer is employed by the owner or operator of a vessel, or in the event such medical officer is not accessible and the acquisiton of controlled substances is required, the master or first officer of the vessel, who shall not be registered under the Act, may purchase controlled substances from a registered manufacturer or distributor, or from an authorized pharmacy as described in paragraph (f) of this section, by following the procedure outlined below:

(1) The master or first officer of the vessel must personally appear at the vendor's place of business, present proper identfication (e.g., Seaman's photographic identification card) and a written requisition for the controlled substances.

(2) The written requisition must be on the vessel's official stationery or purchase order form and must include the name and address of the vendor, the name of the controlled substance, description of the controlled substance (dosage form, strength and number or volume per container) number of containers ordered, the name of the vessel, the vessel's official number and country of registry, the owner or operator of the vessel, the port at which the vessel is located, signature of the vessel's officer who is ordering the controlled substances and the date of the requisition.

(3) The vendor may, after verifying the identification of the vessel's officer requisitioning the controlled substances, deliver the controlled substances to that officer. The transaction shall be documented, in triplicate, on a record of sale in a format similar to that outlined in (4) below. The vessel's requisition shall be attached to copy 1 of the record of sale and filed with the controlled substances records of the vendor, copy 2 of the record of sale shall be furnished to the officer of the vessel and retained aboard the vessel, copy 3 of the record of sale shall be forwarded to the nearest DEA Division Office within 15 days after the end of the month in which the sale is made.

(4) The vendor's record of sale should be similar to, and must include all the information contained in, the below listed format.

Sale of Controlled Substances to Vessels

(Name of registrant)

(Address of registrant)

(DEA registration number)

Line No.	No. of packages ordered	Size of packages	Name of product	Packages distributed	Date distributed
1					
2					
3					

(Line numbers may be continued according to needs of the vendor)

Number of lines completed.

Name of vessel.

Vessel official number.

Vessel's country of registry.

Owner or operator of the vessel.

Name and title of vessel's officer who presented the requisition.

Signature of vessel's officer who presented the requisition.

8. Section 1301.28(f) is revised to read:

Any registered pharmacy which wishes to distribute controlled substances pursuant to this section shall be authorized to do so, provided that:

(1) the registered pharmacy notifies the nearest Division Office of the Administration of its intention to so distribute controlled substances prior to the initiation of such activity. This notification shall be by registered mail and shall contain the name, address, and registration number of the pharmacy as well as the date upon which such activity will commence; and

(2) such activity is authorized by state law; and

(3) the total number of dosage units of all controlled substances distributed by the pharmacy during any calendar year in which the pharmacy is registered to dispense does not exceed the limitations imposed upon such distribution by section 1307.11 (a)(4) and (b) of this subchapter.

PART 1305—[AMENDED]

§ 1305.03 Distributions requiring order forms. [Amended]

9. Paragraph (e) is revised to read:

(e) The purchase for such substances by the master or first officer of a vessel pursuant to § 1301.28 of this chapter: Provided, that copies of the record of sale are generated, distributed and preserved by the vendor according to that section.

PART 1307—[AMENDED]

§ 1307.11 Distribution by dispenser to another practitioner.

10. Paragraph (a)(4) is revised to read:

(4) The total number of dosage units of all controlled substances distributed by the practitioner pursuant to this section and § 1301.28 of this subchapter during each calendar year in which the practitioner is registered to dispense does not exceed 5 percent of the total number of dosage units of all controlled substances distributed and dispensed by the practitioner during the same calendar year.

11. Paragraph (b) is revised to read:

(b) If, during any calendar year in which the practitioner is registered to dispense, the practitioner has reason to believe that the total number of dosage units of all controlled substances which will be distributed by him pursant to this section and § 1301.28 of this subchapter will exceed 5 percent of the total number of dosage units of all controlled substances distributed and dispensed by him during that calendar year, the practitioner shall obtain a registration to distribute controlled substances.

* * * * *

All interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrants a hearing, he shall so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrant a hearing, the Administrator will have published in the **Fededral Register** an order for a public hearing which will summarize the issues to be heard and which will set the time for the hearing (which will not be less than 30 days after the date of the order).

Dated: April 3, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 85-13383 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

Worldwide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Agency is proposing to modify the regulations at 22 CFR Part 502 in order to insert a time limit for entering appeals. Accordingly, it is proposed that 22 CFR 502.5(b) be modified to give an applicant 30 days to appeal a decision of the Attestation Officer to the Review Board.

DATES: The Agency will receive appeals to all prior decisions until August 5, 1985. Comments are due June 24, 1985. The proposed rule shall become final August 5, 1985 unless a notice is published in the **Federal Register** to the contrary.

ADDRESSES: Send comments to Merry Lymn, Attorney-Advisor, United States Information Agency, 301 4th Street SW., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Attorney-Advisor, United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547. (202-485-7976).

SUPPLEMENTARY INFORMATION: The Beirut Agreement, a multi-nation treaty with the formal title "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character" facilitates the free flow of educational audio-visual materials between nations, by eliminating import duties, import licenses, special taxes, quantitative restrictions and other restraints and costs, by shipment under an international certificate. Each government may issue certificates for those materials for which basic ownership is in that country. The material must be primarily educational as to its nature and usefulness.

Executive Order 11311 (October 14, 1966) appointed and authorized the USIA to carry out the provisions of the Agreement. The Agency's regulations provide for three levels of review. The application is originally screened by the Chief Attestation Officer (in consultation with experts) and a certificate is issued or denied. Under Agency regulations at 22 CFR Part 502, an applicant may seek formal review of an adverse ruling by the Chief Attestation Officer. There are two stages of appeal from the Attestation Officer's decision. The first appeal is to a Review Board, the second, directly to the Director.

Under the existing regulations an applicant may appeal to the Director of the Agency within 30 days of receipt of the Review Board decision. As the rules now read, there is no time limit by which an applicant may appeal to the Review Board from a decision of the Attestation Officer. Recently, we have been receiving appeals from decisions which were rendered in excess of two years previously. Appeals registered at this late date create unnecessary problems for the Agency and appear to be an abuse of the intent of the regulation. Upon consideration, the Agency believes that an applicant can easily file an appeal to the Review Board within 30 days of a decision of the Attestation Officer. Thirty days is a standard time frame in judicial and administrative forums for appeal of decisions and is consistent with the time frame already in place for an appeal to the Director from a decision of the Review Board. Thus, the Agency proposes to modify 22 CFR 502.5(b) by adding the following to the end of the first sentence:

"within 30 days of the date of the Attestation Officer's decision."

The first sentence will read:

Any applicant may ask for formal review of any ruling of a USIA Attestation Officer within 30 days of the date of the Attestation Officer's decision.

The Agency is inviting comments by June 24, 1985. The rule will become final August 5, 1985 unless the comments from the public indicate good reason not to implement the new time frame.

All prior decisions will receive grandfather rights. In other words, all applicants which have not yet appealed prior decisions will be given until August 5, 1985 to file appeals from the Attestation Officer's decision to the Review Board.

Accordingly it is proposed to amend 22 CFR Part 502 as follows:

Dated: May 14, 1985.

Charles Z. Wick,

Director, United States Information Agency.

List of Subjects in 22 CFR Part 502

Education, Imports, Trade agreements.

PART 502—[AMENDED]

1. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 et seq. E.O. 11311, 31 FR 13413, 3 CFR 1966-1970 Comp. page 593.

2. Section 502.5 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 502.5 Review and appeal.

* * * * *

(b) Any applicant may ask for formal review of any ruling of a USIA Attestation Officer within 30 days of the date of the Attestation Officer's decision. * * *

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[FR Doc 85-13409 Filed 6-3-85; 8:45 am]

BILLING CODE 8230-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-35, 101-36, and 101-37

Removal From Chapter 101 of Subchapter F, ADP and Telecommunications

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The General Services Administration proposes to remove automatic data procesing (ADP) and telecommunications management provisions from the Federal Property Management Regulations (FPMR) (41 CFR Subchapter F). The purpose is to remove regulatory provisions that have been superseded by the Federal Information Resources Management Regulation (FIRMR).

DATES: Comments are due: July 5, 1985.

ADDRESS: Comments should be submitted to the General Services Administration (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, Policy Branch, Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to

Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Parts 101–35, 101–36, and 101–37

Government information resources activities, Government ADP management, Government telecommunications management.

SUBCHAPTER F—[REMOVED AND RESERVED]

It is proposed, pursuant to sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), 41 CFR Chapter 101 is amended by removing and reserving Subchapter F—ADP and Telecommunications, consisting of Part 101–35—ADP and Telecommunications Management Policy, Part 101–36—ADP Management, Part 101–37—Telecommunications Management, and Appendix to Subchapter F—Temporary Regulations.

Dated: May 22, 1985.

Francis A McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85–13348 Filed 6–3–85; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80, 81 and 83

[PR Docket No. 85–145; FCC 85–247]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to revise and reorganize the existing Parts 81 and 83 of the rules governing the maritime radio services into a new Part 80. This action is part of the FCC's ongoing effort to review, simplify and clarify its regulations. The intended effect of this action is to eliminate unnecessary rules and language and improve the organization of the regulations governing the maritime radio services.

DATES: Comments must be received on or before September 23, 1985, and reply comments on or before November 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Mickley, Robert DeYoung, William Berges or Nicholas Bagnato, Private Radio Bureau, Aviation & Marine Branch, Washington, D.C. 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 80

Alaska, Coast stations, Communications equipment, Radio, Ship stations, Telephone, Telegraph.

47 CFR Part 81

Alaska, Coast stations, Communication equipment, Telephone, Telegraph.

47 CFR Part 83

Communications equipment, Radio, Ship stations.

In the matter of Reorganization and revision of Parts 81 and 83 of the rules to provide a new Part 80 governing the maritime radio services. (PR Docket No. 85–145).

Notice of Proposed Rule Making

Adopted: May 9, 1985.
Released: May 24, 1985.

By the Commission.

1. In this Notice of Proposed Rule Making (Notice) we propose to rewrite and reorganize the Commission's rules governing the maritime radio services. Our primary objectives in this proceeding are to eliminate redundancy, to remove obsolete language, and to restructure the maritime rules so that they are easier for the public to understand and to use. We are also taking this opportunity to review the necessity for and the impact of the regulatory requirements contained in the maritime services rules. The changes proposed in this Notice will have no effect on the safety of life or property at sea.

Background

2. The Commission's rules that govern the maritime radio services are currently contained in Parts 81 and 83 of Title 47 of the Code of Federal Regulations. Part 81 (Stations on Land in the Maritime Services and Alaska Fixed Service) contains the licensing requirements, operational procedures, and technical standards applicable to maritime stations on land and Alaska fixed stations. Part 83 (Stations on Shipboard in the Maritime Services) addresses the licensing requirements, operational procedures and technical standards for the use of maritime radio by ships and boats.[1] As part of our ongoing regulatory review and paperwork reduction programs, we have carefully reviewed these two parts.[2]

3. Although separate rule parts for stations on land and stations on ships is a reasonable method of organizing the maritime radio services rules, it has a number of disadvantages. Many of the general procedures, frequency bands and technical standards are similar, which leads to similar rule sections appearing in both Parts 81 and 83. It also frequently necessitates amending two rule parts to change a single standard or general requirement. Larger documents, more complexity, and higher printing costs result.

4. Because of the commonality of major portions of Parts 81 and 83 we have tentatively concluded that it would be beneficial to consolidate the maritime rules into one new comprehensive rule part. This would not only reduce the redundancy now contained in the two parts but also provides an opportunity to improve the organization of the maritime rules, eliminate unnecessary language, and review again each rule under the guidelines of the Regulatory Flexibility Act, Pub. L. 96–354, and the Paperwork Reduction Act, Pub. L. 96–611. Our goal is to produce a simplified body of maritime regulations structured to accommodate future amendments.

Proposal

5. Appendix A contains our initial efforts to accomplish the goal described above. We have rewritten and reorganized the rules contained in Parts 81 and 83 to produce a new Part 80 entitled Maritime Services. We emphasize that the changes proposed in Part 80 are primarily editorial in nature. We do not intend to alter the substantive requirements applicable to the various maritime services except where specifically described below. There is no negative effect on safety of life or property at sea due to these proposed changes.

6. The proposed new Part 80 reduces the size of the maritime rules by approximately 40 percent. This results from (1) the elimination of duplicative sections such as definitions and application procedures, (2) the removal of unnecessary language and rules, background material and recommended practices, and (3) the reorganization of rules and frequency tables to avoid

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[1] The term "ship" or "vessel" includes every type of watercraft capable of being used as means of transportationon water. See 47 U.S.C. 153(W)(1).

[2] In a preliminary review of Parts 81 and 83 in the Report and Order in PR Docket No. 82–798, released June 14, 1983, 48 FR 28640, we deleted or revised 47 rule sections which contained unnecessary record keeping or reporting requirements.

repetition. In the paragraphs below we will address the nature of the proposed changes incorporated in each new subpart. Subparts A–I are of general applicability while Subparts J–P apply to stations on shore and Subparts Q–X apply to stations on ships. Appendix B is a cross reference table which lists each rule contained in Parts 81 and 83 in the first column, the corresponding proposed Part 80 rule number and title in the second column, and a brief description of any changes in the third column. This will provide a simple method for interested parties to quickly determine the location of any existing rule in the new part and the general nature of any proposed changes. Appendix C provides a cross reference table going from the new rules to the Part 81 and/or Part 83 rule sections.

7. *Subpart A—General Information.* This subpart contains a description of the basis and purpose of the regulations governing the maritime radio services and definitions of terms used throughout Part 80. Because of the commonality of definitions in Parts 81 and 83, the creation of a single "Part 80" reduces by nearly 50 percent the space devoted to definitions. We have deleted some unnecessary terms, clarified others and added a few new definitions. We also consolidated the definitions and put them in alphabetical order. This format change should be easier to use than the existing practice which places definitions in separate rule sections according to the specific radio service or general classification with which the term is most often associated. In addition a new section is added that lists the other rule parts that are referenced in Part 80, such as Part 1 which contains the Commission's general rules of practice and procedure.

8. *Subpart B—Applications and Licenses.* This subpart consists of the application and license requirements for stations in the maritime radio services. Similar sections appearing in Parts 81 and 83 have been consolidated. Unnecessary rules have been deleted. Many other rules have been simplified and clarified. Further, a number of sections which repeat general rules of practice and procedures contained in Part 1 have been deleted. Since the rules in Part 1 are determinative, it is not necessary to repeat them. Much of this information is also contained on application forms or in FCC Bulletins. A substantive change made in this subpart is the deletion of the requirement for coast stations using telegraphy to report the establishment of new transmitter dispatch points. These reports are no longer utilized.

9. *Subpart C—Operating Requirements and Procedures.* In this subpart the general operating requirements and procedures applicable to stations in the maritime services have been assembled. Superfluous material has been deleted and many rules have been revised for clarity. No substantive changes are proposed.

10. *Subpart D—Operator Requirements.* The operator requirements and license classifications contained in Parts 81 and 83 have been merged, reorganized and rewritten in this subpart. Extraneous text has been deleted. Subpart D provides an updated presentation of operator requirements in the maritime services.

11. *Subpart E—Technical Requirements.* This subpart consolidates the general technical requirements for stations in the maritime services. The general technical material has been rewritten to simplify and clarify the rules. One substantive change in the material covered in this subpart concerns equipment authorization requirements for certain radio equipment required on large oceangoing ships.[3] Currently much of this equipment is required to be type approved by the Commission. This necessitates the examination and measurement of one or more sample units by the Commission's laboratory. We propose to amend the rules to require type acceptance, which is based on the test data and representations submitted by the manufacturers. This proposal is consistent with the equipment authorization program for other maritime radio equipment used on board ships and thus would have no effect on safety. Such a change would relieve a burden on the Commission's resources and permit faster authorization of equipment. However, we propose to continue to require manufacturers to submit a sample with applications for type acceptance of compulsory ship equipment so spot checks can be conducted if necessary.

12. *Subpart F—Equipment Authorization for Compulsory Ships.*[4] This subpart sets forth the special technical requirements for certain radio equipment which must be carried on large oceangoing ships. Such equipment includes radiotelegraph transmitters, radiotelegraph auto alarms, automatic-alarm-signal keying devices, survival craft radios, watch receivers and radar equipment. These rules have been reorganized and minor changes have been made for clarity.

13. *Subpart G—Safety Watch Requirements and Procedures.* The listening watch requirements imposed on stations in the maritime radio services are contained in applicable treaties and statutes.[5] This subpart consolidates these requirements. Many of the rules have been rewritten and reorganized. No substantive changes in watch requirements are proposed.

14. *Subpart H—Frequencies.* The frequencies available for assignment in the maritime radio services are listed in this subpart. Currently Parts 81 and 83 contain many repetitive tables listing frequencies available to stations for specific uses. To avoid redundancy and to make the rules easier to use, Subpart H sets forth the frequencies regularly available for assignment in the maritime services along with any applicable conditions or limitiations. Rather than merely provide a list in frequency order, we have organized the maritime frequencies in major categories in accordance with the type of communications service for which they are utilized. For example, telegraphy, a major category, is subdivided into tables of frequencies available for manual Morse telegraphy, narrow-band direct-printing radioteletype and facsimile communications.[6] We believe this arrangement will greatly simplify an applicant's search for an appropriate frequency/band and make it easier to determine the permitted uses of particular frequencies. We specifically desire comments concerning the utility of this centralized approach and the proposed organization of the frequency list. A substantive change is proposed to eliminate a number of arbitrary geographic limitations on the assignment of frequencies to coast stations. For example, some medium and high frequencies are now only available for assignment to public

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[3] Large oceangoing ships refers to ships subject to Title III, Part II of the Communications Act. Currently the telegraph installation, survival craft radios, and radar equipment thereon must be type approved.

[4] Compulsory ships refers to vessels required by treaty or statute to be equipped with a radio installation.

[5] Documents containing watch requirements include: the international Radio Regulations, T.I.A.S. ——; the International Convention for the Safety of Life at Sea, T.I.A.S. 9700 (Safety Convention); the Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, T.I.A.S. 7837, amended T.I.A.S. 9352 (Great Lakes Radio Agreement); the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201 *et seq.*; The Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*

[6] The other major categories of frequencies include: telephony, safety and distress, digital selective calling, automated systems, on-board communications, marine satellite, radiodetermination, fixed service, and shared bands.

telephony coast stations located in specified cities. The geographical areas associated with public coast manual Morse telegraphy stations have also been eliminated. Instead we would rely on technical parameters and propagation predictions to determine whether an assignment would result in harmful interference to an existing station. Further we note that certain low and medium frequencies have been assigned to very few stations. We urge licensees and potential licensees of frequencies in the low and medium bands to comment on the present and future uses of these frequencies in the maritime services.

15. *Subpart I—Station Documents.* The documentation requirements for maritime stations are consolidated in Subpart I. As indicated in footnote 1 above, 47 rule sections containing unnecessary record keeping and reporting requirements were deleted in the *Report and Order* in PR Docket No. 82-798. The remaining documentation requirements, most of which are based on statutory/treaty requirements, pertain primarily to public coast stations and compulsory ship stations. This subpart updates, simplifies and merges these remaining requirements. Additionally, we propose to eliminate the requirement in Section 83.405(b) for ships subject to the Safety Convention to keep a record of the installation and maintenance of radar stations. This documentation is not required by the Safety Convention and is not used by the Commission for licensing or during ship inspections. To the extent such documentation is useful to ship operators, they may keep it in any form desired.

16. *Subpart J—Public Coast Stations.* Subpart J merges and simplifies the rules applicable to public coast stations. These stations provide a common carrier service for ships and boats and interconnect with the public telephone system. Further, we propose to delete the five *administrative classifications* of public coast stations. Currently, Part 81 divides public coast stations into the following classes: (1) Public high seas telegraphy stations, (2) public high seas telephony stations, (3) public regional telegraphy stations, (4) public regional telephony stations, and (5) public local service (VHF) coast stations. These classifications merely reference the frequency band and type of service authorized to be provided by a station. A licensee may have any combination of these "classes" authorized at a given location if the frequencies are available for assignment. Therefore, the five administrative classifications of public coast stations are unnecessary. The applicants, the users and the Commission's staff can readily identify the characteristics of a public coast station's service by the authorized frequency bands and emissions.[7]

17. *Subpart K—Private Coast Stations and Marine Utility Stations.* We propose to rename "limited coast stations" as "private coast stations." These stations serve the private business and operational needs of ships and marine service companies. We feel the word "private" better describes the scope of service of these stations and that this usage is consistent with usage in other parts of the rules. Additionally, we propose to expand the scope of service of private coast stations and marine utility stations to include the communications currently provided by shipyard base stations and shipyard mobile stations. Shipyard stations perform a secondary communications function for licensees of private coast stations and marine utility stations. By expanding the scope of service of private coast and marine utility stations and eliminating shipyard stations, the rules and licensing procedure would better reflect operational practices, and another unnecessary administrative classification could be deleted. Besides the above proposals, some minor revisions are proposed for clarification.

18. *Subpart L—Operational Fixed Stations.* The rules governing the use of frequencies in the 72–76 MHz band for operational control of other maritime stations, repeaters, relays and the like, are located in this section. These frequencies are available on a shared basis with the aviation and land mobile services. In order to remain consistent with the rules for similar uses of this band in the aviation and land mobile services only minor editorial changes have been made.

19. *Marine Fixed Stations—Deleted.* Sections 81.451 to 81.461 currently govern the services of "marine fixed stations". These stations are used to communicate with public coast stations on medium frequencies when other communications facilities are unavailable in an area. Although this class of station once fulfilled a need in remote areas, there are now only two licensed marine fixed stations. We propose to "grandfather" indefinitely these two stations and eliminate this class of station. If requirements develop for such point-to-point communications with a maritime station, they would be addressed under our waiver procedures on a case-by-case basis.

20. *Subpart M—Radiodetermination Stations.* This subpart sets forth the rules concerning radionavigation and radiolocation stations on land. The existing rules in Subpart K of Part 81 have been reorganized and clarified.

21. *Subpart N—Maritime Support Stations.* This subpart consolidates under the heading "maritime support stations" four classes of stations currently licensed as (1) shore radar test stations, (2) marine receiver test stations, (3) shore radiolocation test stations, and (4) shore radiolocation training stations. These four classes of stations provide for training, testing, or the demonstration of maritime radio equipment. We believe the rules will be simpler and easier to understand if these four classes of stations are merged into a single class. The rules proposed in Subpart N are intended to accomplish this purpose.

22. *Subpart O—Alaska Fixed Stations.* The Alaska fixed station rules were recently revised in the *Report and Order* in PR Docket No. 83-464.[8] The amendments and reorganization of those rules (Subpart Q of Part 81) in this subpart conform to the Part 80 format and provide further clarification of Alaska fixed station communications.

23. *Subpart P—Standards for Computing VHF Coverage.* This subpart sets forth the procedures and standards for computing the service area contour of VHF maritime stations on land. These rules have been taken substantially intact from the existing Subpart R of Part 81 except that profile plots are only required when inspection of the topography indicates there may be a coverage problem.

24. *Subpart Q—Compulsory Radiotelegraph Installations For Vessels 1600 Gross Tons.* The radiotelegraph and other radio equipment requirements mandated by Part II of Title III of the Communications Act or the Safety Convention for ships over 1600 gross tons appear in this subpart. Although we have simplified and clarified a number of these rules, most of the provisions are based on the language in the Communications Act or the Safety Convention and thus remain similar to the current rules appearing in Subpart R of Part 83.

25. *Subpart R—Compulsory Radiotelephone Installations For Vessels 300 Gross Tons.* This subpart contains the radiotelephone installation requirements specified by Part II of Title

[7] For example, "high seas" simply means high frequencies are assigned, "regional" means medium frequencies are assigned, and "local service" means very high frequencies are assigned to the station.

[8] Released August 3, 1984, FCC 84-379, 49 FR 32194

III of the Communications Act and the Safety Convention for ships between 300 gross tons and 1600 gross tons. As in the case of the rules applicable to compulsory radiotelegraph ships most of these provisions are based on the language of the Communications Act and the Safety Convention. Some sections have been simplified and clarified. However, these rules are substantially the same as they appear in Subpart S of Part 83.

26. *Subpart S—Compulsory Radiotelephone Installations for Small Passenger Boats.* The radiotelephone equipment carriage requirements for vessels transporting more than six passengers for hire are contained in this subpart. These rules implement the provisions of Part III of Title III of the Communications Act and are currently located in Subpart T of Part 83. Unnecessary and obsolete material has been deleted and many of the rules have been rewritten for clarity.

27. *Subpart T—Radiotelephone Installations Required for Great Lakes Vessels.* Subpart T incorporates the provisions of the Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio. Because they reflect the language of the treaty, only minor editorial changes have been made in these rules which currently are located in Subpart U of Part 83.

28. *Subpart U—Radiotelephone Installations Required by the Vessel Bridge-to-Bridge Radiotelephone Act.* The Vessel Bridge-to-Bridge Radiotelephone Act requires certain ships to be equipped with a VHF radio on the navigational bridge or at the main control station. The rules implementing the legislation are currently found in Subpart X of Part 83. We propose to simplify and clarify a number of the provisions in this subpart, particularly those describing the transmitter and receiver characteristics.

29. *Subpart V—Emergency Position Indicating Radiobeacons (EPIRB's).* Subpart V consolidates and clarifies the rules relating to the various emergency position indicating radiobeacons mandated or permitted to be carried on ships and boats. We feel that placing this information in one subpart will be more convenient and make the rules easier to use.

30. *Subpart W—Future Global Maritime Distress and Safety System.* This subpart is reserved for the rules which will implement the Future Global Maritime Distress and Safety System (FGMDSS) being developed by the International Maritime Organization. It is expected that this system will begin to be phased-in about 1990. The FGMDSS will replace the present high seas maritime distress and safety system which relies on ship-to-ship distress alerting using manual Morse telegraphy. The future system will rely primarily on ship-to-shore distress alerting using satellite and high frequency terrestrial systems employing digital selective calling techniques.

31. *Subpart X—Voluntary Radio Installations.* This subpart consolidates the rules for the use of maritime radio on board craft which are not required to carry such equipment. Generally, the operational and procedural requirements are less stringent for voluntarily equipped ships than for compulsorily equipped ships. The applicable rules have been reorganized and revised to clarify the requirements for applicants and licensees who voluntarily put maritime radio installations on board their ships and boats.

Conclusion

32. We believe that the changes proposed in the proceeding will significantly simplify and clarify the requirements for licensing and operating maritime radio stations. In any such undertaking there are likely to be areas where further consolidations, reductions in regulatory burdens, or better explanations of requirements could be made. We urge interested parties to review this proposal and recommend improvements. We are providing 120 days for comments and 60 days for reply comments. Concurrent Commission proceedings which affect the maritime radio services will be incorporated in the final action in this proceeding.

33. Accordingly, we propose to remove Parts 81 and 83 of the rules and add new Part 80 to consolidate, clarify, simplify and update the maritime radio services rules and regulations. This Notice of Proposed Rule Making is issued under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

34. Under procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before September 23, 1985, and reply comments on or before November 22, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

35. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

36. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

Regulatory Flexibility Initial Analysis

37. *Reason for Action.* This proposal would consolidate and reorganize the

rules applicable to the maritime radio services now contained in Parts 81 and 83 of Title 47 of the Code of Federal Regulations.

38. *Objective.* This action would reduce the redundancy now contained in the two rule parts, remove obsolete rules and language, and simplify and clarify the requirments for licensing and operating radio stations in the maritime services. New Part 80 would be easier for the public to use and understand.

39. *Legal Basis.* The amendments proposed in this proceeding are authorized under sections 4(i) and 303 of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as the public convenience, interest, or necessity require regarding the use of the radio spectrum.

40. *Description, Potential Impact, and Number of Small Entities Affected.* The reorganization and revision of the maritime services rules will reduce the size of the rules by about 40 percent and make them easier to use and understand. The reduction in the size of the rules would reduce the printing costs and the improved organization and wording should save time in researching the requirements for the licensing and operation of maritime stations. The benefits would accrue to all interested parties, large and small entities alike. However, we are unable to quantify these effects. In individual cases the savings in time and money would be small and would not result in a significant economic impact on any entities.

41. *Reporting, Record Keeping and other Compliance Requirements.* No new requirements would be imposed.

42. *Fedeal Rules Which Overlap, Duplicate or Conflict with This Rule.* The maritime radio services rules implement provisions of number of statutes and treaties. These include the international Radio Regulations, the International Convention for the Safety of Life at Sea, the Agreement between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, the Vessel Bridge-to-Bridge Radiotelephone Act, and the Communications Act. These rules bring together the requirements regarding the use of maritime radio. The proposal incorporates the statutory/treaty requirements currently contained in Parts 81 and 83. No new statutory/treaty based requirements are being implemented in this proceeding.

43. *Significant Alternatives.* An alternate regulatory approach would consist of revising and rewriting the rules essentially in their current formats. Part 81 contains rules applicable to maritime radio stations on land while Part 83 deals with radio stations on board ship. As stated above, we believe that reorganizing the rules into one part allows the elimination of considerable redundancy due to the commonality of these rules, a greater reduction in the size of the rules and therefore printing costs, and a format that is easier to use.

44. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed in the Act.

45. It is ordered, That a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Association.

46. In order to save approximately $34,400 in printing costs, we are publishing the Notice of Proposed Rule Making in the **Federal Register** without the appendixes which contain the proposed rules and cross reference tables. Copies of this document including the appendixes will be available to the public on request. This procedure satisfies notice requirements as well as the needs of the public while saving the Commission significant printing costs. Regarding requests for copies of the Notice of Proposed Rulemaking and Appendixes or questions on matters covered in this document, contact Robert Mickley, Robert DeYoung, William Berges or Nicholas Bagnato, Federal Communications Commission, Washington, D.C. 20554 (202) 632–7175.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–12798 Filed 6–3–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Least Bell's Vireo; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: This corrects segments of the critical habitat portion of the proposed rule of the May 3, 1985, **Federal Register** (50 FR 18968–18975). Other portions of the text are also corrected. The document concerned proposed endangered status and critical habitat for the Least Bell's Vireo .

DATES: Comments from all interested parties must be received by July 2, 1985. Public hearing requests must be received by June 17, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85–10808 appearing as Part III on pages 18968–18975 in the issue of May 3, 1985:

1. On page 18974, paragraph 7 is to read as follows:

7. *San Diego River, San Diego County* (Index map location G).

T15S, R1W and T15S, R2W: commencing at the intersection of the Second San Diego Aqueduct and Mission Gorge Road; thence eastward along said road to the western-most intersection with Father Junipero Serra Trail; thence northward and eastward along said trail to the eastern-most intersection of said trail and said road; thence eastward along Mission Gorge Road to its intersection with Carlton Hills Blvd.; thence northward to its intersection with Carlton Oaks Drive; thence westwared along said drive to its eastern-most intersection of Inverness Road; thence westward along said road to its intersection with Carlton Oaks Drive; thence westward along said drive to its intersection with Mast Street; thence westward and southward along the 320-foot contour to its intersection with the Second San Diego Aqueduct on the north side of the San Diego River; thence southeast along said aqueduct to its intersection with Mission Gorge Road.

2. The map following paragraph 7 on page 18974 is corrected by the addition of "Carlton Hills Blvd." as a label for the eastern-most boundary line of the critical habitat area, which crosses the San Diego River.

3. On page 18972, at bottom of column 1, paragraph 1 is corrected to read as follows:

1. *Santa Ynez River, Santa Barbara County* (Index map location A).

T5N, R27W: Sec. 1 and 12.

In addition, all lands within the following circumscribed area: beginning at the northeast corner of Sec. 1, T5N, R27W; thence east approximately 1.85 miles to the intersection of Mono Creek and the Los Prietos Y Najalayegua land grant boundary; thence south approximately 2.5 miles; thence east approximately 2.6 miles to Agua Calienta Creek at a point about 0.4 mile north of the Pendola Guard Station; thence south 1.0 mile; thence west 2.5 miles to the Los Prietos Y Najalayegua land grant boundary; then west and north along said land grant boundary to the northeast corner of Sec. 24, T5N, R27W; thence north approximately 1.0 mile to the southwest corner of Sec. 12, T5N, R27W.

4. On page 18973, column 3, lines 17 and 18, the name of the road is corrected to read "Via Puerta Del Sol" not "Via Puerta Del."

5. On page 18970, column 1, line 28, the words "construction projects" are replaced by "severe flooding."

6. On page 18970, column 2, line 19, the number of acres should read "44,500."

7. On page 18970, column 2, line 15 from bottom is corrected to read "(1) removal or destruction of riparian."

8. On page 18970, column 3, line 23 from bottom is corrected to read "Marine Corps has coordinated with the."

Dated: May 30, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-13388 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements **Federal Register** Document 50 FR 6366 published on February 15, 1985, which presented several duck harvest strategies that were being considered by the Service for possible implementation during the 1985–86 duck hunting season, and **Federal Register** Document 50 FR 10276 published on March 14, 1985, which notified the public that the U.S. Fish and Wildlife Service proposes to establish hunting regulations for certain migratory game birds during 1985–86, and provided information on certain proposed regulations.

This proposed rulemaking provides supplemental proposals and minor corrections for both the "early" and "late" season migratory bird hunting regulations frameworks. The early hunting seasons open prior to October 1 and include seasons on mourning doves; white-winged doves; white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails, moorhens, and gallinules; September teal; sea ducks; early duck seasons in Florida, Iowa, Kentucky, and Tennessee; experimental early goose season framework in a portion of Michigan; special sandhill crane—Canada goose season in southwestern Wyoming; sandhill cranes in the Central Flyway and Arizona; migratory bird hunting seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and special falconry seasons. Late seasons open about October 1 or later and include most waterfowl and seasons not previously selected for other species. The Service annually prescribes hunting regulations frameworks within which the States select specific seasons. The effect of this proposed rule is to facilitate establishment of early and late season migratory bird hunting regulations for the 1985–86 season.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 20, 1985; that for other early season proposals will end on July 15, 1985; and that for late season proposals on August 19, 1985. Comments and tribal requests concerning the proposed guidelines for migratory bird hunting on Indian reservations and ceded lands, must be received no later than July 1, 1985. Public Hearings on proposed early and late season frameworks will be held on June 20 and August 1, 1985, respectively (50 FR 10276).

Written comments and suggestions concerning the environmental assessment on Indian hunting rights should be sent to MBMO by July 8, 1985.

ADDRESS: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Main Interior Building, Room 3252, Washington, D.C. 20240. The Public Hearings will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, D.C. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Main Interior Building, Room 3252, Washington, D.C. 20240

Comments received on the supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C. Addresses for those tribes wishing to submit proposals for special migratory bird hunting seasons may be found in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, D.C. 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which open before October 1, while late seasons open about October 1 or later. Regulations are developed independently for early and late seaons. The early season regulations cover mourning doves; white-winged doves; white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; early duck seasons in Florida, Iowa, Kentucky, and Tennessee; an experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; a special sandhill crane-Canada goose season in southwestern Wyoming; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some special falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots, moorhens, gallinules, and snipe in the Pacific Flyway; and other special falconry seasons.

Certain general procedures are followed in developing regulations for both the early and the late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented, as necessary, with additional **Federal Register** notices. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service

publishes final frameworks in the **Federal Register.** Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register,** amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits, and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. In the February 15, 1985, **Federal Register** (50 FR 6366) the Service presented a series of duck harvest strategies that were being considered for possible implementation in the 1985–86 duck hunting season. On March 14, 1985, the Service published in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits and other regulations for migratory birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. All comments on the March 14 proposal received through May 3, 1985, have been considered in developing this document. Comment periods on this second document are specified above under **DATES**. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for **Federal Register** publication on or about July 11, 1985, and those for early seasons in other areas of the United States on July 26, 1985; and those for late seasons on September 2, 1985.

On June 20, 1985, a public hearing will be held in Washington, D.C., as announced in the **Federal Register** of March 14, 1985, (50 FR 10276), to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, moorhens and gallinules, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species and migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and special falconry seasons. Statements or comments are invited.

On August 1, 1985, a public hearing will be held in Washington, D.C., as announced in the **Federal Register** of March 14, 1985, (50 FR 10276), to review the status and proposed hunting regulations for waterfowl not previously discussed at the June 20 public hearing.

This supplemental proposed rulemaking describes a number of changes which have been proposed by commentors on the original framework proposals published on March 14, 1985, in the **Federal Register.** Two minor errors are corrected.

Review of Public Comments and the Service's Response

Written Comments Received

As of May 3, 1985, the Service had received comments on proposals published in the March 14, 1985, **Federal Register** (50 FR 10276) 21 correspondents, including 5 individuals, 2 organizations, 10 State agencies, and 4 waterfowl flyway councils. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals. however, because they were received during the comment period and generally to migratory bird hunting regulations, they are treated as comments. These comments as well as comments received on duck harvest strategies published in the February 15, 1985, **Federal Register** (50 FR 6366) are discussed below with particular attention to new proposals, and modifications, clarifications or corrections to previously described proposals. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 14, 1985, **Federal Register** (50 FR 10276). Comments received subsequent to May 3, 1985 as well as those received at the June 20, 1985, public hearing will be addressed in the next supplemental proposal to be published in the **Federal Register** in early July.

General Comments

Except for specific recommendations identified below, theCentral Flyway Council recommended adoption of the proposed regulations published in the March 14, 1985, **Federal Register** pertinent to seasons in the Central Management Unit and the Central Flway for all migratory game birds.

The Pacific Flyway Council recommended that no changes be made in the season frameworks for mourning doves, white-winged doves, band-tailed pigeons, and the early season frameworks for Alaska from those of 1984–85 except as identified below.

Review of Duck Harvest Strategies

The U.S. Fish and Wildlife Service, with support from the Flyway Councils and other organizations, joined with Canada in a 5–year program of stablized duck regulations beginning with the 1980–81 season. During the program, season length and bag limits were unchanged from those established for the 1979–80 hunting season. Although the 1984–85 hunting season marked the final harvest season in the program, field activities, including banding, radio-telemetry, and nesting studies will continue through 1985. The program has provided both countries the opportunity to study those factors associated with the regulation of duck numbers, including specific investigations of nonhunting mortality, hunting mortality, and recruitment, in the absence of annual changes in season lengths and bag limits. Data analysis and evaluation of the studies will extend into 1986, so development of the 1985–86 and 1986–87 duck hunting regulations will be without benefit of some of the results of the studies.

In the February 15, 1985, **Federal Register** (at 50 FR 6366) the Service announced that because of the recent prolonged drought on the duck breeding grounds of prairie Canada and the concern by the Service and other wildlife agencies and organizations about the declining status of mallards and northern pintails, particularly breeding populations of mid-continent origin, various harvest strategies would be reviewed prior to establishing duck hunting regulations for 1985–86. Conservative harvest strategies that had been considered to date by the Service for possible implementation during the 1985–86 duck hunting season were given as follows:

1. *Stabilized Regulations.* Establish retrictive regulations in each of the 4 waterfowl flyways that would remain in effect for a predetermined length of time.

2. *Annual Assessment.* Establish requlations by flyway on an annual basis in response to fall flight forecasts of duck numbers and/or other criteria.

3. *Prescription Regulations.* Establish a set of regulations in each flyway, containing specific regulatory responses based on population size and/or habitat conditions. Season lengths and bag limits would be established on the basis of harvest reduction objectives, i.e., if the estimated breeding population of mallards in surveyed areas falls below a certain level, regulations would be developed to decrease the harvest by an established percentage. These restrictions would remain in effect until a predetermined population level is attained.

4. *Other Options.* Influence harvest by adjusting or eliminating zones, split

seasons, bonus bags and special seasons, point system bag limits, framework dates, season length and other special considerations.

The document invited comments and recommendations on those options and provided an opportunity to bring other alternatives forward at an early date.

Summary of Comments

Comments on the harvest strategies have been received (as of May 3, 1985) from 22 State wildlife agencies, 2 Waterfowl Flyway Councils, 16 organizations, and 129 individuals.

Of the 22 states submitting comments, 5 (Arizona, Illinois, Minnesota, Missouri, and New Mexico) expressed a preference for stabilized regulations, while prescription regulations was the strategy advocated by 5 (Massachusetts, New Jersey, New York, South Carolina, and Utah). Two states (Florida and Virginia) indicated support for the option of regulations establishment by annual assessment. With the exception of California, the remaining states (Alabama, Arkansas, Kentucky, Montana, Oklahoma, Pennsylvania, South Dakota, West Virginia, and Wisconsin), supported 2 or more of the options, suggested a combination of 2 or more of the options, or endorsed options other than those provided. California indicated their belief that commenting directly to the Service on harvest issues would be contrary to the flyway management concept, therefore the State would continue to work with member states of the Pacific Flyway in developing duck harvest strategies.

Arizona stated it appears prudent to adopt restrictive regulations as hunting mortality is only partially compensatory. The State asked that the Service carefully evaluate the stabilized regulations concept before endorsing another harvest strategy. Illinois indicated restrictive stabilized regulations was the most viable option especially if it would add to the data base of the initial stabilized regulations study. Minnesota expressed support for a new and conservative period of stabilized regulations while the initial period of stabilized regulations is being evaluated. Missouri stated that pending the results of the stabilized regulations study, regulations in the interim should reflect concern for current waterfowl population levels and that stabilized regulations was their preferred alternative provided that regulations include a specified period of application, and fail-safe population levels allowing additional regulations restrictions during the period of stabilization. New Mexico endorsed a Central Flyway Council-Technical Committee recommendation for an additional 5 years of stabilized regulations with the provision to adjust the point values of species and sexes of ducks during the stabilized period.

Massachusetts indicated that until the stabilized regulations study is evaluated, prescription regulations tailored to each flyway would be best. New Jersey identified prescription regulations to be the strategy of choice because it would allow flyways to be managed individually based on the size of the duck population and/or habitat conditions and thereby each flyway could adjust harvest strategies to manage those species of major concern. New York expressed support for prescription regulations, wherein a stable framework is established to allow harvest at a level sustainable by a predetermined population size, as an interim action while awaiting the results of the stabilized regulations study. South Carolina recommended adoption of some type of prescription regulations should the May and July 1985 waterfowl surveys indicate no substantial increases in the population of prairie nesting mallards and northern pintails. Utah expressed support for the Pacific Flyway Council's tendency toward prescription regulations.

Florida urged that regulations established by the annual assessment approach, strictly identified as an interim action, be implemented for the 1985–86 and 1986–87 seasons while awaiting the evaluation of stabilized regulations, and that upon completion of the evaluation the issue of duck harvest strategies be revisited. Virginia indicated that while awaiting the stabilized regulations evaluation the State preferred the option to establish the 1985–86 and 1986–87 waterfowl seasons based upon the annual assessment of waterfowl numbers.

Alabama stated that should the 1985 waterfowl survey data indicate that restrictions are in order, then the State supports the use of the annual assessment method or prescription regulations, but the restrictions should be directed at the major sources of the problem rather than flyway- or nation-wide.

Arkansas indicated a combination of the options would be most useful and desirable. The State suggested an overall strategy of stabilized regulations incorporating annual assessment of population levels to evaluate their relationship to previously identified triggering levels (as per "prescription regulations").

Kentucky indicated that measures that might most effectively achieve necessary reductions in duck harvest would include timing seasons throughout the flyway on a state-by-state basis to miss peak populations of target species, reducing the season length, and delaying the opening of shooting hours until sunrise.

Montana stated that positive aspects offered by a stabilized regulations format were that it could provide an excellent opportunity for gathering biological information and aid hunters to better understand and become familiar with the regulations. The State also indicated that with prescription regulations, once the guidelines have been established and the regulation format developed, state wildlife agencies have time to address future regulations changes while in the regulations process.

Oklahoma felt the strategies offered were not specific enough to determine the numerical impact of each, and although certain sex-specific regulations might help accelerate a recovery process, there are other means besides using a total regulatory process by which to improve the status of certain species of ducks as well as ducks in general.

Pennsylvania recommended the use, where necessary, of annual assessment and prescription regulations in conjunction with each other.

South Dakota supported the concept of stabilized regulations and prescription regulations stating that stabilized regulations offer excellent research opportunities and reduce hunter confusion, while prescription regulations, such as those contained in the Central Flyway Mallard Management Plan, serve as fail-safe mechanisms during periods of stabilized regulations. The State's comments were provided within the context that increasingly restrictive harvest regulations in response to continuing declines in duck numbers in the future can at best slow the current trend.

West Virginia indicated all of the harvest strategy options were acceptable.

Wisconsin stated a combination of stabilized regulations and prescription regulations would provide a reasonable harvest management strategy.

The Pacific Flyway Council endorsed the concept of stabilized duck hunting regulations but indicated it is receptive to prescription regulations to accommodate species population thresholds.

The Central Flyway Council recommended initiation of a duck harvest management program whereby current stabilized duck hunting regulations are continued with the exceptions that the point value of hen

mallards be increased to 100 points, the conventional possession limit for hen mallards be reduced to 1, and the point value of pintails be increased to 20 points. The program would continue for 5 years unless population levels identified in operational management plans are reached which trigger regulations changes.

Nine organizations submitted comments supporting the need for duck harvest restrictions in 1985–86. The Service's harvest strategies options were addressed by 5 of the organizations. Prescription regulations received support from the New Jersey Waterfowlers Association, River County Voices (Wisconsin), and the Batchtown Sportsman's Club (Illinois). The Humane Society of the United States (HSUS) urged adoption of a plan whereby through a public process optimum population levels for all waterfowl would be established and then strategies to implement them would be chosen. HSUS indicated that their interpretation of the Service's primary duty under the Migratory Bird Treaty Act, to manage migratory birds so as to attain or maintain optimum population levels, was not addressed by any of the harvest strategies. The Service's review of the need for restrictive harvest regulations in 1985–86 was commended by the Wildlife Management Institute (Institute). Commenting on the Service's strategy options, the Institute stated that any future stabilized regulations must provide for the recognition of differences among duck species, as well as yearly influences exerted on the habitats and populations, and the regulations should be oriented to duck populations and their ranges. The Institute indicated annual assessment is needed with the population status of each species and identifiable populations emphasized. In principle, the prescription regulations option was considered appropriate by the Institute; however, they felt the predetermined levels for species and population units should not be constrained by existing annual population records or based on 3-year moving averages, and permitted harvest should be related to population levels to achieve restoration potentials and numerical goals. The Institute urged completion and initiation, where necessary, of studies to improve the understanding of relationships between duck hunting regulations and duck populations.

The 4 remaining organizations, Michigan Duck Hunters Association, Madison Audubon Society, Inc. (Wisconsin), Wisconsin Waterfowlers Association, and LaCrosse County Conservation Alliance (Wisconsin), supported the need for restrictive duck harvest regulations in 1985–86 and all recommended a reduction in the bag limit for ducks rather than a shortening of duck season length.

Seven letters in opposition to any restrictive change in duck hunting regulations for 1985–86 were received from the following organizations: The Wildlife Legislative Fund of America, Ducks Unlimited, Waterfowl Habitat Owners Alliance (California), New York State Conservation Council, New York State Brotherhood of Sportsmen, Federated Sportsman's Clubs of Ulster County, Inc. (New York), and Southwest Louisiana Convention and Visitors Bureau. One issue recurring in most of the letters was that no change from the 1984–85 duck hunting regulations frameworks should be made unless and until the 5-year stabilized regulations study has been evaluated. The 2 New York State organizations and the club from Ulster County recommended a longer duck hunting season. The Convention and Visitors Bureau of southwest Louisiana opposed any regulations restrictions because of the economic hardships that would result on the local tourism industry.

One hundred twenty-nine individuals submitted comments on the possibility of duck harvest restrictions in 1985–86. One hundred six of those commenting were in general support of the need for duck harvest restrictions beginning this year but there was very little consensus on the management action(s) to be implemented. The comments of 23 individuals dismissed the need for harvest restrictions.

Response: The Service has reviewed and considered all comments and recommendations received as a result of the February 15 Notice. Although there was a broad range of responses more comments favored stabilized regulations than any other harvest strategy. A recurring theme among supporters of stabilized regulations was that such regulations should be continued until the results of the recent 5-year study are compiled and analyzed, but that breeding population data should be monitored annually and any needed protection should be afforded breeding populations of mallards and northern pintails. Other comments noted that the 5-year stabilized regulations study was widely accepted by Flyway Councils, State wildlife agencies, and hunters, and that continuation of stabilized regulations would add to the existing study data base and would offer additional research opportunities.

Considerable support was also expressed for prescription regulations. In practice these functions somewhat like stabilized regulations but contain more action points and may be more specific in the response required. They may be effectively combined with stabilized regulations frameworks.

The Service notes the comments of the Pacific Flyway Council and Central Flyway Council in regards to harvest strategies. The specific Council recommendations will receive further consideration during the current regulatory cycle.

The individual comments contained many thoughts about the resource and the sport itself. There was, however, general support for some type of duck harvest restriction. A common recommendation was to reduce the bag limit on mallards, particularly hens, and/or pintails.

Based on the preceding comments and on discussions with our Canadian counterparts, the Canadian Wildlife Service (CWS), the Service believes the needs of the duck resource and the resource users can best be served by a continuation of some form of a stabilized regulations strategy until the results of the 5-year cooperative study become available. There are, however, strong concerns in the United States and Canada regarding current population levels of mallards and northern pintails. These concerns were first expressed in 1984 and more recently in the February 15 and March 14, 1985, **Federal Register**. While waterfowl hunting regulations in the United States and Canada are the individual responsibility of each country, waterfowl are a shared resource. The Service and CWS believe that minimum breeding population levels need to be identified for selected major species. These levels should reflect current population management objectives that can be endorsed by both countries. Below such minimum (fail-safe) population levels, joint international attention would be directed to the problem. Long-term management has been and will continue to focus on maintaining populations above these minimums, but action strategies which are triggered by populations below minimum levels would provide a means for short-term responses to periodic population fluctuations. The absence of a common minimum population level for mallards hindered discussions between the United States and Canada on appropriate regulatory actions in 1984–85—the final year of the stabilized regulations study in both countries. International agreement on minimum

population levels, especially for mallards and northern pintails, is desirable prior to the deliberations and eventual decisions on 1985–86 duck hunting regulations in the United States and Canada. Both countries recognize, however, that loss and degradation of the waterfowl habitat base is the most pressing long-range problem.

The concern for these two species results from the very low levels of their breeding populations in 1984, the importance of these ducks in numbers and in the continental harvest, and the deterioration of much of the central prairie breeding habitat as a result of extended drought since 1982. Intensive study of habitat conditions during the stabilized regulations has shown accelerated modifications in breeding marsh habitat during the prolonged drought. While some of this change may be temporary, the quality and quantity of habitat available for waterfowl use likely will remain reduced for more than one year when water conditions improve.

The Service therefore proposes to consider, as interim guidelines, the minimum population levels contained in the following strategies during discussions of 1985 regulations for mallards and northern pintails. Note that in each strategy more liberal regulations would be established only when populations levels show positive signs of substantial recovery.

Mallards: If the breeding population of mallards in the surveyed area of Canada and the United States falls below 6.5 million, the CWS and the Service will solicit the cooperation of the Provinces of Alberta, Saskatchewan, and Manitoba, and the Atlantic, Mississippi, Central, and Pacfic Flyways, in initiating regulations designed to reduce harvests on mallards of mid-continent origin by at least 25 percent from those which would have been expected had regulations remained unchanged, from the previous year, during that year's hunting season. The harvest reduction would remain in effect until the breeding population reaches or exceeds 7.5 million mallards in the surveyed area. Upon reaching these levels, the restrictions could be removed. Harvest regulations to implement this reduction would be developed through the normal regulatory process of each country.

Northern Pintails: If the breeding population of northern pintails in the surveyed area of Canada and the United States falls below 4 million, the CWS and the Service will solicit the cooperation of the Provinces of Alberta, Saskatchewan, and Manitoba and the Mississippi, Central, and Pacfic Flyways, in initiating regulations designed to reduce harvests on northern pintails by at least 25 percent from those which would have been expected had regulations remained unchanged, from the previous year, during that year's hunting season. The harvest reduction would remain in effect until the breeding population reaches or exceeds 4.7 million northern pintails in the surveyed area. Upon reaching these levels, the restrictions could be removed. Harvest regulations to implement this reduction would be developed through the normal regulatory process of each country.

Agreement on these strategies for minimum populations of mallards and northern pintails and harvest reduction objectives if populations fall below those minimum levels would establish strategies for action that could occur in 1985. A decision whether to employ these strategies will be made through the normal regulatory process, including cooperative evaluation of survey and harvest data. Further, the means of reducing harvest would be developed for each Flyway with the full participation of Flyway Councils and all interested parties, and would address species of concern. It may also be necessary to reduce the harvest of other species.

The Service emphasizes the question of appropriate harvest strategies for 1985–86 and beyond and remains open for further comment.

Note.—The following items are discussed under headings corresponding to the numbered items in the March 14, 1985 **Federal Register** (50 FR 10276).

2. Framework dates for ducks and geese in the continental United States. The Service corrects the sentence on the exception to the framework dates for Canada geese in the Mississippi Flyway in the March 14, 1985, **Federal Register** (at 50 FR 10283) as follows: *In Mississippi and designated western areas of Kentucky and Tennessee the Canada goose season framework extends to January 31, 1986.*

By letter dated March 14, 1985, Mississippi requested continuation of their experimental waterfowl framework extension during the 1985–86 duck hunting season while awaiting final harvest data from the 1984–85 duck hunting season and preparing their final report on the 6-year study.

By letter of March 19, 1985, the Lower Region Regulations Committee of the Mississippi Flyway Council recommended a January 31 framework closing date for duck hunting in all lower region States (Kentucky, Tennessee, Arkansas, Louisiana, Mississippi and Alabama) unless the Mississippi framework extension experiment documents unacceptable impacts on duck resources. The Committee also recommended a January 31 framework closing date for all Canada goose hunting in Alabama, Kentucky, Mississippi, and Tennessee, and a January 31 framework closing date for all goose hunting in Arkansas.

The Upper Region Regulations Committee of the Mississippi Flyway Council by letter dated April 16, 1985, recommended that the September 26 framework opening date for goose hunting in the western portion of Michigan's Upper Peninsula (UP) be expanded to include the entire UP.

Response: The Service desires that Mississippi's final report on their experimental duck season framework extension include data from all six years of the study and, further, that the report be completed in time for a decision about future framework dates prior to the establishment of regulations frameworks for the 1986–87 waterfowl hunting season. The recent prolonged drought on the duck breeding grounds of prairie Canada and the declining status of mallards has raised the concern of the Service and other wildlife agencies and organizations. The potential for late hunting seasons to increase mallard harvest and adversely impact ducks during a critical stage of their life cycle is of particular concern. Because of this, the Service proposes that the 1985–86 framework closing date for duck hunting in Mississippi return to that which is established for the Mississippi Flyway.

The Service notes the recommendation of the Mississippi Flyway Council Lower Region Regulations Committee regarding a later season for duck hunting in all States of the Lower Region. The Service feels that later duck seasons in other areas should not be considered until the final report on the Mississippi study and other information relating to the potential impact of late hunting seasons are evaluated. In regard to the Committee's recommendations concerning the extension of the framework closing date for geese, the Service believes this management strategy deserves further review. Although numerous late frameworks now exist for geese, the expansion of such late seasons must be considered in light of the management objectives for the various flocks. The Service believes the extension of goose season frameworks in Lower Region States should be deferred pending additional review.

In 1983 the U.S. Fish and Wildlife Service concurred with a recommendation from the Upper Region

Regulations Committee for an experimental late-September framework opening date for goose hunting in the western Upper Peninsula of Michigan. The 1985–86 waterfowl season is the final year of the scheduled 3-year study. The Service believes expanding the early goose season option to other areas should be deferred until Michigan's ongoing goose season framework extension study has been completed and their final report has been submitted to and evaluated by the Service and Mississippi Flyway Council.

8. Experimental September duck seasons. The Lower Region Regulations Committee of the Mississippi Flyway Council, by letter dated March 19, 1985, recommended that early September duck seasons be made available to all lower region States pending the evaluation of experimental seasons in Kentucky and Tennessee. The Committee also recommended that the experimental September duck seasons in Kentucky and Tennessee be continued through the 1985 hunting season in order to collect additional information on the effects of early seasons on survival rates of wood ducks.

By letter dated April 16, 1985, the Mississippi Flyway Council Upper Region Regulations Committee endorsed a request from Iowa that the State's experimental September duck season be continued through the 1985 hunting season while they prepare their final report on the 6-year study.

In the March 14, 1985, **Federal Register** (at 50 FR 10284) the Service gave notice fo Florida's request for operational status of their experimental September duck season and noted that Florida's request had not received Atlantic Flyway Council review. Although the Atlantic Flyway Council has not provided recommendations on the September duck season in Florida, the Service proposes to continue it as an experimental season in 1985.

Response: The Service agrees with the Lower Region Regulations Committee that additional information is needed regarding the effects of the September duck seasons in Kentucky and Tennessee and proposes to continue these experimental seasons in 1985.

The Service supports the recommendation by the Upper Region Regulations Committee to continue the experimental September duck season in Iowa in 1985.

9. Special scaup season. By letter dated March 21, 1985, Florida requested permission to expand their Indian River Scaup Season Zone to include an area immediately adjacent to the existing zone because of significant annual concentrations of wintering scaup in the area in recent years. The new zone would be described as follows: "All open waters * * * (the) Indian River from the Titusville Causeway (SR 406) south, and all open waters of the Banana River and Newfound Harbor from the SR 520 causeway south."

Response: The Service defers action on this request pending its review by the Atlantic Flyway Council.

12. Canvasback and redhead ducks. New Jersey, by letter dated March 14, 1985, requested that the framework for their experimental special canvasback season, presently the last 11 days of the regular duck season, be changed to the last 11 days of their scaup-only season. The State expressed concern that hunter success and interest in the experimental canvasback season has been declining and may adversely affect their experimental season evaluation methods. Approval of New Jersey's request would permit a later canvasback season which they believe would be at a time when more canvasbacks might be present, hunter opportunity and interest would increase, and the State could maintain its season evaluation procedures.

By letter of April 9, 1985, the LaCrosse County Conservation Alliance (Wisconsin) requested the canvasback hunting closure in Wisconsin's Mississippi River Zone be removed.

Response: The 1985–86 season is the final year of a scheduled 3-year experimental special canvasback season in New Jersey. The Service cannot support a change in the frameworks of this ongoing experimental canvasback season until the experiment has been completed and evaluated.

The Service will review the Alliance's request but notes that a recommendation for removal of the canvasback hunting closure in Wisconsin's Mississippi River Zone has not been received from either the State or the Mississippi Flyway Council.

13. Duck Zones. Vermont, by letter dated March 6, 1985, submitted a proposal for a 3-year zoning experiment commencing with the 1985–86 waterfowl hunting season. The Lake Champlain portion of New York presently accepts the annual waterfowl season regulations chosen by Vermont. By mutual agreement, the authority for season selection in the proposed Lake Champlain Waterfowl Zone would rest with Vermont. By letter dated February 12, 1985, New York expressed support for Vermont's zoning proposal which identified the following zones:

Lake Champlain Waterfowl Zone. The proposed zone includes the United State's portion of Lake Champlain and those portions fo New York and Vermont as follows:

New York: Includes that part of New York lying east and north of a boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain; south on New York Route 9 to New York Route 22 south of Keeseville; south on New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; south on New York Route 22 to U.S. Highway 4 at Whitehall; and east on U.S. Highway 4 to the Vermont border.

Vermont: Includes that portion of Vermont lying west and north of a boundary running south from the Canadian border along Interstate Highway 89 to Exit 16 at U.S. Highway 7; south on U.S. Highway 7 to Vermont Route 22A; south on Vermont Route 22A to U.S. Highway 4; and west on U.S. Highway 4 to the New York border.

Remainder of State Zone. That area of Vermont not previously described. At their March 17, 1985, meeting the Atlantic Flyway Council endorsed Vermont's request to establish a Lake Champlain Zone for duck hunting.

Colorado, by letter dated March 11, 1985, submitted a proposal for a 3-year zoning experiment in the Pacific Flyway portions of Colorado. Colorado proposed the following zones:

Zone 1. Consists of the counties of Garfield, Mesa, Delta, Montrose, Ouray, San Miguel, Dolores, Montezuma, San Juan, LaPlata, that portion of Hinsdale and Mineral Counties south and west of the Continental Divide, and that portion of Archuleta County west of the Continental Divide.

Zone 2. Consist of the remainder of the Pacific Flyway portion of Colorado.

The Mississippi Flyway Council Upper Region Regulations Committee, by letter dated April 16, 1985, endorsed an Indiana request for minor boundary changes in the State's experimental duck hunting zones. Indiana proposed the following:

North Zone: That portion of the State north of a line beginning at State Highway 18 at the Illinois state line; east on State Highway 18 to U.S. Highway 31; north on U.S. Highway 31 to U.S. Highway 24; east on U.S. Highway 24 to U.S. Highway 224 at Huntington; southeast on U.S. Highway 224 to the Ohio state line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Ohio River Zone: That portion of the State south of a line beginning at Interstate Highway 64 at the Illinois state line; east on Interstate Highway 64 to State Route 62; east on State Route 62 to State Route 56; east on State Route 56 to State Route 156 at Vevay; east on State Route 156 to State Route 56; east on State Route 56 to U.S. Highway 50; east on U.S. Highway 50 to the Ohio state line.

Two replies were received to the Service's solicitation in 50 FR 10285

dated March 14, 1985, for additional consultation on Louisiana duck hunting regulations. The Mississippi Flyway Upper Region Regulations Committee expressed opposition to the Service proposal to allow Louisiana to zone their State east to west with Central Flyway duck season length in the West zone and Mississippi Flyway duck season length in the East zone and Mississippi Flyway bag limits in both zones. The Central Flyway Council recommended that the Service not implement the Service proposal put forth on June 13, 1984 (at 49 FR 24421), and that the duck season framework for all of Louisiana be that of the Mississippi Flyway. Further, the council requested additional consultation with the Service regarding the Louisiana report and proposal.

Response: Information available from the Service's harvest survey and banding programs generally provides for broad management decisions but in some cases has not been fully satisfactory for evaluation of experimental seasons. Future studies will likely require additional special data gathering programs to insure that suitable evaluations can be made. The Service believes it is time to assess the cumulative effect of zoning and other special management strategies on the resource, and review existing criteria for evaluation of experimental seasons with each Flyway Council. Until some better-informed judgments can be made, the Service believes that present zones should not be modified and no new duck zoning studies should be initiated. The Service intends to raise this issue for discussion at Flyway Council meetings in July.

The Service recognizes the long-term unified waterfowl season in the Lake Champlain area of Vermont and New York and believes such action represents a practical approach to waterfowl management there. Because of the desire announced above to delay further zoning studies the Service does not support the Vermont request. It is noted that the uniform season arrangement in New York and Vermont has been effective to date without recourse to zoning. The Service suggests available options such as split seasons be explored by Vermont as a means of continuing the Lake Champlain season.

The Colorado request for a new zone has not been reviewed by the Pacific Flyway Council. Further, because of interest in assessing duck zones, the Service does not support this request.

The Service recognizes that the proposed zone changes in Indiana appear relatively minor and that measures of harvest may not be sensitive enough to reflect any change as a result of such boundary changes. It is noted, however, that Indiana operated under 2 zones with no splits during the period 1977–1982. In 1983 the State initiated a study of 2 zones with the option to split the season within zones and changed this to 3 zones with the split season option in 1984. The State now proposes to modify the boundaries between the 3 zones and continue the option to split seasons within zones. The Memorandum of Agreement concerning this zoning study calls for joint State-Service analysis of harvest and hunter activity data. Measures of harvest and hunter activity may not be sensitive enough to evaluate the 3-zone split-season experimental study in Indiana even if the study were to continue for three years without change; annual changes in the study will be even more likely to preclude a meaningful evaluation. For these reasons the Service proposes to continue the zoning experiment in Indiana with boundaries unchanged from those used in 1984.

In the September 14, 1984, **Federal Register** (at 49 FR 36277) the Service identified 7 areas of concern that were noted in the 22 comments received in opposition to the proposal to apply Central Flyway duck season length and Mississippi Flyway bag limits to the West Zone in Louisiana beginning in the 1985–86 duck hunting season. The Service intends to fully explore those concerns in an Environmental Assessment targeted for publication in early 1986. The Service will consult with the flyway councils during their summer meetings (July) on the various concerns that have been expressed about the proposed duck hunting regulations for Louisiana. Because of these Service initiatives and the reduced number of mallards and northern pintails breeding on the prairies of west central Canada, the Service believes a decision on the proposed duck hunting regulations for Louisiana should be deferred in 1985 to provide all interested parties time to further review and evaluate all issues. Therefore, the Service proposes no change, at this time, in the 1985–86 duck hunting season frameworks for Louisiana from those of 1984–85.

14. Goose and brant seasons. The Service corrects the first sentence of the statement on Central Flyway goose hunting regulations in the July 1, 1980, **Federal Register** (at 45 FR 44545) as follows: *The Central Flyway Council proposed that season, bag and possession limits for dark and light geese be established independently.* * * * The omission of "season" was an oversight.

The Central Flyway Council, by letter dated April 25, 1985, recommended that Kansas be given the option to establish management units for setting light goose (includes snow, blue, and Ross') hunting seasons. Kansas had requested the following units:

Unit 1. Consists of that area of Kansas east of U.S. Highway 75 and north of Interstate Highway 70.

Unit 2. Consists of the remainder of the State.

By establishing these two units, the northeast area of Kansas would be able to continue to take advantage of the opportunity of the extended light goose hunting framework initiated in 1984, while the remainder of the State could take advantage of an early, more traditional light goose hunting season. The Council indicated Kansas' proposal is consistent with objectives and strategies of the Mid-Continent Snow Goose Management Plan.

By letter dated April 9 and April 17, 1985, respectively, the LaCrosse County Conservation Alliance and a Congressional representative from Wisconsin expressed their support for Wisconsin's request, as noted in the March 14, 1985, **Federal Register** at 50 FR 10286, for a 70-day Canada goose season in the State's Mississippi River Zone.

By letter dated April 22, 1985, the Wisconsin Department of Natural Resources expressed their concern for the increasing Canada goose depredation problems in the vicinity of Horicon National Wildlife Refuge. The State contends that the 25-day season in 1984 magnified the depredation problems in Wisconsin because landowners could not use hunting as a tool to keep geese off key crop fields for the usual 40-day period. As a short-term solution to this problem the State seeks a 40-day hunting season in the Horicon and Central zones to occur within the periods October 12–November 16 and December 7–15.

Wisconsin believes long term approaches to the depredation problems should consider placing future quota increases into the Horicon Zone, improved depredations control techniques, and longer season options with multiple splits or day hunts.

Wisconsin reports it is necessary to order goose application forms and tags soon. In the absence of any action by the Mississippi Flyway Council MVP (Mississippi Valley Population of Canada geese) Committee in March the State seeks Service agreement on these recommendations.

Response: The Service concurs with the Central Flyway Council recommendation regarding light goose hunting in Kansas.

The Service remains hopeful that additional recommendations concerning management of MVP geese will be forthcoming from the Mississippi Flyway Council. Discussions between the Service and States are proceeding however, in an effort to improve the management of this flock while recognizing individual State needs. The Mississippi River Zone in Wisconsin will be considered in a later document.

The Service recognizes the importance of goose depredation problems in Wisconsin and elsewhere. However, the recommendation by Wisconsin represents a sharp departure from the regulations jointly developed with the MVP States in 1984. The Service believes it essential to consider comments from all sources before reaching a decision on the Wisconsin proposal, and defers action until the late-season regulations are considered in August.

16. *Sandhill cranes.* The Pacific Flyway Council, by letter dated April 11, 1985, and the Central Flyway Council, by letter dated April 25, 1985, recommended the experimental sandhill crane-Canada goose season in Lincoln County, Wyoming be given operational status but the framework dates be changed from September 1–14 to September 1–22. The Pacific Flyway Council also recommended the experimental sandhill crane season in Arizona be given operational status but the season length framework be changed from 4 days to 6 days.

Response: The Service concurs with the recommendations of both Councils for operational status of the two experimental seasons and the minor framework change in each.

21. *Woodcock.* Twenty-one State conservation agencies and 7 individuals submitted written comments on the proposed changes (reductions) in daily bag, season length, and season framework for woodcock in Atlantic Flyway States. Comments addressed the changes as proposed in the March 14, 1985, **Federal Register** (50 FR 10287) and as discussed in greater detail in the Environmental Assessment "Proposed Hunting Regulations on Eastern Population of Woodcock, 1985" announced in the February 5, 1985, **Federal Register** (50 FR 4994).

The States of Rhode Island, New Hampshire, North Carolina, Florida, West Virginia, Massachusetts, Oklahoma, Connecticut, Illinois, Maine, New York, Vermont, South Carolina, Indiana, Virginia, and Pennsylvania expressly or implicitly endorsed the proposed changes.

Tennessee agreed in principle to the need for regulatory changes in the Atlantic Flyway, but requested that there be no changes in the Mississippi Flyway.

Texas did not endorse the proposed changes on the grounds that they were not restrictive enough to effectively reduce harvests of woodcock. The State recommended reducing the daily bag limit to 1 or 2, or closing the season entirely. Additionally, West Virginia and Connecticut, who generally endorsed the proposed changes, suggested that further restrictions may be desirable.

Louisiana, New Jersey, and Maryland did not endorse the proposed changes in hunting regulations principally on the grounds that such changes may be ineffective and inappropriate because unfavorable habitat change, not hunting, is the underlying cause of the decline of woodcock in the Atlantic Flyway.

Vermont, while generally endorsing the proposed changes, requested exception from the October 1 framework opening date so that they may open their woodcock season on the last Saturday of September concurrent with the State's hunting seasons on resident game species. New Jersey requested exemption from the 10-day penalty normally taken by them for selecting zoning as a woodcock harvest strategy.

Several States commented on the adequacy of woodcock survey data and urged the Service to improve or develop methods for monitoring population status, hunter success, and, in particular, for estimating harvest at the national level.

Six individuals commented on the Environmental Assessment and the proposed changes. Detailed technical comments and observations regarding a variety of woodcock ecology and management issues were offered by 3 of the individuals that will be responded to outside of this document. Based on personal data and observations, 2 individuals urged the Service restrict woodcock hunting regulations while 1 individual questioned the reported decline in woodcock numbers and the necessity of harvest restrictions.

Response: The proposed changes represent a significant reduction in opportunities to harvest woodcock and likely will significantly reduce harvests of woodcock. Effecting further harvest reductions would require severe restrictions that do not appear to be warranted at this time. More restrictive regulations would disproportionately affect States and categories of hunters as discussed in detail in the Environmental Assessment, page 10 under "Impacts of Alternatives Other Than the Proposed Action." More restrictive regulations would likely be opposed by many woodcock hunters and State conservation agencies.

The Service recognizes that long-term loss of breeding habitat has been the fundamental cause of the decline of woodcock in the Atlantic Flyway and that relationships among hunting regulations, harvests, and the decline are not understood well. Nonetheless, various sources of information on hunter success indicate that this population is no longer capable of sustaining former levels of harvest. The Service believes that the proposed regulatory changes are necessary to bring harvest opportunities to a level commensurate with the current population status. The changes cannot assure a positive response in the woodcock population but will provide a margin of security in the uncertainty of whether and how harvests come into play in the decline of Atlantic Flyway woodcock.

The Service does not favor Vermont's request for a framework opening date of the last Saturday in September and believes that the option for New Jersey to zone for woodcock hunting should continue to include a 10-day penalty applied to the framework season length.

The Service recognizes that while the existing woodcock surveys generally have provided satisfactory results, some refinements are possible. Work on improving procedures for analyzing singing-ground survey data is near completion, and the Service proposes to begin similar work to improve use of wing-collection survey data. Improved procedures for monitoring hunter success, an important factor to be considered in evaluating effects of the proposed regulatory changes, will be developed. The Service also is testing the feasibility of estimating harvests of woodcock and other migratory game birds by adjusting certain data from existing State and Federal harvest surveys. At this time the Service prefers taking this approach to the problem rather than by instituting a mandatory permit or stamp to be required by hunters.

25. Migratory bird hunting seasons in Alaska. By letter dated April 11, 1985, the Pacific Flyway Council recommended no change in season frameworks for Alaska except that the sandhill crane bag limits framework be increased to 3 sandhill cranes per day and 6 in possession.

Response: The Service concurs with the recommendation.

29. Migratory Bird Hunting on Indian Reservations and Ceded Lands

In the March 23, 1984 **Federal Register** (49 FR 11125–11126), the Service announced the intention to permit more flexibility in migratory bird hunting regulations for Indians on Federal Indian reservations. The Service proposed guidelines that would permit tribes with recognized reserved hunting rights to select season dates that differed from those in the surrounding State(s) with respect to the times when hunting seasons may occur for migratory game birds for which hunting is permitted under Federal regulations. In all other respects (e.g., season length, bag limits, and basic regulations), the 1984 proposed guidelines would have required the adoption of regulations that are consistent with those established by the Fish and Wildlife Service in the general frameworks for migratory bird hunting. Under the March 23 proposal, the special regulations would apply only to tribal members on Federal Indian reservations, and non-Indians or non-tribal members would continue to be subject to the regulations established for application elsewhere in the State. In presenting the guidelines, the Service emphasized the need for a comprehensive and coordinated approach to management of migratory birds and asked that any tribal proposal be accompanied by a detailed evaluation plan.

The Service received 15 letters concerning the proposed guidelines from Indian tribal officials or their attorneys. Ten letters related to Chippewa bands on four reservations in Minnesota and the Wisconsin Chippewa tribes. The remainder came from the Colorado River Indian Tribes, Parker, Arizona; San Carols Indian Tribe, San Carlos, Arizona; White Mountain Apache Tribe, Whiteriver, Arizona; Navajo Nation, Window Rock, Arizona; and the Penobscot Nation, Old Town, Maine. The Service also received letters from the Pacific Flyway Council and from conservation agency officials in 17 States.

State letters expressed concern regarding the cumulative adverse effects that special regulations might have on waterfowl populations if a large number of tribes participated, and most States urged that proposals be reviewed by flyway councils before any special seasons are approved. Indian tribes supported the Service's efforts to accommodate their reserved hunting rights. However, they requested greater flexibility than the Service proposed, as described below.

Four tribes (Colorado River, Navajo, San Carlos Apache, and White Mountain Apache) contended that they have gained recognized authority to manage wildlife resources on their reservations as a result of recent Federal court decisions, and that their management options are not limited by hunting regulations established by State(s) in which the reservations are located. The Penobscot Nation pointed out that settlement of its Native claims granted the tribe full wildlife management authority on its Indian Territory, as well as on its smaller reservation. All of these tribes wanted the option of allowing both tribal and non-tribal members to hunt migratory birds on their reservations (or Indian Territory) on dates that are within annual Federal frameworks but that may differ from those established in States in which the reservations are located. Two tribes made specific proposals; the Navajo Nation requested uniform hunting regulations for both tribal and non-tribal members throughout its reservation (in parts of Arizona, New Mexico, and Utah). The White Mountain Apache Tribe requested a September opening of the bandtailed pigeon season for both tribal and non-tribal hunters on it reservation. The season dates requested by both tribes are within Federal frameworks but differ from those in the surrounding State(s).

Chippewa tribes in Minnesota and Wisconsin asked for more accommodation for tribal members only. The Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin, representing six Wisconsin Chippewa tribes, pointed out that the tribes have gained a judicially recognized right to hunt on ceded lands and wished to establish a migratory bird hunting season for tribal members on these lands in Wisconsin. The Commission indicated that the tribes want an earlier and longer season for ducks and other species that usually are not hunted in Wisconsin until October. The Commission also requested more flexibility in daily bag and possession limits for Canada geese, but stated that the tribes would observe other Federal regulations. Finally, four bands of the Minnesota Chippewa Tribe (Grand Portage, Leech Lake, Mille Lacs, and White Earth) stressed that their members are not bound by migratory bird hunting regulations established for States and waterfowl flyways.

In summary, the tribal requests can be categorized into three types: (1) On-reservation hunting (including Indian Territory) by both tribal and non-tribal members, with hunting by non-tribal members to take place within Federal frameworks but on dates different from those selected by surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

After reviewing the communications received in response to the March 1984 criteria, the Service proposes now to establish the following revised guidelines that would apply to tribes with recognized reserved hunting rights:

A. *On-reservation hunting, tribal and non-tribal members.* On Federal reservations and Indian Territory where tribes have full wildlife management authority over hunting by tribal and non-tribal members, or where the surrounding State(s) have no objections, the Service may establish hunting seasons for both tribal and non-tribal members that may differ from those in the State(s) in which the reservations are located. Opening and closing dates and season length for non-tribal members on these reservations would still have to be within the annual frameworks for migratory bird hunting seasons established by the Fish and Wildlife Service, and all other Federal regulations also would apply to non-tribal hunters (bag and possession limits and basic regulations). Season length and opening and closing dates for hunting by tribal members on their reservations could be established in accordance with proposed guideline B, below. On reservations where tribes do not have full management authority over hunting by non-tribal members or have not received State approval, non-tribal members could hunt on the reservation only when the season also is open in the surrounding State(s), and non-tribal hunters would be bound by all other migratory bird hunting regulations established in the State(s). This guideline will accommodate requests made by the Navajo Nation and White Mountain Apache Tribe. These two tribes indicated that the proposed hunting regulations on their reservations would apply to both tribal and non-tribal members. However, other tribes with recognized reserved hunting rights and management authority could request regulations that differed for tribal and non-tribal members.

B. *On-reservation hunting, tribal members only.* The Service may establish earlier opening or later closing dates and longer migratory bird hunting seasons for tribal members to hunt within the boundaries of Federal Indian reservations. Such earlier openings

could be outside of usual Federal frameworks but would still have to be consistent with the closed season requirements of the 1916 Migratory Bird Treaty with Canada. The Service would negotiate with tribes that request bag limits different than those provided in Federal frameworks. These special regulations would be available only for tribes that have recognized reserved hunting rights. Based on comments received from tribes, the Service anticipates that most seasons permitted under this guideline will begin in mid-September and end when the migratory bird season closes in the surrounding State(s). This guideline should accommodate opening date and season length requests from the various bands of the Minnesota Chippewa Tribe.

C. *Off-reservation hunting on ceded lands, tribal members only.* In consultation with tribes and the affected State(s), the Service may establish earlier opening or later closing dates and longer migratory bird hunting seasons for tribal members with a judicially recognized right to hunt on ceded lands. As is the case in paragraph B above, such openings could be outside of the usual Federal frameworks but would have to be otherwise consistent with the closed season provisons of the 1916 Migratory Bird Treaty with Canada. The Service would negotiate with tribes that request bag limits different than those provided in Federal frameworks. The special regulations would apply only to ceded lands now in public ownership. Non-tribal members would be permited to hunt on ceded lands only at times when the State migratory bird season is open on these lands. The Service anticipates that such seasons for tribal members generally would begin in mid-September and end with closure of the regular State migratory bird hunting season. This guideline should provide the flexibility in opening date and season length requested by the Great Lakes Indian Fish and Wildlife Commission (for the Wisconsin Chippewa tribes).

Tribes that wish to establish special migratory bird hunting seasons under any of these guidelines should submit a proposal to the Office of Migratory Bird Management (MBMO) with a copy to the appropriate Service regional office shown at the end of this document. The proposal should include (1) the requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. The Service will review proposals on a case-by-case basis and may request modifications based on the conservation needs of the affected species. In most instances, hunting regulations approved by the Service will be established on an experimental basis until harvest estimates have evaluated and confirmed.

Before developing these proposed revised guidelines, the Service prepared a draft environmental assessment that addresses Indian hunting rights, reviews available information on the current status of migratory bird hunting on Federal Indian reservations, and evaluates the impact that adoption of the proposed new guidelines likely will have on migratory birds. Copies of the assessment may be obtained from MBMO. Written comments and suggestions concerning the assessment should be sent to MBMO by July 8, 1985. Comments and tribal requests concerning the proposed guidelines for migratory bird hunting on Indian reservations and ceded lands must be received no later than July 1, 1985.

Generally, the Service believes that the guidelines, when made final, will provide appropriate flexibility for Indian tribes to exercise their reserved hunting rights, and that it is unlikely that adoption of the new criteria would adversely impact the population status of migratory birds. The remaining area of concern relates to special hunting seasons that could be established on reservations where tribes have management authority over non-tribal hunters and wish to develop hunting programs for non-tribal members. A large influx of non-tribal hunters onto a given reservation at a time when the season is closed in the surrounding State(s) could result in excessive adverse harvests for a particular species. The requests received thus far from tribes with this authority are unlikely to result in such adverse impacts, however, and the Service intends to establish experimental season dates on the Navajo, White Mountain Apache, and possibly on other such reservations, beginning with the 1985–86 hunting season. Nevertheless, given the potential for adverse impacts to occur, all requests for special seasons which involve non-tribal hunters will be strictly scrutinized and dealt with on a case-by-case basis.

The Service also plans to continue discussions with the Chippewa Tribe in Minnesota and with the Great Lakes Indian Fish and Wildlife Commission and Wisconsin Department of Natural Resources, with the aim of developing mutually acceptable daily bag and possession limits and other hunting regulations that can be implemented during the 1985–86 hunting season, or as soon thereafter as possible. Regulations established under these guidelines may be implemented through a Memorandum of Understanding with a given band or tribe.

The question of special migratory bird hunting regulations on Indian reservations and ceded lands is complex, and unforeseen circumstances may arise that are not adequately addressed in the guidelines proposed here. However, these proposed guidelines may serve to clarify situations where special regulations are appropriate, as well as where they are not. Migratory birds are an international resource and their conservation is of paramount concern. It is essential that the Service, tribes, and flyway councils cooperate closely on this important issue. The Service intends to pursue ways in which this can best be accomplished within the present system of developing and implementing migratory bird hunting regulations.

FISH AND WILDLIFE SERVICE REGIONAL OFFICES

[Address Regional Director, U.S. Fish and Wildlife service]

States	Address	Telephone
California, Hawaii, Idaho, Nevada, Oregon, Washington.	Lloyd 500 Bldg., Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.	503/231-6118
Arizona, New Mexico, Oklahoma, Texas	P.O. Box 1306, 500 Gold Avenue SW-Rm. 1306, Albuquerque, NM 87103.	505/766-2321
Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin.	Federal Building, Fort Snelling, Twin Cities, MN 55111.	612/725-3563
Alaberna, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee	Richard B. Russell Fed. Bldg., Room 1200, 75 Spring Street SW, Atlanta, GA 30303.	404/221-3588
Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.	One Gateway Center, Suite 700, Newton, Corner, MA 02158.	617/965-5100
Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming.	P.O. Box 25486, Denver Federal Center, Denver, CO 80225.	303/236-7920
Alaska	1011 E. Tudor Road, Anchorage, AK 99503	907/786-3542

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point enough in the summer to allow affected State agencies to appropriately adjust their licensing the regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate in the rulemaking process by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Man Interior Building, Room 3252, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, N.W., Washington, D.C.

All relevant comments on proposals will be considered provided those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands are received no later than June 20, 1985; those on early season proposals (except Alaska, Hawaii, Puerto Rico, and the Virgin Islands) are received no later than July 15, 1985; and those on late season proposals are received by August 19, 1985. Comments and tribal requests concerning the proposed guidelines for migratory bird hunting on Indian reservations and ceded lands will be considered provided they are received no later than July 1, 1985. The Service will consider all comments, but substantive response to individual comments may not be provided.

Flyway Council Meetings

Department of the Interior respresentatives will be present at the following meetings of flyway councils:

Atlantic Flyway—Cherry Hill, NJ (Hyatt Cherry Hill Hotel) July 29–30
Mississippi Flyway–Indianapolis, IN (Speedway Motel) July 28–29
Central Flyway–Bismarck, ND (Kirkwood Motor Inn) July 28–30
Pacific Flyway–Reno, NV (Sundowner Hotel) July 28

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated, however, the Central Flyway Council meeting will commence at 10 a.m., July 28

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with Council on Environmental Quality on June 6, 1975, and notice of availability was published in **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service at the address indicated above.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical."

Section 7 consultations are presently underway regarding both the early and late season regulatory proposals. It is possible that the findings from the consultation, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications that may be desirable will be reflected in the final frameworks for Alaska, Puerto Rico, and the Virgin Islands, scheduled for publication in the **Federal Register** on or about July 11, 1985; those for other early seasons on or about July 26, 1985; and for later seasons on or about September 2, 1985.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Office of Endangered Species, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985, (50 FR 10276), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the letter. This information is included in the present document by reference. As noted in the above **Federal Register** publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

Dated May 30, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-13451 Filed 6-4-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant such amendments. The modifications would ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

DATE: Comments must be received on or before July 5, 1985.

ADDRESSES: Comments may be addressed to the Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Room 3252, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Room 2343, Washington, D.C. 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains the provisions that govern hunting on national wildlife refuges. Hunting is regulated on refuges for three basic reasons: (1) To properly manage the wildlife resource, (2) to protect other refuge values, and (3) to ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is an adequate way of meeting these objectives. On the other refuges, it is necessary for the Service to issue hunting regulations that supplement State regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations are issued only at the time of, or after the determination and publication of, the opening of a wildlife refuge to migratory game bird, upland game, or big game hunting. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. On September 19, 1984, at 49 FR 36736, the Service codified refuge-specific regulations for migratory game bird, upland game, and big game hunting. Subsequent rulemakings at 49 FR 38642, 49 FR 37093, 49 FR 43549, and 49 FR 50049 corrected, amended, or added to these regulations.

The Service reviews refuge hunting programs annually to determine if modifications in the regulations governing individual refuge hunts are necessary. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant that refuge-specific hunting regulations be modified, relaxed, or made more stringent. This ensures the continued compatibility of hunting with the purposes for which individual refuges were established and, to the extent practical, makes refuge hunting programs consistent with State regulations. This proposed rule would amend and supplement certain refuge-specific regulations in 50 CFR Part 32, §§ 32.12, 32.22, and 32.32, which pertain to migratory game bird, upland game, and big game hunting, respectively.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the proposed amendments to refuge-specific regulations for migratory game bird, upland game, and big game hunting. Accordingly, interested persons may submit written comments, suggestions, or objections concerning this proposal to the Associate Director-Wildlife Resources (address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge Administration Act authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with major purposes for which the areas were established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge-specific hunting regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the affected refuges were established. Initial compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the hunting plans are developed, and the determinations required by these Acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in

costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Hunter Surveys	1018–0044
Special Use Permits	1018–0046
Hunter Reservation/Permit Application/Blind Assignment	1018–0047

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved.

Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters. This information may also be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–2324.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisana, Mississippi, North Carolina, South Carolina, Puerto Rico and Tennessee.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 221–3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–5100.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 234–4608.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State hunting regulations. There are no refuge-specific hunting regulations for these refuges).
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3542.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

PART 32—[AMENDED]

Accordingly, it is proposed to amend Part 32 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 703, 704, 43 U.S.C. 351a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

2. Section 32.12 would be amended by revising paragraph (c)(1)(v)(C); adding a new paragraph (c)(1)(v)(D); revising paragraph (d)(1)(v); adding new paragraphs (d)(1)(vi) and (d)(1)(vii); revising paragraph (d)(3)(v); adding new paragraphs (d)(3)(vi) and (d)(3)(vii); adding new paragraphs (e)(4)(iii) and (e)(4)(iv); revising paragraphs (g)(1) and (g)(2); revising paragraph (h)(2); adding a new paragraph (h)(3)(vii); revising paragraphs (i)(2) and (i)(3); revising paragraph (m); revising paragraphs (p)(1) through (p)(3) and paragraphs (p)(4)(vi) through (p)(4)(viii); adding a new paragraph (p)(4)(ix); revising paragraph (r)(2); revising paragraph (u)(1) through (u)(3) and paragraph (u)(5); revising paragraphs (w)(1) and (w)(3); redesignating paragraph (w)(9) as paragraph (w)(10); adding a new paragraph (w)(9); revising paragraph (z) in its entirety; revising paragraphs (bb)(1) and (bb)(2); revising paragraph (hh); revising paragraph (ii)(2)(i); revising paragraph (kk)(1)(ii); revising paragraph (ll)(1)(iii); adding a new paragraph (ll)(1)(vi); revising paragraph (nn); revising paragraph (oo); and adding a new paragraph (pp)(8)(iv), as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(c) * * *
(1) * * *
(v) * * *

(C) During the goose season, the Hart Mine Marsh Area is closed to hunting until noon.

(D) Hunters are restricted to 10 shells per day, except in the Hart Mine Marsh Area.

(d) * * *

(1) * * *

(v) Blinds, boats, and decoys must be removed from the refuge or to a designated area following each day's hunt.

(vi) Firearms must be unloaded when transported or in refuge campgrounds.

(vii) Dogs are permitted.

* * * * *

(3) * * *

(v) Blinds, boats, and decoys must be removed from the refuge or to a designated area following each day's hunt.

(vi) Firearms must be unloaded when transported or in refuge campgrounds.

(vii) Dogs are permitted.

* * * * *

(e) * * *

(4) * * *

(iii) Hunters may not possess more than 25 shells while in the field.

(iv) Hunters must park in assigned lots.

* * * * *

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting except on the South Upland Hunting Area.

(ii) Hunting of waterfowl and coots is permitted on the South Waterfowl Area, the West Waterfowl Area, and the Young Waterfowlers Area.

(iii) Hunting of snow geese only is permitted on the Snow Goose Area.

(iv) Hunting is permitted only from designated sites, except on the South Upland Hunting Area.

(v) The maximum number of hunters permitted per blind is as follows: West Waterfowl and Snow Goose Areas—4: South Waterfowl Area—3: Young Waterfowlers Area—2.

(vi) The possession of a loaded shotgun while outside a blind or designated site is not permitted unless actively pursuing crippled birds.

(vii) Waterfowl hunters may not use or possess more than 15 shells per day on the West and Young Waterfowlers Hunt Areas.

(viii) Waterfowl hunters must use and possess shells containing only steel shot.

(ix) Hunting is not permitted from March 1 through August 31.

(2) *Prime Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for Waterfowl hunting.

(ii) Only Waterfowl and coots may be taken on the Waterfowl and Young Waterfowlers Hunting Area.

(iii) Only mourning doves, common snipe, and woodcock may be taken on the North Hunting Area.

(iv) Access to the waterfowl hunting areas is by boat only.

(v) Except on the North Hunting Area, hunting is permitted from designated blinds only, with a maximum of three hunters per blind.

(vi) The possession of a loaded shotgun while outside of a blind is not permitted unless actively pursuing crippled birds.

(vii) Waterfowl hunters must use and possess shells containing only steel shot.

(viii) Hunters using the Young Waterfowlers Hunting Area may not use or possess more than 25 shells per day.

(ix) Hunting is not permitted from March 1 through August 31.

(h) * * *

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting on the Dixie County portion of the refuge will be in accordance with State regulations for the Perpetual Wildlife Management Area.

(ii) Hunting of ducks, moorhens, woodcock, rails, coots, and snipe only is permitted on the Levy County portion of the refuge.

(iii) Permits are required for hunting on the Levy County portion of the refuge.

(iv) Hunting is not permitted on the Levy County portion of the refuge during the muzzleloading gun deer hunt.

(v) Only temporary blinds are permitted.

(vi) Decoys must be removed from the refuge following each day's hunt.

(vii) Hunters must use and be in possession only of shells containing steel shot.

(3) * * *

(vii) Decoys and other personal property must be removed from the hunting area following each day's hunt.

* * * * *

(i) * * *

(2) Hunting is permitted only on Tuesdays, Thursdays, and Saturdays until noon during the State waterfowl hunting season.

(3) Hunters on the Georgia portion of the refuge must use and be in possession only of shells containing steel shot.

* * * * *

(m) *Iowa, Illinois, and Missouri—Mark Twain National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas on the refuge subject to the following conditions:

(1) Hunting is only permitted on the Big Timber Division, the Bear Creek Unit of the Gardner Division, and Turkey and Otter Islands.

(2) Only temporary wood or brush blinds are permitted.

(3) Blinds cannot be locked or otherwise sealed against public entry.

(4) Blinds are open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of the legal shooting hours.

* * * * *

(p) * * *

(1) *Bogue Chito National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodstock is permitted on designated areas of the refuge subject to the following conditions:

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only Temporary blinds are permitted.

(2) *D'Arbonne National Wildlife Refuge.* Hunting of ducks, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted until noon each day.

(ii) Boats, decoys, and non-native blinds materials must be removed from the refuge following each day's hunt.

(3) *Delta National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of ducks, geese, and coots is permitted only on Wednesdays, Thursday, Saturdays, and Sundays until noon during the State duck season.

(ii) Hunting is not permitted during that portion of the State goose season that extends beyond the State duck season.

(iii) Blinds and decoys must be removed from the refuge following each day's hunt.

(iv) Snipe, rails, and gallinules may not be taken during the State duck season.

(4) * * *

(vi) Blinds must be spaced at least 150 yeards apart.

(vii) Decoys and blinds must be removed from the refuge following each day's hunt.

(viii) Hunting is not permitted during the goose-only portion of the State waterfowl season.

(ix) Access into the marsh and ponds is by foot or boat only. Motorized boats may be used only in canals and bayous.

* * * * *

(r) * * *

(2) *Parker River National Wildlife Refuge.* Hunting of waterfowl and coots is permitted on designated area of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and possess shells containing only steel shot.

(iii) Hunters may not use or possess more than 25 shells per day.

(iv) Hunters using Area B must set out a minimum of six waterfowl decoys and hunt within 50 yards of these decoys.

* * * * *

(u) * * *

(1) *Hillside National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

(v) Dove hunting is permitted during the first two Saturdays of the State season, and the remainder of the first segment and the entire second segment of the season.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

* * * * *

(5) *Panther Swamp National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

* * * * *

(w) * * *

(1) *Benton Lake National Wildlife Refuge.* Hunting of ducks, geese, tundra swans, and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Only nonmotorized boats are permitted.

(ii) Waterfowl hunting is not permitted after November 30.

* * * * *

(3) *Bowdoin National Wildlife Refuge.* Hunting of waterfowl, coots, sandhill cranes, and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

* * * * *

(9) *Medicine Lake National Wildlife Refuge.* Hunting of ducks, geese, snipe, and doves is permitted on designated areas of the refuge.

(10) *Red Rocks Lake National Wildlife Refuge.* * * *

(z) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.* Hunting of rails, gallinules, waterfowl, and coots is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunters must use and possess shells containing only steel shot according to State regulation.

(2) All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent and pit blinds are not permitted.

(3) Waterfowl hunters may not use or possess more than 25 shells per day in Hunting Areas A, B, and C in the Barnegat Division and in Hunting Unit 1 in the Brigantine Division.

(4) In Hunting Area B of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. Access is by boat only. A minimum of six decoys per site is required.

(5) In Hunting Area C of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. A permit is required on opening days, Saturdays, and holidays.

(6) Use of Hunting Unit 3 of the Brigantine Division is restricted to certified Young Waterfowl Program trainees from the close of the first portion of the split duck season through the second Saturday of the second portion of the split duck season.

* * * * *

(bb) * * *

(1) *Iroquois National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Completion of the State waterfowl identification course is required.

(iii) Hunting is not permitted from March 1 through Septemnber 30.

(iv) Waterfowl hunters must use and possess shells containing only steel shot.

(v) Waterfowl hunters may not use or possess more than 15 shells per day.

(vi) Waterfowl hunters must provide and use a minimum of six decoys per hunter.

(vii) Waterfowl hunting is permitted from designated stands only, with a maximum of three hunters per stand.

(viii) Hunting must occur within 50 feet of a stand marker, unless actively pursuing crippled birds.

(2) *Montezuma National Wildlife refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Completion of the State waterfowl identification course is required.

(iii) Hunters must use and possess shells containing only steel shot.

(iv) Hunters may not use or possess more than 25 shells per day.

(v) Hunting parties are limited to a maximum of two hunters per group.

(vi) Motorless boats are required.

* * * * *

(hh) *Pennsylvania—Erie National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is permitted on the refuge from September 1 through the end of February.

(2) Waterfowl hunters must use and possess shells containing only steel shot.

(3) Only motorless boats are permitted for waterfowl hunting. Boats and decoys must be removed from the refuge at the end of each day's hunt.

(ii) * * *

(2) * * *

(i) Dove and woodcock hunting is permitted only when the seasons for

these species coincide with the State quail season.

* * * * *

(kk) * * *

(ll) * * *

(ii) Hunting is permitted only on Saturdays and Sundays during the regular duck season.

* * * * *

(ll) * * *

(1) * * *

(iii) Hunting is permitted until noon.

* * * * *

(vi) The refuge unit formerly known as the Pace Tract is open to hunting every day of the early teal season and regular waterfowl season.

* * * * *

(nn) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required to hunt in the Patrick Marsh-Charcoal Creek Controlled Hunting Area and the Junior Waterfowl Hunting Area.

(2) Hunters may not use or possess more than 25 shells per day on the Patrick Marsh-Charcoal Creek Controlled Hunting Area and the Junior Waterfowl Hunting Area.

(3) Boats are required on the permit hunt area.

(4) Hunters within the permit area must provide and use a minimum of six decoys and hunt within 50 feet of these decoys.

(5) Hunters must use and possess shells containing only steel shot.

(oo) *Virginia—Chincoteague National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required on the non-guided public hunting area.

(2) Compartments 1 to 4 are reserved for guided hunting only, with refuge-designated commercial guides.

(3) Public hunting is permitted only within 50 feet of a designated blind site, unless actively pursuing crippled birds.

(4) Permanent and pit blinds are not permitted, except in Compartments 1 to 4.

(5) Blind sites are limited to one party of hunters, with a maximum of four hunters per party.

(pp) * * *

(8) * * *

(iv) Hunters may not use or possess more than 10 shells per day on the Riekkola Unit.

* * * * *

3. Section 32.22 would be amended by revising paragraphs (a)(4)(ii) through (a)(4)(iv); revising paragraphs (d)(2)(ii) and (d)(2)(iii); adding new paragraphs (d)(2)(v) and (d)(2)(vi); revising paragraphs (d)(4)(ii) and (d)(4)(iii); adding new paragraphs (d)(4)(v) and (d)(4)(vi); revising paragraphs (d)(6)(ii) and (d)(6)(iii); revising paragraphs (g)(1) and (g)(2); revising paragraphs (h)(2) and (h)(3)(ii); revising paragraphs (l)(1) and (l)(2); revising paragraphs (o)(3); revising paragraphs (q)(4) and (q)(6)(i); revising paragraphs (v)(1) through (v)(3) and paragraphs (v)(5) and (v)(6)(iv); revising paragraph (y)(1); revising paragraph (aa)(1)(i); revising paragraph (bb)(2); revising paragraph (cc)(2)(i); adding a new paragraph (cc)(2)(iv); revising paragraph (dd)(1); redesignating paragraphs (ff)(9) and (ff)(10) as paragraphs (ff)(10) and (ff)(11), respectively; adding a new paragraph (ff)(9); adding a new paragraph (hh)(2)(iii); revising paragraph (hh)(3)(iv); adding a new paragraph (hh)(4)(iii); revising paragraphs (jj)(1) and (jj)(2); revising paragraph (kk); and revising paragraph (mm), as follows:

§ 32.22 Refuge-specific regulations; upland game.

(a) * * *

(4) * * *

(ii) Hunting of squirrel is permitted during the first two weeks of the State season only.

(iii) Hunting of raccoon and opposum is permitted during the last 28 days of the State season only.

(iv) Hunting of rabbits is permitted during the last two weeks of the State season only.

* * * * *

(d) * * *

(2) * * *

(ii) Hunting of quail, squirrel, and rabbit is permitted only during the State seasons through January 31, except that it is not permitted during the refuge deer gun and muzzleloader hunts.

(iii) Hunting of raccoon and opossum is permitted only during the first five days and last five days of the State season.

* * * * *

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Squirrel and rabbit hunting with dogs is permitted beginning January 1.

* * * * *

(4) * * *

(ii) Hunting of quail, squirrel, and rabbit is permitted only during the State seasons through January 31, except that it is not permitted during the refuge deer gun and muzzleloader hunts.

(iii) Hunting of raccoon and opossum is permitted only during the first five days and last five days of the State season.

* * * * *

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Squirrel and rabbit hunting with dogs is permitted beginning January 1.

* * * * *

(6) * * *

(ii) Hunting of squirrel and rabbit is permitted from the first Saturday in October through October 31. Squirrel and rabbit may also be taken when their respective State seasons coincide with refuge deer archery and waterfowl hunts, but they must be taken with weapons legal for those hunts.

(iii) Hunting of raccoon and opossum is permitted for six days starting on the first Monday in December.

* * * * *

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the South Upland Hunting Area.

(ii) Hunting is permitted from 1/2 hour before sunrise to 1/2 hour after sunset.

(iii) Hunting is not permitted from March 1 through August 31.

(2) *Prime Hook National Wildlife Refuge.* Hunting of rabbit, squirrel, quail, and pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the North Hunting Area.

(ii) Hunting is permitted from 1/2 hour before sunrise to 1/2 hour after sunset.

(iii) Hunting is not permitted from March 1 through August 31.

(h) * * *

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting on the Dixie County portion of the refuge will be in accordance with State regulations for the Perpetual Wildlife Management Area.

(ii) Hunting of squirrel, quail, rabbit, and armadillo only is permitted on the Levy County portion of the refuge from the day after the State general deer gun season ends through the last day of the State squirrel season.

(iii) Permits are required for hunting on the Levy County portion of the refuge.

(iv) Dogs are permitted for quail hunting only.

(3) * * *

(ii) Hunting is permitted beginning the third Friday in December through the

last Sunday in January except on Christmas and New Year's Day.

* * * * *

(l) * * *

(1) Hunting is permitted on the Big Timber and Gardner Divisions, and Turkey and Other Islands.

(2) Hunting is permitted on the Bear Creek Unit of the Gardner Division during Illinois seasons. On the remainder of the Gardner Division, only squirrel hunting is permitted from the opening of the State season through September 30.

* * * * *

(o) * * *

(3) *Quivira National Wildlife Refuge.* Hunting of pheasant, bobwhite quail, squirrel, and rabbit is permitted on designated areas of the refuge.

* * * * *

(q) * * *

(4) *Delta National Wildlife Refuge.* Hunting of rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted from the day after the waterfowl season closes through the remainder of the State season.

(ii) Only shotguns are permitted.

(iii) Dogs are permitted.

* * * * *

(6) * * *

(i) Hunting of raccoon and opossum is permitted only during January.

* * * * *

(v) * * *

(1) *Hillside National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted during the entire State season, but the use of dogs for rabbit hunting is permitted only after the last day of the State deer season.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted during the entire State season, but the use of dogs for rabbit hunting is permitted only after the last day of the State deer season.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted during the entire State season, but the use of dogs for rabbit hunting is permitted only after the last day of the State deer season.

* * * * *

(5) *Panther Swamp National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted from the opening of the State season through December 15 without dogs and during February with dogs.

(6) * * *

(iv) Hunting of raccoon and opossum is permitted on four consecutive nights beginning the fourth Wednesday in January.

* * * * *

(y) *Nebraska*—(1) *Crescent Lake National Wildlife Refuge.* Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge.

* * * * *

(aa) * * *

(1) * * *

(i) Hunting of jackrabbit and cottontail rabbit is permitted only during the waterfowl season.

* * * * *

(bb) * * *

(2) *Montezuma National Wildlife Refuge.* Hunting of gray squirrel, cottontail rabbit, raccoon, and fox is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of raccoons.

(ii) Hunting is permitted from the third Sunday in December through the close of the respective State seasons.

(iii) Shotguns only are permitted, except that .22 caliber firearms may be used to take raccoon.

(cc) * * *

(2) * * *

(i) Hunting of squirrel is permitted from the first day of the State season through the first Friday in November, except during any gun deer hunts.

* * * * *

(iv) Hunting of raccoon and opossum is permitted from the first day of the State season through the first Friday in November, except during any gun deer hunts.

(dd) * * *

(1) *Arrowwood National Wildlife Refuge.* Hunting of pheasant, grouse, Hungarian partridge, rabbit, and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the State deer gun season through the regular State late upland game season.

* * * * *

(ff) * * *

(9) *Sheldon National Wildlife Refuge.* Hunting of quail, grouse, and partridge is permitted on designated areas of the refuge.

(10) *Umatilla National Wildlife Refuge.* * * *

(11) *William L. Fenley National Wildlife Refuge.* * * *

* * * * *

(hh) * * *

(2) * * *

(iii) Hunting of quail and rabbit is permitted only from the beginning of the State season to December 31.

(3) * * *

(iv) Hunting of raccoon and opossum is permitted during the last ten days of the State season only.

(4) * * *

(iii) Hunters must wear a minimum of 500 square inches of flourescent orange colored material above the wasitline.

* * * * *

(jj) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted during the first two weeks of the State season.

(2) *Hatchie National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Small game hunting is not permitted during the refuge deer archery and gun hunting season.

* * * * *

(kk) *Texas—Hagerman National Wildlife Refuge.* Hunting of squirrel, rabbit, and quail is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunters are required to check in and out of the hunt area.

(2) Only shotguns and bows and arrows are permitted.

(3) Upland game hunting is not permitted during the regular State waterfowl season.

* * * * *

(mm) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) The use of rifles is not permitted on that portion of the refuge lying east of the Missisquoi River.

(2) Huntintg is not permitted from the January 1 through August 31.

* * * * *

4. Section 32.32 would be amended by revising paragraph (a)(1)(iii); revising paragraph (d)(2) and (d)(4); revising paragraphs (g)(1) and (g)(2); revising paragraph (h)(2)(iii); adding a new paragraph (h)(2)(v); revising paragraphs (h)(3) and (h)(5)(iii) through (h)(5)(vi); adding new paragraphs (h)(5)(viii) through (h)(5)(x); revising paragraphs (h)(6)(ii) and (h)(6)(iv); adding new paragraphs (h)(6)(v) through (h)(6)(viii); revising paragraphs (i)(4)(ii) through (i)(4)(iv); adding new paragraphs (i)(4)(vii) and (i)(4)(viii); revising paragraph (i)(5); introductory text revising paragraph (j)(4); adding a new paragraph (j)(5); revising paragraph (n); adding new paragraphs (r)(1)(iii) and (r)(1)(iv); revising paragraph (r)(2); redesignating paragraphs (r)(4) through (r)(6) as (r)(5) through (r)(7), respectively; adding a new paragraph (r)(4); revising paragraph (t)(2); revising paragraphs (u)(1) and (u)(2); revising paragraphs (x)(1)(i) and (x)(1)(iii); adding a new paragraph (x)(1)(v); revising paragraphs (x)(2), (x)(3)(i), (x)(3)(ii), (x)(5)(i), and (x)(5)(ii); adding a new paragraph (x)(5)(v); revising paragraphs (x)(6)(iv) and (x)(6)(viii); revising paragraph (y)(1)(i); revising paragraph (aa)(1); revising paragraph (cc); revising paragraphs (ee)(1) and (ee)(2); revising paragraphs (ff)(1), (ff)(2), and (ff)(3)(ii); adding new paragraphs (ff)(3)(v) and (ff)(3)(vi); adding a new paragraph (gg)(10)(iii); revising paragraph (gg)(13); redesignating paragraph (ii)(4) as paragraph (ii)(5); adding a new paragraph (ii)(4); revising paragraph (11)(l); revising paragraph (mm)(1)(i); revising paragraph (mm)(2); revising paragraph (pp) and revising paragraphs (qq)(1) through (qq)(3) as follows:

§ 32.32 Refuge-specific regulations; big game.

(a) * * *

(1) * * *

(iii) Hunting is permitted from the opening day of the State season through December 1.

* * * * *

(d) * * *

(2) *Felsenthal National Wildlife Refuge.* Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted only from the opening day of the State season through January 31, except by special permit during quota gun deer hunts.

(iii) Muzzleloader hunting is permitted during the last consecutive Friday and Saturday in October only.

(iv) Modern gun hunting is permitted during the State Thanksgiving Holiday hunt only.

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Feral hogs may be taken during daylight hours of any refuge hunt with weapons legal for that hunt.

* * * * *

(4) *Overflow National Wildlife Refuge.* Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted only from the opening day of the State seasons through January 31, except by special permit during quota gun deer hunts.

(iii) Muzzleloader hunting is permitted during the last consecutive Friday and Saturday in October only.

(iv) Modern gun hunting is permitted during the State Thanksgiving Holiday hunt only.

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Feral hogs may be taken during daylight hours of any refuge hunt with weapons legal for that hunt.

* * * * *

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A permit is required on the Regular and Headquarters Deer Hunt Areas.

(ii) Hunting on the Headquarters Deer Hunt Area must be from designated stands only, unless actively tracking or retriving wounded deer.

(iii) Only portable tree stands may be used and must be removed from the refuge each day.

(2) *Prime Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting Areas A and B and the North Hunting Area are open to shotgun and muzzleloader hunting.

(iii) Archery hunting is permitted on North Hunting Area only.

(iv) Archery hunting is not permitted during the October primitive weapons season.

(v) Only portable tree stands may be used and must be removed from the refuge each day.

(h) * * *

(2) * * *

(iii) Two four-day blackpowder hunts are permitted beginning on the first and third Thursdays following the close of the archery hunt.

* * * * *

(v) Hunters must wear a visible outer garment of daylight florescent orange material.

(3) *Lower Suwannee National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting on the Dixie County portion of the refuge will be in accordance with State regulations for the Perpetual Wildlife Management Area.

(ii) Hunting of white-tailed deer and feral hogs only is permitted on the Levy County portion of the refuge beginning the third Saturday in November and extending through the second Sunday in December, except on Thanksgiving.

(iii) Permits are required for hunting on the Levy County portion of the refuge.

(iv) Hunters must wear a visible outer garment of daylight florescent orange material.

* * * * *

(5) * * *

(iii) Only bearded turkeys may be taken.

(iv) Antlerless deer may not be taken on the Panacea Unit of the refuge during the archery hunt.

(v) A bucks-only deer, turkey, and hog hunt using bows and arrows and/or muzzleloaders is permitted for three consecutive days beginning the third Friday in November.

(vi) Two three-day bucks-only deer, hog, and turkey hunts are permitted on consecutive weekends beginning on the fourth Friday in November.

* * * * *

(viii) A hogs-only hunt is permitted for three consecutive days beginning the second Friday in December.

(ix) Turkey hunting is permitted for ten consecutive days beginning on the fourth Friday in March.

(x) Hunters must wear a visible outer garment of daylight florescent orange material.

(6) * * *

(ii) Archery hunting is permitted for three consecutive days beginning on Thursday of the first full week in November.

* * * * *

(iv) A primitive weapons hunt is permitted for three consecutive days beginning on the second Thursday in December and for three consecutive days beginning on the last Thursday of the State modern gun season.

(v) Two deer of either sex may be taken during each hunt.

(vi) One turkey of either sex may be taken during the archery hunt and the December primitive weapon hunt.

(vii) During the archery and primitive weapon hunts, hunters must remain on their stands from one-half hour before sunrise to 9:00 a.m.

(viii) Hunters must wear a visible outer garment of daylight florescent orange material during the primitive weapons hunt.

(i) * * *

(4) * * *

(ii) Archery hunting is permitted for 16 consecutive days beginning on the last Saturday in September.

(iii) Primitive weapons hunting of deer is permitted for three consecutive days beginning on the Thursday following the opening of the State deer firearms season. Deer taken on this hunt must have three or more points on one side or must be antlerless.

(iv) A bucks-only deer hunt is permitted for three consecutive days beginning two weeks after the opening of the refuge primitive weapons hunt.

* * * * *

(vii) A general gun deer hunt is permitted on the two Saturdays following the bucks-only deer hunt and on the first Saturday in December.

(viii) Checking of bagged game is required.

(5) *Wassaw National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(j) * * *

(4) Hunters must wear a minimum of 500 square inches of fluorescent orange colored material above the waistline.

(5) Two deer may be taken. Deer may be of either sex.

* * * * *

(n) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Firearms hunting is permitted on the Bear Creek Unit of the Gardner Division. Firearms hunting is permitted on the remainder of the Gardner Division during part of the November firearms season only. Hunting is permitted from 6:30 to 3:00 p.m. A refuge permit is required.

(2) Archery hunting is permitted on the Bear Creek Unit of the Gardner Division. Archery hunting is permitted on the remainder of the Gardner Division during part of the Illinois archery deer season only. A refuge permit is required.

(3) Hunting is permitted on the Big Timber Division and on Turkey and Otter Islands during the State season.

* * * * *

(r) * * *

(1) * * *

(iii) Bucks-only deer gun hunting is permitted on 12 consecutive days beginning the second Saturday of November.

(iv) Either-sex deer gun hunting is permitted on three consecutive days beginning on the Friday after Thanksgiving.

(2) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted.

(ii) Muzzleloader hunting for deer (bucks only) and unmarked feral hogs is permitted from January 2 through January 20.

(iii) Checking of bagged game is required.

* * * * *

(4) *Delta National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted from the opening of the State season through October 31.

(ii) Only portable stands are permitted and they must be removed from the refuge after each day's hunt.

(5) Lacassine National Wildlife Refuge. * * *

(6) Tensas River National Wildlife Refuge.

(7) Upper Ouachita National Wildlife Refuge. * * *

* * * * *

(t) * * *

(2) *Rachel Carson National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotgun and archery hunting are permitted.

(u) *Maryland*—(1) *Blackwater National Wildlife Refuge.* Hunting is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Handguns and breech-loading rifles are not permitted.

(iii) In the headquarters hunt area, hunters must remain within 30 feet of their stand, unless actively tracking or retrieving wounded deer.

(2) *Eastern Neck National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only one deer of either sex may be taken.

(iii) Only archery, shotgun, and muzzleloader hunting is permitted.

(iv) Loaded weapons are not permitted in parking areas or on blacktopped roads.

* * * * *

(x) * * *

(1) * * *

(i) Permits are required.

* * * * *

(iii) General gun deer hunting is permitted on the third Thursday of December.

* * * * *

(v) Muzzleloader deer hunting is permitted for eight consecutive days beginning the first Saturday of the State season.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

* * * * *

(i) Only archery and primitive weapons hunting are permitted.

(ii) Permits are required.

* * * * *

(5) * * *

(i) Permits are required.

(ii) The youth deer hunt is permitted on the first day of the State either-sex deer season.

* * * * *

(v) General gun hunting for deer is permitted from the beginning of the State season through November 30 and from December 24 through December 31.

(6) * * *

(iv) Muzzleloader deer hunting is permitted during the first five days of the State season excluding Sunday and Monday.

* * * * *

(viii) Bag limits are one bearded turkey, and one deer for all deer gun hunts.

* * * * *

(y) * * *
(1) * * *
(i) Only archery and primitive weapons hunting are permitted.
* * * * *
(aa) * * *
(1) *Crescent Lake National Wildlife Refuge.* Hunting of white-tailed deer, mule deer, and pronghorn antelope is permitted on designated areas of the refuge subject to the following condition: Checking of bagged game is required.
* * * * *
(cc) *New Jersey—Great Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(1) Hunters must comply with State laws governing special deer permit hunts.
(2) All hunters must attend the refuge hunter orientation and show proof of completion of a refuge firearms proficiency test before hunting.
* * * * *
(ee) *New York—(1) Iroquois National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only archery and shotgun hunting are permitted.
(2) *Montezuma National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required.
(ii) Only archery hunting is permitted.
(ff) * * *
(1) *Great Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required.
(ii) Only Shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.
(iii) Dogs are not permitted.
(2) *Mackay Island National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required.
(ii) Only archery and shotgun hunting are permitted.
(iii) Dogs are not permitted.
(iv) Shotgun hunters must hunt from designated stands.
(3) * * *
(ii) Muzzleloader hunting is permitted the first Tuesday of the State (Anson County) muzzleloader gun season.
* * * * *
(v) Youth gun hunting is permitted on the first Saturday of the State (Anson County) gun season. During the youth deer hunt, only persons 15 years and under may carry, handle, or discharge firearms.
(vi) Gun hunting is permitted on the second Monday, Tuesday, Friday, and Saturday of the State (Anson County) gun season.
* * * * *
(gg) * * *
(10) * * *
(iii) Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.
* * * * *
(13) *Upper Souris National Wildlife Refuge.* Hunting of White-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.
* * * * *
(ii) * * *
(4) *Sheldon National Wildlife Refuge.* Hunting of deer and antelope is permitted on designated areas of the refuge.
(5) *William L. Fenley National Wildlife Refuge.* * * *
* * * * *
(ll) * * *
(1) *Lacreek National Wildlife Refuge.* Hunting of White-tailed deer and mule deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.
* * * * *
(mm) * * *
(1) * * *
(i) Archery hunting is permitted during the first two weeks of the State archery season.
* * * * *
(2) *Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required for the firearms deer hunt and turkey hunt.
(ii) Checking of bagged deer taken during firearms hunt is required.
(iii) Gun hunting is permitted on two consecutive days beginning on the fourth Saturday in October. One deer may be taken. Deer may be of either sex.
(iv) Archery hunting is permitted for the first 16 days of the State season. Two deer may be taken. Deer may be of either sex.
* * * * *
(pp) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotguns may be used on that part of the refuge east of the Missisquoi River during the State regular season.
(qq) * * *
(1) *Chincoteague National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required.
(ii) Shotgun hunters must use rifled slugs only.
(iii) Dogs are not permitted.
(2) *Great Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required.
(ii) One deer of either sex may be taken.
(iii) Only shotguns, 20 guage or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.
(iv) Dogs are not permitted.
(3) *Presquile National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required.
(ii) One deer of either sex may be taken.
(iii) Dogs are not permitted.
(iv) Only shotguns, 20 guage or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.
(v) Shotgun hunters must remain on their assigned stand unless tracking or retrieving a wounded deer.
(vi) Archers must remain on their assigned stand from ½ hour before sunrise to 10:00 a.m., after which time they may hunt anywhere within the hunt area.
* * * * *

Dated: May 14, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–13402 Filed 6–3–85; 8:45 am]
BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 107
Tuesday, June 4, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Land Management/Forest Service Interchange Program; Public Review Period and Public Hearings

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of public review period and public hearings.

SUMMARY: The Bureau of Land Management and the Forest Service have completed implementation plans and preliminary legislative concepts for the proposed Interchange of jurisdiction over about 35 million acres of land. The proposal also includes the transfer to the Forest Service of the responsibility for Federal minerals within areas of its jurisdiction. The plans and concepts will be available for a 30-day public review period. During the review period the agencies will conduct 28 public hearings and solicit written comments. The agencies will consider the testimony from the hearings and written comments in preparing a legislative proposal for submission to Congress this summer. Copies of all comments received, hearing transcripts, and an analysis of public input will be made available to Congress with the legislative proposal.

DATES: The Interchange implementation plan summaries and legislative concepts will be released for public review and comment on June 7, 1985, and the comment period will continue through July 8, 1985. Public hearings will be held June 19 through June 29, 1985, at locations listed below.

ADDRESSES: Summaries of the implementation guides and the legislative concepts are available from the national offices of both agencies at the following addresses or at Forest Service Regional Offices and BLM States Offices: USDA Forest Service, P.O. Box 2417, Washington, D.C. 20013; USDI Bureau of Land Management, 1800 C Street, N.W. Washington, D.C. 20240.

Send written comments to BLM/Forest Service Interchange, P.O. Box 21219, Washington, D.C. 20009–0719.

The dates, times and locations of the hearings follow:

State	City	Date	Time	Location
Arizona	Safford	6/19	7 p.m	Old Armory, Highway 70.
	Phoenix	6/20	1 and 7 p.m	Longview Middle School Auditorium, 1209 E. Indian School Road.
	Prescott	6/21	7 p.m	Hendrix Auditorium, Prescott Jr. High, Carlton & Montezuma Streets.
California	Sacramento	6/24	8 a.m	Holiday Inn, 5321 Date Avenue.
	Ukiah	6/24	2:30 p.m	Saturday Afternoon Club, Corner W. Church and S. Oak
	Redding	6/25	8 a.m	Redding Civic Auditorium, Room 125, 700 Auditorium Drive.
	Alturas	6/25	2 & 7 p.m	Modoc High School, Social Hall, 900 N. Main Street.
Colorado	Grand Jct.	6/26	7 p.m	Howard Johnson's I-70 at Horizon Drive.
	Denver	6/27	7 p.m	Clarion Hotel, Airport, 3203 Quebec.
Idaho	Pocatello	6/24	4 p.m	Idaho State Univ. Campus, College of Ed. Auditorium, 19th and Terry Streets
	Boise	6/27	1 p.m	City Hall, Les Bois Room, 150 N. Capitol Blvd.
Montana	Helena	6/25	7 p.m	U.S. District Ct., Room 531, Federal Building, 301 South Park Avenue.
Nevada	Las Vegas	6/24	6 p.m	Clark County Library, 1401 E. Flamingo.
	Reno	6/25	7 p.m	Reno/Sparks Convention Center, South Hall, 4590 South Virginia.
	Elko	6/26	7 p.m	Elko Convention Center, 700 Festival Way.
New Mexico	Albuquerque	6/24	1 & 7 p.mp	University of New Mexico, Conference Center, 1634 University Blvd. NE.
	Roswell	6/25	1 & 7 p.m	Roswell Inn, 1815 N. Main
No. Dakota	Dickinson	6/26	7 p.m	Holiday Inn, Highway 22 and I-94
Oregon	Salem	6/26	1 & 7 p.m	Scottish Rite Temple, 4090 Commercial Avenue SE
	Bend	6/27	1 & 7 p.m	Deschutes National Forest Office, 1645 East Highway 20
Utah	Richfield	6/19	3 p.m	Sevier County Courthouse, 250 N. Main Street
	Salt L. City	6/20	2 & 7 p.m	Salt Palace, Room C-104, West Temple and First South Streets
Washington	Spokane	6/28	1 p.m	Spokane County Agricultural Center, Room A, 222 Havana.
Wyoming	Casper	6/27	7 p.m	Downtowner Motor Inn, I-25 and Center.
	Sheridan	6/28	7 p m	Sheridan High School, Lewis and Adair Street.
	Rock Springs	6/29	2 p.m	Quality Inn, 2518 Foothill Boulvard.
East	Atlanta	6/20	1 p.m	Federal Trade Commission, Hearing Room, 10th Floor, 1720 Peachtree Road NW.
National	Washington, DC	6/27	1 p.m	Interior Dept. Auditorium, 1800 C Street, NW.

FOR FURTHER INFORMATION CONTACT: John Leasure, Programs and Legislation, Forest Service, USDA, (202)–475–5154; or John Moeller, Management Research, Bureau of Land Management, USDI, (202)–343–6825.

SUPPLEMENTARY INFORMATION: Speakers at the hearings may comment on any aspect of the interchange proposal, but comments on the implementation guides and legislative concepts will be especially helpful. Time for oral testimony may be limited to 5 minutes to accommodate all those wishing to speak; full written comments may be submitted for the record. Attendance at one of the hearings is not necessary for anyone submitting written comments. Written comments must be received by July 8 to be considered and addressed in the implementation plans and legislative proposal.

Dated: May 30, 1985.

For the Forest Service.

R.M. Housley,

Deputy Chief.

Dated: May 30, 1985.

For the Bureau of Land Management.

Robert F. Burford,

Director.

[FR Doc. 85–13464 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–11–M, 4310–84–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest Lands in the Pacific Northwest Region, Entire States of Oregon and Washington, and Minor Portions of California and Idaho; Intent To Prepare Supplement to Programmatic Environmental Impact Statement

The Pacific Northwest Region will prepare a supplement to the existing Final Programmatic Environmental Impact Statement entitled "Methods of Managing Competing Vegetation," dated June 2, 1981.

The purpose of this supplement is to provide the decisionmaker with more refined information on the possible effects of herbicide use on human health.

Several US District Court judges have ruled that, in their opinion, enough scientific uncertainty about herbicides and human health exists to require a worst-case analysis (40 CFR 1502.22) be prepared. An injunction halting application of herbicides has been ordered by the Court until preparation and public review of a worst-case analysis as required by the National Environmental Policy Act Implementing Regulations.

There will be no formal public scoping meetings conducted. The Bureau of Land Management, US Department of Interior, and the Environmental Protection Agency are invited to participate in the analysis.

The worst-case analysis, as part of the programmatic Environmental Impact Statement, will be used for ascertaining risks to human health by on-the-ground decisionmakers in their site-specific project analysis. Comments are invited regarding the proposed supplement as a worst-case analysis of potential human health effects. Comments regarding issues to be addressed and scope of the analysis would be particularly useful.

A draft supplement is expected to be available for public review about September 1, 1985. A review period of at least 45 days will be provided for agency and public review and comment. Following consideration of public comments, a final supplement is expected to be issued about March 1, 1986.

Jeff M. Sirmon, Regional Forester, Pacific Northwest Region, is the Responsible Official. Questions and comments about the proposed action may be directed to Mike Schafer, Pesticide Specialist, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208; phone (503) 221–2727.

Dated: May 24, 1985.

John F. Butruille,

Acting Regional Forester.

[FR Doc. 85–13437 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–11–M

Inyo National Forest; Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 8:30 a.m. on June 26, 1985, at the Lee Vining Presbyterian Church, Lee Vining, California. The agenda of the meeting will include Private Land Guidelines, Visitor Center sites, and update by the District Ranger.

The meeting will be open to the public. Persons who wish to attend should notify Eugene E. Murphy, Forest Supervisor, Inyo National Forest, 873 No. Main Street, Bishop, California, 93514, Telephone: (619) 873–5841. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comment.

Dated: May 28, 1985.

Eugene E. Murphy,

Forest Supervisor and Chairman.

[FR Doc. 85–13438 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–11–M

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on June 25, 1965 at the Mancos Ranger District Office, U.S. Highway 160, Mancos, Colorado. This meeting will start at 9:00 am. The board was established in accordance with provisions of the Federal Land Policy Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) discussion of the Grazing Fee Study; and (3) recommendations for the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend and participate should notify Dave Cook, San Juan National Forest, (303) 247–4874 prior to the meeting. The public may participate in discussions during the meeting or may file a written statement following the meeting.

Dated: May 22, 1985.

John R. Kirkpatrick,

Forest Supervisor.

[FR Doc. 85–13439 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Little Bigby Creek Watershed, Tennessee; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of intent to deauthorize Federal funding for the Little Bigby Creek Watershed Project, Maury County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251–5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the Little Bigby Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the propcsed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 22, 1985.

Donald C. Bivens,

State Conservationist.

[FR Doc. 85–13440 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

Piiholo Road Critical Area Treatment Measure, Hawaii

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significance impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Piiholo Road Critical Area Treatment Measure, Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT: Francis C.H. Lum, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850, telephone (808) 546–3165.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis C.H. Lum, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for stabilizing critically eroding areas along Piiholo Road. The planned works of improvement include road swales, grassed waterways, shoulder swales, and a culvert.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic information developed during the environmental assessment are on file and may be reviewed by contacting Francis C.H. Lum, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850, (808) 546–3165.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590 a–f, q)

Dated: May 21, 1985.

Francis C.H. Lum,

State Conservationist.

[FR Doc. 85–13350 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

Hardin Creek Watershed, Tennessee; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Hardin Creek Watershed Project, Wayne and Hardin Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251–5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the Hardin Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: May 22, 1985.

Donald C. Bivens,

State Conservationist.

[FR Doc. 85–13288 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

Mill Creek Watershed, Tennessee; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Mill Creek Watershed Project, Overton and Clay Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251–5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the Mill Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 22, 1985.

Donald C. Bivens,

State Conservationist.

[FR Doc. 85–13289 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

North Fork Obion River Watershed, Tennessee; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the North Fork Obion River Watershed Project, Henry County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251–5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the North Fork Obion River Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 22, 1985.

Donald C. Bivens,

State Conservationist.

[FR Doc. 85–13352 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

Lewis-Hunsaker Creek Watershed, Tennessee; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–556, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Lewis-Hunsaker Creek Watershed Project, Dyer County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251–5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the Lewis-Hunsaker Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 22, 1985.

Donald C. Bivens,

State Conservationist.

[FR Doc. 85–13351 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

Buffalo Creek Watershed, Pennsylvania

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buffalo Creek Watershed, Union County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782–4453.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James H. Olson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the installation of conservation and management practices for erosion and sediment control on 18,800 acres of cropland.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting James H. Olson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program N. 10.904, Watershed Protection and Flood Prevention Program. Presidential executive order 12372 establishing the state and local review of federal and federally assisted programs and projects is applicable)

Dated: May 23, 1985.

James H. Olson,

State Conservationist.

[FR Doc. 85–13316 Filed 6–3–85; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 2:30 p.m. and will adjourn at 9:30 p.m. on June 19, 1985, at the University of Massachusetts at Boston, 100 Arlington Street, 1st Floor Lounge, Boston, Massachusetts. The purpose of the meeting is to conduct a forum on confronting racial violence in Boston in cooperation with the Greater Boston Coalition, University of Massachusetts, Boston.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Phillip Perlmutter or Jacob Schlitt, director of the New England Regional Office at (617) 233–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 29, 1985

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–13246 Filed 6–3–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to United Export Trading Association (UETA). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 83–00023, Amendment #1."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Pursuant to U.S. Customs regulations and under Customs bond, tax-free and duty-free alcoholic beverages, tobacco and tobacco products that are handled in bond exclusively for export to persons exiting the United States across the United States-Mexico land border ("Covered Products").

Export Market

Mexico

Members

International Bonded Warehouses, Inc.; Ayoub Exports, Inc.; Hidalgo Custom Bonded Warehouse, Inc., d/b/a Brady's; Universal Bonded Stores, Inc.; Capin's Duty Free Warehouse; States Import-Export Inc.; Hugo's International Liquors; Ronnie Guerra's International Traders, Inc.; and King Mart Export, Inc.

Export Trade Activities and Methods of Operation

(a) To enter into agreements with Suppliers of Covered Products acting as the exclusive Purchasing Agent for its Members.

(b) To enter into agreements with its Members to resell the purchased Covered Products to the Members exclusively for export wherein:

(1) UETA agrees to serve as the exclusive Purchasing Agent of Covered Products for the Members; and

(2) The Members agree not to purchase the Covered Products, directly or indirectly, from any other entity.

(c) To enter into agreements with its Members on all matters relating to the purchase, handling and sale of Covered Products for export, including agreements to:

(1) Establish prices at which Covered Products will be sold by Members for export,

(2) Establish quantities of Covered Products to be sold by Members for export,

(3) Allocate territories or customers among Members,

(4) Determine the types and the mix of Covered Products purchased by UETA,

(5) Warehouse the Covered Products prior to delivery to its Members,

(6) Provide to Members financing, transportation, insurance, accounting and legal services related to the purchase and sale of Covered Products for export,

(7) Determine the inventory levels of the Covered Products for export,

(8) Determine the internal distribution to Members of profits or loss derived by UETA,

(9) Determine the hours of operation of the Members' sales outlets, and

(10) Determine the terms and conditions for sale of Covered Products or provision of related services to nonmembers.

(d) To prescribe the following conditions for membership and membership withdrawal:

(1) UETA may limit membership to those firms that operate at least one outlet engaged in duty free sales on the Mexican border, that are in compliance with all applicable Treasury and Customs regulations, and that demonstrate sufficient financial responsibility to obtain a standby letter of credit from a bank for expected purchases from UETA.

(2) Any member may withdraw from UETA after giving the Governing Committee written notice, but UETA may require that such Member continue to comply with the agreements specified in paragraph (c) above and that the Member not compete with UETA or its remaining Members in a manner inconsistent with the agreements referred to in paragraph (c) above for a period not to exceed twelve months after its notice of withdrawal, provided, however, that the required compliance does not constitute a penalty or less favorable treatment to the withdrawing Member than the treatment being accorded to remaining Members with respect to the agreements referred to in paragraph (c) above.

(e) To collect information from and to discuss and communicate information with (i) representatives of two or more Members (whether or not a representative of UETA participates) or (ii) a representative of UETA and a representative of one or more Members, regarding competitive conditions or other facts relevant to the sale of the Covered Products in the Export Market. Such communications may occur either in person or during telephone calls or in any other manner. For purposes of this certificate of review, competitive conditions and other facts are:

(1) Any conditions relating to past, present or possible future supply or demand in the Export Market for the Covered Products in order to formulate UETA's general business and expansion plans;

(2) Any past, present or possible future price of the Covered Products for the Export Market;

(3) Any past, current or possible future cost factors of UETA and of any Member relating specifically to the sale of the Covered Products for the Export Market;

(4) Any marketing strategy or activity in the Export Market of any Member, nonmember or any Supplier of the Covered Products to the Export Market, such as opening, closing or expansion of export outlets and similar plans and developments relevant to the formulation of UETA's business plans;

(5) Any information regarding past, present or possible future inventories and turnover of Covered Products held by Members in order to establish inventory requirements for UETA itself.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

Dated: May 29, 1985.

Douglas A. Riggs,

General Counsel.

[FR Doc. 85-13330 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DR-M

[C-533-055]

Oleoresins From India; Revocation of Countervailing Duty Order

AGENCY: International Trade Adminstration/Import Administration Department of Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by the Government of India, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on oleoresins from India would not cause, or threaten to cause, material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after December 30, 1982 will be liquidated without regard to countervailing duties.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Paul Marselian, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On April 9, 1979, the Treasury Department published in the **Federal Register** a countervailing duty order on oleoresins from India (44FR 21009).

On December 30, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Government of India had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On March 8, 1985, the ITC notified the Department of its determination (50 FR 10118, March 5, 1985) that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, by reason of imports of oleoresins from India if the order were revoked.

As a result, the Department is revoking the countervailing duty order concerning oleoresins from India with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after December 30, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 30, 1982, without regard to countervailing duties, and to refund any estimated counervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: May 29, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-13301 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-435-401]

Termination of Antidumping Duty Investigations; Carbon Steel Products From Czechoslovakia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 28, 1985, United States Steel Corporation withdrew its antidumping petition, filed on December 14, 1984, on Carbon Steel Products from Czechoslovakia. Based on the withdrawal, we are terminating the investigations.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Case History

On December 14, 1984, we received a petition from United States Steel Corporation filed on behalf of the U.S. industry producing carbon steel products.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the International Trade Commission (ITC) of our action and initiated the investigations on January 8, 1985 (50 FR 1912). On February 4, 1985, the ITC found that there was a reasonable indication that imports of carbon steel products from Czechoslovakia materially injure, or threaten material injury to, a United States industry.

Scope of the Investigations

The products under investigation are carbon steel plate and cold-rolled carbon steel flat-rolled products. *The term "carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6220, and 607.6625 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, or not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness; as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness; whether or not in coils; as currently provided for in items 607.8350, 607.8355 or 607.8360 of the *TSUSA*.

According to the petitioner, merchandise produced by East Slovak Iron and Steel Works and NHKG-Nova Hut Kelmenta Gottwalda accounted for all the exports of this merchandise to the United States. We investigated all sales of carbon steel products during the period July 1 through December 31, 1984.

Withdrawal of Petition

On May 28, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigations be terminated. Under section 734(a) of the Tariff Act of 1930 (the Act), as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Czechoslovakia to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that terminations would be in the public interest.

We have notified all parties to the investigations and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigations.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 29, 1985.

[FR Doc. 85-13404 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-401]

Termination of Antidumping Duty Investigations; Certain Carbon Steel Products From Hungary

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 28, 1985, the United States Steel Corporation withdrew its antidumping petition, filed on December 19, 1984, on certain carbon steel products from Hungary. Based on the withdrawal, we are terminating the investigations.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1777.

SUPPLEMENTARY INFORMATION:

Case History

On December 19, 1984, we receive a petition from the United States Steel Corporation filed on behalf of the U.S. industry producing certain carbon steel products.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the International Trade Commission (ITC) of our action and initiated the investigations on January 8, 1985 (50 FR 1914). On February 4, 1985, the ITC found that there was a reasonable indication that imports of certain carbon steel products from Hungary materially injure, or threaten material injury to, a United States industry.

Scope of Investigations

The merchandise covered by these investigations is carbon steel plate and hot-rolled carbon steel flat-rolled products (herein referred to collectively as certain carbon steel products).

The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled and not cold-rolled; not in coils, not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, and 607.6625 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel products, whether or not corrugated or crimped, not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width and in coils, as currently provided for in item 607.6610 of the *TSUSA;* or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

Withdrawal of Petition

On May 28, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigations be terminated. Under section 734(a) of the Tariff Act of 1930 (the Act), as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Hungary to limit the volume of imports of these products. We have assessed the public interest factors set out in section 734(a)(2) of the Act, and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigations and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigations.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 29, 1985.

[FR Doc. 85-13405 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-008]

Carbon Steel Wire Rod From Spain; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on carbon steel wire rod from Spain. The review covers the period from October 1, 1984. The petitioners to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. The revocation will apply to all carbon steel wire rod entered, or withdrawn from warehouse,

for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 46181) an antidumping duty order on carbon steel wire rod from Spain.

In a letter dated May 9, 1985, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel-Texas, Inc., Raritan River Steel Company, and Atlantic Steel Company, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod currently classifiable under item 607.17 of the Tariff Schedules of the United States. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on carbon steel wire rod from Spain provides a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the petitioners, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on carbon steel wire rod from Spain effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of carbon steel wire rod from Spain which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 28, 1985.

[FR Doc. 85–13407 Filed 6–3–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–506]

12-Volt Lead-Acid Type Automotive Storage Batteries From Korea; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether 12-volt lead-acid type automotive storage batteries from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 24, 1985, and we will make ours on or before October 15, 1985.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2613.

SUPPLEMENTARY INFORMATION:

The Petition

On May 8, 1985, we received a petition in proper form filed by General Battery International Corporation on behalf of the Puerto Rican regional 12-volt lead-acid type automotive storage battery industry. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based on the United States prices on price quotes from Korea exporters. From these quoted prices, the petitioner deducted freight costs and other appropriate charges.

The petitioner based foreign market value on constructed value. The petitioner calculated constructed value based on the estimated cost of production of the subject merchandise in Korea with additions for general expenses, profit and packing costs.

By comparing the values calculated by the foregoing methods, dumping margins ranging form 5 to 36 percent are indicated.

Initiation of Investigation

Under Section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on 12-volt lead-acid type automotive storage batteries and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating

an antidumping duty investigation to determine whether 12-volt lead-acid type automotive storage batteries from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by October 15, 1985.

Scope of Investigation

The products under investigation are 12-volt lead-acid type automotive storage batteries currently classifed in the *Tariff Schedules of the United States, Annotated* (TSUSA), under item 683.05.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 24, 1985, whether there is a reasonable indication that imports of 12-volt lead-acid type automotive storage batteries from Korea are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13406 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-009]

Carbon Steel Wire Rod From Spain; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on carbon steel wire rod from Spain. The review covers the period from October 1, 1984. The petitioners to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. This affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the petitioners' notification, the revocation will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230: telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 28089) a countervailing duty order on carbon steel wire rod from Spain.

In a letter dated May 9, 1985, Atlantic Steel Company, Continental Steel Company, Georgetown Steel Corporation, North Star Steel Texas, Inc, and Raritan River Steel Company, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of Spanish carbon steel wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statement of no interest in continuation of the countervailing duty order on carbon steel wire rod from Spain provides a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the petitioners, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of carbon steel wire rod from Spain which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and sections 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: May 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-13302 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

Certain Steel Products From Spain; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on certain steel products from Spain. The review covers the period from October 1, 1984. The petitioners and the other domestic interested party to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 51) a countervailing duty order on certain steel products from Spain.

In Letters dated January 18, 1985 and May 2, 1985, United States Steel Corporation, Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel, Inc., National Steel Corporation, and Cyclops Corporation, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their supported of revocation of the order. The Department received a similar letter from the other domestic interested party to the proceeding, Bethlehem Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of Spanish certain steel products. Such merchandise is currently classifiable under items 609.8005, 609.8015, 609.035, 609.8041, 609.8045, 607.6620, 607.6625, 607.8320, 67.8355, 607.8360, 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, 608.1330, 606.8310, 606.8330, 606.8350, 606.8805, 606.8815 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on certain steel products from Spain provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of certain steel products from Spain which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separtate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and sections 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: May 28, 1985

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–13303 Filed 6–3–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–404]

Fabric Expanded Neoprene Laminate From Japan; Final Determination of Sales at Less Than Fair Value

SUMMARY: We have determined that fabric expanded neoprene laminate from Japan is being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: William D. Kane, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377–1766.

SUPPLEMENTARY INFORMATION:

Case History

On October 1, 1984, we received a petition filed by Rubatex Corporation, on behalf of the U.S. industry producing fabric expanded neoprene laminate. In compliance with the filing requirements of § 353.36 of our Regulations (19 CFR 353.36), the petition alleged that imports of fabric expanded neoprene laminate from Japan are being sold, or are likely to be sold, in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 22, 1984 (49 FR 42970). The ITC subsequently found,

on November 14, 1984, that there is a reasonable indication that imports of fabric expanded neoprene laminate are materially injuring, or are threatening to materially injure, a United States industry.

The petitioner alleged that at least five Japanese companies produce fabric expanded neoprene laminate for export to the United States. We found that two of these companies, Yamamoto Corporation (Yamamoto) and Asahi Rubber Co., Ltd. (Asahi), accounted for 60 percent of sales to the United States during the period of investigation. Questionnaires were presented to these companies in Japan on November 8, 1984. Yamamoto responded to the questionnaire on December 26, 1984. Asahi responded on December 31, 1984. Sedo Chemicals Co., Ltd. (Sedo) and Daiwa Rubber & Chemicals Co., Ltd. (Daiwa) also filed voluntary responses to the antidumping questionnaire on December 31, 1984. As these voluntary responses were received in a timely manner, permitting complete review, verification and analysis, sales by these companies were included in our investigation.

On March 11, 1985, we preliminarily determined that fabric expanded neoprene laminate from Japan was being, or was likely to be, sold in the United States at less than fair value (50 FR 10518).

Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. Verifications were conducted at Osaka and Kobe, Japan at the corporate offices of Yamamoto, Asahi, Sedo and Daiwa on March 18 thru 29, 1985.

On April 22, 1985, we held a public hearing.

Scope of Investigation

The product covered by the investigation is fabric expanded neoprene laminate, currently provided for in items 355.81, 355.82, 359.50 and 359.60 of the *Tariff Schedules of the United States, Annotated* (TSUSA). We investigated sales of fabric expanded neoprene laminate by the four respondents during the period from May 1, 1984, to October 31, 1984. A fifth company, Misuzu Chemical Industry Co., Ltd. (Misuzu) filed a voluntary response on March 29, 1985. Statutory time constraints did not permit inclusion of their data in our investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of fabric expanded neoprene laminate to represent the United States price for sales by the Japanese producers because the merchandise was sold prior to the date of importation to unrelated United States purchasers. We calculated the purchase price on the FAS or FOB Japanese port, or CIF, packed price to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling charges, ocean freight and marine insurance.

Yamamoto

One U.S. sale was found to have been subsequently cancelled. This sale was not considered in our calculations. In the original submission some sales late in the period were assigned zero inland freight and packing amounts because invoices for the services from sub-contractors were not available. At the time of verification these amounts were presented and verified.

Asahi

Brokerage and handling charges for these sales were found to be in error. These were revised to reflect the correct amounts.

Sedo

Sales transactions to the U.S. were in Japanese yen. One customer remitted payment in U.S. dollars which resulted in a net return in Japanese yen which differed from invoice prices in the Sedo U.S. sales listing. These were corrected to reflect the amounts actually received. Small differences in amounts claimed for brokerage were corrected.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Yamamoto, Sedo, Daiwa and certain sales by Asahi based on home market ex-factory or delivered, packed and unpacked prices to unrelated purchasers in the home market. For sales of fire-retardant products by Asahi we based foreign market value on delivered Japanese port, packed prices to unrelated trading companies for sale to Canada, because there were no sales of such for similar merchandise in the home market. We made deductions, where appropriate, for foreign inland freight and cash discounts. We made adjustments for advertising and warranty expenses, where appropriate, in accordance with § 353.15 of the Commerce Regulations. We made adjustments for cost differences in comparisons of similar merchandise in accordance with § 353.16 of the Commerce Regulations. We also deducted the home market or third country packing cost where appropriate, and added the packing cost incurred on sales to the United States.

Yamamoto

As verified home market sales prices revealed no consistent pattern of price discrimination based on category of purchaser, we included sales to both end-users and unrelated trading companies in our final calculations. Prior to verification Yamamoto submitted calculations for home market inland freight and packing which were services performed by company employees. Those amounts were verified and allowed. Warranty expenses claimed by Yamamoto were found to related to a sale outside the period of investigation and were not allowed. At our request Yamamoto revised their home market average credit cost allocations to reflect actual expenses incurred on each sale. These were verified and allowed.
Mathematical errors were discovered in Yamamoto's calculations of cost differences for comparisons of similar merchandise. These were corrected and the revised and verified amounts were allowed.

Asahi

Prior to verification Asahi presented corrections to twenty sales to which they had applied estimated amounts for packing and inland freight charges because of the unavailability of source documents at the time of preparation of the response. The corrected amounts were verified and allowed. One sale price was found to be incorrect and was adjusted to reflect the true price. Inland freight charges for two sales could not be documented and were not allowed. Included in an amount for "advertising" and "other direct selling expenses" was a portion of sample sheets supplied to individual customers free of charge. As we consider this a normal cost of doing business and not directly attributable to a particular sale, that portion was not allowed. A portion of warranty costs related to one sale were found to be borne by an unrelated freight company. That portion of warranty costs was not allowed. A warranty cost attributed to one customer was found to relate to a sale outside the period of investigation and was not allowed. One figure in

calculations of cost differences for comparisons of similar merchandise was found to contain a computational error. This was corrected to reflect the proper amount.

Daiwa

At the time of their original response Daiwa had estimated credit expenses for certain sales at the end of the period of investigation for which documentation was not available. At the time of verification actual amounts for these sales were presented and verified. A claim for a "quality discount" was requested for certain sales. These sales were found to be of grade B material, of which there were no sales to the United States.

As their were sufficient sales of identical grade material, sales of grade B were not considered in our calculations. Warranty expenses attributed to two customers were found to be related to sales outside the period of investigation and were not allowed.

Sedo

One sale price was revised to correct a typographical error. Prior to verification Sedo presented revisions to individual sales data. These revisions were verified and allowed. Sedo claimed as an adjustment for direct selling expenses the travel costs associated with salesman visits to customers. As these costs could not be directly related to the sales under investigation, they were not allowed.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Results of Investigation

We made fair value comparisons on all the reported fabric expanded neoprene laminate sold in the United States by the four Japanese companies during the investigative period. We found margins of 4.88 percent to 29.18 percent on 25 percent of sales by Yamamoto. The weighted-average margin was 3.09 percent. For Sedo we found no margins. For Asahi and Daiwa the margins found were de minimis. Therefore, we are excluding Sedo, Asahi and Daiwa from this final determination.

Petitioner's Comments

Comment 1: Petitioner claims that Yamamoto sales of fabric expanded neoprene laminate to an end-user who subsequently manufactures the material into ski masks and motorbike masks should be included in the investigation because such a customer is part of the market for which petitioner seeks relief.

DOC Position: The Department agrees that such sales should be incorporated in our investigation. At no time has the scope of the investigation been limited to exclude a product based on such intended uses.

Comment 2: Petitioner states that the Department should allow only customary warranty expenses during a normal time period.

DOC Position: The Department agrees. Only those warranty expenses directly related to sales during the period of investigation have been allowed. Department policy on this issue is further discussed in response to respondent Yamamoto's comment number 3.

Comment 3: Petitioner contends that an untimely voluntary submission filed by Misuzu Corporation should not be considered in the course of the investigation.

DOC Position: The Department agrees. We have rejected the response of Misuzu from consideration because statutory time constraints would not permit a complete review, verification and analysis of the submitted data.

Respondent's Comments

Yamamoto's Comments

Comment 1: Respondent objected to the use of home market sales to only unrelated trading companies in the calculation of Yamamoto's margin in the Department's preliminary determination, and contended that sales to both end-users and unrelated trading companies should be considered.

DOC Position: The Department agrees. An analysis of verified home market prices shows no evidence of price discrimination based on category of purchaser. Therefore, for our final calculations we have incorporated all home market sales regardless of class of purchaser.

Comment 2: Respondent claims that sales to one customer who manufactures the material into ski masks and motorbike masks should not be considered because they were not made in the ordinary course of trade or in the principal market in Japan.

DOC Position: The Department disagrees. The scope of this investigation includes merchandise sold for many uses, including skimasks and motorbike masks, as explained in the International Trade Commissions preliminary determination. Nor does the fact of Yamamoto having only one such customer demonstrate that such sales would be out of the ordinary course of trade, or not in the principal market, of the fabric expanded neoprene laminate industry in Japan. There is no evidence to suggest that such a customer would not constitute a normal market for manufacturers or trading companies in Japan. Sales to this customer have been included in our calculations.

Comment 3: Respondent contends that their claim for an allowance for warranty expenses should be allowed because it relates to the kind of merchandise under investigation.

DOC Position: The Department disagrees. The requirement for allowance of such sales expenses is that they be directly related to sales under investigation, not simply to the kind of merchandise under investigation. Recognizing that claims under warranty are often, by their nature, delayed, and thus not captured during the period of investigation, the Department has in the past allowed an average warranty cost based on historical experience. However, in the instant case respondent did not compute, or present evidence to compute, such an average. Therefore, these warranty costs were not allowed.

Comment 4: Respondent contends that this investigation was improperly initiated in that it fails to allege the elements necessary for imposition of dumping duties, fails to provide information readily available, and is not brought on behalf of a United States industry.

DOC Position: The Department disagrees. We have found the petition to meet the filing requirements of our regulations. The petitioner alleged sales at less than fair value, and presented reasonably available sales and cost information to substantiate the allegation. The petitioner clearly stated the petition was filed on behalf of the U.S. industry producing the products. Members of that industry have cooperated with the International Trade Commission (ITC) in their injury investigation, and at no time throughout the course of this investigation has any industry member indicated to the Department or the ITC that they do not consider the petition to have been filed on their behalf.

Sedo's Comments

Comment 1: Respondent claims that a clerical error discovered at verification regarding underpayment by one customer on two orders had been

corrected and that prices as stated in their response should be accepted.

DOC Position: The Department agrees. It was clear during the verification that the small unreconciled difference between invoice and payment was the result of bookkeeping error. Evidence subsequently submitted has demonstrated that the full invoiced amount has been received and that there was no intent to misrepresent that amount.

Comment 2: Respondent claims that Japanese yen amounts realized by virtue of currency rate fluctuations should be disregarded in deference to the Japanese yen invoiced amount.

DOC Position: The Department disagrees. The transactions in question were denominated in Japanese yen. These contracts mentioned no equivalent dollar amount, nor any agreed upon exchange rate on which a dollar equivalent might be based. The dollar amount remitted by the customer was apparently at the customer's discretion and unquestioned by the manufacturers. As the transaction was yen denominated, the Department considers yen receipts to represent the price of the merchandise.

Comment 3: Respondent claims an allowance for a salesman's visits to customers should be allowed as a circumstance of sale adjustment.

DOC Position: The Department disagrees. Such a circumstance of sale adjustment must be directly related to the sales under investigation to be allowed. The visits in question could not be demonstrated to be related to those sales during the period of investigation, and these expenses were not allowed.

Asahi Comments

Comment 1: Respondent claims advertising costs should be allowed.

DOC Position: The Department agrees in part. Such advertising costs were found to be directly related to the product under investigation and directed to its ultimated consumers. These expenses were allowed with the exception of sample sheets provided free of charge to Asahi's own customers. The Department considers such free trial samples a normal cost of doing business and not a cost directly related to the sales under investigation.

Daiwa's Comments

Comment 1: Respondent claims warranty costs directly related to the sales under investigation should be allowed.

DOC Position: The Department agrees. All those warranty costs demonstrated to be directly related to the sales under investigation have been allowed.

Misuzu Comments

Comment 1: Misuzu contends that the Department should honor its request for exclusion under § 353.45 of its regulations by verifying and analyzing its response submitted after our preliminary determination.

DOC Position: The Department disagrees, as stated in its letter of May 15, 1985, to counsel for Misuzu. The time constraints placed upon the Department by law and regulation did not permit the full administrative procedures necessary for verification and analysis of a response submitted so late in the proceeding. The Misuzu response has not been considered in our final determination.

Comment 2: Misuzu contends that the Department should include the calculations on all manufacturers investigated in weight-averaging a margin to be applied to all other manufacturers, rather than apply the rate of the one manufacturer with a positive margin.

DOC Position: The Department disagrees. The Departments' long-standing policy is to base the bonding rate for manufacturers and exporters not investigated on the weighted average of the margins applicable to companies covered by an affirmative determination. Manufacturers or exporters which have demonstrated, through verified information, that they do not sell at less than fair value, including those which have *de minimis* margins, are excluded from the determination. The Department does not believe it is appropriate to include in the weighted-average bonding rate companies not covered by the affirmative determination.

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that fabric expanded neoprene laminate from Japan is being sold in the United States at less than fair value within the meaning of section 731 of the Act.

Suspension of Liquidation

On March 18, 1985, we instructed the United States Customs Service to suspend liquidation of all entries of fabric expanded neoprene laminate from Japan, with the exception of that produced by Asahi, Daiwa and Sedo. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended for all firms subject to suspension. The Customs Service shall require a cash deposit or the posting of a bond equal to the new estimated weighted-average amounts shown in this notice for those firms not excluded from this final determination, by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted average margins are as follows:

Manufacturer and states	Weighted average margin (percent)
Yamamoto (subject to suspension)	3.09
Asahi (excluded)	.05
Daiwa (excluded)	.33
Sedo (excluded)	0
All others (subject to suspension)	3.09

ITC Notification

We are notifying the ITC and making available to it all nonprivileged and nonconfidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that such injury does exist, we will issue an antidumping order directing Customs officers to assess an antidumping duty on fabric expanded neoprene laminate from Japan entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d).

Dated: May 28, 1985.

William T. Archey,

Assistant Secretary for Trade Administration.

[FR Doc. 85-13403 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on June 13, 1985, 10:00 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue,

NW., Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1983 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:00 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 166 (1982) and listed in 5 U.S.C. 552b(c) (1) and (9).

The general session will be open to the public with a limited number of seats available. A notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: May 31, 1985.

Ronald I. Levin,

Acting Deputy Assitant Secretary for Textiles and Apparel.

[[FR Doc. 85–13546 Filed 6–3–85; 9:26 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of the Import Limits for Certain Cotton Textile Products Produced or Manufactured in Indonesia

May 30, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 5, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 9, 1982 between the Governments of the United States and Indonesia provides, among other things, for percentage increases in specific limit categories during an agreement year (swing), provided an equal square yard equivalent amount is deducted from the limit of another specific category during the same agreement year. Under the terms of the bilateral agreement and at the request of the Government of Indonesia, an increase of 7,739 dozen (swing) is being applied to the restraint limit previously established for men's and boy's cotton knit shirts in Category 338, raising it to 118,301 dozen. The limit for cotton twill and sateen in Category 317 is being reduced to 8,224,277 square yards.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 30, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, DC

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of June 27, 1984 which prohibited entry into the United States of certain cotton and man-made fiber textile products produced or manufactured in Indonesia and exported during the period which ends on June 30, 1985.

Effective on June 5, 1985, the directive of June 27, 1984 is hereby further amended to include the following adjusted restraint limits for Categories 317 and 338:

Category	Adjusted restraint limit [1]
317 (square yards)	8,224,277
338 (dozen)	118,301

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1983

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–13305 Filed 6–3–85; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Thailand

May 30, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 5, 1985. For further information contact Jane Corwin, International Trade Specialist (202/377–4212).

Background

On December 20, 1984, a notice was published in the **Federal Register** (49 FR 49492) which established an import restraint limit for women's, girls' and infants' wool knit blouses in Category 438pt. (currently under TSUSA items 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724 and 383.9540) produced or manufactured in Thailand and exported during the ninety-day period, November 30, 1984 through February 27, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended, between the Governments of the United States and Thailand. Inasmuch as no agreement has yet been reached during consultations on a mutually satisfactory level for this category, the United States Government has decided, pursuant to the terms of the bilateral agreement, as amended, to establish a specific limit for Category 438pt. for the duration of the agreement. For goods exported during 1985 the limit will be 8,482 dozen. A prorated limit of 736 dozen for the period which began on November 30, 1984 and extended through December 31, 1984 has also been established for goods exported during that period. Further consultations were held on this subject May 15–17.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF

SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 30, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 5, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 438pt.[1], produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1985, in excess of the following limit:

Category	12-month restraint level [2]
438pt.[1] (dozen)	8,482

[1] In Category 438 only TSUSA numbers 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724 and 383.9540;

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

In carrying out this directive, entries of wool textile products in Category 438pt.[1], which have been exported to the United States during the period beginning November 30, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balance, be charged against the level established for such goods during that period. In the event the level established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

Textile products in Category 438pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 F.R. 55709), as amended on April 7, 1983 (48 F.R. 15175), May 3, 1983 (48 F.R. 19924), December 14, 1983 (48 F.R. 55607), December 30, 1983 (48 F.R. 57584), April 4, 1984 (49 F.R. 13397), June 28, 1984 (49 F.R. 26622), July 16, 1984 (49 F.R. 28754), November 9, 1984 (49 F.R. 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

[1] In Category 438 only TSUSA numbers 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724 and 383.9540;

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13307 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of the Federative Republic of Brazil on Category 337

May 30, 1985.

On May 13, 1985, the Government of the United States, pursuant to Article 3 and Annex B of the Arrangement Regarding International Trade in Textiles, requested the Government of the Federative Republic of Brazil to enter into consultations concerning exports to the United States of cotton playsuits in Category 337, produced or manufactured in Brazil and exported during the twelve-month period beginning on May 13, 1985.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textile products in Category 337, produced or manufactured in Brazil and exported to the United States during the twelve-month period which began on May 13, 1985, may be restrained at 59,433 dozen.

A summary market statement for this category follows this notice.

Anyone wising to comment or provide data or information regarding the treatment of Category 337 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this will be available for public inspection in the Office of Textile and Apparel, Room 3100 U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Summary and Conclusion

United States imports of Category 337 from Brazil were 52,800 dozens for the year ending March 1985. These compare with 27,700 dozens for the same period one year earlier. Imports in the first three months of 1985 alone, at 41,900 dozen, nearly equaled the total amount of Category 337 imports from Brazil in all of 1983. Annualized, January-March 1985 data would represent a 12 month import level of 168,000 dozen.

The market for Category 337 has been disrupted by imports; imports from Brazil have contributed to this disruption; and removal of the restraints on imports from Brazil would intensify the market disruption.

Imports

U.S. imports of Category 337 from all sources increased 60 percent between 1979 and 1981 and then slowed to a 6.5 percent increase between 1981 and 1983. In 1984 imports rose 51.3 percent to reach a record of 2,768,000 dozens. In the twelve month period ending March 1985, imports of this category were 3,096,000 dozens, 41 percent higher than the same period one year earlier.

U.S. Production and Import-to-Production Ratio

U.S. Production of Category 337 averaged 3,300,000 dozens annually during 1979–1983. Production in 1983, at 3,361,000 dozens, was close to the 1979–1983 average, but 5 percent below the 5-year record level of 3,550,000 dozen produced in 1981.

The import-to-production ratio for Category 337 has grown substantially since 1979. From a level of 33.1 percent in 1979, the ratio grew to 54.4 percent in 1983. With the large increase in imports, the ratio reached an all time high in 1984.

Domestic Producers' Market Share

Domestic producers' share of this market declined from 75.1 percent in 1979 to 64.8 in 1983. In 1984 the share probably dropped below 60 percent due to the large increase in imports.

Import Value vs. Domestic Producers' Price

Over 95 percent of Category 337 imports from Brazil entered under two TSUSA numbers. These numbers are: 383.0335 women's, girls' and infants' (WGI) cotton playsuits, sunsuits, etc., knit and ornamented; and 383.3030 (WGI) other cotton knit playsuits, sunsuits, etc. These garments are entering the U.S. at duty-paid values below the U.S. producers prices for comparable items.

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, D.C., headquarters located at Room 532, 2033 K Street, NW, Washington, D.C. 20581, on June 21, 1985 beginning at 9:30 a.m. and lasting until 4:30 p.m. The agenda will consist of:

Agenda

1 Discussions concerning "Trade Options" Issues:
   a. "Trade" panel
   b. "Academic" panel
   c. Comments from committee and panelists
2. Other committee business:
   a. Status Report on "Audit Trail" Issue
   b. Discussion of Chicago Board of Trade/National Association of Wheat Growers Petition to Expand Agricultural Options Pilot Program
   c. Discussion of Other Issues For Potential Committee Consideration: Timing of Next Meeting; Other Committee Business

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the June 4, 1985 first renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Agricultural Advisory Committee c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Conrad in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington D.C., on May 29, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85–13290 Filed 6–3–85; 8:45 am]

BILLING CODE 6351–01–M

Renewal of the Commodity Futures Trading Commission Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of renewal of Advisory Committee.

SUMMARY: The Commodity Futures Trading Commission has determined to renew for a period of two years the "Commodity Futures Trading Commission Agricultural Advisory Committee." As required by Section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 14(a)(2)(A) and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration and the Commission certifies that creation of this advisory committee is necessary and in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended. This notice is published pursuant to 41 CFR 101–6.1015.

The objectives and scope of activities of the Agricultural Advisory Committee shall be to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, and lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the committee. Commissioner Kalo A. Hineman serves as Chairman and Designated Federal Official of this Advisory Committee. Representatives of producers, processors, lenders and other interested agricultural groups serve as committee members.

Interested persons may obtain a copy of the committee's charter by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

Issued in Washington, D.C., on this day of May 29, 1985, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85–13291 Filed 6–3–85; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 22, 1985.

The USAF Scientific Advisory Board Sensors and Signatures Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet in the Pentagon on June 18, 1985 from 1:00 p.m., to 5:00 p.m. The purpose of the meeting will be to receive classified briefings and hold classified discussions for evaluating existing and programmed systems which may be effectively applied to attack of mobile ballistic missiles. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–13313 Filed 6–3–85; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 21, 1985.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group will meet at the Aeronautical Systems Division Headquarters, Building 14, Room 222, Wright-Patterson Air Force Base, Ohio, on June 19 and 20, 1985, from 8:00 a.m. to 4:30 p.m. and on June 21, 1985, from 8:00 a.m. to 12:00 noon to review programs and projects relating to the mission of the Division.

This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–13314 Filed 6–3–85; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 24, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Worldwide Information Systems (WIS) will meet at Hanscom AFB, Massachusetts on July 23 and 24, 1985 from 9:00 a.m. to 5:00 p.m. both days. The purpose of the meeting will be to receive classified briefings and hold classified discussions on the status of the WIS acquisition implementation plans to determine if the technical requirements are practical. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–13317 Filed 6–3–85; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 27, 1985.

The USAF Scientific Advisory Board Aerospace Medical Division Advisory Group will meet July 2, 1982 at Wright-Patterson AFB OH, Building 33, Room 123, Area B. from 8:30 a.m. to 5:00 p.m. and on July 3, 1985 from 8:30 a.m. to 3:00 p.m.

The purpose of the meeting will be to hold classified discussions on selected programs and projects relating to the mission of the Aerospace Medical Division.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraph (1) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–679–8404.

Norita C. Koritko,

Air Force Federal Register, Liaison Officer.

[FR Doc. 85–13430 Filed 6–3–85; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on a Proposed Plan To Increase Power-Generation Capabilities at The Dalles Dam on the Columbia River, OR and WA (River Mile 192)

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

The Portland District is currently investigating a plan to increase power-generation capabilities at The Dalles Dam on the Columbia River, Oregon and Washington. The proposed plan would increase the hydraulic head at The Dalles turbines by lowering the water surface of The Dalles tailrace, immediately dowmstream of the powerhouse. Currently, a channel constriction raises the tailrace higher than the backwater effect of Lake Bonneville. Removal of the constriction could lower the tailrace .5-foot, resulting in an annual increase in power production of 7 megawatts. Approximately 460,000 cubic yards of material would be excavated in an 1,100-foot reach and disposed on upland sites.

Initiation of the scoping process will formally commence in late May 1985 with the issuance of a scoping letter containing a draft outline of potential significant effects which will be discussed in the DEIS. Federal, State, and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the scoping letter and identify significant issues relating to the proposed project. The DEIS is scheduled for agency and public review in November 1985. The final EIS is scheduled for publication in March 1986.

ADDRESS: If you have any questions or need additional information, please contact Judy Struznik, (503) 221–6094 (FTS 423–6094), U.S. Army Corps of Engineers, Natural Resources Branch, P.O. Box 2946, Portland, Oregon 97208–2946.

Dated: May 24, 1985.

Eugene D. Pospisil,

Acting Assistant Chief, Planning Division.

[FR Doc. 85–13294 Filed 6–3–85; 8:45 am]

BILLING CODE 3710–AR–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85–12–NG]

Natural Gas Imports, Northwest Pipeline Corp.; Application to Amend Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Amend Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on May 10, 1985, of the application of Northwest Pipeline Corporation (Northwest) to amend its authorization to import Canadian natural gas. The application requests that the ERA approve the October 1, 1984, letter of agreement that Northwest signed with Westcoast Transmission Company Limited (Westcoast) amending the pricing and volume terms of its contract with Westcoast for the period November 1, 1984, through October 31, 1985. Under the agreement the average unit price of the gas will be $3.40 per MMBtu based on present (33 percent load factor) sales projections. The pricing terms provide for a demand charge of $6 million per month and a commodity charge of $2.78 per MMBtu, which is subject to quarterly adjustment based upon the price of No. 6 fuel oil in the Seattle-Portland area.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on July 5, 1985.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9760

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION:

Northwest is currently authorized to

import gas from Westcoast under DOE/ERA Opinion and Order Nos. 29 and 38 issued March 27, 1981, in Docket No. 81-11-NG and December 21, 1981, in Docket No. 81-31-NG, respectively. These authorizations set an upper limit of $4.94 per MMBtu on the price that can be paid for the gas and allow Northwest to import up to 286 Bcf per year from Westcoast.

Northwest is seeking approval of an October 1, 1984, letter of agreement with Westcoast which covers the price and volume conditions under which Northwest will purchase gas from Westcoast for the period November 1, 1984, through October 31, 1985. The purpose of the agreement is to amend the two Westcoast-Northwest contracts on an interim basis while the parties continue negotiations for a long-term sales agreement which on November 1, 1985, would replace both the Kingsgate sales agreement dated September 23, 1960, and the Fourth Service Agreement dated October 10, 1969. The Kingsgate and Fourth Service agreements and their respective authorizations expire October 31, 1987, and October 31, 1989. The new agreement alters the provisions of these contracts only during the one year interim period, and the original provisions are reinstated November 1, 1985, unless a long-term agreement is reached. Northwest claims that it negotiated this arrangement to bring its existing import arrangements into conformity with the DOE policy guidelines for natural gas imports and the Canadian National Energy Board's (NEB) new policy for natural gas exports.

The agreement establishes a two-part, demand-commodity pricing structure that results in an average unit rate of $3.40 per MMBtu based upon present (33 percent load factor) sales projections. The demand charge is $6 million per month and the commodity charge is $2.78 per MMBtu, subject to quarterly adjustment based upon the price of No. 6 fuel oil in the Seattle-Portland area. The agreement may be renegotiated if either party determines that a price change is necessary to respond to changing circumstances in market demand, alternate fuel and domestic gas prices, or other relevant factors. The agreement requires that Northwest purchase a minimum daily volume of 130 MMcf and a minimum annual volume of 1) 42.5 percent of Northwest's actual sales up to 262 Bcf, plus 2) 75 percent of Northwest's actual sales over 262 Bcf.

Northwest filed the contract amendments with the ERA on October 4, 1984, in accordance with the requirements of Section 590.407 of ERA's administrative procedures. Because Northwest was not proposing to extend the term of its authorization, increase the volume of the authorized imports, or purchase at a price higher than that presently authorized, it was not required to file an application to obtain further approval from the ERA. On October 26, 1984, the ERA acknowledged and accepted the report of contract amendments.

Westcoast applied to the NEB for approval of the agreement and a hearing was held on the matter on October 25, 1984. The Canadian Government approved the one year amendment effective November 1, 1984.

Northwest has applied to the Federal Energy Regulatory Commission (FERC) to amend its purchased gas adjustment (PGA) to track in its rates any future changes in the Westcoast demand and commodity charges. In an October 31, 1984, order, the FERC set for hearing the issue of the appropriate manner for permitting Northwest to flow through its purchased gas costs from Westcoast. (*See* FERC Docket No. TA85-2-37-00, *et al.* 29 FERC ¶ 61,149 at p. 61,323). Northwest is seeking an amendment to its PGA which will allow it to flow through the Westcoast demand and commodity charges on an "as billed" basis to its customers. In response to concerns raised by customers of Northwest about the competitive effects of the proposed "as billed" methodology, the FERC broadened the proceeding on April 30, 1985, to consider the prudence of the Northwest/Westcoast agreement.

Northwest asserts that the claims regarding the prudency of the Northwest/Westcoast agreement, now an issue in the FERC proceeding, "go to the heart of whether imports under the Westcoast Agreement are inconsistent with the public interest and comply with the DOE policy guidelines," and therefore "are fundamental issues concerning import agreements that should be determined by [ERA]." Northwest filed a motion with the FERC to dismiss the prudency issue from the FERC proceeding and initiated this proceeding before the ERA "— the agency empowered under the recent delegation orders to review import applications and contract amendments to existing import authorizations—to allow interested parties to pursue their challenges in the proper forum, and to permit Northwest to obtain the regulatory certainty it requires to implement its present and future import arrangements."

Northwest contends that parties before the FERC "are asserting that the two-part price in the Westcoast Agreement and the projected average import cost of $3.40 are not competitive, and may be anticompetitive, in U.S. markets." Northwest asserts that a determination by the ERA that the agreement, and specifically the two-part rate and the $3.40 per MMBtu average price, (1) is not inconsistent with the public interest, and (2) satisfies the criteria of the DOE guidelines, should constitute "full and sufficient resolution of the prudency challenge improperly raised in the FERC proceedings." Northwest further states that the ERA has determined in previous decisions that "contract amendments providing for lower, two-part rates can satisfy the public interest standard provided that, in all other respects, the revised import arrangement is competitive, allows for greater flexibility, and otherwise comports with DOE Guidelines." Northwest claims that similar findings can and should be made here.

Northwest has requested that the ERA act expeditiously and provide a one-week notice and intervention period since Northwest served the application on all parties to the related FERC proceeding. However, the ERA believes it is important to allow the full 30-day notice and comment period in cases clearly controversial such as this and where significant issues of policy and circumstance may be raised. Therefore, while the ERA will act as expeditiously as possible, it is denying Northwest's request for an abbreviated notice and comment period.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice or intervention, as applicable.

The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. They must be filed no later than 4:30 p.m. July 5, 1985.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Northwest's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C., on May 22, 1985

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-13285 Filed 6-3-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. SA85-26-000]

Chase Exploration Corp.; Chase Gathering Systems, Inc.; Notice of Petition for Adjustment

Issued May 30, 1985.

On May 1, 1985, Chase Gathering Systems, Inc. and Chase Exploration Corporation (Chase) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 seeking a waiver of Chase's Btu refund obligation under the Commission Orders 399 and 399-A.

On April 30, 1982, both companies initiated bankruptcy proceedings by voluntarily filing a petition for relief under Chapter 11 of the United States Bankruptcy Code. The trustee-in-bankruptcy for the companies argues on their behalf that compliance with Orders 399 and 399-A would impose upon the companies a special hardship by hindering, delaying and otherwise defeating both the intent of the Bankruptcy Code and the trustee's attempts to rehabilitate and reorganize the companies. In support of the petition, the trustee cites the expense of determining the overcharge share of each interest owner and of billing each such owner, the chances of such owner's voluntary payment, the expense of suing recalcitrant owners for their share of the refund obligation, potential statute of limitations defenses which could bar collection of approximately $12,000 of the refund obligations, inadequacy of corporate financial records necessary to recoup most of the overcharges, and the current limited resources of the companies.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13263 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-19707-000, et al.]

Cities Service Oil and Gas Corp., et al.; Notice of Applications To Amend Certificates To Establish Entitlement to Section 109 Price [1]

May 29, 1985.

Take notice that each of the Applicants listed herein has either filed a petition to amend certificate pursuant to section 7 of the Natural Gas Act or notice of change in rate which is being treated as a petition to amend certificate to establish Applicant's right to collect the section 109 price consistent with the court order issued in *Tenneco Exploration Ltd. v. FERC*, 649 F2d 376, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before June 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
G-19707-000, Aug. 3, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Tennessee Gas Pipeline Company, Grand Isle Area, Offshore Louisiana.	(1)	
G-19806-001, June 4, 1984	Coltexo Corporation, Box 300, Cities Service Bldg., Tulsa, Okla. 74102.	Transwestern Pipeline Company, Outlet of LeFors Natural gas Processing Plant, Gray County, Texas.	(1)	
CI77-587-001, Apr 18, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	Transcontinental Gas Supply Company, Brazos Area, South Addition, Block A-70, Offshore Texas.	(1)	

[1] Applicaton's proposes to amend certificates to establish Applicant's entitlement to collect Section 109 price consistent with court order in *Tenneco Exploration, Ltd.* v. *FERC* 649 F2d 376.

Filing Code: A—Inital Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Sucession.

[FR Doc. 85-13264 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-30-000]

Colonial Corp.; Notice of Petition for Adjustment

Issued: May 30, 1985.

On May 3, 1985, Colonial Corporation (Colonial) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978, seeking a six-month extension of time from May 3, 1985, within which to satisfy its Btu refund obligation under Commission Orders 399 and 399-A. Colonial claims that it is financially unable to meet the May 3 deadline without jeopardizing its financial viability. In support of its petition, Colonial points to its small size, its recent unusual volume of business, and its willingness to refund with interest the amounts due.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13265 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-24-000]

Colorado Gas Compression, Inc.; Notice of Petition for Adjustment

Issued: May 30, 1985.

On April 26, 1985, Colorado Gas Compression, Inc. (Colorado) filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978. Colorado seeks relief from the May 3, 1985 deadline established by the Commission in Orders 399 and 399-A for refunds of Btu overcharges by small first sellers.

Specifically, Colorado seeks authorization to make these refunds in monthly installments over a period ending November 1986. Colorado states that, for reasons beyond its control, it lacks the financial resources to make the lump sum payment required by the Commission orders, and that such payment would therefore impose upon the company a special hardship, inequity and unfair distribution of burdens.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13266 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-404-000]

Commonwealth Edison Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Granting Request for Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued: May 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On March 29, 1985, Commonwealth Edison Company (Company) submitted for filing a proposed two-step increase in its rates for service to its five full requirements customers.[1] The proposed rates also reflect an increase in the Company's meter rental charges (Rider 7) and a change in the Company's Rider 20.[2] The proposed changes would increase revenues to the Company by approximately $7.9 million for Step 1 based upon estimated sales in calendar year 1985 and by approximately an additional $10.5 million for Step 2 on a similar basis. The total increase would be approximately $18.4 million (32%). The Company proposed effective dates of May 29, 1985, for the Step 1 rates and May 30, 1985, for the Step 2 rates.[3]

Notice of the Company's filing was published in the **Federal Register**, [4] with comments due on or before April 23, 1985. The Cities [5] filed a timely motion to intervene and requested a five-month suspension of both steps of the rate increase. The Cities raise a variety of cost of service and rate design issues.[6] They also ask that this proceeding not be expedited, because of the complexity of the case, and request that the price squeeze issues be phased.

On May 8, 1985, the Company filed an answer to the Cities' motion to intervene. While not opposing the Cities' intervention, the Company opposes their request for a five-month suspension. In

[1] The Cities of Batavia, Geneva, Naperville, Rock Falls, and St. Charles, Illinois.

[2] *See* Attachment for rate schedule designations.

[3] In the event that the in-service date for the Company's Byron Unit 1 occurred after May 30, 1985, the Company requested that the Commission suspend the effective date of the Step 2 rates to that in-service date; however, on May 14, 1985, the Company informed the Commission that it had selected April 22, 1985, as the in-service date of the unit.

[4] 50 FR 14,422 (1985).

[5] See note 1.

[6] The issues raised include: (1) The claimed rate of return on equity, (2) the claimed test period Operations and Maintenance expenses, (3) the wholesale load projections, (4) the use of a 4CP demand allocator, (5) the claimed depreciation rates, (6) the inclusion of unenriched uranium in rate base, (7) classification of all revenue credits as energy related, (8) the claimed cash working capital, (9) the claimed fuel stock, (10) the inclusion of undepreciated investment of the retired Dresden Unit 1 in rate base, (11) alleged improper recovery of spent nuclear fuel disposal costs from prior periods, (12) the appropriate criteria for determining the "in-service" date for the Company's Byron Unit 1, (13) whether the increase in meter rental charges is just and reasonable, and (14) whether all the costs of constructing Byron Unit 1 were prudently incurred and should be included in rate base.

support, the Company disputes many of the allegations raised in the Cities' pleading. The Company concedes, however, that contrary to the terms of a settlement agreement approved in Docket Nos. ER83–437–000, *et al.*, it has allocated to the Cities certain disposal costs for spent nuclear fuel burned prior to April 7, 1983. The Company proposes that the Commission summarily dispose of this error by accepting corrected tariff sheets and supporting cost of service statements [7] attached to its answer in lieu of those originally submitted.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene makes the Cities parties to this proceeding.

In view of the Company's concession as to the allocation of nuclear fuel disposal costs to the Cities, we shall summarily dispose of this matter and accept the revised tariff sheets and cost support statements submitted in place of those originally filed by the Company.

The Cities object to the annualization of Byron Unit 1 in the Step 2 cost of service. We note, however, that we have previously allowed similar annualization adjustments were, as in the instant case, the effective date of the proposed rate coincides with the in-service date of the new unit. *See Pacific Gas and Electric Company*, 10 FERC ¶ 61,304 at pp. 61,608–09 (1980); *Southern California Edison Company*, 14 FERC ¶ 61,131 at p. 61,240 (1981).

The Company proposed to defer the effectiveness of the Step 2 rates until the in-service date of the Byron Unit 1. For the Step 2 cost of service, the Company has annualized the effect of placing the Byron Unit 1 in rate base. The Company defines "in-service date" as the date when, under normal practice under the Uniform System of Accounts, it would cease to record AFUDC. The Cities allege that the Company's definition of "in-service date" is inconsistent with utility practice and Commission precedent, which allows plant into rate base only when it becomes dedicated to commercial service. The Cities state that, in prior cases, the Company has attempted to assign an in-service date earlier than the date the plant was fully operational.

We interpret the Company's filing to be structured so that the rate base treatment of Byron Unit 1 and the effectiveness of the rates will coincide with the date the plant becomes available for service in order to avoid the controversies that accompanied its last case where the in-service date of its La Salle nuclear unit slipped substantially. This serves two purposes. The utility does not cease taking AFUDC based on an estimated, uncertain date and the customers' rates do not become effective based on an estimated, uncertain date. The Cities are concerned, however, that because the assignment of an in-service date is under the complete discretion of the utility, the Company could conceivably set a date before the unit was fully operational. The Company has advised the Commission in a letter dated May 14, 1985, that the in-service date for Byron Unit 1 has been set as April 22, 1985. The Company states that April 22, 1985, represents the beginning of a period during which Byron Unit 1 is generating a substantial level of output on a fairly consistent basis. For preliminary suspension purposes, the Commission shall accept the Company's proposed in-service date. Commonwealth shall cease accruing AFUDC as of that date, and we shall suspend the Step 2 rates as of the orginally requested effective date of May 30, 1985. If the Cities believe that Byron Unit 1 performance does not justify rate base treatment as of the Company's selected in-service date, they may pursue this issue at hearing.

Our preliminary examination of the Company's filing and the pleading indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates, as modified by summary disposition, for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the Step 1 rates may produce substantially excessive revenues. In contrast, our examination suggests that the Step 2 rates may not yield substantially excessive revenues. We shall therefore deem the Step 1 rates withdrawn and suspend the Step 2 rates, as modified, for one day, to become effective on May 31, 1985, subject to refund.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors.

Concerning the Cities' request that an expedited schedule not be established, the Chief Administrative Law Judge has discretion to decide whether an expedited schedule is appropriate.

The Commission orders:

(A) Commonwealth Edison Company's request for summary disposition as to allocation of spent nuclear fuel disposal costs is hereby granted.

(B) Commonwealth Edison Company's proposed rates are hereby accepted for filing as modified by summary disposition. The revised Step 2 rates are suspended, to become effective subject to refund, on May 31, 1985, and the revised Step 1 rates are deemed withdrawn.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Commonwealth Edison Company's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the

[7] Specifically, the Company has revised Statements AH, AL, BG, BJ, BK, and BL.

initiation of the price squeeze phase of this proceeding.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

COMMONWEALTH EDISON COMPANY RATE SCHEDULE DESIGNATIONS

[Docket No. ER85-404-000]

Sheet No. under FPC electric tariff original volume No 1	Supersedes	Description
(1) 14th Revised Sheet No. 1.	13th Revised Sheet No. 1	Rate 78—Step One.
(2) 15th Revised Sheet No. 1	14th Revised Sheet No. 1	Rate 78—Step Two.
(3) 2nd Revised Sheet No. 3.	1st Revised Sheet No. 3.	Terms and Conditions.
(4) 5th Revised Sheet No. 7.	4th Revised Sheet No. 7	Rider 7—Meter [illegible].
(5) 2nd Revised Sheet No. 7A.	1st Revised Sheet No. 7A.	Do.
(6) 6th Revised Sheet No. 12.	5th Revised Sheet No. 12.	Rider 20—Fuel Adjustment.

[FR Doc. 85-13267 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-427-000, etc.]

Diamond Shamrock Exploration Co.; Notice of Petition Under Protest [1] To Amend Certificate and Establish Rate Schedules To Reflect Merger

May 29, 1985.

Take notice that on April 30, 1985, Diamond Shamrock Exploration Company (Diamond Shamrock), of P.O. Box 631, Amarillo, Texas 79173, pursuant to § 154.91, *et seq.*, §§ 157.23, *et seq.*, and 157.40 of the regulations (18 CFR 154.91, *et seq.*; 157.23, *et seq.*; and 157.40 (1984)), requests under protest [1] that the Commission amend the certificate issued to Oleum Incorporated (Oleum) in Docket No. CS72-455 to reflect a merger of Oleum into Diamond Shamrock. Diamond Shamrock also requests that eight rate schedules be established to cover the eight sales under Docket No. CS72-455. Finally, Diamond Shamrock requests that the Commission proceedings in which Oleum was previously a party reflect this name change which are listed and described in Exhibits "A" and "B" attached hereto.

Effective March 11, 1985 Oleum was merged into Diamond Shamrock Exploration Company as evidence by the certificate from the State of Delaware dated April 1, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A.—LIST OF OLEUM INCORPORATED PROCEEDINGS AND SALES

Proposed Diamond Shamrock Exploration Rate Schedule No.	Date of contract	Purchaser	Location
85 CI85-427-000	Oct. 28, 1980	Transwestern Pipeline Company	Lipscomb County, Texas
86 CI85-428-000	July 1, 1982	Northern Natural Gas Company, a Division of InterNorth, Inc.	Clark County, Kansas.
87 CI85-429-000	Mar. 28, 1963	Trunkline Gas Company	Vermilion Parish, Louisiana.
88 CI85-430-000	Oct. 25, 1965	ANR Pipeline Company	Woodward County, Oklahoma
89 CI85-431-000	Dec. 18, 1963	ANR Pipeline Company	Ellis County, Oklahoma.
90 CI85-432-000	Feb 4, 1963	Panhandle Eastern Pipeline Company	Dewey County, Oklahoma.
91 CI85-433-000	Sept. 25, 1963	Northern Natural Gas Company, a Division of InterNorth, Inc.	Lipscomb County, Texas.
92 CI85-434-000	Sept. 26, 1963	Northern Natural Gas Company, A Division of InterNorth, Inc	Lipscomb County, Texas.

EXHIBIT B.—LIST OF OLEUM INCORPORATED PROCEEDINGS AND SALES

Proposed Diamond Shamrock Exploration Rate Schedule No.	Date of contract	Purchaser	Location
85	Oct. 28, 1980	Transwestern Pipeline Company	Lipscomb County, Texas.
[illegible]	July 1, 1982	Northern Natural Gas Company, a Division of InterNorth, Inc.	Clark County, Kansas.
87	Mar. 28, 1983	Trunkline Gas Company	Vermilion Parish, Louisiana.
[illegible]	Oct. 25, 1965	ANR Pipeline Company	Woodward County, Oklahoma.
89	Dec. 18, 1963	ANR Pipeline Company	Ellis County, Oklahoma.
[illegible]	Feb. 4, 1963	Panhandle Eastern Pipeline Company	Dewey County, Oklahoma.
91	Sept. 25, 1963	Northern Natural Gas Company, a Division of InterNorth, Inc.	Lipscomb County, Texas.
[illegible]	Sept. 26, 1963	Northern Natural Gas Company, A Division of InterNorth, Inc.	Lipscomb County, Texas.

Other Proceedings Pending

Application for Abandonment Authorization—Docket No. CI85-411-000—Sale to Panhandle Eastern Pipe Line Company; production from Barber County, Kansas.

Application for Abandonment Authorization—Docket No. CI85-399-000—Sale to Tennessee Gas Pipeline Company; production from Austin County, Texas.

Application for Abandonment Authorization—Docket No. CI85-155-000—Sale to United Gas Pipe Line Company; production from Terrebonne Parish, Louisiana.

Petitions for Special Relief—Docket Nos. G-17136, G-18516 and RI60-234.

[FR Doc. 85-13268 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6120-002]

Frontier Land & Power Corp; Notice of Application for Transfer of Minor License

May 31, 1985.

Public notice is hereby given that an application was filed on April 15, 1985, under the Federal Power Act, 16 U.S.C. 791(a) 825(r), by Frontier Land and Power Corporation, Licensee and Solar Research Corporation, Transferee, for transfer of minor license for the Camp

[1] This Petition is filed under protest because Diamond Shamrock does not believe that a certificate amendment is necessary to reflect this merger. By "Notice of Applications for Small Producer Certificates" issued July 12, 1979 the Commission acknowledged Oleum's affiliation with Diamond Shamrock Corporation (predecessor to Diamond Shamrock Exploration Company). Pursuant to § 157.40(d), separate certificate applications and individual rate schedules are necessary only for *future* sales. The existing sales remain under the previously issued small producer certificate. Nevertheless, the Commission Staff has indicated this certificate amendment is required. This protest is also filed to ensure Diamond Shamrock's entitlement to refund of the filing fee with respect to this certificate if it is found that this petition is not required.

Creek Project No. 6120. The project is located on Camp Creek in Butte County, California. Correspondence should be directed to Mr. Bruce J. McDowell, Jr., Vice President, Frontier Land and Power Corporation, P.O. Box 131, Taylorsville, CA 95983, Transferor, and Mr. Lee M. Goodwin, Wickwire, Gavin, and Gibbs, P.C., Suite 700, 1819 L Street, NW., Washington, D.C. 20036, Attorneys for Transferee.

Transferee states that it will comply with all applicable laws of the State of California as required by section 9(b) of the Federal Power Act.

Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before July 10, 1985. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13269 Filed 6–3–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85–25–000]

Laurel Fuel Co.; Notice of Petition for Adjustment

Issued: May 30, 1985.

On April 30, 1985, Laurel Fuel Company (Laurel) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978. Commission Orders 399 and 399–A require Laurel, as operator of certain gas producing properties, to refund to Trunkline Gas Company (Trunkline) amounts related to the measurement of the Btu content of natural gas sold by Laurel to Trunkline. Laurel requests relief from making Btu refunds attributable to the working interest of Don Henry Ford. Laurel states that Mr. Ford filed for bankruptcy in 1983, and on August 23, 1984, was discharged of all debts by the United States Bankruptcy Court in the Northern District of Texas. Laurel states that it is unable to obtain the refund amount from Mr. Ford

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13270 Filed 6–3–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI83–257–002]

MGF Oil Corp.; Notice of Application

May 29, 1985.

Take notice that on May 22, 1985, MGF Oil Corporation (Applicant) of P.O. Box 360, Midland, Texas 79702, filed in Docket No. CI83–257–002, an application pursuant to section 7(b) of the Natural Gas Act for an extension from June 30, 1985 until December 31, 1987 of the temporary partial abandonment authority granted it by Order of the Commission dated January 13, 1984 in Docket No. CI83–257–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant seeks to continue partial abandonment of sales of gas to Panhandle Eastern Pipe Line Company (Panhandle) from certain wells, qualified under Sections 108 and 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA) in the Wattenberg Field in Adams and Weld Counties, Colorado. Applicant states that it will continue to sell such gas to Natural Gas Associates, a Colorado partnership, which will process the gas and resell the gas residue to Western Gas Supply Company (Westgas) for its system supply. Panhandle will transport the released gas, pursuant to section 311(a)(1) of the NGPA, on behalf of Westgas.

Applicant states that its application will promote the present and future public convenience and necessity by providing Panhandle and its customers with substantial take-or-pay relief and also because Panhandle will be relieved from the obligation to purchase gas that it does not need and that is priced higher than Panhandle's weighted average cost of gas. Applicant also states that continuation of the sale of the released gas to Natural Gas Associates will provide applicant with an assured cash flow that is essential to its economic viability.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13271 Filed 6–3–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID–2006–002, etc.]

Arthur A. Hatch et. al.; Interlocking Directorate Applications

May 29, 1985.

Take notice that the following filings have been made with the Commission.

1. Arthur A. Hatch

[Docket No. ID–2006–002]

Take notice that on May 6, 1985, Arthur A. Hatch (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following position: Director; Blackstone Valley Electric Company.

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Preston L. Smith

[Docket No. ID–2172–000]

Take notice that on May 6, 1985, Preston L. Smith (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director; Vermont Electric Power Company

Director; Central Vermont Public Service Corporation

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. A. Wayne Cole

[Docket No. ID–2176–000]

Take notice that on May 15, 1985, A. Wayne Cole (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions.

Director; Ohio Valley Electric Corporation
President and Director; Pennsylvania Power Company

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. George C. Palmer, II

[Docket No. ID–2168–000]

Take notice that on April 30, 1985, George C. Palmer, II (applicant) filed an application under section 305(b) of the Federal Power Act to hold the following positions:

Director; Virginia Electric and Power Company
Director; Sovran Financial Corporation
Director; Sovran Bank, N.A.

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Robert P. Bliss

[Docket No. ID–2175–000]

Take notice that on May 10, 1985, Robert P. Bliss (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director; Vermont Electric Power Company, Inc.
Director; Central Vermont Public Service Corporation

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Robert J. Harrison

[Docket No. ID–2173–000]

Take notice that on April 30, 1985, Robert J. Harrison (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

President, Chief Executive Officer; Public Service Company of New Hampshire
Director; Maine Yankee Atomic Power Company
Director; Vermont Yankee Nuclear Power Corporation
Director; Yankee Atomic Electric Company

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13260 Filed 6–3–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. OF85–486–000, et al.]

Hydro Energies Corp. et al.; Certificate Applications for Qualifying Status as Small Power Production and Cogeneration Facilities

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Hydro Energies Corp.

[Docket No. QF85–486–000]

May 28, 1985.

On May 6, 1985, Hydro Energies Corporation (Applicant), of P.O. Box 991, Bonnett Street, Manchester Center, Vermont 05255, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at the Dewey's Mills Dam in the Town of Hartford, Windsor County, Vermont. The facility consists, in part, of an existing concrete and masonry dam 375 feet long with appurtenant 45 acre reservoir, owned by the Army Corps of Engineers, two new steel penstocks, and a new concrete power house containing two turbine/generators. Electricity produced by the facility will be sold to the Vermont Power Exchange Inc. The interconnecting utility is Central Vermont Public Service Corporation. The primary energy source to be used by the facility is water. The power production capacity of the facility is 2400 kilowatts.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Turbodyne Electric Power Corporation

[Docket No. QF85–495–000]

May 28, 1985.

On May 14, 1985, Turbodyne Electric Power Corporation (Applicant) of 37 Coats Street, Wellsville, New York 14895, submitted for filing an application for certication of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located in Lake Butler, Florida on Route 231A approximately one mile northeast of the intersection of State Routes 100 and 231 A. The facility will consist, in part, of a steam turbine/generator, a wood stoker fired boiler and a mechanical draft tower. The net electric power production capacity of the facility is 13,800 kilowatts. The primary source of energy will be wood in the form of chips and wood by-product from industrial processes.

3. Getty Synthetic Fuels, Inc.

[Docket No. QF85–489–000]

May 29, 1985.

On May 6, 1985, Getty Synthetic Fuels, Inc. (Applicant), of 2750 Signal Parkway, Signal Hills, California 90806 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Monterey Park Los Angeles County, California. The electric power

production capacity will be 6,500 kilowatts. The primary energy source will be biomass in the form of landfill gas, which is provided to the facility from wells and collection pipelines in the landfill. The facility does not require the use of natural gas, oil or coal.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13259 Filed 6–3–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–467–000]

Park-Ohio Energy, Inc.; Notice of Application for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization

May 29, 1985.

Take notice that on May 22, 1985 Park-Ohio Energy, Inc. ("Park-Ohio") 20600 Chagrin Boulevard, 600 Tower East, Cleveland, Ohio 44122, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act, 15 U.S.C. Sections 717c, 717f, and provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing Park-Ohio to conduct a short-term spot sales marketing program, hereinafter referred to as the "SPARK" Program, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the SPARK Program; and (5) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. Park-Ohio also requests the Commission to declare that, with respect to Park-Ohio and its activities, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation not otherwise exempt from the NGA.

Under the SPARK Program, Park-Ohio proposes to sell natural gas qualifying for the Section 102, 103, 107 or 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. Sections 3301–3432. Only contractually committed gas will be sold. Park-Ohio and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13272 Filed 6–3–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA85–31–000]

Phillips and Spradley; Notice of Petition for Adjustment

Issued May 30, 1985.

On May 7, 1985, Phillips and Spradley, a partnership, filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978. Phillips and Spradley seeks an additional 45 days from May 3, 1985, until June 17, 1985, to make Btu overcharge refunds required by Commission Orders 399 and 399–A. The firm contends that it needs this additional time to review its sales records in order to determine the amount of refunds due to its purchaser, Esperanza Transmission Company.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13273 Filed 6–3–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RE85–4–000]

South Carolina Public Service Authority; Notice of Application for Exemption

May 30, 1985.

Take notice that South Carolina Public Service Authority (SCPSA) filed an application on May 8, 1985 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D and E or Part 290.

In its application for exemption SCPSA states, in part, that it should not be required to file the specified data for the following reasons:

- The information is not used by Santee Cooper.
- The information is available in other reports filed with the government.
- Manpower and financial resources could be better utilized in performing other tasks more beneficial to our rate payer.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate

change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Kenneth R. Ford, South Carolina Public Service Authority, One Riverside Drive, Moncks Corner, South Carolina 29461-0398.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13274 Filed 6-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4268-000, et al.]

Tenneco Oil Company et al.; Notice of Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates[1]

May 29, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 12, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-4268-000, F, May 17, 1985	Tenneco Oil company (Successor in interest to sun exploration and Production Co.) P.O. Box 2511, Houston, TX 77001	Colorado Interstate Gas Co., Beach Gas Unit, Hugoton Field, Finney County, KS.	(1)	14.73
G-17381-002, D, May 22, 1985	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, OK 73125	Transcontinental Gas Pipe Line Corp., Ship Shoal Block 33 Platform B, Offshore Louisiana	(2)	
CI61-323-002, D, May 17, 1985	Union Oil Co. of California, Union Oil Center, Box 7600, Los Angeles, CA 90051	Transwestern Pipeline Co., Como Area, Beaver County, OK.	(3)	
CI61-1395-000, F, May 17, 1985	Tenneco Oil Co. (Successor in interest to Sun Exploration and Production Co.)	Northwest Central Pipeline Corp., Bittiker Unit, Hugoton Field, Finney County, KS.	(1)	14.73
CI62-47-001, D, Oct 24, 1984	Gulf Oil Corp., P.O. Box 2100, Houston, TX	Colorado Interstate Gas Co., Patrick Draw Field, Sweetwater County, WY	(4)	
CI66-172-000, D, May 13, 1985	Pioneer Exploration Co., (Previously Sun Oil Co.) P.O. Box 1407, Wichita, KS 67201	Texas Gas Transmission Corp., Maurice Field, Lafayette and Vermilion Parishes, LA	(5)	
CI73-685-000, and CI73-686-001 May 20, 1985	Shell Western E&P Inc. (Successor in interest to Shell Oil Company) P.O. Box 1684, Houston, TX 77210	ANR Pipeline Co., Mocan-Laverne Field, Beaver County OK	(6)	14.73
CI80-245-001, D, May 3, 1985	Sohio Petroleum Co., P.O. Box 4587, Houston, TX 77210	Panhandle Eastern Pipeline Co., Longbranch Field, Adams County, CO.	(7)	
CI85-413-000, F, Apr 29, 1985	TXO Production Corp. (Successor in interest to SPG Exploration Corp.) First City Center, LB 10, 1700 Pacific Avenue, Dallas, TX 75201-4696	Tennessee Gas Transmission Co., Chatham Field, Jackson Parish, LA	(8)	14.73
CI85-414-000, B, Apr 29, 1985	Oil Producers, Inc. of Kansas, P.O. Box 8647, Wichita, KS 67208	Panhandle Eastern Pipeline Co., SE NE NW sec 23-27s-18W N. Greensburg Field, Kiowa County, KS.	(9)	
CI85-418-000 (G-18016), B, Apr 29, 1985	Shell Western E&P Inc.	Cimarron Transmission Co., S W Enville Field, Love County OK	(10)	
CI85-419-000, B, Apr 26, 1985	Bison Petroleum Corp., 200 S 8th--Suite 510, Amarillo, TX 79101	Phillips Petroleum Co., S. Lucky Lake Field, Chaves County, NM (Owen Federal No. 2 well)	(11)	
CI85-421-000, A, May 14, 1985	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309	Natural Gas Pipeline Co. of America South Marsh Island Block 286, Offshore Louisiana	(12)	14.73
CI85-422-000 (CI66-172) B, May 13, 1985.	Pioneer Exploration Co. (Previously Sun Oil Co.) P.O. Box 1397 Wichita, KS 67201	Texas Gas Transmission Corp., Maurice Field, Lafayette and Vermilion Parishes, LA	(5)	
CI85-423-000, B, Apr 29, 1985	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Phillips Petroleum Co., Jordan-Penwell Field, Ector County TX	(13)	
CI85-425-000, F, Apr 30, 1985	TXO Production Corp. (Successor in interest to SPG Exploration Corp.) First City Center, LB 10, 1700 Pacific Avenue, Dallas, TX 75201-4696	Valley Gas Tranmission, Inc., Chatham Field, Jackson Parish, LA	(8)	14.73
CI85-426-000, F, Apr 30, 1985	TXO Production Corp. (Successor in interest to Mernon Oil and Gas Corp., RLB Enterprises Inc., and Texaco Inc.)	Northwest Pipeline Corp., Book Cliffs Field, Grand County, UT	(14)	14.73
CI85-458-000, B, May 16, 1985	Piper Petroleum Company, *et al.*, 2100 First City Natl Bank Bldg., Houston, TX 77002	Transcontinental Gas Pipe Line Corp., South Crowley Field, Acadia Parish, LA	(15)	
CI85-459-000, B, May 15, 1985	ARCO Oil and Gas Co. Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221	The Neueces Company (Delhi) Twofreds Field, Loving County, TX.	(16)	
CI85-460-000, (G-2612) B, May 15 1985	Phillips Petroleum Co. 336 HS&L Bldg., Bartlesville, OK 74004	Arkansas Louisiana Gas Co., Longwood Field, Cesso Parish, LA	(17)	
CI85-461-000 (CI71-443) B, May 16, 1985	Tenneco Oil Co. P.O. Box 2511, Houston, TX 77001	Montana-Dakota Utilities, Slick Creek Unit Field, Washakie County, WY	(18)	
CI85-462-000, B, May 20, 1985	Northern Oil & Gas, Inc., Box 5090, Borger, TX 79007	Panhandle Eastern Pipeline Co., Panhandle Field, Carson County, TX	(19)	
CI85-463-000, b, May 20, 1985	Tomlinson Oil Co., Inc.	Northern Natural Gas Co., Division of InterNorth, Inc., Dowdy Lease Wide Awake Field, Seward County, KS.	(20)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI85-464-000, B, May 20, 1985	Conoco Inc	Getty Oil Co., E/2 NE/4 Sec 4, Block 32, T3N, T&P. RR Co. Survey, Borden County, TX	(21)	
CI85-465-000 (CI64-875) B, May 20, 1985	Sun Exploration and Production Co., P.O Box 2880, Dallas, TX 75221-2880	Arkansas-Louisiana Gas Co., North Enid Area, Garfield County, OK	(22)	

[1] Tenneco Oil company is acquiring this property as of December 1, 1983 and requests its permanent certificate of public convenience and necessity be effective as of that date
[2] All deliveries from Platform "B" have ceased and the functions of the platform have been assumed by the Platforms C-1 and C-2
[3] No longer economically feasible to maintain compression facilities. Low pressure line of an alternate buyer is available.
[4] Assignment executed by Gulf Oil Corporation on December 31, 1969 assignes and tranfers all of its leasehold estate rights in certain acreage to Colorado Interstate Gas Company
[5] Uneconomical.
[6] Effective as of January 1, 1984, Shell Oil Company assigned to SWEPI, *inter alia*, the leases covered by the certificates issued to Shell at Docket Nos. CI73-685 and CI73-686
[7] The leases in the Longbranch Field subject to Rate Schedule No. 173 have been plugged and abandoned
[8] By an Assignment effective April 1, 1984, Applicant acquired from SPG Exploration Corp. certain property
[9] Lack of sufficient production to maintain economical operation
[10] All leases have been assigned to Maynard Oil Company, which intends to continue service.
[11] The Owen Federal No. 2 is an oil well. Bison needs to vent the gas in order to relieve the back pressure on the well and maintain the oil production rate above the economic limit Otherwise oil reserves will be lost.
[12] Applicant is filing under Gas Purchase Contract dated March 27, 1985
[13] Non-production and the contract has passed the primary term
[14] By an Assignment effective May 7, 1982 Applicant acquired from Merrion Oil and Gas Corporation and RLB Enterprises, Inc. interest in certain property By an Assignment effective September 1, 1983, Applicant acquired from Texaco, Inc. interest in that same property
[15] Jeffers #1 well was plugged and abandoned and no further production is planned.
[16] Gasinghead Gas Purchase Contract dated May 21, 1962 expired on its own terms on January 1, 1980 No sales have been made under this contrct since 1971 and no further sales are anticipated.
[17] The contract has expired and the only remaining lease qualifies for the NGPA Section 102 rate and has been released by the purchaser
[18] No sales have transpired since November 15, 1971. All sweet gas is being used on lease; no future sales are anticipated
[19] The present purchaser, Panhandle Eastern no longer wishes to purchase the gas.
[20] This well is unable to deliver gas into NNG collection line since well pressure is less than collection line pressure Northern Natural Gas Company agreed to terminate contract dated August 25, 1975 as of May 1, 1985
[21] Gas contract was cancelled effective January 1, 1982 due to depletion of reserves
[22] Release of property from Arkla Energy Resources
Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession

[FR Doc. 85-13275 Filed 6-3-85; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $228,335.71 and $546.00 in consent order funds to members of the public. This money is being held in escrow following the settlement of two enforcement proceedings involving St. James Resources Corporation and Kingston Oil Supply, both reseller-retailers of petroleum products. St. James is located in Boston, Massachusetts; Kingston Oil Supply is in Port Ewen, New York.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0100, HEF-0109.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to two consent orders entered into by the St. James Resources Corporation (St. James) and Kingston Oil Supply (Kingston). The St. James consent order settled possible pricing violations in the firm's sales of No. 2 heating oil to customers during the period May 1, 1974 through June 30, 1976; the Kingston consent order settled alleged pricing violations in the firm's sale of No. 4 residual fuel oil to its customers during the period of November 1, 1973 through December 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of two escrow accounts funded by St. James and Kingston pursuant to the respective consent orders. In the case of St. James, the DOE has tentatively decided that the consent order funds should be distributed in two stages. In the first stage, OHA proposes that a portion of the consent order fund should be distributed to 78 first purchasers after each has filed an application for refund. The purchasers in this case were identified by a DOE audit and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. However, applications for refund will also be accepted from purchasers not identified by the DOE audit. In the event that money remains in the St. James escrow account after all first-stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. The DOE has also tentatively determined that the $546 in the Kingston consent order fund be reserved for distribution in a second stage proceeding. Although the audit in this case identified the purchaser entitled to receive these funds, the DOE has been unable to locate the customer and will accept information as to its location for 90 days following the issuance of a Final Decision and Order in this case. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: May 16, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 16, 1985.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: St. James Resources Corporation Kingston Oil Supply.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0100 and HEF-0109.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Proceedings in connection with the consent orders which it entered with St. James Resources Corp. (St. James) and Kingston Oil Supply (Kingston). Each of these firms is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.1. St. James's main office is in Boston, Massachusetts; Kingston is located in Port Ewen, New York. DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order, with DOE. Each consent order refers to ERA's allegations of overcharges, but notes that no findings of violations were made. Additionally, each consent order states that the consent order firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

The St. James consent orders covers the period May 1, 1974 through June 30, 1976. The DOE audits alleges that during that period, the firm committed possible pricing violations amounting to $228,335.71 with respect to its sales of No. 2 heating oil. In order to settle all claims and disputes between St. James and DOE regarding the firm's sales of No. 2 heating oil during the audit period, St. James and the DOE entered into the consent order on March 20, 1980. According to the St. James consent order, the firm agreed to deposit $228,335.71, including interest, into an interest-bearing escrow account for ultimate distribution by DOE. The consent order funds were paid in full on March 20, 1980.

In the Kingston case, the DOE audit revealed possible pricing violations with respect to sales of No. 4 residual fuel oil during the November 1, 1973 through December 31, 1974 audit period. In order to settle all claims and disputes between Kingston and DOE regarding these sales, Kingston and the DOE entered into the consent order on August 7, 1981, in which the firm agreed to make refunds amounting to $78,000 (including interest). Since the audit in this case identified the allegedly overcharged end-user purchasers, Kingston made direct refunds to its customers. One customer, however, could not be located. Therefore, Kingston placed this purchaser's refund of $546.00 in an interest-bearing escrow account for ultimate distribution by DOE.

This Decision concerns the distribution of the consent order funds that were deposited in both the St. James and Kingston escrow accounts, plus accrued interest to date.

II. Proposed Refund Procedures

The purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. 10 CFR Part 205, Subpart V. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a more precise determination with respect to the identity of the allegedly overcharged parties is possible.

A. Refunds to Identified Purchasers

During the DOE's audit of St. James, 78 first purchasers were identified by ERA as having allegedly been overcharged. In the case of the Kingston audit, the alleged overcharges under discussion in this decision were attributable to purchases made by a single firm. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of all possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong & Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit, or to their downstream purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.*, 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audits, along with the respective shares of the settlement amount allotted to each by ERA, are listed in Appendices A and B.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any or part of the alleged overcharges were passed on. In addition to the information in the record at this time, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow accounts in these cases. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resovling to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumption.

10 CFR 205.282(e). The presumptions were propose to adopt in this case are used to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in these cases we propose to adopt a presumption of injury with respect to small claims.

There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). as we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost of OHA of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from St. James and Kingston and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption which we propose to adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In these cases, where the consent order fund is small, the refund amount is fairly low, and the time period of the consent order is many years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. After analysis of the information in the record, it appears that 73 of St. James' customers listed on Appendix A and the one Kingston customer listed on Appendix B, made small purchases of the respective firms' products. The refunds authorized for five St. James customers, however, are larger than the amount which a firm may be entitled to receive under the small claims presumption we have proposed.

On the basis of the considerations discussèd above, we propose to distribute a portion of the escrow funds to the first purchasers listed in Appendix A in the amounts specified, plus accrued interest to date. The share of the escrow fund which the listed purchasers in Appendix A may receive represents 100% of the amount each was allegedly overcharged, and is consistent with the terms of the St. James consent order, which settled for 100% of the total amount of alleged overcharges identified by the audit. In order to actually receive a refund each customer will still be required to file an application for refund. (*See* discussion *infra*).

However, since the refunds allotted to five of St. James' reseller customers are larger than $5,000—and therefore larger than a "small claim"—we will require each of these firms to make a specific demonstration of injury prior to receiving the full refund allotted to it in Appendix A.[1] As in previous special refund cases, we will ask these firms to show that they did not pass the effects of St. James' alleged regulatory violations through to their own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which they could make this showing, these firms should generally demonstrate that at the time they purchased St. James products, market conditions would not permit them to pass the alleged overcharges on to their own customers in the form of higher prices. In addition, the firms must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A. Inc.*, 10 DOE ¶ 85,014 (1982); Vickers Energy Corp./Standard Oil Co., 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

In addition, we have no other information regarding the identify or location of the last 13 purchasers listed in Appendix A and are unable to distribute refunds to them. However, we will contact St. James and publish notice of this Proposed Decision and Order in the **Federal Register**, in an effort to reach these purchasers. We will accept information regarding the identify and present locations of these purchasers for a period of 90 days following publication in the **Federal Register** of notice of a final Decision and Order in this proceeding.

We are also unable, based on the information available to us, to distribute the Kingston consent order funds to the purchaser listed on Appendix B. According to our records, this customer, Rubin's Hotel, was sold, and Mr. David Rubin, the owner at the time of the alleged violation, left no forwarding address.[2] OHA has not succeeded in locating Mr. Rubin. Under these circumstances and because most of the Kingston consent order fund has already been distributed to first purchasers (*see* discussion *supra*), we propose to conclude the first stage in the Kingston proceeding and reserve Mr. Rubin's refund for distribution in a second stage proceeding.

B. Refunds to Other Purchasers

As discussed, this Decision concerns the distribution of $228,335.71 that St. James deposited into the escrow account, plus accrued interest to date. Since the refunds tentatively allotted to identified purchasers total only $117,023.88, the remaining portion of the St. James consent order funds may be distributed among purchasers other than those identified by the ERA audit, and repurchasers, who may have been injured by the alleged overcharges. To assist other potential claimants in deciding whether to apply for a refund, we propose to utilize the small claim presumption discussed above and, in addition, to adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by St. James during the consent order period. OHA has referred to this

[1] These five firms are: Decker & Simmons; Emerson Coal & Oil Company; Ingle & Son; Atlantic Coal & Oil Company; Avon Coal & Oil Inc

[2] *See* copy of August 18, 1981 letter which Mr. Arthur P. Motckin, President of Kingston Oil Supply Corp. sent to Mr. Samuel Borenkind, Esq., Counsel for Kingston.

presumption in the past as a volumetric refund amount. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See e.g., Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

Using a volumetric approach in this proceeding means that a portion of the St. James consent order amount would be allocated to each gallon of product which a successful claimant purchased from St. James. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.005828 per gallon.[3] Potential applicants that were not identified by the ERA audit of St. James may use this volumetric figure to estimate the refund to which they may be entitled. Previous experience with Subpart V proceedings indicates that to the extent such other purchasers come forward as first-stage refund claimants, they would be either resellers (including retailers) or end-users. As we stated above, in order to qualify for a refund, resellers generally would be required to establish that they absorbed the alleged overcharges. However, those reseller claimants applying for a refund under $5,000 will not be required to demonstrate injury. *See* discussion, *supra*.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) and cases cited therein. We have concluded that end-users of St. James petroleum products need only document their purchase volumes from St. James to make a sufficient showing that they were injured by the alleged overcharges. If additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[4]

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the modest benefits of restitution in those situations. *See, e.g. Uban, supra* at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a scheduled of its monthly purchases of No. 2 heating oil from St. James, or to submit a statement verifying that it purchases heating oil from St. James and is willing to rely on the data in the audit file. Claimaints must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying the St. James proceeding. Purchasers not identified by the ERR audit will be required to provide specific information concerning the date, place, and volume of product purchases, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative method of distributing any remaining funds.

It Is Therefore Ordered That:

(1) The refund amount remitted to the Department of Energy by St. James Resources Corporation, pursuant to the consent order executed on March 20, 1980, will be distributed in accordance with the foregoing decision.

(2) The refund amount remitted to the Department of Energy by Kingston Oil Supply, pursuant to the consent order executed on August 7, 1981 will be reserved for distribution in a second stage proceeding, in accordance with the foregoing decision.

APPENDIX A.—ST. JAMES RESOURCES CORPORATION

First purchasers	Portion of settlement amount [1]
Aggregate, Post Office Box 161, Palmerton, PA 18071	$753.87
Atlantic Coal & Oil Company, 77 Pilsudski Street, Providence, RI 02909	10,620.57
Atlas Oil Corporation, 55 Allied Drive, Post Office Box 470, Dedham, MA 02026	2,752.56
Avon Coal & Oil, Inc., 175 Main Street, Avon, MA 02322	11,470.78
B & M Fuel Company, Iron Horse Park, North Billerica, MA 01862	201.14
Beaver Coal & Oil Company, 200 Broadway, Norwood, MA 02062	958.43
Bitlman, 222 North 2nd Street, Catawissa, PA 17820	145.95
Blackstone Fuel, 112 Magill, Pawtucket, RI 02860	76.50
Boyd Oil, Main Street, Contoocook, NH 03229	163.50
C.J. Thibodeaux, 940 Esperson Building, Houston, TX 77002	510.61
Cleghorn Oil, 25 Pratt Street, Post Office Box 913, Fitchburg, MA 01420	2,555.50
Co-op, Inc., 38 North Street, Natick, MA 01760	1,263.02
Curtis Oil Company, Inc., 431 Pine Way, East Weymouth, MA 02189	250.27
Docker & Simmons, 37 Hamburg Avenue, Sussex, NJ 07461	6,431.67
Dennis K. Burke, Inc., 410 Beecham Street, Chelsea, MA 02150	684.90
Eichlin, Walter's Oil, Inc., 1000 Bushhill Drive, Easton, PA 18042	279.60
Elman Fuel Company, 171 Walnut Street, Hartford, CT 06101	3,951.78
Emerson Coal & Oil Company, 572 East Street, Post Office Box 117, East Weymouth, MA 02189	9,218.95
Fields, Route 2, Box 37, Easton, PA 18042	3,140.57
Gibbs Oil Company, 40 Lee Burbank Highway, Revere, MA 02151	2,965.19
Glen Petroleum Corporation, Fish Island, North Bedford, MA 01730	800.21
Grimes Oil Company, Inc., 165 Norfolk Street, Boston, MA 02124	827.28
Grove Oil Service, 610 Laurel Hill Avenue, Cranston, RI 02920	324.47
Haffner, Parker Fuel, Post Office Box 1822, Shavertown, PA 18708	4,521.02
Haz Standard, 962 North Laurel Street, Hazelton, PA 18201	112.91
Heller, Main Street, Wapwallopen, PA 18660	241.29
Holliston Oil, 22 Exchange Street, Holliston, MA 01746	32.26

[3] This per gallon factor is computed by dividing the $228,335.71 available for distribution under the St. James consent order by 39,176,666 gallons, which represents St. James' total sales of all covered products during the consent order period.

[4] Purchasers identified in the ERA audit of St. James as having allegedly been overcharged may also submit information to show that they are entitled to larger refunds than those indicated in Appendix A.

APPENDIX A.—ST. JAMES RESOURCES CORPORATION—Continued

First purchasers	Portion of settlement amount [1]
Hopedale Coal & Ice Co., Inc., Hope Street, Hopedale, MA 01747	1,470.42
Ingle & Son, Circuit Street, Hanover, MA 02339	8,590.07
J.R. Williams, 132 Carpenterville Road, Phillipsburg, NJ 08865	184.79
Jay Fuel, 279 Clark Road, Post Office Box 723, Brookline, MA 02147	34.13
Jenny Oil Company, Inc., 6 Vine Street, Middleboro, MA 02346	143.74
L & A Fuel, 794 Sabattus Road, Lewiston, ME 04240	1,602.25
Lenza Oil Terminals, 205 Lexington, Waltham, MA 02154	61.76
Lincoln, 420 Mountain Avenue, Middlesex, NJ 08846	1,550.70
Manbeck, Post Office Box 57, Schuylkill Haven, PA 17972	290.83
Charles H. Mantz, 65 2nd Street, Slatington, PA 18080	10.79
Marvo Oil Company, 10 Lunenburg Street, Fitchburg, MA 01420	1,940.16
McCoy Coal & Oil, 213 Broad Street, Cumberland, RI 02864	1,429.16
Metropolitan Petroleum, 500 Neponset Avenue, Boston, MA 02122	201.13
George Mizhir & Sons, 300 Elmwood Road, Winchedon, MA 01475	297.35
Mystic Fuel, Inc., 7 Corporation Way, Medford, MA 02155	10.83
Needham Oil Company, Inc., 355 Chestnut Street, Needham, MA 02192	556.15
Nightingale, 25 Adams Street, Braintree, MA 02184	3,568.93
Northeast Petroleum Corporation, 295 Eastern Avenue, Chelsea, MA 02150	2,788.30
Oil Service Company, 200 Boylston Street, Newton, MA 02167	813.61
Parker Lane Winn Company, 957 Main Street, Winchester, MA 01890	68.35
People's Fuel & Trucking, Inc., 73 City Hall Avenue, Gardner, MA 01440	130.24
Peschel, 66 Belvedere Avenue, Oxford, NJ 07336	18.46
Petco Coal and Oil, South Windsor Road, South Royalton, VT 05068	126.34
Pioneer Oil, 450 Southbridge Street, Worcester, MA 01610	141.32
Previtt Oil Company, Inc., 1199 East Street, Dedham, MA 02026	57.49
Quincy Adams Coal & Oil Co., Inc., 10 Mayor Thomas McGrath Highway, Post Office Box 150, Quincy, MA 02169	872.47
Sears Fuel, 15 McKinney Road, Post Office Box 131, Plymouth, MA 02360	3,325.74
Sherman Brothers Heating Co., Inc., 1305 Pleasant Street, East Weymouth, MA 02189	94.91
Shupe, 1631 Spring Garden Street, Easton, PA 18042	27.41
Skin's Oil Company, 300 Elmwood Road, Winchendon, MA 01475	92.35
Supreme Petroleum, Post Office Box 756, Somerville, NJ 08876	79.58
Terry Oil, 98 Main Street, Hopkinton, MA 01748	1,048.41
Town River Oil Company, 289 Middle Street, East Weymouth, MA 02189	366.38
Trinity Oil, Inc., 133 Leland Street, Framingham, MA 01701	2,811.08
Union Coal & Oil Company, 743 North Main Street, Leominster, MA 01453	168.44
W.H. Riley & Son, Inc., 448 Broadway, Tauton, MA 02780	[illegible]
Wakefield Public Works, Wakefield, MA 01880	3,582.85
Wildcat, 237 Lunenburg Street, Fitchburg, MA 01420	1,793.06
Purchasers With No Available Address	
B.V. Simmons	2,002.99
Ciro's Oil	984.67
Cornish	[illegible]
Energy Collab.	1,027.69
F.L.F. Oil Company	375.86
Frable	1,693.53
Gaffredo	514.85
Klipple	3,064.70
Niles	398.07

APPENDIX A.—ST. JAMES RESOURCES CORPORATION—Continued

First purchasers	Portion of [illegible] amount [1]
R. Petro Products	37.01
R. Hein	89.57
Sentinel Oil	210.12
Shellock	55.88

[1] Does not include interest. Actual refunds will include the interest which has accrued on these amounts since DOE received the St. James consent order funds on March 20, 1980.

APPENDIX B.—KINGSTON OIL SUPPLY

First purchaser	Portion of settlement amount
David Rubin, Rubin's Hotel, Kerhonskson, N.Y.	$546.00

[FR Doc. 85-13286 Filed 6-3-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Husky Oil Company in settlement of all issues regarding Husky's application of the federal petroleum price and allocation regulations.

DATE AND ADDRESS: Applications for refund must be postmarked by September 3, 1985, should conspicuously display a reference to case number HEF-0213, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order establishes procedures to distribute funds obtained as a result of a consent order between Husky Oil Company (Husky) and DOE. The consent order settled all disputes between DOE and Husky concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period August 19, 1973 through January 28, 1981.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by September 3, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: May 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: Husky Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0213.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of an enforcement proceeding involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Husky Oil Company (Husky). Under the terms of the consent order, Husky agreed to remit $2 million to the DOE In settlement of all civil and administrative claims by the DOE relating to Husky's compliance with the federal petrolem price and allocation regulations applicable to refiners of petroleum products during the period from August 19, 1973 through January 28, 1981 (the consent order period).

I. Background

Husky is a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, Husky was engaged in the production, refining, and marketing of products covered by the federal petroleum price and allocation

regulations set forth in 10 CFR Part 212. In 1975, the ERA began an audit to determine Husky's compliance with these regulations. In the course of this audit, Husky and the DOE entered into a proposed consent order, whereby Husky agreed to remit $2 million to the DOE to resolve all issues regarding Husky's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 47 FR 10072 (1982). Comments were received from several interested parties. The proposed consent order was adopted without modification as a final order of the DOE on June 15, 1982. 47 FR 25764 (1982).

On December 14, 1984, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Husky consent order funds. 49 FR 49882 (December 24, 1984). In the PD&O, we described a two-stage process for disbursing refunds. We proposed that in the first stage, refunds would be made to identifiable purchasers of covered products who may have been injured by Husky's pricing practices during the consent order period. This decision describes the information that purchasers of Husky petroleum products should submit in order to demonstrate eligibility for a portion of the consent order funds. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Thirteen states, the National Council of Farmer Cooperatives, the Husky Marketers and the Jobbers Group filed comments in response to the PD&O.[1] These comments are discussed below in our presentation of the procedures we are adopting. In addition, each of the commenting states discussed the distribution of residual funds in the second-stage proceeding. The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

During the first stage in the refund process, funds from the Husky consent order will be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by alleged overcharges in Husky's sales of covered products. As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispered equally in all sales of products made by Husky during the consent order period. We will therefore calculate refunds based on a per-gallon, volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions to be adopted in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons it bought from Husky during the consent order period, multiplied by a volumetric percentage. This percentage is computed by dividing the $2,000,000 consent order fund by the total number of gallons sold by Husky during the consent order period. Based on information obtained from Husky's annual reports to shareholders, we estimate that Husky sold 4,378,900,340 gallons of covered products during the consent order period. This figure results in a volumetric refund amount of $.000456 per gallon. In addition, the interest which has accrued to the consent order funds will be applied to each paid refund on a pro rata basis.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by Husky. In the absence of better information, this assumptions is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of Husky's pricing practices during the consent order period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact of the alleged overcharges. *See, e.g, Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶85,054 (1984), and cases cited therein at 88,164.

In the PD&O, we tentatively determined that resellers and retailers seeking refunds totalling $5,000 or less under the volumetric presumption would not be required to demonstrate further any injury resulting from the alleged overcharges. The State of North Carolina filed comments opposing our proposal of this presumption in the PD&O. North Carolina contents that refunds should be paid only to those customers who can establish injury, regardless of the amount of the claim. Despite this contention, we remain convinced that this presumption is sound.

As we stated in the PD&O, the adoption of a presumption of injury for smaller claims is based on a number of considerations. We note that in past refund proceedings the OHA has analyzed extensively the issue of cost absorption by smaller purchasers of petroleum products. *See, e.g., Economic Regulatory Administration: In the*

[1] In addition, we received many inquiries from end-users of Husky products, especially from trucking firms which purchased large volumes of Husky diesel fuel. These firms are eligible to apply for refunds, however diesel fuel was decontrolled effective July 1, 1976, and therefore refunds pertaining to purchases of diesel fuel will only be made for the period August 19, 1973 through June 30, 1976. Generally, refunds will only be made for Husky products which a firm purchased while these particular products were subject to the DOE price regulations. *See* 10 CFR 212.31 for the historical changes in the list of covered products and the dates on which these changes took effect.

Matter of Standard Oil Company (Indiana), 10 DOE ¶85,048 (1982) (*Amoco*) at 88,205–209. We have found that in cases of alleged overcharges by refiners such as Husky, retailers were probably injured to some degree in that they were unable to pass along all cost increases to their customers. *Amoco* at 88,206. In addition, because of the complexity of the pricing issues involved and the time elapsed since the alleged overcharges took place, attempts at restitution to deserving parties necessarily will be inexact. *See Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F. 2d 717, 722–23 (TECA 1982). Along with these factors, we must also consider the concerns raised in the PD&O regarding the cost to each firm of gathering all the information necessary to prove injury and the cost to the OHA of analyzing it. Since we firmly believe that smaller claimants bore some impact of the alleged overcharges and are mindful that failure to allow simplified application procedures for small claims could deprive injured parties of the opportunity to receive refunds, we conclude that the small claims presumption should be adopted.

Under the small claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Previous OHA refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984); *Office of Special Counsel: In the Matter of Conoco. Inc.*, 11 DOE ¶85,226 (1984), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is generally required to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of petroleum products must show that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.* 10 DOE ¶85,009 (1982).[2]

The Husky Marketers and the Jobbers Group filed consolidated comments suggesting that the cost bank showing required of claimants seeking larger refunds is prohibitively expensive and too difficult for medium-size resellers. The group suggests that the OHA adopt an alternative showing of injury, without a cost bank requirement, which would require less expenses of potential claimants. This proposed method would compare a firm's historical profit margin in a pre-regulation base period with its realized profits during the period for which it requests a refund. The commenting Group contends that this method would demonstrate the presence of cost banks—for increase, in months which the firm's profit margin is lower than the base period margin—without requiring an actual calculation of cost banks from the firm's old records. The group alternatively proposes that if the OHA is unable to change its standards for demonstrating injury, then the $5,000 threshold level should be raised so that firms not wishing to incur the expense of calculating cost banks may receive refunds more commensurate with the injury they suffered.

First, we believe that the commenters' proposal regarding a new standard of injury has serious limitations. The profit margin comparison, standing alone, would not be reliable evidence of injury and absorbed costs. Because cost banks are cumulative, a firm's ability to pass through some of the increased costs it had previously incurred had the effect of drawing down the cost banks tabulated in previous months. A firm which ultimately was able to recoup its costs therefore was not "injured" by the alleged overcharges, would no longer have cost banks, and would not be eligible for a refund under the cost bank requirement used by the OHA in past proceedings. *See Bayou State Oil Corporation*, 12 DOE ¶85,197 (1985) at 88,622. However, under the commenting group's alternate proposal, such a firm would be eligible for refunds for all months in which it realized lower than base period profits, regardless of whether it eventually was able to recoup fully its increased costs. Although this method would reduce the cost and effort required of claimants, it would also permit refunds to be paid to parties which may not have been injured by the alleged overcharges and therefore would not be acceptable as a standard of injury in this refund proceeding.

However, the OHA is not wedded in every case to a requirement that firms submit their actual, contemporaneous cost banks to show that they were unable to recoup alleged overcharges. In a case in which a firm did not contemporaneously calculate banks and there are specific circumstances which make calculation of banks at this time prohibitively expensive, we will accept monthly profit margin data. However, the claimant will have the burden of demonstrating how this data proves the existence of cost banks during the consent order period. The firm also must explain why any increases in its profits above base period levels should not be taken to indicate that increased costs associated with alleged overcharges were later recouped. In addition, the firm will still be obliged to show that market conditions would not permit it to pass through the alleged overcharges. *See Bayou State Oil Corporation*, 12 DOE ¶ 85,197 (1985) at 88,623.

With regard to the commenters' alternative suggestions, we will not raise the threshold level to be used for the presumption of injury in this proceeding. As stated, we believe the $5,000 figure to be a reasonable level based on the competing factors in this case. Moreover, we are providing an alternative to presenting contemporaneously compiled cost banks to the extent that profit margin analysis may be employed to show the presence of cost banks in certain cases. Therefore, the cost of demonstrating injury may be lowered. In addition, we are not convinced that the cost of calculating cost banks at this later date is as high as the commenters contend it is—greater than $20,000 for a middle-sized reseller. In this regard, we note that these firms were required under the

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶82,597 (1981) at 85,396.

regulations to compile contemporaneously information from which cost banks could be readily calculated. *See* 10 CFR 211.92 *and* 212.93(a). Considering all these factors, we conclude that the threshold will remain at $5,000 in this case.

We find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that downstream end-user purchasers of Husky petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applications from firms regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Husky's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from Husky to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we propose that there is a class of potential claimants who may be presumed to have suffered no injury from Husky's alleged overcharges. Those parties are firms that made spot purchases of Husky petroleum products.[3] *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as Vickers). As we stated in *Vickers:*

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

8 DOE at 85,396–97. We believe that the same rationale applies in this case. Consequently, we propose to establish a rebuttable presumption that spot purchasers were not injured by Husky's pricing practices. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to Husky.

As in previous cases, we will set a minimum refund amount to potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) at 88,214. We will utilize the same minimum refund amount in the present case.

III. Applications for Refund

After considering the comments received concerning the first-stage refund procedures tentatively adopted in the December 14, 1984 PD&O, we have concluded that the proposed procedures should be implemented, as outlined above. We shall now accept applications for refunds from parties who purchased covered products from Husky during the consent order period.

In order to receive a refund, each claimant must provide a monthly schedule of its volume of purchases from Husky during the consent order period. If no documentation of the number of gallons purchased is available, a claimant must submit a detailed estimate of its purchases. Each claimant must also indicate its place in Husky's chain of distribution, *e.g.*, ultimate consumer, reseller, etc. If a reseller or retailer claims a refund in excess of $5,000, it must demonstrate that it was injured by Husky's pricing practices by submitting the types of information outlined in Section II of this Decision.

All applications must be filed in duplicate and must be received within 90 days of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should provide the name and telephone number of a person who may be contacted by the OHA for additional information concerning the application.

Applications should refer to Case Number HEF–0213 and should be sent to: Husky Oil Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Husky Oil Company pursuant to the consent order executed on January 8, 1982, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: May 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals

[FR Doc. 85–13287 Filed 6–3–85; 8:45 am]

BILLING CODE 6450–01–M

[3] We will except from this principle cooperative organizations which made spot purchases of products from Husky and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who as ultimate customers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in this form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶ 82,538 (1982) at 85,203. *See, e.g.*, Anadarko Production Co./Cities Service Co., 12 DOE ¶ 85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of Husky products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1517]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

May 28, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR §1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: MTS and WATS Market Structure (CC Docket No. 78–72) Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board. (CC Docket No. 80–286)
Filed by: John F. Beasley, Vincent L. Sgrosso and Michael A. Tanner, Attorneys for BellSouth Corporation on behalf of South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company on 5–3–85

Subject: MTS and WATS Market Structure, Phase III:
Establishment of Physical Connections and Through Routes Among Carriers;
Establishment of Physical Connections by Carriers with Non-carrier Communications Facilities
Planning Among Carriers for Provision of Interconnected Services, and in Connection with National Defense and Emergency Communications Services; and
Regulations for and in Connection with the Foregoing. (CC Docket No. 78–72, Phase III)
Filed by:
Judith A. Maynes and David T. Wendels, Attorneys for American Telephone and Telegraph Company on 5–23–85
Victor J. Toth, Attorney for Digitech Communications on 5–20–85

Subject: Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in The Private Operational-Fixed Microwave Radio Service. (PR Docket No. 83–426)
Filed by:
Brian R. Moir, Daniel J. Harrold and Jay L. Witkin, Attorneys for International Communications Association on 4–30–85
William C. Sullivan, Linda S. Legg, Mary Whitten Marks and Michael J. Zpevak, Attorneys for Southwestern Bell Telephone Company on 5–6–85

Subject: Implementation of BC Docket No. 80–90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84–231)
Filed by:
Philip R. Olenick, Attorney and Jacob A. Bernstein, Chairman for the Committee for Community Access on 4–16–85
David Honig, Attorney for the National Black Media Coalition on 5–13–85
Forbes W. Blair and William D. Silva, Attorneys for the Humes Broadcasting Corporation on 5–13–85
Forbes W. Blair and William D. Siva, Attorneys for Larry Edwards d/b/a DAE Broadcasting Company on 5–13–85
Henry L. Baumann and Barry D. Umansky, Attorneys for National Association of Broadcasters on 5–20–85
John L. Tierney and Richard F. Swift, Attorneys for William O. Barry on 5–20–85
Vincent A. Pepper and John F. Garziglia, Attorneys for Sarasota-Charlotte Broadcasting Corporation on 5–20–85
Vincent A. Pepper and John F. Garziglia, Attorneys for Hancock Communications, Inc., on 5–20–85

Subject: Amendment of Part 90 of the Commission's Rules to Prescibe Policies & Regulations to Govern the Interconnection of Private Land Mobile Radio Systems with the Public Switched Telephone Network Below 800 MHz. (PR Docket No. 84–414)
Filed by: Garry L. Mott on 5–1–85

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Pine Top, Arizona) (MM Docket No. 84–522, RM–4653)
Filed by: Arthur Stambler and Andrew Ritholz, Attorneys for KBW Associates, Inc., on 4–25–85

Subject: Amendment of Section 73.702(f) Regarding Frequency Assignments for the International Broadcast Service. (MM Docket No. 84–706)
Filed by: Christopher D. Imlay, Attorney for The American Radio Relay League, Incorporated on 5–16–85

Subject: Implementation of BC Docket No. 80–90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84–231)
Filed by:
J. Geoffrey Bentley, Attorney for Harbor Cities Broadcasting, Inc., on 2–25–85. (Kewaunee, Seymour, Plymouth and Brillion, WI)
Dan J. Alpert, Attorney for Mid America Media Company on 2–25–85. (Shreveport, Homer, Vivian and Ruston, LA; San Augustine, TX)
Steven A. Lerman, Attorney for L.M. Communications, Inc., on 2–25–85. (Paris and Wilmore, KY)
Gary S. Smithwick, Attorney for Winfas, Inc. and Winfas of Belhaven, Inc., on 2–25–85. (Jacksonville, Nags Head and Belhaven, NC)

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85–13392 Filed 6–3–85; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–028.
Title: The "8900" Lines Agreement.
Parties:
A.P. Moller-Maersk Line
Barber Blue Sea Line
Waterman Steamship Corp.
Sea-Land Service, Inc.
National Shipping Company of Saudi Arabia
Nedlloyd Lijnen, B.V.
United Arab Shipping Company
Synopsis: The proposed amendment would modify the agreement to specify that the parties may not enter into chartering agreements until such agreements have been filed with the Commission and are effective.

Agreement No.: 203–010762.
Title: United States Eastbound Discussion Agreement.
Parties:
A.P. Moller-Maersk Line
Barber Blue Sea Line

National Shipping Company of Saudi Arabia
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Waterman Steamship Corp.
United Arab Shipping Company (S.A.G.)

Synopsis: The proposed amendment would establish a cooperative working arrangement between the parties in the trade from United States ports and points to ports in the Mediterranean Sea, the Arabian/Persian Gulf and adjacent waters, the Red Sea and Gulf of Aden, parts in Pakistan, Sri Lanka, India, and Bengladesh, and to all points in all countries which can be served via such discharge ports. It would permit the parties to discuss, and in some matters agree upon, issues of mutual interest in the trade.

By Order of the Federal Maritime Commission.

Dated: May 30, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13357 Filed 6-3-85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Approval of Agreement

Agreement No.: 207-009925.
Title: Associated Container Transportation (Australia) Limited and Australian Coast Shipping Commission; Joint Service Agreement.
Parties:
Associated Container Transportation (Australia) Limited
Australian Coast Shipping Commission

Synopsis: Having been notified of the termination of the agreement by the parties, the Commission gives notice that it will terminate its prior approval of Agreement No. 207-009925 effective June 1, 1985, the date the parties legally terminated their arrangement.

By Order of the Federal Maritime Commission.

Dated: May 30, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13356 Filed 6-3-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Commerce Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 18420 to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such any activity. Unless otherwise noted, these activities will be conducted through the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Commerce Bancshares, Inc.*, Lincoln, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce Group, Inc., Lincoln, Nebraska, thereby indirectly acquiring the following companies: National Bank of Commerce Trust and Savings Association, Lincoln; Commerce Savings Lincoln, Lincoln; Commerce Savings Columbus, Columbus; Commerce Savings Scottsbluff, Scottsbluff; and 100 percent of the following companies and their subsidiary banks: Commerce Group Grand Island, Inc., Lincoln (Overland National Bank, Grand Island, Grand Island): Commerce Group Hastings, Inc., Lincoln (City National Bank and Trust Company of Hastings, Hastings); Commerce Group Kearney, Inc., Lincoln (First National Bank and Trust Company of Kearney, Kearney); Commerce Group North Platte, Inc., Lincoln (North Platte National Bank, North Platte); and Commerce Group West Point, Inc., Lincoln (First National Bank of West Point, West Point), all located in Nebraska.

First Commerce Bancshares, Inc. has also applied to acquire Commerce Affiliated Life Insurance Company, Phoenix, Arizona, thereby engaging in the activity of underwriting credit related insurance sold in connection with credit extensions made by credit granting subsidiaries of Applicant.

Board of Governors of the Federal Reserve System, May 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13282 Filed 6-3-85; 8:45 am]

BILLING CODE 6210-01-M

First Jersey National Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-10210), published at page 16752 of the issue for Monday, April 29, 1985. The correct name of the acquiree is The Broad Street National Bank of Trenton, Trenton, New Jersey. Comments on this application must be received by the Board not later than June 13, 1985.

Board of Governors of the Federal Reserve System, May 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13279 Filed 6-3-85; 8:45 am]

BILLING CODE 6210-01-M

First National Shares of Louisiana, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 24, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First National Shares of Louisiana,* Baton Rouge, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of East Baton Rouge, Baton Rouge, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gateway Bancorp, Inc.,* Sturgis, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank & Trust Company, Sturgis, Michigan.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Crockett County Bancshares, Inc.,* Bells, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bells Banking Company, Bells, Tennessee.

2. *Exchange Bancshares, Inc.,* El Dorado, Arkansas; to acquire 100 percent of the voting shares of Citizens Bank, Strong, Arkansas.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jans Bancshares, Inc.,* Kulm, North Dakota; to become a bank holding company by acquiring 85 percent of the voting shares of Kulm State Bank, Kulm, North Dakota.

Board of Governors of the Federal Reserve System, May 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–13283 Filed 6–3–85; 8:45 am]

BILLING CODE 6210–01–M

Fifth Third Bancorp; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1852(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 24, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp,* Cincinnati, Ohio; to acquire 100 percent of the voting shares of The Fifth Third of Columbus, Columbus, Ohio.

Board of Governors of the Federal Reserve System, May 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–13278 Filed 6–3–85; 8:45 am]

BILLING CODE 6210–01–M

First Virginia Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commerce or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.,* Falls Church, Virginia; to engage *de novo* through its subsidiary, First General Insurance Agency, Inc., Falls Church, Virginia, in general insurance agency activities pursuant to section 4(c)(8)(G) of the Act. This activity will be conducted in Virginia, Maryland, North Carolina, Delaware, Pennsylvania, New Jersey and the District of Columbia.

Board of Governors of the Federal Reserve System, May 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–13280 Filed 6–3–85; 8:45 am]

BILLING CODE 6210–01–M

Mellon Bank Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the parts commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 25, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Mellon Securities Trust Company, New York, New York, in certain clearing and custodian activities with respect to securities, commerical paper and similar instruments, such as acting as forwarding agent, coupon paying agent, and provider of trade confirmation services for securities; and acting as issuing and paying agent for comemrcial paper and similar instruments, as well as activities incident thereto.

Board of Governors of the Federal Reserve System, May 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13284 Filed 6-3-85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire certain assets of Vierling, Devaney & Maguire, Inc., Los Angeles, California, and thereby provide municipal securities brokerage services, providing that such services will be restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting, dealing or investment advice or research services, pursuant to § 225.25(b)(15).

Board of Governors of the Federal Reserve System, May 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13281 Filed 6-3-85; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

May 28, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., expect as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: ACH Transaction Data Report
Agency form number: FR 2220
OMB Docket number: 7100-0211
Frequency: Weekly
Reporters: Automated Clearing Houses (ACHs)
Small businesses are not affected

General description of report:

This information collection is mandatory [12 U.S.C. 464] and is given confidential treatment [5 U.S.C. 552(b)(4)].

The report will be collected only from privately operated ACHs that receive net settlement services from the Federal Reserve. The data will be used, in conjunction with Federal Reserve transaction data and data provided by privately operated, large-dollar funds transfer networks, to calculate depository institutions intra-day net reserve or clearing account balances on an after the fact or *ex post* basis.

Board of Governors of the Federal Reserve System, May 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13277 Filed 6-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Assessment of Mental Health Problems in Disaster Victims

AGENCY: The National Institute of Mental Health.

ACTION: Issuance of Special Announcement on Assessment of Mental Health Problems in Disaster Victims, MH-86-03.

SUMMARY: The National Institute of Mental Health through the Center for Mental Health Studies of Emergencies, Division of Prevention and Special Mental Health Programs, will award grants for researchers to estimate the type and incidence of mental health disorders, including Post Traumatic Stress Disorder, resulting from exposure to disaster, to study factors associated with the development and continuance of these disorders in victims exposed to different types of disaster events; and to assess changes in life functioning and other early behavioral problems following disaster exposure which may or may not lead to a mental disorder. The studies will use the instrument, Diagnostic Interview Schedule/Disaster Supplement (DIS/DS), for the assessment of victim's experiences and responses to a range of natural and technological emergencies. Support may be requested for up to 3 years.

Receipt Date of Applications For FY 1986 Funding: Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures.

FOR FURTHER INFORMATION OR A COPY OF THE ANNOUNCEMENT, CONTRACT: Susan Solomon, Ph.D. or Mary Lystad, Ph.D., Center for Mental Health Studies of Emergencies, National Institute of Mental Health, 5600 Fishers Lane, Room 6C-12, Rockville, Maryland 20857, (301) 433-1910.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-13432 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Cooperative Agreement for a Project To Promote Implementation of the Model Standards: a Guide for Community Preventative Health Services

The Centers for Disease Control announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with the American Public Health Association (APHA) to collaborate with the Association of State and Territorial Health Officials (ASTHO), the National Association of County Health Officials (NACHO), the U.S. Conference of Local Health Officers (USCLHO), and the Association of Schools of Public Health (ASPH) on a project to: (1) Promote adoption of the 1985 *Model Standards: A Guide for Community Preventive Health Services*, (2) assist State and local health departments in implementing the *Model Standards*, (3) disseminate data benchmarks for the *Model Standards*, and (4) evaluate promotion activities and develop a plan to evaluate the effect of the *Model Standards* on public health. Catalog of Federal Domestic Assistance Number is 13.283. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

APHA's experience in managing the collaborative project to update and field test the *Model Standards* makes it the logical organization to coordinate assistance to State and local health departments in implementing this approach to public health objectives. Like the previous project, this effort will involve as key participants the five organizations that represent the intended users of the *Model Standards* and thus are critical to successful implementation. As a national organization that represents the total spectrum of public health, APHA has established close working relationships with ASTHO, NACHO, USCLHO, and ASPH and is in a unique position to provide leadership for this project.

This is not a formal request for applications. Assistance will be provided only to APHA for this project. It is expected that approximately $125,000 will be available during Fiscal Year 1985 to support this project. This is the first funding cycle on this project and will consist of a 5-year project period. Continuation awards through the 5th year will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Nancy C. Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: May 24, 1985.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-13433 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement for a Project To Examine the State of the Art in Public Health and To Formulate Policy Options Related to the Future Roles, Functions, Organization, Research and Data Needs, and Manpower Implications for Public Health in General, and for State and Local Health Departments in Particular: Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in fiscal year 1985 for a cooperative agreement with the Institute of Medicine, National Academy of Sciences (NAS), to carry out a two-year study to examine the state of the art in public health and to formulate policy options related to the future roles, functions, organization, research and data needs, and manpower implications for public health in general, and for State and local health departments in particular. The Catalog of Federal Domestic Assistance Number is 13.283. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Assistance will be provided only to the Institute of Medicine, NAS, for this project. The project is being undertaken by the Institute, and participation by the Centers for Disease Control represents only a minor part of the financial support of the project. The Institute is a research organization of national scope with access to and an established reputation with all segments of the professional health community as an authority in areas affecting health policy issues. Therefore, this is not a formal request for applications. It is expected that approximately $75,000 will be available during fiscal year 1985 to support this project. It is anticipated that the cooperative agreement will be funded for an initial budget period of 12 months with a 2-year project period. The continuation award will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: May 24, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-13312 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement To Assist Emory University in the Development of a Research and Research Training Program in International Health: Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in fiscal year 1985 for a cooperative agreement with the Emory University School of Medicine, Department of Community Health, for assistance in the development of a research training program in international health. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

This cooperative agreement requires daily on-site interchange between the participating parties (i.e., research planning, curriculum development, student research experience, on-site support by the medical school faculty and CDC professional staff, etc.). The Master of Public Health Program of the Department of Community Health, Emory University School of Medicine, is the only such program in Atlanta, Georgia. This is not a formal request for applications, and other applications will not be accepted. It is expected that approximately $100,000 will be available in fiscal year 1985 to support this project and that the cooperative agreement will be funded for one year.

For Further Information Contact: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6575.

Dated: May 23, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-13339 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreements for State Capacity Building in Improving Performance and Utilization of Physician-Office Laboratories Through Training: Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1985 for cooperative agreements to build capacity in improving the quality of laboratory tests performed in physician-office laboratories.

This program is authorized by section 301(a) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background

CDC has a long-standing mission and historic role in improvement of the Nation's medical laboratories through voluntary programs of continuing education. This concern with laboratory improvement is particularly important today in regard to CDC's disease containment and prevention objectives. Laboratory improvement activities, particularly voluntary continuing education, have been traditionally performed through or in cooperation with State health agencies, including public health departments and institutions of higher education.

A significant shift has occurred recently in the field of clinical laboratory testing, partly brought about by a change in Federal health care reimbursement regulations, such as the Diagnosis Related Groups.

It has been estimated that perhaps 50 percent of all laboratory diagnostic tests in the United States are now being performed in approximately 40,000 physician-office laboratories (7-10 billion tests annually). This is a laboratory client group with which CDC has not previously interfaced nor have many of the State public health laboratories, yet it appears likely to become the largest segment of the diagnostic laboratory field. Only limited information exists on the quality of the laboratory work performed in the physician's office, its level of sophistication, the personnel performing test procedures, and the needs, if any, for improvement. A few State health departments have some type of regulatory responsibility for physician-office laboratories; a few State university medical schools have

continuing education programs which focus on physicians in their operation of laboratories. CDC's present interest is in promoting the development of voluntary continuing education programs by these institutions for physician-office laboratory personnel; no direct participation by CDC personnel is anticipated in any activity associated with the voluntary training programs.

Purpose

The purpose of these cooperative agreements is to stimulate and assist State laboratories and universities (medical schools and schools of public health) in developing, presenting, and evaluating their programs for assisting in the improvement of microbiological testing in underserved physician-office laboratories through voluntary training and continuing education. While the major thrust may be for training of laboratory personnel actually performing the tests, it is also recognized that physician interpretation and utilization of the test results are an important factor in improvement. The physician is acknowledged, in his or her role as laboratory director, as having continuing education needs of a special nature appropriate to his or her professional level.

Recipient Activities

1. Determine the makeup of an intrastate consortium of affected interest groups (including physicians who operate office laboratories) to coordinate and support the improvement of performance in physician-office laboratories; participate in the formation of this consortium.

2. Identify the number and location of potential target physician-office laboratories within the State and select a voluntary representative sample which will yield predictive information for the entire population. (Target physician-office laboratories are those which volunteer to participate, have three or less laboratory personnel performing procedures in microbiology, have pathologist consultation no more than once per month, and have an average of less than one continuing education activity per year per laboratory employee.)

3. Determine volume and type (by system) of microbiology tests performed by the selected laboratories.

4. Inventory the training and experience of the personnel performing the tests.

5. Draw conclusions concerning the performance level (accuracy) of microbiology performed in target laboratories utilizing appropriate measures; e.g., performance on selected predicitive procedures, etc.

6. Analyze any performance deficiencies in microbiological procedures and determine subject(s) and extent of training needed.

7. Deliver remedial training in formats designed to fit the work situation of the several levels of personnel including physician director, nurses, and technicians. This training must be on a voluntary basis and have the approval of the consortium which includes representation of the target audience.

8. Evaluate improvement in technical performance and the efficacy of the training methodologies (delivery systems).

CDC Activities

1. Collaborate in determining the makeup, organization, and responsibilities of a consortium to coordinate the improvement of performance.

2. Participate in the selection of representative sample laboratories.

3. If proficiency testing is involved in assessment of performance, recommend procedures and assist with materials for testing in selected predictive procedures.

4. Assist in error analysis and determination of subject and extent of training needed.

5. Assist in the development and/or acquisition of remedial training in formats designed to fit the work situation and budgetary limitations.

6. Participate in evaluation of laboratory performance and training effectiveness in bringing about desirable change.

Eligibility Requirements

Eligible applicants are universities and medical schools, and the official State health departments, with State regulatory responsibilities for physician-office laboratories, including the Commonwealth of Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, the Trust Territory of the Pacific Islands and American Somoa.

Availability of Funds

It is anticipated that approximately $100,000 will be available in Fiscal Year 1985 to fund two agreements. Individual project awards are expected to be approximately $50,000 each. The cooperative agreements are for one year.

Methods and Criteria for Review

Review of the applications will be conducted in accordance with PHS Grants Administration Manual Chapter PHS 1-507, Objective Review of Grant Applications. An ad hoc committee of CDC personnel will review the merits of the applications, based upon the following:

—The applicant's understanding of the problem and the purpose of the cooperative agreements.

—The applicant's previous experience and involvement with laboratory improvement for physician-office laboratories; e.g., regulatory programs and/or previous or current cooperative projects with this client group.

—How the applicant will conduct the project, including the types and levels of training to be provided, means of selecting the clients, plans for forming the consortium, and securing voluntary participation.

—The capability to provide the staff and resources to perform the project and the approach to be used in carrying out the responsibilities.

—The proposed schedule (with time frames) for accomplishing the activities.

—The plans to evaluate both improvement in technical performance and the efficacy of the training methodologies.

Submission of Applications

The original and two copies of the applications must be submitted on or before July 15, 1985, to Mr. Leo A. Sanders at the address given below. Applications shall be be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated United States Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the United States Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications which do not meet the above criteria will be considered late applications. Such applications cannot be accepted and will be returned to the applicant.

For applicant procedures and form contact Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6575.

For technical information and assistance contact John J. Krickel, Ed.D., Director, Division of Laboratory Training and Consultation, Laboratory Program Office, Centers for Disease Control, Building 3, Room B49, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Telephone: (404) 329-3232 or FTS 236-3232.

Dated: May 29, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-13355 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Dermatologic Drugs Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is amending the notice of the Dermatologic Drugs Advisory Committee meeting to explain that the committee discussion and conclusions regarding requirements to prove the efficacy of topical drugs such as live yeast cell derivative (LYCD) to promote wound healing will be considered by the agency in its preparation of a final monograph on over-the-counter (OTC) skin protectant drugs. The notice, which was published in the **Federal Register** of May 15, 1985 (50 FR 20296), is amended by revising the meeting announcement to read as follows:

Dermatologic Drugs Advisory Committee

Date, time, and place. June 24, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 5 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4895.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) Etretinate (Hoffmann-La Roche, Inc.); (2) requirements to prove the efficacy of topical drugs to promote wound healing based on data for LYDC submitted by Whitehall Laboratories (information on file in Docket No. 78N-0021); (3) prescription topical antibiotics for the treatment of skin infections, pseudomonic acid (Beecham Labs); and (4) Lindane (Reed & Carnrick). The committee's discussion and conclusions regarding LYCD will be considered by the agency in its preparation of a final monograph on OTC skin protectant drugs. Such a monograph is being developed as part of the OTC Drug Review proceeding on OTC skin protectant drug products. The tentative final monograph (proposed rulemaking) for those products was published in the **Federal Register** of February 15, 1983 (48 FR 6820).

Dated: May 29, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-13239 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-01-M

Endocrinologic and Metabolic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Endocrinologic and Metabolic Drugs Advisory Committee to reflect the deletion of one agenda item and that the committee will meet on June 24 only. The announcement of the Endocrinologic and Metabolic Drugs Advisory Committee meeting, which was published in the **Federal Register** of May 15, 1985 (50 FR 20295), is revised to read as follows:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. June 24, 9 a.m., Parklawn Bldg., Conference Rms. I and J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; A.T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in metabolic and endocrine disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss the following: (1) the medical management of cryptorchidism, and (2) the revision of guidelines for clinical evaluation of drugs used in the treatment of osteoporosis.

Dated: May 29, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-13238 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of June 1985:

Name: Task Force on Organ Transplantation

Date and Time: June 17-18, 1985, 2:00 p.m.

Place: Shoreham Hotel, 2500 Calvert Street & Connecticut Avenue, NW, Washington, D.C. 20008

The entire meeting is open to the public.

Purpose: The Task Force on Organ Transplantation is required to conduct comprehensive examinations of the medical, legal, ethical economic, and social issues presented by human organ procurement and transplantation; including an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients. Reports on these issues are required to be submitted to the Department of Health and Human Services and the Congress later this year.

Agenda: Topics for discussion include assuring equitable access to organ transplantation and ethical and social issues associated with donor organs being transplanted into non-immigrant aliens. On June 18, discussion of immunosuppressive therapies and approaches for assuring that patients needing immunosuppressive drugs can obtain them. The afternoon session will be devoted to a discussion of heart transplantation including patient selection criteria, contraindications for heart transplantation and institutional requirements needed to establish heart transplant programs.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Linda D. Sheaffer, Executive Director, Task Force on Organ

Transplantation, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17-60, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443-7577.

Agenda items are subject to change as priorities dictate.

Note.—This meeting is late because arrangements for hotel accommodations and the agenda items were not finalized in sufficient time to allow more timely notice.

Dated: May 31, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-13491 Filed 6-3-85; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA).

Notice is hereby given that Part S as published in the **Federal Register** on August 7, 1979 (44 FR 46333-34) is amended to reflect the establishment of the Office of Acquisition and Grants (OAG). This realignment of the Division of Contracts and Grants Management (DCGM) to the Office of Acquisition and Grants elevates this critical function to a level that allows key Agency officials more direct responsibility for its management.

The new material and changes are as follows:

Section SM.10 *The Office of Management, Budget and Personnel*—(Organization)

G. *The Office of Materiel Resources* (SMM)

Delete:

3. The Division of Contracts and Grants Management (SMM3)

Renumber remaining subsections 3., 4. and 5.

Add:

J. The Office of Acquisition and Grants (SML), which includes:

1. The Division of ADP and Telecommunications Contracts (SML1)

2. The Division of Contract and Grant Operations (SML2)

3. The Division of Acquisition Planning and Policy (SML3)

Section SM.20 *The Office of Management, Budget and Personnel*—(Functions)

G. The Office of Materiel Resources (SMM)

Delete:

From Lines 6 and 7, "contracting and procurement, grants management."

Delete all material:

3. The Division of Contracts and Grants Management (SMM3) Renumber remaining subsections 3., 4. and 5.

Add:

J. The Office of Acquisition and Grants (SML): Directs the business management aspects of SSA's procurement program for research, demonstration projects, automatic data processing and telecommunications equipment acquisition and procurement of supplies, material and services. The Office performs a continuous surveillance, review and evaluation of SSA procurement actions. It develops and implements policies, procedures and directives for SSA procurement activities. It performs the cost/price analysis and evaluation required to award and administer SSA contracts. The Office directs the business management aspects of SSA's discretionary grants management program. The Office includes the following components and functions:

1. The Division of ADP and Telecommunications Contracts (SML1):

a. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for the entire range of automatic data processing equipment, software and services; voice-grade telecommunications equipment and services; specialized training and computer support equipment.

b. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure the maximum use of full and open competition.

c. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

2. The Division of Contract and Grant Operations (SML2):

a. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for specialized program needs (e.g., program research, development and demonstration through studies and surveys, consultants, systems designs and evaluations) and procurement of administrative supplies, equipment and services in support of SSA's overall operational mission (e.g., technical and professional services, office equipment, moving services, film processing, translations and transcription services).

b. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure maximum use of full and open competition.

c. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

d. Responsible for planning, placement and administration of grants under all SSA's discretionary grants programs (including guidance and support in the selection strategy, evaluation process, budget negotiation, planning and development of policies, procedures, regulations and directives, etc.).

3. The Division of Acquisition Planning and Policy (SML3):

a. Responsible for the planning, development and implementation of comprehensive policies, procedures, regulations and directives for the SSA-wide procurement function.

b. Provides for surveillance, review and evaluaion of activities with delegated procurement authority.

c. Provides for audit support (through other Government resources or field audit) and cost/price analysis support in conjunction with the award, administration and closeout of SSA contracts.

d. Responsible for the planning, analysis and implementation of office automation techniques and a procurement management information system which meets the needs of SSA, HHS, FPDS or other users (including receipt, tracking and control of incoming procurement requests; collection, correlation and retrieval of procurement data for statistical reporting purposes; maintenance and operation of automated solicitation mailing list; workload analysis; procurement planning, etc.).

e. Responsible for the planning, development and implementation of an automated system for Advanced Planning and for the collection, analysis and reporting of planning statistics.

f. Assists in the development of long- and short-range operational objectives for the Office and monitors progress toward accomplishment of these objectives.

Dated: May 20, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-13345 Filed 6-3-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1534]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Develpment, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Prepayment Privileges and Application of Monthly Payments Towards Late Charges of FHA-Insured Single Family Mortgages
Office: Housing
Form Number: HUD-92001
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 1,242
Status: Revision
Contact:
Gordon C. Peggs, HUD, (202) 75-6672
Robert Fishman, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 26, 1985.

Proposal: Part 42—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
Office: Community Planning and Development
Form Number: HUD-40001
Frequency of Submission: Triannually
Affected Public: State or Local Governments
Estimated Burden Hours: 8,250
Status: Reinstatement
Contact:
Harold J. Huecker, HUD (202) 755-6336
Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 15, 1985.

Proposal: Reporting Requirements Associated with 24 CFR 203.508 and 235.1001—Providing Information
Office: Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 3,000
Status: Extension
Contact:
Sally McCormick, HUD, (202) 755-6672
Robert Fishman, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 26, 1985.

Proposal: Application for Designation as Fee Personnel
Office: Housing
Form Number: HUD-92563
Frequency of Submission: Annually
Affected Public: Individuals or Households
Estimated Burden Hours: 500
Status: Extension
Contact:
Daniel T. Berry, HUD, (202) 755-6702
Robert Fishman, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 26, 1985.

Proposal: Single Family Default Monitoring System (Initial Case Data Report)
Office: Housing
Form Number: HUD-92068A and 92068C
Frequency of Submission: Monthly and Quarterly
Affected Public: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated Burden Hours: 38,160
Status: Revision
Contact:
Sally McCormick, HUD (202) 755-6672
Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 14, 1985

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-13427 Filed 6-3-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notices of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing systems of records maintained which are subject to the requirements of section 3 of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

The Minerals Management Service (MMS) is publishing a new system of records notice titled "Travel Files—Interior, MMS-11". The notice describes

records pertaining to official government travel performed by employees of MMS. The notice does not describe new records that are being created, but represents existing records that were formerly described and included in a U.S. Geological Survey (USGS) system of records notice. When MMS was established, USGS provided administrative support to MMS, and the travel records on MMS employees were covered under the USGS notice (GS–14) being amended below.

The purposes and routine uses of the records described in MMS–11 are identical to those previously published in GS–14, therefore, the publication of MMS–11 is not considered to require a report as prescribed in 5 U.S.C. 552a(o).

The USGS notice titled "Travel Files—Interior, GS–14", previously published in the **Federal Register** on October 12, 1983 (48 FR 46450), is being revised to delete references to MMS employees. The notice now describes travel records maintained on only USGS employees. Minor editing and updating corrections are also made to the notice.

Since there are no new or intended uses of the information described in the systems of records published below, the notices are effective on June 4, 1985.

Dated: May 20, 1985.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/MMS–11

SYSTEM NAME:

Travel Files—Interior, MMS–11.

SYSTEM LOCATION:

Minerals Management Service, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Minerals Management Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, social security numbers; destination; itineraries; modes and purposes of travel; dates; expenses including advances; amounts claimed and reimbursed; travel orders; vouchers; receipts and passport record cards, and information pertaining to an amount owed on an outstanding or delinquent travel advance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701, 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to account for travel advances; (b) to compute vouchers to determine amounts claimed and reimbursed; (c) to account for travel orders, maintain records of modes and purposes of travel and itineraries; and (d) to maintain records of passports. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Treasury Department for payments; (2) the U.S. Department of State for passports; (3) to the U.S. Department of Justice when related to litigation or anticipated litigation; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (5) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (6) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (7) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINAING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine readable.

RETRIEVABILITY:

Indexed by name, social security number or travel order number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records.

RETENTION AND DISPOSAL:

Retained in accordance with GSA Federal Travel Regulations, and disposed of in accordance with the Minerals Management Service Records Management Handbook and GSA General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Management Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 632, Reston, Virginia 22091.

NOTIFICATION PROCEDURE:

A written and signed request addressed to the System Manager is required from anyone seeking information concerning themselves. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the System Manager and meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and meet the content requirement of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors and standard finance office references.

INTERIOR/USGS 14

SYSTEM NAME:

Travel Files–Interior, GS–14.

SYSTEM LOCATION:

Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Geological Survey.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, social security numbers; destination; itineraries; modes and purposes of travel; dates; expenses including advances; amounts claimed and reimbursed; travel orders; vouchers; receipts and passport record cards and information pertaining to an amount owed on an outstanding or delinquent travel advance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701, 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Account for travel advances; (b) compute vouchers to determine amounts claimed and reimbursed; (c) account for travel orders; maintaining records of modes and purposes of travel and itineraries; (d) maintain records of passports. Disclosure outside the Department of the Interior may be made

to: (1) The U.S. Treasury Department for payments; (2) the U.S. Department of State for passports; (3) to the U.S. Department of Justice when related to litigation or anticipated litigation; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (5) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (6) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract grant or other benefit; (7) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine readable.

RETRIEVABILITY:

Filed by name, social security number or travel order number.

SAFEGUARDS:

Storage facilities are in secured premises with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to GSA Federal Travel Regulations, and disposed of according to Records Control Schedule and GSA General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

A written and signed request addressed to the System Manager is required from anyone seeking information concerning him or herself. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the System Manager and meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors and standard finance office references.

[FR Doc. 85-13295 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Bureau Forms Submitted for Review

May 2, 1985.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503, telephone number (202) 395-7340.

Title Exchanges—General Procedures, 43 CFR 2200

Abstract: To initiate and complete a land exchange proposal with the Bureau of Land Management. The information aids the Bureau in determining the applicant's eligibility and whether all statutory requirements have been met.

Frequency: Once

Description of Respondents: Any citizen of the United States, corporation subject to the laws of any State of the United States, a State, or a political subdivision of a State desiring to propose an exchange.

Annual Responses: 115

Annual Burden Hours: 345

Bureau Clearance Officer: Rebecca Daugherty at (202) 653-8853

Frank A. Edwards,

Assistant Director—Land Resources.

[FR Doc. 85-13424 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-84-M

[CA 17071]

Notice of Realty Action in Exchange of Public Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Exchange of Public Lands in Riverside County (CA 17071).

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

San Bernardino Base and Meridian

T. 4 S., R. 6 E.,
Sec. 30: Lot 11, S½NE¼NE¼SW¼, SW¼SE¼NE¼, N½SE¼SE¼NE¼.
T. 5 S., R. 6 E.,
Sec. 4, W½NE¼NW¼SW¼, W½NW¼NW¼SW¼, W½NW¼SW¼SW¼, E½SW¼SE¼SW¼.
T. 7 S., R. 8 E.,
Sec. 20, SW¼, SW¼SE¼.
Total—245.04 acres.

In exchange for these lands, the Federal Government will acquire the following non-federal lands in Riverside County from The Nature Conservancy:

San Bernardino Base and Meridian

T. 3 S., R. 6 E.,
Sec. 35, NE¼SW¼SE¼, S½SW¼SE¼, E½SE¼.
Sec. 36, S½.
T. 4 S., R. 6 E.,
Sec. 1, Lot 1 and 2 of NE¼, Lot 1 and 2 of NW¼.
T. 4 S., R. 7 E.,
Sec. 6, Lot 1 and 2 of NE¼, Lot 2 of NW¼, NE¼SE¼, E½NE¼NW¼SE¼.
Total—1040.16 acres.

The purpose of this exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. the lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres within the preserve. Other state or federal agencies will acquire the remaining portion of the preserve. The exchange will include surface and partial mineral estates for both the public and private lands. An appraisal has been completed and the lands being exchanged will be of equal value, or otherwise be equalized by cash payment to the Federal Government not to exceed 25 percent of the value of the public lands in the exchange.

Lands transferred out of public ownership will be subject to the following reservations, terms, and conditions:

The reservation to the United States of a right-of-way for ditches or canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

The reservation to the United States of the oil and gas, and geothermal steam rights under the public land parcels located in Section 30, T. 4 S., R. 6 E., and Section 4, T. 5. S., R. 6 E.

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands will be segregated from all appropriations under the public land laws, including the mining laws, except for exchanges and mineral leasing, for a period of two(2) years or upon issuance of patent or other conveyance document, whichever comes first.

Detailed information concerning this exchange, including the Environmental Assessment Record/Land Report is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, California Desert District Office of the Bureau of Land Management at the above address. Any adverse comments will be evaluated by the District Manager, and forwarded to the California State Director, Bureau of Land Management, who may vacate, uphold, or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

May 23, 1985.

H.W. Riecken,

Acting District Manager.

[FR Doc. 85-13435 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-40-M

Colorado: Filing of Plats of Survey

May 24, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 24, 1985.

The plat, representing the dependent resurvey of a portion of the subdivisional lines and portions of M.S. No. 2962, Gold Field No. 2 Placer, and M.S. No. 8806, River Placer; the remonumentation of the original ¼ section corner of sections 20 and 29, and the metes-and-bounds survey of certain lots, T. 13 S., R. 82 W., Sixth Principal Meridian, Colorado, Group Nos. 750 and 757, was accepted May 13, 1985.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The protraction diagram of the following described lands approved May 13, 1985, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective July 16, 1985.

Protraction Diagram No. 42, prepared to delineate the remaining unsurveyed public lands in T. 43 N., R. 11 W., New Mexico Principal Meridian, Colorado, was approved May 13, 1985.

This diagram in two (2) sheets was prepared to meet certain administrative needs ot this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-13434 Filed 6-4-85; 8:45 am]

BILLING CODE 4310-84-M

[M-63884]

Realty Action; Noncompetitive Sale of Public Land in Stillwater County, MT

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M-63884, Noncompetitive Sale of Public Land in Stillwater County, Montana.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, U.S.C. 1713, at no less than fair market value.

Appraised Value $8,000.

Principal Meridian, Montana

T. 2 S., R. 20 E.,
Sec. 10, SE¼SE¼.
Contains 40 acres.

The land will be offered for sale in a direct-noncompetitive sale to the County of Stillwater.

The land is located approximately two air miles north of Columbus, the county seat of Stillwater County, Montana.

The subject land is the only available public land within a reasonable distance from Columbus that contains the physical attributes desired by the county to use as a sanitary landfill site. Contingent on undesirable soil coring test results, the county would use the site for a warehouse or equipment storage.

The land is currently leased for grazing to Mrs. Helen Handy Reed and adjoins her property on the south and east.

The proposed sale is consistent with the Bureau's planning system and was identified for disposal in the final Billings Resource Management Plan (1983). There is no legal access to the tract. The county is willing to negotiate or condemn access following purchase of the tract.

The government would acquire no benefits in this land sale, but county residents do support the sale to provide a future option for garbage disposal nearer than would otherwise be possible. The proposed sale thus meets the 43 CFR 2430 regulations that lands be determined to be chiefly valuable for public purposes. This consideration gives a preference for sale to the County of Stillwater.

The terms and conditions applicable to the sale are as follows:

1. The sale will be subject to all valid existing rights and reservations of record.

2. The Section 15 grazing lease to Mrs. Reed will remain in effect until the expiration date of the lease of February 28, 1989. Following the sale and until the lease expires, the County of Stillwater would be entitled to receive annual grazing fees from Mrs. Helen Handy Reed in an amount not to exceed that which would be authorized under the federal grazing fee published annually in the Federal Register. For this reservation, the county will receive a discount from the appraised fair market value.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

4. The United States would reserve a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including planning documents, environmental assessment, and the record of public discussions is available for review at

the Billing Resource Area Office, 810 East Main, Billings, Montana.

Dated: May 21, 1985.

Robert A. Teegarden,

Acting District Manager

[FR Doc. 85-13436 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-DN-M

New Mexico; Filing of Plat of Survey

May 20, 1985.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Managememt, Santa Fe, New Mexico, effective at 10:00 a.m. on May 20, 1985.

The dependent resurvey and subdivision of sections, Township 3 North, Range 9 West, NMPM, NM.

This survey was requested by the Socorro District Manager, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that Office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-13425 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Filing of Plat of Survey

May 29, 1985.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on May 29, 1985.

The dependent resurvey of a portion of the subdivisional lines and the survey of lot 11 in section 7 of Township 29 North, Range 13 West of the New Mexico Principal Meridian, New Mexico, under Group 824.

This survey was requested by the District Manager, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey

[FR Doc. 85-13426 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-FB-M

[A-19278]

Public Land Sale; Coconino County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Sale, Public Lands in Coconino County, Arizona.

SUMMARY: The following described public land has been identified as suitable for disposal under sections 203(a) and 209(a) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 90 Stat. 2757, 43 U.S.C. 1719). The land will be offered for sale at not less than the appraised fair market value indicated below.

Gila and Salt River Meridian, Coconino County, Arizona

T. 41 N., R. 2 W.,
Sec. 29, Lot 5

Containing 20.14 acres, more or less, at a Fair Market Value of $4,028.

A mineral report has indicated that the federal minerals, with the exception of oil and gas, have no known mineral value. The declared high bidder will therefore be required to submit a $50.00 non-returnable filing fee for the acquisition of the mineral estate. Oil and gas will be reserved to the United States.

The method of sale will be by sealed bid. Sealed bids must be received in the BLM Arizona Strip District Office, 196 East Tabernacle, St. George, Utah 84770, not later than 4:30 p.m. on Friday, August 2, 1985. Bids must be accompanied by not less than ten percent (10%) of the bid price. Should the land not be sold by close of business August 2, 1985, it will be available for purchase over-the-counter at the above location.

The land will be patented subject to the following terms and conditions:

1. Reserving to the United States a right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1980 (26 Stat. 391; U.S.C. 945).

2. Reserving to the United States all the oil and gas in the land, and to it or persons authorized by it, the right to prospect for, mine, and remove the same.

As provided in 43 CFR 2711.1-2(d), the public lands described herein shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

Additional information concerning these parcels, terms and conditions of the sale, and bidding instructions may be obtained by calling the Resource Area Manager at (801) 628-4491 or by writing the BLM Arizona Strip District Office.

For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments regarding the proposed action to the Arizona Strip District Manager, 196 East Tabernacle, St. George, Utah 84770. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this Realty Action. In the absence of any objections, this Realty Action will become the final determination of the Department of Interior.

Dated: May 23, 1985.

Raymond D. Mapston,

Acting District Manager.

[FR Doc. 85-13315 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-84-M

[U-52894]

Realty Action: Sale of Public Land in Beaver County, UT; Notice of Postponement

AGENCY: Bureau of Land Management, Interior.

ACTION: The sale of public land (U-52894), described as T. 29 S., R. 7 W., SLB&M, Sec. 18, Lot 2, as announced in the Friday, April 12, 1985 **Federal Register** (Vol. 50, No. 71, p. 14462) is hereby postponed until further notice. The segregative effect of the April 12, 1985 notice will remain until such time as the tract may be sold in the future or until it expires under provisions of 43 CFR 2711.1-2(d). A subsequent notice announcing a new sale day will be published at the appropriate time.

Dated: May 23, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85-13319 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-DQ-M

BLM Utah Statewide Wilderness Draft Environmental Impact Statement; Notice of Revised Schedule and Alternatives To Be Considered

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As a result of the need to substantially revise three WSAs to conform with instructions from the

Interior Board of Land Appeals and the need to include 805 acres of split estate lands and reinstate wilderness study areas (WSAs) of less than 5,000 acres resulting from a District Court decision (Sierra Club v. Watt), the schedule for public availability of the BLM Utah Statewide Wilderness Draft EIS has been changed from June 1985 to January 1986.

The EIS will be comprised of several volumes. Volume 1 will be a statewide analysis and the other volumes will contain analyses of individual WSAs.

As a result of public scoping and BLM studies, eleven statewide alternatives are being considered. Six of these have been tentatively identified for detailed study in Volume 1.

EFFECTIVE DATE: May 24, 1985.

SUPPLEMENTARY INFORMATION: On April 12, 1985, the Interior Board of Land Appeals affirmed Utah BLM inventory decisions for six areas involving 173,229 acres found not to be eligible, but at the same time required that the wilderness study area boundaries for three wilderness study areas (WSAs), Fiddler Butte, Mt. Pennell, and Mt. Ellen/Blue Hills, be revised to include additional lands, totaling 77,000 acres of BLM-administered land (IBLA Case 84–182).

On April 18, 1985, the United States District Court for the Eastern District of California issued a decision to return to WSA status areas of less than 5,000 acres contiguous with potential wilderness areas of other agencies. Ten of these, totaling 18,489 acres, that previously had been dropped from study are in Utah. That decision also requires inclusion of split-estate (Federal surface and State subsurface) land, totaling 805 acres, previously omitted in four WSAs in Utah (No. Civil S–83–035LKK).

As a consequence and in order to include the results of the two above actions, Utah BLM has rescheduled its work on the draft EIS. It is now planned to have the document ready for public review and comment beginning in January 1986. Formal public hearings on the draft will be scheduled for February and March 1986. These will be held at numerous locations throughout the State of Utah and will be further announced at the time the draft EIS is available.

The following information is furnished relative to the anticipated content of the draft EIS.

Volume I of the draft EIS will address statewide analysis of alternatives, comprised of various combinations of wilderness study areas. Only the alternatives described in the individual WSA analyses are aggregated in the statewide alternatives. To date 11 statewide alternatives have been identified; however, current acreage figures are approximate since studies still are ongoing and the additional lands noted above have not yet been included. The acreage ranges from 0 for the No Action Alternative to 3.2 million for the All Wilderness Alternative. The nine intermediate alternatives range from about 0.8 million acres to about 2.5 million acres.

(1) No Action:

Criteria: Alternative required by regulations. Provide lower limit to range of alternatives.

(2) All Wilderness:

Criteria: Inventory parameters are principal determinants.

Use All Wilderness Alternative from each individual WSA analysis.

Provide upper limit to range of alternatives.

(3) Manageability Alternative:

Criteria: Include areas without private inholdings and without significant acreages having prior and existing rights.

(4) Wilderness Highest Quality:

Criteria: Identify the highest quality areas, as judged by BLM. Ignore potential conflicts with other resources and uses.

(5) Preliminary Suitable Areas:

Criteria: Utilize wilderness suitability parameters from BLM study policy.

Include all areas and acres preliminarily judged by BLM to meet test of suitability.

(6) Modified Suitability Alternative:

Criteria: Use the alternative suggested in detail on pages 47 to 49 of the scoping booklet, including boundary modification on nine WSAs and two additional WSAs.

(7) Commodity Production:

Criteria: Include WSA areas that do not significantly conflict with known mineral resources, agriculture or potential expansion of livestock grazing, irrespective of wilderness quality.

(8) Large Cluster Concept:

Criteria: Include the All Wilderness Alternative for adjacent WSAs, separated by gravel roads (selected areas from #2 above).

Identify clusters that total 100,000 acres or more, including adjacent non-BLM wilderness lands or proposals.

Provide at least 25 percent BLM WSA land in a cluster.

(9) Wilderness Highest Quality with Minimum Conflict:

Criteria: Identify the highest quality areas, as judged by BLM.

Provide for minimum conflicts with other resources, to the extent possible.

Balance wilderness values with other resources where unavoidable conflicts may exist.

(10) Small Cluster Concept:

Criteria: Include only acreage that meet the suitability test, as determined by BLM (selected areas from #5 above).

Apply other two criteria as listed for the large Cluster concept.

(11) Regional Representative Areas:

Criteria: Select one or two WSAs as most representative of each of 5 regions in the State.

Regions are noted below.

Because some of the statewide alternatives would have similar overall acreages, it is expected that all will not be treated in detail in the draft EIS. It is currently anticipated that six alternatives (Numbers 1, 2, 3, 5, 9 and 10 as listed above) will be analyzed in detail in Volume 1 of the EIS. It is noted that some of the alternatives with similar overall acreages may have differing combinations of individual WSAs.

Individual analyses for each WSA will be included in other EIS volumes. The WSAs in these volumes will be grouped consistent with the five regions as follows:

West-Central Region—covers Utah's West Desert.

South-West Region—includes Zion vicinity and Kaiparowits Plateau.

South-Central Region—includes the Henry Mountains and Dirty Devil River Area.

South-East Region—covers the Canyonlands country.

East-Central Region—includes San Rafael Swell and the Book Cliffs.

FOR FURTHER INFORMATION CONTACT: The EIS Team Leader is Gregory F. Thayn, BLM Utah State Office (U–933), 324 South State Street, Salt Lake City, Utah 84111–2303 (phone 801–524–3135). Those desiring to be placed on the mailing list to receive the draft EIS, when available, should write to this address.

Dated: May 24, 1985.

Roland G. Robinson,

State Director.

[FR Doc. 85–13293 Filed 6–3–85; 8:45 am]

BILLING CODE 4310–DQ–M

[CA 6956]

California; Order Providing for Opening of Lands

May 21, 1985.

1. In an exchange of lands made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, the following land has been reconveyed to the United States:

Mount Diablo Meridian

T. 35 N., R. 8 E.,

Sec. 36. All.
T. 31 N., R. 13 E.,
Sec. 36. All.
T. 32 N., R. 13 E.,
Sec. 36. W½E½, SE¼NE¼, E½W½, SW¼NW¼, NW¼SW¼, NE¼SE¼.
T. 31 N., R. 14 E.,
Sec. 16. All.
T. 30 N., R. 15 E.,
Sec. 36. W½NE¼, SE¼NE¼, E½NW¼, SW¼NW¼, NW¼SW¼, E½SW¼, NE¼SE¼, W½SE¼.
T. 33 N., R. 15 E.,
Sec. 36. All
T. 29 N., R. 16 E.,
Sec. 36. All.
T. 30 N., R. 16 E.,
Sec. 16. All.
T. 31 N., R. 16 E.,
Sec. 36. N½.
T. 36 N., R. 16 E.,
Sec. 36. NE¼NE¼, SE¼SW¼, SE¼.
T. 25 N., R. 17 E.,
Sec. 36. Lots 1, 2, 3 and NE¼NW¼, W½NE¼.
T. 29 N., R. 17 E.,
Sec. 16. All;
Sec. 36. All.
T. 30 N., R. 17 E.,
Sec. 16. All;
Sec. 36. All.
T. 31 N., R. 17 E.,
Sec. 36. All.
T. 32 N., R. 17 E.,
Sec. 16. All;
Sec. 36. All.
T. 33 N., R. 17 E.,
Sec. 16. All;
Sec. 36. All.
T. 34 N., R. 17 E.,
Sec. 16. All;
Sec. 36. All.
T. 35 N., R. 17 E.,
Sec. 36. All.

The area aggregates approximately 12,425.29 acres in Lassen County.

2. At 10 a.m. on July 5, 1985, the land shall be open to the operation of the public land laws generally, including the mining laws (30 U.S.C. Ch. 2) and the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 5, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Nancy J. Alex,

Chief, Lands & Locatable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85-13338 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-84-M

Shoshone District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Wednesday, June 26, 1985, at 10:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Noxious Weed Program
Box Canyon Draft Management Plan

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.), as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 1:00 and 2:00 p.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by June 25, 1985. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Charles J. Haszier,

District Manager.

[FR Doc. 85-13311 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-GG-M

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Grazing Advisory Board.

DATE: June 27, 1984; 9:00 a.m.

ADDRESS: BLM Office, 1050 E. William St., Suite 344, Carson City, Nevada.

SUPPLEMENTARY INFORMATION: The agenda will include prioritization of Lahontan Resource Area grazing allotments, a briefing on the new regulations for leasing grazing privileges, presentation of proposed Fiscal 1986 range improvement projects, and updates on wild horse and burro management, the BLM/Forest Service Interchange, the grazing fee study report, and the status of the Reno Grazing Environmental Impact Statement and the Walker and Lahontan Resource Management Plans. The public is invited, and anyone may appear before the Council at 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Steven Weiss, Public Affairs Officer, BLM, 1050 E. William St, Suite 335, Carson City, NV 89701 (702) 882-1631.

Thomas J. Owen,

District Manager.

May 22, 1985.

[FR Doc. 85-13335 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-HC-M

Filing of Plat of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land will be officially filed at 8:30 a.m. July 8, 1985 in the Oregon State Office, Portland, Oregon.

Willamette Meridian

T. 40 S., R. 12 W.,
sec. 31, Tract 37.

Tract 37 is located by metes and bounds within the Siskiyou National Forest in Curry County about five miles east of Brookings, Oregon, and three miles north of the California state line.

Elevations range from 500 feet to about 850 feet above sea level. The soil is rocky clay. Timber consists of fir, tanoak, alder, maple, and myrtle, and a dense undergrowth consists of huckleberry, salal, salmonberry, and fern.

Tract 37 is administered by the Siskiyou National Forest and is currently part of Forest Exchange application OR 36448.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P. O. Box 2965, Portland, Oregon 97208.

Dated: May 23, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-13336 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-33-M

[WASH 0710, WASH 0710A, OR-4061 (WASH), OR-22458 (WASH)]

Washington; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that four land withdrawals for the Yakima Firing Center continue for an additional 50 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers, proposes that the existing land withdrawals made by Public Land Order No. 75 of January 1, 1943, Public Land Order No. 692 of December 8, 1950, Public Land Order No. 4570 of January 16, 1969, and Public Land Order No. 1000 of August 26, 1954, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located east of the Cascade Mountains in the northeast part of Yakima County and the southeast part of Kittitas County, Washington. A total of 36,417.76 acres are affected.

The purpose of the withdrawals is to protect the Yakima Firing Center. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, and except for 573.47 acres, the mineral leasing laws. The Corps of Engineers proposed no change in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: May 22, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-13337 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-33-M

[W-71396]

Wyoming; Proposed Continuation of Withdrawal

May 22, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to continue the existing withdrawal of 60.25 acres for ditchrider's residences and related facilities in connection with the North Platte Reclamation Project, for an additional 100 years. The lands remain closed to surface entry and mining. The lands have been and will remain open to mineral leasing.

DATE: Comments should be received by September 3, 1985.

ADDRESS: Comments and meeting requests should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307-772-2089.

The Bureau of Reclamation proposed that the existing withdrawal made by the Secretarial Order of August 10, 1908, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

Sixth Principal Meridian

T. 22 N., R. 60 W.,
Sec. 18, lot 6.
T. 23 N., R. 60 W.,
Sec. 6, NE¼SW¼.

The area described contains 60.25 acres in Goshen County.

The purpose of the withdrawal is to protect the ditchrider's residences and related facilities in connection with the North Platte Reclamation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

L. Christian Vosler,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 85-13308 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-22-M

[W-71410]

Wyoming; Proposed Continuation of Withdrawal

May 22, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 40 acre withdrawal for the North Platte Reclamation Project continue for an additional 100 Years. The lands remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received on or before September 3, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, (307) 772-2089.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposed that the existing withdrawal made by the

Secretary Order of February 7, 1921, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian, Wyoming

T. 25 N., R. 63 W.,
Sec. 25, NE¼SW¼.

The area described contains 40 acres in Goshen County.

The purpose of the withdrawal is to protect the Interstate Canal facilities, consisting of a ditchrider's residence, a spillway, and the Lingle Substation, for the North Platte Reclamation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal may present their views in writing to the Chief, Branch of Land Resoruces, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

L. Christian Vosler,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 85-13309 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-22-M

[W-71890]

Wyoming; Proposed Continuation of Withdrawal

May 22, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to continue the existing withdrawal of 89.14 acres for the Fremont Canyon Powerplant, Pick-Sloan Missouri Basin Program, for an additional 100 years. The lands remain closed to surface entry and mining. The lands have been and will remain open to mineral leasing.

DATE: Comments and meeting requests should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office 307-772-2089.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposed that the existing withdrawal made by the Secretarial Order of October 6, 1933, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

Sixth Principal Meridian

T. 29 N., R. 83 W.,
Sec. 17, lots 1, 2;
Sec. 20, E½NE¼NE¼, NE¼SE¼NE¼;
Sec. 21, N½SE¼NW¼.

The area described contains 89.14 acres in Natrona County.

The purpose of the withdrawal is to protect the Fremont Canyon Powerplant and facilites. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

L. Christian Vosler,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 85-13310 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Establishment of the Connecticut Coastal National Wildlife Refuge and Delineaton of Project Boundaries

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice designates by map the area of lands and waters in Fairfield and New Haven Counties, Connecticut which the Secretary of the Interior considers appropriate for the Connecticut Coastal National Wildlife Refuge. The Notice also establishes that present and future Fish and Wildlife Service property or interests therein, within the project area shown on that map, are components of Connecticut National Wildlife Refuge. These lands ae protected and administered in accordance with the Congressional Act, Treaties and Executive Orders which provide the legal basis for operation of units of the National Wildlife Refuge System.

ADDRESSES: A detailed map of the refuge is available for public inspection at the following offices.

(1) Office of the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, and
(2) Ninigret National Wildlife Refuge, Crossland Park, Cross Street, Charlestown, Rhode Island 02813.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 or telephone (617)965-5100 (commercial) or 829-9200 (FTS).

SUPPLEMENTARY INFORMATION: The Act to establish the Connecticut Coastal National Wildlife Refuge was enacted by Congress on October 26, 1984 (Pub. L. 98-548). The Act provided that the Secretary designate approximately 145 acres of lands and waters on Chimon Island, Falkner's Island, Sheffield Island and Milford Point in the State of Connecticut as appropriate for the refuge and publish in the **Federal Register** notice of the availability, for public inspection, of a map depicting the refuge. The Secretary may make minor revisions in the designated boundaries of the refuge in order to carry out the purpose of the Act or to facilitate acquisition of property within the refuge. The Act further directed the Secretary to publish a notice in the **Federal Register** to establish Connecticut Coastal

National Wildlife Refuge whenever sufficient property was acquired that could be effectively managed as a national wildlife refuge.

Notice is hereby given that, pursuant to the above Act, the project area boundary for the Connecticut Coastal National Wildlife Refuge has been depicted on a map entitled "Connecticut Coastal National Wildlife Refuge" and dated March 1985, and that sufficient property interests have been acquired to constitute an area that can be effectively managed as a national wildlife refuge. Therefore the Connecticut Coastal National Wildlife Refuge was established effective February 25, 1985, with acceptance of the deed for Chimon Island.

Portions of this Refuge are units of the Coastal Barrier Resources System and as such Fish and Wildlife Service will undertake consultation procedures as required by the Coastal Barrier Resources Act.

A detailed map of the project area is on file and is available for public inspection at the offices listed in the address section above.

Dated: May 23, 1985.

Howard N. Larsen,

Regional Director.

[FR Doc. 85–13307 Filed 6–3–85; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; BelNorth Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that BelNorth Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5347, Block 557, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 23, 1985. Comments mut be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 24, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–13323 Filed 6–3–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5540, Block 90, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on May 23, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13,

1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 24, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-13320 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4701, Block 652, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on May 22, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 23, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-13321 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1253, Block 169, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on May 21, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 23, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-13322 Filed 6-3-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 25, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 19, 1985.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Larimer County

Estes Park, *Stanley Hotel District (Boundary Increase)*, 333 Wonder View Ave.

Otero County

La Junta vicinity, *Bent's Old Fort*, CO 194

FLORIDA

Alachua County

Gainesville, *Boulware Spring Waterworks*, 3400 SE 15th St.

KANSAS

Sedgwick County

Wichita, *Kress, S.H., Company Building*, 224 E. Douglas

MAINE

Androscoggin County

Lisbon, *Farwell Mill*, ME 196

Cumberland County

Portland, *Cathedral of the Immaculate Conception*, Cumberland Ave. & Congress Sts.

Franklin County

New Sharon, *New Sharon Congregational Church*, ME 134

Hancock County

Ellsworth, *Ellsworth Powerhouse and Dam*, Union River
Verona, *Waldo-Hancock Bridge*, US 1

Kennebec County

Belgrade, *Chandler Store*, ME 27
Winthrop, *Bailey Charles M., Library*, Bowdoin St.

Lincoln County

Damariscotta, *Damariscotta Baptist Church*, King's Square

Oxford County

Rumford, *Rumford Point Congregational Church*, ME 5 and US 2 jct.

Penobscot County

Dexter, *Dexter Universalist Church*, Church St.

Waldo County

Prospect, *Waldo-Hancock Bridge*, US 1
Stockton Springs, *Stockton Springs Community Church*, ME 3 and US 1

York County

North Berwick, *Prescott, J.L., House*, High St.

MARYLAND

Baltimore (Independent City)

Compers School, 1701 East North Ave.
Swiss Steam Laundry Building, 100—102 N. Green St.

MASSACHUSETTS

Essex County

Saugus, *Saugus Town Hall*, Central St.

Suffolk County

Boston, *Commercial Palace Historic District*, Roughly bounded by Bedford, Summer, Devonshire, Franklin, Hawley & Chauncy Sts.

MISSOURI

Camden County

Pin Oak Hollow, *Pin Oak Hollow Bridge (ECW Architecture in Missouri State Parks 1933—1942 TR)*, Lake of the Ozarks State Park

NORTH CAROLINA

Ashe County

Tuckerdale vicinity, *Tucker, John W., House*, SR 1353

Chatham County

Bells vicinity, *Ebenezer Methodist Church (Chatham MRA)*, SR 1008
Bells vicinity, *Goodwin Farm Complex (Chatham MRA)*, SR 1900
Bynum vicinity, *Ward, Dr. E.H., Farm (Chatham MRA)*, SR 1700
Crutchfield Crossroads vicinity, *Whitehead-Fogleman Farm (Chatham MRA)*, SR 1352 & SR 1351 jct.
Farrington vicinity, *O'Kelly's Chapel (Chatham MRA)*, NC 751
Goldston vicinity, *Rives, William Alston, House (Chatham MRA)*, End of SR 2183 off SR 2187
Gulf, *Haughton-McIver House (Chatham MRA)*, SR 1007
Pittsboro vicinity, *Thomas, James A., Farm (Chatham MRA)*, SR 1941
Siler City vicinity, *Bowen-Jordan Farm (Chatham MRA)*, SR 1100
Siler City vicinity, *Teague, William, House (Chatham MRA)*, SR 1004
Siler City, *Gregson-Hadley House (Chatham MRA)*, 322 E. Raleigh St.
Siler City, *Hotel Hadley (Chatham MRA)*, 103 N Chatham St.
Silk Hope vicinity, *DeGraffenreidt-Johnson House (Chatham MRA)*, SR 1346

Durham County

Durham, *North Durham-Duke Park District*, Roughly bounded by Glendale Ave., W. Knox St., Roxboro Rd., Trinity Ave., Magnum & Broadway Sts.

Halifax County

Enfield vicinity, *Myrtle Lawn*, SR 1003

Hertford County

Winton, *Brown, C. S., School Auditorium*, Off NC 45

Hyde County

Fairfield, *Fairfield Historic District*, SR 1308, 1309, 1305 and NC 94
Lake Landing vicinity, *Lake Landing Historic District*, Roughly bounded by Mattamuskeet Refuge Boundary, Middletown, Nebraska, SR 1110 and US 264
Rose Bay vicinity, *Credle, George V., House and Cemetery*, US 264

Northampton County

Garysburg, *Garysburg United Methodist Church and Cemetery*, SR 1207

Orange County

Carrboro, *Carrboro Commercial Historic District*, 100 Blk. of E. Main St. between Greensboro Rd. & Roberson St.

Pitt County

Farmville vicinity, *May-Lewis, Benjamin, House*, US 264–A

Rowan County

Salisbury, *Brooklyn-South Square Historic District*, Roughly bounded by Fisher, Shaver, Walls and Lee Sts.
Salisbury, *Kesler Manufacturing Co.-Cannon Mills Co. Plant No. 7 Historic District*, Park Avé. and Boundary St.
Salisbury, *North Long Street-Park Avenue Historic District*, North Long St. and Park Ave.
Salisbury, *North Main Street Historic District*, Roughly bounded by N. Main, 17th, Lee and Lafayette Sts.
Salisbury, *Salisbury Historic District (Boundary Increase)*, Roughly bounded by S. Fulton, Horah, S. Main and McCubbins Sts.

Stokes County

Danbury, *Danbury Historic District*, Main St. Between Danbury Cemetery Rd. and NC 89

OHIO

Ashtabula County

Ashtabula, *Hotel Ashtabula*, 4726 Main Ave.

Holmes County

Holmesville vicinity, *Croco House*, OH 83

OREGON

Douglas County

Roseburg, *Mill-Pine Neighborhood Historic District*, Roughly bounded by Short St., Mosher Ave., Stephens St. and Rice Ave.

Lane County

Eugene, *Johnson Hall*, E. 13th between University and Kincaid Sts.

Polk County

Monmouth, *Graves-Fisher-Strong House*, 391 E. Jackson St.

PENNSYLVANIA

Philadelphia County

Chestnut Hill, *Chestnut Hill Historic District*, Roughly bounded by Fairmount Park and Montgomery Co. Line

WISCONSIN

Eau Claire County

Eau Claire, *Merrill, Levi, House (Eau Claire MRA)*, 120 Ferry St.

Winnebago County

Menasha, *Doty Island (47–WN–30)*, Smith Park off WI114

[FR Doc. 85–13129 Filed 6–3–85; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Request for Public Comment on Termination of Investigation No. 104–TAA–26, Concerning the Sugar Content of Certain Articles From Australia

AGENCY: International Trade Commission.

ACTION: The Commission requests public comments on the proposed termination of all or part of investigation No. 104–TAA–26, concerning the sugar content of certain articles from Australia. All comments must be received by the Commission no later than two weeks from the date of publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Section 104(b) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note) requires the Commission to conduct an investigation upon receipt of a proper request to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports, if an outstanding countervailing duty order were to be revoked. On September 9, 1982, the Commission received such a request from the Government of Australia for a review of T.D. 39541 (March 24, 1923), as amended, which imposes a countervailing duty on the sugar content of certain articles imported directly or indirectly from Australia. Accordingly, effective May 9, 1985, the Commission instituted investigation No. 104–TAA–26, concerning the sugar content of certain articles from Australia.

Imports covered by the review are "approved fruit products" and "other approved products" produced in Australia. The current list of "approved fruit products" includes the following items: Jams, canned fruit, citrus peel, crystallized (or glace) fruits, certain fruit cordials and fruit juices containing not less than 25 percent pure Australian juice. The list of "other approved products" currently includes: Alcoholic beverages, biscuits, cakes, puddings, pastries and similar mixtures and ingredients used to make them, chemicals derived from cane sugar by hydrolysis, chemical preparations used as inhibitors or stabilizers, condiments, confectionery, desserts and ingredients used to make them, drink powders and crystals, essences and flavorings, ice block mixtures, leather, icing sugar mixture, maple syrup, medicines and drugs, mixtures used to make icings, fillings, dressings and other foods, processed cereal foods or vegetables, processed egg products, processed milk products, quick frozen fruits, soft drinks, soups, spreads, sweetened fruit pulp and other fruit products which are not "approved fruit products." Exceptions to the above are pure sugar and pure icing sugar (that is, not mixed with other manufacturing ingredients), golden syrup, treacle and molasses. These are regarded as sugar and sugar syrups.

In light of the legislative history of section 704(a) of the Tariff Act of 1930 indicating Congress' expectation that the Commission will permit public comment prior to termination, the Commission requests written comments from interested parties (within the meaning of sections 771(9) (C), (D), or (E) of the Tariff Act of 1930), which represent an industry producing all or some of the subject products (within the meaning of section 771(4)(A)). It is expected that persons expressing an interest in this investigation will provide information regarding the issues of material injury or the threat thereof, by reason of the revocation of the countervailing duty order. The Commission will consider the comments received, as well as other relevant information, in determining whether to continue this investigation or any part thereof.

If the Commission terminates the investigation on all or some of the products covered by the countervailing duty order, the order will be revoked as to those products.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin (202–523–0421), Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

By order of the Commission.

Issued: May 31, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–13470 Filed 6–3–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 38)]

Intrastate Rail Rate Authority; Alaska

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of Commission jurisdiction over Alaska intrastate rail transportation.

SUMMARY: Pursuant to a request from the Governor of the State of Alaska, the Commission will assert jurisdiction over intrastate freight rates in Alaska.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: In Ex Parte No. 388, *State Intrastate Rail Rate Authority—Pub. L. 96–448* (not printed), served February 8, 1982, 47 FR 5786 (1982), the Commission stated that several States, including Alaska, had not sought certification pursuant to 49 U.S.C. 11501(b) to regulate intrastate rail rates, and had, therefore, lost jurisdiction to regulate intrastate rail rates. These States were also requested to inform us if they desired the Commission to assume jurisdiction, and that in the absence of a request, we would not assert jurisdiction. As Alaska did not make such a request, the Commission stated that it would not assume jurisdiction in Alaska. *State Intrastate Rail Rate Authority—Pub. L. 96–448*, 365 I.C.C. 700 (1982).

On April 19, 1985, the Governor of the State of Alaska filed a request asking that the Commission assume intrastate rail rate regulation in Alaska, with the proviso that it may seek certification to regulate intrastate rail rates at a later time.

In accordance with Alaska's request, we are assuming jurisdiction over Alaska intrastate rail rates. Rail carriers in Alaska shall comply with Commission regulations, including the filing of intrastate tariffs and contracts with the Commission.

This action does not affect Alaska's right to seek certification in the future. Under 49 U.S.C. 11501(b), Alaska may seek certification at any time.

This decision does not significantly affect either the quality of the human environment or energy conservation

Authority: 49 U.S.C. 11501.

Decided: May 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–13334 Filed 6–3–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub–131X)]

Illinois Central Gulf Railroad Co.; Abandonment Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 10.22-mile line of railroad between milepost 99.00 near Shelby, MS. and milepost 109.22 near Renova, MS.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days period to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 4, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 14, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 24, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission should be sent applicant's representative: Richard M. Kamowski, Illinois Central Gulf RR Co., 233 North Michigan Avenue, Chicago, IL 60601.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned

upon environmental or public use conditions.

Decided: May 29, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–13333 Filed 6–3–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

May 30, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Public Law 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

New Collection

(1) Larry E. Miesse, 202/633–4312
(2) Justice Management Division, Department of Justice
(3) Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs
(4) None
(5) On occasion
(6) State and local governments, individuals or households, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. Issues in conjunction with other Federal agencies to assure that owners of real property to be acquired by the Department of Justice and its Federally-assisted programs are treated fairy and consistently during implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
(7) 1 respondents
(8) 1 burden hour
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Arrival/Departure Record
(4) I–94
(5) On occasion
(6) Individuals or households. This form is part of the manifest requirements of Sections 231 and 235 of the I&N Act, and evidence when issued of alien registration as required by Section 264 of the I&N Act.
(7) 14,000,000 respondents
(8) 924,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) National Crime Survey (NCS) Pretest
(4) NCS–1, NCS–2, NCS–7, NCS–500
(5) On occasion
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amounts of crime committed against households and individuals throughout the United States. Respondents include persons 12 years or older living in 200 households.
(7) 200 respondents
(8) 66 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Agency Clearance Officer.

[FR Doc. 85–13332 Filed 6–3–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Amendment to Consent Decree Pursuant to the Clean Air Act; Chattanooga Coke and Chemicals Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on May 10, 1985, a proposed Amendment to a Consent Decree in *United States* v. *Chattanooga Coke and Chemicals Company, Inc.*, Civil Action No. 1–81–323 was lodged with the United States District Court for the Eastern District Court for the Eastern District of Tennessee. The original consent decree set for the requirements for Chattanooga Coke to install proper pollution control equipment and compliance with emission limitations at several sources of air pollution. The proposed amendment to the Consent Decree concerns adjustments in the final compliance schedules and requirements set forth in the original decree and also adds new sections regarding penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chattanooga Coke and Chemicals Company Inc.*, (E.D. Tenn., Civil Action No. 1–81–323) D.J. No. 90–5–2–1–137.

The proposed Amendment to consent decree may be examined at the office of the United States Attorney, 359 U.S. Courthouse and Post Office Building, Chattanooga, Tennessee 37402 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Amendment to the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-13340 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Judgment Pursuant to Clean Air Act; Martin Muffler Sales; Inc.

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on May 16, 1985, a proposed consent judgment in *United States* v. *Martin Muffler Sales, Inc.* (N.D. Illinois) was lodged with the United States District Court for the Northern District of Illinois. Under the terms of the proposed consent judgment, Martin Muffler Sales Inc. is required to warn its employees not to tamper with catalytic converters, to display notices to warn customers not to request such services, to offer to replace the fifteen converters at issue in the case without cost, and to pay a civil penalty of $12,500.

The Department of Justice will receive comments for a period of thirty (30) days from the date of this publication relating to the proposed consent judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Martin Muffler Sales, Inc.*, D.J. Ref. #90-5-2-1-733.

The proposed consent judgment may be examined at the Office of the United States Attorney, Room 1500-S, 219 South Dearborn Street, Chicago, Illinois 60604; the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60704; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed consent judgment, refer to the case, proposed consent judgment and D.J. Reference number.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-13341 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Modified Final Judgment (on Consent) Pursuant to the Clean Air Act; Quick Roll Leaf Manufacturing Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed modified final judgment (on consent) in *United States* v. *Quick Roll Leaf Manufacturing Company*, Civil Action No. CV 83-0349, has been lodged in the United States Court for the Eastern District of New York.

The proposed modified final judgment (on consent) concerns discharges of pollutants from Quick Roll Leaf's plant in Elmhurst, New York. The proposed modified final judgment (on consent) requires the defendant by June 1, 1985 to reduce emissions at the Elmhurst site by 58%. The proposed modified final judgment (on consent) also requires the defendant to complete construction of a new facility and permanently cease any solvent emitting operations at the Elmhurst facility by March 1, 1987. In addition, the proposed modified final judgment (on consent) provides for stipulated penalties in the event that the defendant fails to comply with the terms of the proposed modification.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed modified final judgment (on consent). Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington D.C. 20530, and should refer to *United States* v. *Quick Roll Leaf Manufacturing Company*, D.J. Ref. No. 90-5-2-1-566.

The proposed modified final judgment (on consent) may be examined at the Office of the United States Attorney, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York and at the Region 2 Office of the Environmental Protection Agency, 26 Federal Plaza, Room 900, New York, New York. Copies of the propsed modified final judgment (on consent) may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington D.C. 20530. A copy of the proposed modified final judgment (on consent) may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced cases and enclose a check in the amount of $3.00 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division, Department of Justice.

[FR Doc. 85-13342 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-01-M

Attorney General's Commission on Pornography Open Meeting; Correction

The original Notice of Meeting appeared on page 21671 in the **Federal Register** of May 28, 1985.

The following information should have been noted.

Approximately 20 seats will be available for the public (including media representatives) on a first-come, first-served basis at the meeting on June 18, 1985. Approximately 150 seats will be available for the public (including 40 seats reserved for media representatives) on a first-come, first-served basis at the hearings on June 19 and June 20, 1985.

May 28, 1985

Henry Hudson,

Commission Chairman.

[FR Doc. 85-13411 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Registration; Aerojet Strategic Propulsion Co.

By Notice dated January 22, 1985, and published in the **Federal Register** on January 30, 1985; (50 FR 4282), Aerojet Strategic Propulsion Company, Highway 50 at Hazel Avenue, P.O. Box 156599C, Sacramento, California 95813, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 20, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Division Control: Drug Enforcement Administration.

[FR Doc. 85-13359 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Withdrawal; Marion Laboratories, Inc.

On November 1, 1984, the Drug Enforcement Administration published a Notice of Application in the **Federal Register** (Vol. 49. No. 213, pg 44031) stating that Marion Laboratories, Inc., Analytical Systems, Inc., Division, 23162 La Cadena Drive, Laguna Hills, California 92653, had sumbitted an application for registration as a bulk Manufacturer of the basis classes of control substances listed below.

Drug	Schedule
1-phenylcyclohexylamine (7460)	II
Ecgoninen (9180)	II

On February 25, 1985, the Drug Enforcement Administration was advised that Marion Laboratories, Inc., Analytical Systems, Inc., Division, 23162 La Cadena Drive, Laguna Hills, California 92653 wished to withdraw its application for registration as a bulk Manufacturer of 1-phenylcyclohexylamine (7460) and Ecgonine (9180).

The application having been withdrawn any proceedings relating to the application have been terminated and the publication withdrawn.

Dated: May 20, 1985.

Gene R. Haislip,

Deputy Assistant Administrator; Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 85-13361 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application; Smithkline Chemicals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 1985, Smithkline Chemicals, Division Smithkline Corporation, 900 River Road, Conshohocken, Pennsylvania 19428 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

Any other such applicant and person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 5, 1985.

Dated: May 20, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 13358 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application; Sterling Drug; Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 18, 1985, Sterling Drug, Inc., 33 Riverside Avenue, Rensselear, New York 12144 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Pethidine (meperidine) (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

Dated: May 20, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-13360 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registration for the bulk manufacturer of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 3, 1985, McNeilab Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form a prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 5, 1985.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for

registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (e) and (f) are satisfied.

Dated: May 28, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 85-13384 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 2, 1985, and published in the **Federal Register** on April 11, 1985, (50 FR 14324), Janssen Inc., P.O. Box JPH, State Road 933 KM 01 Mamey Ward, Gurabo, Puerto Rico 06658, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Sufentanil (9740), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of the Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 28, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-13385 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1985 Aggregate Production Quotas.

SUMMARY: This notice establishes 1985 aggregate production quotas for controlled substances in Schedules I and II which will be used as analytical standards.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, D.C. 20537, Telephone (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code, Section 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On February 12, 1985, a notice of the proposed 1985 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (50 FR 5826). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before March 14, 1985. No comments or objections were received.

Pursuant to Sections 3(c)(3) and 3(E)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Acting Administrator of the Drug Enforcement Administration by Section 0.100 of Title 28 of the Code of Federal Regulations, the Acting Administrator hereby orders that the aggregate production quotas for 1985 for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic Class	1985 Aggregate Production Quotas
Schedule I.	
Lysergic acid diethylamide	4
Lysergic acid methylpropiyamine	2.5
Schedule II:	
Benzoylecgonine	50
Phencyclidine	100

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-13382 Filed 6-3-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance

Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration
Governor's Coordination and Special Services Plan (GCSSP)
1205–0203; ETA RC 53
Biennially
State or local governments
57 respondents; 569 hours

The GCSSP, required by section 121(a)(2) of the JTPA, will provide the Department with a general description of each State's plans for the operation of the JTPA program and its utilization of its JTPA resources.

Signed at Washington, D.C. this 30th day of May 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–13418 Filed 6–3–85; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–15,929]

Acme Boot Co., Inc., Cookeville, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 1985 in response to a worker petition received on April 17, 1985 which was filed by the United Rubberworkers of America on behalf of workers at the Acme Boot Company, Cookeville, Tennessee.

A negative determination applicable to the petitioning group of workers was issued on December 18, 1984 (TA–W–15,454). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 28th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–13417 Filed 6–3–85; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–15,697]

The International Treasury Office of U.S. Steel Corp., New York, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 27, 1985 in response to a worker petition received on January 14, 1985 which was filed on behalf of workers at the International Treasury Office of U.S. Steel Corporation, New York, New York.

An active certification covering the petitioning group of workers remains in effect (TA–W–15,452). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 28th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–13416 Filed 6–3–85; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Edwards Manufacturing Co., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor hearin presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 20, 1985—May 24, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In the following case, the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not cintribute importantly to worker separations at the firm.

TA–W–15,778; Edwards Manufacturing Co., Augusta, ME

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,809; United Uniform Manufacturing Co., Memphis, TN

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–15,776; Puritan Fashions (Calvin Klein Jeans), El Paso, TX

Puritan Fashions (Calvin Klein Jeans), El Paso, TX was a marketing and distribution center and was not engaged in the petition of an article. The subject firm is not affiliated with any corporate facilities which have workers who are currently under a certification for trade adjustment assistance.

Affirmative Determinations

TA–W–15,771; Wolverine World Wide, Inc., Factory C, Big Rapids, MI

A certification was issued covering all workers of the firm separated on or after January 22, 1984 and before December 3, 1984.

TA–W–15,782; Smith-Corona, Cortland, NY

A certification was issued covering all workers of the firm separated on or after February 11, 1984.

TA–W–15,777; Copeland Corp., Fostoria, OH

A certification was issued covering all workers of the firm separated on or after February 6, 1984 and before August 27, 1984.

TA–W–15,841; U.S. Steel Mining Co., Inc., Maple Creek Mine Complex, New Eagle, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1984 and before April 9, 1985.

I hereby certify that the aforementioned determinations were issued during the period May 20, 1985—May 24, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. during normal

business hours or will be mailed to persons who write to the above address.

Dated: May 28, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-13415 Filed 6-3-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 14, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 14, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 28th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of)—	Location	Date [illegible]	Date of petition	Petition No	Articles produced
Eaton Corporation, Transmission Div (workers)	Shelbyville, TN	5/16/85	4/17/85	TA-W-16,024	Transmissions, truck, heavy, duty
Bolivar Management Corp (ACTWU)	Bolivar MO	5/15/85	5/13/85	TA-W-16,025	Casual wear, ladies
Arrow Shirt Co. (ACTWU)	Elysburg, PA	5/22/85	5/17/85	TA-W-16,026	Shirts, men's
Arrow Company of Pennsylvania (ACTWU)	Lewistown, PA	5/22/85	5/17/85	TA-W-16,027	Shirts, men's.
Bear Creek Uranium (workers)	Casper, WY	5/21/85	5/15/85	TA-W-16,028	Uranium—mining
Butler County Mushroom farm (USWA)	West Winfield, PA	5/20/85	5/16/85	TA-W-16,029	Mushrooms
Butler County Mushroom Farm (USWA)	Worthington, PA	5/20/85	5/16/85	TA-W-16,030	Mushrooms
Damsel Mfg. Co., Inc. (workers)	West Hazleton, PA	5/21/85	5/17/85	TA-W-16,031	Sportwear, girls
David Crystal Sportswear, Inc. (ILGWU)	East Newark, NJ	5/3/85	4/23/85	TA-W-16,032	Sportwear, ladies
Formfit Rogers, Inc. (USWA)	Lafayette, TN	5/16/85	5/16/85	TA-W-16,033	Lingene
General Dynamics Corp., Quincy Shipbuilding Div (IUMSWA).	Quincy, MA	5/22/85	5/21/85	TA-W-16,034	Vessels, barges, tankers.
Bethlehem Steel Corp (ASWA)	Johnstown, PA	5/16/85	5/15/85	TA-W-16,035	Carbon and alloy bars, rods, and wires
Briarcliff Mills, Inc. (workers)	Atlanta, GA	5/16/85	5/13/85	TA-W-16,036	Blouses, ladies
Conemaugh & Black Lick Railroad (USWA)	Johnstown, PA	5/16/85	5/13/85	TA-W-16,037	Railroad service—Johnstown, PA plant of Bethlehem Steel Crop
LGAM Mfg Co., Inc. (ILGWU)	Woodsfield, OH	5/16/85	5/14/85	TA-W-16,038	Blouses, shirts, and dresses.
Litton Microwave Cooking Products (company)	Minneapolis, MN	5/17/85	5/6/85	TA-W-16,039	Microwave ovens and component parts
Ohio Brass Company (workers)	Barberton, OH	5/16/85	5/1/85	TA-W-16,040	Fired porcelain insulators, suspension insulators, procelain bushings
Quality Components, Inc. (workers)	St. Marys, PA	5/15/85	5/9/85	TA-W-16,041	Electronic components.
Red Cedar Products Inc (workers)	Amanda Park, WA	5/17/85	5/14/85	TA-W-16,042	Shakes—roofing and siding
Roosevelt Mills, Inc. (workers)	Rockville, CT	5/17/85	5/9/85	TA-W-16,043	Sweaters.
Shapely, Inc. (ACTWU)	Cincinnati, OH	5/22/85	5/20/85	TA-W-16,044	Blouses, dresses, ladies.
U.S. Steel Corp., Homestead Works (USWA)	Homestead, PA	5/20/85	5/16/85	TA-W-16,045	Steel, slab, plate, structurals.
Zenith Electronics Corp., Plant #2 (Electronic Wkrs of America)	Chicago, IL	5/6/85	4/29/85	TA-W-16,046	Sequence machine and VCD.
American Forest Products Co (United Brotherhood of Carpenters)	North Fork, CA	5/13/85	5/7/85	TA-W-16,047	Lumber and other wood products.
Louis Walker Co., Inc. (ILGWU)	Los Angeles, CA	5/15/85	5/9/85	TA-W-16,048	Coats and suites, ladies.
Revere Copper Products, Inc., Rome Plant (Mechanic's Educational Society of America)	Rome, NY	5/22/85	5/10/85	TA-W-16,049	Fabricates copper and brass

[FR Doc. 85-13414 Filed 6-3-85; 8:45 am]

BILLING CODE [illegible]

LEGAL SERVICES CORPORATION

Announcement of Transfer of LSC Grant for Eligible Migrant Clients Residing in the State of Pennsylvania

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Statute 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant contract, or project . . ."

The Legal Services Corporation (LSC) hereby publicly announces the transfer of responsibility of the LSC grant for legal services to eligible migrant clients residing in the State of Pennsylvania from Camden Regional Legal Services, Inc. to Community Legal Services, Inc.

DATE: All comments related to this action must be received by the Office of Field Services within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272-4080.

SUPPLEMENTARY INFORMATION: Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system of legal services for low income people, announces the transfer of responsibility of the LSC grant for legal services to eligible migrant clients residing in the State of Pennsylvania

from Camdem Regional Legal Services, Inc. (CRLS), located in Camdem, New Jersey to Community Legal Services, Inc. (CLS), located in Philadelphia, Pennsylvania.

Since the inception of the LSC grant for these purposes in 1980, CRLS has subcontracted the provision of this legal services work to CLS. All parties mutually agree that beginning in grant year 1985 the LSC grant will be made directly to CLS. The annualized level of Legal Services Corporation's funding for this service area is $55,438 for calendar year 1985.

All groups and persons interested in submitting comments related to this transfer should submit such to the Legal Services Corporation, Grants Assistant, Grants and Budget Unit, Office of Field Services 733 Fifteenth Street NW., Washington, D.C. 20005, before the deadline.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-13362 Filed 6-3-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee (IES) of the National Security Telecommunications Advisory Committee (NSTAC) will be held on Tuesday June 18, 1985. The meeting will be held at the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, VA 22102. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and Government activities.

Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, D.C. 20305-2010.

D. C. Brown,

Captain, USN, Chief, Joint Secretariat.

[FR Doc. 85-13378 Filed 6-3-85; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Section) to the National Council on the Arts will be held on June 17-20, 1985, from 9:15 a.m.-6:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of the meeting will be open to the public on June 20, from 2:00-4:00 p.m. to discuss policy and to review guidelines.

The remaining sessions of this meeting on June 17-19, 1985, from 9:15 a.m.-6:30 p.m. and on June 20, from 9:15 a.m.-1:00 p.m. and from 4:15-6:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence ot the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Yvonne M. Salune,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-13354 Filed 6-3-85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Recommendation Responses; Availability of

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS

Recommendation No	Respondent	Date	Subject
Aviation			
A-82-51	Helicopter Assn. Internat'l	Apr. 24, 1985	Flight Instructor Training.
A-84-131	Federal Aviation Admin. (FAA)	Apr. 24, 1985	Revision of flight attendant manuals (Pilgrim Airlines)
A-85-18	U.S. Dept. of Commerce	Apr. 22, 1985	Supplemental Aviation Reporting Stations in Alaska.
A-85-7	FAA	Apr. 30, 1985	Compressor rear frames of General Electric CF6-50 and -45 engines, inspection, repair and removal procedures
A-83-61	FAA	Apr. 30, 1985	Susceptibility of hydraulic tubing in Swearingen SA226-TC Metro Airplanes to stress
A-76-84	FAA	May 10, 1985	Bird ingestion in turbine engines.
A-84-60	FAA	May 10, 1985	Engine compartment designs of certificated multiengine helicopters
A-83-45	FAA	May 2, 1985	Government/industry task force on passenger safety information.
A-82-118	FAA	May 7, 1985	Minimum airspeeds and flight precautions during flight in icing conditions.
A-83-8 and -9	FAA	May 7, 1985	Wing fuel tank quick drains on Piper PA-11, -12, -18, -18A, -20, -22, and J-3 and PA-25 airplanes.
A-83-50 and -51	FAA	May 18, 1985	Wheel brake pressure on Piper Aircraft.
A-84-85	FAA	Mar. 21, 1985	Strut housing assembly inspection; replacement of landing gear upper bearing retaining pins.
A-83-37 through -43	FAA	Apr. 18, 1985	Air traffic controller error
A-85-11 through -14	FAA	May 14, 1985	Ultralight vehicles; standards, registration, certification, rules
A-81-27	FAA	Mar. 8, 1985	Emergency exits
A-79-93	FAA	Mar. 8, 1985	Stabilizer out-of-trim warning system, Beech 99 and Beech 100 flight manuals
A-83-34	FAA	Mar. 19, 1985	Compliance with Cessna Service Letter SE69-16
A-84-125 through -127	FAA	Mar. 19, 1985	IFR clearance or discrete transponder codes for flights departing San Luis Obispo County Airport.
A-83-54	FAA	Mar. 19, 1985	Visual scanning techniques
A-82-36	FAA	Mar. 29, 1985	Stage 1 high pressure turbine disk

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS—Continued

Recommendation No.	Respondent	Date	Subject
A-83-57	FAA	Apr. 10, 1985	Beech series 19, 23, and 24 airplanes; compliance with Beechcraft Service Instructions No. 1095, Revision 1
A-84-86	FAA	Apr. 8, 1985	Twin-engine airplanes equipped with Prestolite 100-ampere alternators.
A-85-8 through -10	FAA	Apr. 10, 1985	Mooney Aircraft Models M20B, M20C, M20D, M20E, M20F, M20G, M20J (201) and M20K (231)
A-83-56	FAA	Apr. 12, 1985	Mitsubishi MU-2 airplanes; engines, fuel system, autopilot, flight control systems; handling characteristics during IMC landing approaches.
A-84-79 through -81	FAA	Apr. 12, 1985	Cessna induction airbox assembly; evidence of cracking, chafing, or looseness.
A-84-59	FAA	Apr. 2, 1985	Detroit Diesel Allison 250-C30 engine; turbine rotor structural design.
A-83-14 through -26	FAA	Apr. 2, 1985	Low Level Wind Shear Alert System; Automatic Terminal Information Service; radar, pilot reports; aircraft operational limitations, flight director systems; other sources of weather information.
A-82-32, -33	FAA	Apr. 3, 1985	Wing spar tension bolt assembly design.
A-84-110	FAA	Mar. 21, 1985	Sikorsky S-76A fuselage-mounted engine containment shield installation.
A-84-116 through -122	FAA	Mar. 11, 1985	Management of Air Route Traffic Control Centers to minimize conflict/hazards during high density traffic
A-83-64	FAA	Mar. 8, 1985	Cessna Aircraft tank selector valve linkages
A-82-64 through -66	FAA	Mar. 12, 1985	Digital flight data recorder systems.
A-84-108	U.S. Dept. of Commerce	Mar. 26, 1985	Warnings of clear air turbulence by area forecasts, SIGMET's, or other communication
A-84-5 and -6	[illegible] Aviation Safety Board	Mar. 6, 1985	Aircraft fire and cabin safety
A-84-123 and -124	Civil Aviation Administration	Apr. 18, 1985	Call-out procedures to include actual speed deviation.
Highway			
H-85-4 through -6	New Mexico Dept. of Education	Apr. 17, 1985	School bus stopping at railroad crossings.
H-83-48	Tennessee Dept. of Education	Apr. 23, 1985	Fire extinguisher installment on school buses.
H-84-59, -66 and -93	Federal High Admin.	Apr. 30, 1985	Issuance of On-Guards to alert drivers to safety threats.
H-84-94 and -95	Arkansas State Police	Jan. 17, 1985	Drawing of blood samples in serious or fatal accidents.
H-83-52	Indiana Dept. of Highways	Jan. 9, 1985	Safety seats
H-84-19	Missouri Div. of Highway Safety	Jan. 22, 1985	Sobriety checkpoints
H-83-52	[illegible] of Nebraska	Jan. 22, 1985	Child restraints
H-83-52	[illegible]homa Highway Safety	Jan. 24, 1985	Child restraints
H-84-8	Michigan Dept. of Trans.	Jan. 22, 1985	National School Bus Safety Standards
H-83-39	Ohio Dept. of Highway Safety	Jan. 30, 1985	School bus/safety standards
H-84-76	Massachusetts Registry of Motor Vehicles	Jan. 14, 1985	School bus safety
H-84-11 through -14, 19-21, 23-26	Commonwealth of Virginia	Jan. 28, 1985	Sobriety checkpoints.
H-84-6	State of Maryland	May 1, 1985	Schoolbus construction standards.
H-85-4 through -6	New Jersey Dept. of Education	Apr. 12, 1985	School bus driver training programs
H-84-4 through -6	Missouri Dept. of Elementary and Secondary Education.	Mar. 29, 1985	School bus driver training programs
H-82-25	Federal Highway Admin.	Mar. 5, 1985	Citizen's band radios
H-84-77 through -86	Alaska Dept. of Public Safety	Mar. 4, 1985	Preliminary breath tests
H-83-53 through -59	Nat'l Highway Traffic Safety Administration	Mar. 14, 1985	Child restraint systems
H-83-68	Federal Highway Admin.	Mar. 13, 1985	Prohibition on falsification related to medical certification for commercial drivers.
H-83-40, -41, -46, -47 and -48	Commonwealth of Virginia	Mar. 27, 1985	School bus safety
H-85-5	Oklahoma State Dept. of Education	Mar. 29, 1985	School bus safety; railroad crossings
H-84-72	Ohio Dept. of Highway Safety	Mar. 28, 1985	Maneuverability testing of noncommercal bus operators
H-83-39 through -41	Vermont Agency of Transportation	Mar. 21, 1985	Child restraints
H-84-61 and -62, -63	Trailways Lines, Inc.	Mar. 25, 1985	Operating speeds, seat belt use; devices to minimize dozing at the wheel by drivers.
H-85-4 through -6	W. Virginia Dept. of Education	Mar. 28, 1985	School bus safety
H-84-91 and -92	Internat'l Assn. of Chiefs of Police, Inc.	Feb. 14, 1985	Blood alcohol testing for truck drivers involved in serious accidents.
H-84-66 through -68	Federal Highway Admin.	Feb. 22, 1985	Motor carriers involved in interstate commerce
H-83-39 through -41	State of New Mexico	Feb. 11, 1985	School bus accidents
H-81-76	Federal Highway Admin.	Feb. 14, 1985	Requirement for drivers of trucks to have an additional State or national license to transport bulk hazardous materials
H-84-11 through -14	Pennsylvania Dept. of Transportation	Feb. 8, 1985	Sobriety checkpoints/administrative license action.
H-81-72 and -73	Federal Highway Admin.	Feb. 13, 1985	Identification of crossings with passive warning devices used by trucks transporting bulk hazardous materials
H-83-39 and -40	Oklahoma Dept. of Education	Feb. 1, 1985	School bus safety
H-83-39 and -40	N. Dakota Dept. of Public Instruction	Feb. 4, 1985	Seat belt laws/small bus safety
H-85-1 through -3	California Yearly Meeting of Friends	Apr. 3, 1985	Bus safety
H-83-34	National Tank Truck Carriers	Jan. 18, 1985	Upgraded driver training; certification criteria
H-84-72	Idaho Transportation Dept.	Apr. 3, 1985	Examinations and road tests for non-commercial bus drivers
H-84-77 through -86	Honolulu Executive Chambers	Apr. 10, 1985	Sobriety tests, DUI laws
H-84-5	New York Dept. of Transportation	Apr. 3, 1985	School bus safety
H-83-46 and -47	Maryland Executive Dept.	Apr. 2, 1985	School bus safety
H-83-10 through -15	California Dept. of	Apr. 2, 1985	Tunnel emergency response procedures
H-83-39 through -41	State of West Virginia	Apr. 18, 1985	Small school buses/vans; restraint systems, safety standards, safety belts for drivers
H-84-77 through -86	State of Nevada	Apr. 18, 1985	Preliminary breath tests, DUI laws
H-85-4 through -6	Florida Dept. of Education	Apr. 3, 1985	School bus safety
H-84-77 through -86	Commonwealth of Kentucky	Nov. 2 1985	Preliminary breath tests DUI laws
H-84-5 through -10	Tennessee Dept. of Safety	Apr. 16, 1985	School bus safety
H-85-4 through -6	Tennessee Dept. of Education	Mar. 29, 1985	School bus safety
H-85-4 through 6	North [illegible]ma State Board of Education	Mar. 28, 1985	School bus safety
Marine			
M-83-76	State of Washington	May 1, 1985	Legislation to define level of legal intoxication for recreational boaters; toxicological tests in the event of boating fatalities
M-82-48 and -49	Commonwealth of Massachusetts	Apr. 25, 1985	Standing orders for cadet and officer engineering watches.
M-85-25	U.S. Dept. of Commerce	Apr. 30, 1985	Navigation guides for mariners traveling the Western Rivers
M-85-14 through -17	U.S. Coast Guard	Apr. 24, 1985	Bascule bridge spans; controls of navigation lights, indicators for bridgetenders; protective fender systems to prevent damage by vessel superstructures
M-85-1 through -5	U.S. Coast Guard	May 6, 1985	Steering gear standards, failure/risk, inspection, and rules
M-84-31 through -34	U.S. Coast Guard	Jan. 25, 1985	Bilge pumps to prevent flooding; coercion of offshore supply vessel masters to take vessels to sea against their better judgement; requirements for applicants for original master's licenses
M-84-24 through -29	U.S. Coast Guard	Feb. 26, 1985	Passenger vessels
M-85-7 through -11	Mobil Oil Corporation	Apr. 30, 1985	Ships' steering gear
M-84-48	Department of Transportation	Mar. 26, 1985	Mobile offshore drilling units; personnel qualifications and manning regulations
M-83-76 and -77	New Mexico Natural Resources Department	Apr. 2, 1985	Alcohol abuse, recreational boating
M-83-89 through -92	American Bureau of Shipping	Jan. 24, 1985	Hydroster model MS-800-TE-1 steering gear system.

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS—Continued

Recommendation No	Respondent	Date	Subject
M-84-43	American Bureau of Shipping	Feb. 12, 1985	Towing systems on all ocean towing vessels
M-85-5	American Bureau of Shipping	Feb. 13, 1985	Steering gear inspections; proper installation of cotter pins
M-84-67 through -69	Graham & Jones (for ARCO China)	Mar. 5, 1985	Continuous 24-hour radio watch
Pipeline			
P-85-4 and -5	Washington Gas Light Co	May 7, 1985	Pipe surface preparation at bonding points, conductivity of bonding cables
P-83-8 and -9, -31 through 34.	Washington Gas Light Co	Mar. 5, 1985	Employee training, adherence to established safety procedures
P-84-30	National Research Council	Feb. 25, 1985	Surface and subsurface use of land adjacent to pipelines that transport hazardous commodities
Railroad			
R-85-35	New York Dept. of Trans	Apr. 24, 1985	Subway fires
R-83-60 and -61	Soo Line Railroad Co	Apr. 30, 1985	Spot checks of employees for drug/alcohol abuse
R-82-15, -18, -55, -57, -70, -72, -74.	Washington Metropolitan Area Transit Authority.	Mar. 18, 1985	Training for rail transportation supervisors, operators, controllers, passenger education for emergency procedures; emergency escape windows, carborne monitors.
R-83-60 and -61	Chicago & Illinois Midland Railway Co	Mar. 18, 1985	Spot checks for drug/alcohol abuse
R-84-60, -61, -33 and -34	Seaboard System Railroad	Mar. 11, 1985.	Spot checks for drug/alcohol abuse; employee training
R-84-20	Indian Railways	Mar. 19, 1984.	Chrome Vanadium Alloy.
R-84-40, -13 and -14	Amtrak	Apr. 10, 1985	Baggage retention capability, seat securement, food service equipment, traction motor bearings, heat sensors; inspection of assembly and maintenance of locomotive traction assemblies.
R-85-18	General Electric	Apr. 1, 1985	Design and maintenance of traction motor support bearings
R-84-40, -42 -25	Amtrak	Apr. 1, 1985	Baggage retention capability, seat securement, food service equipment; storage batteries emergency lighting features
R-84-12	Association of American	Apr. 5, 1985	Inspection procedures and operating practices in connection with the movement of maintenance-of-way rolling stock in revenue freight trains.
R-85-19, -20	Conrail	Apr. 3 1985	Cab signals.
R-85-17	Electro-Motive	Apr. 12, 1985	Traction motor support bearing
R-84-25 -28, -30	Metro-Dade Transportation Admin	Mar. 14, 1985	Train speeds, stopping distances, contrast of numbers and background of speed signs standard operating procedures for emergencies.
R-84-37 through -43	Amtrak	Mar. 13, 1985	On-time incentive programs, locomotive speed tapes; railroad/highway grade crossings passenger car interior features; speed recorder and overspeed devices, storage batteries, engine crew performance
R-84-47 through -51	Seaboard System Railroad	Mar. 11, 1985	Tank cars containing residual quantities of hazardous materials classified as "emph. emergency information; engineers performance
R-81-37	Norfolk Southern	Mar. 15, 1985	Advance approach aspects
R-83-35 through -45	Maryland Dept. of Licensing and Regulation	Mar. 22, 1985	Supervisory checks for crew alcohol use, alcohol abuse rules, education.
R-84-37 through -43	Illinois Central Gulf	Apr. 23, 1985	On-time incentive programs; locomotive speed recorder tapes; railroad/highway grade crossings; design deficiencies in passenger car interiors; overspeed devices; storage batteries; engine crew performance
R-85-15 and 16	Association of American Railroads	Apr. 9, 1985	Traction motor support bearings
R-84-2	Association of American Railroads	Mar. 20, 1985	Procedures for installation and maintenance of high strength alloy rails.
Intermodal			
I-85-1	State of Colorado	Feb. 19, 1985	Designation of routes for the transportation of hazardous materials.
I-84-5	U.S. Coast Guard	May 15, 1985	Standards for design and construction of chemical protective suits

The Safety Board has revised the format of these notices of response letters to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Alternate Federal Register Liaison Officer

May 24, 1985.

[FR Doc. 85-13297 Filed 6-3-85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on May 21, 1985 (50 FR 20969) through May 24, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By July 5, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If a final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10, days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: March 13, 1985.

Description of amendment request: The proposed amendment would revise Table 3.8.1 of the Technical Specifications (TS) related to containment electrical penetration conductor overcurrent protective devices. The proposed TS changes are:

1. Additional containment penetration conductor overcurrent protective devices would be added to the table.

2. Reactor Coolant System sample line solenoid valves and their associated overcurrent protective devices would be deleted from the table.

3. Primary and backup overcurrent protective devices for pressurizer heaters would be changed.

4. An equipment designation would be changed.

5. Typographical errors would be corrected.

Containment electrical penetration conductor overcurrent protective devices are essentially circuit breakers which help to maintain containment integrity by preventing overcurrent from damaging penetrations given single random failures of overcurrent protective devices.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions that are considered not likely to involve significant hazards considerations include: (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the TS: for example, a more stringent surveillance requirement. (vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. (i) A purely administrative change to TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

Based on our preliminary review of the proposed changes, it appears that each of the changes is similar to one of the above examples. Item 1 of the proposed changes clearly matches Example (ii) in that additional overcurrent protective devices would be added to the table and tested periodically for operability. These additional overcurrent protective devices resulted from plant modifications pertaining to Low Temperature Overpressure Protection, Pressurizer Spray Valve, and Hydrogen Purge Valves. Item 2 appears to be similar to Example (vi) in that even though the periodic surveillance testing which would demonstrate the operability of the primary and backup overcurrent devices associated with the Reactor Coolant System sample line solenoid valves would not be performed, two redundant fuses in series would prevent overcurrents from damaging penetration and, therefore, the design of the circuit associated with this containment electrical penetration would still meet the acceptable criteria in SRP Section 8.3.1. Item 3 appears to be similar to Example (vi) in that the licensee's engineering analysis indicates that designating certain overcurrent protective devices located outside the containment as the backup devices instead of the present backup devices located inside the containment would enhance the devices' ability to meet the acceptable criteria in SRP Section 8.3.1 based on the fact that the penetration would not be protected should a fault occur between the protective devices in containment and the penetration under the present TS, whereas it would be protected under the proposed TS. Items 4 and 5 appear to be similar to Example (i) in that Item 4 involves a change in nomenclature and Item 5 involves correction of typographical errors.

Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Commonwealth Edison Company, Docket Nos. 50–373 & 50–374, La Salle County Station, Units 1 & 2, La Salle County, Illinois

Date of amendment request: April 17, 1985.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Units 1 and 2 Technical Specifications to: (1) (a) Include a minimum critical power ratio limit on Figure 3.2.3–1, to show when the end-of-cycle reactor pump trip is inoperable, (b) correct typographical and administrative errors, and (c) reduce valve stroke times to reflect actual valve times; (2) indicate Specification 3.0.4 does not apply by permitting reactor startup as long as assurance is provided that a system inoperable would not affect plant safety; (3) clarify the Technical Specifications to indicate required action on failure of either "Full In" or "Full Out" reactivity position indicating system and surveillance or "Full In" indication; (4) correct the time allowed for decay of liquid effluent batch releases for lower limit of detection; (5) change the method of calculating the kilowatt capacity for electric heaters in the control room emergency make-up train required by Specification 4.7.2.d.4 for surveillance; and (6) incorporate the reactor core isolation cooling differential temperature instrumentation with respect to set points, surveillance requirements and required remedial actions.

The following descriptions are proposed changes to the designated pages of Unit 1 and 2 Technical Specifications:

1. (a) ¾ 2–5 for Unit 1 and ¾ 2–5 for Unit 2. The Minimum Critical Power Ratio curve is updated to reflect when end-of-life reactor pump trip is inoperable. This portion of the curve was inadvertently omitted and is in accordance with the provisions of the Standard Technical Specifications for General Electric Boiling Water Reactors.

(b) ¾ 3–87, ¾ 6–9, ¾ 6–27 for Unit 1 and ¾ 3–87, ¾ 4–3, ¾ 6–8, ¾ 6–30, ¾ 7–21, ¾ 7–28 for unit 2.

Minor changes of a nonsubstantive nature (e.g. misspelled words, a word repeated, change for clarification, etc.) are proposed for these pages.

(c) ¾ 6–24, ¾ 6–26 for Unit 1 and ¾ 6–27, ¾ 6–29 for Unit 2. On these pages licensee proposes to reduce stroke valve timing and add stroke times to reflect actual times measured during surveillances.

2. ¾ 6–22, ¾ 6–24, ¾ 6–25, ¾ 6–26, ¾ 6–27, ¾ 6–28, ¾ 6–32, ¾ 6–34 for Unit 1 and ¾ 6–25, for Unit 1 and ¾ 6–25, ¾ 6–27, ¾ 4–28, ¾ 6–29, ¾ 6–30, ¾ 6–31, ¾ 6–35, ¾ 6–37 for Unit 2. These pages would be clarified to indicate Specification 3.0.4 is not applicable to permit reactor startup since the plant safety is not degraded when an automatic isolation valve is inoperable but secured in its isolation position. The question of continued operation only becomes one of other requirements and not based on primary containment integrity.

3. 3/4 1–13, 3/4 1–14 for Unit 1 and 3/4 1–13, 3/4 1–14 for Unit 2.

Clarification is proposed for these pages to indicate that when "Full In" or "Full Out" position indicators for control rods are not functioning action is required. These changes are in accordance with the Standard Technical Specifications for General Electric Boiling Water Reactors for action to be taken and surveillance requirements to ensure operability of the "Full In" indication.

4. 3/4 11-4 for Unit 1 and 3/4 11-4 for Unit 2.

This change is to correct the time used in determining liquid effluent. The licensee indicates that a sample taken and analyzed prior to release of the batch discharge tank effluent, is a representative measurement of the radioactive material to be released and need not be decay corrected back to sample time.

5. 3/4 7-6 for Unit 1 and 3/4 7-6 for Unit 2.

This change is to correct the method of calculating the kilowatt capacity for electric heaters in the control room emergency make-up train required by Specification 4.7.2.d.4 for surveillance by correcting for bus voltage variations.

6. 3/4 3-9, 3/4 3-12, 3/4 3-13, 3/4 3-14, 3/4 3-16, 3/4 3/18, 3/4 3-21 for Unit 1 and 3/4 3-9, 3/4 3-12, 3/4 3-13, 3/4 3-14, 3/4 3-16, 3/4 3/18, 3/4 3-21 for Unit 2.

The reactor core isolation cooling pump room differential temperature isolation is being added to be part of the isolation actuation instrumentation of these pages of the Technical Specifications. This includes setpoints, surveillance requirements and required remedial actions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). The example of actions involving no significant hazards consideration include:

(i) A purely administrative change to the Technical Specifications, correction of errors or changes in nomenclature (ii) a change that constitutes an additional limitation, restriction or control not presently included in the Technical specifications; and (vi) a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The changes proposed in the application for amendment are encompassed by these examples in the following ways:

(1) Changes requested by the licensee in the following items are administrative in nature and are encompassed by the Commission's example (i) of actions not likely to involve significant hazards consideration. Item 1(b).

(2) The following proposed changes in the Technical Specifications are requirements more conservative than in the present Units 1 and 2 requirements and are encompassed by the Commission's example (ii) of action not likely to involve significant hazards consideration: Items 1(a), 1(c), 3, 5, 6.

(3) The following proposed changes in the Technical Specifications are requirements which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but the results of changes are within acceptable criteria so that these changes fall within the Commissions example (vi) of action not likely to involve significant hazards considerations: Items 2, 4.

Therefore, since the application for amendments involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room Location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Branch Chief: W.R. Butler.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: April 10, 1985.

Description of amendment request: The proposed change amends the Technical Specifications to revise the limits for total nuclear peaking factor (F_Q) and accumulator water volume to accommodate plant operation at steam generator tube plugging levels up to 25%. The proposed change would permit a maximum F_Q of 2.32 up to 25% steam generator tube plugging with nominal accumulator volumes of 822 ft^3.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in margin of safety. Consolidated Edison's amendment application includes an evaluation of the effects of a postulated loss-of-coolant accident with 25% steam generator tube plugging. Consolidated Edison's evaluation concludes that the proposed revision provides a margin of safety which complies with the acceptance criteria of 10 CFR 50.46 and Appendix K to 10 CFR Part 50.

The staff expects to agree with Consolidated Edison's evaluation. Therefore, the staff proposes to determine that the requested action would involve no significant hazards considerations.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Thomas J. Farrelly, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: January 7, 1985 as revised on March 14, 1985 which supersede previous requests dated June 4, 1976 and November 13, 1978.

Description of amendment request: The amendment proposes changes to the Technical Specifications and Bases to incorporate Radiological Effluent Technical Specifications (RETS) which would meet the requirements of Appendix I to 10 CFR Part 50. The amendment would approve new Technical Specification (TS) sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring, for effluent concentrations and for treatment of liquid, gaseous and solid wastes. It would also incorporate into the TS the bases that support the operation and surveillance requirements.

The proposed amendment also includes certain administrative changes which relocate and reformat but do not modify technical specifications which are not part of RETS, but were necessary in order to incorporate RETS into the existing technical specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions not likely to involve significant hazards considerations relates to a change that constitutes additional restrictions or

controls not presently included in the Technical Specifications.

The Commission, in a revision to Appendix I to 10 CFR Part 50, required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement, it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the proposed addition of the Appendix I Technical Specifications described above. The Commission proposes to determine that the application does not involve a significant hazards consideration since incorporation of the Appendix I Technical Specifications constitutes additional restrictions and controls that are not currently included in the Technical Specifications.

Another example (i) included in the Commission's guidance (48 FR 14780) of actions not likely to involve significant hazards considerations relates to a purely administrative change to Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature. The administrative changes described above fit this example. On this basis the staff proposes to determine that the requested administrative changes do not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: March 19, 1985, as supplemented on May 1, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specification (TS) 3.7.2(e)2 to allow a one-time extension of the allowable period of inoperability from 24 hours to 10 days per battery for the installation of new Keowee batteries and battery racks.

The Keowee Hydro Station is the source of two independent on-site emergency power paths for Oconee Nuclear Station. They are part of the Auxiliary Electrical System that assures safe reactor operation and provides for continuing availability of engineered safety features systems. The Keowee Hydro Station is in the process of ordering replacement cells for both of the Keowee 125 VDC power system batteries. The changeout of the batteries and the racks cannot be accomplished during the 24-hour time period currently allowed by TS 3.7.2(e)2. However, the replacement can be accomplished in a maximum of 10 days for each of the two batteries.

Each Keowee hydro unit is provided with a separate 125 VDC power system consisting of a 125 VDC battery charger, a 125 VDC battery, and a metal clad distribution center. A bus tie arrangement (two breakers in series) is provided between the distribution centers. This arrangement allows one Keowee 125 VDC power system battery to be removed for testing/servicing while maintaining the capability to supply the required DC loads of both Keowee units with the remaining battery. The licensee will also perform a load test on the battery train that will remain in service to show it will be available to perform its intended function.

The capability of each existing Keowee battery is substantially greater than the DC load requirements of both units. Therefore, operating with one Keowee 125 VDC power system battery out of service and the distribution center tie breakers closed for a period of 10 days per battery will allow for installation of the replacement batteries and racks while involving no additional significant safety hazard.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the determination of significant hazards considerations by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. An accident previously evaluated includes a loss of coolant accident happening concurrently with a loss of offsite power and one train of the on-site emergency power source inoperable. However, the probability of all three of these events occurring simultaneously is very small. Extending the allowable period of inoperability from 24 hours to 10 days per battery would increase the probability of this accident; however, because of the very low probability of such an accident, such increase does not add significantly to the overall probability of the accident. Therefore, the proposed amendment involves operation of the facility that would involve a very slight increase in the probability of a previously-evaluated accident. In addition, the licensee will perform, as a compensatory measure for added assurance, a surveillance test beyond what is routinely required. The licensee will perform a load test on the battery train that will remain in service to show it will be available to perform its intended function. Prior to installing the new battery, the licensee will start up both Keowee units with only one battery in service. The second battery outrage will not begin until the newly installed battery is verified operable. Thus, the proposed amendment will not significantly increase the probability of a previously analyzed accident.

The consequences of an accident previously evaluated remain unchanged because the nature of the accident is not affected by the number of days of inoperability.

2. Since neither the operability nor the configuration of the battery is a direct causative factor in creating an accident, its inoperability will not create a new or different type of accident.

The inoperability of one Keowee battery, when the busses are tied together, will not affect the operability of either Keowee Unit and that one battery is capable of carrying the required Keowee emergency DC load. Since this one time, temporary inoperability of one battery system will not prevent the other battery system from performing its safety function, the margin of safety is not significantly reduced.

The discussion above indicates that operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501

West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 11, 1985.

Description of amendment request: These amendments would modify the Technical Specifications to remove Administrative Subsection 6.15.1 concerning the completion requirement for the environmental qualification program.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (vii), a change to make a license conform to changes in the regulations where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Subsection 6.15.1 requires that the environmental qualification program for Hatch Units 1 and 2 be completed by June 30, 1982. 10 CFR 50.49 suspended the equipment qualification compliance deadline. Removal of this subsection to make the Technical Specifications consistent with the regulation is similar to Example (vii). Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington D.C. 20036

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: February 15, 1985, as supplemented May 14, 1985.

Description of amendment request: The amendment would modify the Technical Specifications to (1) change the required channel calibration setpoint of the control rod scram accumulator (hydraulic control unit (HCU) accumulator) pressure alarm from 955±15 psig to greater than or equal to 940 psig; and (2) revise the identification number listed in Table 3.3.3–1 for the automatic depressurization system (ADS) timer.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probabiliy or consequences of an accident previously evaluated; or (2) create the possiblity of a new or differnt kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The purpose of the HCU pressure alarm is to warn of a decreasing HCU pressure condition while preserving enough HCU pressure to meet scram time requirements for the associated control rod when reactor pressure is low. The lower limit of the tolerance band is the important limit that is preserved by the channel calibration. This limit, 940 psig, is unaffected by the proposed change.

Probabilities and consequences of analyzed accidents will not be increased by this change since the minimum HCU alarm pressure setting is unchanged. No new accident types are created since no new modes of operation are involved. The margin of safety as defined in the Technical Specificatons will not be reduced by this change since it will allow the pressure alarms to be set at a value which reduces the likelihood of instrument drift compromising the lower limit of 940 psig.

The Commission concludes that the proposed change is consistent with the three standards as discussed above.

The Commission has also provided guidance concerning the application of the standards in 10 CFR 50.92 by providing examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (i), an amendment involving a purely administrative change to Technical Specifications. The revision of the identification number for the ADS timer is similar to this example.

Accordingly, the Commission proposes to make a preliminary determination that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Northeast Nuclear Energy Company et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: May 18, 1983.

Description of amendment request: The proposed changes to the Technical Specifications (TS) would made the TS conform with the final rule on environmental qualification (EQ) of electric equipment important to safety for nuclear power plants (10 CFR 50.49), published in the **Federal Register** on January 21, 1983 (48 FR 2729) as amended on November 19, 1984. The proposed changes would delete the June 30, 1982 deadline date and remove the requirement for a central qualification file. The removal of the requirement for a central equipment qualification file in no way reduces the requirements of 10 CFR 50.49(j) to maintain an auditable record of equipment qualification documentation.

Basis for proposed no significant hazards consideration determination: In determining the no significant hazards consideration, we have used the guidance provided by the Commission (48 FR 14870). Example (vii) pertains to a change which would make a license conform to changes in the regulations, where the change results in very minor changes clearly in keeping with the regulations. The proposed action is within the purview of Example (vii) because only minor changes are involved in making the license in compliance with the EQ rule described above. Therefore, the proposed change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road; Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: James R. Miller.

Northeast Nuclear Energy Company et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: March 29, 1985.

Description of amendment request: The proposed change to the Technical Specifications would delete diesel generator surveillance requirement 4.8.1.1.2.c.5.d. Section 4.8.1.1.2.c.5.d requires verification that on simulated loss of diesel generator:

(1) The loads are shed from the emergency buses,

(2) The emergency buses are reenergized with permanently connected through load sequencers, and

(3) The diesel operates for more than or equal to 5 minutes while its generator is loaded with the emergency load.

These requirements are in excess of the scope outlined in 10 CFR Part 50, Appendix A, General Design Criterion 17 (GDC), and is not consistent with the provisions of GDC–17, Regulatory Guide 1.108 and the NRC Standard Review Plan (8.2 and 8.3.1). The remaining surveillance testing requirements in the Technical Specifications are sufficient to demonstrate full functional operability and independence of the diesel generator units. Specifically, the following tests are specified:

(1) Verifying that on loss of off-site power the emergency buses have been deenergized and that the loads have been shed from the emergency buses.

(2) Verifying that on loss of off-site power the diesel generators start from ambient condition on the auto-start signal, the emergency buses are energized with permanently connected loads, the auto-connected emergency loads are energized through the load sequencer, and the system operates for five minutes while the generators are loaded with the emergency loads.

The remaining surveillance test requirements demonstrate the capability of the on-site power system to perform its required functions and conformance with GDC–17 and NRC regulatory guide criteria.

Basis for proposed no significant hazards consideration determination: Because the remaining required surveillance test requirements are in full conformance with GDC–17 and NRC regulatory guide criteria and the full functional operability and independence of the diesel generator units can be demonstrated by these remaining tests, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated. For these same reasons, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated or involve a significant reduction in a margin of safety. Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: James R. Miller.

Northeast Nuclear Energy Company et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: April 4, 1985.

Description of amendment request: The proposed change to the Technical Specifications (TS) revises TS Section 4.5.2.c.3 to delete a reference to the physical description (solid granular) of the trisodium phosphate dodecahydrate (TSP). Because the "solid granular" description can be confusing, the proposed change deletes these words.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making a no significant hazards consideration determination (48 FR 14870). Example (i) of this guidance is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed change of deleting reference to a physical description in order to avoid misinterpretation is purely administrative in nature and similar to example (i) described above. Furthermore, the functional requirement of Specification 4.5.2.c.3 is not changed and the proposed change does not adversely affect safety. Therefore, the proposed change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: James R. Miller.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: March 27, 1985.

Description of amendment request: The amendment would revise the Technical Specifications, Sections 2.1, 2.3, and 3.1 to allow plant operation with an equivalent steam generator tube plugging level of up to 30% in any steam generator provided the equivalent average plugging level in all steam generators is less than or equal to 24%. By letter dated January 13, 1983, the licensee submitted an amendment application requesting that the average steam generator equivalent tube plugging level be raised to 24% (this change would have permitted plugging level greater than 24% in individual steam generators). The application was supported by an Appendix K Emergency Core Cooling System (ECCS) reanalysis. By letter dated January 13, 1984, the staff issued Amendment No. 48 granting up to 24% maximum tube plugging level for each steam generator only. The licensee's March 27, 1985 submittal provides the analyses of asymmetric tube plugging among steam generators which would permit the greater plugging levels for individual steam generators.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a

previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (Example vi). The proposed change presents an evaluation of the effects of asymmetric tube plugging among steam generators on the consequences of accident analyses performed in Chapter 14 of the Indian Point FSAR. The licensee's evaluation finds the consequences of allowing an equivalent steam generator tube plugging level of up to 30% in any steam generator provided the equivalent average plugging level in all steam generators is not greater than 24% are within the allowable limits of 10 CFR Part 50, Appendix K, and the Accident Analyses Section of the Standard Review Plan, (Section 15). It is expected that our final evaluation will agree with the licensee's conclusions. Therefore, the staff proposes to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 20, 1984, as revised February 25, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to (1) change the closure times of several containment isolation valves in Table 3.6.1 and (2) require that leak rate testing of the equipment hatch and fuel transfer tube seals after each opening be performed prior to when containment integrity is required by Specification 3.6.1.

Basis for proposed no significant hazards consideration determination: The proposed changes to the maximum closure times for several containment isolation valves resulted from valve modifications required by IE Bulletin 79–01B. The proposed TS change will not adversely affect the containment functional performance, and therefore will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident; or (3) involve a significant reduction in a margin of safety.

The current TSs require that the equipment hatch and fuel transfer tube seals be tested after each opening. However, the licensee states and we agree that testing when containment integrity is not required is not necessary. Therefore, the licensee proposes to revise the TSs so that testing of the equipment hatch and transfer tube seals is required after each opening prior to when containment integrity is required. The proposed change will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident; or (3) involve a significant reduction in a margin of safety.

Based on the foregoing, the Commission's staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813

NRC Branch Chief: John F. Stolz.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: October 29, 1984.

Description of amendment request: The proposed amendment requests changes to the Technical Specification surveillance of the emergency power to the pressurizer heaters to allow using the Nuclear Service Buses to energize the pressurizer heaters to demonstrate that the emergency power supply is operable.

Basic for proposed no significant hazards consideration determination: During each refueling interval, a test is performed on the pressurizer heaters to demonstrate their operability. The performance of the Emergency Pressurizer Heaters can be verified either through a normal power supply or an emergency power supply. Rancho Seco's Nuclear Service Buses 4160A and 4160B have the capability for providing normal or emergency power to the pressurizer heaters. Rancho Seco's current Technical Specifications call for transferring power from the normal to the emergency power supply to energize the heaters. In the revised Technical Specifications, the licensee proposes to demonstrate that the emergency power supply for the pressurizer heaters is operable by using the Nuclear Service Buses to energize the heaters. Utilizing the Nuclear Service Buses to energize the heaters for serveillance testing each refueling interval will not change plant operation nor the design of the plant. Therefore, the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. On this basis, the Commission's staff proposes to determine that the amendment application involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company et al, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: December 9, 1983 (Reference Proposed Change PCN–155), April 27, 1984 (Reference PCN–111 and 155), and November 30, 1984 (Reference PCN–96)

Introduction: The proposed changes would revise Technical Specifications 3/4.3.2, "Instrumentation—Engineered Safety Features Actuation System Instrumentation," 3/4.7.1.5, "Plant Systems—Main Steam Line Isolation Valves," and 3/4.11.2, "Radioactive Effluents—Gaseous Effluents," and add new Technical Specifications 3/4.11.2.7, "Radioactive Effluents—Auxiliary Boiler," and 3/4.4.10, "Reactor Coolant System—Reactor Coolant Gas Vent System." The proposed changes are summarized as follows:

1. PCN–96 would revise Technical Specification (TS) Sections 3/4.3.2 "Engineered Safety Feature Actuation System Instrumentation" and 3/4.7.1.5 "Main Steam Line Isolation Valves." The proposed change would revise Table 3.3–5 of T.S. Section 3/4.3.2 to: a) provide increased response time testing requirements for the containment spray isolation valves, main steam line isolation valves and auxiliary feedwater isolation valves; b) include only those steam, blowdown, sample and drain isolation valves required to be response

time tested on a main steam isolation signal; c) include response time testing requirements for the main steam isolation valves, main feedwater isolation valves and minipurge valves; d) include the noncritical loop component cooling water valves not required to be response time tested on safety injection actuation signal; e) include the power-operated auxiliary feedwater isolation valves HV 4762 and HV 4763 in the response time testing requirements on a main steam isolation signal, following implementation of Design Change Package (DCP) 195J; and f) correct a typographical error in item 5.a.(3), valve number HV 4054. The proposed change would revise T.S. Section 3/4.7.1.5 to increase the main steam isolation valve closure time consistent with the changes specified in a) above.

2. PNC–111 would revise Technical Specification 3/4.11.2, Table 4.11–2, "Radioactive Gaseous Waste Sampling and Analysis Program", and to add a new Technical Specification 3.11.2.7, "Radioactive Effluents, Auxiliary Boiler", in order to facilitate an exemption to 10 CFR 20.305 via technical specification changes to allow disposal of radioactively contaminated reactor coolant pump (RCP) motor oil, turbine building sump and other waste oil by incineration.

3. PCN–155 is a request to add a new Technical Specification Section 3/4.4.10, "Reactor Coolant Gas Vent System". The proposed change satisfies the Generic Letter 83–37 requirements for technical specifications for reactor coolant system vents.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations.

Example (i) relates to a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Each of the proposed changes is similar to one of the examples of 48 FR 14870. Therefore, it is proposed that these changes do not involve significant hazards considerations. A more detailed description of each proposed change to the technical specifications and a discussion of how each change is similar to one of the examples of 48 FR 14870 follows.

Specific Changes Requested and Basis for Proposed No Significant Hazards Determination

1. Proposed Change PCN–96

The proposed change would revise Technical Specifications (TS) 3/4.3.2, "Instrumentation—Engineered Safety Features Actuation System Instrumentation," and 3/4.7.1.5, "Plant System—Main Steam Line Isolation Valves." T.S. 3/4.3.2 requires engineered safety feature actuation system (ESFAS) operability and specifies ESFAS instrumentation functional testing, calibration, channel checks and response time testing to verify such operability. Table 3.3–5, "Engineered Safety Features Response Times," of Section 3/4.3.2 contains engineered safety feature (ESF) response time testing requirements which verify the assumptions used in the safety analysis. In particular, Table 3.3–5 requires that 1) the main feedwater isolation valves (MFIV) and valves associated with a main steam isolation function to be tested on a main steam isolation signal (MSIS), 2) the auxiliary feedwater isolation valves (AFIV) be tested on an emergency feedwater actuation signal (EFAS), and 3) the containment spray isolation valves (CSIV) be tested on a containment spray actuation signal (CSAS). Section 3/4.7.1.5 requires main steam isolation valve (MSIV) operability and prescribes a surveillance requirement to demonstrate such operability by verifying the specified valve closure time.

The proposed change would make the following changes to T.S. 3/4/3.2 Table 3.3–5: (1) Increase the CSIV response time from 21.0 to 23.0 seconds; (2) increase the MSIV response time from 5.9 to 6.9 seconds; and (3), increase the AC train AFIV response time testing requirement on an EFAS without emergency diesel generator sequence loading delays for SIAS from 42.7 to 52.7 seconds. In addition, the proposed change would revise Table 3.3–5 to include: (1) Only those steam blowdown sample and drain isolation valves required to be response time tested on a MSIS; (2) MFIV and minipurge isolation valve (MPIV) response time testing requirements on a containment isolation actuation signal (CIAS); (3) the noncritical loop component cooling water (CCW) valves not required to be response time tested on a safety injection actuation signal (SIAS); and (4) the power operated auxiliary feedwater isolation valves to be added to the auxiliary feedwater system.

Also, a typographical error in Table 3.3–5 would be corrected by the proposed change. Valve Number HV–5054 of Item 5.a.(3) is changed to the correct designation, HV–4054. The proposed change would revise T.S. 3/4.7.1.5 by increasing the MSIV closure time from 5.0 to 6.0 seconds.

Each part of the proposed change is similar to either example (i) of 48 FR 14870 in that the proposed change is a purely administrative change to Technical Specifications or example (vi) of 48 FR 14870 in that the proposed change may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP).

SRP Section 7.3, "Engineered Safety Features System," requires that the actuated equipment response be consistent with the assumed in the plant safety analysis. Since each proposed change previously discussed, with the exception of the typographical error correction, maintains the ESF response time testing requirements within the boundaries established by the Final Safety Analysis Report (FSAR), the proposed changes meet the criteria of SRP Section 7.3 and, therefore, are similar to example (vi) of 48 FR 14870. The proposed increase in CSIV response time is due to the increased isolation valve response time for the main stream line break (MSLB) case with offsite power available (the consequences of the MSLB with loss of offsite power would be unaffected by the increased CSIV response time). The consequences of the proposed increase in CSIV response time for the MSLB with offsite power available remain bounded by those of the MSLB with loss of offsite power.

The proposed increases in MSIV response and closure times have been

shown to be acceptable, principally through the reduction of an excessively conservative steam flow assumption used in the original evaluation of the MSLB scenario. Steam flow through the MSIV was previously represented by a linear model of valve flow area versus time during closing. The MSLB analysis has been revised using typical valve flow area characteristics provided by the manufacturer in order to more accurately represent actual steam flow conditions. The combined effect of the above reduction in flow area conservatism and a 6.0 second valve closure time is a net decrease in the total calculated integrated flow area of over 50%. Therefore, the reactor coolant system (RCS) cooldown and the peak containment pressure and temperature resulting from the most limiting MSLB remain conservatively bounded by existing FSAR analyses.

The proposed change would increase the AFWIV response time, without emergency diesel generator sequence loading delays for SIAS (EFAS), from 42.7 to 52.7 seconds. A review of the existing analyses has been performed which shows that a 10 second increase in the auxiliary feedwater delivery time for the limiting event (loss of normal feedwater with loss of offsite power) does not significantly affect the calculated RCS energy removal. This conclusion supports the proposed increase in AFIV response time for the AC trains to the same value as that for the steam/DC train valves for this event.

The proposed change would revise Table 3.3–5 to include only those steam blowdown sample and drain isolation valves required to be response time tested on a MSIS. Table 3.3–5 currently includes response time testing requirements for the auxiliary feedwater pump turbine steam isolation valves (HV 8200 and HV 8201) and the main steam bypass isolation valves (HV 8202 and HV 8203) on a MSIS. These valves receive a MSIS to close but not serve an active safety-related function. The auxiliary feedwater pump turbine steam isolation valves are pneumatically-operated valves (normally open) which open on a EFAS and fail open on loss of the nonsafety-grade compressed air supply. Consequently, the downstream check valves (rather than HV 8200 and HV 8201) are credited for isolating the intact steam generator from the rupture steam generator under MSLB or main feedwater line break conditions; these check valves are included in the ASME XI, inservice inspection program pursuant to T.S. 4.0.5. Manual action is assumed in isolating a break in the common section of the auxiliary feedwater pump turbine steam line for the limiting high energy line break accident. Actuation of these valves on a MSIS is not required by existing FSAR analyses. Similarly, the MSIV bypass isolation valves are normally closed, close on a MSIS, and fail closed. In the unlikely event that a MSIV bypass isolation valve were to be open during an MSLB, the accident consequences would remain bounded by the MSLB scenario involving single failure of a MSIV (as analyzed in the FSAR). Therefore, the response time testing requirements of valves HV 8200, HV 8201, HV 8202, and HV 8203 on a MSIS are not required to support the accident analyses and would be deleted by the proposed change.

The proposed change would add MFIV, MSIV, and MPIV response time testing requirements on a CIAS to Table 3.3–5, since, as is assumed in the FSAR accident analyses, the MFIV's and MSIV's are required to actuate on a CIAS to maintain peak accident containment pressure within the required limits and the MSIV's are required to close on a CIAS to maintain offsite dose consequences below the required limits.

Consistent with FSAR accident analyses, the proposed change would add to Note 3 of Table 3.3–5 the Train A non-critical component cooling water (CCW) loop containment isolation valves, as valves which receive CIAS, but are not diversely actuated on SIAS. The Train B non-critical CCW loop containment isolation valves are already included in Note 3. The proposed change would add Note 7 to Table 3.3–5 in order to indicate the replacement in the auxiliary feedwater system of two existing manual auxiliary feedwater isolation valves (both normally closed) by two power-operated valves (which are to be normally closed and actuated to close on MSIS and, therefore, are required to be tested on MSIS). The proposed change which corrects the typographical error in Table 3.3–5, Item 5.a.(3) (i.e. Valve Number HV–5054 should be designated as HV–4054) is purely administrative and, therefore, is similar to example (i) of 48 FR 14870.

2. Proposed Change PCN–111

The proposed change would revise Table 4.11–2, "Radioactive Gaseous Waste Sampling and Analysis Program," of Technical Specification 3/4.11.2, "Gaseous Effluents," and would create a new technical specification, T.S. 3.11.2.7, "Radioactive Effluents, Auxiliary Boiler," which concerns the disposal of radioactively contaminated waste oil. T.S. 3/4.11.2 provides the maximum dose rates at which radioactive gaseous effluents may be released into the environment. Table 4.11–2 lists the different types of radioactive gaseous releases and specifies sampling and analysis requirements to verify that dose rates are within the limits. Currently, the auxiliary boiler is not listed in Table 4.11–2 as a radioactive effluent release path, because the boiler burns non-radioactive oil. It is proposed that T.S. 3.11.2.7 be created to provide a method of radioactive waste oil disposal. Slightly contaminated radioactive waste oil (from reactor coolant pumps, etc.) is presently stored on site. T.S. 3.11.2.7 will allow the radioactive oil to be burned in the auxiliary boiler along with regular fuel oil. The resulting exhaust, which contains small amounts of radioactivity, is diluted by a flow of air and released into the environment provided that the amount of radioactivity in the exhaust does not exceed 1% of the technical specification's total dose limit of radioiodines, particulates, and tritium. If the amount of radioactivity in the exhaust does exceed its specified limit, action must be taken to suspend further incineration of the radioactively contaminated gas. The proposed change would also require the addition of auxiliary boiler gaseous release types to Table 4.11–2 or T.S. 3/4.11.2. This will identify the auxiliary boiler as a release path and will specify the sampling and analysis requirements of the waste oil which must be met prior to incineration in order to verify that the dose limit will not be exceeded.

The proposed change is similar to example (vi) of 48 FR 14870 in that while the proposed change may result in some increase in the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan.

IE Information Notice No. 83–05, "Obtaining approval for disposing of very-low-level radioactive waste—10 CFR 20.302," states that in accordance with 10 CFR 20.302(a), which concerns methods for obtaining approval of proposed disposal procedures, the Nuclear Regulatory Commission will give consideration to previously unauthorized disposal methods. As an example, IE Informatin Notice No. 83–05 relates that a proposal was approved in which the licensee requested that very-low-level contaminated oil be allowed to burn in the plant's oil fired burners. The above described proposed change prvides T.S. requirements which will

allow slightly radioactive waste oil to be burned in the plant's oil fired auxiliary boilers. Because IE Information Notice No. 83–05 states that the disposal of very-low-level contaminated oil by incineration has previously been approved, the proposed change is consistent with this notice. In addition, the proposed change will maintain the concentration and the dose rate of radioactivity within the limits specified by 10 CFR 20, Appendix B, Table II, Column 1 and 10 CFR 50, Appendix I, respectively. Because the proposed change meets the above criteria, it is similar to example (vi) of 48 FR 14870.

3. Proposed Change PCN–155

The proposed change would add to a new Technical Specification (TS) 3/4.4.10, "Reactor Coolant System—Reactor Coolant Gas Vent System." Generic Letter 83–37 dated November 1, 1983 required licensees to submit technical specifications (TS) for the reactor coolant system vents required by NUREG–0737. "Clarification of TMI Action Plan Requirements." The purpose of T.S. 3/4.4.10 is to specify conditions for the operability of the reactor coolant gas vent system (RCGVS). The RCGVS is a system of multiple interdependent paths provided to exhaust noncondensible gases from the primary system. The limiting condition for operation (LCO) of T.S. 3/4.4.10 delineates the valves required to be operable and those required to be closed such that: (1) the RCGVS is capable of providing at least one vent path from both the reactor vessel head and the pressurizer steam space to either containment or the quench tank, and (2) double isolation is maintained. The action statement specifies that with a valve inoperable, operation may continue until the next cold shutdown, provided that power is removed from the inoperable valve(s) within 4 hours and that all valves which together with the inoperable valve provided double isolation are maintained closed and deenergized within 4 hours. The action statement also provided an exception to T.S. 3.0.4 which states that entry into an operational mode shall not be made unless the conditions of the LCO are met without reliance on provisions contained in the action requirements, would otherwise restrict entry into these modes while relying on the action. The T.S. 3/4.4.10 surveillance requirements require each reactor coolant system (RCS) vent path to be demonstrated operable at least once per 18 months by: (1) Verifying that all manual isolation valves in each vent path are locked in the open position, (2) cycling each valve in the vent path through at least one complete cycle of full travel from the control room during COLD SHUTDOWN or REFUELING, and (3) verifying flow through the reactor coolant vent system vent paths while venting during COLD SHUTDOWN.

The proposed change is similar to example (ii) of 48 FR 14870 in that the proposed change constitutes an additional limitation, restriction, or control not presently included in the technical specifications. By adding T.S. 3/4.4.10 to the technical specifications, the proposed change makes the technical specifications more restrictive and, therefore, is similar to example (ii) of 48 FR 14870.

Based on the above, the NRC staff proposes to determine that the proposed changes described above do not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pogott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 8, 1985

Description of amendment request: The amendments would modify the Technical Specifications (TS) to:

1. Change the Units 1, 2 and 3 TS to require that for each main steam line there be at least two operable high flow sensors with at least one operable high flow sensor for each of the two isolation trip systems. This would replace the current requirement to simply have two operable sensors for each main steam line.

2. Delete from the Unit 1 TS, the provision of Amendment 109 which permitted temporary inoperability of Containment Air Dilution valve 84–8B.

3. Revise the Units 1, 2 and 3 TS to clarify nomenclature associated with fire protection requirements. Current nomenclatue subjects the TS to the misinterpretation that automatic fire detection and suppression is provided for the cable tunnel from the Turbine Building to the Intake Pumping Station, and for cable trays along the south wall of the Turbine Building. It is neither provided nor required.

4. Revise the Unit 1 TS to indicate that the level switches for the Scram Discharge Instrument Volumes are of an on-off design rather than analog-to-bistable design.

5. Revise the "Table of Testable Penetrations" in the Unit 1 TS to reflect modifications performed during the Cycle 6 outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include: (i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example a more stringent surveillance requirement; and (vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Change No. 1 constitutes an additional more restrictive control necessary to assure proper operation of the isolation system. Change No. 1 is therefore encompassed by example (ii).

Change No. 2 removes a temporary (now expired) statement which could be left in the TS indefinitely with no effect, but for which removal is desirable in order to eliminate wording which serves no further purpose. This change is therefore encompassed by example (i).

Change No. 3 revises nomenclature without affecting any Limiting Conditions for Operation, Safety Limits, or Surveillance Requirements, and is therefore encompassed by example (i).

Change No. 4 corrects an error in the descriptive information associated with surveillance requirements, but does not affect the actual requirements. It is therefore encompassed by example (i).

Change 5 updates testing requirements to be consistent with 10 CFR 50 Appendix J local leak rate test requirements. It is therefore encompassed by example (vii).

Since the application for amendment involves proposed changes that are encompassed by the criteria or an example for which no significant hazards consideration exists, the staff has made a proposed determination that

the application involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 1, 1985.

Description of amendment request: (1) Use of a Fifth Standby Diesel Generator. Limiting conditions for operation at Sequoyah Units 1 and 2 require all four separate and independent diesel generator units to be operable. If one of the four diesels is in an inoperable status for more than 72 hours because of repairs, both nuclear units must be shut down. The licensee has built a fifth diesel at Sequoyah and requests that the fifth diesel serve as a replacement for any of the existing diesels in order to provide unrestricted operation of both nuclear units. (2) Change in Fire Hose Stations. The licensee requests the removal of three unnecessary fire hose stations that were installed to protect the auxiliary essential raw cooling water system. This system has been taken our of operation and superseded by the essential raw cooling water system. Also, the addition of fire hose stations is requested for the new fifth diesel generator building which is similar to the other diesel generator building. (3) Revise Table 4.8 1 of the Technical Specifications on test schedule to comply with NRC Generic Letter 84–15, dated July 2, 1984, Proposed Staff Actions To Improve and Maintain Diesel Generator Reliability: this request is deferred pending the completion of the NRC review on a generic basis.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The two requests involved do not match any of those examples. However, the staff has reviewed the licensee's requests and has determined that installation of the fifth diesel and addition of fire hose stations will not (1) involve a significant increase in the probability or consequences of an accident previously evluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety because the fifth diesel generator has been constructed with the same components and to the same standards as the installed and approved diesel generators, the addition of the fire hose stations is necessary to implement the fifth diesel generator system as a duplicate of the installed diesel generator systems, and the availability of a fifth diesel generator will improve the reliability and capability of emergency power supply system. Furthermore, the deletion of the fire hose stations in the auxiliary essential raw cooling water system (AERCWS) area will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety because the AERCWS is no longer used as a safety related system and the fire hose stations are no longer necessary to protect a safety-related system. The Commission proposes to determine that the changes identified in this notice do not involve a significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Mr. Herbert S. Sanger, Jr., Esq., General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902.

NRC Branch Chief: Elinor G. Adensam.

Virginia Electric and Power Company et al., Docket Nos. 50-338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendments request. February 9, 1984.

Description of amendments request: The amendment request would add Technical Specifications for the Administrative Controls to the Post-Accident Sampling System in accordance with the requirements of NUREG–0737.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, Example (ii), is explicity considered not likely to involve significant hazards. This change impose additional limiting conditions of operation and is therefore more restrictive. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Branch Chief: E.G. Tourigny, Acting Chief.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: October 28, 1980, as supplemented September 21, 1983 and April 12, 1985.

Description of amendment requests: The amendment would delete the High Energy Pipe Break Inspection Program (Technical Specification 4.15) section of the Technical Specifications (TS). By letter dated October 28, 1980, the licensee requested several changes to the TS. Among the changes proposed was one pertaining to break points to be incorporated in the High Energy Pipe Break Inspection Program. By letter dated September 21, 1983, the licensee indicated that there had been changes in the information concerning break points to be incorporated in the High Energy Pipe Break Inspection Program and that a subsequent submittal would include this information. The supplemental information was submitted by letter dated April 12, 1985. The proposed change would delete TS 4.15 completely. In its place, and acceptable inspection would be conducted under the ASME Code Section XI Inservice Inspection (ISI) program.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing examples (48 FR 14870). One of the examples of actions likely to involve a significant hazards consideration (Example iii) states: "A significant relaxation in limiting conditions for operation not accompanied by compensatory changes conditions, or actions that maintain a commensurate level of safety . . ." The proposed change is similar to the example in that it deletes an existing surveillance requirement. However,

unlike the example, compensatory actions, in the form of an equivalent ISI program, would be taken, thus assuring that a commensurate level of safety is maintained. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: November 30, 1984, as supplemented April 12, 1985

Description of amendment requests: The amendment request was initially noticed on February 27, 1985 (50 FR 8011). This notice includes changes requested in a subsequent submittal dated April 12, 1985. The request is in response to NRC Generic Letter 83–43 to all licensees, in which model Technical Specifications were forwarded which showed the revisions to reporting requirements as necessitated by §§ 50.72 and 50.73 of Title 10 of the Code of Federal Regulations. Section 50.72 revises the immediate notification requirements for operating nuclear power plants. Section 50.73 provides for a revised Licensee Event Report System.

By letter dated November 30, 1984, Virginia Electric and Power Company submitted proposed license amendments for NRC review and approval which reflect changes to reporting requirements. In addition, minor editorial and typographical errors are corrected. The April 12, 1985 supplement revises references on several pages to reflect renumbering of Section 6 pages and adds a reference to the initial notification requirements of 10 CFR 50.72.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the applications of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vii) of actions not likely to involve a significant hazards consideration is a change to make the license conform to changes in the regulations where the change results in very minor changes to facility operations clearly in keeping with the regulations. The NRC initial review of the licensee's submittal related to reporting indicates that this is the case. Another example (i) of actions not likely to involve a significant hazards consideration is a purely administrative change to Technical Specifications; for example, a change to achieve consistency throughout the Technical Specification, correction of an error, or a change in nomenclature. The remaining changes fall into this category. Accordngly, the Commission proposes to determine that these amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50.281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: May 13, 1985.

Description of amendment requests: The amendments would modify the description in Section 5.3 of the Surry Technical Specifications of the fuel assemblies in the Surry 1 and 2 cores. The proposed changes will allow reconstituted fuel assemblies to be placed in the Surry cores. The licensee is pursuing fuel assembly reconstitution as a means to enable the use of the remaining energy in fuel assemblies which contain small numbers of leaking fuel rods.

In the reconstitution process the fuel rods which are known to have failed will be removed and replaced with dummy rods. The reconstituted assembly will comply with the original assembly design criteria. The failed fuel rods will be stored in a fuel rod canister designed to prohibit the loss of fuel material while providing adequate cooling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). Example (iii) states: "For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed and that the NRC has previously found such methods acceptable". The analyses show that the reconstituted assemblies will comply with original design criteria. The analytical methods used by the licensee will remain unchanged. Therefore, the staff proposes to determine that the application for amendments does not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: February 27, 1985.

Description of amendment request: The proposed amendment to Operating License NPF–21 would revise the WNP–2 Technical Specifications to permit replacement of the High Pressure Coolant Sysem (HPCS) pump discharge pressure—high signal with a pump running signal taken directly from contacts in the pump breaker. The present HPCS design incorporates minimum flow valve logic based on concurrent conditions of high pump discharge pressure *and* low system flow. The pressure switch that provides the high discharge pressure (pump running) input takes its signal downstream of the pump discharge check valve; consequently, upon securing the pump following closure of the test flow path, high pressure can be trapped downstream of the check valve and result in the minimum flow valve remaining open with the pump off. This high pressure necessitates depressurizing the system to close the valve. Further the Technical Specifications as presently written contain the requirement to perform a monthly Channel Functional Test and an annual (during refueling outage) Channel Calibration on the Pump Discharge Pressure-High (pump running) instrumentation.

This proposed amendment, if approved, will permit the valve to open on low flow and breaker closed (pump running) and would close on high flow *or* with the breaker open. With this

design enhancement, the pump discharge pressure-high signal would no longer be used or needed. Deletion of the signal surveillance requirement from the Technical Specifications will not decrease reliability and has little or no safety significance because the signal will not be part of the control logic. Drift and calibration errors associated with this pressure instrumentation and its attendant failure modes thus will be eliminated. Actuation of the system itself is being made even more affirmative from the standpoint of signal reliability; that is, the proposed pump logic will include a positive indication of the pump breaker position thus will automatically reflect the status of the HPCS pump without any of the problems associated with instrument channels. As before, the pump minimum flow logic will be functionally verified during the HPCS Pump Quarterly Operability Test as well as during the 18 month Logic System Functional Test performed during refueling outages.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because replacing an instrument signal with a simple "contacts closed" signal does not degrade the HPSC system's ability to perform following an accident nor does it degrade the system pressure boundary; or

(2) Create the possibility of a new or different kind of accident than previously evaluated because the post accident ECCS function of the system will not be affected; or

(3) Involve a significant reduction in a margin of safety because the proposed change will have no effect on the ability of the HPCS system to meet its associated ECCS injection functions.

The licensee has determined and the NRC staff agrees that these changes have little safety significance and that the proposed amendment will not alter any of the accident analyses.

Based on staff review of the proposed modifications, we find that there exists reasonable assurance that the proposed replacement of an instrumentation signal with a positive "contacts closed" signal and elimination of the (no longer used) instrumentation signal from surveillance requirements will have little or no impact on the public health and safety.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: W. Butler.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: March 13, 1985.

Description of amendment request: The proposed amendment to Operating License NPF–21 would revise the WNP–2 Technical Specifications to change the trip setpoints and allowable values for some of the isolation instrumentation in portions of the Reactor Building. In addition the amendment, if approved, will change the delta temperature—high signal to a temperature—high signal for isolation actuation from the RHR Heat Exchanger Area and correct an inconsistency in the quality assurance record retention requirements.

These measurements are used primarily to detect leaks and line breaks in various rooms and areas of the Reactor Building. An increase in air temperature is signaled in the control room and used as an initial indication that a high energy line leak has occurred in the secondary containment. If this initial indication is not severe it is used as a basis for an inspection, evaluation and manual intervention as appropriate. If the measured signal exceeds the trip setpoint value, the signal automatically causes an isolation of the systems associated with the local area of room. Initially, conservative values of the leak detection setpoints were deliberately chosen to permit early warning and isolation for local leaks and pipe breaks.

When the Operating License was issued, the Technical Specifications included several trip setpoints and allowable values that were based on these conservative engineering estimates with the expectation that these values would be adjusted following plant operation when actual ambient conditions were established. These values were no noted in the Technical Specification itself and more appropriate values were to be determined and submitted to the Commission. (See "TABLE NOTATIONS," page ¾ 3–18 of the Technical Specification) The Supply System has completed the necessary testing, measurements and analyses and this amendment will change the values as appropriate to reflect the actual plant conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evalauted becaue the updated temperature setpoints use the same leakage criteria as previously and do not alter the valve closure times. so accident probabilities and consequences are not affected; or

(2) Create the possibility of a new or different kind of accident than previously evaluated because this change introduces no new accident types nor changes any criteria; or

(3) Involve a significant reduction in a margin of safety because the same criteria for allowable leakage prior to high temperature trip have been used, so the margin of safety has been maintained.

The licensee has determined and the NRC staff agrees that these changes have litile safety significance and that the proposed amendment will not alter any of the accident analyses.

Based on staff review of the proposed modification, we find that there is reasonable assurance that the proposed changes to the containment isolation trip setpoints and the allowable values of these parameters will have little or no impact on the public health and safety.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell & Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: April 19, 1985.

Description of amendment request: The proposed amendment to Operating License NPF–21 would revise the WNP–2 Technical Specifications to change the Surveillance Requirement 4.6.1.7 from the specific elevations/azimuths now incorporated in the Technical Specifications to a written description of the locations of the thermocouples used to determine the average drywell air temperature.

This change, if approved, will provide the plant with some flexibility in the actual thermocouple locations used for surveillance, while maintaining the original intent and concept. A maximum average drywell temperature of 135°F is specified in the Technical Specifications as a Limiting Condition of Operation (LCO) to ensure validity of the accident analyses that use drywell temperature as an initial condition. Currently the Technical Specifications require that the drywell average temperature shall be the arithmetic average of at least three of five thermocouple measurements at specified locations within the containment drywell. The proposed temperature signals will be taken from the air as it enters at least three of the drywell cooling units. Elimination of the shield annulus termperature intrusion into the average will actually provide a more accurate average drywell temperature because the annulus volume, as small fraction of the drywell volume, is unrealistically weighted in the current formulation of the arithmetic average.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined that the requested amendment per 10 CFR 50.91 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because this change represents a modification to the location of the thermocouples that produce signals for combining to form a drywell average termperature, not a change in the thermocouple design or function or change in the accident analyses that use average drywell temperature as an initial condition.

(2) Create the possibility of a new or different kind of accident than previously evaluated because these devices are passive, providing no direct mitigation of an accident; therefore, they could not create the potential for a different type of accident than previously identified and evaluated; or

(3) Involve a significant reduction in a margin of safety because the original intent of the LCO is being maintained.The actual sensors to be used for determining average air termperature is changing due to design change to the drywell cooling system, while the number remains the same. The margin of safety is, therefore, also maintained.

The licensee has determined and the NRC staff agrees that these changes have little safety significance and that the proposed amendment will not alter any of the accident analyses.

Based on staff review of the proposed modification, we find that there is reasonable assurance that the proposed changes to the drywell air temperature instrumentation locations will have little or no impact on the public health and safety.

Accordingly, the Commission proposed to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell & Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Bulter.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland Washington

Date of amendment request: May 16, 1985.

Descripition of amendment request: This proposed amendment would revise the Technical Specifications (TS) for the Washington Public Power Supply System, Nuclear Plant No. 2 (WNP 2). The proposed revision to the TS Tables 3.3.3–1, 3.3.2–2, and 4.3.3.1–1 reflects modifications to the Automatic Depressurization System (ADS) by removing the high pressure trip from the logic sequence and adding a manual inhibit switch thus eliminating the need for manual actuation to ensure core coverage. The request TS change removes the ADS high drywell pressure instruments and adds manual inhibit switches to ADS logic in TS 3.3.3 and 4.3.3.1.

This modification is a result of TMI Action item II.K.3.18. A BWR Owners Group (BWROG) study of alternatives to the present ADS actuation logic identified modifications to eliminate the need for manual actuation to ensure core coverage in the event of certain accident sequences. The proposed TS change is the second option outlined in the BWROG study and is one of the two options indicated to be an acceptable method of complying with TMI Action item II.K.3.18. (See WNP W 2 Safety Evaluation Report, NUREG–0892, Supplement No. 4). The proposed reduction of logic devices will increase ADS reliability and will provide additional assurance of adequate core cooling by further automating reactor pressure vessel depressurization for isolations and stuck open relief valve events, while satisfying design concerns associated with anticipated transients without scram.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement."

Based on the above discussion the staff concludes that the proposed amendment is consistent with the staff position. Further, the proposed amendment provides additional

assurance of adequate core cooling by extending the operation of the ADS to encompass additional accident and transient conditions which do not directly produce a high drywell pressure signal.

Example (ii) applies to the added requirements for automating reactor pressure vessel depressurization for isolations and stuck open relief valve events, while satisfying design concerns associated with anticipated transients without scram. Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington, 99352.

Attorney for license: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: March 29, 1985.

Description of amendment request: This amendment requests incorporation of radiological effluent technical specifications into the license as required by 10 CFR 50.34a.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. Examples of actions involving no significant hazards consideration are changes that relate to "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement; and (vii) A change to make a license conform to changes in the regulations where the license change results in minor changes to facility operations clearly in keeping with the regulations." We conclude the suggested changes are similar to the Commission's examples (ii) and (vii).

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 3, 1985.

Brief description of amendments: The proposed amendments would incorporate into the McGuire, Unit 2, license authority to receive, possess, and store irradiated Oconee fuel assemblies under the same conditions as are presently authorized by the McGuire, Unit 1, license.

Date of publication of individual notice in **Federal Register:** May 22, 1985 (50 FR 21152).

Expiration date of individual notice: June 21, 1985.

Local Public Document Room Location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: February 14, 1985, as revised May 6, 1985.

Brief description of amendment: To satisfy the habitability requirements on NUREG–0737, Item III.D.3.4, the Control Room Emergency Heating, Ventilating and Air Conditioning (HVAC) System was changed from a single train system into a two-loop redundant full-flow system. In addition, the Control Room Emergency HVAC System was expanded to include the Emergency HVAC requirements for the Technical Support Center (TSC). The new Control Room/TSC Emergency HVAC System is designed to satisfy the habitability requirements of both the Control Room and the TSC.

In accordance with the licensee's application dated February 14, 1985, the proposed amendment would revise the Technical Specifications to incorporate design changes to the Control Room/TSC Emergency Filtering System and the Air Supply System which are subsystems of the new Control Room/TSC Emergency HVAC System. Specifically, the amendment would: (1) Change the name of the Emergency Control Room Filtering System to Control Room/TSC Emergency Filtering System, (2) change the Limiting Condition for Operation (LCO) for the Filtering System to reflect the new design, (3) revise the surveillance testing of the Air Makeup System to reflect new design flow rates and Control Room/TSC positive pressure requirements, and (4) revise surveillance testing of the filtering system to reflect proposed reduced removal efficiencies for testing of the charcoal and HEPA filters and to reflect new design flow rates. The NRC staff earlier reviewed the proposed Technical Specifications for these four items and found the proposed reduced removal efficiencies for testing charcoal and HEPA unacceptable. Subsequently, by letter dated May 6, 1985, the licensee revised the February 14, 1985 application to delete the proposed change of the reduced charcoal and HEPA filter testing (i.e., so that the original Technical Specifications remain unchanged).

Date of publication oif individual notice in **Federal Register:** May 16, 1985, (50 FR 20154).

Expiration date of individual notice: June 17, 1985.

Local Public Document Room Location: Sacramento City-County Library, 828 I Street, Sacramento, California.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last notice, the Commission has issued the following amendments. The Commission has determined for each of these amemdments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: May 3, 1983, supplemented July 29 and September 23, 1983, and January 27 and September 6, 1984.

Brief description of amendments: Technical Specification surveillance requirements are modified for the auxiliary building and service water building d.c. batteries including load tests and checks of such things as battery voltage, electrolyte level, specific gravity, and general battery conditions to assure continued operability. The changes update the surveillance requirements to conform to the newer Commission format based on the more recent IEEE Standard 450–1980.

Date of issuance: May 24, 1985.

Effective date: May 24, 1985.

Amendment Nos.: 59 and 50.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register.** August 23, 1983 (48 FR 38385) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36306.

Baltimore Gas & Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of applications for amendment: December 31, 1984, February 22, 1985, (partial response) and February 26, 1985.

Brief description of amendment: Provides Technical Specification changes for startup testing and operation of Calvert Cliffs Unit 1 for cycle 8.

Date of issuance: May 20, 1985.

Effective date: May 20, 1985.

Amendment No.: 104.

Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12132 at 12136) and April 19, 1985 (50 FR 15661).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 20, 1984 and January 31, 1985.

Brief description of amendments: The amendments change the Unit 1 and Unit 2 Technical Specifications (TS) to reflect: (1) Changes to Surveillance requirements for safety related hydraulic sway arrestors (snubbers) for Unit 1 only, (2) clarification of the degree of independence associated with the emergency core cooling system (ECCS) and shutdown cooling system, (3) deletion of a reactor vessel pressurization curve that is no longer needed for Unit 2 only, (4) a change to the containment isolation valve identification numbers, (5) incorporation of the containment water level monitor including operability and surveillance requirements, and (6) installation of a new meteorological monitoring system.

Date of issuance: May 16, 1985.

Effective date: May 16, 1985.

Amendment Nos.: 103 and 85.

Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50794 at 50798) and March 27, 1985 (50 FR 12132 at 12136).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Federick, Maryland.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick, Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: July 29, 1982, as supplemented August 30, 1984 and January 18, 1985.

Brief description of amendment: The amendments change the Technical Specifications to correctly identify certain relays associated with the plant emergency power supplies and provide correct setpoint valves for actuating these relays.

Date of issuance: May 23, 1985.

Effective date: May 23, 1985.

Amendment Nos.: 82 and 109.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38391) and March 27, 1985 (50 FR 12138).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of application for amendment: September 12, 1984.

Brief description of amendment: The amendment revises the technical

specification to increase the minimum temperature requirement for pressurizing the secondary side of the steam generators above 200 psig from 70°F to 120°F.

Date of issuance: May 14, 1985.
Effective date: May 14, 1985.
Amendment No. 91.
Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** (49 FR 50799) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of application for amendment: September 19, 1984.
Brief description of amendment: The amendment would change the Technical Specifications from requiring the station batteries equalizing charge to be performed monthly to performing the charge annually.
Date of Issuance: May 13, 1985.
Effective date: May 13, 1985.
Amendment No. 90.
Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7981) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of application for amendment: December 10, 1984.
Brief description of amendment: The amendment would revise Section 6, Administrative Controls, of the Technical Specifications to change the position of Manager-Operations and Maintenance from a single position to two positions; Manager-Operations and Manager-Maintenance; reporting to the General Manager as prior to change.
Date of issuance: May 17, 1985.
Effective date: May 17, 1985.
Amendment No. 92.
Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7980).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1985.
No significant hazards consideration comments received: No
Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: February 21, 1985 as supplemented by letter dated March 5, 1985.
Brief description of amendment: These amendments reflect the changes in the revised Section of 10 CFR 50.72 and a new Section 10 CFR 50.73, both of which became effective on January 1, 1984. The revised Section 50.72 modifies the immediate notification requirements for operating nuclear power reactors and Section 50 73 provides for a revised Licensee Event Report System. The major changes are in the "Definitions" and "Administrative Control" sections of the Technical Specifications with added administrative changes to to make the Technical Specifications consistent throughout. The definition "Reportable Occurrence" is replaced by a new term, "Reportable Event".
Date of issuance: May 22, 1985.
Effective date: May 22, 1985.
Amendment Nos. 22 and 11.
Facility Operating Licenses Nos. NFP–11 and NFP–18. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16001).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 11, 1985.
Brief description of amendments: The amendments change the Technical Specifications to reflect the second of several refueling stages involved in the continuing transition to the use of optimized fuel assemblies in Unit 1.
Date of Issuance: May 15, 1985.
Effective date: May 15, 1985.
Amendment Nos. 43 and 24.
Facility Operating License No. NPF–9 and NPF–17. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7985)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: October 19, 1984, augmented by letters dated December 20, 1984, February 14, 1985, March 8, 1985 and April 19, 1935.
Brief description of amendments: These amendments would change (a) the hot channel factor limits and (b) limiting conditions for operation of the accumulator system. Both changes results from the revised Emergency Core Cooling System analysis.
Date of issuance: May 24, 1985.
Effective date: May 24, 1985.
Amendment Nos. 89 and 79.
Facility Operating License Nos. DPR–39 and DPR–48. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12142).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Benton County, Illinois

Date of application for amendments February 5, 1985.
Brief description of amendments: Would revise the actions required in the event of an inoperable rod due to a rod urgent failure condition.
Date of issuance: May 13, 1985.
Effective date: May 13, 1985.
Amendment Nos. 88 and 78.

Facility Operating License Nos. DPR–39 and DPR–48. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1985 (50 FR 12142).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemah County, Nebraska

Date of application for amendment: May 7, 1985.

Brief description of amendment: The amendment revises the Technical Specifications related to: (1) Mark I Containment Long-Term Program modifications, and (2) continuous containment monitoring for gross nitrogen leakage.

Date of issuance: May 13, 1985.

Effective date: May 13, 1985.

Amendment No. 91.

Facility Operating License No. DPR–62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 20, 1985 (50 FR 25364).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of application for amendment: October 5, 1984, as supplemented October 29, 1984.

Brief description of amendment: The amendment revises the Technical Specifications related to: (1) Tables listing the safety-related snubbers that are required to be operable and (2) surveillance requirements for the valves in the recirculation pump discharge valve four-inch bypass lines.

Date of issuance: May 20, 1985.

Effective date: May 20, 1985.

Amendment No.: 92.

Facility Operating License No. DPR–62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1984 (49 FR 50807).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: January 15, 1985 as supplemented on February 21, 1985.

Brief description of amendment: This amendment revises the Unit 1 Technical Specification (TS) to support the operation of Susquehanna Steam Electric Station (SSES), Unit 1 at full rated power during the upcoming Cycle 2 operation. The amendment to support this reload, changes the Technical Specifications in the following areas: (1) Establishes operating limits for all fuel types for the upcoming Cycle 2 operation; (2) establishes the Average Power Range Monitor setpoints; (3) reflects the replacement of approximately one quarter of the core with Exxon fuel assemblies for the upcoming Cycle 2 operation; and (4) modifies the bases section to account for the use of Exxon fuel assemblies.

This reload consists of 764 assemblies, 572 of which once burned GE fuel assemblies and 192 of which are new ENC, type XN–1 fuel assemblies. The Exxon fuel assemblies are very similar to the GE fuel assemblies except for slight differences in the mechanical, thermal-hydraulic and nuclear design.

Although the Exxon fuel is very similar to the GE fuel, the slight differences in mechanical, thermal-hydraulic, and nuclear design of the bundles, and the use of different analysis methodologies, required that a wide range of reanalyses be performed by Exxon Nuclear Company (ENC). This included reanalyzing for anticipated operational occurrences, performing LOCA and MAPLHGR analyses for the Exxon fuel, and analyzing for the rapid drop of a high worth control rod to assure that excessive energy will not be deposited in the fuel. Analyses for normal operation of the reactor consisted of fuel evaluations in the areas of mechanical, thermal-hydraulic and nuclear design.

The use of the ENC type XN–1, fuel assemblies and the associated analytical methods used for the Cycle 2 reload analyses have been previously approved by the NRC staff for use in other boiling water reactors (BWR's). Based on previous experience, the staff has determined that there are only small differences in the results between the use of Exxon or GE analytical methods.

The other differences between the Cycle 1 core and the Cycle 2 core reload are in the core loading pattern. Cycle 1 is a standard GE BWR/4 initial core configuration consisting of fuel assemblies of similar enrichments placed in a specific zone within the core. In contrast the Cycle 2 core will be based on the conventional scatter load principle where fresh reload assemblies are scatter loaded throughout the core except for the center region and the core periphery. Changing from a zone core loading pattern used during first fuel cycle to a scatter loading pattern for the new reload assemblies during the second cycle is an accepted reload method that has been approved by the staff for other BWR plant reloads.

Thus, this core reload involves the use of fuel assemblies that are not significantly different from those previously found acceptable for a previous core at this facility.

Date of issuance: May 22, 1985.

Effective date: Upon start-up following the first refueling outage.

Amendment No.: 45.

Facility Operating License No. NPF–4: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1985 (50 FR 12153).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1985.

The Commission made a proposed nc significant consideration finding and received no comments on this finding.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Stations, Units 1 and 2, Luzerne County Pennsylvania

Dates of application for amendments: January 31, 1985 and supplemented on May 3, 1985.

Brief description of amendments: NUREG–0737 Item II.K.3.18 required modification of the automatic depressurization system (ADS) actuation logic to eliminate the need for manual actuation to assure adequate core cooling. The addition of the ADS drywell pressure bypass timer and manual inhibit switch to the Susquehanna Steam Electric Station (SSES), Unit 1, statisfies this requirement for Unit 1. The addition of

the ADS manual inhibit switch to the Susquehanna Steam Electric Station (SSES), Unit 2, satisfied this requirement for Unit 2. Since the ADS is considered one of the safety systems used to assure emergency core cooling, license condition 2.C.(28)(e) for Unit 1 and license condition 2.C.(12)(f) for Unit 2 required that the licensee propose Technical Specifications to cover the equipment installed which eliminated the need for manual actuation of the ADS. The changes to the Technical Specifications requested in this amendment, for both Units 1 and 2, except those on page ¾ 3–28, are all related to modifications made to satisfy NUREG–0737 Item II.K.3.18 requirements and associated license conditions 2.C.(28)(e) and 2.C.(12)(f).

In addition, this amendment corrects errors contained in Table 3.3.3–1 Emergency Core Cooling System (ECCS) Actuation Logic Instrumentation (page ¾ 3–28) of the Unit 1 and 2 Technical Specifications. Footnote (a), where originally located on this page, applied to every entry. Footnote (a) states:

> A Channel may be placed in an operable status for up to 2 hours for required surveillance without placing the trip system in the tripped condition provided at least one OPERABLE channel in the same trip system is monitoring that parameter.

This footnote was erroneously applied to the manual initiation functions, which can be performed without placing the required system in an inoperable status, and the Level 8 high pressure coolant injection trip function which would become unavailable if one channel were placed in an inoperable status. The proposed amendment removes this footnote from these functions since it was incorrectly applied originally.

Date of issuance: May 15, 1985.

Effective date: Upon startup following the first refueling outage for Unit 1 and 30 days from the date of issuance except in particular cases, no later than September 1, 1985 for Unit 2.

Amendment Nos.: 44 and 11.

Facility Operating License Nos. NPF–14 and NPF–22: Amendment revised the Technical Specifications.

Dates of initial notices in Federal Register: March 27, 1985 (50 FR 12156).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 15, 1985.

No Comments on the proposed no significant hazards consideration determination were received.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 2, 1984 as amended October 22, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to permit a temporary increase in the main stream line high radiation scram and isolation setpoints to facilitate the testing of hydrogen addition to coolant water as a potential inhibitor of intergranular stress corrrosion cracking.

Date of issuance: May 16, 1985.

Effective date: May 16, 1985.

Amendment No: 90.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 14, 1984 (49 FR 48842).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego Oswego, New York.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 26, 1984 and supplemented November 6, 1984.

Brief description of amendments: The amendments update Public Service Electric and Gas Company's Nuclear Department Organization, SORC responsibilities, membership, and quorum requirements.

Date of issuance: May 13, 1985.

Effective date: May 13, 1985.

Amendment Nos. 62 and 33.

Facility Operating Licenses Nos. DPR–70 and DPR–75: Amendments revised the Technical Specifications

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8003)

The Commission' related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1985.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric and Gas Company, Docket No. 50–311, Salem Nuclear Generating Station, Unit 2, Salem County, New Jersey

Date of application for amendment: January 11, 1985.

Brief description of amendment: The amendment revises Technical Specifications Figure 3.1–1, Power Dependent Insertion Limits for Salem, Unit No. 2.

Date of issuance: May 17, 1985.

Effective date: May 17, 1985.

Amended No.: 34.

Facility Operating License No. DPR–75: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1985 (50 FR 12160).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: November 16, 1983, as amended December 14, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to indicate that all snubbers on systems required for safe shutdown/accident mitigation shall be operable and to delete Tables 3.7–4a and 3.7–4b.

Date of issuance: May 6, 1985.

Effective date: May 6, 1985.

Amendment No. 41.

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8007). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: December 14, 1984.

Brief description of amendment: The amendment modifies Technical. Specification 3/4.9.11"'Spent Fuel Pool Ventilation System" to require certain surveillance testing only when the system is being used in an engineered safety features function.

Date of issuance: May 14, 1985.

Effective date: May 21, 1985.

Amendment No. 42.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8006).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 5, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first preharing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested,

it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the commission, U.S Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Brach Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Arizona Public Service Company, et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Units No. 1, Maricopa County, Arizona

Date of application for amendment: April 12, 1985.

Brief description of amendment: This amendment authorized a change in Technical Specification 3/4.3.2, Table 3.3–5, Item 3.e, to correct an error in the total response times for the containment spray pumps.

Date of Issuance: May 10, 1985.

Effective Date: April 16, 1985.

Amendment No.: 1.

Facility Operating License No.: NPF–34.

Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated May 10, 1985.

Attorney for licensee: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: May 9, 1985.

Brief description of amendment: The amendment revises the overcurrent trip setpoints of the circuit breakers for one drywell cooling unit and three drywell cooling return air fans. These circuit breakers protect the primary containment penetration electrical conductors for these four items of drywell cooling equipment against failure due to overcurrent.

Date of Issuance: May 14, 1985.

Effective Date: May 10, 1985.

Amendment No.: 46.

Facility Operating License No. NPF–34: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

State Contacted: In accordance with the Commission's regulations, consultation was held with the State of Georgia by telephone. The state had no comments.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 14, 1985.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia

Dated at Bethesda, Maryland this 29th day of May 1985.

Edward Tourigny,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85–13397 Filed 6–3–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–498 OL and STN 50–499 OL; ASLBP No. 79–421–07 OL]

Houston Lighting and Power Company, et al. (South Texas Project Units 1 and 2; Evidentiary Hearings

May 29, 1985.

Notice is hereby given that, as provided in the Atomic Safety and Licensing Board's Sixth Pehearing Conference Order, dated May 17, 1985, the evidentiary hearings for Phase II of this operating license proceeding will commence at 9:30 a.m. on Thursday, July 11, 1985, at the Matagorda County Courthouse, District Court Room No. 2, 1700 7th Street, Bay City, Texas 77414. Hearings will be held at that location from 9:30 a.m. to 6:00 p.m. on Thursday, July 11, 1985; from 9:00 a.m. to 6:00 p.m. on Friday, July 12, 1985; and from 9:00 a.m. to approximately 12 noon on Saturday, July 13. The Board will hear oral limited appearance statements on Saturday, July 13, 1985 from 2:00–5:00 p.m.; except that the Board will not stay in session beyond 3:00 p.m. if, at the time, no persons desiring to present statement are present in the hearing room.

The hearings will continue at 9:30 a.m. on Monday, July 15, 1985, at the University of Houston Law School, University Park, Krost Hall, 4800 Calhoun, Houston, Texas 77004. On July 15, 1985, the Board will hear limited appearance statement at the outset of the session, from 9:30 a.m.–12 noon. The evidentiary session will resume immediately following the last limited appearance statement; after testimony resumes, further limited appearance statements will not be entertained at that session. On July 15, the evidentiary session will extend to approximately 5:30 p.m. Further limited appearance statements will be heard in a session from 7:30–9:30 p.m. on that day, except that the Board will not stay in session beyond 8:00 p.m. if, at the time, no persons desiring to present statements are present in the hearing room.

The hearings will continue from 9:00 a.m.–6:00 p.m. on July 16–18, 1985, and on July 19 from 9:00 a.m. to approximately mid-afternoon, at the University of Houston Law School, University Park, Room 215, Teaching Unit II, 4800 Calhoun, Houston, Texas 77004.

Futher hearing sessions (to the extent necessary) are scheduled for July 29–August 3, 1985, and August 5–9, 1985, at a time and location to be announced.

Any person who has not been admitted as a party to this proceeding may request permission to make a limited appearance pursuant to the

provisions of 10 CFR 2.715(a). A person making a limited appearance may make an oral or written statement on the record. He or she does not become a party but may state a position and raise questions which he or she would like to have answered, to the extent that the questions are within the purview of matters which may be considered in an operating license proceeding, as specified by 10 CFR 2.104(c). Limited appearances will be permitted at this evidentiary hearing, within such limits and on such conditions as may be fixed by the Board. As set forth above, oral limited appearance statements will be taken in Bay City on July 13, 1985 (afternoon session) and in Houston on July 15, 1985 (morning and evening sessions). Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

Dated at Bethesda, Maryland, this 29th day of May, 1985.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 85-13398 Filed 6-3-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 610; Docket No. A85-18]

Guatay, California 92031 (Mr. and Mrs. C. A. Bestle, Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued May 24, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy, Bonnie Guiton.

Docket Number: A85-18

Name of Affected Post Office: Guatay, California 92031

Name(s) of Petitioner(s): Mr. and Mrs. C. A. Bestle

Type of Determination: Closing

Date of Filing of Appeal Papers: May 17, 1985

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).

2. Effect on the postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before June 3, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

May 17, 1985	Filing of Petition
May 24, 1985	Notice and Order of Filing of Appeal.
June 11, 1985	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
June 21, 1985	Petitioners' Participant Statement of Initial Brief (*See* 39 CFR 3001.115(a) and (b)).
July 11, 1985	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
July 26, 1985	(1) Petitioners' Reply Brief should petitioners choose to file one (*see* 39 3001 115(d)).
August 2, 1985	(2) Deadline for motions by any party requesting oral argument The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument (*see* 39 CFR 3001.116).
September 14, 1985	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 85-13296 Filed 6-3-85; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Freedom of Information Requests.

(2) Form(s) submitted: N/A.

(3) Type of request: New collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

(6) Annual responses: 5.

(7) Annual reporting hours: 20.

(8) Collection description: Under the Freedom of Information Act the public may request business information maintained by Federal agencies. The collection obtains information needed by the Board to determine whether to release the requested information.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-13344 Filed 6-3-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23710; 70-7105]

Consolidated Natural Gas Company et al.; Notice of System Financing

May 28, 1985.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, The Peoples Natural Gas Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh,

Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland Ohio 44114, Hope Gas, Inc., Union Natural Gas Center West, Clarksburg, West Virginia 26301 ("subsididary companies"), have filed an application-declaration subject to sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, 50(a)(2), 50(a)(5), and 70 thereunder.

Consolidated proposes to finance its subsidiary companies as follows:

(a) Consolidated proposes to finance the seasonal increase in gas storage inventories of subsidiary companies by borrowing, from time to time, through June 15, 1986, up to $175 million from banks on its unsecured promissory notes having a maturity of not more than twelve months from the date of first borrowing, without a commitment fee.

The interest rate on the notes will be either (i) the prime rate of Chase Manhattan Bank, (ii) the London Interbank Offered Rate plus 0.375%, or (iii) the bid rate for Certificates of Deposit plus 0.50%.

(b) Consolidated, in order to meet working capital requirements, proposes to issue and sell commercial paper, in the form of short-term bearer notes, to Merrill Lynch Money Market, Inc. ("Merrill"), a dealer in commercial paper, in a principal amount not to exceed $300 million outstanding at any one time, from time to time, through June 15, 1986. The commercial paper will have varying maturities of not more than 270 days after date of issue and will be issued and sold in varying denominations of not less than $50,000 nor more than $5 million directly to Merrill, at a discount which will not be in excess of the discount rate per annum for commercial paper of comparable quality and like maturity. Consolidated proposes to sell commercial paper only so long as the discount rate or the effective interest cost of the date of sale does not exceed the equivalent cost of borrowings from a commercial bank.

(c) Consolidated proposes, if it becomes impractical to issue commercial paper, to make short-term bank borrowings from Chase Manhattan ("Chase") and Citibank, N.A. ("Citibank"). Consolidated would borrow (i) from Chase from time to time through June 15, 1986 an aggregate principal amount not to exceed $75 million outstanding at any one time, withou collateral or commitment fee, at the prime commercial rate of interest at Chase in effect on the date of each borrowing, and (ii) from Citibank, from time to time through June 15, 1986, an aggregate principal amount not to exceed $50 million outstanding at any one time, without collateral but with a commitment fee of one-eighth of one percent (0.125%) on said principal amount, at the base rate of interest at Citibank in effect on the date of each borrowing. Borrowings from both banks would be evidenced by the promissory notes of Consolidated with the right of prepayment, having a maturity date within 90 days of each borrowing date. The additional back up of $175 million required to support the issuance of $300 million of commercial paper notes will be supported by existing bank lines.

(d) Consolidated proposes to make, from time to time through June 15, 1986, open account advances in an amount not to exceed $464,100,000 at any one time, to the subsidiary companies for inventory gas financing and working capital requirements. Such advances may be made as requested by letter agreement by the treasurer of each subsidiary and will be repaid within one year from the date of the first advance to such subsidiary company with interest at substantially the same effective rate of interest as the related gas storage bank loan, sale of commercial paper, and/or bank borrowings by Consolidated. If there is no outstanding short-term debt, the interest rate would be at the prime commercial rate of interest in effect from time to time at Chase. Such advances will be made up of the following principal amounts:

Company	Amount
CNG Development Co	$30,000,000
CNG Producing Co	50,000,000
Consolidated Gas Transmission Corp	120,000,000
Consolidated Natural Gas Service Co	1,000,000
Hope Gas, Inc.	10,000,000
The East Ohio Gas Co	190,000,000
The Peoples Natural Gas Co	55,000,000
The River Gas Co	2,100,000
West Ohio Gas Co	[illegible],000,000
Total	464,100,000

Consolidated seeks to have the 5% limitation under section 6(b) of the Act raised to 33% from the order date through June 15, 1986. Such an increase would permit Consolidated to have outstanding at any one time up to $300 million aggregate principal amount of short-term notes.

(e) Consolidated proposes to make long-term, non-negotiable loans, from time to time through June 15, 1986, of up to $182,500,000 to the subsidiary companies set forth below. These loans will be evidenced by long-term, non-negotiable notes of the subsidiaries maturing over a period to be determined by Consolidated's officers, with the interest rate predicated on the prime rate at Chase. The loans would partially finance the capital expenditures of these subsidiaries, up to the following principal amounts:

Company	Amount
CNG Development Co	$28,000,000
CNG Producing Co	104,000,000
The East Ohio Gas Co	25,000,000
The Peoples Natural Gas Co	25,000,000
The River Gas Co	500,000
Total	182,500,000

(f) Consolidated proposes to make revolving credit advances not to exceed $100,000,000 at any one time outstanding to subsidiary companies set forth below to figure revolving credit advances made in 1984 and repaid in 1985. Such advances may be made through June 15, 1986, upon letter agreement by each such subsidiary company, in accordance with Consolidated's Credit Agreement with Chase (HCAR No. 22362), with interest at substantially the same effective rate of interest as paid by Consolidated under such Credit Agreement. Should Consolidated have no outstanding amount under its Credit Agreement, the interest rate would be the prime rate in effect from time to time at Chase. Such advances will be made up of the following principal amounts:

Company	Amount
CNG Producing Co	$40,000,000
Consolidated Gas Transmission Co	30,000,000
The East Ohio Gas Co	25,000,000
The Peoples Natural Gas Co	5,000,000
Total	100,000,000

(g) Consolidated proposes to purchase from the four subsidiary companies listed below and such subsidiary companies propose to issue and sell to Consolidated to finance, in part, their capital expenditures, an aggregate of $72,700,000 in common stock, at par value, as called for from time to time through June 15, 1986, as follows:

Company	Number of shares ($100 par)	Aggregate par value
CNG Coal Co	15,000	$1,500,000
CNG Development Co	310,000	31,000,000
CNG Producing Co	400,000	40,000,000
CNG Research Co	2,000	200,000
Total		72,700,000

The application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 21, 1985, to the Secretary, Securities and Exchange Commission, Washington,

D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delgated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13443 Filed 6-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22081; File No. SR-Amex-85-13]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Listing Guidelines for Real Estate Investment Trusts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Section 114 of the Amex Company Guide to raise the level of aggregate annual expenses which may be incurred by a real estate investment trust.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* In October 1971, the Amex adopted special requirements for the original listing of securities of real estate investment trusts ("REITs") together with special listing standards dealing with possible conflicts of interest between REITs and their advisers. The provisions on conflicts of interest were largely patterned after a 1970 Statement of Policy of the Midwest Securities Commissioner's Association which sets forth recommended requirements for its 24 member states.

Among the more significant provisions adopted was a limit on the aggregate annual expenses which could be paid or incurred by a REIT. Presently, section 114(d)(C) of the Company Guide provides that these expenses, including fees paid to the REIT's adviser, cannot exceed the greater of 1½% of the average net assets of the trust or 25% of the net income of the trust, but in no event more than 1½% of the total invested assets.

In 1981, the North American Securities Administrators Association, Inc. ("NASAA"), the umbrella organization for all 50 State Securities Commissions, endorsed a series of recommended guidelines for the states to follow in processing REIT offerings. Included in these guidelines is a provision permitting REITs to have total operating expenses, including advisory fees, of up to 2% of their average invested assets or 25% of their net income. This 2% ceiling is now regarded as the industry standard.

The Exchange is therefore proposing to amend Section 114 along the lines of the new NASAA guidelines by adopting a 2% ceiling on aggregate expenses with the right on the part of the independent trustees to raise such limits for unusual or non-recurring instances. These changes will further uniformity or regulation throughout the industry and facilitate the processing of REIT listing applications by the Exchange.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general, and Section 6(b)(5) in particular, in that it will update an Exchange guideline which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition. Rather, by conforming Amex rules to the current industry standards it will simplify the process of Exchange listing for certain REITs thereby removing a burden on competiton.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submission should file six copies therefore with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. ¶552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 25, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-13441 Filed 6-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22038; SR-NYSE-85-21]

Filing and Order Granting Accelerated Approval of Proposed Rule Change; New York Stock Exchange, Inc.

On May 7, 1985, the New York Stock Exchange, Inc. ("NYSE"), submitted a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b-4 thereunder,[2] to conform NYSE Rule 791 ("Communications to Customers") to amended Rule 134a under the Securities Exchange Act of 1933 ("Securities Act") [3] relating to the use and content of written materials on options disseminated to the public.[4] As the NYSE points out, the Commission previously has approved similar rule proposals for the American ("Amex") and Philadelphia ("Phlx") Stock Exchanges and the Chicago Board Options Exchange, Inc. ("CBOE").[5] The NYSE states that the statutory basis for its proposed rule change is Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with others engaged in regulating securities transactions and provide for the protection of investors and the public interest.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-85-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the NYSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change conforms NYSE Rule 791 to amendments to Rule 134a under the Securities Act that were published in the **Federal Register** for comment, considered, and approved by the Commission, and parallels rule changes by the Amex, Phlx and CBOE which also were published for comment in the **Federal Register.** No comments were received on the proposed rule changes by the Amex, Phlx and CBOE.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-13445 Filed 6-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22087; File No. SR-OCC-85-6]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Order Approving on an Accelerated Basis a Proposed Rule Change

May 29, 1985.

The Options Clearing Corporation ("OCC") on May 20, 1985, submitted a proposed rule change to the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). This Order gives notice of the proposal and approves the proposal on an accelerated basis under Section 19(b)(2) of the Act.

OCC's proposal would permit the admission of the National Association of Securities Dealers, Inc. ("NASD")[1] as a Participating Exchange[2] of OCC. The proposal also would make several related changes in OCC By-Laws, Rules, Restated Participant Exchange Agreement and Stockholders Agreement to enable OCC to issue, clear and settle options on National Market System stocks ("NMS stocks"). Over-the-counter and exchange trading of such options was approved in principle by the Commission on May 8, 1985.[3] The Commission expects to approve in the near future exchange proposals to begin trading options on NMS stocks, with exchange trading possibly beginning as soon as June 3, 1985.[4]

OCC's By-Laws[5] would be amended to include a registered national securities association within the definition of, and qualifications for, Participating Exchanges. Amendments to OCC Rules[6] would specify, in effect, that OCC will conduct business with NASD members through the NASD's existing offices according to current OCC procedures. Also, closing prices reported on NASDAQ would be included within the definition of "closing prices" for purposes of expiration date exercise procedures.

Amendments to OCC's Restated Participant Exchange Agreement ("PEA") would express OCC's current Participant Exchanges' consent to permitting a national securities association to become a Participating Exchange. New York City would be considered the principal location of the NASD for purposes of the PEA.[7] Similarly, amendments to OCC's

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 17 CFR 239.134a (1984).

[4] The amendments to Rule 134a were announced in Securities Act Release No. 6714, March 22, 1984, 49 FR 12687.

[5] Securities Exchange Act Release Nos. 21063, 21254 and 21887, June 18 and August 17, 1984 and March 25, 1985; 49 FR 25725 and 33522, and 50 FR 12878.

[1] OCC's proposal actually refers to "registered national securities associations" rather than to the NASD. At the present time, however, the NASD is the only national securities association registered with the Commission under Section 15A of the Act.

[2] OCC is owned by its Participating Exchanges, which are the only entities authorized to trade OCC issued options. *See* OCC By-Law Article VII for qualifications of Participating Exchanges.

[3] *See* discussion in Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) ("Release No. 34-22026").

[4] Effectiveness of the approvals, and thus commencement of exchange trading, may be postponed to permit exchanges to obtain Commission approval for surveillance and other programs addressing the Commission's regulatory concerns stated in Release No. 34-22026. Over-the-counter trading of NMS stock options must await Commission approval of NASD's proposal, which the Commission expects will be submitted within the next several months.

[5] OCC By-Laws Articles I and VII would be amended.

[6] OCC Rules 210, 602, and 805 would be amended.

[7] Other changes would conform the PEA to OCC By-Laws and Rules, as amended by this proposal.

Stockholders Agreement would express OCC's current stockholders' consent to a national securities association becoming a stockholder of OCC.

OCC believes that the proposal is consistent with the Act, and in particular Section 17A of the Act, because it promotes the prompt and accurate clearance and settlement of options on NMS stocks. Specifically, the proposal would bring clearance and settlement of these options within the same clearing system and rules currently used by OCC for other options.

OCC requested accelerated approval of the proposal, under Section 19(b)(2) of the Act, to the extent necessary to make the proposal effective at the latest by the date the Commission allows exchange trading in NMS stock options to begin. OCC believes that accelerated approval is justified because the proposal merely facilitates the implementation of exchange and NASD proposals that already have been subjected to public comment and close deliberation by the Commission. That is, OCC believes that this proposal raises no issues other than those already considered by the Commission. OCC notes that commencement of trading in NMS stock options, even when authorized by the Commission, must await Commission approval of OCC's proposal concerning issuance, clearance and settlement of those options.

The Commission agrees with OCC that the proposal is consistent with Section 17A of the Act, and believes that the proposal should be approved. The proposal enables OCC to provide the same automated clearance and settlement system for NMS stock options that OCC currently provides for other options. That system has proven to be safe and efficient over OCC's years of experience with it, and the Commission believes that it will prove equally successful for NMS stock options. The Commission therefore finds that the proposal is consistent with the Act in general, and in particular with Section 17A of the Act.[6]

The Commission finds good cause for approving the proposal prior to the thirtieth day after publication of notice of the proposal. OCC ability to issue options on NMS stocks, and to clear and settle transactions in such options, is a prerequisite to commencement of exchange and over-the-counter trading in NMS stock options as envisioned by the exchanges, the NASD and the Commission. The Commission agrees with OCC that without approval of OCC's proposal, the Commission's Orders approving the commencement of NMS stock options trading could not be given practical effect. In addition, the Commission agrees with OCC that the proposal does not raise any issues that were not addressed by the Commission and public commentators during the Commission's extensive deliberations about the several NMS stock option trading proposals. Rather, the proposal is but one of several self-regulatory organization rule changes anticipated by the Commission as necessary before its Orders approving trading in NMS stock options can be implemented. The Commission therefore is approving the proposal on an accelerated basis.

Written data, views and arguments concerning the proposal are invited within 21 days from the date this notice is published in the **Federal Register.** Please file six copies of comments referring to File No. SR–OCC–85–6, with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by June 25, 1985.

Copies of all documents related to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., and at OCC's principal offices.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SC–OCC–85–6) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–13446 Filed 6–3–85; 8:45 am]

BILLING CODE 8010–01–M

[6] The Commission expects OCC to file promptly with the Commission under Securities Exchange Act Rule 19(b)(4) any further OCC By-Law and Rule changes that OCC determines are necessary for clearance and settlement of NMS stock options.

[Release No. 34–22086; SR–PHLX–85–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change

May 29, 1985.

The Philadelphia Stock Exchange, Inc. ("Phlx"), submitted on May 10, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend Exchange Rule 101 relating to the Phlx's hours of business. The proposed rule change provides that foreign currency option transactions may commence on the Exchange at 8:00 a.m. on each business day. The rule currently provides for an 8:30 a.m. commencement.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the **Federal Register.** Persons desiring to make wirtten comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–Phlx–85–13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the Phlx.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in the Phlx desires to initiate trading at 8:00 a.m. on Monday, June 17, 1985, the first day after the June expiration. The Exchange states that the proposed rule change will permit additional time which Phlx foreign currency options markets can be accessed and therefore will permit additional time for hedging of foreign currency risk. The Exchange has informed the Commission that it will notify its members of the rule change at least two weeks prior to the actual initiation of the time change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13442 Filed 6-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14543 (File No. 812-5676)]

Sears Corporate Investment Trust; Notice of Application

May 29, 1985.

Notice is hereby given that Sears Corporate Investment Trust (and Subsequent and Similar Series of Trusts) ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, c/o Dean Witter Reynolds Inc., Unit Investment Trust Department, 5 World Trade Center, New York, New York 10048 filed an application on October 13, 1983, for an order, pursuant to Section 45(a) of the Act, granting confidential treatment for the profit and loss statements of its sponsor, Dean Witter Reynolds Inc. ("Sponsor"), filed with the Commission from time to time in connection with registration statements of Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of the provisions referred to herein.

According to the application, Sears Corporate Investment Trust, Series 1 and all subsequent Trusts and all similar series of Trusts to be included in the order will be sponsored by the Sponsor. Applicant represents that Series 1 is, and each future Trust will be, governed by a trust indenture and a Standard Terms and Conditions of Trust for that Trust (collectively, the "Trust Agreement") under which the Sponsor will act as depositor, United States Trust Company of New York will act as trustee ("Trustee") and Interactive Data Services, Inc. will act as evaluator. Applicant states that the Trust Agreement for each Trust will incorporate standard terms and conditions of trust common to all Trusts.

Applicant represents that apart from the Sponsor's obligation under the Trust Agreement to recommend the disposition of underlying portfolio securities for certain limited reasons described in the application (which obligations may be performed by the Trustee or successor Sponsor if not performed by the current Sponsor), the Sponsor functions solely as an underwriter of the Trusts. Applicant submits that investors in the Trusts are not offered an opportunity to acquire any interest whatsoever in the Sponsor and there is no legitimate interest on the part of investors in the public disclosure of the profit and loss statements of the underwriters from whom Trust units are purchased. Applicant maintains that public disclosure of such financial information is neither necessary nor appropriate in the public interest or for the protection of investors. According to the Applicant, to the extent that the Sponsor's solvency may conceivably be thought to be relevant to the maintenance of the secondary market in the units of the Trusts, the Sponsor's statement of financial condition, which is filed with the Commission and various stock exchanges and is readily available to the public, contains fully adequate information in this regard.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 19, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13444 Filed 6-3-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #6303]

Arkansas; Designation of Federal Action Economic Injury Loan Area

Poinsett County in the State of Arkansas constitutes an economic injury area as a result of the following Federal action pursuant to section 7(b)(3), as amended, of the Small Businesses Act: 1983 Payment-In-Kind Land Diversion Program.

The date of said Federal action is: 1983 crop season. Eligible small businesses without credit elsewhere may file applications for economic injury until the close of business on February 24, 1986, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051 or other locally announced locations. The interest rate for eligible small business applicants is 8 percent. This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 24, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-13255 Filed 6-3-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2189]

North Carolina; Declaration of Disaster Loan Area

Burke County and the adjacent Counties of Caldwell, McDowell and Rutherford in the State of North Carolina constitute a disaster area because of a forest fire which occurred on April 1-18, 1985. Applications for loans for physical damage may be filed until the close of business on July 22, 1985, and for economic injury until the close of business on August 1, 1985, at the address listed below. Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., S.W., Suite 822, Atlanta, GA 30303; or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218905 for physical damage and for economic injury the number is 630000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 23, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-13251 Filed 6-3-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #6253; Amdt. #2]

Texas; Declaration of Disaster Loan Area

The above numbered Designation (50 FR 2640) and amendment #1 (50 FR 14483) are hereby amended to include the County of Clay. All other information remains the same; i.e., the termination date for filing applications is the close of business on October 10, 1985. This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 24, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-13254 Filed 6-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Application No. 08/08-0146]

UBD Capital, Inc.; Application for License to Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102(1985)) by UBD Capital, Inc., 1700 Broadway, Denver Colorado 80274 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act for 1958 (the Act), as amended, (15 U.S.C. *et seq.)*

The proposed officers, directors and shareholders are:

Name and Title	Percentage of ownership
Richard B. Wigton, 6116 S. Willow Street, Englewood, CO 80113; President/Director	
Donald W. Robotham, 360 Humboldt Street, Denver, CO. 80218; Director	
Jed J. Burnham, 3785 S. Valley Drive, Evergreen, CO 80439; Director	
William J. Rundorff, 7812 S. Hill Circle, Littleton, CO 80123; Secretary	
United Bank of Denver, NA, 1700 Broadway, Denver, CO 80274; Parent Company	100

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comment on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Denver, Colorado.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 24, 1985

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-13250 Filed 6-3-85; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 3:00 p.m., Monday, July 1, 1985, in the City-County Building, 2 Woodward Avenue, 13th Floor Auditorium, Detroit, Michigan, 48226 to conduct such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to obtain further information should contact Mrs. Maurine Fisher, Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, N.W., Washington, D.C. 20416, telephone (202) 653-6851.

Dated: May 29, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils

[FR Doc. 85-13253 Filed 6-3-85; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before July 10, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of the form, request for clearance (S.F. 83), supporting statement, instruction, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L. St., N.W., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-3785.

Information Collection Submitted for Review:

Title: Management Assistance Counseling Record
Form No. SBA 1062
Frequency: Description of Respondents: Counselors are required to complete this form. The data is used to plan, monitor and control programs of assistance.
Annual Responses: 450,000
Annual Burden Hours: 135,000
Type of Requests: Extension

Dated: May 28, 1985.

Mike Rabasco,

Acting Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85-13252 Filed 6-3-85; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before July 8, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of forms, request for clearance (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., N.W., Room 200, Washington, D.C. 20416, Telephone: (202) 653–8538.

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–3785.

Information Collections Submitted for Review:

Title: Pollution Control: Procedure for Guarantee Application
Form No. SBA 1136, 1136A
Frequency: Once per application determination
Description of Respondents: Small business applicants are required to complete these forms to assist in determination of project feasibility and creditworthiness.
Annual Responses: 30
Annual Burden Hours: 1725
Type of Request: Extension
Title: Loan Guaranty Agreement
Form No. SBA 1175
Frequency: Quarterly
Description of Respondents: Participants are required to report this information on whether the accounts are current or not and the outstanding principal balance.
Annual Responses: 20,000
Annual Burden: 20,000
Type of Request: Extension

Dated: May 23, 1985.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85–13256 Filed 6–3–85; 8:45 am]

BILLING CODE 8025–01–M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective June 1, 1985, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 10.685 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by Section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: May 24, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13257 Filed 6–3–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 938]

Determination Under the Foreign Missions Act

Pursuant to the authority vested in me under the Foreign Missions Act (Act) (22 U.S.C. 4301 et seq.), I hereby determine that it is "reasonably necessary on the basis of reciprocity or otherwise * * * to adjust for costs and procedures of obtaining benefits for missions of the United States abroad" that certain "benefit(s)" relating to the acquisition of construction supplies and services by the Union of Soviet Socialist Republics for their Embassy complex at Mount Alto in Washington, DC, be obtained through the Director of the Office of Foreign Missions (Director). In accordance with sections 204(b) (A) and (B) and 204(c) of the Act, I hereby approve provision of such benefits from or through the Director on terms and conditions to be established which include measures concerning the provisions of local goods and services, as well as those terms and conditions specified in section 204(c).

Publication of this notice in the **Federal Register** constitutes notice to persons subject to U.S. jurisdiction doing business, providing goods or services, or in contractual relationships with the U.S.S.R. with regard to the construction of the above-mentioned Soviet Embassy complex located in Washington, DC, that terms and conditions are hereby imposed on such construction. Compliance with such terms and conditions is required by the Act. Accordingly, such persons should contact the Director to determine if a specific term or condition provided for under this determination affects the execution, performance, or other action concerning such person's arrangement with the U.S.S.R.

Dated: May 22, 1985.

George P. Shultz,

Secretary of State.

[FR Doc. 85–13431 Filed 6–3–85; 8:45 am]

BILLING CODE 4710–23–M

SYNTHETIC FUELS CORPORATION

Solicitation for Coal or Lignite Gasification Projects

ENTITY: Synthetic Fuels Corporation.

ACTION: Issuance of Solicitation for Eastern Province or Eastern Region of the Interior Province Bituminous Coal Gasification Projects.

SUMMARY: Notice is hereby given that on May 28, 1985 the United States Synthetic Fuels Corporation issued a Solicitation for Eastern Province or Eastern Region of the Interior Province Bituminous Coal Gasification Projects soliciting proposals for synthetic fuel projects to be assisted under Title I, Part B, of the Energy Security Act of 1980 (Pub. L. 96–294).

EFFECTIVE DATE: May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Shanklin, United States Synthetic Fuels Corporation, 2121 K Street NW., Washington, D.C. 20586, (202) 822–6463.

For Copies of the Solicitation Contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street NW., Washington, D.C. 20586, (202) 822–6460.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel–Corporate & Litigation.

May 30, 1985.

[FR Doc. 85–13369 Filed 6–3–85; 8:45 am]

BILLING CODE 7905–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980 Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Attention: Desk Officer for the Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524, FTS 858–2524

Type of Request: Regular Submission

Title of Information Collection: Solicitation of issues of concern regarding safety of TVA nuclear plants

Frequency of Use: Non-recurring

Type of Affected Public: Individuals or households, Federal agencies or employees

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 200

Estimated Total Annual Burden Hours: 200

Need For and Use of Information: Using a contractor, TVA is soliciting information from former TVA employees to complete a program of identifying and investigating employee concerns regarding the TVA nuclear program. This is one element of a comprehensive program to assure that safety concerns are brought to TVA's attention for resolution. The program was developed in response to NRC concerns.

Dated: May 24, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85–13349 Filed 6–3–85; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 30, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0008
Form Number: IRS Forms W–2, W–2P, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, W–3SS, W–3S&L
Type of Review: Extension
Title: Wage and Tax Statement

OMB Number: 1545–0387
Form Number: IRS Form 4419
Type of Review: Extension
Title: Application for Magnetic Media Reporting of Information Returns

OMB Number: 1545–0748
Form Number: IRS Form 2678
Type of Review: Revision
Title: Employer or Payer Appointment of Agent

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85–13370 Filed 6–3–85; 8:45 am]

BILLING CODE 4810–25–M

[Number: 114–3]

Delegation of Authority and Disestablishment of the Office of the Assistant Secretary (Electronic Systems and Information Technology)

Dated: May 17, 1985.

By virtue of the authority vested in me as the Secretary of the Treasury, including authority vested in me by 31 U.S.C. 301, 321(b), and by 44 U.S.C. 3506(b), it is ordered that:

a. The functions delegated to the Assistant Secretary (Electronic Systems and Information Technology) by Treasury Department Order 114–1, March 14, 1983, are hereby delegated to the Assistant Secretary for Management.

b. The functions delegated to the Assistant Secretary (Electronic Systems and Information Technology) by Treasury Department Order 114–2, March 28, 1984, relating to responsibilities of the Senior Official designated pursuant to section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3506(b), are hereby delegated to the Assistant Secretary for Management; provided that collections of information contained in any new proposed, temporary or final regulations also shall be reviewed by the General Counsel (or designee) who shall coordinate such collections with the Office of Management and Budget.

c. All personnel, records, property, and unexpended funds of the Office of the Assistant Secretary (Electronic Systems and Information Technology) are transferred to the Office of the Assistant Secretary for Management.

d. Except as provided below, the Office of the Assistant Secretary (Electronic Systems and Information Technology) is hereby disestablished. The position of Assistant Secretary (Electronic Systems and Information Technology) is hereby abolished.

e. The position of Deputy Assistant Secretary (Financial Systems) in the Office of the Assistant Secretary (Electronic Systems and Information Technology), shall remain operational until August 31, 1985, in order to facilitate the orderly coordination and transition of functions related herein. The Deputy Assistant Secretary (Financial Systems) shall provided the Office of the Assistant Secretary for Management with information necessary to assure continuous and effective support to vital operational efforts during the transitional phases of this reorganization.

This Order shall be effective on June 15, 1985. Treasury Department Order

114–1, March 14, 1983, and Treasury Department Order 114–2, March 28, 1984, are hereby rescinded. All other Treasury Department Orders, which are inconsistent with the above, are hereby amended or superseded.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 85–13331 Filed 6–3–85; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 107
Tuesday, June 4, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ENERGY REGULATORY COMMISSION

"Federal Register" CITATION OF PREVIOUS ANNOUNCEMENT: May 28, 1985, 50 FR 21688.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., May 30, 1985.

CHANGES IN THE MEETING: (1) The following items have been added:

Item No., Docket No., and Company

M-2—Docket No. RM85-17-000. Regulation of Electricity Sales-For-Resale and Transmission Services.

M-3—Docket No. RM85-1-000, Parts A-D. Regulations of Natural Gas Pipelines after Partial Wellhead Decontrol.

(2) The Commission meeting for May 30, 1985, originally scheduled to be held in Room 9306 will be held in Hearing Room A.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-13262 Filed 5-31-85; 9:43 am]

BILLING CODE 6717-02-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-24]

TIME AND DATE: Wednesday, June 12, 1985, at 2:00 p.m.

PLACE: Room 331, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation 731-TA-196 [Final] (Certain red raspberries for Canada)—briefing and vote.
6. Investigation 731-TA-199 [Final] (Certain dried salted codfish for Canada)—briefing and vote.
7. Investigation 731-TA-261 [Preliminary] (12-volt lead-acid type storage batteries from Korea)—briefing and vote.
8. Investigation TA-201-55 (Nonrubber footwear)—briefing and vote on remedy.
9. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*, (202) 523-0161.

[FR Doc. 85-13466 Filed 5-31-85 10:29 am]

BILLING CODE 7020-02-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-10]

TIME AND DATE: 9 a.m., Wednesday, June 12, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: The first six items are open to the public; the last item is closed under Exemption 10 of the government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad/Highway Accident Report:* Grade Crossing Collision of a Florida East Coast Railway Company Freight Train and Indian River Academy Schoolbus, Port St. Lucie, Florida, September 27, 1984.
2. *Aircraft Accident Report:* Vieques Air Link, Inc., Britten-Norman BN-2A-6 Islander, N589 Sa, Vieques, P.R., August 2, 1984.
3. *Safety Study:* "Air Carrier Overwater Emergency Equipment and Procedures".
4. *Pipeline Accident Report:* Arizona Public Service Company, Natural Gas Explosion and Fire, Phoenix, Arizona, September 24, 1984.
5. *Aircraft Accident/Incident Summary Report & Brief of Accident:* Eastern Airlines Boeing 727-225A, N812EA, Miami International Airport, Miami, Florida, November 1, 1983.
6. *Recommendations:* to the Federal Aviation Administration, Concerning Explosive Failures of Tires in Wheel Wells of B-727 Airplanes.
7. *Opinion and Order:* Administrator v. Miller, Docket SE-3701; disposition of the appeals of both parties.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa, (202) 382-6525.

Catherine T. Kaputa,

Alternate Federal Register Liaison Officer.

May 30, 1985.

[FR Doc. 85-13492 Filed 5-31-85; 2:07 pm]

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Federal Register

Tuesday
June 4, 1985

Part II

Environmental Protection Agency

Final General NPDES Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) of Alaska; Norton Sound; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL 2843-8]

Final General NPDES Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) of Alaska; Norton Sound

AGENCY: Environmental Protection Agency.

ACTION: Notice of final general NPDES permit.

SUMMARY: The Regional Administrator, Region 10, is today issuing a final general National Pollutant Discharge Elimination System (NPDES) permit for oil and gas stratigraphic test and exploration wells on the Outer Continental Shelf (OCS) of Alaska.

The final Norton Sound general permit authorizes discharges from oil and gas stratigraphic test and exploration operations only (not development or production operations) in all areas offered for lease by the U.S. Department of the Interior, Minerals Management Service (MMS) during Federal Lease Sale 57 (Norton Sound). A general NPDES permit previously issued (48 FR 54881, December 7, 1983) for this same area expired on June 30, 1984, after which time permits must impose limitations which reflect Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT).

This general NPDES permit establishes new effluent limitations, standards, prohibitions, and other conditions on discharges from these facilities. These conditions are based on the administrative record, EPA regulations and the permit contain a procedure which allows the owner or operator of a point source discharge to apply for an individual permit instead of coverage under the general permit.

On February 15, 1985, Region 10 of the Environmental Protection Agency published in 50 FR 6385 a notice of the draft general permit which is being issued in final form today. Today's notice reviews the basis for the conditions and requirements in the general permit. Copies of the permit and the Agency's response to comments received are printed below. Changes in the final permit and the justification for the change from the draft permit are presented in the Agency's response to comments.

Requests for Coverage

Written request for authorization to discharge under the general permit shall be provided, as described in Part I.A. of this permit, to EPA, Region 10, at least 60 days prior to initiation of discharges. The 60-day notification requirement will be waived for those permittees who notified EPA during the public comment period for the draft permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA within 7 days prior to the initiation of discharges at the site.

Administrative Record

The administrative record for this permit is available for public review at EPA, Region 10, Room 10D, at the address listed below.

ADDRESS: Requests for coverage and notifications should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section M/S 430, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: John Gabrielson or Janis Hastings, Region 10, at the address listed above (telephone (206) 442-1756 or (206) 442-8504, respectively). Copies of today's publication, and the permit will be provided upon request.

SUPPLEMENTARY INFORMATION:

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR 122.28), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require similar monitoring requirements; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations (40 CFR 122.28(c)(1)), the Regional Administrator is required to issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Where the offshore area includes areas, for which separate permit conditions are required, such as areas of environmental concern, a separate individual or general permit may be required by the Regional Administrator.

The Regional Administrator has determined that exploratory oil and gas facilities operating in the area described in this general NPDES permit are more appropriately controlled by a general permit than by individual permits. The decision of the Regional Administrator is based on an evaluation of the section 403(c) Ocean Discharge Criteria (40 CFR Part 125, Subpart M) for discharges from exploratory operations in Norton Basin, and the Agency's recent permit decisions in other Alaskan OCS areas.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Division, EPA, Region 10 ("Director"). A source located within a general permit area, excluded from coverage under the general permit solely because it already has an individual permit (i.e., a permit that has not been continued under the Administrative Procedures Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of NPDES permits are provided by 40 CFR 122.62-122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Nature of Discharges and Covered Facilities

The general permit issued today authorizes the discharge of drilling muds, drill cuttings and associated operational wastewaters from exploratory operations in federal waters. Exploratory operations are defined as those operations involving the drilling of wells to determine the nature of potential hydrocarbon reserves. Under the permit, they are limited to a maximum of five wells at a single site. Exploration facilities covered by the Norton Sound general permit are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435).

This general permit authorizes the following discharges: Drilling mud; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire

control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; mud, cuttings, and cement at the seafloor; and test fluids. Descriptions of discharges are given in Part II.A. of the final permit.

Drilling muds and cuttings are the major pollutant sources discharged from exploratory drilling operations.

III. Statutory Basis for Permit Conditions

Sections 301(b), 304, 308, 401, 402, and 403 of the Clean Water Act provide the basis for the permit conditions contained in the final permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in Part IV.

A. Technology-Based Effluent Limitations

1. BPT Effluent Limitations. The Clean Water Act requires particular classes of industrial dischargers to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A) on April 13, 1979 (44 *FR* 22069).

BPT effluent limitations guidelines required "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation required that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d)). The BPT effluent limitations guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. For facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons, the BPT effluent limitations guideline for sanitary waste required no discharge of floating solids. A "no floating solids" guideline also applied to domestic waste. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/l and a monthly average of 48 mg/l.

2. BAT and BCT Effluent Limitations. All permits issued after July 1, 1984, are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) through the use of Best Available Technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional poilutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT. Permits must impose effluent limitations which control nonconventional pollutants by means of BAT not later than July 1, 1987.

BAT/BCT effluent limitations guidelines and New Source Performance Standards (NSPS) are currently under development and will be proposed in the near future for the Offshore Subcategory. In the absence of effluent limitations guidelines for the Offshore Subcategory, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). This permit incorporates BAT and BCT effluent limitations based on the Agency's Best Professional Judgment. Previous BPJ determinations for offshore oil and gas exploratory operations were incorporated into the general permits for the Bering Sea and the Beaufort Sea (49 FR 23734, June 7, 1984).

As required by section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The type of equipment and processes employed in exploratory drilling operations are well known to the Agency. Region 10 has issued numerous general and individual permits for such operations. The records for this permit and those earlier permits thoroughly discuss the types of equipment, facilities and processes employed in exploratory drilling operations. Concerning the factor of engineering aspects of the application of various types of control techniques, the only permit limitation based on installation of control equipment is the limitation on the oil content of cuttings. Region 10 established the 10 percent limit based on the use of cuttings washers. All other new permit limitations can be achieved through product substitution, the technology basis for the limitations in this permit. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated and a discussion of such evaluations is presented below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the Act, the Agency considered the same factors in determining BPJ/BCT permit conditions, but with one exception. Rather then considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT "cost test", BCT effluent limitations are set equal to BPT.

The Agency's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to the Agency's best professional judgment determinations of BPT in instances where there is no BPT effluent limitation guideline for a particular wastestream. With respect to the BCT "cost test," all BCT limitations are equal to the BPT effluent limitations guidelines or to the Region's best professional judgment determinations of BPT. Therefore, no incremental cost will be incurred.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Critera (40 CFR Part 125, Subpart M), and section 403 are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-

site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The determination of unreasonable degradation must be based on the following factors: Quantities, composition, and potential for bioaccumulation or persistence of the pollutants discharged; potential transport of such pollutants; the composition and vulnerability of biological communities exposed to such pollutants; the importance of the receiving water area to the surrounding biological community; the existence of special aquatic sites; potential impacts on human health; impacts on recreational and commercial fishing; applicable requirements of approved Coastal Zone Management Plans; marine water quality criteria developed pursuant to section 304(a)(1) of the Act; and other relevant factors. A final Ocean Discharge Criteria Evaluation has been completed for those discharges from exploratory operations in the area covered by this permit.

The Regional Administrator has concluded that, with two exceptions, there is sufficient information to determine that exploratory oil and gas facilities operating under the effluent limitations and conditions in this general permit will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines. For the two cases for which Region 10 has insufficient information to make this determination, the Region has made a finding that the discharges will not cause irreparable harm while a monitoring program is undertaken. The monitoring results will be evaluated to determine if future discharges are likely to result in unreasonable degradation. The conditions which constitute these two exceptions and the monitoring programs required are discussed below in Part IV.D. Requirements Based on the Ocean Discharge Criteria Evaluation.

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i) the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in this permit, as listed in the table below.

IV. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria assuming conditions in parts (1) and (2) were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in Parts B through D, respectively. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and permit condition	Statutory basis
Drilling muds and cuttings:	
Authorized muds and additives only	BAT
No oil-based muds	BCT.
No diesel	BAT.
Discharge rate limitations	Sec. 403(c).
10% max. oil content of cuttings	BCT
No free oil	BCT
3 mg/kg cadmium and 1 mg/kg mercury in barite.	BAT.
Monitoring of metals and toxicity	Sec. 308.
Seasonal/depth related limits, monitoring.	Sec. 403(c)
Monitor volume discharged	Sec. 308.
Inventory of added substances	Do.
Deck drainage:	
No free oil	BCT.
Monitor discharge rate	Sec. 308
Sanitary wastes:	
No floating solids	BCT
Chlorine 1.0 mg/l (facilities with more than 10 people)	BCT.
Monitor discharge rate	Sec. 308.
Domestic wastes:	
No floating solids	BCT.
Monitor discharge rate	Sec 308
Miscellaneous discharges (discharges 006 to 014 in the permit):	
No free oil	BCT.
Monitor discharge rate	Sec. 308.
Inventory of added substances	Do.
Test fluids	
pH 6.5–8.5	BCT and marine water qualify criteria.
No free oil	BCT
Oil & grease limits: 48 mg/l monthly avg., 72 mg/l daily max.	BCT.
Monitor volume discharged	Sec. 308.
All discharges:	
No halogenated phenols, sodium chromate, sodium dichromate, or trisodium nitrilotriacetic acid	BAT
No floating solids	BCT

B. BCT Requirements

1. Oil and grease in test fluids. Limited volumes of formation waters which are encountered during testing of the well are authorized for discharge as test fluids. Under BPT, oil and grease in discharges of produced water were limited to a 48 mg/l monthly average and a 72 mg/l daily maximum based on oil/water separation technologies. Since formation waters may be present in test fluids, these limits are applied to the discharge of test fluids under BCT. This limitation is equal to BPT because Region 10 does not have technology performance data available at this time on which to base a more stringent limitation. As this limitation is equal to the BPT level of control, there is no incremental cost involved.

2. Free oil and oil-based muds. No discharge of free oil is permitted from discharges authorized by this permit. Region 10 has determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment fluids should apply to other discharges, including uncontaminated bilge water, uncontaminated ballast water, test fluids, desalination unit wastes, boiler blowdown, non-contract cooling water, excess cement slurry, blowout preventer fluid, fire control system test water; and mud, cuttings and cement at the seafloor. Thus, the no free oil limitation is Region 10's best professional judgment determination of BPT controls for these discharges. They have been subject to a no free oil limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. For this permit, therefore, Region 10 has set BCT effluent limitations equal to the BPT level of control and, as such, these limitations impose no incremental costs.

As discussed above, the BCT effluent limitation on free oil for drilling muds is equal to the BPT limitation. The discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is therefore prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil.

The monitoring requirement for determining compliance with the effluent limitation of free oil is in most instances a visual observation of the receiving water. However, the Static Sheen Test is required for monitoring free oil in discharges with the greatest likelihood of oil contamination. These are: (1) Drilling muds and drill cuttings, with the Static Sheen Test required year-round, and (2) deck drainage and bilge water, with the Static Sheen Test

required when ice is present on the receiving water. The Static Sheen Test on drilling muds must be conducted prior to bulk discharges. Thus, a violation of the limitation due to the discharge of oil-contaminated drilling muds can be prevented, something a visual observation of a sheen on the receiving water does not allow.

3. Oil content of cuttings associated with mineral oil-based muds. The discharge of drill cuttings associated with mineral-oil based drilling muds is subject to the no free oil limitation (see 2., above) and to a limitation of the maximum mineral oil content (10 percent, by weight) of drill cuttings.

The limitation of 10 percent, by weight, on the oil content of drill cuttings is based on the efficiency of currently available cuttings washers. Region 10 expects that if oil-based drilling muds are used, drill cuttings would, at a minimum, have to be washed by cuttings washers to meet the no free oil limitation. Therefore, this effluent limitation on the maximum oil content of drill cuttings has been imposed as an additional means to effectively control the discharge of oil from cuttings associated with mineral oil-based muds.

Region 10 expects that cuttings washers with routinely be required only for drilling operations with use mineral oil-based drilling muds and not for all drilling operations. Due to the rare usage of mineral oil-based drilling muds by exploratory drilling operations, very few, if any, Alaskan exploratory facilities will require the installation of cuttings washers. This limitation will not require the Alaskan oil and gas industry to incur any additional cost beyond the cost of monitoring compliance since, at a minimum, such cuttings washers would be required to meet the BCT (equal to BPT) effluent limitation of "no free oil" if oil-based drilling muds are used. Therefore, there is no incremental cost involved, and the limitation passes the BCT cost test.

The permit requires an analysis of drill cuttings for oil content both weekly (during any week when oil-based drilling fluids are used) and immediately on any sample that has failed the Static Sheen Test. The drill cuttings will be monitored daily by the Static Sheen Test. Permittees are required to use one of two analytical methods for determining the oil content of drill cuttings, as specified in the permit: (1) The soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), or (2) the American Petroleum Institute retort distillation procedure for oil.

4. pH. The pH of discharged test fluids (which may have a substantially different pH from that of the ambient receiving water) has been limited to a range of 6.5–8.5 at the point of discharge. In the Agency's best professional judgment, this limitation appropriately equals to BPT level of control. No more stringent standard has been identified by the Agency at this time. Therefore, the Agency is setting a BCT effluent limitation for the pH of test fluids equal to that of BPT. This limitation will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100-meter mixing zone (40 CFR 125.121(c)). This requirement has been and is routinely compiled with by operations under previous BPT permits and thus, reflects no cost incremental to BPT.

5. Floating solids. The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations for other waste streams, Region 10 has determined that the BPT effluent limitations guidelines of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is Region 10's best professional judgment determination of BPT limitations for these discharges. They have been subject to this limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Therefore, Region 10 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

6. Chlorine. The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/l in sanitary waste discharges for facilities manned by 10 or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry.

C. BAT Requirements

1. Diesel oil. The discharge of muds which have been contaminated by diesel oil (i.e., those drilling muds which have contained diesel) or drill cuttings associated with these muds is prohibited. Diesel, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in diesel, the Agency's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

The Agency selected "diesel" as an "indicator" as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel-contaminated waste streams. The listed toxic pollutants found in various diesel oils include naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The light aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

The Region has determined that eliminating the discharge of drilling fluids contaminated with diesel oil will reduce the levels of toxic pollutants present in discharged fluids. Studies show that when the amount of diesel is reduced in drilling muds, the concentrations of toxic pollutants and the overall toxicity of the fluid generally is reduced. Available data clearly establish that diesel oils as a class contain significantly higher levels of toxic pollutants than do mineral oils as a class. It is reasonable and appropriate to conclude that BAT-level control of toxic pollutants (i.e., reduction in concentrations through substitution of mineral oil for diesel oil) will be achieved by regulating diesel oil as an indicator pollutant.

Region 10 has concluded that establishing effluent limitations for each of the seven toxic pollutants present in diesel oil is not economically or technically feasible at this time. The level achievable by BAT controls on the

specific toxics can be calculated using available data on the three mineral oils which have been extensively characterized (see response to Comment 7). However, the limited data on the many diesel and mineral oils, mud formulations, and the various additives used, and on the unquantified effects of drilling all frustrate an attempt to develop specific toxic pollutant effluent limitations at this time.

Not only is it infeasible to establish limitations on the specific toxic pollutants, but to comply with specific limitations on each of the toxic pollutants would be costly and technically complex. The analytical costs for specific pollutant analyses would be much greater than the cost of analyzing for diesel by gas chromatography alone. The high cost of compliance monitoring, which may include awaiting results of analyses, which must be conducted onshore, possibly outside the State of Alaska, also would be unwarranted. Either operators would have to delay discharge until monitoring results confirmed compliance or they would discharge and risk permit noncompliance. A permit limitation that prohibits the discharge of diesel oil is economically and technologically feasible and allows a determination of permit compliance prior to discharge.

The prohibition on the discharge of diesel is a technology-based BAT limitation based on product substitution. Low toxicity mineral oils are available as product substitutes for diesel oil, and do not impose unreasonable additional costs on industry. In the permit proposal the Agency relied primarily on the increased cost of mineral oil over diesel oil as a basis for this determination. For example, mineral oil costs Alaskan operators approximately $2.60 per gallon more than does diesel oil. The increased costs associated with using mineral oil rather than diesel oil for 50 barrels (2,100 gallons) of oil (the maximum amount generally expected in a concentrated spotting or "pill" formulation used to free stuck drill pipe) would therefore be equal to approximately $5,500. Since the frequency of differential sticking of drill pipe and the use of oil-based spotting formulations is low for exploratory operations (less than once per well on an average), this cost would not be incurred for each operation. The Agency has evaluated other costs associated with either diesel or mineral use in response to comments on the draft permit (see response to Comment 10). Both analyses show that the cost associated with the prohibition on the discharge of diesel oil clearly is economically achievable.

In the permit proposal Region 10 proposed to limit "free oil," "oil-based drilling fluids," and "oil content of cuttings" as indicators of toxic pollutants. While the Agency has determined that the proposed effluent limitations will control the discharge of toxic pollutants in these oils, it is unnecessary to designate these pollutants as indicators since the same levels of control have been established under BCT, which are equal to levels of control required by the BPT effluent limitations guidelines. Therefore, redundant limitations under BAT have not been imposed for these pollutant parameters.

2. Mercury and cadmium in barite. The final permit contains limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite, a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. An identical limitation is included in the general permits for the Bering Sea and the Beaufort Sea (49 FR 23734, June 7, 1984).

As discussed in the fact sheet for the Bering and Beaufort Seas permits, this limitation under BAT is reasonable due to the availability of substitute products; i.e., Alaskan operators can substitute "clean" barite, which meets the above limitations, for contaminated barite which does not. Numerous offshore exploratory wells have been drilled in Alaska over the past year, and chemical analyses have shown that the barite used has not exceeded the limitations in this permit. Given that "clean" barite is available and that operators in the Bering and Beaufort Seas have been complying with an identical limitation, Region 10 believes that this limitation is both technologically feasible and economically achievable. Region 10 has determined that it is impractical at this time to place the limitations on drilling mud until additional data are collected. See Response to Comment 6. Furthermore, if the limitation were placed on the drilling mud rather than on the barite, it would not be feasible for an operator to determine in advance if the discharge complied with the permit requirements since metals analyses must be conducted at commercial laboratories onshore. Such a requirement may impose costly and unreasonable delays while the analyses were being conducted.

EPA does recognize the possibility of changes in the available supply of "clean" barite. The final permit contains a provision which allows the Water Division Director the discretion to grant a waiver from the limitations on a case-by-case basis if the permittee (1) satisfactorily demonstrates that barite which meets the limitation is not available, and (2) provides results of analyses of the substitute barite. In determining the availability of "clean" barite under this provision, Region 10 will reasonably consider all relevant factors, including the cost of obtaining barite which meets the limitations.

3. Generic muds and authorized additives. The permit limits the discharge of toxic substances in drilling fluids through the generic muds and approved additives concept. The permit authorizes the discharge of only generic drilling muds (listed in Table 1 of the permit) and additives for which acceptable bioassay and chemical data are available. Permittees are required to certify in advance of discharge that only generic drilling muds and authorized additives will be discharged.

Permittees may discharge the specific additives listed in Table 2 of the permit (at concentrations not exceeding the maximum allowable amounts) without special permission. This table is a modified version of Table 2 in the general permits for the Bering and Beaufort Seas (49 FR 23756, June 7, 1984). Over 25 drilling mud constituents and additives have been newly listed as acceptable for discharge. These chemicals have various applications in drilling practice, as outlined in Table 2 of the permit. Region 10 has received numerous requests to allow discharge of these compounds and has determined that they are acceptable for discharge up to the specified concentrations based on bioassay data, chemical data, and other product information. The addition of these additives to Table 2 will simplify the additive authorization process for both the permittees and EPA. The permit contains a provision (see Table 2) which will allow the discharge of additives which are listed in Table 2 of subsequent Region 10 general permits, unless otherwise stated in the new permits. For operations under this permit, any additive receiving authorization in this manner will be evaluated according to the regional criteria used for this permit.

Any discharge of a generic mud which has been modified other than by addition of an additive listed in Table 2 requires submission of information demonstrating that it passes the criteria in Part II.B.1.d.(2) of the permit or prior authorization by Region 10. Permittees may request authorization to discharge additives (including mineral oils) not

listed in Table 2 by submitting appropriate information and bioassay data in advance of discharge. Region 10 will determine whether the use of the requested additives is likely to cause the mud system to be more toxic than Generic Mud No. 1, which is the base formulation which the Agency uses to determine acceptable toxicity levels for discharge of fluids. Other criteria (e.g., persistence and degradation), as appropriate, are also considered in the evaluation process. The permits furthermore contain a provision which allow an exception for the discharge of mineral oil-containing muds which exceed the toxicity of Mud No. 1 if the least toxic available alternative is discharged. See Part II.B.1.f. of the permit and Response to Comments 16 and 21.

In some cases interim authorizations to discharge may be granted if preliminary bioassay data are submitted and the Region determines that additional bioassay testing or other analyses are required. Such testing may be required, for example, to examine possible cumulative or synergistic effects if the additive is to be used in combination with a number of other additives. Because the additional testing may take a considerable amount of time to conduct, interim authorization to discharge may be granted so that operations are not impaired for an unreasonable amount of time. Interim authorizations may also require testing a used drilling mud from a rig.

This approach to limiting toxicity is expected to control the discharge of listed toxic as well as nonconventional pollutants in drilling muds. For example, the toxicity of muds containing lubricants, including mineral oil products, may vary widely, and such additives may greatly increase the toxicity of the mud. Studies on diesel-contaminated drilling muds have shown toxicity to be strongly correlated with content of aromatic hydrocarbons, which include listed toxic pollutants. Some mineral oils also contain aromatic hydrocarbons which are listed toxics, such as fluorene, naphthalene, and phenanthrene. The toxicity of muds containing these oils is assumed to be caused, in part, by the listed toxic pollutants as well as by the nonconventional pollutants. Region 10 has determined that it is technically and economically infeasible to directly limit the toxic pollutants in drilling muds, as discussed in Part IV.C.1. Therefore, the Region has determined that the toxicity limitations (e.g., generic muds and approved additives) constitute a reasonable approach which is expected to control not only listed toxic pollutants, but other toxic substances (i.e., toxic nonconventional pollutants) as well.

The technology basis for this permit condition is product substitution; i.e., mud additives and components which would cause the toxicity of a mud system to exceed that of Generic Mud No. 1 can be replaced by less toxic mud additives and components.

Under section 308 of the CWA, compliance with this permit condition will be monitored in two ways: First, by requiring that permittees certify that only generic muds and authorized additives will be discharged; and second, by requiring that permittees submit an end-of-well inventory listing all chemicals and the amounts of each added to each mud system. In addition, permittees must analyze one sample from the end-of-well mud system for metals content and toxicity. The metals data will be used to verify that mercury and cadmium limits on barite are adequately controlling metal concentrations in used muds. The Standard Drilling Fluids Toxicity Tests, performed on the end-of-well mud system, will provide a comparison between the toxicity of used muds containing mixtures of additives and the bioassay data submitted on individual additives prior to discharge.

4. Other toxic and nonconventional compounds. Under the permit discharge of the following pollutants are prohibited: Halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants, and sodium chromate and dichromate contain chromium, also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. The discharge of these compounds was previously prohibited in the BPT general permits for the Beaufort Sea and Norton Sound (48 FR 54881, December 7, 1983) as well as in the BAT/BCT general permits for the Bering and Beaufort Seas (48 FR 23734, June 7, 1984). These compounds are therefore subject to BAT limitations. Because operators complied with this provision in the BPT permit, there is no additional cost to the industry.

D. Requirements Based on the Ocean Discharge Criteria Evaluation

1. Drilling muds, cuttings, and washwater. Additional restrictions on these discharges are necessary to ensure no unreasonable degradation of the environment. The Lease Sale 57 area includes water depths between 5 and 27 meters. Discharge rate limitations on muds and cuttings have been established in the Ocean Discharge Criteria Evaluation process in order to allow adequate dispersion of the discharges. These maximum rates will ensure that acceptable toxicity levels will be met at the edge of the 100-meter mixing zone during open water conditions. During stable ice conditions, we have determined that on-ice disposal will ensure no unreasonable degradation of the environment. This is because at ice breakup, ice will tend to move away from Norton Sound to deeper areas, where the deposited discharges are expected to enter the water column at relatively slow rates.

The computer models used to predict dilution and dispersion of drilling muds and our knowledge of the water currents are not adequate to predict the fate of muds and cuttings discharged into shallow waters during unstable or broken ice conditions. Without this knowledge the Agency has insufficient information to determine that no unreasonable degradation of the marine environment will occur from the discharges. No reasonable alternatives to on-site disposal exist during these ice conditions, however, because the risk to the environment and human safety posed by the transportation of muds and cuttings under these conditions would be unacceptably high. EPA believes that no irreparable harm would occur in the general permit area during a monitoring period to evaluate the fate of such discharges because the projected number and volume of such discharges is relatively small. This permit therefore permits discharges under broken or unstable ice conditions, while requiring a field monitoring program to establish the fate of such discharges. It is not EPA's intention to have all operators in a particular area conducting monitoring studies. The first operator wishing to discharge under broken or unstable ice conditions in an area of concern would likely be required to monitor the fate of discharged muds and cuttings. If this monitoring clearly indicates the potential for biological effects, further evaluation or studies (including biological monitoring) may also be required. Similar monitoring by subsequent operators at other locations would be required only if environmental conditions were substantially different from those at the site of the first monitoring program.

The second case of insufficient information involves the discharge of cuttings which have been associated with oil-based muds. The BCT limitations under this permit authorize the discharge of cuttings with up to 10%

oil content if no free oil results from the discharge of such cuttings. Little is known about the fate and effects of oil contaminated cuttings. However, limited numbers of operations are expected to discharge cuttings from oil based muds under this permit. Information available to Region 10 does not support a finding that there are reasonable alternatives to discharge. Further, the Region 10 has determined that no irreparable harm would occur if such a discharge is allowed while the required monitoring program is conducted to measure its effects.

2. Other discharges (003–015). These discharges are adequately controlled by the limitations in Parts II.C.–F. of the final permit to ensure no unreasonable degradation of the marine environment due to those discharges.

V. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of section 311. However, this permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

B. Endangered Species Act

Based on information in the Ocean Discharge Criteria Evaluations and in the Environmental Impact Statement prepared for Federal Lease Sale 57, EPA has concluded that the discharges authorized by this general permit will neither jeopardize the continued existence of any endangered or threatened species nor adversely affect their critical habitat. Further, EPA requested comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the draft permit and received no comments on endangered species. EPA will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

C. Coastal Zone Management Act

The draft permit and consistency certifications were submitted to the State of Alaska at the time of public notice. The State of Alaska has concurred that the activities allowed by this general permit are consistent with the Alaska Coastal Management Plan.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

No state waters are included in this permit.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part II.B. of this permit are similar to the monitoring requirements that were approved by OMB for the previously issued Beaufort Sea general NPDES permit (June 7, 1984; 49 FR 23734). Comments received during the public comment period on the information collection requirements contained in the draft general permit are addressed in the Response to Comments.

H. Effective Date. The final NPDES general permit issued today is effective immediately. Ordinarily, EPA would issue this permit and allow thirty (30) days before making the final permit effective. However, EPA may, under 5 U.S.C. 553(d)(1) make the permit effective immediately because it relieves a restriction on the regulated community by authorizing the discharge of pollutants in compliance with its terms. Without a permit, discharges of pollutants are prohibited under section 301 of the Clean Water Act. In addition, EPA finds that good cause exists under section 553(d)(3), because a later effective date would result in significant economic loss due to delays in the commencement of exploratory drilling operations. The 30-day period between the date of issuance and the date of effectiveness is provided to afford administrative appeal, and this procedure is not available for general permits.

I. The Regulatory Flexibility Act. After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 et seq. (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: May 22, 1985.

Signed:

Ernesta B. Barnes,

Regional Administrator, Region 10.

Appendix A—Public Comments

Public hearings tentatively scheduled to be held at Anchorage and Nome on March 21 and 22, 1985 were not held due to a lack of expressed interest in hearings at these locations. A public meeting was held on March 19, 1985 at Alakanuk on the Yukon Delta to discuss the concerns of Nunam Kitlutsisti, a non-profit Alaska Native environmental organization.

The following parties responded with written comments during the public comment period:

Alaska Oil and Gas Association (AOGA)
American Petroleum Institute (API)
ARCO Alaska, Inc.
Conoco Inc.
Natural Resources Defense Council (NRDC)
Nunam Kitlutsisti
Texaco U.S.A.
Trustees for Alaska
U.S. Department of the Interior, Fish and Wildlife Service
U.S. Department of the Interior, Minerals Management Service

NRDC, Nunam Kitlutsisti, and Trustees for Alaska submitted comments jointly and are therefore referenced as "NRDC" below.

On April 2, 1985 Exxon Company U.S.A. requested coverage as a permittee under this general NPDES permit.

Significant comments presented during the public comment period and at the public meeting were reviewed by EPA and considered in the formulation of the final decision regarding the proposed permit. These comments and Region 10's responses to the comments are presented below.

1. *Comment:* Conoco Inc. criticized the required notification procedures in this permit. In particular, they felt (a) the request for coverage 60 days prior to discharge was too long; (b) an individual permit number should not be necessary under a general permit; (c) notification of termination of discharges should be reported in the Discharge Monitoring Report (DMR); and (d) the duty to reapply deadline (180 days) is too long.

Response: (a) A 60-day period is necessary to ensure adequate time for Region 10 to determine whether the proposed activity is appropriately covered by this permit and whether the proposed location might require environmental monitoring under Part II.B.3. If environmental monitoring will be required, the specifics of the program will need to be established. (b) When granting coverage under the general permit, an individual permit number is assigned in order to track compliance of the authorized facility with permit requirements. (c) The "Termination of Discharge" notification may be given in a DMR or under separate cover, as long as notification is given within thirty days of each well completion. This notification is required to indicate to EPA's Water Compliance Section that subsequent DMRs for the facility are not required. (d) *Part V.E. Duty to Reapply* is based on 40 CFR 122.21.d. and Region 10 believes at this time that 180 days is necessary to allow sufficient time to issue a new permit.

2. *Comment:* NRDC and the Nunam Kitlutsisti expressed great concern about the ability of EPA to enforce provisions of the permit given the relatively limited enforcement capability, the remoteness of the area covered, and the severity of weather in the permitted areas. It was suggested that an enforcement plan be developed and subject to public review prior to the issuance of any discharge permits.

Response: It is not within the scope of these NPDES permits to rigidly define in advance the way in which enforcement shall occur. EPA, however, routinely targets facilities for compliance verification inspections. Although EPA's staff and resources for on-site monitoring are limited, a joint agreement with the Department of Interior (DOI) was signed on May 31, 1984, which provides for the assistance of DOI's Minerals Management Service personnel in EPA compliance monitoring and inspections efforts. DOI personnel are frequently on-site during rig operations.

3. *Comment:* NRDC strongly recommends that EPA define upset conditions (Part IV.H.2.) in such a way as to eliminate all reasonably foreseeable emergencies that can be planned for in advance. The same comment applies to the bypass provision (Part IV.G.) of the permit.

Response: The parts referred to are drawn directly from the NPDES regulations (40 CFR 122.41(m) and (n)). Definitions of "bypass" and "upset" are included in Part II.A. of the permit. Although NRDC did not provide suggested specific wording, Region 10 believes the permit's wording accomplishes what NRDC requests.

4. *Comment:* AOGA and Conoco commented that the static sheen test is an unreliable and unproven method which is therefore inappropriate for monitoring compliance with the no free oil limitation. AOGA also commented (Attachments 1 and 5) that the static sheen test is appropriate for monitoring on-ice discharges only, "and even then only marginally so." AOGA recommended that "an API retort protocol" be allowed as an alternative test method during ice conditions and suggested that other alternatives such as a visual observation of the receiving water be required during other seasons.

Response: The static sheen test has been demonstrated to be a reliable and reproducible test method. Not only is it appropriate for the harsh weather (including ice-free as well as ice-cover conditions) and prolonged periods of darkness common in Alaska, but it provides operators with an opportunity to avoid permit violations. Drilling discharges can be tested prior to bulk discharge. A visual observation of the receiving water does not have these advantages. Any variability that may be present in a demonstrated laboratory procedure such as the static sheen test will be far less than that of an over-the-side-of-the-deck observation of the receiving water.

The commenters refer to two studies to support their challenge of the static sheen test, one conducted for EPA by CENTEC Analytical Services, Inc. and another conducted by Maurice Jones. The arguments raised ignore two essential features of the regional methodology (Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test."). The regional guidance, which must be used in conjunction with the detailed protocol in Petrazzuolo (1983), was developed to ensure against any possibility of ambiguous results arising from attempts to detect trace amounts of a sheen or from the use of small sample sizes (with the standard-sized test containers). First, a sheen must cover more than one-half of the test container in order to result in a positive reading (i.e., a trace amount of a sheen is a negative finding). Second, only the largest of the three sample sizes originally specified in the methodology (Petrazzuolo 1983) is tested, thereby enhancing the possibility of detecting a sheen for any particular sample (i.e., if drilling mud contains free oil, a larger sample size will result in proportionally greater amounts of free oil).

In EPA's study (CENTEC 1984) 354 separate tests were conducted on 54 samples of muds and cuttings in order to assess the reliability and reproducibility of the test methodology, as originally proposed (Petrazzuolo 1983). The findings clearly support Region 10's application of the test method, as discussed in detail in the record. EPA showed the sheen test to be a reliable enforcement tool that does not give false positive readings (i.e., it does not erroneously detect oil when no oil was added). Contrary to the statement in AOGA's Attachment 5, the test did not give false positive results, even when emulsifiers were added. The test was also reproducible. Repeat tests for any one sample type showed high levels of agreement.

The second study used to support AOGA's comment was conducted by Jones (1985) who had 26 observers evaluate 14 test samples. The study design contains several critical flaws. In particular, the study ignored the two essential features of the Region 10 guidance discussed above. Small samples were used (with the standard-size test container). These results, therefore, must be ignored. The test results for the remaining samples cannot be evaluated according to the regional guidance, which requires a trace of a sheen to be read as a negative result. According to Jones' study design and unlike the EPA study (CENTEC 1984), observations of both trace amounts and greater than trace amounts were scored as positives.

Jones furthermore failed to follow specified requirements for lighting conditions and dark test containers (Petrazzuolo 1983). He states that "white dishpans and plastic liners were used due to the relatively low light levels present." By his own admission, "the use of the different colored backgrounds and different lighting conditions could affect result [sic] significantly." These results are used to argue that "variable test conditions (i.e. lighting)" serve to invalidate the procedure. The specified test procedure, however, precludes the use of unsuitable lighting conditions and white test containers. The results of Jones (1985) are inconclusive with regard to Region 10's test method. See further discussion in the record.

Region 10 advises that CENTEC (1984) should be consulted for the EPA test data since Jones (1985) contains several critical typographical errors or omissions in Table 3 ("Results of Sheen Tests by CENTEC Analytical Services").

AOGA did not supply any data demonstrating the suitability of the retort test as a substitute for the sheen test, and Region 10 has no information on the validity of using the retort test for this purpose. Operators are encouraged to supply EPA with study results should they become available from the industry study proposed to address this issue (see AOGA's Attachment 8).

5. *Comment:* AOGA and Conoco requested that Region 10 remove the effluent limitations on mercury and cadmium in barite which "create an unjustified risk to industry of becoming a national precedent" (quote from AOGA). The commenters argue that the discharge of these metals in barite pose no hazard to the marine environment and that the Agency has not fully assessed the potential cost of "limiting Alaska exploratory operations to only one source of barite" (AOGA). Conoco asserts that "the requirement that only barite from Nevada be allowed for use in Alaska may very well be an 'act in restraint of trade' " and contends that the limitation will have nationwide impact on barite costs, affecting not only large but also small oil and gas products. AOGA submitted Attachments 6 and 8 in support of their comments.

Response: The permit limitation is a BAT effluent limitation. Findings under section 403(c) (assessment of "hazard to the marine environment") were not the basis for the limitation. The section 403(c) evaluation assumed that discharged muds would reflect BAT level control. The record, however, demonstrates an environmental concern due to the toxicity and bioaccumulation of mercury and cadmium in other types of wastes and the lack of information on the chemical nature and ultimate bioavailability of these toxic heavy metals in drilling muds. Industry has, in fact, acknowledged the lack of information in these areas (see proposed Offshore Operators Committee studies in AOGA's Attachment 8).

While the use of Nevada barite was the basis for Region 10's determination regarding product substitution of uncontaminated barite for contaminated barite, the permits do not necessarily restrict operators to using Nevada barite. Nevada barite however is the major domestic source of barite and the current principal source for Alaskan operations. Nevada barite is a bedded deposit, which is characteristically low in trace metals. Vein deposits, however, may also have acceptable levels (AOGA's Attachment 6, Kramer et al. 1980).

The demand for barite by Alaskan operators is not expected to significantly alter barite costs since offshore wells in Alaska account for less than two percent of the total offshore wells drilled in the U.S. Moreover, the permit provides an exemption in cases when the operator is unable to comply due to the lack of barite which meets the limitations. The commenters did not address this provision in their comments.

Attachment 6 (AOGA) fails to provide any useful new data. First, the discussion addresses the impact of more stringent limitations (2 mg/kg cadmium and 1 mg/kg mercury) than were proposed in the draft permit (3 mg/kg cadmium and 1 mg/kg mercury). Second, data on the percent of barite sources (domestic and foreign) that could meet the assumed (incorrect) limitations are presented only in summary form, frustrating any interpretation of the impact of Region 10's proposed limitations on the use of worldwide barite sources in Alaska. Third, the discussion addresses the impact of the assumed (incorrect) barite limitations if they were to be imposed nationwide. Region 10, however, has made a case-specific determination for operations offshore of Alaska and is not required to assess the impacts of this limitation if it were to be imposed nationwide. This issue will be addressed in the guidelines development process or by each region on a similar case-by-case basis, taking into account the cumulative effects of established restrictions. Finally, the comments do not provide information pertinent to Region 10's specific request in the permit proposal (40 FR 6390, February 15, 1985) for "any increased costs that a permittee incurred in meeting the barite limitations contained in the general permits for the Beaufort and Bering Seas."

With respect to small operators, Region 10 notes that only major companies are expected to operate exploratory wells in remote offshore regions of Alaska. Extensive planning and a large financial commitment are required (see Lewis 1983). Leases in the Norton Sound Sale 57 area are held by large oil companies.

6. *Comment:* NRDC, Trustees for Alaska, and Nunam Kitlusisti ("NRDC") recommended that the mercury and cadmium limitations be placed on drilling muds at levels of 1 mg/kg for each metal. These drilling mud limitations would replace the barite limitations.

Response: Barite accounts for 60 to 85 percent of the mass of drilling mud solids and is expected to be the chief source of heavy metals in the discharged muds. Control of heavy metals in barite is therefore expected to control heavy metals in drilling muds. Region 10 has determined that the most practicable approach at this time is to place a limitation on the barite until sufficient data are collected to allow thorough characterization of the levels in discharge drilling muds. The limitation on the barite provides an operator with an opportunity to plan ahead in order to avoid permit violations. Compliance can be determined by sampling barite prior to discharge rather than by sampling and waiting for analyses to be completed on the used drilling mud.

Region 10 notes that while the cadmium limitation on barite may be slightly less strict than the drilling mud limitation recommended by NRDC, Region 10's mercury limitation is theoretically more strict. For example, if all mercury in drilling mud is derived from barite, then barite with 1 mg/kg will be mixed and diluted with other, less contaminated drilling mud solids, resulting in a discharge of drilling mud with less than 1 mg/kg mercury. Region 10's discharge monitoring data show that mercury levels in drilling muds are generally less than 0.9 mg/kg, dry weight. While cadmium levels in discharged muds have been somewhat more variable, the concentrations generally show levels less than 2 mg/kg.

Region 10 will reevaluate these limitations as additional discharge monitoring data on metals in drilling muds are available. The permit requires end-of-well chemical analyses to be conducted on drilling muds from each well.

7. *Comment:* AOGA (Attachments 1 and 11) and Conoco challenge the Region's use of diesel oil as an indicator pollutant for the listed toxic pollutants present in diesel oil. The commenter first argued that diesel oil is a conventional pollutant and that diesel oil is subject only to a BCT limitation. Second, the commenter argued that the Region's use of diesel oil failed to comply with the requirements of 40 CFR 125.3(h)(1), as amended on September 24, 1984 (previously listed as 40 CFR 125.3(g)(1)). Finally, if the Region used diesel oil as an indicator to control the nonconventional pollutants present in diesel oil, AOGA requested that their comments be considered a request for a section 301(g) waiver of all BPT effluent limitations.

NRDC strongly supports the diesel prohibition but suggested that the

Agency provide a more explicit justification for regulating diesel as an indicator.

Response: The Regional believes that it adequately explained in the proposal its bases and justifications for using diesel oil as an indicator pollutant. However, in order to fully respond to comments, the Region will restate and elaborate on its position and explain why its decision fully complies with the requirements in 40 CFR 125.3(h)(1). The Region has also provided new information and further discussion of this comment in the record, which expands the technical basis for the use of diesel as an indicator.

As the Region has discussed in previous notices, diesel oil is a complex mixture of petroleum hydrocarbons. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons (Thoresen and Hinds 1983). The light aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products (National Research Council 1983, p. 81). One issue raised is whether diesel oil should be regulated as a conventional, nonconventional, or toxic pollutants. The AOGA comment stated that EPA regulations define " 'oil and grease,' *including diesel oil,* as a conventional pollutant" (emphasis in original comment). The Region previously acknowledged that the mixture "diesel oil" is not a listed toxic pollutant; however, the Region also has recognized the presence in diesel oil of numerous listed toxic pollutants including naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. The Region furthermore has identified numerous specific nonconventional pollutants in the mixture "diesel oil," including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

The exericse of arguing over which pollutant category in which to place "diesel oil," however, is in a sense unnecessary. The real issue is how best to regulate and control the numerous listed toxic pollutants present in diesel oil. The Region considered and rejected the option of establishing specific numerical effluent limitations for the conventional pollutant oil and grease in drilling fluids, or for the numerous listed toxic and nonconventional pollutants, the presence or concentration of which would be attributable to diesel oil contamination of the drilling fluid. The Region has chosen to use "diesel oil" as an indicator of the many toxic pollutants present in that complex mixture. By prohibiting the discharge of diesel oil, the Region will reduce the discharge of toxic pollutants. The Region's decision to take this approach was reasonable and, contrary to AOGA's argument, in full compliance with the applicable permitting regulations in 40 CFR 125.3(h)(1).

Section 125.3(h)(1) authorizes a permit writer to establish limitations for a conventional pollutant more stringent than BCT, or limitations for a nonconventional pollutant which shall not be subject to modification under section 301 (c) or (g), where (in either case): (1) The pollutant has been identified as an indicator in effluent limitations guidelines or (2) the permit writer makes findings warranting use of the pollutant as an indicator.

In the absence of BAT guidelines, Region 10 has acted pursuant to the second provision. See 40 CFR 125.3(h)(1)(ii). First, § 125.3(h)(1)(ii)(B) requires the Region to identify the toxic pollutants to be controlled by the limitation on diesel oil. The listed toxic pollutants found in various diesel oils include naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. The notice published on February 15, 1985 did not provide an inclusive list; however, in response to comments Region 10 has reevaluated the toxic pollutants in diesel and has also considered recently available information. All of the above toxic pollutants were present in a diesel identified as "Alaska diesel" (Requejo et al. 1984).

Second, § 125.3(h)(1)(ii) (A) and (C) require findings that the indicator limitation reflects BAT-level control for the specific toxic pollutants and that establishing effluent limits on the specific toxic pollutants would be economically or technically infeasible. The BAT-level control for the specific toxic pollutants would be the reductions achievable through use of the technology basis for the limitations. Whether the Region chooses to control the indicator pollutant diesel oil or the specific toxic pollutants, the technology basis would be product substitution, i.e., use of mineral oil instead of diesel oil. A treatment system does not exist that could be installed and used on a rig to reduce toxic pollutants in drilling fluids prior to discharge.

The Region has determined that prohibiting the discharge of drilling fluids contaminated with diesel oil (i.e., substitution of mineral oil for diesel oil in drilling fluids) will reduce the levels of the toxic pollutants present in the discharged fluids. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. A report discussed in AOGA's comments and prepared for API by Battelle Laboratories supports the conclusion that the elimination of diesel oil discharges will reduce toxic pollutants discharges (Requejo et al. 1984). AOGA argues in Attachment 11 that the Battelle report "reveals no correlation between diesel concentration and the concentrations of various toxic pollutants" because the concentrations of toxic pollutants vary among different diesel oils. This argument, however, is misdirected. The real issue is whether the levels of toxic pollutants would be reduced by substituting mineral oil for diesel oil. The Battelle report confirms that such a reduction would occur. Appendix I of the report presents the results of analyses for toxic pollutants in three mineral oils and six diesel oils. The results reveal strikingly higher levels of toxic pollutants in the diesel oil samples. For example, naphthalene was detected in only one of the three mineral oil samples and at a level of 0.05 mg/ml. In contrast naphthalene was detected in all six diesel oils at levels ranging from 0.48 mg/ml (mistakenly reported as 0.048 mg/ml in AOGA's Attachment 11) to 3.25 mg/ml. While the levels of naphthalene may vary in diesel oil, as AOGA argues, they routinely and significantly exceed the levels detected in mineral oils. Similarly striking results occurred in the analyses for benzene, ethylbenzene, fluorene, phenanthrene, and phenol, and the alkylated homologues of each of these toxic pollutants, including naphthalene.

It is reasonable and appropriate to conclude that BAT-level control of toxic pollutants (i.e., reduction in concentrations through substitution of mineral oil for diesel oil) will be achieved by regulating diesel oil as an indicator pollutant. The use of mineral oils rather than diesel oils in mud systems will result in a reduction of toxic pollutant levels equivalent to those levels reflecting BAT-level treatment. AOGA contends, however, that Region 10 has not established this fact for "all types of diesel oil." While there may be one diesel oil that may have lower levels of some toxic pollutants than a highly toxic mineral oil, the available data overwhelmingly establish that diesel oils as a class include significantly higher levels of toxic pollutants than do mineral oils as a class. The regulations do not require

EPA to analyze every diesel oil (of which there are many) before concluding that diesel oils contain high levels of toxic pollutants and that controlling the discharge of diesel oils will reduce the discharge of toxic pollutants.

AOGA argues that the Region has not identified specific concentrations of each toxic pollutant which would represent the level achievable by BAT controls on the specific toxics. Such a calculation can be made by multiplying the known concentrations of specific pollutants in mineral oils (e.g., from the Battelle study) by the assumed concentration of oil in the drilling mud, resulting in predicted BAT levels of control. The results of these calculations for numerous toxic pollutants and classes of nonconventional pollutants are contained in the administrative record. The concentrations of these pollutants will vary, as expected, depending on the amount and specific type of mineral oil use. Concentrations of toxic pollutants resulting from 5 percent by volume "Mineral Oil B" in drilling muds, for example, were predicted to range from undetectable amounts of benzene, ethylbenzene, naphthalene, and phenol to up to 10 mg/l of phenanthrene. "Mineral Oil A" and "Mineral Oil C" used in amounts as high as 10 percent of volume in drilling muds would result in undetectable amounts of a number of toxic pollutants and in maximum concentrations for any single pollutant of 5 mg/l naphthalene and 4 mg/l phenanthrene, respectively.

Region 10 has, however, concluded that establishing effluent limitations for each of the toxic pollutants present in diesel oil is not economically or technically feasible at this time. See § 125.3(h)(1)(ii)(C) and today's Notice, Part IV.C.1. Additionally, specific toxic effluent limitations would be contrary to the positions of AOGA and API which request permits that enable operators to determine compliance at the earliest possible date. Either operators would have to delay discharge until monitoring results confirmed compliance or they would discharge and risk permit noncompliance. Delay time while awaiting for monitoring data could result in excessive costs. A permit limitation that prohibits the discharge of diesel oil is economically and technically feasible and allows a determination of permit compliance prior to discharge.

Finally, with respect to the AOGA request that their comment be considered a request for a waiver under section 301(g), Region 10 makes the following observations. First, since AOGA is not a permittee, it is not the appropriate party to request such a waiver. Second, such a request would require more than a one sentence statement. Third, the use of diesel oil as an indicator for toxic pollutants, precludes the issuance of a section 301(g) waiver. See 40 CFR 125.3(g)(1).

8. *Comment:* AOGA challenges the technology basis (i.e., product substitution) for the prohibition on the discharge of diesel in drilling muds contaminated by a diesel "pill" (also known as a "spotting fluid"). The commenter stated that there is a "present lack of alternatives to diesel as the liquid carrier in 'pill' packages to relieve drill pipe sticking problems" and that the use of diesel represents the "state of currently available technology."

Response: AOGA's Attachment 5 contains a review of three published papers to support their challenge of the diesel prohibition. The author of Attachment 5, Maurice Jones, states that the Region has based the limitation "on the assumption that diesel oil can be easily substituted by mineral oil or other less toxic oils." Region 10 considered two of the referenced papers prior to proposal and has evaluated the third, in addition to all other available information, prior to the final permit decision. A discussion of the arguments raised in AOGA's Attachment 5 follows.

Oil-based fluids (both drilling fluids and spotting fluids) include not only the base oil but also chemical additives such as emulsifiers, surfactants, viscosifiers, and barite. Most oil-based fluids also include emulsified water. The thrust of AOGA's argument is that mineral oils are not suitable substitutes for diesel oil because formulations specifically tailored to mineral oils (and especially to their lower aromatic hydrocarbon content) have not been adequately developed. Diesel oil has had longstanding use in drilling muds because it is readily available from a rig's fuel tanks and cheaper than alternative oils. Simply substituting mineral oil for diesel oil in fluid formulations originally developed for diesel does not always achieve favorable results because chemical additives may have differng solubilities and behavior in different types of oil. EPA recognizes that substitution of a mineral oil pill for a diesel pill generally entails the use of chemical packages specially formulated for mineral oil.

Jones, in AOGA's Attachment 5, acknowledges that operationally effective mineral oil-based fluids can substitute for diesel oil-based fluids, provided that chemical additives effective in the base mineral oil can be formulated (see also Jones et al. 1983). As shown in the administrative record, chemical additives have been developed which are compatible with mineral oils. The performance of these fluids has been demonstrated in both the laboratory and the field. Information on a number of different mineral oil-based spotting fluids currently marketed and available for use is also contained in the administrative record for this permit. Such products are routinely requested for use and discharge under Region 10's permits. Neither AOGA nor other commenters present data which refute the demonstrated development and performance of mineral oil-based fluids, including spotting fluids.

Jones furthermore misconstrues the information presented in the three references cited in AOGA's Attachment 5. First, Cowan and Brookey (1984) focus on the cost/efficiency of using mineral oil with additive packages originally developed for diesel. They conclude that present diesel packages can be adapted for use in most new oil systems. They note that the cost/efficiency of such formulations are not optimized for mineral oil as they are for diesel, resulting in some sacrifice of drilling cost/performance. They did not, however, evaluate newer oil-based formulations specifically tailored to mineral oil.

Second, Clapper and Salisbury (1984) discuss the chemistry of additives (primary and secondary emulsifiers) used in specially formulated mineral oil-based fluids. They conclude that "while a wide range of effectiveness exists among new emulsifiers designed for use in mineral oil, new product demands basically have been met."

Finally, Bennett (1983) details the development and application of oil-based fluids specially formulated to accommodate a mineral oil base. The first mineral oil-based fluid was available commercially in 1975 as a spotting fluid for differently stuck pipe. Since that time, oil-based fluids have received widespread application. Bennett concludes that "mineral oil-based fluids posses the same characteristics but also have definite advantages over diesel oil-based drilling and spotting fluids. These characteristics and advantages are shown by laboratory evaluations, laboratory toxicity studies and field case histories." Bennett also notes that many emulsifiers and dispersants used in diesel oil-based fluids are very toxic and that less toxic compounds can be used in mineral oil-based fluids.

In conclusion, available data support Region 10's determination that substitution of mineral oil products for diesel oil formulations is technologically feasible.

9. *Comment:* Both Conoco and AOGA requested that EPA allow the discharge of diesel-contaminated drilling muds resulting from the use of a diesel pill. The commenters suggested that such discharges should be allowed if the operators participate in the Diesel Pill Monitoring Program originally proposed for the Gulf of Mexico (see AOGA's Attachment 7). The study would determine the efficiency of pill recovery and the toxicity and diesel content of discharged muds. Conoco recommended omission of the diesel limitation and use of the visual sheen test (over-the-side-of-the-deck observation of the receiving water) pending the results of the study. AOGA (Attachment 1) recommended a limitation on the increase in oil content resulting from diesel pill use (and recovery) of no more than 0.5 percent by volume, as determined by the API (American Petroleum Institute) retort test.

Response: Region 10 has again evaluated and rejected the option of controlling pollutants contained in diesel by means of diesel pill recovery rather than by product subsititution of mineral oil for diesel. See 49 FR 32745 and 48 FR 54881. The effectiveness of pill recovery has not been demonstrated.

The record demonstrates a potential for a drilling mud system to be significantly contaminated with diesel, at levels of approximately 1.5 percent by volume, from the use of a diesel pill. AOGA, however, suggested setting a limitation on the maximum increase in oil content equal to 0.5 percent by volume, as determined by the API retort method. Even if an operator were able to meet such a limitation with pill recovery, 0.5 percent diesel would be expected to cause significant increases in acute toxicity and in concentrations of toxic substances in drilling muds. See Comment 7.

Region 10 questions whether the API retort method is sufficiently sensitive to accurately measure diesel increases of 0.5 percent. It appears likely that increases in diesel concentration of nearly 1 percent could easily occur with AOGA's proposed limitation and test method due to difficulties in visually detecting small differences on the measuring scale (i.e., distances along the scale of approximately two hundredths of an inch correspond to a measure of 0.5 percent oil). The lack of sensitivity of the test measurement would allow significant increases in the concentration of toxic substances in the discharge.

Region 10 also disagrees that the visual sheen test of the receiving water provides "adequate control for discharges of mud and cuttings containing small amounts of diesel" (comment by Conoco). The National Research Council ("NRC", 1983, p. 162) reported that drilling muds containing as much as several percent diesel may not cause a sheen.

In conclusion, Region 10 has evaluated alternative control technologies and suggested control parameters (API retort oil content and sheen on the receiving water). The Region has determined that the prohibition on the discharge of diesel-contaminated drilling muds is reasonable and appropriate since diesel pill recovery is unproven and substitution of a mineral oil pill for diesel is technologically feasible and economically achievable.

10. *Comment:* Conoco noted that "the costs quoted by EPA for use of mineral oil over the costs for diesel do not consider the additional handling, storage, etc. required for mineral oil."

Response: Conoco failed to provide any pertinent information on such costs. Unlike Conoco, other members of AOGA have operated offshore exploratory wells under Region 10's permits (which have prohibited the discharge of diesel since 1983). AOGA, however, did not challenge Region 10's evaluation of costs associated with substitution of mineral oil spotting fluids for diesel pills. Conoco, in fact, did not directly challenge Region 10's conclusion but only whether the costs for the "additional handling, storage, etc." required for mineral oil were considered. Region 10 is, therefore, providing the following supplementary information on the costs associated with mineral oil use. The following cost estimate is derived from API figures (Attachment 7 to AOGA's comments), except where data believed to be more accurate are available. These additional costs have not changed Region 10's final determination regarding economic achievability of the effluent limitation (diesel prohibition). The details of this analysis are in the administrative record. It is summarized as follows:

The total cost per mineral oil pill is estimated to be $22,765.

A diesel pill is estimated to cost as little as $18,500. Additional costs incurred by use of the diesel pill, including tank storage for the pill and hauling of it to shore, make the total cost for use of diesel pills between $19,700 (assuming 200 barrels are disposed of downhole) and $32,200.

While the above figures provide only general cost estimates, they clearly demonstrate the economic feasibility of produce substitution of a mineral oil pill for a diesel pill.

11. *Comment:* Conoco commented that a GC analysis should not be required since the test results may convey confidential business information due to the exploratory nature of the wells.

Response: EPA has procedures for handling confidential business information. If appropriate, the gas chromatograms will be held in confidentiality by the regional office in accordance with 40 CFR Part 2, Subpart B. The determination stating whether or not diesel was present in the drilling mud will, however, in any case not be eligible for confidential treatment since this determination is required for tracking compliance with the permit conditions. Region 10 does not believe that a statement of whether or not diesel is present conveys confidential business information.

12. *Comment:* AOGA and Conoco requested that a certification statement that diesel was not discharged in muds should replace the requirement for monitoring diesel in drilling mud. Conoco suggested that a certification statement should suffice for other monitoring requirements as well. NRDC fully supported the monitoring requirement for diesel.

AOGA (Attachment 11) requested that the cost of the diesel monitoring requirement be borne by EPA. Regarding general costs of monitoring, AOGA noted that monitoring requirements under the Bering/Beaufort general permits cost from $2,000 to $8,000 per well for analyses plus about $30,000 for an onsite technician.

Response: Monitoring requirements for diesel in discharged drilling muds in addition to a number of other monitoring requirements have been established in order to assure and determine compliance with permit effluent limitations. These conditions are imposed in accordance with 40 CFR 122.44(i) and section 308 of the Act. Compliance monitoring with the permit conditions is the responsibility of the permittee. EPA conducts testing only for compliance inspections. EPA has determined the the diesel prohibition and other effluent limitations are economically achievable. The analytical and sampling costs and the cost of a technician, if one were required, do not present costs which make the limitations economically unachievable. Sampling to determine compliance with BAT effluent limitations is expected to require limited effort. The most frequent

monitoring is required to determine compliance with the BCT effluent limitation on free oil in muds and cuttings. This limitation and its monitoring requirement are the same as those incorporated under Region 10's previous BPT permits.

13. *Comment:* AOGA (Attachment 11) and Conoco commented that the GC test method "has been found to mistakenly identify mineral oil as diesel in two recent cases already; one in a laboratory study and one in a monitoring situation" (quote from AOGA). The commenters requested that this test method be deleted (see Comment 12).

Response: Region 10 is familiar with two instances in which industry has claimed that the GC method has erroneously identified the presence of diesel oil. In neither case did the data support this claim. In both instances, the requirement for a comparison of the GC "fingerprint" was ignored. The method in the administrative record for this permit states that "the major peaks present in the standard (e.g., those greater than 1 percent of the total integrated area) should also be present in the sample and in the same relative intensity and pattern."

In the first case, API claimed that the Battelle study (see Comment 7) shows that one mineral oil (Mineral Oil B) cannot be distinguished from diesel oil. In the second case, ARCO claimed that GC data submitted with a Discharge Monitoring Report for operations in the Bering Sea erroneously identified diesel oil in drilling mud when only mineral oil was present. The record (containing the Agency's response to these two cases, and supporting analyses) clearly demonstrates the error of industry's conclusions. ARCO, in fact, recently concurred with Region 10's conclusions regarding the second case, above (letter dated May 10, 1985).

AOGA (Attachment 11) states that while the GC method will cost up to $200 per sample, an "adequate method" (assumed to be gas chromatography/mass spectrometry) will cost as much as $2,500 per sample. Due to these cost considerations and the general reliability of the GC method, Region 10 does not believe that a more sophisticated, costly analytical method is required for general effluent monitoring purposes. The permit, however, will allow the use of GC/MS to provide greater resolution of the drilling mud "fingerprint," if an instance should arise where the operator and EPA determine that greater resolution is required to make a determination. Region 10 emphasizes, however, that the GC chromatogram was fully adequate in both cases mentioned above to determine that the presence of diesel was unlikely.

14. *Comment:* Conoco stated in a general comment that "Region X appears to have adopted the 'product substitution' rationale without full consideration of the true costs involved."

Response: Region 10 believes that it has adequately assessed costs for all requirements based on product substitution. The costs for product substitution of mineral oils and barite have been addressed. See Comments 5 and 10. It can be assumed that additional costs may be involved in substituting less toxic additives for more toxic ones, as required to meet toxicity limitations. While industry has not provided information on costs of such additives, Region 10 does not believe that there are substantial costs involved beyond those already quantified. One clear example known to Region 10 of increased costs from product substitution of drilling mud additives (other than mineral oil) would occur if starch containing toxic paraformaldehyde is substituted with a cellulose polymer. Starch is generally used in amounts of 2 to 6 pounds per barrel; amounts of cellulose polymer are generally less (approximately 2 pounds per barrel). If, for a particular drilling mud, the maximum amount of starch were substituted by approximately 2 pounds per barrel of cellulose polymer, the overall product cost would increase approximately two-fold. The increased cost of the drilling mud, however, would not be substantial, even if other polymers were required, since these additives are not expected to be major drilling mud constituents or among the most costly components of the mud.

In conclusion, Region 10 has adequately addressed and evaluated costs associated with product substitution and has made a reasonable determination that they are economically achievable.

15. *Comment:* NRDC commented that the discharge of chromium should be prohibited under BAT through the use of product substitution.

Response: While NRDC stated that substitutes for chrome lignosulfonates, such as iron lignosulfonate, are available, they did not provide any supporting data. Region 10 has no information at this time that would allow a finding that it is technologically feasible to limit chromium in drilling muds through product substitution.

16. *Comment:* NRDC objected to the mineral oil provision which permits operators to discharge drilling muds more toxic than Mud No. 1 by demonstrating that no other less toxic mineral oils are available. NRDC recommended deletion of the provision or incorporation of a clear definition of the term "available" as "the only type of mineral oil that can perform the specific function required, not the only type of mineral oil on the rig at the time it is needed."

Response: Region 10 originally incorporated this provision in the general permits for the Bering/Beaufort Seas in recognition that the Agency had limited information on the "characteristics, applications, and toxicities of all available mineral oil." (49 FR 23736, June 7, 1984). Region 10 has determined that there continues to be a lack of information on the effects of mineral oil products on drilling mud toxicity. Available data on several products indicate, however, that their use in most discharged muds would not cause the toxicity to exceed that of Mud No 1. Interim authorizations, requiring bioassay testing of the used drilling mud, are generally granted for the discharge of these products. However, few of the products have actually been used and discharged.

Region 10 has therefore determined that the provision should remain in the permit. The Region generally agrees with the intent of NRDC's comment. The word "available" will be interpreted by the Region in a reasonable manner on a case-by-case basis, with a consideration of both product performance and availability. As a number of mineral oils have been requested for discharge in Region 10, the Region believes that there are several alternative mineral oils generally available for use offshore of Alaska. These products will be evaluated for availability should the use of any one mineral oil cause a drilling mud to be more toxic than the most toxic generic mud.

17. *Comment:* All industry commenters recommended that the permit allow participation in a " 'mud additive approval clearinghouse' that is presently being developed for use by other EPA regions." The clearinghouse would determine, in advance, which drilling mud additives could be discharged. AOGA and Texaco recommended that Region 10 adopt additives lists from other Regions, in particular Region 9, "while awaiting formal development of the list of additives through the clearinghouse program." Conoco recommended that all additives currently authorized by Region 10 for operations under other general permits be included in Table 2 of the permit and that new additives be included in Table 2 as they are authorized.

NRDC supported a requirement for advance evaluation and authorization for the discharge of all muds and additives not listed in the permit tables.

Response: Region 10 supports the idea of a National Clearinghouse. However, this concept is still under development and will not be implemented in the timeframe for this permit. If the Clearinghouse is implemented, Region 10 would expect to use the data base to support the regional evaluations.

In the interim, operators may request prior authorization from Region 10 if they wish to discharge muds other than generic muds in Table 1 with additives in Table 2. The regional process provides operators with the same advance assurance of compliance that they request the clearinghouse program provide, but on a regional basis. Operators wishing to discharge additives not listed in Table 2 must either receive prior authorization or demonstrate that they meet criteria in Part II.B.1.d.(2) of the permit.

Region 10 has responded to the comment by listing a number of new additives used in Alaska in Table 2. Permittees may discharge the specific additives listed in Table 2 of the permit (at concentrations not exceeding the maximum allowable amounts) without special permission. The Region, however, cannot include all additives currently authorized under Region 10 permits because some of them were only approved on a case-by-case basis for specific conditions, and the Region does not have sufficient information to approve them for general use. The permit contains a provision (see Table 2) which will allow the discharge of additives which are listed in Table 2 of subsequent Region 10 general permits, unless otherwise stated in the new permits. For operations under this permit, any additive receiving authorization in this manner will be evaluated according to the regional criteria used for this permit.

Other Regions' lists are not directly transferrable to Region 10. For example, Region 9's list has been in existence for some time, and it includes additives tested by a variety of test methods and test species. Many of these test results are not acceptable under Region's 10's BAT permit, which generally requires that toxicity tests be conducted in accordance with the Standard Drilling Fluids Toxicity Test.

18. *Comment:* Conoco challenged the use of results from the Standard Drilling Fluids Toxicity Test (i.e., bioassays) which, in their opinion, "are merely an indicator with no actual substantiation of their reliability for effectively predicting environmental impacts in real-life situations, particularly at the outer edge of the mixing zone." AOGA also stated (Attachment 1) that a limitation of 250 ppm should be imposed because stricter toxicity limitations were more stringent than necessary to protect marine resources under section 403(c) Ocean Discharge Criteria.

Response: The toxicity limitations are BAT effluent limitations, designed to control the nature and concentration of toxic substances, including designated toxic pollutants, in discharged drilling muds. A standard, 96-hour acute toxicity test is an accepted, standard measure of relative toxicity and an appropriate BAT effluent limitation for the control of toxic substances in the discharge. As a technology-based limitation, Region 10 could not establish an LC_{50} limitation based on the level of toxicity which is minimally necessary to protect against unreasonable degradation of the marine environment.

19. *Comment:* NRDC stated that, according to data from California, an LC_{50} of 30,000 ppm for the suspended particulate phase (i.e., 3,000 whole mud equivalent, according to Region 10's terminology) allows operators adequate flexibility to use and discharge necessary additives in the majority of cases. NRDC expressed concern, however, that bottom dwelling organisms will be exposed to drilling discharges for long periods of time and that the regional toxicity criterion is not based on solid phase testing, which is most directly applicable to these organisms. NRDC noted the lack of adequate solid phase toxicity data. They therefore suggested that Region 10 decrease the drilling mud toxicity level (i.e., raise the LC_{50}) that is allowed under these permits.

Response: Region 10 agrees that solid phase toxicity data would aid in assessment of the environmental impacts associated with these discharges and supports the development of a standardized solid phase bioassay protocol. The suspended particulate phase test used in this permit is, however, the best test currently available for the purpose of testing and comparing drilling mud toxicities in a standardized fashion. This test is used to limit drilling mud toxicity under BAT. Product substitution of less toxic additives for more toxic ones is the basis for Region 10's BAT determination that drilling muds no more toxic than the most toxic generic mud should generally be discharged. Increasing the LC_{50} level (decreasing the allowable toxicity) would potentially eliminate one of the generic muds, generic mud No. 1, from discharge. Region 10 does not have data which indicate that this mud type can be substituted by one of the other, less toxic generic muds. Nor has Region 10 determined, based on available data, that more restrictive effluent limitations are required under section 403(c).

20. *Comment:* Conoco requested deletion of one of the toxicity screening criteria which give operators flexibility to discharge additives prior to authorization if the additive does not cause a substantial increase in drilling mud toxicity. See Part II.A.1.d.(2)(b) of the permit. This formula defines the level of increase in drilling mud toxicity which is allowed due to the discharge of additives prior to their authorization. Conoco stated that the provision is "impracticable and without technical bases."

Response: The purpose of this provision is to provide flexibility for operators to discharge relatively nontoxic additives without special EPA authorization to discharge. If the drilling mud containing the additive(s) passes the criteria in Part II.B.1.d.(2) of the permit, the discharge will have complied with the permit conditions. An operator need not use these provisions if authorization to discharge additives is requested beforehand. Although this approach in essence establishes a toxicity limitation for the discharge of unauthorized additives, similar to AOGA's proposal for unauthorized muds and/or additives, the Region's criteria are far stricter. The Region determined that only minor increases in drilling mud toxicity resulting from unauthorized additives should be allowed prior to EPA's granting authorization. For additives which cause a substantial increase in toxicity, the Region has adopted a regional evaluation/authorization process. When conducting evaluations/authorizations prior to discharge, the Region has an opportunity to assess the adequacy of the toxicity test results (which are often incomplete and on occasion invalid), the necessity for additional information, the chemical nature of the product, and available information on long-term persistence of the constituents.

The basis for this screening criterion is discussed in detail in the administrative record for this permit and in the record for the Bering/Beaufort Seas general permits. The assumption behind Region 10's approach is that toxicities of drilling mud additives will behave in an additive fashion rather than a synergistic one. The limitations of this approach are carefully noted. Conoco did not note specific impracticalities or deficiencies in the technical basis. Their objection to the provision, which is based on the

assumption that toxicity is additive rather than synergistic, is unclear to Region 10 since Conoco also commented elsewhere in their comment letter that they agree that "toxicities of the various components in mud systems should be assumed for bioassay purposes to be somewhat less than additive and certainly not synergistic."

21. *Comment:* Industry commenters requested (1) "emergency" discharge provisions and (2) less stringent or no toxicity limitations. These comments are stated in greater detail below.

AOGA, a "trade association whose member companies account for the bulk of oil and gas exploration, production and transportation activities in Alaska" requested that the permit require "certification of no discharge of any unapproved mud or additive except in emergency situations." AOGA further requested that the permit state, "Where an unapproved mud and/or additive is used, an LC_{50} for the whole mud, in the range of 250 (plus or minus 100) ppm will be imposed, pending the approval of the mud and additive through the clearinghouse program. Failure to pass the LC_{50} limit will *prohibit the discharge* of such muds" (emphasis added).

Although Texaco recommended imposition of the same drilling mud toxicity limitation as AOGA, Texaco, however, stated that "data gathered from the use of muds and additives not yet approved should be used to enhance EPA's data base and should not be used for enforcement action." Conoco commented that a permittee could not absolutely guarantee that a drilling mud would continually meet a toxicity limitation.

Conoco requested that specific approval for use of mineral oil lubricants or spotting fluids with Generic Mud No. 1 be included in the permit.

Response: Region 10 notes that there is clearly a lack of consensus among industry commenters regarding whether the permit should contain toxicity limitations on the discharged mud and whether compliance with such limitations should be enforced. After carefully considering all comments, the course chosen by Region 10 is to authorize additives prior to discharge in lieu of imposing a toxicity limitation on the used, discharged drilling mud (see previous comment). End-of-well bioassays are required to verify the effectiveness of this approach in controlling drilling mud toxicity. These data will be considered in developing future effluent limitations. Detailed responses to these comments follow.

A. Use of Unauthorized Additives in "Emergency Situations." Region 10 believes that advance planning and bioassay testing of additives is achievable by industry and essential for the control of drilling mud toxicity. Bioassay testing of drilling mud additives discharged from offshore operations has been commonplace for a number of years (Jones and Hulse 1982). Furthermore, operations in these remote locations require contingency planning to deal with "emergency" situations so that necessary additives are on hand. The Region firmly believes that all materials, including those which will be made available when drilling problems are encountered, should be evaluated with respect to their toxicity prior to discharge. Thus, for products with a similar application, those resulting in unacceptable toxicities can be substituted with less toxic products in order to meet toxicity limitations. Although AOGA correctly notes that an emergency use provision was included in earlier permits, such a provision was not included in the BAT/BCT permits for the Bering and Beaufort Seas (49 FR 23734, June 7, 1984).

B. Maximum Allowable Toxicity of Discharged Muds Under BAT.

AOGA and Texaco base the request for a limitation of 250 ppm (whole mud) on two types of drilling muds, a modified potassium chloride ("KCl") mud and generic mud No. 8 with 5 and 10 percent by volume Mentor 28 (a mineral oil). AOGA states that the toxicity of these muds (in the range of 150 to 350 ppm) "represents available technology for present drilling practices * * * practices which necessitate high concentrations of KCl, biocides and mineral oil lubricity agents (to 10%) in some drilling muds."

First, AOGA (Attachments 2 and 3) uses two bioassay tests to argue that Region 10 should acknowledge that up to 10 percent mineral oil in drilling muds will increase the toxicity (decrease the LC_{50}) to approximately 250 ppm (whole mud; 2500 ppm or 0.25% of the suspended particulate phase). These results are not consistent with EPA's data. The bioassay test results have inadequacies which limit their general applicability to determining the effect of mineral oil lubricants on drilling mud toxicity. Further discussion, provided in the administrative record, points out the limitations of current data for developing specific conclusions regarding the effect of mineral oil lubricants on drilling mud toxicity. For these reasons, Region 10 strongly disagrees that the two bioassay tests on generic mud No. 8 with 5 and 10 percent Mentor 28 (AOGA's Attachment 2) should be used as a basis for a toxicity limitation. Region 10 has therefore chosen to limit the class of mineral oil additives as a separate, special case under the terms of the permit. While data on some mineral oil products indicate that their use will not cause the toxicity of Mud No. 1 to be exceeded, there are, in general, limited data on the toxic effects of mineral oils. The permit specifically allows these additives to cause a drilling mud to exceed the toxicity criterion if the least toxic available alternative is used through product substitution. Thus, mineral oil lubricants may be added to Generic Mud No. 1. This mineral oil provision grants operators flexibility through the regional additive authorization process to use mineral oils during the period in which further testing is being conducted.

Second, AOGA (Attachments 2 and 3) requests that the permits allow for the discharge of drilling muds such as Exxon's requested modified KCl mud with 80 lb/bbl KCl, a biocide, 10 percent mineral oil, and numerous other additives. Industry has not submitted adequate data on the technological requirement for this mud system. The numerous inadequacies and unanswered questions in the request to discharge this drilling mud are noted by Region 10 in the record. Region 10 also notes that sloughing shales and other drilling problems discussed in AOGA's Attachments 2 and 3 are not new to the industry. Nor is the drilling of offshore wells in Alaska. These wells to date have been drilled with generic muds and authorized additives. The modified KCl mud was originally requested for drilling a directional well from a stable platform in the Beaufort Sea. Wells in Norton Sound, drilled from jackup or other mobile rigs, are not expected to require directional drilling to the extent that operations in the Beaufort Sea do. Region 10 does not intend to impede advances in drilling technology; however, Region 10 notes that best available technology cannot simply be determined to include all "new" drilling formulations requested by industry. Adequate data and information must be provided.

The Region will continue to use the toxicity level of 3,000 ppm (whole mud equivalent; 30,000 ppm of the suspended particulate phase) as a criterion in addition to other factors (e.g., longterm persistence), as appropriate, in authorizing mud systems.

22. *Comment:* Industry representatives and AOGA made several detailed comments concerning the depth-related limitations on muds and cuttings discharge rates. A technical suppport document, the basis of these limitations, was criticized on two major points: (a)

The Offshore Operators committee (OOC) dilution model should have been used to model dilution in waters of all depths and (b) the standard 96-hour LC_{50} (acutely lethal toxicity level) used to calculate the minimum acceptable dilution at the edge of the mixing zone should have been adjusted for exposure time (said to be less than 1 hour for these discharges).

Response: The "Technical Support Document for Regulating Dilution and Deposition of Drilling Muds on the Outer Continental shelf" (Tetra Tech 1984) is the best analysis available to this agency of the relationship between water depth and dilution rates of discharged drilling muds. The OOC model was not found to reliably simulate the fate of discharges where the discharge plume encounters the bottom with substantial momentum. For this reason, an EPA model was used to simulate discharge dilutions in water depths less than 20 meters. A detailed response by Tetra Tech to this and other technical comments related to the dilution models used has been placed in the Administrative Record.

A 96-hour LC_{50} was used by Tetra Tech to establish maximum discharge rates acceptable in waters of various depths. EPA is required to determine that unreasonable degradation of the marine environment will not occur as a result of permitted discharges. This determination must consider sublethal effects as well as lethal toxicity. LC_{50}'s are defined as the concentration at which 50% of the test organisms will die within a given time of exposure. Standard tests to determine LC_{50}'s are usually done for 96 hours and the resulting 96-hour LC_{50}'s are typically used to evaluate the potential for a substance to cause lethal effects. Sublethal effects are expected to occur at lower concentrations than this.

EPA has determined that exceeding the 96-hour LC_{50} concentration at the edge of the mixing zone would cause unreasonable degradation. The determination of whether unacceptable adverse sublethal effects would result from exposures to concentrations up to the 96-hour LC_{50} level relies on judgment concerning the effects of varying lengths of exposure. Sublethal effects may occur due to short-term acute exposures; however, long-term chronic exposures are in general judged to be more severe. In the case of exploratory wells, discharge of muds and cuttings are sporadic, short-term events. Region 10 has determined that water column exposures will not result in unreasonable degradation of the environment if the 96-hour LC_{50} concentration is met at the edge of the mixing zone during worst case conditions.

23. *Comment:* NRDC recommended stricter discharge rate limitations for muds and cuttings, including no discharge in areas less than 10 meters deep, 500 barrels per hour in areas greater than 10 meters deep, and 10:1 predilution for the remaining areas.

Response: The limitations in the permit are based on the best information available at this time and have been determined by Region 10 to be adequate to protect against unreasonable degradation of the marine environment. See the response to Comment 22.

24. *Comment:* Conoco Inc. stated that the seasonal restrictions in the permit are not "germane." NRDC recommended that no discharge be allowed to shallow waters during unstable or broken ice conditions.

Response: Seasonal restrictions are necessary due to the effects of seasonal ice, generally present in Norton Sound from October into the following June. Current velocities, and therefore, dilution rates during ice conditions, are lower than during the open water season but poorly documented. EPA cannot adequately predict the fate or effects of muds and cuttings discharged to the water during unstable or broken ice conditions (see notice for draft permit, 50 *FR* 6385). Because the projected number and volume of such discharges is small, EPA believes that no irreparable harm would occur during initial exploratory operations. A monitoring program will allow EPA to evaluate the fate of muds and cuttings discharged under these conditions. Based on the results of this monitoring program, discharge limitations may be modified for future operations under similar conditions.

25. *Comment:* Environmental monitoring should be required only for areas of "biological concern."

Response: The permit does not require environmental monitoring for all drilling operations covered by the permit. Only operators who propose to drill and discharge to waters less than 20 meters deep under broken or unstable ice conditions will be potentially subject to this requirement. These are conditions under which EPA currently has insufficient information to be able to make a determination of "no unreasonable degradation" (see 40 CFR 125.123(c) and the discussion in "Supplementary Information"). The monitoring program shall be conducted at one facility initially, with monitoring of subsequent operations (if there are more meeting these conditions) required only in cases where special environmental concerns exist.

26. *Comment:* The inventory of chemicals added to cooling water and desalination systems is unnecessary data gathering.

Response: While Region 10 currently believes discharges from cooling water and desalination systems from exploratory operations to have little effect on the environment, it is important that EPA know the composition of what is being discharged to verify that determination for each permittee. Only substances other than water or seawater in these discharges need be reported.

27. *Comment:* NRDC recommends that the Static Sheen Test be required for discharges of deck drainage and bilge water at all times, rather than just during broken, unstable or stable ice conditions.

Response: Bilge water and contaminated deck drainage are minor discharges, which under this permit, must be passed through an oil-water separator prior to discharge. Region 10 is not aware of any violations of the visual or static sheen tests from these sources in the past, and therefore, believes that during open water conditions the visual sheen test provides satisfactory protection to the environment. During broken, unstable or stable ice conditions the Static Sheen Test is still required as potential sheens would not be visible on the "receiving water."

28. *Comment:* The hydrcarbon analyses required in Part II.B.1.i. of the draft permit are unnecessarily broad and should be deleted.

Response: Region 10 agrees that the hydrocarbon analyses according to Science Applications, Inc. (1984) are unnecessarily extensive for operations under this permit and has deleted this requirement from the final permit.

29. *Comment:* NRDC recommends that formation waters should not be a permitted discharge (especially in areas less than 10 meters deep).

Response: The discharge of formation waters is not permitted under this permit except for those limited volumes which may be present as a part of test fluid discharges. These fluids must be passed through an oil–water separator prior to discharge. The effluent is covered by oil content and pH limitations under this permit. For the exploratory drilling operations expected in Norton Sound, discharges of test fluids including formation water are likely to be small.

30. *Comment:* One commenter suggested that Part V.A. of the permit,

requiring screening for toxic pollutants if the discharge is altered, be deleted. This commenter explained that the provision is not needed because the permittee must certify that the facility will only use approved muds and additives, which do not contain toxic components.

Response: This section of the permit is required under 10 CFR 122.42(a) and applies to all existing manufacturing, commercial, mining, and silvicultural dischargers. EPA believes that this provision is a necessary part of the general permit. The intent of this provision is to ensure that a permittee notifies EPA if any toxic pollutant which is not specifically limited in the permit is or will be discharged at levels which exceed the threshold levels in Part V.A. If Region 10 is specifically notified of listed toxic pollutants contained in a drilling mud additive and if the Region lists such toxic pollutants in the authorization to discharge that additive, then the discharge of such toxic pollutants will be considered to be specifically limited by the permit through the additive authorization.

This provision is appropriate in the current permit because during the five-year term of the permit discharge situations might change. If the permittee knows, or has reason to believe, that such changes in discharge conditions will mean that discharges of toxic components in amounts greater than the notification threshold levels will result, then the permittee must notify EPA of that discharge. EPA will use such notification in deciding whether a new permit or a revision to the current permit is required.

31. *Comment:* U.S. Fish and Wildlife Service (U.S.F.W.S.) supports the need for environmental monitoring (Part II.B.3) and recommends that biochemical oxygen demand (BOD) be included in data to be collected.

Response: When the details of a monitoring program are developed, BOD and dissolved oxygen will be considered as parameters to be measured. U.S.F.W.S. will be consulted at that time.

32. *Comment:* The physical parameters to be measured in the proposed environmental monitoring program have already been measured in the Norton Sound Cost Well No. 2 Mud Dispersion Study.

Response: While the study mentioned was conducted in Norton Sound waters less than 20 meters deep, it was not done under the conditions of interest for the required monitoring in this permit. Not only was there no broken or unstable ice during the test, but the surface current velocity was approximately 77 cm/sec.

33. *Comment:* Monitoring required under section 308 of the Act should be discontinued after one year.

Response: The permit provides for EPA to review the need for monitoring periodically to determine if any requirements are not longer necessary. We cannot, however, determine the adequacy of the data before they are collected and evaluated.

34. *Comment:* Conoco Inc. commented that the comment period of 30 calendar days was too short for such a complex permit.

Response: This permit is the same in most respects to the Bering/Beaufort Seas general permits, which were the first two general permits to incorporate BAT/BCT effluent limitations for the offshore oil and gas industry. Those permits have been challenged by industry, and Conoco is a party to the suit (*API et al.* v. *EPA* in the U.S. Fifth Circuit Court of Appeals). Conoco is therefore familiar with the majority of the issues raised in the Norton Sound permit. Exxon requested issuance of the permit in time for an exploratory well planned for the end of May. Region 10 therefore decided not to extend the comment period.

35. *Comment:* The pH limitation on test fluids is unnecessary.

Response: The great majority of exploratory well test fluids are expected to be within the pH range of 6.5 to 8.5. However, about 50 barrels per test may have a pH of 2 and 100 barrels may have a pH of 2 to 5 (Holliday 1984). Although seawater is fairly well buffered, discharges of these low pH fluids would have immediate, potentially lethal effects in the vicinity of the discharge before dilution and buffering would be able to neutralize the acid.

Since pH is a conventional pollutant, it is controlled under section 402 of the Act. The permit limitation is equal to a BPT level of treatment and is routinely achieved under previous BPT and BAT/BCT general permits for exploratory operations.

36. *Comment:* The permit should contain a volume to mass conversion for drilling mud and drill cutting discharges.

Response: A conversion factor from volume to mass (dry weight basis) would depend on the water content and density of the solids included. These characteristics vary considerably. Conversion factors therefore, would need to be calculated on a case-by-case basis.

37. *Comment:* The administrative record for the Bering/Beaufort general permits should be added in its entirety to the administrative record for this permit.

Response: Those documents which are relevant and were a significant part of our deliberations in developing this permit have been added to the administrative record for the Norton Sound general NPDES permit.

38. *Comment:* The definition of diesel oil should be changed to "ASTM Standard D975 Grade 2–D."

Response: For purposes of this permit, "diesel oil" refers to the fuel oil present on the drilling rig during drilling at the permitted location.

39. *Comment:* Commenters stated that the reduction in oleates in mixed alcohols from 6 to 2 pounds per barrel in Table 2 was unjustified.

Response: In response to comments Region 10 reevaluated all available data on drilling mud additives authorized for discharge under the Region's offshore exploratory drilling permits. Numerous new additives are listed in Table 2 of the permit. The maximum concentration of oleates in mixed alcohols was however reduced. The bioassay report on this additive, tested at a maximum concentration of 3 pounds per barrel, shows an LC_{50} level close to that of the most toxic generic mud. Furthermore, the test was not conducting according to the Standard Drilling Fluids Toxicity Test. Pending additional bioassay testing, Region 10 determined that general authorization should only be given at the lower concentration previously authorized in Table 2 (2 pounds per barrel). This amount is generally adequate for one of its common uses, as a carrier for powdered, poorly soluble polymers (e.g., Drispac) added to drilling muds.

40. *Comment:* NRDC recommended that the oil content of cuttings discharged be limited to 5% by weight.

Response: EPA, Region 10, does not have sufficient information at this time on cuttings washer performance and economics to justify reducing the allowable level of oil in cuttings based on this technology. The use of cutting washers will routinely be necessary only for operations which use oil-based drilling muds. Very few, if any operations in Norton Sound are likely to use oil-based drilling muds, based on past exploratory drilling practices in Region 10.

Region 10 evaluated whether a stricter effluent limitation should be imposed under section 403(c). The potential environmental effects of the discharge of oil contaminated-cuttings had not in fact been adequately assessed previous by in the ODCE for Norton Sound. The Region has evaluated this issue since proposal of the draft permit and has determined that there is insufficient

information to make a finding that there will be no unreasonable degradation from the discharge of oil-contaminated drill cuttings in Norton Sound. Limited numbers, if any, of exploratory operations are expected to use oil-based muds and discharge the cuttings, however. Information available to Region 10 does not support a finding that there are reasonable alternatives to discharge. Further, the Region has determined that the discharge of such cuttings is not likely to cause irreparable harm during the period in which monitoring is undertaken. A monitoring requirement has therefore been imposed under 40 CFR 125.123(c).

Although this specific monitoring activity was not proposed in the draft permit, the scope of the monitoring does not differ significantly from that proposed for discharges under ice. Monitoring will be limited to a survey of the extent and persistence of such discharges, rather than the biological effects (which are more costly to measure).

41. *Additional Comments:* Region 10's responses to the following comments are the same as provided earlier in response to comments on the draft general permits for the Bering and Beaufort Seas. For this reason, only the comments are provided below and the reader is referred to 49 *FR* 23734, June 7, 1984, for the Region's responses.

Comment: Concern was expressed that Region 10 has adopted BAT/BCT permit limits in advance of the promulgation of national effluent limitations guidelines. Permit limits should be set at the BPT level with the provision to reopen the general permit following promulgation of national guidelines.

Comment: Conoco Inc. questioned the need for the limit of "a maximum of five wells at a single site."

Comment: NRDC strongly recommended that the monitoring program of Part II.B.3. be subject to public review before being finalized.

Comment: The general permit should cover the entire planning area. If there are areas of special concern within this area, they can be dealt with when an expected discharger submits a request to be covered under the general permit.

Comment: The general permit should cover all blocks offered for lease rather than all blocks leased. A mechanism is also needed to extend the permit to include future lease sale areas in this permit.

A list of references cited herein is available from Region 10 on request. All referenced documents, and other materials which provide the basis for this permit decision, are contained in the administrative record.

General NPDES Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

[Permit No. AKG287000 (Norton Sound)]

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Oil and Gas Exploration Facilities on the Outer Continental Shelf

In compliance with the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.: the "Act"), the following discharges are authorized:

Drilling Mud—(Discharge 001),
Drill Cuttings and Washwater—(Discharge 002),
Deck Drainage—(Discharge 003),
Sanitary Wastes—(Discharge 004),
Domestic Wastes—(Discharge 005),
Desalination Unit Wastes—(Discharge 006),
Blowout Preventer Fluid—(Discharge 007),
Boiler Blowdown—(Discharge 008),
Fire Control System Test Water—(Discharge 009),
Non-Contact Cooling Water—(Discharge 010),
Uncontaminated Ballast Water—(Discharge 011),
Uncontaminated Bilge Water—(Discharge 012),
Excess Cement Slurry—(Discharge 013),
Mud, Cuttings, Cement at Seafloor—(Discharge 014), and
Test Fluids—(Discharge 015),

from oil and gas exploratory facilities in offshore areas (defined in 40 CFR Part 435, Subpart A), to receiving waters named the Norton Sound, in accordance with effluent limitaitons, monitoring and reporitng requirements, and other conditions set forth in Parts I, II, III, IV, and V hereof.

Permittees who do not request and receive coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the permittee by EPA, Region 10.

The authorized discharge sites include all blocks offered for lease from the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sale 57 (Norton Sound).

This permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that this information would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation shall be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment.

Under 40 CFR 122.44(c)(3), if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on June 4, 1985.

This permit and the authorization to discharge shall expire at midnight on May 29, 1990.

Signed this May 22, 1985, day of May 1985.

Ernesta B. Barnes,

Regional Administrator, EPA Region 10.

Part I. Notification Requirements

A. Requests to be Covered by General Permit

Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. The 60-day notification requirement may be waived for those permittees who notify EPA during the public comment period on the draft permit. The request shall include the following information:

1. Name and address of the permittee.
2. General location (lease and block numbers) of operations and discharges.
3. Any discharge or operating conditions which will require monitoring (Part II.B.3.) or will require special consideration by EPA.
4. Certification that only authorized muds and additives will be discharged (Part II.B.1.c.).
5. Certification of lessee's responsibility. The permittee shall be the owner and/or operator of the facility. However, the lessee may become the permittee after certifying that the lessee assumes responsibility for compliance with the permit. If the lessee has multiple leases, the lessee may submit a single certification for all of its leases. Submission of this certification does not remove the responsibility of the owner or operator for compliance with the conditions of the permit.

B. Authorization to Discharge.

The permittee's discharges are not authorized until written notification is received from EPA that operations at the discharge site have been assigned a permit number under this general permit. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage, if possible, but in no case less than 30 days prior to commencement of discharges.

1. Location of discharge site, including lease block number and approximate coordinates.
2. Range of water depths in lease block.
3. Initial date and expected duration of operations.
4. Request for authorization to discharge muds or additivies not listed in Tables 1 and 2 (Parts II.B.1.e. and f.).

C. Commencement of Disharges

The permittee shall notify EPA Region 10 during the 7 day period prior to initiation of discharges from a new or existing facility at an authorized discharge site. The notification shall include the exact coordinates and water depth at the discharge site, and may be oral or in writing. If notification is given orally,

written confirmation must follow within 7 days.

D. 3Sites Requiring Environemental Surveys

All operators that locate within the areas covered by this general permit shall submit to EPA copies of any exploration plans, biological surveys, and/or environmental reports required by the Regional Supervisor, Field Operations (RSFO) of the Minerals Management Service for the identification and/or protection of biological populations or habitats. If the final exploration plans and environmental reports are identical to review copies received by Region 10, permittees need not submit them under this permit provision. Permittees shall notify Region 10 in writing when no exploration plan or environmental report will be sent.

E. Termination of Discharges

The permittee shall notify EPA within 30 days following cessation of discharges at the discharge site.

F. Submissions of Requests to be Covered and Other Reports

Reports and notifications required herein shall be submitted to the folowing addresses:

All requests for coverage and additive authorization—

Director, Water Division, U.S. Environmental Protection Agency, Region 10, Attn: Water Permits and Compliance Branch, M/S 430, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442–8293

All monitoring reports and notifications of non-compliance—

Director, Water Division, U.S. Environmental Protection Agency, Region 10, Attn: Water Permits and Compliance Branch, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442–1213

G. Coverage Under Individual Permits.

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s) is (are) a significant contributor of pollution.

b. The permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. Effluent limitation guidelines are promulgated for point sources covered by this permit.

e. A Water Quality Management Plan containing requirements applicable to such point source is approved.

f. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations.

(2) Discharge the same types of wastes.

(3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring.

g. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of the general permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II. Effluent Limitations and Monitoring Requirements

A. Definitions

1. "AAS" means atomic absorption spectrophotometry.

2. "Authorized additive" means any drilling mud additive listed in Table 2 or authorized for discharge under Parts II.B.1.d., e. or f.

3. "Ballast water" means seawater added or removed to maintain the proper ballast floater level and ship draft.

4. "bbl/hr" means barrels (one barrel equals 42 gallons) per hour.

5. "Bilge water" means water which collects in the lower internal parts of the drilling vessel hull.

6. "Biocide" means any chemical agent used for controlling the growth of nuisance organisms; examples are fungicides, algicides, and bactericides.

7. "Blowout preventer fluid" means fluid used to actuate hydraulic equipment on the blowout preventer.

8. "Boiler blowdown" means the discharge of water and contained substances drained from boiler drums.

9. "Bulk discharge" means the discharge of more than 100 barrels in a one hour period.

10. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility (see Part IV.G.).

11. "Cd" means cadium.

12. "Cooling water" means once-through non-contact cooling water.

13. "Cuttings"—see "Drill cuttings."

14. "Deck drainage" means all waste resulting from platform washings, deck washings, spillings, rainwater, and runoff from curbs, gutters, and drains including drip pans and wash areas.

15. "Desalination unit wastes" means wastewater associated with the process of creating freshwater from seawater.

16. "Diesel oil" means the class of distillate fuel oil, typically used in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of any particular operation under this permit, "diesel oil" shall refer to the fuel oil present on the drilling rig.

17. "Domestic wastes" means wastes from showers, sinks, galleys, and laundries.

18. "Drill cuttings" means particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

19. "Excess cement slurry" means the excess cement and wastes from equipment washdown after a cementing operation.

20. "Exploratory" operations are limited to those operations involving drilling to determine the nature of potential hydrocarbon reserves and does not include drilling of wells once a hydrocarbon reserve has been defined.

21. "Fire control system test water" means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

22. "GC" means gas chromatography.

23. "Generic drilling muds" or "generic muds" means the eight primary mud types which have been evaluated and authorized by EPA. These mud types have been authorized for discharge with limitations on composition given in Table 1. A list of authorized specialty additives is given in Table 2. Any type of mud (excluding Mud No. 1) listed in Table 1 which contains one or more components or additives not listed in Table 2, shall also be considered a generic mud if the standard drilling fluids toxicity test for the drilling mud with the additive demonstrates that there has not been a substantial decrease in the LC_{50} value of the listed generic mud. See Part II.B.1.

24. A "grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

25. "Hg" means mercury.

26. "lb/bbl" means pounds per barrel.

27. "Maximum" as applied to effluent limitations and standards for produced water and drilling fluids means the maximum concentration allowed as measured in any single sample of the discharged waste stream.

28. "MGD" means million gallons per day.

29. "mg/kg" means milligrams per kilogram.

30. "Mineral oils" means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

31. "mg/l" means milligrams per liter.

32. "Monitoring month" shall mean the period consisting of the calendar weeks which end in a given calendar month.

33. "Monthly average" for discharges means the average flow rate per hour or day during the period of each calendar month.

34. "Monthly maximum" for flow rate means the peak flow rate which occurs during the period of each calendar month.

35. "Monthly maximum" for oil and grease concentration means the maximum value obtained for samples taken during the period of each calendar month.

36. "Muds, cuttings, cement at sea floor" means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

37. "NAA" means neutron activation analysis.

38. "No discharge of free oil" means that waste streams that would cause a film or sheen upon or a discoloration of the surface of the receiving water or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines may not be discharged.

39. "No discharge of diesel oil" in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

40. "Production" operations are those operations involving active recovery of hydrocarbons from producing formations.

41. "Sanitary wastes" means human body waste discharged from toilets and urinals.

42. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

43. "Spent drilling fluid system discharge" means the bulk discharge of an entire drilling fluid system prior to a complete changeover to another drilling fluid system, or at the completion of the drilling of a well.

44. "Stable ice" means ice that is stable enough to support discharged muds and cuttings.

45. "Standard Drilling Fluids Toxicity Test" means a bioassay conducted and reported in accordance with the following standard bioassay methodology: "Proposed Methodology: Drilling Fluids Toxicity Test for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983) or other methods approved in advance by EPA Region 10.

46. "Static Sheen Test" means those procedures which are described in the draft "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry," prepared by Technical Resources, Inc., April 10, 1983, and EPA Region 10's "interim Guidance for the Static (Laboratory) Sheen Test," January 10, 1984.

47. "Test fluid" means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water from the formation.

48. "Unstable or broken ice conditions" means greater than 25% ice coverage within a one (1) mile radius of the discharge site after spring breakup or after the start of slush ice formation in the fall.

49. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (see Part IV.H.).

50. "Water depth" means the depth of the water between the surface and the seafloor as measured at mean lower low water.

51. "XFA" means x-ray fluorescence analysis.

52. "96-HR LC50" means the concentration of a test material that is lethal to 50 percent of the test organisms in a bioasay after 96 hours of constant exposure.

B. *Drilling Muds and Cuttings and Washwater Discharges Discharges 001 and 002).*

1. *General Requirements.* Such discharge's shall be limited and monitored by the permittee in accordance with Parts II.B.2., II.B.3., II.F., III., and the following requirements. The requirements apply to each of the discharges except where otherwise noted.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported value(s)
Drilling mud constituents.	Generic muds and authorized additives only.	[1]	[1]	[1]
Max. flow rate [2] 5–20 m depth >20–40 m depth.	500 bbl/hr, 750 bbl/hr	Continuous during discharge	Estimate	Monthly maximum (bbl/hr).
Total volume (bbl)	[3]	Daily	do	Monthly total
Free oil	No free oil	Daily, and before bulk discharges.	Grab/Static Sheen Test	Number of days [illegible]
Oil content of cuttings	10 percent by weight	[4]	Grab [5]	Results of each analysis.
Diesel oil content	No discharge of diesel oil.	[6]	Grab/GC	Presence or absence.
Hg and Cd content of barite.	1 mg/kg Hg, 3 mg/kg Cd, dry wt.	Once per well	AAS	Concentrations (mg/kg dry wt)
Drilling mud metals		do	See Part II.B.1.i	Concentrations (mg/kg dry wt).
Toxicty of mud		do	See Part II.B.1.j	96–hr LC50.

[1] See Parts II.B.1.d., e., f., g. and i.
[2] Maximum flow rate of total muds and cuttings into waters of given depths and under open water conditions (See Part II.B.2 for additional seasonal limitations).
[3] Exploratory drilling is limited to no more than five wells at a single drilling site. If a step-out (kick-off) well is drilled from a previously drilled well hole, the step-out (kick-off) well is counted as a new well.
[4] Analysis is required: (a) Weekly during weeks when oil-based drilling fluids are used, and (b) immediately on any sample that has violated the Static Sheen Test.
[5] Analysis for oil and grease by soxhlet extraction (40 CFR 136) or for oil by retort distillation (American Petroleum Institute, Recommended Practice 13B, 1980).
[6] Analysis is required: (a) On a sample collected from the end-of-well drilling mud system used at the greatest well depth, and (b) whenever the Static Sheen Test is violated and a discharge has occurred.

a. *Prohibition on the discharge of all oil-based muds or diesel oil and associated cuttings.*—The discharge of oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase) is prohibted. The discharge of water-based drilling muds which have contained diesel oil or of cuttings associated with any muds which have contained diesel is also prohibited. Compliance with the limitation on diesel oil shall be demonstrated by analysis of drilling mud collected from the end-of-well mud system. In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method of GC analysis shall be that described in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" (CENTEC, 1985) available from EPA, Region 10. Gas chromotography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud "fingerprint" is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with the analyses required in Part II.B.1.i. The results and raw data, including the spectra from the GC analysis shall be provided to the Director by written report (a) within 30 days of a positive result with the Static Sheen Test, or (b) for the end-of-well analysis, with the monthly Discharge Monitoring Report.

b. *No discharge of free oil.*—There shall be no discharge of free oil as a result of the discharge of drill cuttings and/or drilling muds. The permittee shall perform the Static (laboratory) Sheen Test on separate samples of drilling muds and cuttings on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983) and EPA Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test." The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the Static Sheen Test and a discharge has occurred, the permittee is required to immediately collect an undiluted sample of the material which failed the test. The permittee shall analyze this sample by gas chromatography (GC) to determine the presence or absence of diesel oil. The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report within 30 days of a positive result with the Static Sheen Test.

c. *Certification of discharge of authorized muds and additives.*—The permittee is required to certify at the time coverage is requested under the general permit that only

generic muds and authorized additives (Part II.B.1.d.) or muds and additives authorized in accordance with Parts II.B.1.e. and f. will be discharged.

d. *Generic drilling muds and authorized additives.*—1) Only generic drilling muds and authorized additives shall be discharged. The eight generic mud types which have been authorized for discharge are given in Table 1, with specified limitations on composition. A list of additional authorized mud components (specialty additives) are given in Table 2. This table may be revised during the term of this permit based on new information. Unless otherwise stated, the latest version of this table, published in the Federal Register as part of a Region 10 general NPDES permit for coastal or offshore oil and gas drilling, shall be the version applicable to discharges under this permit after the date of publication.

(2) Any type of mud listed in Table 1 which contains one or more components or additives NOT listed in Tables 1 and 2 shall also be considered a generic mud IF the permittee provides the results of the Standard Drilling Fluids Toxicity Test, or other procedures approved in advance by EPA Region 10, which demonstrate that it passes the screening criteria listed below.

(a) For Generic Mud No. 1 (Table 1) there shall be no decrease in the LC_{50} (increase in toxicity) under this provision.

(b) For Generic Muds Nos. 2 through 8 (Table 1) the addition of additives or other components shall not cause an increase in toxicity greater than seven (7) as calculated below. The increase in toxicity is defined as the difference between the inverses of the LC_{50} values multiplied by 10^6, i.e. by the following formula:

$$\text{Increase in toxicity} = (1/LC_{ma} - 1/LC_m)\ 10^6$$

Where LC_m equals the LC_{50} (ppm volume to volume) of the listed generic mud (as determined either by EPA or the permittee) and LC_{ma} equals the measured LC_{50} of that mud with the added components or additives. These LC_{50} values refer to the undiluted mud; LC_{50} values obtained from the suspended particulate phase must be corrected for dilution.

This equation allows a 10% decrease in the LC_{50} of the second most toxic generic mud and a correspondingly greater percentage decrease for those muds which are less toxic. However, the same absolute increase in toxicity applies to all generic muds except Mud No. 1 (see (a) above).

(c) Biocides may only be discharged if prior authorization is obtained under Part II.B.1.e.

The discharge of generic muds does not require prior approval, but is sugject to the following reporting requirements, if the generic mud is not listed in Table 1 or has not previously been approved. Prior to discharge or no later than 60 days after the discharge, the permittee shall submit a report containing the following information: A list and description of all drilling mud constituents (including chemical composition), concentration of each constituent (lbs/bbl and % by volume), the estimated total volume of discharge, and bioassay test results conducted in accordance with the standard drilling fluids toxicity test (or other procedures approved in advance by EPA, Region 10). Additional information may be required at the discretion of Region 10.

e. *Authorization to discharge drilling muds and additives not listed in Tables 1 and 2.*—The discharge of drilling muds containing any additive (or component) not allowed under Part II.B.1.d. shall require authorization by Region 10 *prior* to discharge.

The permittee shall submit the information outlined below with the request for coverage (Part I.B.). In the authorization process Region 10 will evaluate whether the use of the requested additives or components will unacceptably increase the toxicity of the drilling mud. The permittee shall supply the following information to Region 10:

(1) Approximate date and duration of proposed discharge.

(2) Bioassay testing and reporting of results in accordance with the Standard Drilling Fluids Toxicity Test or other procedures approved in advance by Region 10; additives may be tested with this methodology in a standard reference mud, a generic mud, or in the proposed drilling mud system. The bioassay report shall specify the concentration of each constituent in the tested drilling fluid.

(3) Chemical characterization of the additive: estimate of total amount required for any particular well, requested application rate (lb/bbl and % by volume) in the drilling mud, total volume of the drilling mud in which the additive will be dispersed. For the particular well under consideration, a description of drilling mud type and list of other additives, inlcuding concentrations (lb/bbl and % by volume) likely to be present in the drilling mud.

Additives may be authorized on an interim basis, at the discretion of EPA, Region 10, if preliminary bioassay data and other information are submitted and if the Water Division Director determines that additional information is required. The requested additional information may include bioassay data on a used drilling mud sample containing the requested additive. Interim authorization of some mineral oil spotting agents may include a requirement that a pill containing the mineral oil spot be removed prior to discharge of the mud system. This information shall be submitted by the date specified in the letter granting interim authorization.

f. *Authorization to discharge mineral oil lubricity or spotting agents.*—Mineral oil lubricity or spotting agents will be authorized as additives in discharged drilling muds (subject to other limitations; e.g., on free oil) in accordance with Part II.B.1.e., above, if (1) the Standard Drilling Fluids Toxicity Test demonstrates that the selected mineral oil would not cause the drilling mud to be more toxic than the most toxic generic mud, or (2) the permittee adequately demonstrates that the use of mineral oils which meet this limitation is not possible and that the requested mineral oil is the least toxic available.

g. *Mercury and cadmium content of barite.*—The permittee shall not discharge a drilling mud to which barite was added if such barite contained mercury in excess of 1 mg/kg or cadmium in excess of 3 mg/kg (dry weight basis). The permittee shall analyze a representative sample to stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the Dischrge Monitoring Report upon well completion. Analyses for total concentrations shall be conducted by AAS and results expressed as mg/kg (dry weight) of barite.

If the permittee is unable to comply with this provision due to the lack of availability of barite which meets the above limitations, the Water Division Director may on a case by case basis allow the discharge of barite which exceeds these limitations. Prior to discharge the permittee shall demonstrate to the satisfaction of the Water Division Director that barite which meets the limitations is unavailable and shall provide the results of analyses of the substitute barite.

h. *End-of-well chemical inventory.*—For each mud system discharged the permittee shall maintain a precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. The inventory shall include the following for *each* mud type: (1) The total pounds or barrels, as appropriate, of each constituent added, (2) the total volume of mud in the whole system, (3) the volume of mud discharged, and (4) the maximum concentration of each constituent in the discharged mud. Furthermore, the mud system shall be identified as to its generic mud type from the list in Table 1 if that is the basis of its authorization. The inventory shall be submitted within 45 days following well completion.

i. *End-of-well chemical analysis.*—The permittee shall analyze one drilling mud sample from the end-of-well mud system after the mud is used at its greatest well depth, and prior to any predilution. The drilling mud sample shall be of sufficient size to allow for both chemical and bioassay testing as described here and in Part II.B.1.j. below.

The chemical analysis of the drilling mud shall include the following metals: barium, cadmuim, chromium, mercury, zinc, and lead. The results shall be reported in "mg/kg of whole mud (dry weight)" and the moisture content (% by weight) of the original drilling mud sample shall be reported. The total concentration shall be reported for each metal and shall be obtained by the methods given in 40 CFR 136 with the exception of total barium. NAA or XFA shall be used for total barium. Flame of flameless AAS shall be used for mercury, cadmium, zinc and lead. Either NAA or AAS may be used for chromium.

The results of the chemical analyses shall be submitted with the end-of-well chemical inventory (Part II.B.1.h.) and shall identify the corresponding mud system from the end-of-well inventory. This requirement may be discontinued if EPA determines at some point that additional data collection is unnecessary.

j. *Bioassay test.*—The permittee shall complete one bioassay test per well. The sample shall be a representative subsample of that collected for chemical analysis in Part II.B.1i. above. The testing and reporting of results shall be in accordance with the Standard Drilling Fluids Toxicity Test or other procedures approved in advance by

Region 10. The results of the bioassay testing shall be reported in association with the end-of-well chemical inventory (Part II.B.1.h) and analyses (Part II.B.1.i) for the end-of-well mud system and shall be submitted with the monthly Discharge Monitoring Report (DMR).

The bioassay requirement will be re-evaluated every two years. If EPA determines that sufficient information has been gathered, the requirement may be discontinued.

2. *Seasonal and Depth-Related Requirements.* a. During unstable or broken ice conditions, the following conditions apply:

(1) Drilling effluents shall be placed on-ice using routine methods or nonroutine methods of discharge whenever practicable.

(2) Discharge to the water column is prohibited, unless it is not practicable to: (i) Store drilling effluents onsite for subsequent discharge on stable ice or during open water, (ii) dispose of the drilling effluents on and, (iii) create an on-ice disposal site by pumping and artificial thickening of the sea ice, and/or (iv) handle the drilling effluent in another manner that prevents below-ice discharge.

(3) If it is not practicable to meet the conditions in (2) above, discharge may be allowed under the following conditions in addition to those in Part II.B.1.

(a) Permittee notifies EPA that discharge will occur. Notification, in writing, shall be received by the Director at least thirty (30) days prior to the discharge. The notification will include:

(i) A comprehensive evaluation of disposal alternatives for drilling muds and cuttings.

(ii) A demonstration that where discharges are to areas shallower than 10 m, these areas are not overwintering areas for significant fish or shellfish populations.

The Director may prohibit discharges if an acceptable alternatives analysis has not been completed, or if a clear demonstration can not be made that significant overwintering fish or shellfish populations are absent from the discharge area. Discharge is not authorized until the permittee receives notification from the Director.

(b) The discharge shall be released no deeper than 2 meters below the surffice of the receiving water.

(c) Environmental monitoring is required as specified in part II.B.3.

b. During stable ice conditions the following conditions apply:

(1) Discharges shall be to above-ice locations and shall avoid areas of sea ice cracking or major stress fracturing.

(2) Flow rate restrictions do not apply.

3. *Environmental Monitoring Requirements.* a. A monitoring program shall be conducted by the permittee to determine the transport, fate, and, possibly, the biological effects of drilling muds and cuttings discharged during broken or unstable ice conditions. The monitoring program will apply to waters less than 20 m deep and will be designed by EPA in consultation with the Alaska Department of Environmental Conservation (ADEC) and the permittee. The program shall be conducted at one facility initially, with monitoring of subsequent operations required in cases where special environmental concerns exist (e.g., discharges which will occur in a net depositional area or an area with a vulnerable biological community).

Where a monitoring program is required, monitoring data shall be obtained at the following times:

(1) For baseline conditions, at least 30 days before drilling operations commence;

(2) During well drilling operations and discharges (either single or multiple well operations);

(3) For a period of one year after drilling discharges cease; and

(4) Up to twice per year therafter until such time as no statistically significant differences in sediment concentrations between pre- and post-discharges are measurable, as determined by EPA, Region 10. This requirement shall continue for a maximum of 5 years.

The data shall include but not be limited to, the following:

(1) Wave heights and depth profiles of current speeds and directions;

(2) Temperature, salinity, and density profiles;

(3) Sediment water content (percent by weight), particle size distribution, and concentrations of heavy metals and hydrocarbons;

(4) Visual (including photographic) observations.

(b) A monitoring program shall be conducted to determine the fate, composition, and persistence of oil-contaminated cuttings, if cuttings from oil-based drilling muds are discharged. This monitoring requirement may be waived on a case-by-case basis at the discretion of EPA, Region 10, if a significant portion of the well is not drilled with oil-based muds, thereby resulting in only a minor discharged volume of oil-contaminated cuttings. It may also be waived if sufficient information is gathered to detemine that such discharges from subsequent wells will not cause unreasonable degradation of the marine environment.

The details of the program will be designed by EPA in consultation with ADEC and the permittee, based on the circumstances of the proposed discharge. The parameters, to be measured at the time of discharge and periodically thereafter, shall include but not be limited to the following:

(1) The distribution of the contaminated cuttings, including the area covered and the depths of the deposits;

(2) The BOD and oil content of the cuttings; and

(3) The toxicity of the cuttings.

C. Deck Drainage, Sanitary Wastes, and Domestic Wastes (Discharges 003–005).

These discharges shall be limited and monitored by the permittee in accordance with Parts II.F., III. and the following requirements.

Outfall/effluent characteristic	Discharge limitation	Monitoring Requirements		
		[illegible] frequency	Sample type/method	Reported value(s)
All discharges (003–005) flow rate.		Monthly	Estimate	Monthly average.
Deck drainage (003) [1] free oil.	No visible sheen	Daily, during discharge	Visual/sheen on receiving water [2].	Number of days [illegible] observed.
Sanitary Wastes (004) [3]				
Solids	No floating solids	Daily	Observation [4]	Number of days [illegible] observed.
Residual chlorine [5]	As close as possible to, but no less than, 1.0 mg/l.	Monthly	Grab [6]	Concentration (mg/l)

[1] Area drains for either washdown water or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. The contaminated deck drainage shall be processed through an oil-water separator prior to discharge.

[2] If discharge occurs during broken, unstable, or stable ice conditions, the sample type/method shall be "Grab/Static Sheen Test."

[3] Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under § 312 of the Act shall be deemed to be in compliance with the limitations for this outfall until such time as the device is replaced or is found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operation and test results maintained at the facility. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

[4] Monitoring, by visual observation of the surface of the receiving water in the vicinity of the outfall(s), shall be done during daylight at a time of maximum estimated discharge.

[5] This limitation applies only to facilities continously manned by ten or more persons.

[6] Residual chlorine may be monitored according to test procedures approved under 40 CFR 136 or using a Hach Test Kit capable of measuring free chlorine in the range 0–3.5 mg/l with a sensitivity of 0.1 mg/l or better.

D. Miscellaneous Discharges (Discharges 006–014).

1. *General Requirements.* The following limitations and monitoring requirements in addition to those in Parts II.F. and III. apply to these discharges.

Outfall/effluent characteristic	Monitoring Requirements			
	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
All discharges (006–014):				
Flow rate (MGD)		Monthly	Estimate	Monthly average
Free oil	No free oil	Once/discharge or once/day as appropriate.	Visual/sheen on receiving water.	Number of days sheen observed.

a. Bilge water (012) shall be processed through an oil-water separator prior to discharge. If discharge of bilge water occurs during broken, unstable, or stable ice conditions, the sample type/method used to determine compliance with the no free oil limitation shall be "Grab/Static Sheen Test."

b. The permittee shall maintain an inventory of the quantities and rates of chemicals (other than water or seawater) added to cooling water (010) and desalination (006) systems. The inventory shall be submitted with the monthly Discharge Monitoring Report.

E. *Test Fluids (Discharge 015).*

1. *General Requirements.* This discharge shall be limited and monitored by the permittee in accordance with Parts II.F., III. and the following requirements. Test fluids must be processed through an oil-water separator prior to discharge. Samples when required shall be collected from the effluent of the oil-water separator.

Outfall effluent characteristic	Monitoring requirements			
	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
Volume (bbl)		Once/discharge	Estimate	Total volume/test.[1]
Free oil	No free oil	Once/discharge	Visual/sheen on receiving water.	Number of times sheen observed
Oil and grease (mg/l)	72 mg/l daily max., 48 mg/l monthly avg.	Once/discharge	Grab	Monthly maximum and average.
pH	6.5–8.5 [2]	Once/discharge	Grab	pH.

[1] Volume will be reported as the number of barrels of fluids sent downhole during testing and the number of barrels discharged. The chemical composition of the fluids sent downhole will also be reported.
[2] Any spent acidic test fluids shall be neutralized before discharge such that the pH at the point of discharge shall not be less than 6.5 or greater than 8.5.

a. The discharge of oil-based test fluids is prohibited. All other test fluids shall be processed through an oil-water separator.

F. *Other Discharge Limitations.*

1. *Floating Solids, Visible Foam, or Oily Wastes.* There shall be no discharge of floating solids or visible foam in other than trace amounts, nor of oily wastes which produce a sheen on the surface of the receiving water.

2. *Applicable Marine Water Quality Criteria.* There shall be no discharge of any constituent in concentrations which exceed applicable marine water quality criteria after allowance for initial mixing. Initial mixing in federal waters is defined at 30 CFR 227.29 and federal marine water quality criteria at 45 FR 79318, 23 November 1980.

3. *Highly Toxic Compounds and Materials.* There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

4. *Surfactants, Dispersants, and Detergents.* The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service.

Part III. Monitoring, Recording and Reporting Requirements

A. *Representative Sampling.* Samples taken in compliance with the monitoring requirements established under Part II shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. *Monitoring Procedures.* See 40 CFR 122.41(j)(4).

C. *Penalties for Tampering.* See 40 CFR 122.41(j)(5).

D. *Reporting of Monitoring Results.* The permittee shall be responsible for submitting monitoring results.

1. The effluent monitoring requirements in this permit shall take effect upon commencement of discharge. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1). The reports shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in the accordance with the requirements of *Part V.H. Signatory Requirements,* and submitted to EPA at the address specified in Part I.F.

2. The permittee shall include on each DMR a listing which days had (1) unstable or broken ice and (2) stable ice around the discharge site during the month covered by that DMR.

3. If any discharge has more than one discharge point, all permit limitations apply to each discharge point. The discharge points shall be designated as 001A, 001B, 001C, etc. Flow limitations apply to the total discharge of each category of wastes; i.e., to the sum or 001A, 001B, 001C, etc., except where otherwise noted.

4. If any category of waste (outfall) is not applicable due to the type of operation or facility, no reporting is required for that particular outfall. Only DMRs representative of the activities occurring need to be submitted. Information indicating the type of operation should be provided with DMRs.

E. *Compliance Schedules.* See 40 CFR 122.41(l)(5).

F. *Additional Monitoring by the Permittee.* See 40 CFR 122.41(l)(4)(ii). Increased monitoring frequency shall also be indicated.

G. *Records Contents.* See 40 CFR 122.41(j)(3).

H. *Retention of Records.* See 40 CFR 122.41(j)(2). Data collected onsite, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained onsite during the duration of activity at the permitted location.

I. *Twenty-four Hour Notice of Noncompliance Reporting.*

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

a. Any noncompliance which may endanger health or the environment;

b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See *Part IV.G. Bypass of Treatment Facilities.*);

c. Any upset which exceeds any effluent limitation in the permit (See *Part IV.H. Upset Conditions.*);

d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit as requiring violations to be reported within 24 hours.

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. See 40 CFR 122.41(l)(6)(i).

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 442–1213.

4. Reports shall be submitted as specified in *Part III.D. Reporting of Monitoring Results.*

J. *Other Noncompliance Reporting.* Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part III.D. are submitted. The reports shall contain the information listed in Part III.I.2.

K. *Inspection and Entry.* See 40 CFR 122.41(i).

Part IV. Compliance Responsibilities

A. *Duty to Comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action, termination of coverage under the general permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

B. *Penalties for Violations of Permit Conditions.* See 40 CFR 122.41(a)(2), as revised by 50 *FR* 6940, February 19, 1985. Except as provided in permit conditions in *Part IV.G. Bypass of Treatment Facilities* and *Part IV.H. Upset Conditions,* nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. *Need to Halt or Reduce Activity not a Defense.* See 40 CFR 122.41(c).

D. *Duty to Mitigate.* See 40 CFR 122.41(d).

E. *Proper Operation and Maintenance.* See 40 CFR 122.41(3), as revised September 26, 1984, 49 *FR* 38049.

F. *Removed Substances.* Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

G. *Bypass of Treatment Facilities.* See 40 CFR 122.41(m), as revised by 49 *FR* 38046, September 26, 1984.

H. *Upset Conditions.* See 40 CFR 122.41(n), as revised by 49 *FR* 38046, September 26, 1984.

I. *Toxic Pollutants.* The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. *Samples of Wastes.* If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

Part V. General Requirements

A. *Changes in Discharge of Toxic Substances.* See 40 CFR 122.41(a)(1)(i), (ii), and (iv); 40 CFR 122.41(a)(2) (i), (ii), and (iv); as revised by 49 *FR* 38049, September 26, 1984.

B. *Planned Changes.* See 40 CFR 122.41(l)(1) (i) and (ii), as revised by 49 *FR* 38049, September 26, 1984.

C. *Anticipated Noncompliance.* See 40 CFR 122.41(l)(2).

D. *Permit Actions.* See 40 CFR 122.41(f).

E. *Duty to Reapply.* See 40 CFR 122.41(b). The application should be submitted at least 180 days before the expiration date of this permit.

F. *Duty to Provide Information.* See 40 CFR 122.41(h).

G. *Other Information.* See 40 CFR 122.41(l)(8), as revised by 40 *FR* 6940, February 19, 1985.

H. *Signatory Requirements.* See 40 CFR 122.22, as revised by 49 *FR* 38047, September 26, 1984.

I. *Penalties for Falsification of Reports.* See 40 CFR 122.41(k)(2).

J. *Availability of Reports.* Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of ADEC and EPA. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

K. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

L. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

M. *State Laws.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

N. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

O. *Transfers.* See 40 CFR 122.61(b).

Table 1.—Authorized Drilling Mud Types

Components	Maximum allowable concentration (lb/bbl)
1. Seawater/freshwater/potassium/polymer mud:	
KCl	50
Starch	12
Cellulose polymer	6
Xanthan gum polymer	2
Drilled solids	100
Caustic	1
Barite	450
Seawater or freshwater	(1)
2. Seawater/lignosulfonate mud:	
Attapulgite or bentonite	50
Lignosulfonate, chrome or ferrochrome	15
Lignite, untreated or chrome-treated	10
Caustic	5
Barite	450
Drilled solids	100
Soda ash/sodium bicarbonate	2
Cellulose ploymer	5
Seawater	(1)
3. Lime mud:	
Lime	20
Bentonite	50
Lignosulfonate, chrome or ferrochrome	15
Lignite; untreated or chrome-treated	10
Caustic	5
Barite	150
Drilled solids	100
Soda ash/sodium bicarbonate	1
Seawater or freshwater	(1)
4. Nondispersed mud:	
Bentonite	15
Acrylic polymer	2
Barite	150
Drilled solids	70
Seawater or freshwater	(1)
5. Spud Mud:	
Lime	1
Attapulgite or bentonite	50
Caustic	2
Barite	50
Soda ash/sodium bicarbonate	2
Seawater	(1)
6. Seawater/freshwater gel mud:	
Lime	2
Attapulgite or bentonite	50
Caustic	1
Barite	50
Drilled solids	100
Soda ash/sodium bicarbonate	2
Cellulose polymer	2
Seawater or freshwater	(1)
7. Lightly treated Lignosulfonate freshwater/seawater mud:	
Lime	2
Bentonite	50
Lignosulfonate, chrome or ferrochrome	5
Lignite, untreated or chrome-treated	4
Caustic	1
Barite	150
Drilled solids	100
Soda ash/sodium bicarbonate	2
Cellulose polymer	1
Seawater and freshwater in 1:1 ratio	(1)
8. Lignosulfonate freshwater mud:	
Lime	1
Bentonite	50
Lignosulfonate, chrome or ferrochrome	15
Lignite, untreated or chrome-treated	10
Caustic	5
Barite	450
Drilled solids	100
Soda ash/sodium bicarbonate	2
Cellulose polymer	2
Freshwater	(1)

(1) As needed.

Table 1.—Authorized Drilling Mud Types—Continued

TABLE 2.—AUTHORIZED MUD COMPONENTS/SPECIALTY ADDITIVES

[Table 2 may be updated by EPA, Region 10, during the effective period of this permit. If so, the latest updated version will supersede all earlier versions. Updated versions will be published in the *Federal Register* as part of future EPA, Region 10, general NPDES permits for Coastal and Offshore Subcategory oil and gas activities. Updates will take effect at the time of *Federal Register* publication.]

Primary additive function	Generic description (1)	Maximum allowable concentration (lb/bbl unless otherwise noted)	Product name
Substitute for Attapulgite or Bentonite Clay	Sepiolite	See Table 1	Sea Mud, Durogel.
Detection of Filtrate Re-Entry into Mud System	Ammonium nitrate	200 mg/l nitrate	
	Sodium nitrate	200 mg/l nitrate	
Detection of formation water intrusion	Sodium chloride	50,000 mg/l chloride	
Mud lag time Measurement	Calcium carbide	As needed	
Corrosion inhibitor (H_2S scavenger)	Basic zinc carbonate	do	Mil-Gard.
	Zinc carbonate and lime	do	Sulf-Ex ES.
	Zinc oxide	do	
Defoamer	Aluminum stearate	0.2	
	Aluminum stearate in propoxylated oleylalcohol	10 gal/1500 bbls	LD-8.
	Dimethyl polysiloxane in an aqueous emulsion	0.1	Bara Brine Defoam.
Dispersant	Sodium polyphosphate	0.5 (2)	
Emulsifier	Sulfonated asphalt residuum	.6 (2)	Soltex.
Filtrate reducer	Lignite/resin blend	6 (2)	Duranex.
	Polymer treated humate	5 (2)	Chemtrol x
	Polymer treated humate	4 (2)	Poly RX
	Reacted phenol-formaldehyde-urea resin containing no free phenol, urea, or formaldehyde.	4 (2)	Rimsiren.
Flocculant	Vinyl acetate/maleic anhydride copolymer	0.1 (2)	Ben-ex.
Lost circulation material	Cellophane flakes	As needed	

TABLE 2.—AUTHORIZED MUD COMPONENTS/SPECIALTY ADDITIVES—Continued

[Table 2 may be updated by EPA, Region 10, during the effective period of this permit. If so, the latest updated version will supersede all earlier versions. Updated versions will be published in the *Federal Register* as part of future EPA, Region 10, general NPDES permits for Coastal and Offshore Subcategory oil and gas activities. Updates will take effect at the time of *Federal Register* publication.]

Primary additive function	Generic description [1]	Maximum allowable concentration (lb/bbl unless otherwise noted)	Product name
	Crushed granular nut hulls	do	
	Flakes of silicate mineral mica	45	
	Vegetable plus polymer fibers, flakes, and granules	50	
Lubricant	Fatty acid esters and alkyl phenolic sulfides in a solvent base	2	Bit Lube II.
	Liquid triglycerides in a vegetable oil	6	Torq-Trim II
	Oleates in mixed alcohols	2	Lube 106.
	Phosphoric acid esters and triethanolamine	0.4	
	Plastic spheres	8	
	Sulfonated asphalt residuum	6 [2]	Soltex
	Vegetable ester formulation	2.0% (vol.)	Lubri-Sal
Shale control inhibitor	Poly treated humate	4 [2]	Poly RX
	Sulfonated asphalt residuum	6 [2]	Soltex
Spotting agent	Sulfonated vegetable ester formulation	1.0% (vol.)	Aqua-Spot
Surface active agent	Aqueous solution of nonionic modified phenol	3.0	DMS
	Blend of surfactants	0.5	D-D
	Ethoxylated alcohol formulation	0.04 gal/bbl	Milchem MD
	Fatty acid ester	0.25	MD (IMCO)
	Water solution of anionic surfactants	0.4	Con Det
Thinner	Chrome-free mud thinner containing sulfomethylated tannin	0.5	Desco CF.
	Polymer treated humate	4 [2]	Poly RX
	Polymer treated humate	5 [2]	Chemtrol x
	Sodium polyphosphate	0.5 [2]	
Viscosifier	Organophilic clay	12	VG-69
	Vinyl acetate/maleic anhydride copolymer	0.1 [2]	Ben-ex
	Xanthan gum polymer	2	Duovis, XC Polymer

[1] Any proprietary formulation that contains a substance which is an intentional component of the formulation, other than those specifically described, must be authorized by the Director.
[2] Total amount allowed for all additive functions

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federal register

Tuesday
June 4, 1985

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 13, 14, 15, 16, 22, 25, 31, 33, 44, 52, and 53

Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 13, 14, 15, 16, 22, 25, 31, 33, 44, 52, and 53

[Federal Acquisition Circ. 84-7]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-7 amends the Federal Acquisition Regulation (FAR) with respect to the following: OMB Approval Under the Paperwork Reduction Act; Late Proposals and Modifications; Notification to Offerors; Allowable Cost and Payment Clause; Standard Form 99, Notice of Award of Contract; Equal Opportunity Preaward Clearance of Subcontracts; Purchases Under the Trade Agreements Act of 1979; Cost Principle On Insurance and Indemnification; Protests to the General Services Board of Contract Appeals; and Standard Form 24, Bid Bond. The Master List of Contractors for Negotiated Advance Agreements for IR&D/B&P Costs is included as an information item.

EFFECTIVE DATE: April 30, 1985.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION: .

A. Public Comments

The revisions to FAR Part 31 concerning the cost principle on insurance and indemnification are significant revisions as defined in FAR 1.501-1. Accordingly, public comments were requested in a notice at 49 FR 18321, April 30, 1984, and were considered in the formulation of the revisions. Public comments have not been solicited with respect to the other revisions in FAC 84-7 since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

B. Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, and, therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Ch. I

Government procurement.

Dated: May 30, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

Federal Acquisition Circular

[Number 84-7]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-7 is effective April 30, 1985.

Dwight Ink,

Acting Administrator.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Mary Ann Gilleece,

Deputy Under Secretary (Acquisition Management).

Federal Acquisition Circular (FAC) 84-7 amends the Federal Acquisition Regulation (FAR) as specified below. The following is a summary of the amendments:

Item I—OMB Approval Under the Paperwork Reduction Act

The Paperwork Reduction Act of 1980 requires that information collection requirements be approved by the Office of Management and Budget (OMB) and that the OMB control numbers assigned to these requirements be displayed in the regulation.

FAR 1.105 is revised to display the current listing of OMB control numbers assigned to FAR requirements.

Item II—Late Proposals and Modifications

FAR 15.412(c) is revised to delete the authority granted to NASA to accept late proposals and modifications to proposals. NASA has evaluated the history and use of this authority and concluded that its mission would not be significantly affected by the material's deletion.

Item III—Notification to Offerors

FAR 15.1001 (b) and (c) are revised to raise the threshold for prescribed preaward and postaward notices to unsuccessful offerors from $10,000 to $25,000. These changes had been made in Federal Procurement Regulations Temporary Regulation 77 in connection with the revision of the small purchase limitation, but were not made in the FAR.

Item IV—Allowable Cost and Payment Clause

FAR 16.307 is revised to add references to the applicable cost principles for contracts awarded to an educational institution, State or local government, or other nonprofit organization. FAR 31.105 is revised to add a reference to nonprofit organizations except those exempted under OMB Circular A-122. The preface to the clause at 52.216-7, Allowable Cost and Payment, is revised to remove duplicative language.

Item V—Standard Form 99, Notice of Award of Contract

FAR 22.608-5(b) is changed to remove the requirement for a contracting officer to submit a Standard Form 99, Notice of Award of Contract, to the Department of Labor if a Standard Form 279, Individual Contract Action Report, is submitted to the Federal Procurement Data System.

Item VI—Equal Opportunity Preaward Clearance of Subcontracts

FAR 22.810(g) is revised to correct the references to the clause prescriptions in FAR 44.204. The clauses at 52.244-1, 52.244-2, and 52.244-3 are retitled and the clause prescriptions at FAR 44.204 are changed to reflect the new clause titles.

Item VII—Purchases Under the Trade Agreements Act of 1979

The FAR text and clause concerning the Trade Agreements Act of 1979 have been revised to eliminate citing the applicable dollar threshold. In the future, information concerning revisions made by the U.S. Trade Representative of the dollar threshold will be distributed through agency procedures on an expedited basis. Under this procedure it will no longer be necessary to issue a FAR revision solely to update the dollar threshold determinations of the U.S. Trade Representative.

Item VIII—Cost Principle on Insurance and Indemnification

FAR 31.205-19(a)(3) is revised to make unallowable insurance costs in excess of the amount calculated by discounting at the Secretary of the Treasury rate of interest in those instances where an actual loss has occurred and the present value of the liability is determined under the provisions of CAS 416.50(a)(3)(ii).

Item IX—Protests to the General Services Board of Contract Appeals

FAC 84–6 added instructions concerning the filing of bid protests on certain ADP acquisitions with the General Services Board of Contract Appeals (GSBCA). FAR 33.105(a)(1), as published in FAC 84–6, requires service of a copy of the protest to the contracting agency within one day after the protest is filed with the GSBCA. The GSBCA has advised that rule 3(b)(2) of the GSBCA rules of procedure is intended to require the protester to serve a copy of the protest on the contracting agency on the same date the protest is filed with the GSBCA. Accordingly, FAR 33.105(a)(1), as published in FAC 84–6, is revised to conform the FAR with the GSBCA requirement.

Item X—Standard Form 24, Bid Bond

The first block of Standard Form 24, Bid Bond, is revised to instruct bidders that the bond must be executed not later than the bid opening date.

Item XI—Master List of Contractors for Negotiated Advance Agreements for IR&D/B&P Costs

The attached Master List of Contractors for Negotiated Advance Agreements for Independent Research and Development/Bid and Proposal Costs (Appendix A) is included as an information item to contracting officers.

Therefore, 48 CFR Chapter I is amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 13, 14, 15, 16, 22, 25, 31, 33, 44, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by removing all FAR segments and corresponding OMB Control Numbers and inserting in their place the following numbers:

1.105 OMB Approval under the Paperwork Reduction Act.

* * * * *

FAR Segment	OMB Control No.
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.7	9000-0034
5.405	9000-0036
8.203-2	9000-0017
9.1	9000-0011
9.2	9000-0020
9.5	9000-0019
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0002
14.205-4(c)	9000-0037
14.406	[illegible]
14.5	9000-0041
15.106	9000-0034
15.404	9000-0037
15.7	[illegible]
15.8	9000-0013
19.7	[illegible]
22.103	9000-0065
22.8	1215-0072
22.11	[illegible]
22.13	1215-0072
22.14	1215-0072
28.1	[illegible]
28.2	[illegible]
29.304	9000-0059
31	9000-0072
32.5	9000-0010
32.7	9000-0074
33	9000-0035
36.302	9000-0037
36.603	[illegible]
	[illegible]
	9000-0005
42.7	9000-0013
42.12	9000-0076
42.13	9000-0076
42.14	9000-0056
42.203	9000-0026
45	9000-0075
46	9000-0077
47	[illegible]
48	9000-0027
49	9000-0028
50	[illegible]
51.1	9000-0031
51.2	9000-0032
52.203-2	9000-0018
52.203-4	9000-0003
52.208-1	9000-0017
52.208-2	9000-0017
52.209-1	9000-0020
52.210-5	9000-0030
52.210-6	9000-0030
52.212-1	9000-0043
52.212-2	9000-0043
52.214-2	9000-0046
52.214-5	9000-0042
52.214-8	9000-0018
52.214-14	9000-0047
52.214-15	9000-0044
52.214-16	9000-0044
52.214-17	9000-0018
52.214-21	9000-0039
52.214-26	9000-0034
52.214-28	9000-0013
52.215-1	9000-0034
52.215-2	9000-0034
52.215-6	[illegible]
52.215-11	9000-0048
52.215-19	[illegible]
52.215-20	9000-0047
52.215-21	9000-0078
52.215-24	9000-0013
52.215-25	9000-0013
52.216-2	[illegible]
52.216-3	[illegible]
52.216-4	[illegible]
52.216-5	9000-0071
52.216-6	9000-0071
52.216-7	[illegible]
52.216-10	9000-0067
52.216-13	[illegible]
52.216-15	9000-0069
52.216-16	9000-0067
52.216-17	9000-0067
52.219-9	9000-0006
52.219-10	9000-0006
52.222-2	9000-0065
52.222-4	1215-0119
52.222-21	1215-0072
52.222-22	1215-0072
52.222-23	1215-0072
52.222-25	1215-0072
52.222-26	1215-0072
52.222-27	1215-0072
52.222-35	1215-0072
52.222-36	1215-0072
52.222-46	9000-0068
52.223-1	9000-0021
52.225-1	9000-0024
52.225-8	9000-0023
52.225-8	[illegible]
52.225-10	[illegible]
52.228-1	[illegible]
52.228-2	[illegible]
52.228-3	[illegible]
52.229-2	[illegible]
52.232-5	[illegible]
52.232-7	[illegible]
52.232-10	9000-0070
52.232-12	[illegible]
52.232-13	[illegible]
52.232-14	9000-0010
52.232-15	9000-0010
52.232-16	9000-0010
52.232-20	[illegible]
52.232-21	9000-0074
52.232-22	9000-0074
52.233-1	9000-0035
52.236-5	[illegible]
52.236-13	[illegible]
	[illegible]
	[illegible]
52.236-15	[illegible]
52.236-19	[illegible]
52.242-12	9000-0056
52.243-1	[illegible]
52.243-2	[illegible]
52.243-3	[illegible]
52.243-4	[illegible]
52.243-6	[illegible]
52.243-7	9000-0026
52.245-2	9000-0075
52.245-3	9000-0075
52.245-5	[illegible]
52.245-7	9000-0075
52.245-8	9000-0075
52.245-9	9000-0075
52.245-10	9000-0075
52.245-11	9000-0075
52.245-16	9000-0075
52.245-17	9000-0075
52.245-18	[illegible]
52.246-2	9000-0077
52.246-3	9000-0077
52.246-4	9000-0077
52.246-5	9000-0077
52.246-6	9000-0077
52.246-7	9000-0077
52.246-8	9000-0077
52.246-10	9000-0077
52.246-12	9000-0077
52.246-15	9000-0077
52.247-2	[illegible]
52.247-29	9000-0061
52.247-30	9000-0061
52.247-31	9000-0061
52.247-32	9000-0061
52.247-33	9000-0061
52.247-34	9000-0061
52.247-35	[illegible]
52.247-36	[illegible]
52.247-37	9000-0061
52.247-38	9000-0061
52.247-39	9000-0061
52.247-40	9000-0061
52.247-41	9000-0061
52.247-42	[illegible]
52.247-43	9000-0061
52.247-51	9000-0061
52.247-53	9000-0057
52.247-13	9000-0055
52.247-57	9000-0061
52.247-63	9000-0054
52.247-64	9000-0054
52.248-1	9000-0027
52.248-2	9000-0027
52.248-3	9000-0027
52.249-2	9000-0028
52.249-3	9000-0028
52.249-5	9000-0028
52.249-6	9000-0028
52.249-11	9000-0028
52.250-1	9000-0029
5SF 24	9000-0045
SF 25	9000-0045
5SF 25-A	9000-0045
5SF 25-B	9000-0045
5SF 28	9000-0001
5SF 34	9000-0045
5SF 35	9000-0045
5SF 119	9000-0003
5SF 129	9000-0002
5SF 254	[illegible]

FAR Segment	OMB Control No.
5SF 255	[illegible]
5SF 273	[illegible]
5SF 274	[illegible]
5SF 275	[illegible]
5SF 294	[illegible]
5SF 295	[illegible]
5SF 1403	9000-0011
5SF 1404	9000-0011
5SF 1405	9000-0011
5SF 1406	9000-0011
5SF 1407	9000-0011
5SF 1408	9000-0011
5SF 1411	9000-0013
5SF 1412	[illegible]
5SF 1413	9000-0014
5SF 1416	9000-0045
5SF 1417	[illegible]
5SF 1423	9000-0015
5SF 1424	9000-0015
5SF 1426	9000-0015
5SF 1427	9000-0015
5SF 1428	9000-0015
5SF 1429	9000-0015
5SF 1430	9000-0015
5SF 1431	9000-0015
5SF 1432	9000-0015
5SF 1433	9000-0015
5SF 1434	9000-0015
5SF 1435	9000-0012
5SF 1436	9000-0012
5SF 1437	9000-0012
5SF 1438	9000-0012
5SF 1439	9000-0012
5SF 1440	9000-0012
5SF 1443	9000-0010
All other requirements	[illegible]

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.501 [Amended]

3. Section 13.501 is amended by removing in the first sentence of paragraph (g) the reference "4.201" and inserting in its place the reference "4.101".

PART 14—SEALED BIDDING

4. Section 14.407–8 is revised to read as follows:

14.407–8 Protests against award.

See Subpart 33.1, Protests.

PART 15—CONTRACTING BY NEGOTIATION

15.412 [Amended]

5. Section 15.412 is amended by removing in paragraph (d) the introductory phrase "Except as authorized for NASA in its regulations," and by capitalizing the word "Proposals," to begin the paragraph.

15.502 [Amended]

6. Section 15.502 is amended by removing the second word in the first sentence, and inserting it its place the word "shall".

15.903 [Amended]

7. Section 15.903 is amended by adding in the second sentence of paragraph (d)(2), following the word "However," the words "a deviation to"; and by removing in the second sentence the word "waived" and inserting in its place the word "authorized".

15.905–1 [Amended]

8. Section 15.905–1 is amended by removing in paragraph (b)(3) the word "terms" and inserting in its place the word "term".

15.1001 [Amended]

9. Section 15.1001 is amended by removing in the first sentence of paragraph (b)(1) the words "at over $10,000" and inserting in their place the words "to exceed the small purchase limitation in Part 13"; by removing in the first sentence of paragraph (c)(1) the words "over $10,000" and inserting in their place the words "exceeding the small purchase limitation in Part 13"; and by removing in paragraph (c)(3) the words of $10,000 or less" and inserting in their place the words "not exceeding the small purchase limitation in Part 13".

PART 16—TYPES OF CONTRACTS

10. Section 16.307 is amended by adding three sentences at the end of paragraph (a) to read as follows:

16.307 Contract clauses.

(a) * * * If the contract is with an educational institution, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.3." If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.6." If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A–122, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.7."

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

11. Section 22.608–5 is amended by revising paragraph (b) to read as follows:

22.608–5 Award.

* * * * *

(b) Whenever Standard Form 279, Individual Contract Action Report, or its equivalent, is not submitted to the Federal Procurement Data System, furnish to the U.S. Department of Labor, Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210 a completed original and one copy of Standard Form 99, Notice of Award of Contract.

22.810 [Amended]

12. Section 22.810 is amended by removing in paragraph (g) the words "(c), or (e)" and inserting in their place the words "(b), or (c)".

PART 25—FOREIGN ACQUISITION

13. Section 25.402 is amended by revising paragraph (a); and by removing from paragraph (c) the figure "$161,000" and inserting in its place the words "the dollar threshold addressed in paragraph (a) above." to read as follows:

25.402 Policy.

(a) Executive Order 12260 requires the U.S. Trade Representative to determine from time to time the dollar threshold for use in implementing the Agreement on Government Procurement. The U.S. Trade Representative's dollar threshold determinations are published in the Federal Register and will be distributed through agency procedures on an expedited basis. Agencies shall evaluate offers at or over the dollar threshold for an eligible product without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3).

* * * * *

25.403 [Amended]

14. Section 25.403 is amended by removing in paragraph (a) the figure "$161,000" and inserting in its place the words "the dollar threshold discussed in 25.402(a)".

15. Section 25.405 is amended by removing in the introductory text the words "$161,000 or more" and inserting in their place the words "at or over the dollar threshold (see 25.402(a))"; and by revising paragraph (e) to read as follows:

25.405 Procedures

* * * * *

(e) Within seven working days after a contract award for an eligible product having a value equal to or exceeding the dollar threshold (see 25.402(a)), agencies shall give unsuccessful offerors from designated countries written notice that their offers were not accepted.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

16. Section 31.105 is amended by revising the first sentence of paragraph (a) to read as follows:

31.105 Construction and architect-engineeer contracts.

(a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see 31.104), State and local governments (see 31.107), and nonprofit organizations except those exempted under OMB Circular A–122 (see 31–108) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. * * *

17. Section 31.205–19 is amended by inserting two sentences in paragraph (a)(3)(i), following the reference "(see 4 CFR 416.50(a)(2)(ii))"; and by removing from paragraph (f) the reference "(d)" and inserting in its place the reference "(a)(3)" to read as follows:

31.205–19 Insurance and indemnification.

(a) * * *

(3) * * *

(i) * * * In those instances where an actual loss has occurred and the present value of the liability is determined under the provisions of CAS 416.50(a)(3)(ii), the allowable cost shall be limited to an amount computed using as a discount rate the interest rate determined by the Secretary of the Treasury pursuant to 50 U.S.C. App. 1215(b)(2) in effect at the time the loss is recognized. However, the full amount of a lump-sum settlement to be paid within a year of the date of settlement is allowable.

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.105 [Amended]

18. Section 33.105 is amended by removing in the third sentence of paragraph (a)(1), the words "no later than one day after the protest is filed with GSBCA" and inserting in their place the words "on the same day the protest is filed with the GSBCA".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

19. Section 44.204 is amended by removing in paragraph (a)(1)(i) the word "Under" and inserting parentheses before "Fixed" and following "Contracts"; by removing in the first sentence of paragraph (b) the word "Under" and inserting parentheses before "Cost" and following "Contracts"; and by removing in the second sentence of paragraph (c) the word "Under" and inserting parentheses before "Time" and following "Contracts".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52-216-7 [Amended]

20. Section 52.216–7 is amended by inserting a colon after the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph.

52.222–28 [Amended]

21. Section 52.222–28 is amended by removing the eighth word of the clause, i.e., " 'Subcontractors' ", and inserting in its place the word " 'Subcontracts' ".

52.225–9 [Amended]

22. Section 52.225–9 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the sentence; by removing in the title of the clause the date "1984" and inserting in its place the date "1985"; by removing from the third sentence of paragraph (b) of the clause the figure "$161,000" and inserting in its place "$. . . . .[*Contracting Officers shall insert the dollar threshold amount referenced in FAR 25.402(a)*]"; and by removing both derivation lines following "(End of clause)".

52.244–1 [Amended]

23. Section 52.244–1 is amended by removing in the title of the section the word "under" by inserting a colon after the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph; by removing in the title of the clause the word "UNDER" and inserting paretheses before "FIXED" and following "CONTRACTS"; and by removing the date "1984" and inserting in its place the date "1985".

52.244–2 [Amended]

24. Section 52.244–2 is amended by inserting a colon after the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph; by removing in the title of the clause the word "UNDER" and inserting parentheses before "COST" and following "CONTRACTS"; by removing the date "1984" and inserting in its place the date "1985"; and by removing all derivation lines following "(End of clause)".

52.244–3 [Amended]

25. Section 52.244–3 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the sentence; by removing in the title of the clause the word "UNDER" and inserting parentheses before "TIME" and following "CONTRACTS"; and by removing the date "1984" and inserting in its place the date "1985"; and by removing the derivation line following "(End of clause)".

PART 53—FORMS

53.228 [Amended]

26. Section 53.228 is amended by removing in paragraph (a) the date "(10/83)" and inserting in its place the date "(4/85)".

27. Section 53.301–24 (Standard Form 24) is revised to read as follows:

BILLING CODE 6820–61–M

53.301-24 Standard Form 24, Bid Bond.

OMB NO. 9000-0045

BID BOND
(See instructions on reverse)

DATE BOND EXECUTED (Must not be later than the opening date)

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION ("X" one)
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (Name and business address)

PENAL SUM OF BOND					BID IDENTIFICATION
PERCENT OF BID PRICE	AMOUNT TO BE INSERTED				DATE
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	INVITATION NO.
					FOR (Construction, Supplies or Services)

KNOW ALL MEN BY THESE PRESENTS

We, the Principal and Surety(ies) hereto are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The Principal has submitted the bid identified above.

THEREFORE

The above obligation is void if the Principal — (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal, or (b) in the event of failure so to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL			
Signature(s)	1.	2. (Seal)	Corporate Seal
Name(s) & Title(s) (Typed)	1.	2.	
INDIVIDUAL SURETIES			
Signature(s)	1. (Seal)	2. (Seal)	
Name(s) (Typed)	1.	2.	
CORPORATE SURETY(IES)			
SURETY A — Name & Address		STATE OF INC.	LIABILITY LIMIT $
SURETY A — Signature(s)	1.	2.	Corporate Seal
SURETY A — Name(s) & Title(s) (Typed)	1.	2.	

NSN 7540-01-152-8059
PREVIOUS EDITION NOT USABLE

24-105

STANDARD FORM 24 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR 53.228(a))

CORPORATE SURETY(IES) *(Continued)*

SURETY B	Name & Address		STATE OF INC.	LIABILITY LIMIT $
	Signature(s)	1.	2.	*Corporate Seal*
	Name(s) & Title(s) *(Typed)*	1.	2.	
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT $
	Signature(s)	1.	2.	*Corporate Seal*
	Name(s) & Title(s) *(Typed)*	1.	2.	
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT $
	Signature(s)	1.	2.	*Corporate Seal*
	Name(s) & Title(s) *(Typed)*	1.	2.	
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT $
	Signature(s)	1.	2.	*Corporate Seal*
	Name(s) & Title(s) *(Typed)*	1.	2.	
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT $
	Signature(s)	1.	2.	*Corporate Seal*
	Name(s) & Title(s) *(Typed)*	1.	2.	
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT $
	Signature(s)	1.	2.	*Corporate Seal*
	Name(s) & Title(s) *(Typed)*	1.	2.	

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed herein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror".

STANDARD FORM 24 BACK (REV. 4-85)

Note.—The following appendix is included as an information item to contracting officers and will not appear in the Code of Federal Regulations.

Appendix A—Master List of Contractors for Negotiated Advance Agreements for Independent Research and Development and Bid and Proposal Costs

This Circular contains a revised master list for informational purposes of contractors requiring lead agency negotiation of advance agreements for Independent Research and Development and Bid Proposal costs (FAR SUBPART 42.10).

Questions as to assignments of negotiation cognizance and inclusion or exclusion of contractors on the master list should be directed to the agencies as follows:

Air Force: Headquarters, Air Force Systems Command, Attn: AFSC/PMMO, Andrews Air Force Base, Maryland 20334.

Army: Commander Materiel Development and Readiness, Command, Department of the Army, Attn: DRCPP-SC, 5001 Eisenhower Avenue, Alexandria, Virginia 22333.

Navy: Headquarters, Naval Material Command, Attn: Director, Navy Triservice (NAVMAT 0224), Washington, D.C. 20360.

Contractor	Negotiating department [1]
AAI Corporation	Navy.
ARO ENG	AF.
Aerojet General Corporation	Navy.
Applied Physics Lab (JHU/APL)	Navy.
Atlantic Research Corporation	AF.
Automation Industries, Inc.	Navy.
AVCO	Army
Baird Atomic Inc.	AF.
Ball Corporation	Navy.
Bendix Corporation	Navy.
Boeing Company	AF.
Burroughs Corporation, Federal & Special Systems Group.	AF.
CCI Marquardt Corporation	AF
Celesco Industries Inc	AF.
Charles Stark Draper Laboratory, Inc.	Navy.
Cincinnati Electronics	Army
Computer Sciences Corporation	Navy.
Control Data Corporation	AF
Cubic Corporation	Navy.
Curtiss-Wright Corporation	AF.
DATATAPE	AF.
Eastman Kodak	AF.
E-Systems, Inc.	Navy.
Eaton Corporation	Navy.
Electrospace	AF.
Emerson Electric Company	AF.
FMC Corporation	Army.
Except:	
Northern Ordnance Division	Navy.
Fairchild Industries, Inc	AF.
Farrand Optical Company	AF.
Ford Motor Company	Navy.
GTE Products Corporation	Navy.
Garrett Corporation	AF.
General Dynamics Corporation	AF.
Except:	
Land Systems	Army
General Electric Company	AF
General Motors Corporation	AF
Except:	
Transmission Operations	Army.
Goodyear Tire & Rubber Company	Navy.
Gould, Inc.	Navy.
Grumman Aerospace Corporation	Navy.
HARSCO/BMY	Army.
Harris Corporation	Navy.
Hazeltine	Army.
Hercules	Navy.
Honeywell, Inc	AF.
Hughes Aircraft Company	AF.
IBM Corporation	AF.
IT&T Corporation	AF.
Interstate Electronics Corporation	Navy.
Itek Corporation	AF.
Lear Siegler, Inc	AF.
Linkabit	AF.
Litton Systems, Inc	Navy
Lockheed Aircraft Corporation	AF.
Loral Corporation	AF.
Magnavox Corporation	Navy.
Martin Marietta Corporation	AF.
McDonnell Douglas Corporation	AF.
Except:	
Huges Helicopter	Army.
Morton Thiokol	AF.
Motorola	Army.
Northrop Corporation	AF.
Page Communication Engineers	AF.
Pan American World Airways, Inc	AF.
Perkin Elmer Corporation	AF.
RCA Corporation	Navy.
Raytheon	Army.
Rockwell International Corporation	AF.
Rosemount, Inc	AF.
Sanders Associates, Inc.	Navy.
Simmonds Precision	AF.
Singer Company	AF
Sperry Corporation	AF.
Stanford Research Institute	Army.
Sundstrand Corporation	AF.
Systems Development Corporation	AF.
Teledyne, Inc	AF.
Except:	
Teledyne Systems Company	Navy.
Teledyne Continental Motors	Army.
Texas Instruments, Inc	Navy.
Textron	Army.
Except:	
Bell Aerospace	AF.
TRACOR	AF.
TRW, Inc	AF.
Except:	
ESL, Inc	Army.
United Technologies Corporation	Navy
Except:	
Chemical Systems Division	AF.
Varian Associates	AF.
Vought Corporation	Navy.
Western Electric/Bell Labs	Army.
Westinghouse Electric Company	Navy.
Williams Research Corporation	AF.
Xerox Corporation	AF.

[1] Negotiating Department for components of contractor operations except as noted.

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Federal Register

Tuesday
June 4, 1985

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Gassy Metal and Nonmetal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Gassy Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update, clarify and revise MSHA's existing safety standards for gassy metal and nonmetal mines. It would establish a new procedure for categorizing mines with a history of, or a potential for, methane liberation. Safety standards to protect miners in each category would be dependent upon, among other things, the quantity and type of gas emission.

DATES: Comments must be received on or before August 5, 1985.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631, Ballston Towers #3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1980, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (45 FR 19267) announcing its comprehensive review of metal and nonmetal mine safety and health standards published in 30 CFR Parts 55, 56, and 57. On November 20, 1981, MSHA published a subsequent ANPRM in the **Federal Register** (46 FR 57253) listing eight sections of Parts 55, 56, and 57 that the Agency had selected for a priority review. Standards relating to gassy mines in 30 CFR 57.21 were included in the priority group.

On March 9, 1982, MSHA published a Notice in the **Federal Register** (47 FR 10190) announcing public conferences to discuss issues related to the gassy mine standards. Conferences were concluded in May 1982. Many participants requested that MSHA make a draft proposal available to the public before issuing the proposed rule. MSHA therefore developed a draft proposal of procedures and standards for gassy mines, and announced its availability for review and comment in the **Federal Register** on June 10, 1983 (48 FR 27025). The Agency received and reviewed suggestions and recommendations from many commenters including mine operators, labor groups, and mining organizations.

Industry-wide participation in MSHA's public conferences and the comments received by the Agency on the existing classification system and safety standards have underscored the need for a complete revision of the gassy mines standards.

In drafting the proposed rule, MSHA has attempted to clearly convey the requirements for each category or subcategory and related standards. The proposed standards are intended to address hazards to persons and are not directed toward protection of property where life would not be endangered.

Methane gas is a flammable gas found in underground mining. Although it is usually associated with underground coal mines, it also occurs in some metal and nonmetal mines. The potential for methane gas exists in mines located in almost every state in the United States and in virtually every commodity mined underground. Methane gas is colorless, odorless, tasteless, and tends to rise to the roof of a mine because it is lighter than air. Although methane gas is nontoxic, it reduces the oxygen content by dilution when mixed with air, and it can act as an asphyxiant.

Methane may enter the mining environment from a variety of sources including fractures, faults, or shear zones overlying or underlying the strata that surrounds the ore body, or from the ore body itself. It may occur as an occluded gas within the ore body. Methane also may be generated by the action of bacteria on mine timbers. Methane mixed with air is explosive in the range of from 5 to 15 percent methane provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in a gassy atmosphere may further enhance the explosion potential of methane in a mine.

After a gas or dust ignition, the mine atmosphere often contains toxic gases and oxygen-deficient air. Flammable dust, timbers and other combustibles can be ignited by fires following a gas explosion. For these reasons methane gas cannot be permitted to accumulate underground.

Under the existing classification system in Section 57.21001, a mine is either gassy or nongassy, and is considered to be gassy if one or more of the following criteria are met: the State classifies it as gassy, a flammable gas ignition has occurred, a concentration of 0.25 percent or more of flammable gas has been detected, or it is connected to a gassy mine. Every mine that is classified gassy must comply with identical safety standards regardless of the type and frequency of methane occurrence, the mining method, the combustibility of the ore being mined, the geology of the ore body or the surrounding strata, or other related factors.

MSHA is proposing to revise its existing standards for gassy underground mines to upgrade safety provisions which are consistent with advances in mining technology. The revisions would also eliminate unnecessary standards, consolidate duplicative standards, provide alternative methods of compliance to the existing standards and reduce recordkeeping requirements. MSHA believes that the proposed rule will result in more effective standards for protecting the safety of miners in the least burdensome manner.

MSHA's review has resulted in many substantive changes. These changes are generally consistent with commenters' suggestions and recommendations, the goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

The proposed rule would completely change the concept and procedure for classifying gassy mines. The new category system would consider both the actual liberation of methane and the potential to liberate methane, the type of gas occurrences, the degree of hazards, and the diversity of mining methods. It would also consider the history of the mine and the history of the geological area in which the mine is located. The potential to liberate methane would take into consideration such factors as combustible ore being mined (Subcategories I–B, oil shale, and V–B, liquid petroleum), dust containing volatile matter and the geological area of the mine (Subcategory I–C, gilsonite), and the geological area of the mine (Subcategory II–B, domal salt). Due to MSHA's concern for the safety of miners in these types of mines, the proposed rule contains the minimum requirements to protect miners from the danger of encountering methane gas and volatile gilsonite dust. The new category system, which was introduced in the preproposal draft, has generally received wide support from the metal and nonmetal mining community.

In this proposal, the Agency has developed standards which are unique to each category of mines. Consequently, mines would be required to comply only with standards that apply to a particular category or subcategory. In addition, recordkeeping provisions would be reduced. Wherever possible, a system of certification by

signature and date would be established to indicate that a required inspection or task has been accomplished.

II. Discussion of the Proposed Rule

This proposal reflects the Agency's agreement with commenters that the identification and categorization of individual mines based on the types of occurrence, mine history and geological area of the mine is preferable to the existing classification system. A deep mine containing large amounts of carbonaceous material would be expected to encounter more and higher concentrations of methane than a shallow mine extracting a noncarbonaceous material. Mines that have experienced or have the potential for an outburst, or continuously liberate methane, or intermittently liberate methane, all have different types of emissions and hazards.

Under this proposal each mine, whether currently classified as gassy or nongassy, would be placed into one of six categories. Category or subcategory placement or a change in placement would include consideration of: the liberation of methane or the potential to liberate methane; scope of each category or subcategory; the history and geology of the mine or the geological area in which the mine is located; the ore body and host rock; analysis of methane gas samples, and the character, amount, duration, origin and nature of methane emissions; and the presence of explosive dust or inert gases. This procedure would be applicable to all mines.

The Administrator for Metal and Nonmetal Mine Safety and Health would be responsible for category placement and notification to the affected mine operators. Initially, the Administrator would place all mines that have been classified as gassy under the existing standard and those which have the potential for methane gas into an appropriate category. Other mines will be placed into Category VI because the presence of methane gas has not been established.

Upon notification of the opening or reopening of a new mine under 30 CFR 57.1000, or other occurrence under proposed § 57.30004, such as a change in methane conditions, or the occurrence of an outburst, blowout or methane ignition requiring notification, the Administrator may appoint an MSHA committee to promptly investigate the occurrence reported. While conducting the investigation, the Administrator may hold a fact-finding hearing, interview company officials, employees and other persons having knowledge of the occurrence or the mine, and obtain all records relating to a methane emission or explosion, or dust explosion. Representatives of the mine operator, the miners and the State agency charged with the responsibility for miner safety may participate in the investigation. Thereafter, the Administrator would make a decision with respect to placement or change in placement, and provide the mine operator and representatives of the miners with a copy of the decision.

The Administrator's determination of placement or change in placement would become final 30 days after it is served upon the mine operator and the representative of the miners unless a request for a hearing is filed with the Assistant Secretary of Labor for Mine Safety and Health within the 30-day period. The Administrator's determination and the request for a hearing, if any, would be posted on the mine bulletin board and would remain there while the appeal is pending. The Assistant Secretary would refer the appeal request to the Chief Administrative Law Judge, United States Department of Labor who would appoint an Administrative Law Judge to preside over the hearing and to make an initial decision. The initial decision by the Administrative Law Judge would become final unless discretionary review is taken by the Assistant Secretary or the decision is appealed to the Assistant Secretary who upon review would make the final decision. Only a decision by the Assistant Secretary would be subject to judicial review.

The hearing rules would be the rules of practice and procedure published in 29 CFR Part 18. They are substantially similar to those currently provided for Petitions for Modification under 30 CFR Part 44. This is consistent with public comment and would allow for the development of a record prior to a final decision by the Assistant Secretary. The decisions by the Administrative Law Judge and the Assistant Secretary would be based upon a preponderance of the evidence and a consideration of the entire record of the proceedings.

On January 29, 1985, MSHA published a recodification and renumbering of the safety and health standards for metal and nonmetal mines in Title 30 of the Code of Federal Regulations (50 FR 4048). This final rule reorganized and restructured § 57.21 as new Subpart T (gassy mines). The procedural and safety standards for Subpart T would be placed in seven related groups under the following centered headings: Mine Categorization, Fire Prevention and Control, Ventilation, Equipment, Underground Retorts, Illumination, and Explosives; an eighth group, Miscellaneous, is included for Subcategory I–C mines.

Each proposed standard in Part 57 would have a topic heading. MSHA intends to establish a comprehensive index to the metal and nonmetal standards when the revisions to Parts 56 and 57 are complete. To further assist in understanding the rule, the proposed rule provides two Appendices. Appendix 1 is a derivation table that cross-references existing standards with draft proposed and proposed standards. Appensix 2 describes the methane levels at which actions must be taken. Both reference tables would also be included in the final rule.

Section-by-Section Discussion

The following is a summary section-by-section analysis of the development of the proposal.

Section 57.30001 Scope.

This new proposal would replace § 57.21000. It would provide that all metal and nonmetal underground mines be placed into one of the categories and subcategories to protect miners against the hazards of methane gas. Each mine would be required to operate in accordance with the safety standards applicable to its category or subcategory. All these mines would also be operated in accordance with the other applicable health and safety standards published in 30 CFR Part 57.

Section 57.30002 Definitions.

Under the proposal, the standards in Subpart T would be preceded by their own set of definitions which are discussed below.

Abandoned areas. The proposed new definition would define "abandoned areas" as areas where work has been completed, further work is not planned, and travel is not permitted. This definition would distinguish such areas from sections or panels that are temporarily shut down.

Approved. The existing definition of "approved" means tested and accepted for a specific purpose by a nationally recognized agency. The proposed definition would narrow the scope of the term to apply only to equipment that MSHA has issued a formal document stating that the applicable MSHA requirements in 30 CFR Parts 11 through 36, as appropriate, have been met.

Blowout. The proposed new definition would distinguish blowouts that could occur in petroleum mining from outbursts that have or could occur in certain domal salt mines and could occur in other mines. Commenters recommended defining both terms

because the characteristics of the two types of occurrences are different. MSHA agrees and proposes to define a "blowout" to mean a sudden, violent, unplanned release of gas or liquid due to reservoir pressure in petroleum mines. Outbursts are defined below.

Certified. The proposed new definition would clarify the term "certified" to mean a formal designation applied by MSHA to a subassembly or component meeting the testing requirements of the applicable Parts of 30 CFR.

Combustible material. The proposed revised definition of the term "combustible" is the same as MSHA's new fire standards definition recently published in the **Federal Register** (50 FR 4022). The proposed definition would define "combustible" to mean a material that in the form in which it is used and under the conditions anticipated will ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Examples are wood, paper, rubber and plastics.

Competent person. The proposed definition would revise the existing definition that requires persons who have the ability and experience to be designated and assigned by the mine operator to perform certain tasks. The draft proposed standards would have replaced the existing definition with wording in the appropriate standards that certain tests or examinations are to be carried out by "a person designated by the operator." While some commenters accepted this concept by including the same or similar wording in their suggested standards, other commenters indicated that the word "person" should be changed to "competent person" or some other language signifying an individual who has the unique qualifications to test for methane or to examine the mine for hazardous conditions. MSHA agrees and has proposed a performance definition that would require the operator to select only those persons who have sufficient experience and task training to be assigned to such tasks as testing for methane gas or examining the mine for dangerous conditions.

Explosive materials. This definition is based on the existing definitions for explosives, blasting agents, and detonators. Explosive and blasting agent would mean any substance classified as an explosive or a blasting agent by the Department of Transportation in the 1984 edition of the Code of Federal Regulations (Title 49), rather than the 1979 edition used in the existing definitions. The examples of detonators has been clarified by listing blasting caps, electric or non-electric instantaneous or delay blasting caps and delay connectors. These definitions are consistent with the Department of Transportation regulations which are used industry-wide.

Geological area. The proposed new definition would define one of the new criteria for placing a mine in a category or subcategory. The term "geological area" would replace the term "geological province" that was used in the draft proposed Categories and Subcategories I through IV. Draft proposed Category II mines were defined as "mines located within a geological province where the history of the province . . . indicates the presence of outbursts. . . ." Commenters indicated that this term was of a general nature and too vague to be a useful basis for determining the hazard of methane gas that might be associated with a particular mine. While these commenters were not opposed to the consideration of geological conditions in defining and determining category or subcategory placement, they were opposed to the use of the geological history of the entire province. The term "geological province" is replaced with the term "geological area" which means an area characterized by the presence of the same ore body, the same stratigraphic sequence of beds, or the same ore-bearing formation.

Intrinsically safe. The proposed new definition is consistent with the definition of the same term used in 30 CFR 18.2. Commenters recommended the inclusion of intrinsically safe equipment both by definition and appropriate standards for gassy mines. MSHA agrees and in response to those comments proposes to define "intrinsically safe" to mean incapable of releasing enough electrical or thermal energy under normal or abnormal conditions to cause ignition of a flammable mixture of methane in the air of the most easily ignitable composition.

Intrinsically safe is a term used only in the proposed Mine-Wide Monitoring System standards applicable to mines in Subcategories I–A and II–A and Category V. The proposal would provide that components meet applicable permissibility requirements, or that they be intrinsically safe or explosion proof. Permissible components are not commercially available for use in all mining situations. The requirements for intrinsically safe components are specified in 30 CFR 18.68. This intrinsically safe concept is retained, and would assure that consideration be given to the most hazardous, probable faults, malfunctions and environmental conditions that might be encountered in a mine. Such conditions include overheating and short-circuiting of the components, power surges, corrosive elements and water damage. To avoid disasters and to protect miners in the confined, underground environment, it is essential that components not provide an ignition or explosion source under the most hazardous operating conditions including ignitable mixtures of methane gas.

Intermittently liberates methane. The proposed new definition would provide a distinction between an intermittent liberation of methane and a continuous liberation on a repeated basis. Commenters expressed concern that release of gas from pressure-relief holes may be construed as a continuous release. Accordingly, MSHA proposes to define the term "intermittently liberates methane" to mean the release of methane at occasional and sporadic intervals, and in indeterminate quantities.

Mine atmosphere. The proposed new definition would clarify the locations where tests for methane are to be taken in the atmosphere of an underground mine. Existing standards §§ 57.21001(c), 57.21039, 57.21040, 57.21076, and 57.21100 repeatedly refer to the detection of methane "not less than 12 inches from the back, face, or ribs." The phrase "not less than 12 inches from the back, face, rib and floor" was used throughout the draft proposed standards. Commenters indicated that the phrase was not appropriate for Category IV mines because there was no provision for the testing locations for point sources of methane emission. Commenters also recommended the term "general mine atmosphere." MSHA agrees in principle with these commenters and has rewritten the definition to define the term "mine atmosphere" to mean any point at least 12 inches away from the back, face, rib, and floor. In addition, the measurement in a Category IV mine would have to be at least three feet laterally away from the collar of a borehole which releases gas into the mine.

Noncombustible material. The proposed new definition for the term "noncombustible material" is the same as MSHA's new fire standards.

The proposed definition would define "noncombustible material" as a material that in the form in which it is used and under the anticipated conditions will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Examples of such materials are concrete, masonry block, brick, and steel.

Outburst. The proposed new definition would distinguish an outburst

from a blowout. The draft proposal would have defined an "outburst" as a sudden, violent release of occluded gases and solids under high pressure from a geologic formation. Commenters pointed out that this definition could be confused with a blowout. The distinction between them is that an outburst releases occluded gases and a blowout releases gas or liquid under reservoir pressure in a petroleum mine (Subcategories V–A and V–B). Commenters also indicated that the liberated occluded gases should specify methane gas. MSHA agrees and the words occluded gases "including methane" have been added to the proposed definition. The extent would be determined by testing for methane in the mine atmosphere. MSHA has proposed that "outburst" mean the sudden, violent release of solids and high-pressure occluded gases including methane.

Permissible. The existing definition would be changed to make reference to MSHA's testing, approval and certification requirements published in 30 CFR Parts 11 through 36. The proposed definition would also delete the reference to the "Bureau of Mines."

Substantial construction. The proposed definition would change the existing definition as used in this Subpart which defines the term to mean construction of such strength, material, and workmanship that the object will withstand all reasonable shock, wear, and usage to which it will be subjected. Air blasts, blasting shock, ground movement and pressure differences were added to clarify factors to be considered in determining the construction of seals, certain stoppings, overcasts and undercasts.

Section 57.30003 Mine categorization.

This proposal would revise existing Standards § 57.21001, and appeared as draft proposal § 58.21–2. The draft proposal defined five categories into which all underground mines would be placed. MSHA believes that such a category system more accurately addresses the varying degree of hazards and the diversity of metal and nonmetal mines within the industry.

The existing classification system provides that a mine is considered gassy if the State in which the mine is located classifies it as gassy. Under the proposal, mines would no longer be classified as gassy based upon State action. However, the proposal would not affect existing state mining law. The existing system requires compliance with a single set of standards which were generally of coal mining origin. Commenters generally agreed with the proposed concept of mine categories and subcategories.

Under the proposal, all underground metal and nonmetal mines would be placed in one of six categories based on the nature and likelihood of methane hazards. The first five categories would address mines which have either experienced methane hazards or have the potential for such hazards. The sixth category, representing the remainder of the underground mines, would incur regulatory obligations only if methane is detected. Should this happen, immediate action would be taken to protect the affected miners by implementing certain safeguard provisions. Under this category no action would be required if methane is not detected. These categories and subcategories are discussed individually as follows:

Category I. This category would apply to mines operating in a combustible ore body. It is further divided into three subcategories which address (A) methane concentrations anticipated in deep mines, (B) methane concentrations anticipated in outcrop mines, and (C) methane concentrations in conjunction with highly volatile ore dusts such as occur in gilsonite mines.

Subcategories I–A and I–B. Commenters specifically objected to the draft proposed requirement of 100 ppm methane limitation in return air, use of the term "province" regarding the geology of the mine, and reference to the water table for subcategory placement. Commenters suggested higher methane levels than those in the draft proposal with time intervals specified between samples where methane was detected. MSHA has incorporated many commenter suggestions and addressed their concerns. The 100 ppm in return air was deleted, as was reference to the water table; "geological province" was replaced with the term "geological area," and a definition of this terminology is proposed.

The concept of forecasting methane hazards in metal and nonmetal underground mines by the detection of 100 ppm in the return was not considered to be feasible due to the high cost of the test equipment needed to accurately measure such low concentrations of methane gas.

Commenters also suggested that only gas ignitions which cause injury, or have the potential to do so, should be considered in subcategory placement. Such factors are expected to be considerations incorporated into the placement change investigation defined in § 57.30004.

Subcategory I–C: Gilsonite is a solid form of crude oil that contains highly volatile material. It is combustible ore and a very small amount of gilsonite dust can cause a flash fire. Gilsonite has been mined in the United States for over a century. Vertical deposits are found in Utah and the product is used in varnishes, stains, inks, roofing, and molded articles. Mining is accomplished by the use of hand-held pneumatic chippers in a stoping mining bench method (large open trench). The extracted ore is generally transported to the surface by vacuum air lifts. The main fan located on the surface is the source for the vacuum power. Gilsonite dust has a high ignition sensitivity and explosive potential.

Commenters objected to a separate subcategory for this type of mine; others expressed agreement with the separation. MSHA believes that the mining methods, equipment, and the general mine environment in this type of mine are unique in the mining industry and a separate subcategory is warranted. Further, the highly volatile content of the ore dust enhances the potential for an explosion when combined with the liberation of methane gas. Between 1954 and 1983 there have been eight explosions of gilsonite dust, methane gas, or a combination of both that have resulted in fatalities or serious injuries to miners. In addition there was an inundation of dangerous quantities of methane in a gilsonite mine. MSHA has reviewed these occurrences and other relevant data. The proposal specifically addresses the unique hazards of gilsonite mining.

The word "percent" was inadvertently omitted in the draft proposal in designating the volatile matter content of the dust. This has been corrected.

Category II. Commenters suggested alternate language for this category and subcategories. Objections were expressed to use of the terms "geological province," "outburst," and "potential." Commenters also believed that the draft proposal was too general and was vague as to the intended coverage. MSHA has rewritten the draft proposal and has explicitly limited the coverage of Category II to domal salt mines. The category is further divided into two subcategories; one subcategory for mines where an outburst has occurred and another for mines where an outburst has not occurred. The proposed safety standards for each subcategory are intended to address the different hazard potentials. The term "geological province" has been replaced with the term "geological area" which is defined. The definition of an outburst has been changed for clarity. Some commenters were concerned that blowouts and rockbursts would be

interpreted broadly as an outburst. However, the proposed definitions of outburst and blowout should preclude misinterpretation.

Category III. Commenters objected to the use of the term "geological province" regarding the geology of the mine as much too broad. MSHA has replaced the term "geological province" with "geological area" and proposed a definition for this new term. Commenters also suggested wording to describe the liberation of methane "on a continuous and prolonged basis in hazardous concentrations." The term "prolonged" was not used as it is considered synonymous with the term "continuous" and is redundant in reference to liberation of methane in a mine where methane may build to hazardous concentrations. The intent of these proposed regulations is the control of methane hazards rather than actions subsequent to an ignition.

Category IV. Commenters recommended two subcategories for this category. One subcategory was suggested for mines in which an ignition had occurred or in which methane, in hazardous concentrations, had been detected within the preceding five years. The other suggested subcategory was for all other mines that might intermittently liberate methane. MSHA recognizes the concerns of these commenters and considered the various quantities of methane that such mines might liberate, the different physical conditions associated with the methane liberations, and the total mixture content of the gas emitted. MSHA also acknowledges that these mines normally operate without significant amounts of methane, and may operate for long periods without presence of any methane. Some mines in this category liberate methane along with inert gases in amounts that create a noncombustible mixture. Such gas mixtures often emit from pressure-relief boreholes drilled in the mine roof. However, all of the mines in this category operate under such conditions with nonpermissible equipment. All of them either liberate methane intermittently or have the potential to do so. In the proposed standards for mines in this category, MSHA attempted to direct most of the requirements, except for testing, toward actions to be taken after methane has been detected. MSHA believes that the precautionary-type standards will assure the safety of miners without undue hardship to the mine operator.

Category V. Commenters suggested a separate category or subcategory for petroleum mines and expressed a preference for certain standards proposed for mines in Category II. MSHA generally agrees with commenters' recommendations and has proposed placing these mines into a separate category which is divided into Subcategories V–A and V–B. However, the major difference is that the product mined is in liquid form. Otherwise, recognized mining practices are used and methane hazards, including blowouts, are basically the same. The proposed standards for petroleum mines were generally taken from Category II.

Category VI. Under the existing standards, all underground metal and nonmetal mines are subject to the gassy classification and the provisions of Subpart T if there is a methane occurrence or state designation. Using the proposed category system, all underground mines not otherwise designated would be placed in Category VI. In this category, operators would be responsible for implementing certain safeguard standards only if methane is detected. These actions would continue until the completion of an Agency investigation and final appropriate action. Some commenters suggested the removal of Category VI (which appeared in the proposed draft as Category V) contending it unnecessary to impose standards on mines which have no gas problems.

However, as proposed, mines in Category VI with no methane would have no additional regulatory obligations. Category VI was created to assure that an immediate level of protection would be provided to affected miners in the event of a methane occurrence in those mines not previously exhibiting any such history or located where methane had been experienced.

Under the existing classification procedure, metal and nonmetal mines must comply with the safety standards only after methane gas is found by MSHA or the mine operator. If MSHA should find methane gas, then the Agency would notify the mine operator, but if the mine operator should find the gas, the mine operator would notify MSHA. These existing requirements are retained in the proposed rule.

Category VI would apply to all mines in which the presence of methane gas has not been established and which are not included in another category. If MSHA or the mine operator find that an outburst, blowout, or ignition of methane gas has occurred in any Category VI mine, the other party would be notified immediately, as proposed under standard § 57.30004. This notification is in addition to the immediate notification requirements under existing 30 CFR Part 50. In the event methane gas is detected in these mines, it would be necessary to take immediate action to protect miners. The proposed standards are action level standards that describe the actions to be taken in the event different levels of methane gas are detected and would apply to levels of 0.5, 1.0 and 2.0 percent or more. There are no proposed sampling requirements for Category VI mines. MSHA has a policy of sampling for methane gas during underground inspections. This policy would be continued.

In summary, the proposal establishes five categories of methane presence or potential. Category I would apply to mines with combustible ore which continuously emanate or have the continuous presence of methane, have the potential for continuous emanation or presence of methane, or have dust containing volatile matter. Deep and outcrop oil shale mines have characteristics which suggest placement in Subcategories I–A and I–B, respectively. Mines in Subcategory I–A would have experienced methane gas, and mines in Subcategory I–B would have the potential for methane gas.

Gilsonite mines have characteristics which suggest placement into Subcategory I–C because of the combustible ore, the actual or potential presence of methane gas, and the volatile dust.

Petroleum mines recover a liquid hydrocarbon product and suggest placement into Category V. Subcategory V–A would apply to those petroleum mines where there is a presence of methane gas. These mines operate in, or drill into, an oil reservoir. Blowouts are known to be the source of large volumes of methane gas and other gases entering the mine. Subcategory V–B would apply to those petroleum mines that have the potential for both methane emissions and blowouts. These mines operate outside and drill into an oil reservoir.

Domal salt mines that have experienced an outburst or that have the potential for an outburst would suggest placement into Category II. If a domal salt mine has an outburst, or has a history of outbursts, it would be placed into Subcategory II–A. Outbursts have caused large amounts of methane to enter the mine after a violent release of the gas under pressure. Domal salt mines with the potential for outbursts would be placed into Subcategory II–B.

Categories III and IV would apply to mines with noncombustible ores. They would have either continuously experienced methane or had intermittent liberation of explosives mixtures of methane (Category III

mines), or have had an intermittent release of nonexplosive mixtures of methane (Category IV mines). Examples of minerals mined in Category III are trona, uranium and potash. Category IV mines extract potash, bedded salt, domal salt without the potential for outbursts, limestone, and copper.

Under the existing standard, if a mine ever had 0.25% or more of methane gas in its mine atmosphere, it is automatically classified as gassy. This would not happen under the proposed category system. Should a mine in Category VI, for example, find 0.25% or more of methane gas, or have an ignition, outburst or blowout, the Administrator would initiate an investigation of the occurrence. The investigation would evaluate the source, nature and extent of the occurrence, along with analysis of the physical conditions, geology of the mine and the geological area in which the mine is located. Consideration would be given to determine if the gas was isolated, continuous, intermittent, or could reoccur. Only after completion of the investigation would a written determination with findings and category placement be made. The mine operator or representative of the miners would have the right to appeal the Administrator's decision, and to have a hearing before an administrative law judge. The administrative law judge's decision may be reviewed by the Secretary, and the mine operator or representative of the miners may obtain judicial review of the Secretary's decision.

Section 57.30004 Placement or change in placement, notice and investigation.

This is a new proposal, and appeared as draft proposal 58.21–3. The draft proposal would have required notice to be given to MSHA by operators of Category I–B, II–B and V (preproposed Category IV mines) mines if specific levels of methane were detected or an outburst or an ignition occurred, or if 100 ppm or more of methane was detected anywhere in the main air return. The draft proposal would have required MSHA to conduct an investigation of the reported occurrence and the mine operator would have been required to comply with certain precautionary standards. Commenters generally agreed with the concepts of the draft proposal. However, they believed that the language implied that a category or subcategory placement change would almost always follow a reportable methane occurrence. Commenters also stated that the action levels triggering an investigation and those established for the precautionary standards were unnecessarily restrictive. They recommended 0.25 percent as being more practicable.

Commenters also stated that there was no provision for new mines and that the 100 ppm action level was too restrictive. Commenters questioned whether an outburst, as defined, could occur only in the specified categories. MSHA has revised the draft proposal and incorporated many of the suggestions.

It is not MSHA's intention to arbitrarily place a mine in a category or subcategory. The purpose of the Administrator's investigation is to determine if the methane occurrence warrants a change in mine categorization in order to assure the safety of miners. MSHA requests comments on whether a mine's category placement should be reviewed when the conditions that caused the initial placement no longer exist over a period of time.

The draft proposed action levels of 0.10 percent and the 100 ppm requirements have been deleted. The recommendation to use 0.25 percent would be used as the triggering mechanism for the Administrator's investigation. The proposal also contains a provision which permits MSHA to conduct an investigation upon receipt of the mine operator's notice of the opening or reopening of a mine.

The specific location for methane testing in Category IV mines has been clarified and revised to include boreholes as sources of emissions by defining the term "mine atmosphere." Precautionary-type standards have been incorporated in respective categories and subcategories with revised action levels for reporting, making ventilation changes, deenergizing electrical equipment, shutting off diesel equipment, and finally withdrawal from the area and from the mine if necessary.

Section 57.30005 Notice and appeal of placement or change in placement.

This is a new proposal and appeared as draft proposal 58.21–4. The draft proposal provided that mine operators and representatives of miners could obtain review of MSHA's notice of category or subcategory placement or change in placement by requesting a conference with the Administrator for Metal and Nonmetal Mine Safety and Health. The draft proposal further provided that after receipt of a decision by the Administrator following a conference, a mine operator or a representative of miners could petition the Assistant Secretary for Mine Safety and Health to review the Administrator's decision. Commenters opposed these proposals and any substitute language that would not provide for a hearing and appeal prior to the Agency's final decision. Commenters suggested that such a review procedure, including a hearing with cross-examination, is essential to assure that placement or change in placement decisions are considered impartially and with technical fairness.

Commenters stated that a review procedure similar to that currently provided for petitions for modification published in 30 CFR Part 44 should be adopted. MSHA agrees and has revised the placement review provisions to adopt procedures that are substantially the same as the provisions set forth in 30 CFR Part 44. Under the proposal, an administrative hearing would be conducted by a Department of Labor Administrative Law Judge in accordance with the rules of practice and procedure published in the 29 CFR Part 18. An initial decision by the Administrative Law Judge would become final unless discretionary review is taken by the Assistant Secretary or an appeal to the Assistant Secretary is filed by either the mine operator or the representative of the miners. The Assistant Secretary for Mine Safety and Health upon review or appeal will make the final decision. Only a decision by the Assistant Secretary will be subject to judicial review by the Federal Courts. Commenters also suggested that citations and orders received by mine operators concerning categorization should not be considered in determining category or subcategory placement unless such citations and orders are final. MSHA would consider citations and orders, as appropriate, and all other relevant data in making its determination. All factors considered by MSHA would be subject to review under the proposed provisions in this Section.

While an appeal is pending concerning initial placement, affected miners will be protected as follows:

(1) Where the mine has been previously classified as gassy under existing standards in Subpart T, the "existing" standard will continue to be applicable until placement is final;

(2) Where the mine has not been previously classified as gassy and is placed in one of the new Categories I through V, the mine will be subject to notice, ventilation, deenergization and withdrawal provisions of Category VI pending an appeal. These safety provisions would only apply in the event of a methane occurrence.

(3) Where a mine has not previously been classified gassy and is not

considered to have current gassy potential, the mine will be placed in Category VI. The notice, ventilation, deenergization, and withdrawal provisions of this Category would apply only in the event of a methane occurrence.

In addition to the above, the statutory enforcement provisions including imminent danger orders with immediate withdrawal from the affected area remain in effect independent of the standards, and would not be affected by the appeal procedures.

Section 57.21002 Mine classification.

This proposal would delete existing standard § 57.21002 which addresses detection of methane while dewatering mines or during other reclamation operations. The existing standard also specifies that the detection of methane during such operations could not be used to permanently classify a mine gassy. Dewatering is the process of removing water from a shaft or work area by pumping, drainage or evaporation. It is not a common occurrence in metal and nonmetal gassy mines. Methane gas encountered during dewatering may be caused by decaying timbers, or some other temporary condition.

The Agency does not consider this occurrence to be an emanation of methane gas. MSHA proposes to delete this standard since the provisions of the standard are covered by the proposed action level standards for each category and subcategory. Such standards require ventilation, testing, and includes withdrawal of methane exceeds certain levels.

Sections 57.31101, 57.32101, 57.33101, 57.34101, 57.36101, 57.37101 (Smoking and Open Flame), 57.38101, 57.39101 Smoking.

This proposal would revise existing standard 57.21010, and appeared as draft proposals 58.21–110, 58.21–210, 58.21–310, 58.21–410, 58.21–610, and 58.21–710. It would generally prohibit smoking and carrying smoking materials underground. It would also require the operator to institute a reasonable program to assure compliance by persons entering the mine. The word "reasonable", which was deleted in the draft proposal, has been retained. This proposal does not substantially change the existing standard. Smoking would be permitted in Subcategory II–B mines, but restricted in Subcategory I–B and Category IV mines.

Commenters suggested that smoking prohibition for Subcategory I–C mines was covered by former Standard § 57.4–1 (now § 57.4100) which allows smoking under certain circumstances. Due to the potential presence of methane and the explosive nature of the material mined, MSHA believes that smoking must be totally prohibited underground in Subcategory I–C mines, within 50 feet of the mine opening, and in surface milling facilities. Also, the requirement for a program to restrict carrying of smoking materials into or within 50 feet of a mine opening and into areas of the surface milling facilities would not be included in proposed standard § 57.4100.

Limitations on smoking and the use of open flame were incorporated into the proposal for Category IV mines. Commenters suggested alternate language and recommended minimum levels of methane for this proposed standard. MSHA revised this standard and would permit testing required by proposed standard § 57.37204 as meeting these requirements. However, the minimum methane level suggested was not incorporated. MSHA believes that smoking or open flame should not be permitted when any methane is present in the mine atmosphere of a Category IV mine.

Sections 57.31102, 57.33102, 57.34102, 57.36102, 57.38102, and 57.39102 Open flames.

This proposal would combine and revise existing standards §§ 57.21011, 57.21012, and 57.21013; and appeared as draft proposals §§ 58.21–111, 58.21–311, and 58.21–611. It would prohibit use of open flame underground except for welding, cutting, and other maintenance operations. Such maintenance operations may be performed in other than fresh air only if tests for methane are conducted before and during the operation. Testing is to be done either by monitors provided on face equipment, or by persons at the work site at intervals not to exceed 5 minutes. In the draft proposal, the sampling interval was 10 minutes. However, the proposed standard would reduce the interval to 5 minutes. Methane gas moves from place to place and sampling at 5 minute intervals is considered to be reasonable and appropriate during such maintenance operations. A shorter time interval would be impractical and a period of 10 to 20 minutes may allow dangerous accumulations of methane gas. If major maintenance work involving cutting and welding for a long duration is necessary, MSHA recommends that the equipment be moved into fresh air for repairs. Fresh air is air that has not been contaminated by methane and other gases. The purpose of this proposed standard is to permit immediate maintenance-type repairs. The Agency would expect that equipment requiring major repairs be moved to a safe location. One commenter suggested that the preproposal draft test interval of 10 minutes for Category III mines would allow cutting and welding at the face, which would eliminate or reduce the protection afforded by the existing standards. However, existing standard § 57.21011 prohibits the use of open flame in other than fresh air except for welding and cutting. The existing standards allow welding and cutting at the face with continuous testing for methane during such operations. Continuous testing required by existing standard § 57.21012 was considered impractical by some commenters, and certain hand-held instruments are not capable of continuous testing. MSHA agrees.

Commenters suggested that continuous methane monitors installed at work sites or on mining equipment should be allowed in lieu of manual testing. MSHA agrees and believes that such intruments would provide equivalent safety for miners, and appropriate wording has been incorporated into the proposal.

The proposed requirements for Subcategory I–C mines prohibit all open flame underground and provide a restriction of 50 feet from the mine opening for welding and cutting unless all persons are out of the mine and the mine opening is covered. Commenters suggested word changes and suggested that wet brattice be used over a substantial material to cover the mine opening and to prevent sparks from entering the mine opening. These suggestions have been incorporated only into the standard for Subcategory I–C mines.

The limitation of 1.0 percent methane as prescribed by standard existing § 57.21013 is retained except for Subcategory I–C and II–A mines. Methane levels were not standardized because the degree of hazard and contributing factors are different within categories and subcategories. A provision for igniting underground retorts was incorporated for Subcategory I–A and I–B mines.

Section 57.33103 Dust containing volatile matter.

This is a new proposed standard, and appeared as draft proposal 58.21–399. It requires dust control measures that will effectively eliminate the accumulation of explosive quantities of dust containing volatile matter in Subcategory I–C mines.

Commenters stated that an explosive amount of dust is not defined and that

enforcement of the standard would be subjective. MSHA has revised the standard for clarity. Explosive amounts of dust would vary from mine-to-mine and even day-to-day. Explosive quantities are normally dependent upon variables such as particle size, concentration and temperatures. However, due to the extreme volatility of dust in this subcategory of mines, MSHA considers that an accumulation of any visible amount of dust would be a potential hazard in view of past explosions that have occurred in gilsonite mills. Any accumulation that is not controlled or immediately eliminated presents a potential danger of disasterous consequences.

Sections 57.31201, 57.32201, 57.33201, 57.34201, 57.35201, 57.36201, 57.37201, 57.38201, and 57.39201 Main fans.

This proposal would revise existing standard § 57.21020, and appeared as draft proposals §§ 58.21–120, 58.21–220, 58.21–320, 58.21–420, 58.21–520, 58.21–620, and 58.21–720. It specifies the criteria for main fan installations. In the draft proposal, the Agency clarified the word "prompt" relative to fan reversal by specifying a 10-minute time limitation. Commenters stated that the fan reversal provision was unnecessary and requested that it be deleted. MSHA agrees and has deleted this provision since power leads can be reversed if necessary. Commenters also requested deleting the requirement that main fans be powered electrically. MSHA has changed the proposal to permit the use of either electric motors or internal combustion engines for driving main fans. Internal combustion engines may also be used for standby power.

Conditions for using internal combustion engines have been incorporated. The Agency believes that such conditions are necessary to provide basic protection from fuel fires and engine exhaust emissions. Commenters requested an exemption from this proposed standard for Subcategory II–B mines. MSHA has incorporated a "grandfather" provision for existing mines in Subcategory II–B and Category IV so that the standard would apply to new mines which begin operation after the effective date of the final rule.

Commenters also requested clarification of the term "malfunction" in the stopped-fan provision. In response to comments, MSHA has revised this provision to require that an alarm be sounded when the main fan slows or stops. For the safety of the miners, the main fans must run continuously while miners are underground. Main fans are usually installed at remote locations, away from the miners. An automatic alarm would provide a warning to both underground and surface miners in the event of a main fan malfunction, and enable corrective action to be taken.

However, under certain circumstances (based on the configuration of the mine or the mining method), the sounds of the main fan may be heard, permitting the miners to determine if the fan slows or stops. This situation is generally characteristic of gilsonite mines. Typically, these mines are small operations with few employees. Therefore, Subcategory I–C mines would not have to conform to the alarm requirement, unless the miners underground could not hear the operation of the main fan. Commenters on Subcategory I–C mines stated that an automatic warning device is not necessary when a main fan slows or stops because persons in the mine can hear the system at all times. MSHA agrees and has specified that where the fan system cannot be heard at all times, an alarm shall be provided. They also requested that the mine production air-lift system which is unique to these mines be considered the main fan and ventilation system. Under the proposal, this will be permitted if the system complies with all applicable main fan standards.

Commenters requested deletion of the requirement for static conducting drive belts and fan blades, and for nonsparking materials in fan blades. MSHA believes that such requirements are necessary and has identified the fan blade components that must be nonsparking. Reference to electrical components exposed to forward and reverse airstreams has been retained because there is no assurance that a given fan will always be operated blowing.

Commenters requested that the requirement that main fans be installed on the surface in Category II mines be applied only to new mines. MSHA has incorporated this provision for Subcategory II–B and Category IV mines. However, the Agency believes that main fans must be installed on the surface in Subcategory II–A mines since these mines would have experienced an outburst. An outburst or an explosion following an outburst could severely damage or ruin the underground main fan which would destroy ventilation for the survivors and jeopardize rescue and recovery workers.

A requirement for methane monitors on main exhaust fans was incorporated for Subcategory I–A and I–B mines because of the potential quantities of methane that could be released during blasting.

Sections 57.31202, 57.33202 (Main Fan Operation), 57.34202, 57.36202, 57.38202 Main fan operation and inspection.

This proposal would revise existing standard § 57.21021, and appeared as draft proposals §§ 58.21–121, 58.21–321, 58.21–421, and 58.21–621. It requires continuous operation of main fans while persons are underground, and also requires pressure-recording gages, daily inspection and certification. Revisions to the draft proposal include a suggestion by commenters to allow shut down of main fans while all persons are out of the mine as permitted by the existing standard. Provisions for maintenance, adjustments, and unplanned failures are omitted from the proposed standard as these exceptions are specifically addressed in other proposed standards within each category or subcategory.

Commenters suggested insertion of the words "while running" to the requirement for the daily inspection of main fans, which has been incorporated. Inspection of a stopped fan would not provide evidence of its operational performance. The suggestion for visual inspection has not been incorporated as the required inspection is not limited to what can be seen. Some malfunctions can be detected by odor or unusual sound. Inspections usually include taking manometer readings, checking amperage values, and looking for overheated bearings and belt slippage.

Under the proposal, gage charts and certifications would have to be retained for one year. In the preproposal draft, this aspect of the standard was applicable to Subcategory I–B mines, however, under this proposal it has been deleted at commenter's request since methane would not have been detected in these mines.

Commenters for Subcategory I–C mines suggested word changes to allow continuous operating of the fan while mining is in progress. MSHA has incorporated the suggested change by specifying continuous operation while ore production is in progress.

Sections 57.31203, 57.32202, 57.33203, 57.34203, 57.35207, 57.36203, 57.38203, and 57.39203 Separation of intake and return air.

This proposal would revise and combine existing standards §§ 57.21022 and 57.21023. It appeared as draft proposals §§ 58.21–122 and 58.21–123, 58.21–222 and 58.21–223, 58.21–322 and 58.21–323, 58.21–422 and 58.21–423, and 58.21–622 and 58.21–623. It requires separation of intake and return air

currents and provides temporary measures for air separation prior to completion of a second opening to the surface. The proposal has been clarified to reflect that air separation is required during and after development. MSHA has revised the proposal to be consistent with commenters recommendations concerning provisions to permit the use of ventilation tubing and a 250-foot limit for developmental work. These additional provisions establish specific safety measures to be followed during shaft, slope or drift development, yet allow some operational flexibility.

Commenters suggested that use of a flame-spread rating of 25 be applied to exposed surfaces instead of requiring that surfaces be noncombustible. MSHA has specified that concrete construction or its equivalent be used for partitions, and has incorporated the suggested flame spread rating for flexible ventilation tubing along with a limitation on the length of such tubing. The intent of such a limit is to require rigid tubing to be installed as development progresses. Commenters also suggested that noncombustible construction provisions apply only when single shafts are permanently used for main intake and return air current. Since fire hazards could exist whether the installation is permanent or temporary, the proposal does not reflect their suggestion. Commenters further stated that the draft proposal did not specify the types of ventilation required after two openings have been completed. MSHA agrees. This standard addresses separation of intake and return air. Specific requirements for ventilation and air flow are addressed by other ventilation and air quality standards. The requirements for Subcategory I–C mines are slightly different due to the unique mine configurations.

Sections 57.32203, 57.35213, 57.39213, and 57.40001 Actions at 0.25 percent methane.

This is a new proposed standard and appeared as draft proposal § 58.21–3. It requires mine operators to notify MSHA if 0.25 percent methane is detected in the mine atmosphere (2.0 percent for Category IV mines), and requires ventilation changes to dilute the methane. Commenters generally agreed to the action levels in the draft proposal with the exception of the 0.1 percent level for Category VI mines. In responses, MSHA has changed the level to 0.25 percent for Category VI mines. Appendix 2, "Action Levels and Standards Table," is provided as an aid in comparing and understanding action levels.

Mine ventilation is the primary means of controlling concentrations of methane, respirable dust and other airborne contaminants, and oxygen in the underground mine atmosphere. However, air flow can be suddenly disrupted for a variety of reasons, or a surge of methane gas may unexpectedly enter the mine. There could be a failure of the main fans or booster fans, a break in a seal, damage to a stopping, ground fall, outburst, blowout, or even a sudden drop in the barometer will affect mine ventilation. Since there can be breakdowns in air flow, a series of safeguards are provided. Requirements that designated actions occur at certain methane levels (action levels) are critical to an effective ventilation system. Action levels protect miners and prevent an ignition or explosion of methane gas. The explosive range for methane gas is from 5% to 15%. Since it is unsafe to work in a methane atmosphere without taking necessary precautions, the presence of methane in quantities below 5% alert miners of an increasing danger and the potential for an ignition or explosion of methane gas. The most dangerous areas would be at the faces, benches or unworked areas. Ore is disturbed at the faces and benches and methane is released into the mining environment. Unworked areas may conceal the presence of gas until it is suddenly released by drilling, cutting, or blasting. Based upon the category or subcategory of mine and the amount of methane gas found, or action level, a mine may be required to change or adjust its ventilation, deenergize or shut down its electrical and diesel equipment, or withdraw personnel from an affected area or the entire mine. Miners would not be allowed to return, or to energize equipment, until needed corrections have been made and the affected areas determined to be safe for reentry and resumption of mining.

The proposed action levels are based upon the lower explosive limit for methane gas of 5% and acceptable safety factors for each category or subcategory of mine. They have taken into consideration such factors as mine size, the manner, amount and frequency of methane emissions, the mining methods and cycles, the size of the mine openings, and the product mined. The 0.25% level is used as a threshold measure of methane. If this level is encountered in a Category VI mine, or a Subcategory I–B, II–B, and V–B mine, it must be reported to MSHA so that the Administrator may conduct an investigation of the occurrence to determine if category placement or change in placement is warranted. In other categories, this level would initiate a change in ventilation to correct the situation. The 0.25% level was initially used because it was the lowest concentration that could be measured using a flame safety lamp. Today, hand-held methanometers and methane monitors are capable of accurately measuring much lower levels. However, the flame safety lamps continue to be used as supplementary testing devices.

Sections 57.32206, 57.35216, 57.37207, 57.39216 and 57.40004 Actions at 2.0 percent methane.

This is a new proposed standard which appeared in the draft proposal as § 58.21–770, for Category IV mines only. In the proposal, this requirement is extended to all other categories. It requires all persons to be withdrawn from the mine in certain categories or subcategories when methane levels reach 2.0 percent and prohibits reentry until methane is reduced to less than 0.5 percent. MSHA believes that withdrawal of persons at 2.0 percent is necessary for safety in these mines due to the absence of permissible equipment and the lack of comparable ventilation requirements proposed for other mines where methane is an established hazard.

The draft proposal required that persons be withdrawn from the mine and MSHA be immediately notified whenever 2.0 percent or more methane is present in the mine. Commenters generally supported the preproposal draft, however, they recommended that it be clarified. Commenters questioned the logic of miners remaining in the mine until methane levels reach 2.0 percent but not allowing them to return until it was reduced to 0.5 percent. Commenters also suggested deleting this requirement stating that it was a duplication of draft proposal § 58.21–3(a)(1)(c).

In the proposal, MSHA has changed the language of this standard for clarity. However, the withdrawal and reentry methane levels have not been changed. Proposed standard § 57.37206 requires withdrawal from the working place at 1.0 percent methane and prohibits return until methane is reduced to less than 0.5 percent. If methane levels cannot be immediately reduced, or if initial detection indicates 2.0 percent or more, then everyone must be removed from the mine. Since other standards in this category do not allow personnel in the working place until methane levels are reduced to less than 0.5 percent, allowing them back into the mine (but not into the working places) at between 1.0 percent and 2.0 percent levels would

be unnecessary and could be potentially dangerous.

Sections 57.31205, 57.33205, 57.34205, 57.36205, and 57.38205 Main ventilation failure.

This proposal would revise existing standard 57.21024, and appeared as draft proposals 58.21–124, 57.21–324, 57.21–424, and 57.21–624. It prescribes actions to be taken when main fans stop or other main ventilation failures occur, and allows a period of time for corrective action before withdrawal is required. Commenters suggested a revision that essentially would require action only after methane concentrations reached or exceeded 1.0 percent. This suggestion would allow continued production after ventilation has stopped, and in a section after methane has been found. Further, the concentrations could reach or exceed 1.0 percent in one or more headings. MSHA believes that such a revision would not provide time for withdrawal of persons from the mine due to the potential for a rapid rise of methane in the mine atmosphere. MSHA believes that miners should not be kept underground without ventilation in a potentially gassy environment beyond a 30-minute time period.

Commenters suggested that a 1.0 percent action level be standardized for all categories. MSHA does not believe that standardization of action levels is appropriate because the degree of methane conditions and hazards are different for the various categories of mines. In the preproposal draft, the time allowed for a ventilation interruption was 15 minutes. However, in the proposal it has been changed to 30 minutes to allow additional time to determine the cause and to make repairs. Commenters suggested omitting the time allowed for restoring ventilation in preference to a 1.0 percent action level. MSHA has retained the 30-minute time allowance for momentary power failures and other brief interruptions of ventilation without requiring withdrawal of miners. If after 30 minutes ventilation cannot be restored, it is essential to safety that persons be promptly withdrawn from the mine.

Commenters stated that the draft proposal would mandate a standby fan for each main fan. The provision, retained in the proposal, would permit the use of standby fans if such fans deliver equivalent ventilation.

Commenters also recommended that the term "competent person" be retained in the proposed standard in lieu of the phrase "a person designated by the mine operator." The reason given was that "competent person" is defined in § 57.2 and is familiar to the mining industry. MSHA agrees and has proposed a revised definition. Commenters also suggested that the requirements for main fan failure should be the same as those for main ventilation failure. MSHA agrees and has combined both provisions.

Since some work would be permitted in Subcategory I–C mines when the main fan is shut down, the proposed methane level of 0.5 percent is necessary due to potential fluctuation in natural ventilation. Subcategory I–C commenters suggested that a failure of the main fan does not present a significant hazard because certain dust samples collected by MSHA in these mines have indicated one-thousandth of an explosive concentration. However, these dust concentrations were respirable samples collected on a time-weighted average and do not reflect the amount of dust that might be suspended in the air at any given moment or place.

Section 57.21025 Failure of mine ventilation.

MSHA proposes to delete existing § 57.21025 for all categories. It appeared as draft proposals §§ 58.21–125, 58.21–225, 58.21–325, 58.21–425, and 58.21–625, and prescribed actions to be taken in the event of ventilation failures other than main fan failures. Commenters recommended that mandated actions should be the same for this requirement as those in the standards for main ventilation failure. MSHA agrees and has combined this requirement into proposed standards described in the preceding section revising § 57.21024.

Sections 57.31207, 57.33207, 57.34207, 57.36207, and 57.38207 Reentry after shutdown of main fans.

This proposal would revise existing standard § 57.21027, and appeared as draft proposals §§ 58.21–127, 58.21–227, 58.21–327, 58.21–427, 58.21–627. It prescribes testing procedures prior to reentry of personnel following main fan shutdown. Commenters recommended changes in language and the establishment of a methane level consistent with other ventilation standards. These recommendations are generally incorporated into the proposal.

A 30-minute time period prior to reentry has been added to allow time for the ventilation system to become effective. MSHA considers this to be particularly important after the mine has been idle and unventilated for one or more weeks.

Commenters recommended that MSHA establish a limit on the number of persons who would be allowed to enter the mine for the purpose of compliance with this standard. MSHA considered this recommendation, but does not believe that a specific number would be appropriate for the variety of situations that could be encountered. However, the standard permits only those persons necessary to test for methane and to make ventilation changes underground until ventilation has been fully restored. The number of persons needed to perform these activities will vary from mine to mine. Commenters requested that the term "competent person" be retained. MSHA has done so and has proposed a revised definition for this term. In the draft proposal, this standard would have applied to Subcategory I–B and I–C mines, but in response to commenters, the proposal would not apply to these mines. Commenters stated that this requirement was inappropriate for Subcategory I–B and I–C mines.

Sections 57.31208, 57.32207, 57.34208, 57.36208, and 57.38208 Booster fans.

This proposal would revise and combine existing standards §§ 57.21028 and 57.21029, and appeared as draft proposals §§ 58.21–129, 58.21–229, 58.21–329, 58.21–429, and 58.21–629. It provides safety precautions for the use of booster fans. Some commenters did not believe that booster fans in fresh air needed to be permissible, since some other equipment in fresh air is not required to be permissible. However, other commenters supported the draft proposal. MSHA believes that all booster fans need to be permissible. Booster fans may be installed in such close proximity to the working areas, particularly in air splits, that they could be affected by intrusions of methane. Recirculation and disruptions in the normal flow of air could also cause intrusions of methane.

MSHA has revised the provision in the draft proposal that implied that an air lock was required if passage through the bulkhead was necessary "when the fan is running." This was to clarify that the operating fan is not a factor in determining the need for air locks. Under the proposal, if there is no need for passage through the bulkhead, there is no need for an air lock. The Agency also revised the draft proposal to allow interruption of operation of booster fans if positive air flow can be maintained in accordance with other ventilation standards. The provision for a reversing requirement has been deleted to correspond with the same revision for main fans. Commenters were concerned that the automatic warning requirement for a fan system malfunction was not

clear. This requirement has been clarified in the proposed standard.

Section 57.33208 In-line filters.

This is a new proposed standard that was not included in the draft proposal. It requires that filters be installed on air-lift fan systems in Subcategory I–C mines to prevent an explosive amount of dust from being drawn through the fan. Such filters are currently in use in these mines and are considered a necessary precaution to prevent dust explosions within air-lift systems.

Sections 57.31209, 57.33209, 57.34209, 57.36209, and 57.38209 Auxiliary fans.

This proposal would revise existing standard 57.21030, and appeared as draft proposals §§ 58.21–130, 58.21–230, 58.21–330, 58.21–430, and 58.21–630. It provides safety precautions for the use of auxiliary fans. Commenters suggested alternate language which has been incorporated into the proposal. In response to comments the proposal has been revised to include diffuser fans.

Section 57.21031 Auxiliary fan inspection.

This proposal would delete existing standard § 57.21031, and was included in the draft proposal. The existing standard requires auxiliary fans to be inspected at least twice each shift. Some commenters suggested that the existing inspection requirement should be retained. However, MSHA believes that inspection of auxiliary fans twice each shift is unnecessary because air flow and air quality must be maintained in accordance with other ventilation standards. Accordingly, standard § 57.21031 is proposed to be deleted.

Section 57.31210, 57.33210, 57.36210, and 57.38210 Minimum air flow.

This proposal would revise and combine existing standards §§ 57.21033 and 57.21034, and appeared as draft proposals §§ 58.21–134, 58.21–234, 58.21–334, and 58.21–634. It requires a minimum flow of air at specific locations in the mine. All comments supported the draft proposal. MSHA has added a provision in the proposal, which requires withdrawal of personnel when minimum air quantities cannot be maintained. This provision is necessary because precautionary measures in other standards pertaining to partial ventilation failures would be deleted in the proposal. Minimum air flow proposals take into consideration the different mine types and configurations. In the draft proposal, this requirement was applicable to Subcategory I–B mines, but is now proposed to be deleted at commenters request, since methane would not have been detected in these mines.

Mine ventilation is the primary means used in underground mines to control airborne contaminants including methane gas. Minimum air flow quantities for ventilation have been proposed to assure control of methane in the mine atmosphere under operating conditions. However, such quantities are not always effective, for example, during interruptions or stoppage of air flow due to events such as damage to overcasts, curtain walls or ventilation doors, and roof falls or floor heaves. In addition, during mine advancement, a ground fault or a pocket of methane of such quantity to inundate all or part of the mine atmosphere could be encountered. In these situations, methane emissions can quickly approach explosive levels thereby endangering the lives of all persons underground. The proposed action level standards require specific corrective actions at certain levels of methane gas in the mine atmosphere. Since methane gas is odorless and colorless, methane monitors are needed on some equipment and mine-wide monitoring systems are necessary in certain categories to alert the miners of an otherwise undetected build-up of methane gas. Permissible equipment is required under some conditions to eliminate potential sources of ignition and to provide time to evacuate areas of the mine where methane is present.

Action level requirements specify corrective actions that must be initiated when mine ventilation cannot control methane emanating into the mine atmosphere.

Sections 57.31211, 57.32210, 57.33211, 57.34225, 57.36211, and 57.38211 Weekly testing.

This proposal would revise and combine existing standards §§ 57.21035, 57.21065, and 57.21066 and appeared as draft proposals §§58.21–135, 58.21–235, 58.21–335, 58.21–465, and 58.21–635. It requires testing for methane and carbon monoxide and requires air flow measurements (except Subcategory II–A mines) at specific locations in the mine at least once every 7 days. It also requires certification of such tests and measurements. Commenters suggested that the requirement for testing for carbon monoxide be deleted and questioned the need for such tests. MSHA believes that the presence of carbon monoxide can be indicative of a heat build-up caused by spontaneous combustion, and may provide advance warning of an undetected mine fire or a methane ignition. The potential for spontaneous combustion is greater with carbonaceous material. Commenters' suggestion that affected persons be informed if hazardous conditions are detected has been incorporated into the proposed rule.

Commenters recommended that the examinations include airborne contaminants. Control of airborne contaminants is covered by the Agency's air quality standards which are currently under review. Therefore, they are not included in this proposal. Commenters for Subcategory I–C mines recommended measurement of air by velocity instead of volume which has been incorporated into the proposed standard for those mines.

Section 57.31212, 57.33212, and 57.36212 Installation of support equipment.

This proposal would revise existing standards § 57.21036, and appeared as draft proposals §§ 58.21–136, 58.21–236, 58.21–336, and 58.21–636. They required that battery charging stations, transformer stations and other support equipment be well ventilated. Commenters suggested that this standard be deleted, stating that such requirement was not needed because the fire potential of battery charging stations is less than that of permissible mobile equipment. Other commenters suggested retention of the existing standard, and expressed concern that the small chargers for 12-volt and 24-volt batteries would be affected. Small single battery chargers are not covered by the proposed standard. The intent of this proposal is to require sufficient ventilation to prevent build-up of methane at any location where support equipment such as battery charging stations, transformers, compressors, and pumps are installed. Compressors and pumps are included in the proposal as such installations present similar potential hazards where methane might be present. Commenters also stated that the requirement for a separate split of air for such equipment was unnecessary. MSHA agrees and has deleted this provision.

In the preproposal, this requirement was applicable to Subcategory I–B mines but, in response to comments, the proposed requirement would not apply to these mines since methane has not been detected in these mines.

Sections 57.31213, 57.34210, 57.36213, and 57.38213 Changes in Ventilation.

This proposal would revise existing standard § 57.21038, and appeared as draft proposals §§ 58.21–138, 58.21–438, and 58.21–638. It provides safety precautions to be taken when changes are made that materially affect the main

air currents or splits. Commenters recommended language changes for clarity. MSHA generally agrees with these recommendations except for the reference to "intrinsically safe monitoring equipment." This was not adopted because monitoring equipment must be permissible. MSHA has added a requirement that all persons be out of the mine when ventilation changes are made that may affect the safety of persons in the mine.

Sections 57.31214, 57.32204, 57.33214, 57.34211, 57.35214, 57.36214, 57.37205, 57.38214, 57.39214 and 57.40002 Actions at 0.25, 0.5 and 1.0 percent methane.

This proposal would revise existing standard § 57.21039, and appeared as draft proposals §§ 58.21–139, 58.21–339, 58.21–439, 58.21–639, and 58.21–739. It requires that ventilation changes be made and that equipment be deenergized at specific methane levels in certain category and subcategory mines. Commenters suggested changes to the methane testing method and also suggested removal of diesel equipment rather than deenergization. The testing method suggestion is discussed under proposed § 57.30003. MSHA believes that diesel equipment must be deenergized or removed when methane is encountered at levels specified. Immediately shutting off diesel equipment is the safest method of eliminating a source of ignition when methane is encountered. However, the proposal would permit diesel equipment to be promptly removed in some categories and subcategories. Reference to electrical and diesel equipment was omitted for Subcategory I–C mines because this equipment is currently not used underground in these mines except for electric submersible sump pumps.

Sections 57.31215, 57.32205, 57.33215, 57.34212, 57.35215, 57.36215, 57–37206, 57.38215, 57.39215, 57.40003 Actions at 0.5, 1.0, 1.5, 2.0, and 2.5 percent methane.

This proposal would revise existing standard § 57.21040, and appeared as draft proposals §§ 58.21–140, 58.21–340, 58.21–440, 58.21–640, and 58.21–740. It specifies withdrawal actions to be taken when specific levels of methane are present in the mine atmosphere. Commenters indicated general acceptance of the preproposal but suggested higher action levels and changes in the methane testing method. The testing method is discussed under proposed § 57.30003. MSHA has retained the action levels of the draft proposal because the Agency believes they are necessary to assure adequate protection for miners.

Sections 57.31216, 57.34213, 57.36216, and 57.38216 Air passing abandoned or unsealed areas.

This proposal would revise and combine existing standards §§ 57.21041, and 57.21042 and appeared as draft proposals §§ 58.21–141, 58.21–341, 58.21–441, and 58.21–641. It would establish methane limits for air that has passed by or through abandoned or unsealed areas used to ventilate working places. Commenters suggested that the draft proposal be clarified and stated that all air used for ventilation would be affected regardless of the source. MSHA agrees and has changed the draft proposal. Unsealed abandoned areas and other inaccessible areas are known sources of methane. If air passing by or through such areas contains 0.25 percent or more methane, it cannot be used for ventilation because the concentration could increase due to progressive natural condition changes that occur during mining. The specific requirement for carbon monoxide testing was deleted from the draft proposal because it would be included in the proposed weekly testing standards.

In the draft proposal, this standard was applicable to Subcategory I–C mines, however, it has been deleted because it is not considered applicable to conditions and ventilating methods in these mines.

Sections 57.31217, 57.34214, 57.36217, and 57.38217 Abandoned areas.

This proposal would revise existing standard § 57.21043, and appeared as draft proposals §§ 58.21–143, 58.21–243, 58.21–343, 58.21–443, and 58.21–643. It prescribes safety measures for potential methane emissions from abandoned areas. Commenters supported the draft proposal. In the preproposal, this standard was applicable to Subcategory I–B and I–C mines, but has been deleted as inappropriate for these mines.

Sections 57.31218, 57.32213, 57.33218, 57.34215, 57.36218, 57.38218, and 57.39218 Seals and Stoppings.

This proposal would revise and combine existing standards §§ 57.21044, 57.21045 and 57.21053. It appeared as separate draft proposals §§ 58.21–44 and 58.21–153, 58.21–244, and 58.21–253, 58.21–344 and 58.21–353, 58.21–444 and 58.21–453, and 58.21–644 and 58.21–653. The proposal would address construction of seals, and those stoppings that separate main intake and main return airways. It also includes provisions to permit air sampling behind seals.

Some commenters opposed the use of the term "noncombustible" for seals and suggested a flame spread rating of 25 or less. MSHA believes that seals and main intake and return stoppings must be of substantial construction and that their resistance to fire must exceed a flame-spread rating of 25. While a flame-spread rating of 25 is acceptable for line brattice and ventilation tubing, seals and main air stoppings are so critical to the ventilation of the mine that they must have a greater fire resistance capability. Seals constructed of materials such as timber or foam-type blocks would be acceptable if all exposed surfaces were coated with one-inch of shotcrete, one-half inch of gunite, or a cement-like material of equivalent fire resistance. However, fire-retardant paint and urethane foam are not suitable coatings for these critical areas. In the preproposal, the seal requirement was applicable to Category I–B and I–C mines, however, it has been deleted as inappropriate for these mines.

Commenters suggested the use of foam-type materials for construction of stoppings in main intake and return entries. The proposal would permit the use of such materials provided that they meet the construction requirements and that areas surrounding seals or stoppings constructed of foam-type materials be kept free of sources of heat for a distance of a least 25 feet.

Commenters recommended retaining the word "solid" which is used in the existing standard, but was not included in the draft proposal. MSHA believes that the term "solid" construction would prohibit the use of foam-type blocks for construction of seals and stoppings, which are often more effective under certain ground conditions.

The word "permanent" which was used in the draft proposal has been deleted because the Agency does not consider it necessary since this standard applies only to stoppings used for separation of main intake and main return air streams. The word "main" has been added for clarity.

Section 57.21046 Crosscut intervals.

This proposal would delete existing standard § 57.21046, which appeared as draft proposals §§ 58.21–146, 58.21–246, 58.21–446, and 58.21–646. It required maximum intervals for crosscuts. MSHA believes that proposed revisions of minimum air flow and air quality requirements adequately address the provisions of this standard.

Sections 57.31220, 57.34217, 57.36220, and 57.38220 Line brattice and fan ducting.

This proposal would revise existing standard § 57.21048, and appeared as

draft proposals §§ 58.21–148, 58.21–248, 58.21–348, 58.21–448, and 58.21–648. It requires the use of line brattice or fans with ducting to assure positive air flow across the face. Commenters recommended deletion of the draft proposals, suggesting that other proposed standards requiring minimum air flow adequately addressed ventilation requirements at the face area. MSHA believes that line brattice, fans with ducting, or other equivalent means are necessary to provide positive air flow to the face. Therefore, the requirement has been retained in the proposal. Some commenters were concerned with single initial cuts off the solid. In response to these comments, the proposal would not require ducts or brattice when taking an initial cut, if air flow requirements in other ventilation standards are met. The proposal also includes an exception for pillar extraction. Commenters also requested an exception to this requirement if there was perceptible air flow at the face. MSHA believes that the source of perceptible air flow at the face would be from a fan or line brattice.

In the preproposal this standard was applicable to Subcategory I–B mines, but would not now apply to these mines.

Sections 57.31221, 57.32216, 57.33224, 57.34218, 57.36221, 57.38221, and 57.39221 Brattice cloth and ducting flame resistance.

This proposal would revise existing standard § 57.21049, and appeared as draft proposals §§ 58.21–149, 58.21–249, 58.21–449, and 58.21–649. It specifies a flame spread rating of 25 or less for brattice cloth and fan ducting. Commenters supported the draft proposal. A revised laboratory test to evaluate flame resistance of brattice and ducting is being developed by the MSHA Approval and Certification Center, and the new test requirements may be proposed by the Agency at a later date.

Section 57.21050 Damaged brattice.

This proposal would delete existing standard § 57.21050 which would have required damaged brattice to be repaired promptly. MSHA believes that the proposed revisions of the minimum air flow and air quality standards would adequately address the provisions of this standard. Commenters agreed with this proposed deletion.

Section 57.36222 Crosscuts before abandonment.

This proposal would retain the provisions of existing standard § 57.21051, and appeared as draft proposal § 58.21–651. It provides for crosscuts to be established before workings are abandoned in unsealed areas of the mine.

Section 57.21052 Room necks and stub entries.

The existing standard established a maximum depth for room necks and stub entries beyond the last open crosscut. MSHA proposed to delete this standard in the draft proposal because the protection would be covered by other proposed standards. Some commenters agreed while others, who were concerned about Category III mines, objected to the deletion. For Category III mines, proposed standards §§ 57.36211 and 57.36227 specifically require regular tests for methane, and proposed standards §§ 57.36214 and 57.36215 specify actions to be taken when methane is found. MSHA believes that these proposed standards provide appropriate measures for safety in room necks and stub entries, since these places must be regularly sampled regardless of depth.

Sections 57.36224 and 57.38224 Airlocks, overcasts, and undercasts.

This proposal would revise existing standard § 57.21055, and appeared as draft proposals §§ 58.21–155, 58.21–255, 58.21–455, and 58.21–655. It would require installation of air locks, overcasts, or undercasts so when persons or trips pass, they do not cause air flow interruptions. Commenters recommended deletion of this standard, stating that these hazards are adequately covered by existing standards §§ 57.5–20, 57.5–31, and 57.5–32 (now §§ 57.8520, 57.8531, and 57.8532 respectively). MSHA does not agree since standard § 57.8520 provides for submitting a ventilation plan only upon request of the District Manager. Standards §§ 57.8531 and 57.8532 address single ventilation doors and their construction. Interruptions of air currents in potentially gassy mines involve an additional hazard which dictates more stringent air flow control. MSHA proposes to delete this standard as inappropriate for Category I and Category II mines due to mine opening size and configuration.

Section 57.21056 Air Locks.

This proposal would delete existing standard § 57.21056 which requires that air locks be ventilated to prevent accumulations of methane. Commenters recommended a revision which would permit up to 1.25 percent methane inside air locks. MSHA did not adopt this recommendation because the proposed testing requirements and action level standards afford the same or greater protection.

Sections 57.36225, and 57.38225 Air doors.

This proposal would revise existing standard § 57.21057, and appeared as draft proposals §§ 58.21–157, 58.21–257, 58.21–457, and 58.21–657. It requires that ventilation doors which control the flow of air by being closed, shall be kept closed, except when persons or equipment are passing through. Doors would be marked to indicate whether they are to be kept closed or open for air flow control.

MSHA proposes to delete this requirement for Category I and Category II mines due to the unique configuration of these mines. In the preproposal draft, this standard also was applicable to Subcategory I–B mines. However, MSHA proposes to delete this requirement because methane has not been detected in these mines.

Sections 57.31226, 57.34222, 57.36226, and 57.38226 Overcast and undercast construction.

This proposal would revise existing standard § 57.21058, and appeared as draft proposals §§ 58.21–158, 58.21–258, 58.21–458, and 58.21–658. It addresses the construction and installation of overcasts and undercasts. Commenters suggested that airtight construction is impossible to achieve. MSHA agrees and has revised the requirements for this provision. Another suggestion was made to substitute a "flame spread-rating of 25" for the term "noncombustible." MSHA believes that the function and location of overcasts and undercasts are so critical that a burn-through or failure could have disastrous consequences and therefore the term "noncombustible" would be retained. Other commenters were concerned that the draft proposal revision would reduce the quality of overcast and undercast installations. The proposed definition of "substantial construction" would include all provisions contained in the existing standard.

Commenters also objected to the limitation on construction material imposed by the proposed definition of "noncombustible materials." They stated that products such as concrete block are susceptible to crushing due to ground movement which results in substantial air leakage and recirculation. MSHA has revised the language to permit the use of other materials such as timbers, if they are coated with shotcrete or gunite.

In the draft proposal this standard was applicable to Subcategory I–B mines. However, MSHA proposes to delete this requirement since methane has not been detected in these types of mines.

Sections 57.31227, 57.33221, 57.34223, 57.36227 and 57.38227 Preshift examination.

This proposal would revise existing standard § 57.21059, and appeared as draft proposals §§ 58.21–159, 58.21–359, 58.21–459, and 58.21–659. It requires preshift examinations for specific situations. Comments were varied reflecting different interpretations of the draft proposal. MSHA has revised the standard to clarify the intent. Mines must be examined following an idle period, working places examined prior to starting work on each shift, and all areas of the mine examined at least once during each 24-hour period of operation. MSHA considers preshift examinations to be a critical precautionary measure in gassy mines.

Commenters for Category II–A mines suggested that the requirement for a preshift examination prior to any person entering the mine should be eliminated because the mine-wide monitoring system would provide adequate safety. MSHA agrees, and the proposal would allow persons underground if the monitor system indicates that the mine is free of methane. However, all working places still need to be tested for methane before work is started. MSHA has also made this provision consistent with proposed standard 57.34601, blasting from the surface.

Section 57.21061 Dangerous conditions.

This proposal would delete existing standard § 57.21061 which would have specified that only qualified persons may enter areas where danger signs are posted. MSHA proposes to delete this standard because other proposed requirements for testing and action level standards adequately address these hazards. Commenters supported deletion of this standard.

Section 57.21062 Danger signs.

This proposal would delete existing standard § 57.21062, which would have prohibited the removal of danger signs until the hazard had been corrected. MSHA believes that hazards covered by this standard are adequately addressed in the proposed testing requirements and action level standards. Additionally, existing standard § 57.20011 requires barricading and posting areas where health or safety hazards exist. Commenters concurred with this proposed deletion.

Sections 57.31228, 57.32221, 57.33222, 57.34224, 57.35202, 57.36228, 57.37203, 57.38228, and 57.39228 Permissible testing devices.

This proposal would revise existing standard § 57.21064, and appeared as draft proposals §§ 58.21–164, 58.21–264, 58.21–364, 58.21–464, 58.21–564, 58.21–664, and 58.21–764. It requires that portable, self-contained methane detectors and other devices such as oxygen detectors and dust pumps be permissible. It would also establish specifications for these instruments. Provisions for calibration and maintenance of methane monitoring systems have been revised in response to commenters. Commenters objected to the recordkeeping requirement for calibration of instruments and believed that the restriction placed on the use of flame safety lamps was not written as a mandatory standard. MSHA agrees and has revised the proposal accordingly.

Commenters objected to the reference to "other combustible gases," stating that standards which are applicable to gassy mines should only refer to methane gas. MSHA believes that any combustible gas found in a mine requires that certain precautionary measures be taken to prevent an explosion.

Sections 57.31229, 57.32222, 57.33223, 57.34226, 57.35229, 57.36229, 57.37202, 57.38229, and 57.39229 Mechanical ventilation.

This proposal would revise existing standard § 57.21067, and appeared as draft proposals §§ 58.21–167, 58.21–267, 58.21–367, 58.21–467, 58.21–567, 58.21–667, and 58.21–767. It requires all mines to be ventilated mechanically. Commenters suggested deletion of this standard, stating that mechanical ventilation is implied by other standards. However, MSHA believes that such a requirement should be expressly stated because the alternative to mechanical ventilation is natural ventilation which is not always reliable for maintaining air quantity and direction of flow.

Section 57.36230 Air flow in intake and return courses.

This proposal would revise existing standard § 57.21068, and appeared as draft proposals §§ 58.21–168, 58.21–268, 58.21–368, and 58.21–668. It requires that air flow be maintained in intake and return air courses. In the draft proposal, this standard was applicable to Category I mines. However, it is proposed to be deleted because these requirements are inappropriate for such mines.

Sections 57.31230, 57.34227, 57.36231, and 57.38231 Doors on main fans.

This proposal would revise existing standard § 57.21069, and appeared as draft proposals §§ 58.21–169, 58.21–269, 58.21–469, and 58.21–869. It retained the language of the existing standard and required doors at main fan installations to close automatically following fan failure. Commenters generally supported the draft proposal. However, one commenter was concerned that self-closing doors are not compatible with main fan reversal. MSHA agrees and notes that this contention is correct in some existing installations. Therefore, the reversing provision has been deleted from the proposed main fan standard.

In the draft proposal this standard was applicable to Subcategory I–B and I–C mines; however, it is proposed to be deleted because the requirements are not applicable to these types of mines.

Sections 57.31301, 57.34301, 57.38301, and 57.39301 Mine-wide monitoring system.

This would be a new proposed standard and appeared as draft proposals §§ 58.21–172 and 58.21–472. It requires that a mine-wide monitoring system be installed to give warning and to deenergize power at specific methane concentrations. Commenters suggested some alternate provisions, but essentially agreed with the need for these systems.

Mine-wide monitoring systems are proposed for mines in Subcategories I–A, II–A, and V–A and V–B. This proposal does not replace the preshift examination proposal because the mine-wide system would be used only to provide surface recordings of underground methane concentrations after development, production, and bench round blasting. The preshift examiner on the on-coming shift would test the mine atmosphere in all working places before each shift and before persons enter the mine. Preshift examinations are not limited to methane, but involve testing of the mine atmosphere for air quality, respirable dust, oxygen, methane and other airborne contaminants. The examiner would also check the mine for physical problems including rock falls, changes in ventilation caused by damage to line brattice, ducting, stoppings, seals, overcasts and undercasts, and ventilation doors.

Commenters preferred that MSHA use the phrase "intrinsically safe monitors" in lieu of "permissible monitors." The

proposed standard has been changed to allow intrinsically safe or explosion-proof components or monitors. Commenters also believed that the location of the warning device is irrelevant so long as it can be seen or heard at all times. MSHA agrees and has incorporated this concept.

Paragraph (d) which requires calibration testing was moved to this proposed standard because commenters believed its placement in draft proposal § 58.21–464 was inappropriate. Commenters also recommended that the methane action level be changed to 1.0 percent in order to standardize levels for all categories of mines. They also questioned the accuracy of currently available monitoring equipment for measuring low levels of methane. MSHA's experience indicates that monitors are accurate within manufacturers' tolerances. Periodic calibration would be required in the proposed standard. Therefore, MSHA has retained the lower action levels instead of proposing to standardize action levels between mine categories because the conditions and degrees of hazard are different.

Commenters suggested that mine power be automatically deenergized when "power to the monitoring system is disrupted" instead of when the methane "monitoring system is not functioning properly." MSHA has incorporated this suggestion into the proposed standard along with a provision for a delay in deenergizing mine power due to nuisance tripping.

Commenters suggested alternate language to allow work to continue in fresh air areas while methane is being dissipated elsewhere in the mine. MSHA did not incorporate this suggestion and considers such a practice to be potentially dangerous because methane concentrations could exceed levels established by these proposed standards in any area of a mine, and the hazard would extend well beyond the immediate area where gas was detected.

Section 57.33301 Electrical grounding.

This would be a new proposed standard for Subcategory I–C mines and appeared as draft proposal § 58.21–373. It requires that all electrical systems providing power underground limit ground fault current to no more than 15 amperes, be provided with ground fault protection, and be continuously monitored for continuity of the ground circuit or tested for continuity at least every 30 days. The Agency received no comment on the draft proposal.

Section 57.33302 Pressure-relief vents.

This would be a new proposed standard for Subcategory I–C mines and appeared as draft proposal § 58.21–374. It requires pressure-relief vents on all dust handling and drying equipment and on facilities housing such equipment. Commenters stated that such a requirement is unnecessary, and does not specifically address explosions of flammable dusts. They also contended that the proposal was unclear as to what equipment would be affected by this standard. Commenters stated that past explosions involved electrical arcs or direct flame.

In the proposal MSHA has revised the standard to clarify that pressure-relief vents or other explosion-suppression systems are necessary for all equipment used for handling and processing volatile dusts and on all facilities housing such equipment. MSHA believes that these requirements are necessary because of the volatility of the dust involved and the past history of explosions in these mills and facilities.

Commenters recommended the use of fire suppression systems in lieu of vents. MSHA has incorporated this suggestion into the proposed standard as an alternate means of compliance.

Sections 57.33303 Jacketed and shielded cables, and 57.34302 Jacketed cables.

These are new proposed standards and appeared as draft proposals §§ 58.21–375 and 58.21–475. Proposed standard § 57.33303 for Subcategory I–C mines requires jacketed cables with grounded shielding around each conductor which is in contact with the ground conductors. Commenters contended that such requirements are unnecessary for fixed cable installations not subjected to damage through handling or contact with rough ground. They also suggested excluding submersible pumps from this requirement.

MSHA intends this standard to be applied to equipment such as submersible pumps. Power cables for these pumps are often installed in pipes, which might lack strain clamps. Also, individual conductor shields that extend all the way to the pump motor are sometimes not sufficient. Shields around each conductor will minimize arcing and provide a better path to ground should a ground fault occur. Such shields would also signal the circuit breaker to trip in accordance with proposed standard § 57.33301.

Proposed standard § 57.34302 for Subcategory II–A mines would be a new standard and requires that only jacketed cables be used to provide power to certain mining equipment.

Section 57.21077 Trolley wires.

This proposal would delete existing standard § 57.21077. A revision of the standard appeared as draft proposal §§ 58.21–177 and 58.21–677. The draft proposal did not significantly change the requirements of the existing standard, which specifies that trolley wires cannot extend into the last open crosscut or within 150 feet of pillar recovery workings. Commenters suggested deletion of all requirements of the existing standard except the draft proposal provision that trolley wires be installed in intake air. MSHA believes that the standard should be deleted as being inapplicable because any hazards involving trolley wires would be controlled by proposed testing, minimum air flow, and action level standards.

Sections 57.31303, 57.33304, 57.34303, 57.36302, and 57.38302 Permissible equipment.

This proposal would revise and combine existing standards §§ 57.21076 and 57.21078, and appeared as draft proposals §§ 58.21–178, 58.21–378, 58.21–478, and 58.21–678. It requires that only permissible equipment be used at the face. An exception is provided for loaders and trucks equipped with methane monitors in Subcategory II–A mines. The draft proposal required testing for methane and deenergizing diesel equipment at 0.25 percent methane levels. Commenters contended that it is safer to move diesel-powered equipment to fresh air than to deenergize it in place when methane is detected. In the proposal, MSHA has included action levels for each category and subcategory to require deenergizing or immediate withdrawal of diesel equipment. The proposal to remove diesel equipment from an area where methane has been detected is in response to those situations where equipment cannot be safely deenergized, such as on a grade or in a location where the equipment would block or obstruct a passageway.

Commenters suggested a 1.0 percent methane action level for this standard due to perceived problems of accuracy and maintenance with methane monitors on mobile equipment in a salt or corrosive atmosphere. MSHA's experience with the performance of methane detectors is that they are capable of performing accurately within the manufacturer's specification if they are maintained and calibrated according to the manufacturers' recommendations.

MSHA believes that the detection of methane at the proposed action levels is sufficient cause to immediately remove and deenergize mobile equipment.

In the proposal, MSHA has retained the permissibility requirement for such equipment. However, the proposal would allow nonpermissible stationary equipment to function without a methane monitor if the equipment is located in intake air or within 50 feet downstream of a mine-wide monitor sensor. This revision is in response to commenters' suggestions.

In order to eliminate potential methane ignition sources in Category III mines, the proposal would require that nonpermissible electrical and diesel-powered equipment be kept at least 150 feet from pillar recovery workings, longwall faces and shortwall faces. These mining systems have partly caved and poorly ventilated places (gobs). In these situations, methane may be forced out of the gob due to falling rock, and override the ventilation. A distance of 150 feet represents the maximum limit such a release of methane may be expected to travel when it is working against the ventilation system. This distance has been used in mining for approximately 40 years, and a review of MSHA's field data reveals that, for metal and nonmetal mines, the 150-foot distance appropriately addresses hazards in these areas. (See existing standard § 57.21077)

Commenters objected to the term "last open crosscut" and reasoned that it is not an appropriate term for Subcategory II–A mines. MSHA has deleted the term for Subcategory II–A mines, and has proposed a 100-foot limitation from the face for nonpermissible equipment in these mines. Commenters also objected to the draft proposal requirement for intake flame arrestors on diesel equipment. MSHA agrees and has proposed to delete this requirement.

Commenters recommended substituting the term "explosion-proof" for the term "permissible" throughout the categories. MSHA has retained the requirement that equipment used beyond the last open crosscut be permissible, except for specific equipment in Subcategory II–A mines. Permissible equipment would have to be approved under existing Agency permissibility requirements.

Sections 57.34304 and 57.38305 Distribution boxes.

This proposal would revise existing standard § 57.21079, and appeared as draft proposal § 58.21–479. It requires that distribution boxes containing short circuit protection for permissible equipment be explosion proof. Commenters recommended deleting this standard because the proposed permissibility standards adequately address the hazards. However, MSHA proposes to retain this standard since these distribution boxes are often located beyond the face or bench area. Proposed permissibility standards include only equipment used at the face or bench.

Sections 57.31305, 57.34305, 57.36303, 57.38303, and 57.39303 Methane monitors.

This proposal would revise existing standard § 57.21080, and appeared as draft proposals §§ 58.21–180, 58.21–380, 58.21–480, and 58.21–680. It requires methane monitors to be installed on specific mining equipment in each category and subcategory. Face drilling and undercutting machines were inadvertently included in the draft proposal for Category I and Category III mines; this equipment would be excluded in the proposal. Although some commenters recommended higher action levels for methane, MSHA has retained the levels specified in the draft proposal because they are necessary to assure protection of miners. Commenters also suggested that methane monitors automatically deenergize the equipment "should power to the monitor be disrupted" instead of when the monitor "malfunctions." MSHA has incorporated this recommendation.

Commenters expressed concern that mounting sensing units on the booms of certain machines would create maintenance problems. The requirement for positioning the sensors as close as practical to the working face should provide sufficient flexibility for locating the sensors in areas other than on the booms of face equipment. The intent of this provision is to assure that the sensors are positioned in a location where they are not easily damaged, yet close enough to detect methane released during operation of the equipment.

In the preproposal draft, the standard was applicable to Subcategory I–C mines, however, it has been deleted at commenters request because it is not applicable to equipment used in these mines.

Sections 57.38306 and 57.39306 Flow-control devices.

This is a new proposed standard that was not included in the draft proposal. It addresses the potential hazard of uncontrolled gases and flammable liquids entering the mine from boreholes drilled into an oil horizon in Category V mines. The control devices to be installed include but are not limited to packers, stuffing boxes, gas-water-oil separators, full-port valves, and standpipes.

Section 57.38307 Self-contained breathing apparatus.

This is a new proposed standard which was not presented as a requirement in the draft proposal. It requires self-contained breathing apparatus to be provided and strategically located in the mine. Strategic locations are those locations where the apparatus will be readily available to the miners when needed. They are considered necessary due to methane gas and the potential emission of hydrogen sulfide, carbon dioxide, and other harmful gases that may be encountered in a Subcategory V–A mine.

Sections 57.31401 and 57.32401 Underground retort plan.

This is a new proposed standard and appeared as draft proposals §§ 58.21–181 and 58.21–281. It would be applicable to Subcategory I–A and I–B oil shale mines and would require that an ignition and operation plan for underground retorts be submitted to the district manager for approval. Commenters suggested alternate language and suggested that an appeal procedure be included.

The use of underground retorts to extract shale oil and other carbonaceous material from oil shale by heat (fire) is in a state of development by the oil shale mining industry. Because underground retorts represent a unique technology involving highly technical processes, it would not be practical to specify detailed safety standards for uniform application to all operations. Mine operators have had to resort to the statutory variance procedure (petitions for modification under section 101(c) of the Mine Act) for standard § 57.4–58, (recently recodified as § 57.4161), which prohibits fires to be built underground, to make it relevant and feasible to individual mining operations. The revised standard continues the prohibition of fires underground. The proposed standard generally reflects the Agency's policy for granting petitions for modification for retorts, and such retorts have been operated under this concept. However, this plan standard would take precedence. MSHA proposes a plan-type standard and criteria for plan approval to deal with the hazards associated with underground retorting. A plan approach will provide both MSHA and the individual mining operator with needed flexibility in establishing and implementing safety requirements. The intention of the

proposed standard is to afford the mine operator with a timely and continuing opportunity to participate in the plan development, review and approval process. The proposed standard would provide a review by the Administrator for Metal and Nonmetal Mine Safety and Health. The Administrator will have flexibility in that a conference with the mine operator may be held or a factfinding hearing may be conducted in accordance with section 103(b) of the Mine Act. Upon notifying the mine operator of the findings and determination, the plan, as approved by the Administrator, would become the approved plan and the mine operator would be required to comply with all provisions of that plan.

Section 58.21–392 Blasting.

This was a new standard that appeared as draft proposal 58.21–392. It would have required either wetting down or rock dusting to prevent ignition of dust containing volatile matter prior to blasting in Subcategory I–C mines. This draft proposal has been deleted because the requirements are addressed by other blasting standards related to these mines.

Section 57.33701 Advance face boreholes.

This is a new proposed standard and appeared as draft proposal § 58.21–391. It requires drilling advance boreholes as mining approaches abandoned mines or abandoned workings. Commenters supported the draft proposal, but felt it should not be included in the explosive section of the index. MSHA agrees and has placed it under a separate heading.

Sections 57.31501, 57.32501, 57.33501, 57.34501, 57.36501, 57.37501, 57.38501, and 57.39501 Personal electric lamps.

This proposal would revise existing standard § 57.21090, and appeared as draft proposals §§ 58.21–190, 58.21–290, 58.21–390, 58.21–490, and 58.21–690. It requires that electric lamps used to provide personal illumination be permissible. Commenters suggested deleting references to specific permissibility standards. MSHA believes that such references clarify the intent of the standard. This requirement was inadvertently omitted from the preproposal draft for Category IV mines, but has been included in the proposal.

Sections 57.31601, 57.33603, 57.34601, 57.35601, and 57.38601 Blasting from the surface.

This is a new proposed standard and appeared as draft proposals §§ 58.21–193, 58.21–393, 58.21–493, and 58.21–593. It requires that blasting be done from the surface in Category II mines after everyone is out of the mine, and does not permit reentry until the mine-wide monitor indicates that the mine is free of methane. All places blasted would also be required to be tested for methane before work is started. It requires that vehicles used for transportation when conducting these tests be permissible. A minimum period of 30 minutes has been added before persons reenter the mine to allow for ventilation after blasting. Commenters stated that the mine-wide monitoring system should eliminate the need for manual testing before persons reenter the mine. MSHA agrees and has incorporated this change. However, the requirement to test each blast site prior to starting work is retained because the ventilation system might not have cleared all places of methane due to improper positioning or failure of an auxiliary fan or other problems associated with air movement in mines with large openings. The preproposal draft inadvertently included 1.0 percent action level for Subcategory II–B mines, which has been changed to 0.5 percent as intended.

Commenters for Subcategory I–A mines stated that blasting from the surface after everyone is out of the mine is unnecessary. MSHA believes that large volumes of methane would be released during blasting in Category I–A mines. When large volumes of gas are released, there is no safe place for miners underground. The potential presence of extremely high methane concentrations during mining of deep Subcategory I–A mines is a concern of the mining community. (See, Designing An Oil Shale Mine Ventilation System, by Floyd C. Bossard and Associates, Inc. presented at the Fall 1983 SME–AIME meeting at Salt Lake City, Utah). In addition, there is the explosive potential of oil shale dust. (See, Fire and Explosion Properties of Oil Shale presented during the Tenth Oil Shale Symposium Proceedings by J.K. Richmond and L.F. Miller, April 21–22, 1977, at the Colorado School of Mines). Further, a mining research contract report recommends that personnel should be on the surface if sudden bursts of methane into the mine atmosphere are anticipated when blasting in gassy metal and nonmetal mines. (See, Recommended Blasting Procedures, Calder and Workman, Inc., May 1983). Finally, a Bureau of Mines Report indicates a major gas problem in these mines and potential problems when blasting. (See, Methane Encountered At The Bureau of Mines Oil Shale Shaft, by Vinson, Cox, and Kissell, presented during the Twelfth Oil Shale Symposium Proceedings, at the Colorado School of Mines, April 1979). MSHA believes that blasting from the surface in Category I–A mines is essential to the safety of miners.

The proposed requirements of this standard for Category I–C mines are different in consideration of the unique mine type and configuration.

Generally, if the mine-wide monitoring system indicates the presence of methane in excess of 1% in an oil shale mine (§ 57.31601), or 0.5% in a domal salt mine (§ 57.34601), or 1% in a liquid petroleum mine (§ 57.38601), miners would not be permitted to reenter the mine and resume production until the mine was determined to be free of methane. Free of methane means free of measurable concentrations of methane. Methane detection instruments today are capable of detecting minute quantities of the gas with considerable accuracy, even to one-hundredth of one percent.

Sections 57.31602, 57.34602, and 57.38602 Secondary blasting.

This is a new proposed standard and appeared as draft proposals §§ 58.21–194, and 58.21–494. It requires testing for methane prior to secondary blasting. Commenters recommended acceptance of the standard, but suggested adding "competent person" and higher methane action levels. The word competent was added. However, MSHA believes the levels of methane as proposed are necessary to assure that ventilation is sufficient before secondary blasting is performed.

Sections 57.31603, 57.32601, 57.33604, 57.34603, 57.36601, and 57.306.3 Explosive materials and blasting units.

This proposal would revise and combine existing standards §§ 57.21905, 57.21096, and 57.21097 and appeared as draft proposals §§ 58.21–195, 58.21–295, 58.21–395, 58.21–495, and 58.21–695. The existing standards allow the use of either permissible explosives or nonpermissible explosives as permitted by the district manager in underground gassy mines. The proposal would delete and permissible explosives requirement and continue the current procedure for using explosive materials and blasting units at these mines. Explosives are highly dangerous and inherently hazardous during blasting activities in confined underground, gassy mining environments. The purpose for using permissible explosives is to prevent a flash from occurring during blasting and thereby to eliminate an ignition source for methane that is released into the mine atmosphere. The existing standard is being revised because permissible

explosives are not being used in underground gassy mines due to the failure of such explosives to provide satisfactory blasting capacity to fragment rock. Rather than apply a set of fixed blasting standards to all gassy mines, MSHA believes that the proposal would provide a flexible means of allowing safe conditions and explosive materials and blasting units for each affected mining operation.

Commenters suggested an exception for explosive materials which are currently permitted by the Agency. MSHA does not believe that it is necessary to have such an exception in the proposed standard since all permissions presently granted by the district manager will continue unless changes occur in the use, materials, or conditions of the affected mines.

Section 57.21098 Stemming.

The draft proposed revision of existing standard § 57.21098 appeared as § 58.21–698. It generally would have required noncombustible stemming in blast holes in Category III mines. Commenters supported the draft proposal. However, MSHA believes that the stemming provision is adequately covered by the proposed requirement for written permission for the use of explosive materials in the preceding section. Therefore, the Agency proposes to delete this standard.

Section 57.36603 Blasting on shift.

This proposal would revise and combine existing standards §§ 57.21099 and 57.21100, and appeared as draft proposal 58.21–699. It requires testing for methane before and after blasting in Category III mines, and prohibits blasting when 1.0 percent methane is present.

Commenters supported the draft proposal. MSHA has added the term "competent person" to the proposal. This term is defined and has been suggested by commenters for other standards in this Subpart.

Section 57.37204 Testing for methane.

This is a new proposed standard for Category IV mines and appeared as draft proposal § 58.21–721. It requires testing for methane at specific places in the mine before work is done. Some commenters felt that the draft proposal would have required testing in shops and other areas remote from the face, raise, and other areas where methane is not likely to occur. They also felt that each miner would be required to carry a methanometer. Alternate language was suggested. MSHA has revised the draft proposal. The proposed standard requires testing for methane at least once each shift prior to starting work at the face or raise area of the mine. A requirement for testing pressure-relief boreholes was also incorporated. Testing of unventilated areas has been deleted because the Agency believes that testing prior to starting work would cover such situations.

Commenters also suggested alternate test procedures which incorporated sampling intervals. They also requested that only hazardous concentrations of methane be considered, since methane encountered in some Category IV mines is rendered harmless by high percentages of nitrogen gas. In many cases, methane encountered in these mines has been diluted with inert gases to render methane harmless. However, the presence of any methane in these mines must be recognized as a potential hazard, and some precautionary measures must be taken. MSHA believes that the requirement for testing is essential to safety in these mines. The suggestion for sampling intervals is addressed in proposed § 57.30004.

III. Public Hearing

MSHA intends to hold public hearings on these proposed rules in Rochester, New York; Salt Lake City, Utah; New Orleans, Louisiana; and Carlsbad, New Mexico. The Agency will announce specific dates and locations for the hearings in the **Federal Register**.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a preliminary cost estimate to identify potential costs and benefits associated with the proposed revisions to the Agency's standards for gassy metal and nonmetal mines. The Agency has incorporated these estimates into the initial regulatory flexibility analysis which is required under the Regulatory Flexibility Act. In this analysis which is summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100,000,000 or more annually on the economy. Since the rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small business. Several proposed standards provide alternatives for compliance. A primary benefit of this proposal is the protection that the standard would provide to persons who could be endangered by explosive atmospheres and hazards associated with gassy mines. Over the past several years, explosions in gassy mines have resulted in multiple fatalities and serious injuries. Eighteen people were killed and two injured in an explosion at a potash mine; an explosion of dust at a gilsonite mine was caused by electric arcing from an electrical box resulting in eight fatalities and three injuries; methane explosions at two limestone mines resulted in two injuries each; and an explosion at a salt mine killed five miners.

The proposal would also clarify compliance responsibilities and adopt standards that are based upon the degree of hazards and, when possible, performance oriented. The proposed rule should benefit both large and small underground gassy mining operations. The proposed rule maximizes flexibility since it establishes safety objectives without limiting the means to achieve it. MSHA anticipates that fewer mines will need to petition the agency for modification of a standard (variance) because of the revision of the standards, to include a category system and to reflect some new technology.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mining operations with fewer than 20 employees. The proposed rule could affect approximately 42 mines. MSHA estimates that all gassy mines, except those in proposed Category I–C, have more than 250 employees. The estimated 15 mines in Category I–C employ fewer than 20 miners each; however, 14 of these 15 mines are controlled by large corporations.

In the proposal, MSHA has reorganized, updated, and clarified the existing gassy mine standards. The Agency also proposes to consolidate related standards and to keep recordkeeping provisions to a minimum without diminishing miner safety. There are 62 existing standards, each one applicable to mines deemed to be gassy. MSHA's proposed rule would reduce the total standards applicable to each mine as follows:

Category or subcategory	Standards
I-A	34
I-B	17
I-C	29
II-A	33
II-B	10
III	35
IV	10
V-A	36
V-B	17
VI	5

In the initial regulatory flexibility analysis, MSHA has compared estimated costs of the proposed standards with corresponding estimated costs of the existing standards. MSHA has summarized below the standards which represent the major components of the total cost. A copy of the full analysis is available upon request.

The total one-time cost for industry compliance with the existing standards is estimated to be approximately $178.6 million, and the annual recurring cost is estimated to be approximately $22.6 million. The total one-time cost for the proposed rule is estimated to be approximately $95.6 million, and the annual recurring cost is estimated to be approximately $13.1 million. The proposed rule, therefore, represents an estimated reduction in capital costs of $83 million and an estimated recurring cost reduction of $9.5 million.

Of the total combined costs for the existing and proposed rules, the principal cost is from existing standard § 57.21078 (proposed standards §§57.31303, 57.33304, 57.34303, 57.36302 and 57.38302) which requires the use of permissible equipment in underground gassy miles. The estimated one-time cost for the existing standard is approximately $167 million, and the estimated recurring cost for the existing standard is approximately $21 million. The estimated one-time cost for the proposed standard is $[illegible] million and the estimated recurring cost is $12 million. The differential is due to changes for permissibility in the proposed standards.

Existing standard § 57.21020 (proposed standards, §§ 57.31201, 57.32201, 57.33201, 57.34201, 57.35201, 57.33601, 57.37201, 57.38201, and 57.39201) applies to main fan installations. The estimated one-time cost for the existing standard is $1.8 million, and the estimated recurring cost is $187,000. The estimated one-time cost for the proposed standard is $150,000, and the estimated recurring cost for the proposed standard is $15,000. The differential is due to the proposal that only new Category IV mines beginning operations after the effective date of the standard be required to install main fans on the surface.

Existing standard § 57.21023 (proposed standards §§ 57.31203, 57.32202, 57.33303, 57.34203, 57.35207, 57.36203, 57.38203, and 57.39203) applies to separation of intake and return air. The estimated one-time cost for the existing standard is $816,000, and the estimated recurring cost is $20,000. The estimated one-time cost and the estimated recurring cost for the proposed standard is the same because there is no change in requirements.

Existing standard § 57.21029 (proposed standards §§ 57.31208, 57.32207, 57.34208, 57.36208, and 57.38208) applies to booster fans. The estimated one-time cost for the existing standard is § 248,000, and the estimated recurring cost is $25,000. There is no cost for the proposed standard because the requirement has been eliminated in Category IV mines which presently are the only mines using booster fans.

Existing standard § 57.21030 (proposed standards §§ 57.31209, 57.332209, 57.34209, 57.36209, and 57.38209) applies to auxiliary fans. The estimated one-time cost for the existing standard is $5.6 million, and the estimated recurring cost is $294,000. The estimated one-time cost for the proposed standard is $1.6 million and the estimated recurring cost for the proposed standard is $163,000. The differential is due to fewer mines that would be affected by the proposed standard.

Existing standard § 57.21035 (proposed standards §§ 57.31211, 57.32210, 57.33211, 57.34225, 57.36211 and 57.38211) requires weekly testing for air volume. The estimated one-time cost for the requirement in the existing standard $47,000, and the estimated recurring cost is $158,000. The estimated one-time cost for the proposed standard is $28,000, and the estimated recurring cost for the proposed standard is $90,000. The differential in cost is due to a reduction in large mines and an increase in small mines, resulting in a net reduction in equipment and labor costs associated with testing.

Existing standards § 57.21044 and 57.21053 (proposed standards §§ 57.31218, 57.32213, 57.33218, 57.34215, 57.36218, 57.38218, and 57.39218) apply to stoppings and seals. The estimated one-time cost for the existing standard is $960,000 and the estimated recurring cost is $960,000. The estimated one-time cost for the proposed standard is $725,000, and the estimated recurring cost for the proposed standard is $725,000. The differential is due to a change in construction materials that would be affected by the proposed standard.

Existing standard § 57.21059 (proposed standards §§ 57.31227, 57.33221, 57.34223, 57.36227, and 57.38227) applies to preshift examinations. The estimated one-time cost for the existing standard is $96,000, and the estimated recurring cost is $96,000. The estimated one-time cost for proposed standard is $100,000, and the estimated recurring cost for the proposed standard is $100,000. The differential is due to the additional mines that would be affected by the proposed standard.

Existing standard § 57.21069 (proposed standard §§ 57.31230, 57.34227, 57.36231, and 57.38231) applies to doors on main fans. The estimated one-time cost for the existing standard is $138,000, and the estimated recurring cost is $14,000. The estimated one-time cost for the proposed standard is $48,000, and the estimated recurring cost is $5,000. The differential is due to a reduction in the number of mines to be affected by the proposed standard.

Existing standard § 57.21079 (proposed standard §§ 57.34304 and 57.38305) applies to permissible distribution boxes. The estimated one-time cost for the existing standard is $1.4 million, and the estimated recurring cost is $150,000. The estimated one-time cost for the proposed standard is $57,000, and the estimated recurring cost for the proposed standard is $6,000. The differential is due to fewer mines affected by the proposed standard.

Existing standard § 57.210080 (proposed standard §§ 57.31305, 57.34305, 57.36303, 57.38303, and 57.39303) applies to approved methane monitors on certain mobile equipment. The estimated one-time cost for the existing standard is $160,000, and the estimated recurring cost is $34,000. The estimated one-time cost for the proposed standard is $87,000, and the estimated recurring cost for the proposed standard is $17,000. The differential is due to the fact that fewer devices would be required under the proposed standard.

New proposed standards §§ 57.31301, 57.34301, 57.38301, and 57.39301 would apply to mine-wide montioring systems to record methane concentrations in the underground mine atmosphere. The estimated one-time cost of the proposed rule is $210,000, and the estimated recurring cost is $42,000.

V. Paperwork Reduction Act.

The proposed rule retains the current requirements for pressure-recording gage charts for main fans and applying for MSHA's permission to use explosive materials and blasting units in underground gassy metal and nonmetal mines. Proposed standard §§ 57.31202, 57.34202, 57.36202, and 57.38202 would require pressure recording gages and charts, and the charts would be replaced after completing one revolution. Main fans, including gages, would be inspected daily. Rather than continue keeping logs and signing and countersigning records of inspection, the proposed standard would require

certification of inspection to be made by signature and date. Proposed standard §§ 57.31603, 57.36201, 57.33604, 57.34603, 57.36601, and 57.33603 retains the current requirements that nine operators apply for and obtain approval to use explosive materials and blasting units. The approvals are issued on a nine-by-nine basis and may contain safeguards, in addition to those proposed by the mine operator, to protect the safety of the miners during blasting operations. Proposed standards §§ 57.31401 and 57.32401 include a new recordkeeping requirement for Subcategory I–A and IB mines (oil shale) that mine operators submit an underground retort plan for approval. The plan would provide site-specific safeguards and safety procedures for the underground areas affected by the retorts. The paperwork requirements contained in the proposed rule have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for MSHA.

VI. Draft Information

The principal persons responsible for preparing this proposed rule are: William H. Donley, Metal and Nonmetal Mine Safety and Health; Claude N. Narramore, Metal and Nonmetal Mine Safety and Health; William E. Bruce, Safety and Health Technology; and Bernard R. McGuire, Office of the Solicitor, Department of Labor.

List of Subjects in 30 CFR Part 57

Mine Safety and Health, Metal and Nonmetal Mining, Gassy Mines.

Dated: May 28, 1985.

Thomas J. Shepich,

Deputy Assistant Secretary for Mine Safety and Health.

PART 57—SAFETY AND HEALTH STANDARDS—METAL AND NONMETAL UNDERGROUND MINES

1. It is proposed to revise Subpart T, Part 57, Subchapter N, Chapter I of the Code of Federal Regulations as follows:

Subpart T—Gassy Mines

General

Sec.
57.30001 Scope.
57.30002 Definitions.
57.30003 Mine Category or Subcategory.
57.30004 Placement or Change in Placement, Notice and Investigation.
57.30005 Notice and Appeal of Placement or Change in Placement.

Subcategory I–A

Scope

57.31000 Scope.

Fire Prevention and Control

57.31101 Smoking.
57.31102 Open Flame.

Ventilation

57.31201 Main Fans.
57.31202 Main Fan Operation and Inspection.
57.31203 Separation of Intake and Return Air.
57.31205 Main Ventilation Failure.
57.31207 Reentry After Shutdown of Main Fans.
57.31208 Booster Fans.
57.31209 Auxiliary Fans.
57.31210 Minimum Air Flow.
57.31211 Weekly Testing.
57.31212 Installation of Support Equipment.
57.31213 Changes in Ventilation.
57.31214 Action at 1.0 Percent Methane.
57.31215 Actions at 1.5 to 2.5 Percent Methane.
57.31216 Air Passing Abandoned or Unsealed Areas.
57.31217 Abandoned Areas.
57.31218 Seals and Stoppings.
57.31220 Line Brattice and Fan Ducting.
57.31221 Brattice Cloth and Ducting Flame Resistance.
57.31226 Overcast and Undercast Construction.
57.31227 Preshift Examination.
57.31228 Permissible Testing Devices.
57.31229 Mechanical Ventilation.
57.31230 Doors on Main Fan.

Equipment

57.31301 Mine-wide Monitoring System.
57.31303 Permissible Equipment.
57.31305 Methane Monitors.

Underground Retorts

57.31401 Underground Retort Plan.

Illumination

57.31501 Personal Electric Lamps.

Explosives

57.31601 Blasting from the Surface.
57.31602 Secondary Blasting.
57.31603 Explosive Materials and Blasting Units.

Subcategory I–B

Scope

57.32000 Scope.

Fire Prevention and Control

57.32101 Smoking.

Ventilation

57.32201 Main Fans.
57.32202 Separation of Intake and Return Air.
57.32203 Actions at 0.25 Percent Methane.
57.32204 Actions at 0.5 Percent Methane.
57.32205 Actions at 1.0 Percent Methane.
57.32206 Actions at 2.0 Percent Methane.
57.32207 Booster Fans.
57.32210 Weekly Testing.
57.32213 Seals and Stoppings.
57.32216 Brattice Cloth and Ducting Flame Resistance.
57.32221 Permissible Testing Devices.
57.32222 Mechanical Ventilation.

Underground Retorts

57.32401 Underground Retort Plan.

Illumination

57.32501 Personal Electric Lamps.

Explosives

57.32601 Explosive Materials and Blasting Units.

Subcategory I–C

Scope

57.33000 Scope.

Fire Prevention and Control

57.33101 Smoking.
57.33102 Open Flame.
57.33103 Dust Containing Volatile Matter.

Ventilation

57.33201 Main Fans.
57.33202 Main Fan Operation.
57.33203 Separation of Intake and Return Air.
57.33205 Main Ventilation Failure.
57.33207 Reentry After Shutdown of Main Fans.
57.33208 In-Line Filters.
57.33209 Auxiliary Fans.
57.33210 Minimum Air Flow.
57.33211 Weekly Testing.
57.33212 Installation of Support Equipment.
57.33214 Actions at 0.25 Percent Methane.
57.33215 Actions at 0.5 Percent Methane.
57.33218 Seals and Stoppings.
57.33221 Preshift Examination.
57.33222 Permissible Testing Devices.
57.33223 Mechanical Ventilation.
57.33224 Brattice Cloth and Ducting Flame Resistance.

Equipment

57.33301 Electrical Grounding.
57.33302 Pressure-Relief Vents.
57.33303 Jacketed and Shielded Cables.
57.33304 Permissible Equipment.

Illumination

57.33501 Personal Electric Lamps.

Explosives

57.33603 Blasting from the Surface.
57.33604 Explosive Materials and Blasting Units.

Miscellaneous

57.33701 Advance Face Boreholes.

Subcategory II–A

Scope

57.34000 Scope.

Fire Prevention and Control

57.34101 Smoking.
57.34102 Open Flame.

Ventilation

57.34201 Main Fans.

Sec.
57.34202 Main Fan Operation and Inspection.
57.34203 Separation of Intake and Return Air.
57.34205 Main Ventilation Failure.
57.34207 Reentry After Shutdown of Main Fans.
57.34208 Booster Fans.
57.34209 Auxiliary Fans.
57.34210 Changes in Ventilation.
57.34211 Actions at 0.5 Percent Methane.
57.34212 Actions at 1.0 Percent Methane.
57.34213 Air Passing Abandonded or Unsealed Areas.
57.34214 Abandoned Areas.
57.34215 Seals and Stoppings.
57.34217 Line Brattice and Fan Ducting.
57.34218 Brattice Cloth and Ducting Flame Resistance.
57.34219 Minimum Air Flow.
57.34222 Overcast and Undercast Construction.
57.34223 Preshift Examination.
57.34224 Permissible Testing Devices.
57.34225 Weekly Testing.
57.34226 Mechanical Ventilation.
57.34227 Doors on Main Fans.

Equipment

57.34301 Mine-wide Monitoring System.
57.34302 Jacketed Cables.
57.34303 Permissible Equipment.
57.34304 Distribution Boxes.
57.34305 Methane Monitors.

Illumination

57.34501 Personal Electric Lamps.

Explosives

57.34601 Blasting from the Surface.
57.34602 Secondary Blasting.
57.34603 Explosive Materials and Blasting Units.

Subcategory II–B

Scope

57.35000 Scope.

Ventilation

57.35201 Main Fans.
57.35202 Permissible Testing Devices.
57.35207 Separation of Intake and Return Air.
57.35213 Actions at 0.25 percent Methane.
57.35214 Actions at 0.5 Percent Methane.
57.35215 Actions at 1.0 Percent Methane.
57.35216 Actions at 2.0 Percent Methane.
57.35229 Mechanical Ventilation.

Explosives

57.35601 Blasting from the Surface.

Category III

Scope

57.36000 Scope.

Fire Prevention and Control

57.36101 Smoking.
57.36102 Open Flame.

Ventilation

57.36201 Main Fans.
57.36202 Main Fan Operation and Inspection
57.36203 Separation of Intake and Return Air.
57.36205 Main Ventilation Failure.
57.36207 Reentry After Shutdown of Main Fans.
57.36208 Booster Fans.
57.36209 Auxiliary Fans.
57.36210 Minimum Air Flow
57.36211 Weekly Testing.
57.36212 Installation of Support Equipment.
57.36213 Changes in Ventilation.
57.36214 Actions at 1.0 Percent Methane.
57.36215 Actions at 1.5 to 2.5 Percent Methane.
57.36216 Air Passing Abandoned or Unsealed Areas.
57.36217 Abandoned Areas.
57.36218 Seals and Stoppings.
57.36220 Line Brattice and Fan Ducting.
57.36221 Brattice Cloth and Ducting Flame Resistance.
57.36222 Crosscuts Before Abandonment.
57.36224 Air Locks, Overcasts and Undercasts.
57.36225 Air Doors.
57.36226 Overcast and Undercast Construction.
57.36227 Preshift Examination.
57.36228 Permissible Testing Devices.
57.36229 Mechanical Ventilation.
57.36230 Air Flow in Intake and Return Air Courses.
57.36231 Doors on Main Fans.

Equipment

57.36302 Permissible Equipment.
57.36303 Methane Monitors.

Illumination

57.36501 Personal Electric Lamps.

Explosives

57.36601 Explosive Materials and Blasting Units.
57.36603 Blasting on Shift.

Category IV

Scope

57.37000 Scope.

Fire Prevention and Control

57.37101 Smoking and Open Flame.

Ventilation

57.37201 Main Fans.
57.37202 Mechanical Ventilation.
57.37203 Permissible Testing Devices.
57.37204 Testing for Methane.
57.37205 Actions at 0.5 Percent Methane.
57.37206 Actions at 1.0 Percent Methane.
57.37207 Actions at 2.0 Percent Methane.

Illumination

57.37501 Personal Electric Lamps.

Subcategory V–A

Scope

57.38000 Scope.

Fire Prevention and Control

57.38101 Smoking.
57.38102 Open Flame.

Ventilation

57.38201 Main Fans.
57.38202 Main Fan Operation and Inspection.
57.38203 Separation of Intake and Return Air.
57.38205 Main Ventilation Failure.
57.38207 Reentry After Shutdown of Main Fans.
57.38208 Booster Fans.
57.38209 Auxiliary Fans.
57.38210 Minimum Air Flow.
57.38211 Weekly Testing.
57.38213 Changes in Ventilation.
57.38214 Actions at 1.0 Percent Methane.
57.38215 Actions at 1.5 Percent Methane.
57.38216 Air Passing Abandoned or Unsealed Areas.
57.38217 Abandoned Areas.
57.38218 Seals and Stoppings.
57.38220 Line Brattice and Fan Ducting.
57.38221 Brattice Cloth and Ducting Flame Resistance.
57.38224 Air Locks Overcasts and Undercasts.
57.38225 Air Doors.
57.38226 Overcast and Undercast Construction.
57.38227 Preshift Examination.
57.38228 Permissible Testing Devices.
57.38229 Mechanical Ventilation.
57.38231 Doors on Main Fans.

Equipment

57.38301 Mine-wide Monitoring System.
57.38302 Permissible Equipment.
57.38303 Methane Monitors.
57.38305 Distribution Boxes.
57.38306 Flow-Control Devices.
57.38307 Self-Contained Breathing Apparatus.

Illumination

57.38501 Personal Electric Lamps.

Explosives

57.38601 Blasting from the Surface.
57.38602 Secondary Blasting.
57.38603 Explosive Materials and Blasting Units.

Subcategory V–B

Scope

57.39000 Scope.

Fire Prevention and Control

57.39101 Smoking.
57.39102 Open Flame.

Ventilation

57.39201 Main Fans.
57.39203 Separation of Intake and Return Air.
57.39213 Actions at 0.25 Percent Methane.
57.39214 Actions at 0.5 Percent Methane.
57.39215 Actions at 1.0 Percent Methane.
57.39216 Actions at 2.0 Percent Methane.
57.39218 Seals and Stoppings.
57.39221 Brattice Cloth and Ducting Flame Resistance.
57.39228 Permissible Testing Devices.
57.39229 Mechanical Ventilation.

Equipment

57.39301 Mine-wide Monitoring System.
57.39303 Methane Monitors.
57.39306 Flow-Control Devices.

Illumination

57.39501 Personal Electric Lamps.

Category VI

Scope

Sec.

57.40000 Scope.

Ventilation

57.40001 Actions at 0.25 Percent Methane.
57.40002 Actions at 0.5 Percent Methane.
57.40003 Actions at 1.0 Percent Methane.
57.40004 Actions at 2.0 Percent Methane.

Authority: Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811).

Subpart T—Gassy Mines

General

§ 57.30001 Scope.

This Subpart T sets forth the procedures and mandatory safety standards for each metal and nonmetal underground mine subject to the Federal Mine Safety and Health Act of 1977. All metal and nonmetal mines shall be placed into one of the categories or subcategories defined in this Subpart to protect miners against the hazards of methane gas. Each mine shall be required to operate in accordance with the standards applicable to its category or subcategory. Such mines shall also be operated in accordance with the applicable standards and regulations in this Title. The standards in this subpart apply only to underground operations.

§ 57.30002 Definitions.

The following definitions apply in this subpart.

Abandoned areas. Areas in which work has been completed, no further work is planned, and travel is not permitted.

Approved. A formal designation applied by MSHA indicating that the applicable requirements of Title 30 of the Code of Federal Regulations for the subject equipment have been met.

Blowout. A sudden, violent, unplanned release of gas or liquid due to reservoir pressure in a petroleum mine.

Certified. A formal designation applied by MSHA to a subassembly or component meeting the testing requirements of the appropriate Part of Title 30 of the Code of Federal Regulations.

Combustible material. A material that, in the form in which it is used and under the conditions anticipated, will ignite, burn, support combustion or release flammable vapors when subjected to fire or heat. Wood, paper, rubber, and plastics are examples of combustibles.

Competent person. A person who has sufficient experience and has been trained and designated by the mine operator to perform the task to which the person is assigned.

Explosive material. Explosives, blasting agents, and detonators. Explosives are any substance classified as an explosive by the Department of Transportation in §§ 173.53, 173.88, and 173.100 of the 1984 Edition of Title 49 of the Code of Federal Regulations. Blasting agents are any substance classified as a blasting agent by the Department of Transportation in § 173.114(a) of the 1984 Edition of Title 49 of the Code of Federal Regulations. Detonators are any device containing a detonating charge used to initiate an explosive. Examples of detonators are blasting caps, electric or non-electric instantaneous or delay blasting caps and delay connectors. These referenced documents are available at any Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

Geological area. An area characterized by the presence of the same ore bodies, the same stratigraphic sequence of beds, or the same ore-bearing geological formation.

Intermittently liberates methane. To release methane at occasional and sporadic intervals, and in indeterminate quantities.

Intrinsically safe. Incapable of releasing enough electrical or thermal energy under normal or abnormal conditions to cause ignition of a flammable mixture of methane or natural gas in the air of the most easily ignitable composition.

Mine atmosphere. Any point at least 12 inches away from the back, face, rib, and floor; and at least 3 feet laterally away from the collar of a borehole which releases gas into the mine in a Category IV mine.

Noncombustible material. A material that, in the form in which it is used and under the conditions anticipated, will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Concrete, masonry block, brick, and steel are examples of noncombustible materials.

Outburst. The sudden, violent release of solids and high-pressure occluded gases including methane gas.

Permissible. A machine, material, apparatus, or device which has been investigated, tested, and approved under the applicable Parts of Title 30 of the Code of Federal Regulations by the Mine Safety and Health Administration, and is maintained in permissible condition.

Substantial construction. Construction of such strength, material, and workmanship that the object will withstand all reasonable air blast, blasting shock, ground movement, pressure differentials, wear, and usage to which it will be subjected.

§ 57.30003 Mine category or subcategory.

(a) All underground mines will be placed into one of the categories or subcategories defined in paragraph (b) of this section to protect miners against the hazards of methane gas. Subject to the review provisions of § 57.30005, each mine shall be required to operate in accordance with the safety standards applicable to its particular category or subcategory. Category or subcategory placement or change in placement shall include consideration of the following:

(1) The scope of each category or subcategory;

(2) The history and geology of the mine or of the geological area in which the mine is located;

(3) The ore body and host rock;

(4) The character, amount, duration, origin, and nature of methane emission and the presence of explosive dust and inert gases; and

(5) Analysis of methane gas samples. All gas samples taken for the purpose of category or subcategory placement or change in placement, and to determine if action levels have been reached, shall be taken in the mine atmosphere.

Tests for methane gas shall be made with hand-held methanometers, other devices, or with laboratory analysis of samples. Such methods may also be used when testing for methane gas or action levels in day-to-day mining.

(b) Categories and subcategories are defined as follows:

(1) *Category I* mines are mines that operate within a combustible ore body and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located. Category I is divided into Subcategories I–A, I–B, and I–C as follows:

(i) Subcategory I–A mines are mines that operate within a combustible ore body and liberate methane and in which:

(A) A concentration of 0.25 percent or more methane has been detected by air analysis in the mine atmosphere; or

(B) An ignition of methane has occurred.

(ii) Subcategory I–B mines are mines that operate within a combustible ore body and have the potential to liberate methane based on the history of the mine or geological area in which the mine is located and in which:

(A) A concentration of 0.25 percent or more methane has not been detected by air analysis in the mine atmosphere; or

(B) An ignition of methane has not occurred.

(iii) Subcategory I–C mines are mines in which the product extracted is combustible and the dust has a volatile matter content of 60 percent or more measured on a moisture-free basis,[1] and which are located within a geological area where the history of the area indicates the potential for liberation of methane and dust containing volatile matter.

(2) *Category II* mines are domal salt mines where the history of the mine or geological area indicates the occurrence of or the potential for outbursts. Category II is divided into Subcategories II–A and II–B as follows:

(i) Subcategory II–A mines are domal salt mines where an outburst has occurred.

(ii) Subcategory II–B mines are domal salt mines where an outburst has not occurred but which have the potential for an outburst based on the history of the mine or geological area in which the mine is located.

(3) *Category III* mines are (i) mines in which noncombustible ore is extracted and which either continuously liberate methane or have the potential to continuously liberate methane based on the history of the mine or the geological area in which the mine is located, or (ii) mines which intermittently liberate explosive mixtures of methane.

(4) *Category IV* mines are mines in which noncombustible ore is extracted and which either intermittently liberate methane in nonexplosive mixtures or have the potential to do so based on the history of the mine or the geological area in which the mine is located.

(5) *Category V* mines are petroleum mines that operate within or drill into an oil reservoir. Category V is divided into Subcategories V–A and V–B as follows:

(i) Subcategory V–A mines are petroleum mines that operate entirely or partially within an oil reservoir, and all other petroleum mines in which:

(A) A concentration of 0.25 percent of more methane has been detected by air analysis in the mine atmosphere; or

(B) An ignition of methane has occurred.

(ii) Subcategory V–B mines are petroleum mines that operate outside and drill into an oil reservoir and in which:

(A) A concentration of 0.25 percent or more methane has not been detected by air analysis in the mine atmosphere; or

(B) An ignition of methane has not occurred.

[1] Measured by the American National Standard. ASTM D–3175–77, Standard Test Method for Volatile Matter in the Analysis Sample of Coal and Coke. (This document is available at any Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration).

(6) *Category VI* mines are mines in which the presence of methane gas has not been established and are not included in another category or subcategory.

§ 57.30004 Placement or change in placement, notice and investigation.

The Administrator for Metal and Nonmetal Mine Safety and Health shall be responsible for category and subcategory placement or change in placement of mines.

(a) Upon receipt of the mine operator's notice under § 57.1000 of the opening or reopening of a mine, the Administrator may undertake an investigation to determine the proper category or subcategory for such mine.

(b) The Administrator shall promptly undertake an investigation of any occurrence specified in paragraph (d) of this section. Mine operators shall make available to MSHA all information relating to a methane gas or dust ignition.

(c) The Administrator's determination of placement or change in placement shall:

(1) State the category or subcategory;

(2) State the reasons for placement or change in placement;

(3) Identify the data considered;

(4) Identify the applicable standards and provide the mine operator with a schedule under which the mine operator is to achieve compliance; and

(5) Notify the mine operator of the right to review the Administrator's determination under § 57.30005.

(d) MSHA is to be notified immediately if any of the following events occur:

(1) An outburst that results in 0.25 percent or more methane in the mine atmosphere;

(2) A blowout that results in 0.25 percent or more methane in the mine atmosphere;

(3) An ignition of methane: or

(4) A change from intermittent to continuous liberation of methane.

(5) These notifications are in addition to the notification requirements of 30 CFR Part 50.

(e) The Administrator shall promptly appoint an MSHA committee to investigate occurrences reported in accordance with paragraph (d) of this section. The purpose of this investigation is to provide for the safety of miners by determining if these occurrences warrant a change in mine category or subcategory. The scope of these investigations may include the following:

(1) Source, nature, and extent of occurrences;

(2) Conditions under which the incident occurred;

(3) Evaluation of samples and tests;

(4) Consideration of physical conditions at the time of the occurrence;

(5) Review of charts, logs, and records related to the occurrence;

(6) Consideration of the occurrence, and whether it is isolated, continuous, or could reoccur;

(7) A study of the geology of the mine and the geological area in which the mine is located; and

(8) Interviews of witnesses, company officials, employees, and other persons having knowledge of the mine or the occurrence. Representatives of the mine operator, the miners and the State agency charged with the responsibility for miner safety may participate in the investigation.

(f) The Administrator may, after notice, hold a public hearing in accordance with section 103(b) of the Federal Mine Safety and Health Act.

(g) Upon completion of the investigation the Administrator shall make a written determination of the findings.

§ 57.30005 Notice and appeal of placement or change in placement.

(a) The Administrator's determination of category or subcategory placement or change in placement shall become final upon the 30th day after it is served on the mine operator and representative of the miners, unless a request for a hearing has been filed within the 30 days as provided in paragraph (b) of this section. Service of the Administrator's determination is complete upon mailing by registered or certified mail, return receipt requested.

(b) The mine operator or representative of the miners may obtain review of the Administrator's determination by filing a request for a hearing with the Assistant Secretary of Labor for Mine Safety and Health, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Requests for a hearing shall be in writing and contain the following information:

(1) Name, address, and mine identification number;

(2) A concise statement of the reason why the Administrator's determination is inappropriate; and

(3) A copy of the Administrator's determination. Service of a request for hearing is completed upon mailing by registered or certified mail, return receipt requested.

(c) The mine operator shall post a copy of the Administrator's determination and the request for a

hearing on the mine bulletin board, and shall maintain the posting until the placement becomes final.

(d) As soon as practical after receipt of the request for a hearing, the Assistant Secretary shall refer to the Chief Administrative Law Judge, United States Department of Labor the following:

(1) The request for a hearing;

(2) The Administrator's determination;

(3) All information upon which the determination was based; and

(4) Any other information received in consideration of the determination.

(e) The hearing shall be regulated and conducted by an Administrative Law Judge in accordance with 29 CFR Part 18, entitled, *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges* except to the extent otherwise provided by this section. The Administrative Law Judge shall make an initial decision and serve each party. The decision shall be final on the 30th day after service, unless discretionary review is undertaken by the Assistant Secretary or an appeal is filed under paragraph (f) of this section.

(f) Within 30 days after service of an initial decision of an Administrative Law Judge, the Assistant Secretary for Mine Safety and Health may undertake a discretionary review of the initial decision, or the mine operator or representative of the miners may appeal the initial decision of the Administrative Law Judge.

(1) The Assistant Secretary shall give notice of discretionary review to the mine operator and representative of the miners. The mine operator or representative of the miners shall give notice of an appeal to the other party. The notice shall specify the suggested changes and refer to the specific findings of fact, conclusions of law, and terms of the initial decision to be reviewed or appealed. The Assistant Secretary shall fix a time for filing any objections to the suggested changes and supporting reasons.

(2) The Assistant Secretary shall promptly notify the Administrative Law Judge of a discretionary review or an appeal, and thereafter the entire record of the proceedings shall be transmitted to the Assistant Secretary for review.

(3) The Assistant Secretary shall make the final decision based upon consideration of the record of the proceedings. The final decision may affirm, modify, or set aside in whole or in part, the findings and conclusions contained in the initial decision. A statement of reasons for the action taken shall be included in the final decision. The final decision shall be served upon the mine operator and representative of the miners.

(g) A decision by the Administrator for Metal and Nonmetal Mine Safety and Health, or the initial decision of the Administrative Law Judge, which is not appealed or reviewed within 30 days becomes final, and is not subject to judicial review for the purposes of 5 U.S.C. 704. Only a decision by the Assistant Secretary shall be considered final Agency action for purposes of judicial review.

Subcategory I–A

Scope

§ 57.31000 Scope.

Category I mines are mines that operate within a combustible ore body and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located. Category I is divided into Subcategories I–A, I–B, and I–C. Subcategory I–A mines are mines that operate within a combustible ore body and liberate methane and in which:

(a) A concentration of 0.25 percent or more methane has been detected by air analysis in the mine atmosphere; or

(b) An ignition of methane has occurred.

The safety standards for this subcategory follow.

Fire Prevention and Control

§ 57.31101 Smoking

Persons shall not smoke or carry smoking materials, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.31102 Open flame.

Open flames shall not be permitted underground except for welding, cutting and other maintenance operations, and igniting underground retorts. When using open flames in other than fresh air, tests shall be conducted by a competent person in places where methane may enter the air current before work is started and at intervals not to exceed 5 minutes. Continuous methane monitors with alarms may be used as an alternative to the testing requirements of this standard. Open flames shall not be used in atmospheres containing 1.0 percent or more methane.

Ventilation

§ 57.31201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combusion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium; and

(g) Main exhaust fans shall be equipped with methane monitors which give an alarm when methane in the return air reaches 0.5 percent. Such monitors shall give an audible or visible alarm that can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground.

When methane reaches 1.0 percent, electrical power underground shall be deenergized and all persons shall be withdrawn from the mine.

§ 57.31202 Main fan operation and inspection.

Main fans shall be:

(a) Operated continuously while persons are underground except as provided in §§ 57.31205 and 57.31213.

(b) Provided with pressure-recording gages. Gage charts shall be changed after completing one revolution; and

(c) Inspected daily while operating. Certification of the inspections shall be made by signature and date. Certifications and gage charts shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.31203 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface:

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.31205 Main ventilation failure.

(a) At mines where a single main fan is used and such fan stops, or where multiple main fans are used and all such fans stop, or where there has been a total failure of ventilation other than the main fan, the operator shall take the following actions:

(1) Deenergize electrical power and diesel equipment in all working places, and

(2) If the stoppage lasts 30 minutes or more, promptly withdraw all persons to the surface.

(b) The above procedures do not apply to main fan failure if standby main fans or auxiliary power sources have commenced operation without interruption of normal ventilation and the air quantity delivered is equal to the air quantity delivered by the main fan during normal operation.

§ 57.31207 Reentry after shutdown of main fans.

When the main fan or fans have been stopped or if a total failure of ventilation has occurred while all persons are out of the mine, only competent persons shall be allowed underground to examine the mine or to make necessary ventilation changes. Other persons may reenter the mine only after the main fans have been operational for at least 30 minutes, and the mine atmosphere has been tested and determined to be free of 1.0 percent or more methane.

§ 57.31208 Booster fans.

(a) Booster fans shall be permissible and be:

(1) Deenergized automatically when methane levels reach 1.0 percent at the fan;

(2) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan stops or slows. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the affected workings should the fan slow or stop; and

(4) Equipped with two sets of controls capable of starting and stopping the fan. One set shall be located at the fan and a second set shall be located at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open at least 50 percent of the airway is available for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

§ 57.31209 Auxiliary fans.

Electric auxiliary fans shall be permissible and operated so that recirculation is minimized. Tests for methane shall be made at auxiliary fans before they are started. Auxiliary fans shall not be operated when air passing over or through them contains 1.0 percent or more methane. Auxiliary fans shall not be used to ventilate any working place during the interruption of normal mine ventilation. If an auxiliary fan stops or fails, electrical equipment in the affected area shall be deenergized at the power source and diesel equipment shall be shut off or removed from the affected area until ventilation is restored. Permissible diffuser fans that are an integral part of continuous mining machines may be used.

§ 57.31210 Minimum air flow.

The average air velocity in the last open crosscut in pairs or sets of developing entries, or through other ventilation openings nearest the face, shall be at least 40 feet per minute. The volume of air ventilating each face at a working place shall be at least 20 feet per minute multiplied by the open cross-sectional area (in square feet) of the entry. If such quantities of air cannot be maintained, all persons shall be immediately withdrawn from affected working areas, and all electrical power and diesel equipment shall be deenergized.

§ 57.31211 Weekly testing.

(a) At least once every 7 days, a competent person shall test for methane in the mine atmosphere and carbon monoxide at the following locations:

(1) In the return of each split where it enters the main return;

(2) Adjacent to retreat areas if accessible;

(3) At seals;

(4) In the main return;

(5) In at least one entry of each intake and return;

(6) In idle workings; and

(7) In the return air from unsealed abandoned workings.

(b) At least every 7 days, a competent person shall measure the volume of air at the following locations:

(1) Entering the main intakes;

(2) Leaving the main returns;

(3) Entering from each main split;

(4) Returning from each main split; and

(5) In the last open crosscuts or other ventilation openings nearest the active faces.

(c) Where such examinations disclose hazardous conditions, affected persons shall be informed and such conditions shall be promptly corrected.

(d) Certification of examinations shall be made by signature and date. Certifications shall be retained for at least one year, and made available to an authorized representative of the Secretary.

§ 57.31212 Installation of support equipment.

Battery charging stations, compressor stations, pump stations, and transformer stations shall be installed in intake air at locations which are sufficiently ventilated to prevent the build-up of methane and are free of combustible materials.

§ 57.31213 Changes in ventilation.

(a) Changes in ventilation which materially affect the main air current or

any split thereof and which may affect the safety of persons in the mine shall be made only when the mine is idle.

(b) Only those persons engaged in making such changes shall be permitted in the mine during the change.

(c) Power shall be deenergized in areas affected by the change before such change is made. Power shall not be restored until the results of the change have been ascertained and a competent person has examined affected working places for methane.

§ 57.31214 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that methane is reduced to less than 1.0 percent. Until such changes are achieved, all electrical power and diesel equipment shall be deenergized and no other work shall be permitted in the affected area.

§ 57.31215 Actions at 1.5 to 2.5 percent methane.

(a) If 1.5 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the affected area. Other persons shall not reenter affected areas until the methane is reduced to less than 1.0 percent.

(b) The methane content in the mine atmosphere in bleeder systems shall not exceed 2.0 percent at the point where a bleeder split enters a main return split. If the methane content exceeds 2.0 percent, immediate corrective action shall be taken. No other work shall be permitted upstream from problem areas on ventilation splits which contribute return air to the bleeder system until methane has been reduced to less than 2.0 percent. If methane has not been reduced to less than 2.0 percent within 30 minutes, or if methane levels reach 2.5 percent or more, all persons other than competent persons necessary to take corrective action shall be immediately withdrawn from affected areas. Other persons shall not reenter affected areas until methane has been reduced to less than 2.0 percent.

§ 57.31216 Air passing abandoned or unsealed areas.

Air that has passed by or through abandoned or unsealed inactive areas and contains 0.25 percent or more methane shall:

(a) Be coursed directly to a return airway;

(b) Be tested daily for methane by a competent person; and

(c) Not be used to ventilate any working place in the mine.

§ 57.31217 Abandoned areas.

Abandoned areas shall be:

(a) Sealed; or

(b) Ventilated, barricaded and posted against unauthorized entry.

§ 57.31218 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials or form-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constructed of combustible or foam-type materials shall be kept free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.31220 Line brattice and fan ducting.

Line brattice, fans with ducting, or other equivalent means shall be used to provide positive air flow across each working face, except during initial continuous miner cuts, initial rounds blasted, and pillar extraction.

§ 57.31221 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

§ 57.31226 Overcast and undercast construction.

Overcasts and undercasts shall be:

(a) Constructed to minimize leakage;

(b) Of substantial construction;

(c) Constructed either of noncombustible materials or exposed surfaces coated with at least one-inch of shotcrete or one-half inch of gunite or other material with equivalent fire resistance; and

(d) Kept clear of obstructions.

§ 57.31227 Preshift examination.

(a) Prior to the beginning of a shift following an idle shift, a competent person shall test the mine atmosphere of all working places for methane within 3 hours before persons other than examiners enter the mine.

(b) When one shift immediately follows another, a competent person on each shift shall test the mine atmosphere of each working place for methane before work is started on that shift.

(c) At least once during each 24-hour period a competent person shall test the mine atmosphere of areas other than those examined in paragraph (a) and (b) of this section for methane.

§ 57.31228 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.31229 Mechanical ventilation.

All mines shall be ventilated mechanically.

§ 57.31230 Doors on main fans.

In mines ventilated by a combination of multiple main fans, each main fan installation shall be equipped with noncombustible doors. Such doors shall automatically close to prevent air reversal through the fan. The doors shall be located so that they are not in direct line with forces which could come out of the mine.

Equipment

§ 57.31301 Mine-wide monitoring system.

(a) A mine-wide monitoring system shall be installed to provide surface recordings of methane concentrations in the mine atmosphere from underground locations. Components of the system shall meet the requirements of 30 CFR Parts 18, 22, 23, and 27, as appropriate;

or be intrinsically safe or explosion-proof.

(b) Mine-wide monitoring systems shall:

(1) Give audible and visible warnings on the surface and underground when methane at any sensor reaches 1.0 percent or more. Warning devices shall be located so that they can be seen and heard by a responsible person designated by the mine operator.

(2) Automatically deenergize the power underground when methane at any sensor reaches 1.5 percent; and

(3) Automatically deenergize the power underground when power to the sensor is interrupted. Timing devices are permitted to avoid nuisance tripping for periods not to exceed 30 seconds.

(c) Recordings of methane shall be retained for at least one year, and shall be available to an authorized representative of the Secretary.

(d) At least once every two weeks, the systems shall be checked with a known mixture of 1.0 percent methane, and calibrated if necessary. Certification shall be made by signature and date. Certification of calibration tests shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.31303 Permissible equipment.

All electrical and diesel-powered equipment used in or beyond the last open crosscut shall be permissible. Equipment shall not be operated in atmospheres containing 1.0 percent or more methane.

§ 57.31305 Methane monitors.

Methane monitoring devices (methane monitors) shall be installed on continuous mining machines and longwall mining systems. Such monitors shall be permissible in accordance with 30 CFR Part 27, except that the monitors shall give warning at 1.0 percent methane and automatically deenergize the equipment and prevent starting when methane levels reach 1.5 percent or more, and when power to the sensor is interrupted. The sensing unit of the monitors shall be positioned as close to the face as practical.

Underground Retorts

§ 57.31401 Underground retort plan.

(a) Prior to the ignition of underground retorts a written ignition and operation plan shall be submitted for approval to the district manager for the area in which the mine is located.

(b) The retorting plan shall include the following:

(1) Provisions for two independent power sources for mine ventilation fans and retort blowers, and provisions for switching automatically from one power source to the other;

(2) Descriptions of alrarm systems for blower malfunctions and actions necessary to assure safety of personnel in the event of a failure;

(3) Acceptable levels of combustible gases and oxygen in retort off-gases during start-up and during burning; levels at which corrective action will be initiated; levels at which personnel will be removed from the retort areas, from the mine, and from endangered surface areas; and, conditions for reentering the mine;

(4) Specifications and locations of off-gas monitoring procedures and equipment;

(5) Specifications for construction of retort bulkheads and seals, and their locations;

(6) Procedures for ignition of a retort and for reignition following a shutdown; and

(7) Details of area monitoring and alarm systems for hazardous gases and oxygen deficiency, and actions to be taken to assure safety of personnel.

(c) Within 90 days of receipt of a proposed plan, the district manager will notify the mine operator in writing of approval or disapproval of the plan. If the plan is not approved or if revisions are required, the reasons shall be specified in writing. The mine operator may request a conference with the Administrator for Metal and Nonmetal Mine Safety and Health to review the plan, and MSHA's disapproval or revisions of the plan. Prior to making a decision, the Administrator may conduct an investgation and hold a hearing in accordance with section 103(b) of the Federal Mine Safety and Health Act. The Administrator shall notify the mine operator of the findings and determination. The plan, as adopted or modified by the Administrator, shall become the approved plan and the mine operator shall comply with all provisions of the approved plan.

(d) Pending review of the withdrawal of a plan approval, or denial of a plan revision, a retort may continue in operation according to the terms of the previously approved plan until a final decision is issued.

Illumination

§ 57.31501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 and 20, as appropriate.

Explosives

§ 57.31601 Blasting from the surface.

(a) All development, production, and bench rounds shall be initiated electrically from the surface after all persons are out of the mine. Persons shall not reenter the mine until ventilating air has passed over the blast area and through the mine-wide monitoring sensors. If the system indicates that methane in the mine is less than 1.0 percent, persons may enter the mine, and all places blasted shall be tested for methane by a competent person before work is started. Vehicles used for transportation when conducting these tests shall be permissible. If the monitoring system indicates the presence of methane in excess of 1.0 percent, persons shall not reenter the mine until the mine has been examined by a competent person and is free of methane.

(b) The mine shall be ventilated for at least 30 minutes after blasting before persons enter the mine.

§ 57.31602 Secondary blasting.

Prior to secondary blasting, tests for methane shall be made in the mine atmosphere at blast sites by a competent person. Secondary blasts shall not be initiated where 0.5 percent or more methane is present.

§ 57.31603 Explosive materials and blasting units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate MSHA district manager for each explosive material and blasting unit to be used. In granting permission, the district manager will be guided by such factors as the oxygen balance and detonation temperatures, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

Subcategory I–B

Scope

§ 57.32000 Scope.

Category I mines are mines that operate within a combustible ore body and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located. Category I is divided into Subcategories I–A, I–B, and I–C. Subcategory I–B mines are mines that operate within a combustible ore body and have the potential to liberate methane based on

the history of the mine or geological area in which the mine is located and in which:

(a) A concentration of 0.25 percent or more methane has not been detected by air analysis in the mine atmosphere; or

(b) An ignition of methane has not occurred.

The safety standards for this subcategory follow.

Fire Prevention and Control

§ 57.32101 Smoking.

Smoking shall be restricted to designated areas located in intake air. The operator shall institute a reasonable program to assure that smoking and smoking materials, matches, and lighters are confined to such areas.

Ventilation

§ 57.32201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstreams shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18.

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium; and

(g) Main exhaust fans shall be equipped with methane monitors which give an alarm when methane in the return air reaches 0.5 percent. Such monitors shall give an audible or visible alarm that can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground. When methane reaches 1.0 percent, electrical power underground shall be deenergized and all persons shall be withdrawn from the mine.

§ 57.32202 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface:

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.32203 Actions at 0.25 percent methane.

If 0.25 percent or more methane is present in the mine atmosphere, ventilation changes shall be made to reduce the methane, and MSHA shall be notified immediately.

§ 57.32204 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that the methane is reduced to less than 0.5 percent. Until such changes are achieved, electrical power shall be deenergized and diesel equipment shall be shut off or immediately removed from the area. No other work shall be permitted in the affected area.

§ 57.32205 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make corrections shall be withdrawn from the affected area until the methane is reduced to less than 0.5 percent.

§ 57.32206 Actions at 2.0 percent methane.

If 2.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until the methane is reduced to less than 0.5 percent.

§ 57.32207 Booster fans.

(a) Booster fans shall be permissible and be:

(1) Deenergized automatically when methane levels reach 1.0 percent at the fan;

(2) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan stops or slows. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the affected workings should the fan slow or stop; and

(4) Equipped with two sets of controls capable of starting and stopping the fan. One set shall be located at the fan and a second set shall be located at another accessible remote location.

(b) Booster fan installations except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open at least 50 percent of the airway is available for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

§ 57.32210 Weekly testing.

(a) At least once every 7 days, a competent person shall test for methane in the mine atmosphere and carbon monoxide at the following locations:

(1) In the return of each split where it enters the main return;

(2) Adjacent to retreat areas if accessible;

(3) At seals;

(4) In the main return;

(5) In at least one entry of each intake and return;

(6) In idle workings; and

(7) In the return air from unsealed abandoned workings.

(b) At least every 7 days a competent person shall measure the volume of air at the following locations:

(1) Entering the main intakes;

(2) Leaving the main returns;

(3) Entering from each main split;

(4) Returning from each main split; and

(5) In the last open crosscuts or other ventilation openings nearest the active faces.

(c) Where such examinations disclose hazardous conditions, affected persons shall be informed and such conditions shall be promptly corrected.

(d) Certification of examinations shall be made by signature and date. Certifications shall be retained for at least one year, and made available to an authorized representative of the Secretary.

§ 57.32213 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials of foam-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and shall be at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constructed of combustible or foam-type materials shall be kept free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.32216 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

§ 57.32221 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present, shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.32222 Mechanical ventilation.

All mines shall be ventilated mechanically.

Underground Retorts

§ 57.32401 Underground retort plan.

(a) Prior to the ignition of underground retorts, a written ignition and operation plan shall be submitted for approval to the appropriate district manager.

(b) The retorting plan shall include the following:

(1) Provisions for two independent power sources for mine ventilation fans and retort blowers, and provisions for switching automatically from one power source to the other;

(2) Descriptions of alarm systems for blower malfunctions and actions necessary to assure safety of personnel in the event of a failure;

(3) Acceptable levels of combustible gases and oxygen in retort off-gases during start-up and during burning; levels at which corrective action will be initiated; levels at which personnel will be removed from the retort areas, from the mine, and from endangered surface areas, and, conditions for reentering the mine;

(4) Specifications and locations of off-gas monitoring procedures and equipment;

(5) Specifications for construction of retort bulkheads and seals, and their locations;

(6) Procedures for ignition of a retort and for reignition following a shutdown; and

(7) Details of area monitoring and alarm systems for hazardous gases and oxygen deficiency, and actions to be taken to assure safety of personnel.

(c) Within 90 days of receipt of a proposed plan, the district manager will notify the mine operator in writing of the approval or disapproval of the plan. If the plan is not approved or if revisions are required, the reasons shall be specified in writing. The mine operator may request a conference with the Administrator for Metal and Nonmetal Mine Safety and Health to review the plan, and MSHA's disapproval or revisions of the plan. Prior to making a decision, the Administrator may conduct an investigation and hold a hearing in accordance with section 103(b) of the Federal Mine Safety and Health Act. The Administrator shall notify the mine operator of the findings and determination. The plan, as adopted or modified by the Administrator, shall become the approved plan and the mine operator shall comply with all provisions of the approved plan.

(d) Pending review of the withdrawal of a plan approval, or denial of a plan revision, a retort may continue in operation according to the terms of the previously approved plan until a final decision is issued.

Illumination

§ 57.32501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 and 20, as appropriate.

Explosives

§ 57.32601 Explosive materials and blasting units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate district manager for each explosive material and blasting unit to be used. In granting permission, the district manager will be guided by such factors as the oxygen balance and detonation temperatures, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

Subcategory I–C

Scope

§ 57.33000 Scope.

Category I mines are mines that operate within a combustible ore body and either liberate methane or have the potential to liberate methane based on the history of the mine of the geological area in which the mine is located. Category I is divided into Subcategories I–A, I–B, and I–C. Subcategory I–C mines are mines in which the product extracted is combustible and the dust

has volatile matter content of 60 percent or more measured on a moisture free basis [1] and which are located within a geological area where the history of the area indicates the potential for liberation of methane and volatile dust. The safety standards for this subcategory follow.

Fire Prevention and Control

§ 57.33101 Smoking.

(a) Persons shall not smoke or carry smoking material, matches, or lighters underground or within 50 feet of a mine opening. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

(b) Smoking is prohibited in surface milling facilities except in designated, dust-free smoking areas.

§ 57.33102 Open flame.

(a) Open flames, including cutting and welding, shall not be used underground.

(b) Welding and cutting shall not be done 50 feet of a mine opening unless all persons are out of the mine and the mine opening is covered. The cover shall be a substantial material, such as metal or wood, covered by a wet material to prevent sparks and flames from entering the mine opening.

§ 57.33103 Dust containing volatile matter.

Dust containing volatile matter shall not be allowed to accumulate on the surfaces of enclosures, facilities, or equipment used in surface milling in amounts that, if suspended in air, would become an explosive mixture.

Ventilation

§ 57.33201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in a noncombustible housing provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Unless the fan can be heard by a responsible person, it shall be provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground: and

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstreams shall be approved, certified, or accepted by MSHA in accordance with CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium.

§ 57.33202 Main fan operation.

Main fans shall be operated continuously while ore production is in progress.

§ 57.33203 Separation of intake and return air.

The main intake and return air currents in single shafts shall be separated by ventilation tubing or curtain walls. Curtain walls or partitions shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices. Ventilation tubing shall be constructed of noncombustible material.

§ 57.33205 Main ventilation failure.

(a) At mines where a single main fan is used and such fan stops, or where multiple main fans are used and all such fans stop, the operator shall take the following actions:

(1) Stop all ore production immediately; and

(2) Monitor the air in affected working places. If methane levels reach 0.5 percent or more, promptly withdraw all persons from the mine.

(b) The above procedures do not apply to main fan failure if standby main fans or auxiliary power sources have begun operation without interruption of normal ventilation and the air quantity delivered is equal to the air quantity delivered by the main fan during normal operation.

§ 57.33207 Reentry after shutdown of main fans.

When the main fan or fans have been stopped or if a total failure of ventilation has occurred while all persons are out of the mine, only competent persons shall be allowed underground to examine the mine or make necessary ventilation changes. Other persons may reenter the mine only after the main fans have been started and the mine has been tested for, and determined to be free of, 0.25 percent or more methane.

§ 57.33208 In-line filters.

Filters or separators shall be installed on air-lift fan systems to prevent explosive concentrations of dust or ore from passing through the fan.

§ 57.33209 Auxiliary fans.

Electric auxiliary fans shall be permissible and operated so that recirculation is minimized. Tests for methane shall be made at auxiliary fans before they are started. Such fans shall not be operated when air passing over or through them contains 0.5 percent or more methane.

§ 57.33210 Minimum air flow.

The velocity of air ventilating each face shall be at least 40 feet per minute.

§ 57.33211 Weekly testing.

(a) At least once every 7 days a competent person shall test for methane in the mine atmosphere and measure the velocity of air at each face in all active workings. Where such examinations disclose hazardous conditions, affected persons shall be informed and such conditions shall be promptly corrected.

(b) Certification of these examinations shall be made by signature and date. Certifications shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.33212 Installation of support equipment.

Battery charging stations, compressor stations, and electrical substations shall not be installed underground or within 100 feet of a mine opening.

§ 57.33214 Actions at 0.25 percent methane.

If 0.25 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that methane is reduced

[1] Measured by the American National Standard, ASTM D-3175-77, standard test method for volatile matter in the analysis sample of Coal and Coke. (This document is available at any Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.)

to less than 0.25 percent. Until such changes are achieved, no other work shall be permitted in the affected area.

§ 57.33215 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the affected area until the methane is reduced to less than 0.25 percent.

§ 57.33218 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials or foam-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and shall be at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constructed of combustible or foam-type materials shall be kept free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.33221 Preshift examination.

(a) Prior to the beginning of a shift following an idle shift, a competent person shall test the mine atmosphere of all working places for methane within 3 hours before persons other than examiners enter the mine.

(b) When one shift immediately follows another, a competent person on each shift shall test the mine atomsphere of each working place for methane before work is started on that shift.

(c) At least once during each 24-hour period a competent person shall test the mine atmosphere of areas other than those examined in paragraphs (a) and (b) of this section for methane.

§ 57.33222 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Flame safety lamps shall not be used.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.33223 Mechanical ventilation.

All mines shall be ventilated mechanically.

§ 57.33224 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 of less.

Equipment

§ 57.33301 Electrical grounding.

Systems providing electrical power underground shall be:

(a) Grounded. Ground-fault current shall be limited to not more than 15 amperes;

(b) Protected by circuit breakers equipped with ground-fault devices that will interrupt the circuit at not more than 7 amperes ground-fault current; and

(c) Continuously monitored for continuity of the ground circuit, or ground circuits shall be tested for continuity at least every 30 days.

§ 57.33302 Pressure-relief vents.

Pressure-relief vents or other explosion suppression systems shall be provided on explosive dust handling and processing equipment and on facilities housing such equipment. Vents shall be installed so that forces are directed away from persons should an explosion occur. The ratio of vent size to internal size of the equipment of facility shall be not less than one square foot of vent for each 80 cubic feet of volume or space.

§ 57.33303 Jacketed and shielded cables.

Only flame-resistant, jacketed cables accepted in accordance with 30 CFR 18.64 shall be used underground. Such cables shall have grounded metallic shielding around each power conductor which is in continuous electrical contact with the grounding conductors. Installation and maintenance shall be in accordance with the cable manufacturers' specifications.

§ 57.33304 Permissible equipment.

Only permissible electrical equipment shall be used underground.

Illumination

§ 57.33501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 and 20, as appropriate.

Explosives

§ 57.33603 Blasting from the surface.

(a) All blasting shall be initiated electrically from the surface after all persons are out of the mine and any connecting mines.

(b) Persons shall not reenter the mine until a competent person has examined the blast sites to assure that methane concentrations are less than 0.25 percent. If ventilation corrections are necessary to reduce methane levels, only those persons necessary to make the corrections shall be allowed underground.

§ 57.33604 Explosive materials and blasting units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate district manager for each explosive material and blasting unit to be used. In granting permission, the district manager will be guided by such factors as the oxygen balance and detonation temperatures, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

Miscellaneous

§ 57.33701 Advance face boreholes.

(a) Boreholes shall be drilled at least 25 feet in advance of a face whenever the working place is within:

(1) 50 feet of a surveyed abandoned mine or abandoned workings which cannot be inspected; or

(2) 200 feet of an unsurveyed abandoned mine or abandoned workings which cannot be inspected.

(b) Boreholes shall be drilled in such a manner to insure that the advancing face will not accidentally break into an abandoned mine or abandoned working.

Subcategory II–A

Scope

§ 57.34000 Scope.

Category II mines are domal salt mines where the history of the mine or the geological area indicates the occurrence of or the potential for outbursts. Category II is divided into Subcategories II–A and II–B. Subcategory II–A mines are domal salt mines where an outburst has occurred. The safety standards for this subcategory follow.

Fire Prevention and Control

§ 57.34101 Smoking.

Persons shall not smoke or carry smoking materials, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.34102 Open flame.

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations. When using open flames in other than fresh air, tests shall be conducted by a competent person in places where methane may enter the air current before work is started and at intervals not to exceed 5 minutes. Continuous methane monitors with alarms may be used as an alternative to the testing requirements of this standard. Open flames shall not be used in atmospheres containing 0.5 percent or more methane.

Ventilation

§ 57.34201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground; and

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium.

§ 57.34202 Main fan operation and inspection

Main fans shall be:

(a) Operated continuously while persons are underground except as provided in §§ 57.34205 and 57.34210;

(b) Provided with pressure-recording gages. Gage charts shall be changed after completing one revolution; and

(c) Inspected daily while operating. Certification of the inspections shall be made by signature and date. Certifications and gage charts shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.34203 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface:

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.34205 Main ventilation failure.

(a) At mines where a single main fan is used and such fan stops, or where multiple main fans are used and all such fans stop, or where there has been a total failure of ventilation other than the main fan, the operator shall take the following actions:

(1) Deenergize all electrical power and diesel equipment in all working places; and

(2) If the stoppage lasts 30 minutes or more, promptly withdraw all persons to the surface.

(b) The above procedures do not apply to main fan failure if standby main fans or auxiliary power sources have begun operation without interruption of normal ventilation and the air quantity delivered is equal to the air quantity delivered by the main fan during normal operation.

§ 57.34207 Reentry after shutdown of main fans.

When the main fan or fans have been stopped or if a total failure of ventilation has occurred while all persons are out of the mine, only competent persons shall be allowed underground to examine the mine or to make necessary ventilation changes. Other persons may reenter the mine only after the main fans have been operational for at least 30 minutes, and the mine atmosphere has been tested and determined to be free of 0.5 percent or more methane.

§ 57.34208 Booster fans.

(a) Booster fans shall be permissible and be:

(1) Deenergized automatically when methane levels reach 0.5 percent at the fan;

(2) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan stops or slows. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the affected workings should the fan slow or stop; and

(4) Equipped with two sets of controls capable of starting and stopping the fan. One set shall be located at the fan and a second set shall be located at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open at least 50 percent of the airway is provided for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

§ 57.34209 Auxiliary fans.

Electric auxiliary fans, including free standing fans, shall be permissible and operated so that recirculation is minimized. Tests for methane shall be made at auxiliary fans before they are started. Auxiliary fans shall not be operated when air passing over or through them contains 0.5 percent or more methane. Auxiliary fans shall not be used to ventilate any working place during the interruption of normal mine ventilation. If an auxiliary fan stops or fails, electrical equipment in the affected area shall be deenergized at the power source and diesel equipment shall be shut off or removed from the affected area until ventilation is restored. Permissible diffuser fans that are an integral part of continuous mining machines may be used.

§ 57.34210 Changes in ventilation.

(a) Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the mine shall be made only when the mine is idle.

(b) Only those persons engaged in making such changes shall be permitted in the mine during the change.

(c) Power shall be deenergized in areas affected by the change before such change is made. Power shall not be restored until the results of the change have been determined and a competent person has examined affected working places for methane.

§ 57.34211 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that methane is reduced to less than 0.5 percent. Until such changes are achieved, all electrical power and diesel equipment shall be deenergized and no other work shall be permitted in the affected area.

§ 57.34212 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the affected area. Other persons shall not reenter affected areas until the methane is reduced to less than 0.5 percent.

§ 57.34213 Air passing abandoned or unsealed areas.

Air that has passed by or through abandoned or unsealed inactive areas and contains 0.25 percent or more methane shall:

(a) Be coursed directly to a return airway;

(b) Be examined daily for methane by a competent person; and

(c) Not be used to ventilate any working place in the mine.

§ 57.34214 Abandoned areas.

Abandoned areas shall be:

(a) Sealed; or

(b) Ventilated, barricaded and posted against unauthorized entry.

§ 57.34215 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials or foam-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constructed of combustible or foam-type materials shall be kept free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.34217 Line brattice and fan ducting.

Line brattice, fans with ducting, or other equivalent means shall be used to provide positive air flow across each working face.

§ 57.34218 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

§ 57.34219 Minimum air flow.

The average air velocity in the last open crosscut in pairs or sets of developing entries, or through other ventilation openings nearest the face, shall be at least 40 feet per minute. The volume of air ventilating each face at a working place shall be at least 20 feet per minute multiplied by the open cross-sectional area (in square feet) of the entry. If such quantities of air cannot be maintained, all persons shall be immediately withdrawn from affected working areas, and all electrical power and diesel equipment shall be deenergized.

§ 57.34222 Overcast and undercast construction.

Overcasts and undercasts shall be:

(a) Constructed to minimize leakage;

(b) Of substantial construction;

(c) Constructed either of noncombustible materials or exposed surfaces coated with at least one-inch of shotcrete or one-half inch of gunite or other material with equivalent fire resistance; and

(d) Kept clear of obstructions.

§ 57.34223 Preshift examination.

(a) Prior to the beginning of a shift following an idle shift, a competent person shall test the mine atmosphere of all working places for methane within 3 hours before persons other than examiners enter the mine.

(b) When one shift immediately follows another, a competent person on each shift shall test the mine atmosphere of each working place for methane before work is started on that shift.

(c) At least once during each 24-hour period a competent person shall test the mine atmosphere of areas other than those examined in paragraphs (a) and (b) of this section for methane.

§ 57.34224 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be

provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.34225 Weekly testing.

(a) At least once every 7 days, a competent person shall test for methane in the mine atmosphere and carbon monoxide at the following locations:

(1) In the return of each split where it enters the main return;

(2) Adjacent to retreat areas if accessible;

(3) At seals;

(4) In the main return;

(5) In at least one entry of each intake and return;

(6) In idle workings; and

(7) In the return air from unsealed abandoned workings.

(b) Where such examinations disclose hazardous conditions, affected persons shall be informed and such conditions shall be promptly corrected.

(c) Certification of examinations shall be made by signature and date. Certifications shall be kept for at least one year, and made available to an authorized representative of the Secretary.

§ 57.34226 Mechanical ventilation.

All mines shall be ventilated mechanically.

§ 57.34227 Doors on main fans.

In mines ventilated by a combination of multiple main fans, each main fan installation shall be equipped with noncombustible doors. Such doors shall automatically close to prevent air reversal through the fan. The doors shall be located so that they are not in direct line with forces which could come out of the mine.

Equipment

§ 57.34301 Mine-wide monitoring system.

(a) A mine-wide monitoring system shall be installed to provide surface recordings of methane concentrations in the mine atmosphere from underground locations. Components of the system shall meet the requirements of 30 CFR Parts 18, 22, 23, and 27, as appropriate; or be intrinsically safe or explosion-proof.

(b) Mine-wide monitoring systems shall:

(1) Give audible and visible warnings on the surface and underground when methane at any sensor reaches 0.25 percent or more. Warning devices shall be located so that they can be seen and heard by a responsible person designated by the mine operator.

(2) Automatically deenergize power underground when methane at any sensor reaches 0.5 percent; and

(3) Automatically deenergize the power underground when power to the sensor is interrupted. Timing devices are permitted to avoid nuisance tripping for periods not to exceed 30 seconds.

(c) Recordings of methane shall be retained for at least one year, and shall be available to an authorized representative of the Secretary.

(d) At least once every two weeks the systems shall be checked with a known mixture of 0.5 percent methane, and calibrated if necessary. Certification of the calibration tests shall be made by signature and date. Certifications of the calibration tests shall be kept for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.34302 Jacketed cables.

Flame-resistant jacketed cables, accepted in accordance with 30 CFR 18.64, shall be used to supply electric power to permissible equipment, and to electrical equipment located where methane from an active face may pass over operating equipment.

§ 57.34303 Permissible equipment.

(a) Only permissible equipment shall be used at or within 100 feet of a face or bench being mined, excepted that nonpermissible front-end loaders and haulage trucks equipped with methane monitors may be used at a face or bench after blasting.

(d) Methane tests shall be made immediately before front-end loaders and haulage trucks are used at a face or bench.

(c) Methane monitors on front-end loaders and haulage trucks shall give alarm if 0.25 percent or more methane is detected.

(d) Nonpermissible stationary equipment shall be equipped with a methane monitor that will deenergize the equipment when 0.25 percent or more methane is detected unless such equipment is located in intake air or within 50 feet downstream from a minewide monitor sensor.

§ 57.34304 Distribution boxes.

Distribution boxes containing short circuit protection for trailing cables of permissible equipment shall be certified as explosion-proof in accordance with 30 CFR Part 18.

§ 57.34305 Methane monitors.

Methane monitoring devices (methane monitors) shall be installed on continuous mining machines, bench and face drills, undercutting machines, and longwall mining systems. Such monitors shall be permissible in accordance with 30 CFR Part 27, except that the monitors shall give warning at 0.5 percent methane and automatically deenergize the equipment and prevent starting when methane levels reach 1.0 percent or more, and when power to the sensor is interrupted. The sensing unit of the monitors shall be positioned as close to the face as practical.

Illumination

§ 57.34501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 and 20, as appropriate.

Explosives

§ 57.34601 Blasting from the surface.

(a) All development, production, and bench rounds shall be initiated electrically from the surface after all persons are out of the mine. Persons shall not reenter the mine until ventilating air has passed over the blast area and through the mine-wide monitoring sensors. If the system indicates that methane in the mine is less than 0.5 percent, persons may enter the mine, and all places blasted shall be tested for methane by a competent person before work is started. Vehicles used for transportation when conducting these tests shall be permissible. If the monitoring system indicates the presence of methane in excess of 0.5 percent, persons shall not reenter the mine until the mine has been examined by a competent person and is free of methane.

(b) The mine shall be ventilated for at least 30 minutes after blasting before persons enter the mine.

§ 57.34602 Secondary blasting.

Prior to secondary blasting, tests for methane shall be made in the mine atmosphere at blast sites by a competent person. Secondary blasts shall not be initiated where 0.25 percent or more methane is present.

§ 57.34603 Explosive materials and blasting units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate district manager for each explosive material and blasting unit to be used. In granting permission, the district manager will be guided by such factors as the oxygen balance and detonation temperatures, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply

with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

Subcategory II–B

Scope

§ 57.35000 Scope.

Category II mines are domal salt mines where the history of the mine or the geological area indicates the occurrence of or the potential for outbursts. Category II is divided into Subcategories II–A and II–B. Subcategory II–B mines are domal salt mines where an outburst has not occurred but which have the potential for an outburst based on the history of the mine or geological area in which the mine is located. The safety standards for this subcategory follow:

Ventilation

§ 57.35201 Main fans.

Main fans shall be:

(a) Installed on the surface:

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust gases cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give audible or visual warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be so located that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium; and

(g) This standard shall apply only to new mines commencing operation after the effective date of this standard.

§ 57.35202 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approval as permissible in accordance with 20 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestor shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.35207 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface:

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.35213 Actions at 0.25 percent methane.

If 0.25 percent or more methane is present in the mine atomsphere, ventilation changes shall be made to reduce the methane, and MSHA shall be notified immediately.

§ 57.35214 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that the methane is reduced to less than 0.5 percent. Until such changes are achieved, electrical power shall be deenergized and diesel equipment shall be shut off or immediately removed from the area. No other work shall be permitted in the affected area.

§ 57.35215 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make corrections shall be withdrawn from the affected area until the methane is reducted to less than 0.5 percent.

§ 57.35216 Actions at 2.0 percent methane.

If 2.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until the methane is reduced to less than 0.5 percent.

§ 57.35229 Mechanical ventilation.

All mines shall be ventilated mechanically.

Explosives

§ 57.35601 Blasting from the surface.

(a) All shots and rounds shall be initiated electrically.

(b) All development, production, and bench rounds shall be initiated from the surface after all persons are out of the mine. Persons shall not be allowed to reenter the mine until a competent person has examined the places blasted for methane.

Category III

Scope

§ 57.36000 Scope.

Category III mines are (a) mines in which noncombustible ore is extracted and which either continuously liberate methane or have the potential to

continuously liberate methane based on the history of the mine or the geological area in which the mine is located, or (b) mines which intermittently liberate explosive mixtures of methane. The safety standards for this category are as follows.

Fire Prevention and Control

§ 57.36101 Smoking.

Persons shall not smoke or carry smoking materials, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.36102 Open flame.

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations. When using open flames in other than fresh air, tests shall be conducted by a competent person in places where methane may enter the air current before work is started and at intervals not to exceed 5 minutes. Continuous methane monitors with alarms may be used as an alternative to the testing requirements of this standard. Open flames shall not be used in atmospheres containing 1.0 percent or more methane.

Ventilation

§ 57.36201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provide by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops.

The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground; and

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium.

§ 57.36202 Main fan operation and inspection.

Main fans shall be:

(a) Operated continuously while persons are underground except as provided in §§ 57.36205 and 57.36213;

(b) Provided with pressure-recording gages. Gage charts shall be changed after completing one revolution; and

(c) Inspected daily while operating. Certification of the inspections shall be made by signature and date. Certifications and gage charts shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.36203 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface:

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.36205 Main ventilation failure.

(a) At mines where a single main fan is used and such fan stops, or where multiple main fans are used and all such fans stop, or where there has been a total failure of ventilation other than the main fan, the operator shall take the following actions:

(1) Deenergize all electrical power and diesel equipment in all working places, and

(2) If the stoppage lasts 30 minutes or more, promptly withdraw all persons to the surface.

(b) The above procedures do not apply to main fan failure if standby main fans or auxiliary power sources have begun operation without interruption of normal ventilation and the air quantity delivered is equal to the air quantity delivered by the main fan during normal operation.

§ 57.36207 Reentry after shutdown of main fans.

When the main fan or fans have been stopped or if a total failure of ventilation has occurred while all persons are out of the mine, only competent persons shall be allowed underground to examine the mine or to make necessary ventilation changes. Other persons may reenter the mine only after the main fans have been operational for at least 30 minutes, and the mine atmosphere has been tested and determined to be free of 1.0 percent or more methane.

§ 57.36208 Booster fans.

(a) Booster fans shall be permissible and be:

(1) Deenergized automatically when methane levels reach 1.0 percent at the fan;

(2) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan stops or slows. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the affected workings should the fan slow or stop; and

(4) Equipped with two sets of controls capable of starting and stopping the fan. One set shall be located at the fan and a second set shall be located at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open at least 50 percent of the airway is available for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

§ 57.36209 Auxiliary fans.

Electric auxiliary fans shall be permissible and operated so that recirculation is minimized. Tests for methane shall be made at auxiliary fans before they are started. Auxiliary fans shall not be operated when air passing over or through them contains 1.0 percent or more methane. Auxiliary fans shall not be used to ventilate any working place during the interruption of normal mine ventilation. If an auxiliary fans stops or fails, electrical equipment in the affected area shall be deenergized at the power source and diesel equipment shall be shut off or removed from the affected area until ventilation is restored. Permissible diffuser fans that are an integral part of continuous mining machines may be used.

§ 57.36210 Minimum air flow.

The quantity of air coursed through the last open crosscut in pairs or sets of entries, or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in longwall and continuous miner sections. The quantity of air across each face at a working place shall be at least 2,000 cubic feet per minute. If such quantities of air cannot be maintained, all persons shall be immediately withdrawn from affected working areas, and all electrical power and diesel equipment shall be deenergized.

§ 57.36211 Weekly testing.

(a) At least once every 7 days, a competent person shall test for methane in the mine atmosphere and carbon monoxide at the following locations:

(1) In the return of each split where it enters the main return;

(2) Adjacent to retreat areas if accessible;

(3) At seals;

(4) In the main return;

(5) In at least one entry of each intake and return;

(6) In idle workings; and

(7) In the return air from unsealed abandoned workings.

(b) At least every 7 days, a competent person shall measure the volume of air at the following locations:

(1) Entering the main intakes;

(2) Leaving the main returns;

(3) Entering from each main split;

(4) Returning from each main split; and

(5) In the last open crosscuts or other ventilation openings nearest the active faces.

(c) Where such examinations disclose hazardous conditions, affected persons shall be informed and such conditions shall be promptly corrected.

(d) Certification of examinations shall be made by signature and date. Certifications shall be retained for at least one year, and made available to an authorized representative of the Secretary.

§ 57.36212 Installation of support equipment.

Battery charging stations, compressor stations, pump stations, and transformer stations shall be installed in intake air at locations which are sufficiently ventilated to prevent the build-up of methane and are free of combustible materials.

§ 57.36213 Changes in ventilation.

(a) Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the mine shall be made only when the mine is idle.

(b) Only those persons engaged in making such changes shall be permitted in the mine during the change.

(c) Power shall be deenergized in areas affected by the change before such change is made. Power shall not be restored until the results of the change have been determined and a competent person has examined affected working places for methane.

§ 57.36214 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that methane is reduced to less than 1.0 percent. Until such changes are achieved, all electrical power and diesel equipment shall be deenergized and no other work shall be permitted in the affected area.

§ 57.36215 Actions at 1.5 to 2.5 percent methane.

(a) If 1.5 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the affected area. Other persons shall not reenter affected areas until the methane is reduced to less than 1.0 percent.

(b) The methane content in the mine atmosphere in bleeder systems shall not exceed 2.0 percent at the point where a bleeder split enters a main return split. If the methane content exceeds 2.0 percent immediate corrective actions shall be taken. No other work shall be permitted upstream from problem areas on ventilation splits which contribute return air to the bleeder system until methane has been reduced to less than 2.0 percent. If methane has not been reduced to less than 2.0 percent within 30 minutes, or if methane levels reach 2.5 percent or more, all persons other than competent persons necessary to take corrective action shall be immediately withdrawn from affected areas. Other persons shall not reenter affected areas until methane has been reduced to less than 2.0 percent.

§ 57.36216 Air passing abandoned or unsealed area.

Air that has passed by or through abandoned or unsealed inactive areas and contains 0.25 percent or more methane shall:

(a) Be coursed directly to a return airway;

(b) Be tested daily for methane by a competent person; and

(c) Not be used to ventilate any working place in the mine.

§ 57.36217 Abandoned areas.

Abandoned areas shall be:

(a) Sealed; or

(b) Ventilated, barricaded and posted against unauthorized entry.

§ 57.36218 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials or foam-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constucted of combustible or foam-type materials shall be keep free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.36220 Line brattice and fan ducting.

Line brattice, fans with ducting, or other equivalent means shall be used to provide positive air flow across each working face, except during initial continuous miner cuts and initial rounds blasted. Line brattice or ducting is not required during pillar extraction.

§ 57.36221 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

§ 57.36222 Crosscuts before abandonment.

Crosscuts shall be provided where practicable at or within 18 feet of faces before workings are abandoned in unsealed areas of the mine. When crosscuts are not practicable, line brattice or other positive means of ventilating the faces shall be provided.

§ 57.36224 Air locks, overcasts and undercasts.

The main ventilation shall be arranged by means of air locks, overcasts, or undercasts so that passage of trips or persons does not cause interruptions of air currents. Where air locks are impracticable, single doors may be used if—

(a) The doors are attended constantly while areas affected by the doors are being worked; or

(b) The doors are self-closing.

§ 57.36225 Air doors.

Doors which control the flow of air by being closed shall be kept closed, except when persons or equipment are passing through. Doors shall be plainly marked to indicate whether they are to be closed or open for ventilation control.

§ 57.36226 Overcast and undercast construction.

Overcasts and undercasts shall be—

(a) Constructed to minimize leakage;

(b) Of substantial construction;

(c) Constructed either of noncombustible materials or exposed surfaces coated with at least one inch of shotcrete or one-half inch of gunite or other material with equivalent fire resistance; and

(d) Kept clear of obstructions.

§ 57.36227 Preshift examination.

(a) Prior to the beginning of a shift following an idle shift, a competent person shall test the mine atmosphere of all working places for methane within 3 hours before persons other than examiners enter the mine.

(b) When one shift immediately follows another, a competent person on each shift shall test the mine atmosphere of each working place for methane before work is started on that shift.

(c) At least once during each 24-hour period a competent person shall test the mine atmosphere of areas other than those examined in paragraphs (a) and (b) above for methane.

§ 57.36228 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.36229 Mechanical ventilation.

All mines shall be ventilated mechanically.

§ 57.36230 Air flow in intake and return air courses.

Airflow shall be maintained in all intake and return air courses of a mine. When multiple main fans are used, the system shall not develop neutral areas (areas without perceptible air movement).

§ 57.36231 Doors on main fans.

In mines ventilated by a combination of multiple main fans, each main fan installation shall be equipped with noncombustible doors. Such doors shall automatically close to prevent air reversal through the fan. The doors shall be located so that they are not in direct line with forces which could come out of the mine.

Equipment

§ 57.36302 Permissible equipment.

All electrical and diesel-powered equipment used in or beyond the last open crosscut shall be permissible. Equipment shall not be operated in atmospheres containing 1.0 percent or more methane. Nonpermissible electrical and diesel-powered equipment shall be kept at least 150 feet from pillar recovery workings, longwall faces and shortwall faces.

§ 57.36303 Methane monitors.

Methane monitoring devices (methane monitors) shall be installed on continuous mining machines and longwall mining systems. Such monitors shall be permissible in accordance with 30 CFR Part 27, except that the monitors shall give warning at 1.0 percent methane and automatically deenergize the equipment and prevent starting when methane levels reach 1.5 percent or more, and when power to the sensor is interrupted. The sensing unit of the monitors shall be positioned as close to the face as practical.

Illumination

§57.36501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 or 20, as appropriate.

Explosives

§ 57.36601 Explosive materials and blasting units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate district manager for each explosive material and blasting unit to be used. In granting permission, the district manager will be guided by such factors as the oxygen balance and detonation temperature, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

§ 57.36603 Blasting on shift.

(a) All rounds shall be initiated electrically.

(b) When blasting on shift, tests for methane shall be made in the mine atmosphere by a competent person before and after each blast and before other work is performed. Blasting shall not be done where 1.0 percent or more methane is present.

Category IV

Scope

§ 57.37000 Scope

Category IV mines are mines in which noncombustible ore is extracted and which either intermittently liberate methane in nonexplosive mixtures or have the potential to do so based on the history of the mine or the geological area in which the mine is located. The safety standards for this category follow.

Fire Prevention and Control

§ 57.37101 Smoking and open flame.

Smoking or open flame shall not be permitted in a face, raise, or heading until tests have been conducted in accordance with § 57.37204 and the area is free of methane.

Ventilation

§ 57.37201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in a noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustion housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectonal area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium; and

(g) This standard applies only to new mines commencing opeation after the effective date of this standard.

§ 57.37202 Mechanical ventilation.

All mines shall be ventilaed mechanically.

§ 57.37203 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instruction, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.37204 Testing for methane.

Tests for methane shall be conducted in the mine atmosphere by a competent person:

(a) At least once each shift prior to starting work in each face, raise, or heading; and

(b) At the time of gas release from boreholes into the mine atmosphere.

§ 57.37205 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that the methane is reduced to less than 0.5 percent. Until such changes are achieved, electrical power shall be deenergized and diesel equipment shall be shut off or immediately removed from the area. No other work shall be permitted in the affected area.

§ 57.37206 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make corrections shall be withdrawn from the affected area until the methane is reduced to less than 0.5 percent.

§ 57.37207 Actions at 2.0 percent methane.

If 2.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until the methane is reduced to less than 0.5 percent. MSHA shall be notified immediately.

Illumination

§ 57.37501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 or 20, as appropriate.

Category V–A

Scope

§ 57.38000 Scope.

Category V mines are petroleum mines that operate within or drill into an oil reservoir. Category V is divided into Subcategories V–A and V–B. Subcategory V–A mines are petroleum mines that operate entirely or partially within an oil reservoir and petroleum mines in which:

(a) A concentration of 0.25 percent or more methane has been detected by air analysis in the mine atmosphere; or

(b) An ignition of methane has occurred.

The safety standards for this subcategory follow.

Fire Prevention and Control

§ 57.38101 Smoking.

Persons shall not smoke or carry smoking material, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.38102 Open flame.

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations. When using open flames in other than fresh air, tests shall be conducted by a competent person in places where methane may enter the air current before starting work and at intervals not to exceed 5 minutes. Continuous methane monitors with alarms may be used as an alternative to the testing requirements of this standard. Open flames shall not be used in atmospheres containing 1.0 percent or more methane.

Ventilation

§ 57.38201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground; and

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium.

§ 57.38202 Main fan operation and inspection.

Main fans shall be:

(a) Operated continuously while persons are underground except as provided in §§57.38205 and 57.38213;

(b) Provided with pressure-recording gages. Gage charts shall be changed after completing one revolution; and

(c) Inspected daily while operating. Certification of the inspections shall be made by signature and date. Certifications and gage charts shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.38203 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except—

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface—

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.38205 Main ventilation failure.

(a) At mines where a single main fan is used and such fan stops, or where multiple main fans are used and all such fans stop, or where there has been a total failure of ventilation other than the main fan, the operator shall take the following actions:

(1) Deenergize electrical power and diesel equipment in all working places, and

(2) If the stoppage lasts 30 minutes or more, promptly withdraw all persons to the surface.

(b) The above procedures do not apply to main fan failure if standby main fans or auxiliary power sources have begun operation without interruption of normal ventilation and the air quantity delivered is equal to the air quantity delivered by the main fan during normal operation.

§ 57.38207 Reentry after shutdown of main fans.

When the main fan or fans have been stopped or if a total failure of ventilation has occurred while all persons are out of the mine, only competent persons shall be allowed underground to examine the mine or to make necessary ventilation changes. Other persons may reenter the mine only after the main fans have been operational for at least 30 minutes, and the mine atmosphere has been tested and determined to be free of 1.0 percent or more methane.

§ 57.38208 Booster fans.

(a) Booster fans shall be permissible and be:

(1) Deenergized automatically when methane levels reach 1.0 percent at the fan;

(2) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan stops or slows. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the affected workings should the fan slow or stop; and

(4) Equipped with two sets of controls capable of starting and stopping the fan. One set shall be located at the fan and a second set shall be located at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open at least 50 percent of the airway is available for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

§ 57.38209 Auxiliary fans.

Electric auxiliary fans shall be permissible and operated so that recirculation is minimized. Tests for methane shall be made at auxiliary fans before they are started. Auxiliary fans shall not be operated when air passing over or through them contains 1.0 percent or more methane. Auxiliary fans shall not be used to ventilate any working place during the interruption of normal mine ventilation. If an auxiliary fan stops or fails, electrical equipment in the affected area shall be deenergized at the power source and diesel equipment shall be shut off or removed from the affected area until ventilation is restored. Permissible diffuser fans that are an integral part of continuous mining machines may be used.

§ 57.38210 Minimum air flow.

The air velocity in the last open crosscut in pairs or sets of entries, or through other ventilation openings nearest the face, shall be at least 40 feet per minute. The quantity of air ventilating each face at a working place shall be at least 20 feet per minute per square foot of face area.

§ 57.38211 Weekly testing.

(a) At least once every 7 days, a competent person shall test for methane

in the mine atmosphere and carbon monoxide at the following locations:

(1) In the return of each split where it enters the main return;

(2) Adjacent to retreat areas if accessible;

(3) At seals;

(4) In the main return;

(5) In at least one entry of each intake and return;

(6) In idle workings; and

(7) In the return air from unsealed abandoned workings.

(b) At least every 7 days, a competent person shall measure the volume of air at the following locations:

(1) Entering the main intakes;

(2) Leaving the main returns;

(3) Entering from each main split;

(4) Returning from each main split; and

(5) In the last open crosscuts or other ventilation openings nearest the active faces.

(c) Where such examinations disclose hazardous conditions, affected persons shall be informed and such conditions shall be promptly corrected.

(d) Certification of examinations shall be made by signature and date. Certifications shall be retained for at least one year, and made available to an authorized representative of the Secretary.

§ 57.38213 Changes in ventilation.

(a) Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the mine shall be made only when the mine is idle.

(b) Only those persons engaged in making such changes shall be permitted in the mine during the change.

(c) Power shall be deenergized in the areas affected by the change before such change is made. Power shall not be restored until the results of the change have been determined and a competent person has examined affected working places for methane.

§ 57.38214 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that methane is reduced to less than 1.0 percent. Until such changes are achieved, electrical power shall be deenergized and diesel equipment shall be shut off or immediately removed from the area. No other work shall be permitted in affected areas.

§ 57.38215 Actions at 1.5 percent methane.

If 1.5 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the affected areas until the methane is reduced to less than 1.0 percent.

§ 57.38216 Air passing abandoned or unsealed areas.

Air that has passed by or through abandoned or unsealed inactive areas and contains 0.25 percent or more methane shall:

(a) Be coursed directly to a return airway;

(b) Be tested daily for methane by a competent person; and

(c) Not be used to ventilate any working place in the mine.

§ 57.38217 Abandoned areas.

Abandoned areas shall be:

(a) Sealed; or

(b) Ventilated, barricaded and posted against unauthorized entry.

§ 57.38218 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials or foam-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constructed of combustible or foam-type materials shall be kept free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.38220 Line brattice and fan ducting.

Line brattice, fans with ducting, or other equivalent means shall be used to provide positive air flow across each working face.

§ 57.38221 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

§ 57.38224 Air locks, overcasts and undercasts.

The main ventilation shall be arranged by means of air locks, overcasts, or undercasts so that passage of trips or persons does not cause interruptions of air currents. Where air locks are impracticable, single doors may be used if:

(a) The doors are attended constantly while areas affected by the doors are being worked, or

(b) The doors are self-closing.

§ 57.38225 Air doors.

Doors which control the flow of air by being closed shall be kept closed, except when persons or equipment are passing through. Doors shall be plainly marked to indicate whether they are to be closed or open for ventilation control.

§ 57.38226 Overcast and undercast construction.

Overcasts and undercasts shall be:

(a) Constructed to minimize leakage;

(b) Of substantial construction;

(c) Constructed either of noncombustible materials or exposed surfaces coated with at least one-inch of shotcrete or one-half inch of gunite or other material with equivalent fire resistance; and

(d) Kept clear of obstructions.

§ 57.38227 Preshift examination.

(a) Prior to the beginning of a shift following an idle shift, a competent person shall test the mine atmosphere of all working places for methane within 3 hours before persons other than examiners enter the mine.

(b) When one shift immediately follows another, a competent person on each shift shall test the mine atmosphere of each working place for methane before work is started on that shift.

(c) At least once during each 24-hour period a competent person shall test the mine atmosphere of areas other than those examined in paragraphs (a) and (b) of this section for methane.

§ 57.38228 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet with the

requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.38229 Mechanical ventilation.

All mines shall be ventilated mechanically.

§ 57.38231 Doors on main fans.

In mines ventilated by a combination of multiple main fans, each main fan installation shall be equipped with noncombustible doors. Such doors shall automatically close to prevent air reversal through the fan. The doors shall be located so that they are not in direct line with forces which could come out of the mine.

Equipment

§ 57.38301 Mine-wide monitoring system.

(a) A mine-wide monitoring system shall be installed to provide surface recordings of methane concentrations in the mine atmosphere from underground locations. Components of the system shall meet the requirements of 30 CFR Parts 18, 22, 23, and 27, as appropriate; or be intrinsically safe or explosion-proof.

(b) Mine-wide monitoring systems shall:

(1) Give audible and visible warnings on the surface and underground when methane at any sensor reaches 1.0 percent or more. Warning devices shall be located so they can be seen and heard by a responsible person designated by the mine operator.

(2) Automatically deenergize power underground when methane at any sensor reaches 1.5 percent; and

(3) Automatically deenergize power underground when power to the sensor is interrupted. Timing devices are permitted to avoid nuisance tripping for periods not to exceed 30 seconds.

(c) Recordings of methane shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

(d) At least once every two weeks, the systems shall be checked with a known mixture of 1.0 percent methane, and calibrated if necessary. Certification of the calibration tests shall be by signature and date. Certification of calibration tests shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

§ 57.38302 Permissible equipment.

All electrical and diesel-powered equipment used in or beyond the last open crosscut shall be permissible. Equipment shall not be operated in atmospheres containing 1.0 percent or more methane.

§ 57.38303 Methane monitors.

Methane monitoring devices (methane monitors) shall be installed on all electrical and diesel-powered equipment used in or by the last open crosscut. Such monitors shall be permissible in accordance with 30 CFR Part 27, except that the monitors shall give warning at 1.0 percent methane and automatically deenergize the equipment and prevent starting when methane levels reach 1.5 percent or more, and when power to the sensor is interrupted. The sensing unit of the monitors shall be positioned as close to the face as practical.

§ 57.38305 Distribution boxes.

Distribution boxes containing the short circuit protection for trailing cables of permissible equipment shall be certified explosion-proof in accordance with 30 CFR Part 18.

§ 57.38306 Flow-control devices.

Boreholes that penetrate oil bearing formations shall have devices to control the release of liquid hydrocarbons and hazardous gases.

§ 57.38307 Self-contained breathing apparatus.

One (1) hour, self-contained breathing apparatus sufficient in number to equip all persons undergound shall be strategically located throughout the mine. Such apparatus shall be approved in accordance with 30 CFR Part 11, and shall be maintained in accordance with manufacturers' specifications.

Illumination

§ 57.38501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 and 20, as appropriate.

Explosives

§ 57.38601 Blasting from the surface.

(a) All development, production, and bench rounds shall be initiated electrically from surface after all persons are out of the mine. Persons shall not reenter the mine until ventilating air has passed over the blast area through the mine-wide monitoring sensors. If the system indicates that methane in the mine is less than 1.0 percent, persons may enter the mine, and all places blasted shall be tested for methane by a competent person before work is started. Vehicles used for transportation when conducting these tests shall be permissible. If the monitoring system indicates the presence of methane in excess of 1.0 percent, persons shall not reenter the mine until the mine has been examined by a competent person and is free of methane.

(b) The mine shall be ventilated for at least 30 minutes after blasting before persons enter the mine.

§ 57.38602 Secondary blasting.

Prior to secondary blasting, tests for methane shall be made in the mine atmosphere at blast sites by a competent person. Secondary blasts shall not be initiated where 0.5 percent or more methane is present.

§ 57.38603 Explosive materials and blasting units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate district manager for each explosive material and blasting unit to be used. In granting permission, the district manager will be guided by such factors as the oxygen balance and detonation temperatures, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

Category V–B

Scope

§ 57.39000 Scope.

Category V mines are petroleum mines that operate within or drill into an oil reservoir. Category V is divided into Subcategories V–A and V–B. Subcatetory V–B are petroleum mines that operate outside and drill into an oil reservoir and in which:

(a) A concentration of 0.25 percent or more methane has not been detected by air analysis in the mine atmosphere; or

(b) An ignition of methane has not occurred.

The safety standards for this subcatetory follow.

Fire Prevention and Control

§ 57.39101 Smoking.

Persons shall not smoke or carry smoking material, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.39102 Open flame.

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations. When using open flames in other than fresh air, tests shall be conducted by a competent person in places where methane may enter the air current before work is started and at intervals not to exceed 5 minutes. Continuous methane monitors with alarms may be used as an alternative to the testing requirements for this standard. Open flames shall not be used in atmospheres containing 1.0 percent or more methane.

Ventilation

§ 57.39201 Main fans.

Main fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings provided with noncombustible air ducts;

(c) Driven either by electric motors or by internal combustion engines. When an internal combustion engine is used to power a main fan or as a standby engine, the engine shall be:

(1) Installed in a noncombustible housing;

(2) Installed so as to be protected from a possible fuel supply fire or explosion; and

(3) Installed so that the engine and exhaust are located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atmosphere so that exhaust gases cannot contaminate mine intake air.

(d) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall located in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(e) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan slows or stops. The signal device shall be located so that it can be seen or heard by a responsible person designated by the mine operator at all times when persons are underground; and

(f) Approved as permissible or—

(1) All electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified, or accepted by MSHA in accordance with 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static conducting material; and

(3) Fan blades shall be constructed of nonsparking materials. Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium.

§ 57.39203 Separation of intake and return air.

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief devices; or

(b) During development of openings to the surface:

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.39213 Actions at 0.25 percent methane.

If 0.25 percent or more methane is present in the mine atmosphere, ventilation changes shall be made to reduce the methane, and MSHA shall be notified immediately.

§ 57.39214 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that the methane is reduced to less than 0.5 percent. Until such changes are achieved, electrical power shall be deenergized and diesel equipment shall be shut off or immediately removed from the area. No other work shall be permitted in the affected area.

§ 57.39215 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make corrections shall be withdrawn from the affected area until the methane is reduced to less than 0.5 percent.

§ 57.39216 Actions at 2.0 percent methane.

If 2.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until the methane is reduced to less than 0.5 percent.

§ 57.39218 Seals and stoppings.

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction.

(b) Where seals and stoppings are constructed of combustible materials or foam-type blocks, exposed surfaces on both sides shall be coated with at least one-half inch of gunite, one-inch of shotcrete, or other coatings with equivalent fire resistance. Such seals and stoppings shall be provided with vertical supports or braces (stulls) which extend from floor to roof on both sides and are installed on not more than five-foot centers. Foam-type blocks used for seal or stopping construction shall be solid and at least 20 inches thick.

(c) At least one seal of every sealed area shall be fitted with a pipe and valve or pipe cap to permit sampling behind seals.

(d) Areas surrounding seals or stoppings constructed of combustible or foam-type materials shall be kept free of sources of heat, including power cables, and combustible materials for a distance of at least 25 feet.

§ 57.39221 Brattice cloth and ducting flame resistance.

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

§ 57.39226 Permissible testing devices.

(a) Portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in the mine air shall be approved as permissible in accordance with 30 CFR Parts 18, 22, 27, and 29, as appropriate. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) Permissible flame safety lamps shall not be used to test for methane except as a supplementary device.

(c) If electrically-powered remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall meet the requirements of 30 CFR Parts 18, 22, 23, 27, and 29, as appropriate.

(d) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors located upstream from pumping equipment and analytical instruments. Pumping equipment and analytical

instruments shall be located in intake air.

§ 57.39229 Mechanical ventilation.

All mines shall be ventilated mechanically.

Equipment

§ 57.39301 Mine-wide monitoring system.

(a) A mine-wide monitoring system shall be installed to provide surface recordings of methane concentrations in the mine atmosphere from underground locations. Components of the system shall meet the requirements of 30 CFR Parts 18, 22, 23, and 27, as appropriate; or be intrinsically safe or explosion-proof.

(b) Mine-wide monitoring systems shall:

(1) Give audible and visible warning on the surface and underground when the methane at any sensor reaches 0.25 percent or more. Warning devices shall be located so that they can be seen and heard by a responsible person designated by the mine operator.

(2) Automatically deenergize power underground when methane at any sensor reaches 0.5 percent; and

(3) Automatically deenergize power underground when power to the sensor is interrupted. Timing devices are permitted to avoid nuisance tripping for periods not to exceed 30 seconds.

(c) Recordings of methane shall be retained for at least one year, and shall be made available to an authorized representative of the Secretary.

(d) At least once every two weeks, the systems shall be checked with a known mixture of 0.5 percent methane, and calibrated if necessary. Certification of calibration tests shall be made by signature and date. Certification of calibration tests shall be retained for at least one year, and shall be available to an authorized representative of the Secretary.

§ 57.39303 Methane monitors.

Methane monitoring devices (methane monitors) shall be installed on all electrical and diesel-powerd equipment used on or beyond the last open crosscut. Such monitors shall be permissible in accordance with 30 CFR Part 27, except that the monitors shall give warning at 0.25 percent methane and automatically deenergize the equipment and prevent starting when methane levels reach 0.5 percent or more, and when power to the sensor is interrupted. The sensing unit of the monitors shall be positioned as close to the face as practical.

§ 57.39306 Flow-control devices.

Boreholes that penetrate oil bearing formations shall have devices to control the release of liquid hydrocarbons and hazardous gases.

Illumination

§ 57.39501 Personal electric lamps.

Electric lamps which provide personal illumination shall be permissible in accordance with 30 CFR Parts 19 and 20, as appropriate.

Category VI

Scope

§ 57.40000 Scope.

Category VI mines are mines in which the presence of methane has not been established and are not included in another category. The safety standards for this category follow.

Ventilation

§ 57.40001 Actions at 0.25 percent methane.

If 0.25 percent or more methane is present in the mine atmosphere, ventilation changes shall be made to reduce the methane, and MSHA shall be notified immediately.

§ 57.40002 Actions at 0.5 percent methane.

If 0.5 percent or more methane is present in the mine atmosphere, ventilation changes shall be made immediately so that the methane is reduced to less than 0.5 percent. Until such changes are achieved, electrical power shall be deenergized and diesel equipment shall be shut off or immediately removed from the area. No other work shall be permitted in affected areas.

§ 57.40003 Actions at 1.0 percent methane.

If 1.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the affected area until the methane is reduced to less than 0.5 percent.

§ 57.40004 Actions at 2.0 percent methane.

If 2.0 percent or more methane is present in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until the methane is reduced to less than 0.5 percent.

Note.—Appendices 1 and 2 will not be shown in the Code of Federal Regulations.

APPENDIX 1.—DERIVATION TABLE

Proposed No.	Preproposal draft No.	Existing No.
Procedures		
57.30001 Scope	58.21-1 Methane Hazard categorization.	57.21001.
57.30002 Definition	58.21-2 Mine categories.	
57.30003 Mine Category or Subcategory.	58.21-3 Methane occurrences and precautionary standards.	
57.30004 Placement or change in place investigation.	58.21-4 Notice and reviewment, notice and.	
57.30005 Notice and appeal of placement or change in placement.		
Classification during mine reclamation		57.21002 deleted.
Standards		
Smoking:		
57.31101	58.21-110	57.21010.
57.32101	58.21-210	
57.33101	58.21-310	
57.34101	58.21-410	
57.36101	58.21-610	
57.37101 (smoking and open flames).	58.21-710	
57.38101	58.21-110	
57.39101	58.21-110	
Open flame:		
57.31102	58.21-111	57.21011 combined with 57.21012 and 57.21013.
57.33102	58.21-311	
57.34102	58.21-411	
57.36102	58.21-611	
57.38102	58.21-111	
57.39102	58.21-111	
Main fans:		
57.31201	58.12-120	57.21020.
57.32201	58.21-220	
57.33201	58.21-320	
57.34201	58.21-420	
57.35201	58.21-520	
57.36201	58.21-620	
57.37201	58.21-720	
57.38201	58.21-120	
57.39201	58.21-120	
Main fan operation and inspection:		
57.31202	58.21-121	57.21021
57.33202	58.21-321	
57.34202	58.21-421	
57.36202	58.21-621	
57.38202	58.21-121	
Welding and cutting in surface milling facilities		
	58.21-313	New dropped
Actions at 0.25 percent methane:		
57.32203	58.21-3	New.
57.35213	58.21-3	
57.39213		
57.40001	58.21-3	
Actions at 2.0 percent methane:		
57.32206		New.
57.35216		
57.37207	58.21-770	
57.39216		
57.40004		
Volatile dust:		
57.33103	58.21-99	New.
Separation of intake and return air:		
57.31203	58.21-122	
	58.21-123	57.21023 combined with 57.21022.

APPENDIX 1.—DERIVATION TABLE—Continued

Proposed No.	Preproposal draft No.	Existing No.
57.32202	58.21-222	
57.33203	58.21-223	
	58.21-322	
	58.21-322	
57.34203	58.21-422	
	58.21-323	
57.35207		
57.36203	58.21-622	
	58.21-623	
57.38203	58.21-122	
	58.21-123	
57.39203	58.21-122	
	58.21-123	
Main ventilation failure:		
57.31205	58.21-124	57.21024 combined with 57.21025
57.33205	58.21-324	
57.34205	58.21-424	
57.36205	58.21-624	
57.38205	58.21-124	
Reentry after shutdown of main fans:		
57.31207	58.21-127	57.21027
	58.21-227	
57.33207	58.21-327	
57.34207	58.21-327	
57.36207	58.21-627	
57.38207	58.21-127	
Booster fans:		
57.31208	58.21-129	57.21029 combined with 57.21028.
57.32207	58.21-229	
	58.21-329	
57.34208	58.21-429	
57.36208	58.21-629	
57.38208	58.21-129	
In-Line Filters:		
57.33208		New
Auxiliary fans:		
57.31209	58.21-130	57.21030.
	58.21-230	
57.33209	58.21-330	
57.34209	58.21-430	
57.36209	58.21-630	
57.38209	58.21-130	
Auxiliary fan inspection:		
		57.21031 deleted.
Minimum air flow:		
57.31210	58.21-134	57.21033 combined with 57.21034.
57.33210	58.21-334	
57.34210		
57.36210	58.21-634	
57.38210	58.21-134	
Weekly testing:		
57.31211	58.21-135	57.21035 combined with 57.21065 and 57.21066.
57.32210	58.21-235	
57.33211	58.21-335	
57.34225	58.21-465	
57.36211	58.21-635	
57.38211	58.21-135	
Installation of support equipment:		
57.31212	58.21-136	57.21036.
	58.21-236	
57.33212	58.21-336	
57.36212	58.21-636	
Changes in ventilation:		
57.31213	58.21-138	57.21038.
57.34210	58.21-438	
57.36213	58.21-638	
57.38213	58.21-138	

APPENDIX 1.—DERIVATION TABLE—Continued

Proposed No.	Preproposal draft No.	Existing No.
Actions at 0.25, 0.5, and 1.0 percent methane:		
57.31214	58.21-139	57.21039.
57.32204		
57.33214	58.21-339	
57.34211	58.21-439	
57.35214		
57.36214	58.21-639	
57.37205	58.21-739	
57.38214	58.21-139	
57.39214	58.21-139	
57.40002	58.21-3	
Actions at 0.5, 1.0, 1.5, and 2.5 percent methane:		
57.31215	58.21-140	57.21040.
57.32205		
57.33215	58.21-340	
57.34212	58.21-440	
57.35215		
57.36215	58.21-640	
57.37206	58.21-740	
57.38215	58.21-140	
57.39215	58.21-140	
Air passing abandoned or unsealed areas:		
57.31216	58.21-141	57.21041 combined with 57.21042.
	58.21-341	
57.34213	58.21-441	
57.36216	58.21-641	
57.38216	58.21-141	
Abandoned areas:		
57.31217	58.21-143	57.21043.
	58.21-243	
	58.21-343	
57.34214	58.21-443	
57.36217	58.21-643	
57.38217	58.21-143	
Seals and Stoppings:		
57.31218	58.21-144	57.21044 combined with 57.21045 and 57.21053.
	58.21-153	
57.32213	58.21-244	
	58.21-253	
57.33218	58.21-344	
	58.21-353	
57.34215	58.21-444	
	58.21-453	
57.36218	58.21-644	
	58.21-653	
57.38218	58.21-144	
	58.21-153	
57.39218	58.21-144	
	58.21-153	
Crosscut intervals:		
	58.21-146	57.21046 deleted.
	58.21-246	
	58.21-446	
	58.21-646	
Line brattice and fan ducting:		
57.31220	58.21-148	57.21048.
	58.21-248	
	58.21-348	
57.34217	58.21-448	
57.36220	58.21-648	
57.38220	58.21-148	
Brattice cloth and ducting flame resistance:		
57.31221	58.21-149	57.21049.
57.32216	58.21-249	
57.33224		
57.34218	58.21-449	
57.36221	58.21-649	
57.38221	58.21-149	
57.39221	58.21-149	
Damaged brattices:		
		57.21050 deleted.

APPENDIX 1.—DERIVATION TABLE—Continued

Proposed No.	Preproposal draft No.	Existing No.
Cross cuts before abandonment:		
57.36222	57.21-051	57.21051.
Room necks and stub entries:		
		57.21052 deleted.
Air locks, overcasts and undercasts:		
	58.21-155	57.21055.
	58.21-255	
	58.21-455	
57.36224	58.21-655	
57.38224	58.21-155	
Air locks:		
		57.21056 deleted.
Air doors:		
	58.21-157	57.21057
	58.21-257	
	58.21-457	
57.31225	58.21-657	
57.38225	58.21-157	
Overcast and undercast construction:		
57.31226	58.21-158	57.21058.
	58.21-258	
57.34222	58.21-458	
57.36226	58.21-658	
57.38226	58.21-158	
Preshift examination:		
57.31227	58.21-159	57.21059.
57.33221	58.21-359	
57.34223	58.21-459	
57.36227	58.21-659	
57.38227	58.21-159	
Dangerous conditions:		
		57.21061 deleted.
Danger signs:		
		57.21062 deleted.
Permissible testing devices:		
57.31228	58.21-164	57.21064.
57.32221	58.21-264	
57.33222	58.21-364	
57.34224	58.21-464	
57.35202	58.21-564	
57.36228	58.21-664	
57.37203	58.21-764	
57.38228	58.21-164	
57.39228	58.21-164	
Mechanical ventilation:		
57.31229	58.21-176	57.21076.
57.32222	58.21-267	
57.33223	58.21-367	
57.34226	58.21-467	
57.35229	58.21-567	
57.36229	58.21-667	
57.37202	58.21-721	
57.38229	58.21-167	
57.39229	58.21-167	
Air flow in intake and return course:		
	58.21-168	57.21068.
	58.21-268	
	58.21-368	
57.36230	58.21-668	
Doors on main fans:		
57.31230	58.21-169	57.21069
	58.21-269	
57.34227	58.21-469	
57.36231	58.21-669	
57.38231	58.21-169	
Mine-wide monitoring system:		
57.31301	58.21-172	New
57.34301	58.21-472	
57.38301	58.21-172	
57.39301	58.21-172	
Electrical grounding:		
57.33301	58.21-373	New.
Pressure-relief vents:		
57.33302	58.21-374	New.
Jacketed and shielded cables:		
57.33303	58.21-375	New

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Proposed No.	Preproposal draft No	Existing No.
57.34302 (jacketed)	58.21-475	
Permissible equipment:		
57.31303	58.21-178	57.21078 combined with 57.21076
57.33304	58.21-378	
57.34303	58.21-478	
57.36302	58.21-678	
57.38302	58.21-178	
Distribution boxes.		
57.34304	58.21-479	57.21079.
57.38305		
Trolley wires:		
	58.21-177	57.21077 deleted
	58.21-677	
Methane monitors.		
57.31305	58.21-180	57.21080
	58.21-380	
57.34305	58.21-480	
57.36303	58.21-680	
57.38303	58.21-180	
57.39303	58.21-180	
Flow-control devices:		
57.38306		New
57.39306		

APPENDIX 1.—DERIVATION TABLE—Continued

Proposed No.	Preproposal draft No.	Existing No
Self-contained breathing apparatus:		
57.38307		New.
Underground retort plan		
57.31401	58.21-181	
57.32401	58.21-281	
Blasting.	58.21-392	New dropped.
Advance face boreholes.		
57.33701	58.21-391	New.
Personal electric lamps		
57.31501	58.21-190	57.21090.
57.32501	58.21-290	
57.33501	58.21-390	
57.34501	58.21-490	
57.36501	58.21-690	
57.37501		
57.38501	58.21-190	
57.39501	58.21-190	
Blasting from the surface:		
57.31601	58.21-193	New
57.33603	58.21-393	
57.34601	58.21-493	
57.35601	58.21-593	
57.38601	58.21-193	

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Proposed No.	Preproposal draft No.	Existing No
Secondary blasting:		
57.31602	58.21-194	New
57.34602	58.21-494	
57.38602	58.21-194	
Explosive material and blasting units:		
57.31603	58.21-195	57.21095 combined with 57.21096 and 57.21097
57.32601	58.21-295	
57.33604	58.21-395	
57.34603	58.21-495	
57.36601	58.21-695	
57.38603	58.21-195	
Stemming:		
	58.21-698	57.21098 deleted
Blasting on shift:		
57.36603	58.21-699	57.2109 combined with 57.21100
Testing for methane:		
57.37204	58.21-721	New.

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Action Levels and Standards Table

Actions	CATEGORY I			CATEGORY II		CATEGORY III	CATEGORY IV	CATEGORY V		CATEGORY VI
	I-A	I-B	I-C	II-A	II-B			V-A	V-B	
Notification		57.32203 0.25%			57.35213 0.25%				57.39213 0.25%	57.40001 0.25%
Ventilation Changes Deenergize Equipment	57.31214 1.0%	57.32204 0.5%	57.33214 0.25%	57.34211 0.5%	57.35214 0.5%	57.36214 1.0%	57.37205 0.5%	57.38214 1.0%	57.39214 0.5%	57.40002 0.5%
Withdraw Area	57.31215(a) 1.5%	57.32205 1.0%	57.33215 0.5%	57.34212 1.0%	57.35215 1.0%	57.36215(a) 1.5%	57.37206 1.0%	57.38215 1.5%	57.39215 1.0%	57.40003 1.0%
Reenter Area	-1.0%	-0.5%	-0.25%	-0.5%	-0.5%	-1.0%	-0.5%	-1.0%	-0.5%	-0.5%
Withdraw Mine		57.32206 2.0%			57.35216 2.0%		57.37207 2.0%		57.39216 2.0%	57.40004 2.0%
Reenter Mine		-0.5%			-0.5%		-0.5%		-0.5%	-0.5%
Bleeder System	57.31215(b)					57.36215(b)				
Limit	2.0%					2.0%				
Corrective Action	+2.0%					+2.0%				
Withdraw from Area	2.5%					2.5%				
Reenter	-2.0%					-2.0%				

Action Levels and Standards Table

Actions	CATEGORY I I-A	CATEGORY I I-B	CATEGORY I I-C	CATEGORY II II-A	CATEGORY II II-B	CATEGORY III	CATEGORY IV	CATEGORY V V-A	CATEGORY V V-B	CATEGORY VI
Deenergize Mine Power	1.0%	1.0%								
Withdraw Mine	1.0%	1.0%								
Deenergize Main Fans Exhausting	2.0%	2.0%								
Booster Fans	57.31208	57.32207		57.34208		57.36208		57.38208		
Deenergized	1.0%	1.0%		0.5%		1.0%		1.0%		
Auxiliary Fans	57.31209			57.34209		57.36209		57.38209		
Not Operated In	1.0%			0.5%		1.0%		1.0%		
Main Ventilation Failure		57.33205								
Withdraw Mine		0.5%								
Reentry After Main Fan Shutdown	57.31207 1.0%	57.33207 0.25%		57.34207 0.5%		57.36207 1.0%		57.38207 1.0%		

Action Levels and Standards Table

Actions	CATEGORY I I-A	I-B	I-C	CATEGORY II II-A	II-B	CATEGORY III	CATEGORY IV	CATEGORY V V-A	V-B	CATEGORY VI
Mine-Wide Monitors	57.31301			57.34301				57.38301	57.39301	
Alarm	1.0%			0.25%				1.0%	0.25%	
Deenergize Mine Power	1.5%			0.5%				1.5%	0.5%	
Checked	1.0%			0.5%				1.0%	0.5%	
Methane Monitors	57.31305			57.34305		57.36303		57.38303	57.39303	
Alarm	1.0%			0.5%		1.0%		1.0%	0.25%	
Deenergize Equipment	+1.5%			+1.0%		+1.5%		+1.5%	+0.5%	
Permissible Equipment	57.31303			57.34303		57.36302		57.38302		
Not Operated In	+1.0%			+0.25%		+1.0%		+1.0%		
Main Fans Exhausting	57.31201	57.32201								
Alarm	0.5%	0.5%								
Deenergize Mine Power	1.0%	1.0%								

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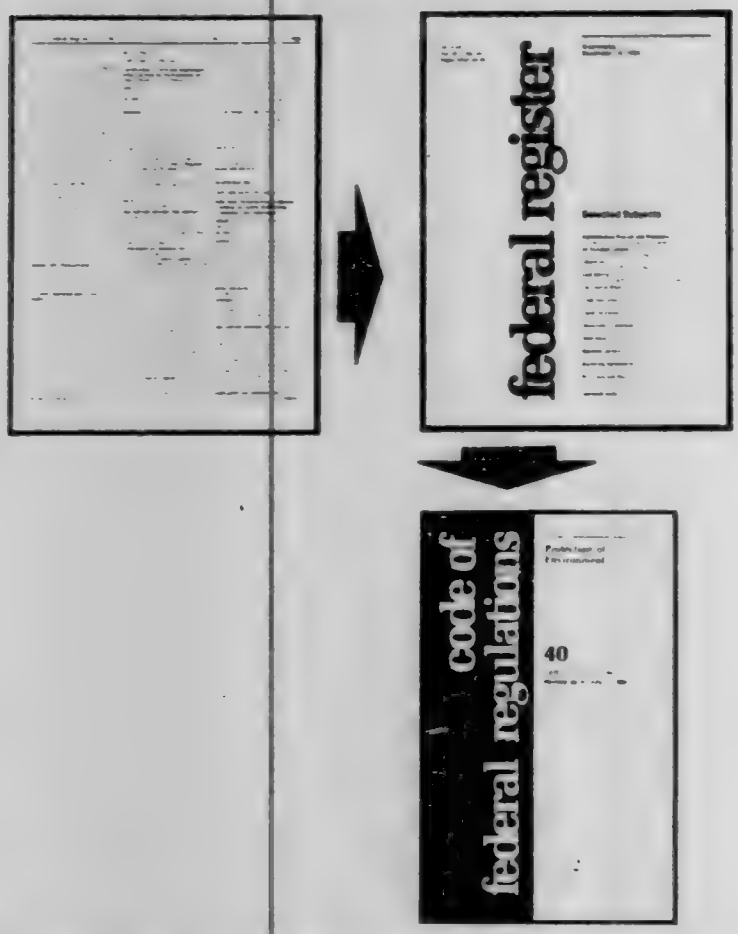
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Wednesday, June 5, 1985

Presidential Documents

Title 3—

The President

Executive Order 12518 of June 3, 1985

Trade in Services

By the authority vested in me by the International Investment and Trade in Services Survey Act (Public Law 94–472, as amended by Section 306 of Public Law 98–573), and in order to assure that information necessary for developing, formulating and implementing United States policy concerning trade in services is collected, analyzed and disseminated, it is hereby ordered that Executive Order No. 11961 of January 19, 1977, as amended, is redesignated "International Investment and Trade in Services" and is further amended by (1) substituting "International Investment and Trade in Services Survey Act" for "International Investment Survey Act of 1976" wherever it appears; (2) substituting "(5)" for "(4)" in Section 2; (3) adding "and trade in services" after "investment" in Section 3; and (4) adding ", (5)" after "(4)" in Section 3.

Ronald Reagan

THE WHITE HOUSE,
June 3, 1985.

[FR Doc. 85–13694
Filed 6–4–85; 10:15 am]
Billing code 3195–01–M

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Rules and Regulations

Federal Register
Vol. 50, No. 108
Wednesday, June 5, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Revocation.

SUMMARY: The Office of Personnel Management is revoking regulations that provide retroactive grade and pay retention benefits for employees who suffered a reduction in grade on or after January 1, 1977 and before the first day of the first pay period beginning on or after January 11, 1979 (the effective date of grade and pay retention provisions of the Civil Service Reform Act of 1978). The six-year statute of limitations on claims for these benefits expired in January 1985.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Bobby G. Williams, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Section 536.306 of Title 5, Code of Federal Regulations, provides retroactive grade and pay retention benefits for employees who were downgraded as a result of reduction-in-force or reclassification on or after January 1, 1977, and before the effective date of the grade and pay retention provisions of the Civil Service Reform Act of 1978. Because the guidance provided by OPM under 5 CFR 536.306 required employees to file a claim with their current employing agency to receive retroactive benefits, the applicable statute of limitations is the general statute of limitations on claims against the Government (31 U.S.C. 3702(b)). This statute provides that claims must be received by the Comptroller General of the United States within 6 years after the claim accrues. Since the period of retroactive benefits ended on the first day of the first pay period beginning on or after January 11, 1979, the 6-year statute of limitations has now expired for claims made under this provision of the Civil Service Reform Act of 1978.

Note.—Employees who otherwise would have been entitled to retroactive benefits because of a reduction in grade during the retroactive period were also entitled to a two-year period of grade retention beginning on the effective date of the grade and pay retention provisions of the Civil Service Reform Act. Any employee so entitled may file a claim for back pay with the U.S. General Accounting Office for the balance of the period not excluded by the 6-year statute of limitations.

This administrative action follows directly and necessarily from the statute of limitations on claims against the Government. Therefore OPM has no discretion in the matter. No public interest or legal requirement would be served by a process of notice and comment. Accordingly, this rulemaking—in the nature of the recission of a rule—is final and effective immediately upon publication.

List of Subjects in 5 CFR 536

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

PART 536—[AMENDED]

For the reasons set forth above, the Office of Personnel Management hereby amends Part 536 of Title 5, Code of Federal Regulations as follows:

1. The Authority citation for Part 536 is revised to read as follows:

Authority: 5 U.S.C. 5361–5366.

§ 536.306 [Removed]

2. Section 536.306 is removed.

[FR Doc. 85–13489 Filed 6–4–85; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Soybeans; Correction

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors appearing in the regulation on U.S. Standards for soybeans published in the Federal Register of May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: In Federal Register Document 85–10347 beginning on page 18455 in the issue of Wednesday, May 1, 1985, the following corrections should be made:

§ 810.602 [Corrected]

1. On page 18457, in the third column, in § 810.602 (b), in the sixth line, "stink-bug-stung" should read "stinkbug-stung"; and on the seventh line continuing to the eighth "stinking-stung" should read "stinkbug-stung".

2. On page 18458, § 810.602 (l), in the second column, third line, "square inch." should read "square foot."

§ 810.606 [Corrected]

3. Also on page 18458, § 810.606, in the table, under column heading "Minimum test weight per bushel (pounds)", "56.00", "54.00", "52.00", and "49.00" should read "56.0", "54.0", "52.0", and "49.0".

4. Also on page 18458, § 810.606, in the table, under U.S. Sample grade, paragraph (b), second line, "(Crotalaria spp.)" should read "(*Crotalaria* spp.)" and "(Ricinus communis)" should read "(*Ricinus communis*)".

Dated: May 28, 1985.

K.A. Gilles,

Administrator.

[FR Doc. 85–13413 Filed 6–4–85; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Lime Reg. 43, Amdt. 4; Lime Import Reg. 10, Amdt. 1]

Limes Grown in Florida; Amendment of Grade Requirements

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Final rule.

SUMMARY: This action raises the minimum grade requirements for fresh shipments of seedless limes grown in Florida, and for seedless limes imported into the United States, from the current U.S. Combination, Mixed Color, of 60 percent U.S. No. 1 and 40 percent U.S. No. 2, to a modified U.S. Combination, Mixed Color, of 75 percent U.S. No. 1 and 25 percent U.S. No. 2 during the period June 1 through January 31 of the following year. The minimum diameter requirement for such limes would remain at 1⅞ inches. Such action is necesssary to assure the shipment of limes of acceptable quality in the interest of producers and consumers.

EFFECTIVE DATES: The Florida Lime Regulation 43 (§ 911.344) becomes effective June 5, 1985 and the Lime Import Regulation 10 § 944.209) becomes effective June 10, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 and Exectuive Order 12291 and has been designated as a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida lime regulation is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The regulation applicable to limes grown in Florida is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by grade and size under Florida Lime Regulation 43 (49 FR 25243). This regulation, which is effective on a continuing basis, requires seedless limes for fresh shipments: (1) To grade at least U.S. Combination, Mixed Color; (2) to meet a minimum juice content of 42 percent by volume; and (3) to have a minimum diameter of 1⅞ inches. This action increases minimum quality requirements applicable to fresh shipments of Florida seedless limes by requiring such shipments to grade a modified U.S. Combination, Mixed Color, with the stipulation that 75 percent of the limes, by count, grade at least U.S. No. 1 and 25 percent of the limes grade at least U.S. No. 2 during the period June 1 of each year through January 31 of the following year. The current grade requirement is U.S. Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent of the limes grading U.S. No. 2) (7 CFR 51.1001). This action was unanimously recommended by the Florida Lime Administrative Committee.

Florida Persian seedless limes are marketed throughout the year, with peak production during the summer months. At that time, market prices and grower returns tend to be low. Traditionally, the winter market for Florida seedless limes is strong. In the past year, however, winter market prices for such limes weakened due to the availability of large volumes of lesser quality limes in the marketplace. Such limes have poor retail acceptance, which has a price-depressing effect on shipments of better quality fruit. In response to deteriorating market conditions of limes during October and November 1984, an amendment to Lime Regulation 43 (49 FR 46703) was issued for the period December 3, 1984 through January 31, 1985, which specified the same modified U.S. Combination, Mixed Color, as contained in this final rule. Reports indicate that the institution of higher minimum quality requirements stabilized market conditions. This increase in the percentage of U.S. No. 1 grade fruit in fresh shipments is designed to stimulate consumer demand, result in greater sales volume of limes of preferred quality and improve grower returns.

During the five previous years, fresh shipments of Florida limes have trended upward from 755,337 bushels in 1978-79 to 1,286,127 bushels in 1983-84 primarily due to increased bearing acreage. The 1984-85 crop of Florida limes has already exceeded record levels. Historically, only 50 percent of the crop is shipped to the fresh market with the remainder utilized in processed products. Thus, more than ample supplies of better quality limes should be available to satisfy consumer's demands.

This final rule is effective from June 1 of each year through January 31 of the following year; however, for 1985 the rule will go into effect June 5. From February 1 through May 31 of each year the requirement applicable to seedless limes would be U.S. Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent grading U.S. No. 2). These lower grade requirements reflect seasonal changes in supply and demand conditions for Florida seedless limes.

The regulation currently in effect (Lime Regulation 43, Amendment 3) was published November 28, 1984. These more restrictive regulations for Florida limes will continue to be in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. The issuance of seasonal regulations which continue in effect from marketing season to marketing season reflects the fact that such regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. Although the seasonal regulations will be effective for an indefinite period, the committee will continue to meet during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will review committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the act.

Under section 8e of the act, as implemented by Part 944 of the regulations, whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, grade requirements for imported seedless limes would also change to conform to

the grade requirements for domestic shipments of seedless Florida limes beginning June 10, 1985. Therefore, this final rule makes a technical conforming change to Part 944.

A proposed rule was published in the Federal Register on May 9, 1985 (50 FR 19535) with a 15 day comment period. No comments were received. It is hereby found that this action will tend to effectuate the declared policy of the act.

Accordingly, the Secretary finds that upon good cause shown this final rule will be effective less than 30 days after publication in the Federal Register (5 U.S.C. 553), because: (1) Shipments of the current crop of limes grown in Florida is underway; (2) the amendment to the Florida lime regulation was recommended by the committee following discussion at a public meeting at which there were no opposing views; (3) a proposed rule was issued on May 9, 1985 with a 15 day comment period and no opposing views were received; (4) Florida lime handlers have been apprised of these requirements for Florida limits; (5) the lime import requirements are mandatory under section 8e of the act and they should be effective for the specified period; (6) the grade requirements for imported limes are the same as those for Florida limes; and (7) it was determined that an effective date of June 10, 1985 for this import regulation would provide adequate notice, this complies with section 8e of the act which requires at least three days notice before import regulations can be effective.

List of Subjects

7 CFR Part 911

Marketing agreements and orders, Florida, Limes.

7 CFR Part 944

Food grades and standards, Imports, Limes.

1. The authority citation for 7 CFR Parts 911 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 3, as amended. 7 U.S.C. 601–674.

PART 911—[AMENDED]

2. Section 911.344 Lime Regulation 43 (49 FR 25243) is amended by revising paragraph (a)(2), to read as follows:

§ 911.344 Florida Lime Regulation 43.

(a) On or after June 5, 1985, no handler shall handle any variety of limes grown in the production area unless: * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, That stem length shall not be considered a factor of greade; *Provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the U.S. Standards for Persian (Tahiti) limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in section 911.329; and *Provided further*, That during the period June 1 of each year through January 31 of the following year, no handler shall ship such limes to destinations outside the production area unless they grade at least U.S. Combination, Mixed Color, with the stipulation that stem length shall not be a factor of grade and at least 75 percent, by count, of the limes in the lot grade at least U.S. No. 1 and 25 percent, by count, of the limes grade at least U.S. No. 2.

* * * * *

PART 944—[AMENDED]

3. Section 944.209 Lime Import Regulation 10 is amended by revising paragraph (a) to read as follows:

§ 944.209 Lime Import Regulation 10.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944-Fruits; Import Regulations, the importation into the United States of any limes is prohibited on or after June 10, 1985, unless such limes meet the minimum grade and size requirements specified in § 911.344 Florida Lime Regulation 43.

* * * * *

Dated: May 3, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–13578 Filed 6–4–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 85–AWA–13]

Alteration of Restricted Area R–6501A Underhill, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Areas R–6501A located in the vicinity of Underhill, VT, indicating more accurately when the area is being utilized.

EFFECTIVE DATE: 0901 GMT, August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenues, SW., Washington, D.C. 20591; telephone (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1985, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to change the times of use for Restricted Area R–6501A from continuous to a specific time of use (50 FR 11895). A review of R–6501A conducted by the Department of the Army indicated R–6501A is not used on a continuous basis. This would amend the time of designation to reflect actual times of use. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.65 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Area R–6501A located in the vicinity of Underhill, VT, reflecting more accurately when the area is being utilized.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Restricted areas, Airspace, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 is revised to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510 and 1522; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. Section 73.65 is amended as follows:

R-6501A Underhill, VT—[Amended]

By removing the word "Continuous." and substituting the words "0700 to 2300 local time, Monday–Friday and 0000 Saturday to 2359 Sunday, local time. Other times by NOTAM 24 hours in advance."

Issued in Washington, D.C., on May 29, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-13449 Filed 6-4-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 373

[Docket No. 40110-5076]

Revision of Distribution License Procedure

Correction

In FR Doc. 85-12598 beginning on page 21562 in the issue of Friday, May 24, 1985, make the following corrections:

1. On page 21562, in the second column, in the **EFFECTIVE DATE** paragraph, in the second line, "July 23, 1984" should read "July 23, 1985".

2. On page 21563, in the third column, in the first complete paragraph, in the seventh line, "in six" should read "of six".

3. On page 21565, in the second column, in the twelfth line from the bottom, "April 23, 1985" should read "April 23, 1986".

4. In the third column in the paragraph designated "2", in the seventh line, "June 24, 1984" should read "June 24, 1985"; in the paragraph designated "3", in the thirteenth line, "May 23, 1986" should read "April 23, 1986", and in the last two lines of the paragraph, "October 21, 1984" should read "October 21, 1985".

5. On page 21566, in the second column, in § 373.1(f), in the eleventh line, "system" should read "systems".

6. On page 21570, in the second column, in § 373.3(e)(2)(ix), in the second line, insert "and" between "(h)" and "(m)"; also, in the second column, in § 373.3(e)(2), in the eighteenth line in the column, insert "internal" after "consignee's".

7. On page 21571, in the third column, in § 373.3(i)(2), in the third line, "the" should read "a".

8. On page 21572, in the second column, in § 373.3(j)(3)(i), in the second line, insert "may" after "consignee".

9. On page 21573, in the second column, in § 373.3(k)(4)(i), in the twelfth line, "established" should read "establishing".

10. On page 21574, in the third column, in amendatory instruction 4, the sixteenth, seventeenth, and eighteenth lines should read: "entry 1565 is redesignated as footnote 8 and revised; footnotes 3".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Enforcement of Floor Broker Registration Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted a final rule requiring each contract market to adopt and enforce rules prohibiting any person from executing orders for any other person on the floor of that contract market, unless that person is first registered with the Commission as a floor broker in accordance with the provisions of sections 4e and 4f(1) of the Commodity Exchange Act ("Act") and the regulations thereunder. The rule will take effect on October 1, 1985 in order to afford contract markets sufficient time to adopt rules in accordance with the requirements set forth therein.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Dolins, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On August 7, 1984, the Commission published for comment in the **Federal Register** a proposed rule to require designated contract markets to adopt and enforce rules prohibiting any person from executing orders for any other person on the floor of that contract market, unless that person is first registered with the Commission as a floor broker in accordance with the provisions of sections 4e and 4f(1) of the Act, 7 U.S.C. 6e and 6f(1) (1982), and the regulations thereunder.[1] The sixty-day comment period was extended twice in order to afford all interested parties, in particular, the designated contract markets which requested the extensions, an opportunity to submit comments.[2] The comment period, as extended, ended January 16, 1985.

The Commission received one comment in response to its proposed rule. The Coffee, Sugar and Cocoa Exchange, Inc. ("Exchange") opposed the rule. Essentially, the Exchange argued the Commission lacked the statutory authority to adopt the rule. Moreover, the Exchange asserted that the rule, if adopted, would be difficult to implement because current registration information with respect to floor brokers is not always available. The Commission has carefully considered the objections of the Exchange and, for the reasons set forth below, has determined to adopt the rule as proposed.[3]

[1] 49 FR 31442.

[2] 49 FR 44105 (November 2, 1984) and 49 FR 48570 (December 13, 1984). The Commission notes that, in support of the requests for an extension of the comment period, the Chicago Board of Trade and the Chicago Mercantile Exchange each advised the Commission that several exchanges were considering whether it would be possible to petition the Commission for authority under section 8a(10) of the Act to perform the registration functions with respect to floor brokers. On May 23, 1985, the Commission received such a petition filed by the Chicago Board of Trade. This petition will receive the Commission's careful consideration. However, because the obligation of contract markets under this rule to ensure that anyone acting as a floor broker is registered as such will not be altered if the contract markets are authorized to perform such registration function, the Commission has determined to proceed with the adoption of rule 1.62 at this time.

[3] In the Federal Register release accompanying the proposed rule, the Commission noted that it is authorized under section 8a(7) of the Act, 7 U.S.C. 12a(7), to alter or supplement exchange rules as necessary or appropriate and requested comment on whether the Commission should proceed under section 8a(7) rather than adopting proposed rule 1.62. The Exchange questioned the authority of the Commission to act under section 8a(7). Since the Commission has determined to adopt rule 1.62, it is not necessary to address the objections of the Exchange in this matter.

Lack of Statutory Authority

The Commission proposed rule 1.62 under the statutory authority contained in sections 4c, 4e, 4f, 5, 5a and 8a of the Act, 7 U.S.C., sections 6c, 6e, 6f, 7, 7a, and 12a (1982). The Exchange argued that the above sections did not authorize the Commission to adopt this rule as proposed. The Commission disagrees.

Section 8a(5) of the Act authorizes the Commission to make and promulgate such rules and regulations as, in its judgment, are reasonably necessary to accomplish any of the purposes of the Act. At least one court has recognized that rules promulgated pursuant to section 8a(5) of the Act should be sustained where a rule is reasonably related to the purposes of, and is not otherwise inconsistent with, the Act or applicable laws. *Board of Trade Clearing Corp.* v. *United States,* Comm. Fut. L. Rep. (CCH) [1977–80 Transfer Binder] ¶20,534 at p. 22,207 (D.D.C. 1978) *aff'd per curiam, Board of Trade Clearing Corp.* v. *CFTC,* No. 78–1263 (D.C. Cir. March 29, 1979); *Cf. Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 369 (1973); *FCC* v. *Schreiber,* 381 U.S. 279, 291 (1965). The Commission believes that rule 1.62 is a reasonable means of achieving one of the primary statutory purposes underlying the Act, to ensure the qualifications of all persons dealing with or on behalf of customers.

As the Commission noted in the **Federal Register** release accompanying proposed rule 1.62:

> Registration with the Commission of particular market participants is fundamental if the Commission is to meet its statutory responsibilities to protect investors and to promote fair and honest dealing on the part of those persons subject to the Act. In addition, the highest ethical standards must prevail in the commodity futures industry, and registration is one of the means available to the Commission to achieve this result.[4] As stated by the United States Court of Appeals for the Second Circuit:
>
> The intent of the congressional design is clear; persons engaged in the defined regulated activities within the commodities business are not to operate as such unless registered, [sic] the Commission is charged in the first instance with determining the applicant's qualifications and whether proper grounds exist for refusing registration, and the Commission is empowered to seek injunctive prohibitions against violations of any provisions of the Act, including registration provisions. Registration is the kingpin in this statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.[5]
>
> * * * * *
>
> The Commission believes that making registration an exchange requirement is consistent with self-regulation and that assuring the registration of floor brokers may be more readily accomplished by the exchanges through daily membership supervision than by the Commission through its floor surveillance program and other surveillance techniques. The Commission further believes that implementation by the exchanges of rules to require registration of floor brokers is a reasonable adjunct to the regular membership screening already performed by the exchanges.[6]

Thus, the Commission believes it has ample authority under section 8a(5) of the Act to adopt rule § 1.62. This rule will complement the Commission's enforcement capability with respect to its registration requirements and will ensure that certain minimum standards are imposed uniformly on all persons currently executing orders for others. Moreover, the rule is consistent with its general policy of requiring direct regulation in the first instance by the contract markets.

Availability of Current Registration Information

In support of its contention that the rule will be difficult to implement, the Exchange notes that the Commission formerly had published its directory of floor brokers only once each year and, since all floor broker registrations expired on March 31 each year, the directory would lose its usefulness on that date. Although floor brokers who renew their registrations receive a letter from the Commission confirming that such registration has been renewed, these letters were frequently not mailed until April. Thus, there would be a period of time when the registration status of floor brokers would be in doubt.

The Commission recognizes that it is essential that contract markets have available the most current information possible with respect to the registration status of their floor brokers. Therefore, the Commission intends to prepare and send monthly to each contract market a report of all floor brokers then currently registered who have indicated that they have trading privileges on that contract market.

In order to ensure that each contract market and the Commission have identical records on the effective date of this rule the Commission intends to send each contract market by June 15, 1985, a report of the registered floor brokers who have indicated that they have been granted trading privileges by that contract market. The contract market and its members will have an opportunity to identify any omissions to the Commission and correct them prior to implementation of the rule. In this connection, the Commission notes that an applicant for registration as a floor broker must identify on the Form 8–R each exchange on which the applicant has trading privileges. In addition, Commission rule 3.31(b), 17 CFR 3.31(b) (1984), requires an applicant or registrant to notify the Commission on Form 3–R whenever any information on the Form 8–R becomes deficient or inaccurate. Thus, each floor broker has a continuing obligation to keep the Commission advised of the exchanges on which he has trading privileges.

Regulatory Flexibility Act

In the proposal, the Commission noted that the only regulated entities affected by proposed rule 1.62 are contract markets, which the Commission has determined are not "small entities" within the meaning of the Regulatory Flexibility Act.[7] The Commission received no comments on this issue. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act,[8] the Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction act of 1980, 44 U.S.C. Chapter 35 (1982), the Commission previously has submitted this rule to the Office of Management and Budget. The control number provided for this rule is 3038–0024.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Floor brokers, Registration.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, oc. 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 12a, 13a, 13a–1, 19 and 21, unless otherwise noted.

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[4] *See Commodity Futures Trading Commission* v. *J.S. Love and Associates Options, Ltd.* 422 F. Supp. 652, 659 (S.D.N.Y. 1976).

[5] *Commodity Futures Trading Commission* v. *British American Commodity Options Corp.,* 560 F.2d 135, 139–40 (2d Cir. 1977), *cert. denied,* 438 U.S. 905 (1978).

[6] 49 FR at 31422.

[7] 5 U.S.C. 601(3) and (6) (1982). *See* 47 FR 18618 (April 30, 1982).

[8] 5 U.S.C. 605(b) (1982).

2. Section 1.62 is added and, as added, reads as follows:

§ 1.62 Contract market requirement for floor broker registration.

Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to Section 5a(12) of the Act and § 1.41 of this chapter and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered with the Commission as a floor broker in accordance with Section 4f of the Act and § 3.11 of this chapter, and such registration has not expired nor been suspended (and the period of such suspension shall not have expired) nor revoked.

Issued in Washington, D.C. on May 30, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-13496 Filed 6-4-85; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6583, 34-22091, 35-23711, 39-988, IC-14546, IA-976]

Revision of Rule Concerning Post-Commission Employment

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Rule 8(b) of the Commission's Conduct Regulation, 17 CFR 200.735-8(b), requires former Commission members and employees to notify the Commission's Secretary of contemplated appearances before the Commission for two years after leaving the agency. The Commission has adopted an amendment to clarify the circumstances under which it requires notification of a contemplated representation before the agency and the information to be included in that notification.

EFFECTIVE DATE: June 5, 1985.

SUPPLEMENTARY INFORMATION: Former members and employees of the Commission are subject to the post-employment restrictions described in 18 U.S.C. 207 and Rule 8 of the Commission's Conduct Regulation, 17 CFR 200.735-8. Those restrictions generally prohibit former members and employees from engaging in representations to the United States in connection with matters for which they had some responsibility while employed by the Commission. The breadth of the disqualification is tied to the extent of the former member's or employee's participation in the particular matter. Accordingly, a former employee who participated personally and substantially in a matter is barred permanently from appearing in a representative capacity or participating in the matter, so long as the United States is a party or has a continuing interest in the matter. A member or employee who had official responsibility for a matter within one year prior to leaving Government service is subject to a comparable prohibition. However, the prohibition based on official responsibility extends for only two years after leaving the Government.

To enable the Commission to monitor compliance with post-employment restrictions, 17 CFR 200.735-8(b) requires former members and employees of the Commission to advise the Commission's Secretary of contemplated appearances before the Commission in a representative capacity and to represent that the contemplated appearance is consistent with the applicable restrictions. Since the restrictions are intended to prohibit both appearances before the agency and communications with intent to influence, the Commission must be advised of situations in which a former member or employee is contemplating a physical appearance before the agency or its staff, a filing with the Commission, or an oral communication to the agency or its staff. As federal post-employment restrictions apply in situations where a representation consists of telephone communication as well as a physical appearance,[1] effective monitoring of the post-employment activities of former members and staff requires notification of any representative activity—oral, written or physical presence—which involves the Commission or its staff.

However, because of an oversight when the Conduct Regulation was amended in 1980, Rule 8(b) can be read to only require notice when a physical appearance before the Commission or filing with the Commission is contemplated. Conversely, Rule 8(b) can be read to permit former Commission members and employees to refrain from notifying the Commission's Secretary when representation of a client will require only telephone or informal written communication with the staff, but not the filing of a document [2] or a physical appearance before the Commission or its staff. Such a reading, however, is clearly not consistent with the intent or spirit of the rule, and not in keeping with the requirements of 18 U.S.C. 207.

Accordingly, the Commission is amending 17 CFR 200.735-8(b) to clarify the circumstances under which former members and employees are required to notify the Commission's Secretary of contemplated appearances before the agency and to more specifically describe the required contents of that notification. Former staff members should be aware that violations of provisions of the Commission's Conduct Regulation can subject them to disqualification from appearing and practicing before the Commission.[3]

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendment

PART 200—ORGANIZATION, CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

In consideration of the foregoing, the Commission hereby amends Part 200 of Chapter II, Title 17, Code of Federal Regulations, as follows:

1. The authority citation for Subpart M of Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85,901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11; E.O. 11222; 3 CFR, 1964-1965 Comp., 5 CFR 735.104.

2. Paragraph (b) of § 200.735-8 is revised as follows:

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[1] *See* 5 CFR 737.5(b)(3).

[2] The definition of "appear before the Commission" includes "the conveyance of material in connection with a formal appearance or application to the Commission." Former members and employees should be advised that this includes the transmission of any documents to the Commission for the purpose of filing, request or notification. 17 CFR 200.735-8(c).

[3] 17 CFR 200.735-13(a).

§ 200.735–8 Practice by former members and employees of the Commission.

* * * * *

(b)(1) Any former member or employee of the Commission who, within 2 years after ceasing to be such, is employed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he or she will appear before the Commission, or communicate with the Commission or its employees, shall, within ten days of such retainer or employment, or of the time when appearance before, or communication with the Commission or its employees is first contemplated, file with the Secretary of the Commission a statement which includes:

(i) A description of the contemplated representation;

(ii) An affirmative representation that the former employee while on the Commission's staff had neither personal and substantial responsibility nor official responsibility for the matter which is the subject of the representation; and

(iii) The name of the Commission Division or Office in which the person had been employed.

(2) Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirements of this paragraph do not apply to (i) communications incidental to court appearances in litigation involving the Commission; and (ii) oral communications concerning ministerial or informational matters or requests for oral advice not otherwise prohibited by paragraph (a) of this section.

* * * * *

The Commission finds that the foregoing action relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comments under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, are unnecessary. *See* 5 U.S.C. 553(b).

By the Commission.

May 30, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13527 Filed 6–4–85; 8:45 am]

BILLING CODE 6310-01-M

DEPARTMENT OF ENGERY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270, and 273

[Docket No. RM83–53–000; Order No. 423]

Purchased Gas Adjustments; Final Rule

Issued: May 30, 1985.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to permit purchasers to use billing adjustments to recover interim collection refunds under 18 CFR 273.302 (1984). The Commission is also requiring interstate pipeline companies to file reports with their Purchased Gas Adjustment (PGA) filings identifying billing adjustments made to recover either interim collection refunds or general refunds under 18 CFR 270.101(e) (1984). Finally, the Commission is clarifying that 18 CFR 154.38(d)(4)(vii) requires interstate pipeline companies to report, and pay to their customers, all refunds recovered through billing adjustments.

EFFECTIVE DATE: August 19, 1985. If the Office of Management and Budget approval of the information collection provisions has not been received by that date, the Commission will issue a notice temporarily suspending the effective date.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8308.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

Obligations of sellers and puchasers of First-Sale Natural Gas for refunds owed for collections in excess of maximum lawful prices under the Natural Gas Policy Act of 1978; Docket No. RM83–53–000; Order No. 423.

Issued: May 30, 1985.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its interim collection refund provisions [1] to allow purchasers to make billing adjustments to recover interim collection refunds under 18 CFR 273.302 (1984). The final rule also requires interstate pipeline companies to file reports with their Purchased Gas Adjustment (PGA) filings identifying billing adjustments made to recover either interim collection refunds or general refunds under 18 CFR 270.101(e) (1984). Finally, the Commission is amending its regulations to clarify that interstate pipeline companies must pay to their customers, and report, all refunds recovered through billing adjustments.[2]

II. Background

Producers and other sellers of first-sale natural gas must refund any collections in excess of the applicable maximum lawful price under the Natural Gas Policy Act (NGPA).[3] Under the Commission's regulations, this obligation falls into two main categories: (1) Refund obligations under the Commission's interim collection refund requirements in § 273.302 and (2) all other potential refund obligations under the general refund provisions of § 270.101(e).

A. Section 273.302 Interim Collection Refund Cases

The maximum lawful price (MLP) in any first sale of natural gas depends on the applicable NGPA category of the gas. NGPA section 503 [4] requires the seller to apply to the appropriate state or Federal jurisdictional agency for a determination of eligibility to collect the MLPs for four categories of gas [5] for which the NGPA permits incentive prices higher than the MLPs of all other categories. The Commission reviews such agency determinations and may remand or reverse a determination unsupported by substantial evidence.

Once a first seller of natural gas has filed an application with a jurisdictional agency, it may collect prices up to the MLP for the applied for category of natural gas.[6] However, the present regulations require a seller to refund these interim collections by lump-sum payments with interest [7] within 60 days

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[1] 18 CFR 273.302 (1984).

[2] 18 CFR 154.38(d) (4)(vii) (1984).

[3] 15 U.S.C. 3301–3432 (1982).

[4] 15 U.S.C. 3413 (1982).

[5] These categories are (1) new natural gas (section 102(c)); (2) certain gas produced from the Outer Continental Shelf (section 102(d)); (3) new onshore production wells (section 103(c)); (4) high-cost natural gas (section 107(c)); and (5) stripper well natural gas (section 108(b)).

[6] 15 U.S.C. 3413 (1982) (Section 503 of the NGPA); 18 CFR Part 273 (1984).

[7] 18 CFR 213.302(e) (1984). The interest payable on a § 273.302 interim collection refund is calculated under § 154.102 (c) and (d) of the Commission's regulations unless the refund is paid from an escrow account, in which case the accrued interest in the escrow account is the interest amount payable with the refund.

of denial of its application by the jurisdictional agency or the Commission or the seller's withdrawal of the application.[8] Within 90 days, a seller must file either a refund report [9] or a statement with the Commission certifying that no refund is required.

Section 273.302 prohibits billing adjustments by purchasers to recover interim collection refunds. Based on its experience with billing adjustments to satisfy sellers' refund liabilities under the Natural Gas Act (NGA),[10] the Commission concluded that such adjustments resulted in delays in reimbursing gas customers for overcharges. The Commission also believed that billing adjustments, as compared with lump-sum payments, made identification of overcharges and monitoring of sellers' progress in making refunds more difficult and time-consuming.[11]

B. Section 270.101(e) General Refund Cases

All refund obligations other than interim collection refunds fall under § 270.101(e) of the Commission's regulations. Most involve gas produced from disqualified NGPA section 108[12] stripper wells.[13] Section 270.101(e) refund obligations also arise in any sale of gas at an NGPA incentive price which the seller was not eligible, even on an interim basis under Part 273, to collect because it had never filed an application for a determination of eligibility or had made the sale after denial or withdrawal of an application.

Unlike § 273.302, which prohibits billing adjustments to collect interim collection refunds, § 270.101(e) allows such adjustments to carry out general refund obligations. Also unlike § 273.302, §270.101(e) contains no specific deadline for making refunds but simply requires that such refunds be made "promptly." Nor does § 270.101(e) require sellers to file refund reports similar to those required for interim collection refunds. Section 154.38(d)(4)(vvi) contains, however, a general requirement that interstate pipeline companies report all refunds in their PGA filings or as required by the refund provisions in their FERC Gas Tariffs. But it does not specify the exact information to be reported or make clear that billing adjustments are considered refunds.

C. The Notice of Proposed Rulemaking

On August 23, 1984, the Commission issued a Notice of Proposed Rulemaking (NOPR) seeking ways to facilitate the refund process. Specifically, the Commission proposed to amend § 273.302 to permit purchasers to use billing adjustments to recover interim collection refunds and to require interstate pipeline companies to file reports of refunds so recovered.[14] The Commission also proposed to amend § 270.101(f) to require interstate pipeline companies to file similar reports of general obligations recovered through billing adjustments and to amend §154.38(d)(4)(vii) to clarify that the requirements in that section that interstate pipeline companies report refunds in their PGA filings and pay such refunds to consumers apply to refunds recovered through billing adjustments. Finally, the Commission stated in the NOPR its policy that, although sellers have the primary responsibility for making refunds, pipeline companies also have an obligation as part of prudent management to ensure that they recover refunds owed to their customers.

Seventeen companies and one trade association filed comments on the NOPR.[15] The Commenters included producers, pipeline companies, and pipeline company customers. After reviewing the comments, the Commission has determined to issue a final rule adopting the proposed amendments with minor changes.

III. Discussion

A. Authorization of Billing Adjustments

The Commission seeks to ensure that refunds owed by producers and other first sellers are made as quickly as possible, in order to speed their ultimate payment to residential customers and other end-users. Permitting interim collection refunds to be made through billing adjustments as well as through lump-sum payments should aid in achieving this goal. First, billing adjustments provide pipeline companies and other first-sale purchasers a positive means of recovering refunds without waiting for producers to make their lump-sum payments. Pipeline companies have traditionally used billing adjustments to recoup most types of overcollections. Many pipeline companies already routinely calculate overcharges, compute interest owed, and inform producers of their general refund obligations. Accordingly, pipeline companies are in a position to use billing adjustments to take the initiative in recovering first sellers' interim collection refunds when sellers fail to make timely lump-sum payments.

Almost all the commenters, producers as well as pipeline companies, agree that allowing pipeline companies to use billing adjustments will speed collection of interim overcollection refunds. None oppose billing adjustments. Accordingly, the Commission concludes that the prohibition of billing adjustments to recover interim overcollection refunds, instead of avoiding delays in reimbursing gas customers for overcharges as the Commission originally intended, has hampered the collection of such refunds.

The other reason the Commission originally prohibited billing adjustments was its belief that billing adjustments

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[8] 18 CFR 273.302(e)(1) (1984).

[9] 18 CFR 273.302(f)(3). This section requires that a refund report state the amount of the overcharges and interest payable, the dates such refunds were due as well as when actually paid, the name and American Petroleum Institute number of the well that produced the gas sold, the state agency with which the seller's application for determination of eligibility was originally filed, and, if applicable, the date the seller withdrew the application. Sellers are also required to include in any refund report a statement of concurrence by the purchaser that all proper refunds have been made or indicate that the purchaser has not submitted such a statement to the seller. Thereafter, statements of concurrence or nonconcurrence not included with a seller's report become the filing obligation of the purchaser.

[10] 15 U.S.C. 717–717w (1982).

[11] *See* Natural Gas; Collection Authority, Refunds, 44 FR 37491 (June 27, 1979) (Order No. 36).

[12] 15 U.S.C. 3318 (1982).

[13] Prior to December 1983, the Commission's regulations provided that a well would lose its stripper well qualification and gas produced from that well would become subject to the otherwise applicable MLP if the well's production exceeded the qualifying level in any single ninety-day production period. Once that occurred, even if production quickly thereafter fell below qualifying levels, stripper well status could be regained only if the producer made a new filing for another determination of eligibility to sell gas from that well at stripper well prices. The Commission's regulations were amended effective December 7, 1983, to provide that, once the Commission has given stripper well approval, such status is not forfeited because production exceeds stripper well levels in one or more ninety-day production periods; however, the seller may collect only the otherwise applicable MLP, not the stripper well incentive price, for gas produced in those periods of higher production. *See* Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, and 107 and 108 of the Natural Gas Policy Act of 1978, 48 FR 44508 (Sept. 29, 1983) (Order No. 336). *See also* 48 FR 54947 (Dec. 7, 1983).

[14] Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978, 49 FR 34233 (Aug. 29, 1984) (Notice of Proposed Rulemaking and Statement of Policy).

[15] These commenters are Gulf Oil Corporation; Exxon Corporation; Arkansas Louisiana Gas Company; Northern Indiana Public Service Company; Pacific Gas and Electric Company; Southern Union Exploration Company; Conoco, Inc.; American Gas Association; Northern States Power Company; Mitchell Energy Corporation; Public Service Company of Colorado; Tennessee Gas Pipeline Company; Northwest Central Pipeline Corporation; Niagara Mohawk Power Corporation; Natural Gas Pipeline Company of America; El Paso Natural Gas Company; Pogo Producing Company and Mesa Petroleum Co.

made identification of overcharges and monitoring of refunds more difficult. Permitting billing adjustments does place additional administrative burdens on the Commission. However, that burden should be minimal since most of the refunds in question are small enough that billing adjustments can be completed in one month.[16] Hence, the disadvantage of a small additional administrative burden on the Commission is outweighed by the advantage of speeding refunds. For these reasons, the Commission has decided to permit billing adjustments, in addition to lump-sum payments, to recover interim collection refunds.

While no commenters oppose the use of billing adjustments as such, the commenters do raise a number of issues concerning the conditions under which pipeline companies will be permitted to use billing adjustments: (1) Whether producers should be given additional protection against incorrect billing adjustments, (2) the time within which a billing adjustment must be completed, (3) whether adjustments should be allowed against a pipeline company's payments for gas other than that for which the producer charged too high a price and (4) how pipeline companies should pay refunds obtained by billing adjustments to their customers.

As discussed more fully below, the Commission believes that additional protections for sellers against incorrect billing adjustments are generally unnecessary. But the rule does provide that purchasers must give sellers notice of billing adjustments to recover interim collection refunds and may not make those billing adjustments within the first 60 days after the refund requirement arose without the agreement of the seller. Also, if disputes arise concerning a billing adjustment, an aggrieved party may file a complaint with the Commission. The rule also provides that sellers and purchasers may agree to carry out billing adjustments over a longer period than 60 days, and adjustments may be made against a purchaser's payments for any gas. Finally, the issue of how pipeline companies should pay refunds to their customers may be more appropriately considered in the separate proceeding now being conducted concerning revisions to the Commission's PGA regulations.[17]

[16] The Commission's records show that the average per well refund is $37,000. In addition, 65% of all wells reported are stripper wells, and the average stripper well refund is $17,000.

[17] Revisions to the PGA Regulations, 49 FR 18539 (May 1, 1984) (Docket No. RM84-12-000) (Notice of Inquiry).

1. Protections for Producers

Some of the commenting producers assert that the Commission should provide that a purchaser can make a billing adjustment only after the producer has agreed to the adjustment. These commenters argue that purchasers may not have the information necessary to determine the amount owned accurately or that the parties may disagree on the amount. Some argue, in particular, that purchasers do not know the date producers received excess payments and thus cannot determine the interest owed. Other commenters state that the Commission should at least require purchasers to submit a statement to the producer before making the adjustment, giving all information necessary to enable it to verify the purpose and amount of the refund and possibly resolve any dispute concerning the adjustment before it is made.[18]

In order to guarantee that the rights of producers are protected, the Commission is modifying the proposed rule to provide that, before making a billing adjustment to recover an interim collection refund, the purchaser must give the producer notice of the amount of the adjustment and the time period during which it will be made. Also, the Commission modifies the proposal to provide that a purchaser must obtain the agreement of the seller before making any billing adjustment prior to the 60-day deadline for making interim collection refunds. Hence, producers can avoid billing adjustments by voluntarily refunding the entire overcollection within the first 60 days. However, if a producer does not make the refund within 60 days, as it is required to do under the rule, then the purchaser may proceed with a billing adjustment without agreement by the producer.

Some commenters argue that additional protections for sellers against incorrect billing adjustments are particularly important because the Commission's regulations do not provide a method to compensate producers for lost use of their money as a result of an incorrect billing adjustment. This concern is misplaced. A producer will be able to collect interest from purchasers to the extent the contract provides for interest to be paid on unpaid balances.

Finally, one commenter argues that unilateral billing adjustments could cause cash flow problems for producers who rely on a predictable level of revenue from their wells in order to meet current expenses. The Commission finds no evidence that billing adjustments to collect general refund obligations have caused producers more cash flow difficulties than lump-sum refund payments. Indeed, billing adjustments to recover interim collection refunds should cause less cash flow difficulties than lump-sum payments. This is because sellers must make lump-sum payments within 60 days but, as detailed in the next section of this order, the parties may agree to complete billing adjustments over a longer period. In addition, billing adjustments can be made during the inital 60-day period only with the agreement of the producer.

Accordingly, except as discussed above, the Commission has decided not to establish procedures governing the making of billing adjustments and resolution of disputes concerning them but to allow sellers and purchasers flexibility to work out these matters themselves.

The Commission recognizes, however, that occasionally the parties will be unable to resolve disputes concerning a billing adjustment. In such situations, the aggrieved party may resort to those remedies provided by state law or file a complaint with the Commission.

2. Time Limit for Billing Adjustments

Some commenters interpret the 60-day deadline for making interim collection refunds as requiring completion of billing adjustments within 60 days. They suggest that the Commission allow a longer period (12 months is suggested by one commenter). The commenters observe that the amount of the refund might be too large, compared with the amount the purchaser owes the producer for gas, for completion of a billing adjustment in 60 days.

The Commission wishes, first, to make clear that the 60-day deadline applies only to the producer's obligation to refund interim overcollections. As already discussed, purchasers may without agreement by the producer use billing adjustments, after expiration of the 60-day deadline, to collect refunds which the producer has not made.

Nevertheless, that deadline as set forth in the NOPR may impede agreement by producers and purchasers to use billing adjustments for making interim collection refunds. This is because a producer's agreement to a billing adjustment which would require more than 60 days might be construed as a violation of its obligation to make all such refunds within 60 days.

[18] This information would include the amount of the refund, the amount of interest, how the purchaser arrived at these figures, and the well to which the refund relates.

Accordingly, the Commission is modifying the language of the new § 273.302(e) to clarify that producers and purchasers may agree to carry out interim collection refunds through billing adjustments over a reasonable period. This permits use of billing adjustments where the refund is too large to enable completion of the adjustment in 60 days. Moreover, billing adjustments of more than 60 days should not harm anyone since the producer must, in any event, pay interest on the unpaid balance until all refunds are completed.[19]

3. Adjustments Against All Amounts Owed to Producer

Some commenters ask that the Commission clarify that purchasers may make billing adjustments against payments to the first seller for any gas, not just the gas from the well to which the refund relates. Payments for the latter gas are sometimes insufficient to cover the necessary refund. Indeed, the well may be abandoned or no longer in production. Another commenter claims, however, that permitting adjustments against payments for any gas would complicate tracking the amounts the purchaser owes for gas from each lease. Since sellers often pay royalties based on the payments they receive from their purchaser, they might miscalculate royalties with the result that lessors might cancel leases for underpayment of royalties.

The Commission believes that billing adjustments should be permitted with respect to any amounts owed by the producer to the purchaser. This will maximize the usefulness of billing adjustments as a means of expediting refunds. Specifically, this procedure will permit billing adjustments where purchasers otherwise could not make them because the well to which the refund relates would not produce sufficient cash flow to pay the refund. The Commission believes that producers should be able to work out procedures for tracking the amounts owed for production from each well so that any difficulties concerning royalties payments are minimized.

4. Clarification That Pipeline Companies Must Pay Refunds Recovered by Billing Adjustments to Their Customers

In the NOPR, the Commission proposed to amend §154.38(d)(4)(vii) of its regulations to clarify that interstate pipeline companies must pay refunds recovered by billing adjustments to their customers through PGA procedures. One commenter contends that the Commission should require interstate pipeline companies to pay refunds above a certain threshold level [20] in lump-sums to those customers actually harmed by the overcharges, instead of passing those refunds through by PGA procedures. It states that, in today's highly competitive gas market, large refunds could otherwise cause serious market distortions. Such large refund obligations could arise as a result of currently pending litigation such as the challenge to the Commission's treatment of production-related cost allowances.[21]

Another commenter asserts that the Commission should require that pipeline companies pass through all refunds recovered from their suppliers by lump-sum payments. It fears that otherwise the pipeline company from whom it purchases might keep its commitment to hold down rate increases by passing through refunds under PGA procedures rather than by renegotiating its supply contracts. Also, the commenter states that lump-sum refunds are easier to verify.

The Commission has determined not to address this issue at this time. The Commission has issued a Notice of Inquiry [22] in Docket No. RM84–12–000 requesting comments on, among other issues, whether pipeline companies should pay refunds to their customers by lump-sum cash payments "particularly where a large refund is involved," noting that such payment "avoids distortion of market signals and unfairness to the pipeline's competitors."[23] The Commission also observed, however, that there are often administrative disadvantages to lump-sum payments and requested comments on other possible approaches to the flow-through problem. Accordingly, the Commission has determined at this time to adopt the clarifying amendment to §154.38(d)(4)(vii), as proposed. The Commission believes that it may be more appropriate to consider, in the proceeding in Docket No. RM84–12–000, whether, in some circumstances, pipeline companies should pay refunds to their customers by lump-sum payments.

B. Reporting Requirements

The Commission proposed additional reporting requirements for interstate pipeline companies. The Commission concludes that those requirements are necessary to allow the Commission to discern more readily those cases where required refunds have been made. By eliminating these cases from its workload, the Commission will be able to devote more time to the remaining cases.

1. Section 273.302—Refund Reports by Interstate Pipelines.

The Commission proposed to amend §273.302(f) by requiring interstate pipeline companies to file reports with their PGA filings that identify those instances in which the pipeline companies have made billing adjustments to collect §273.302 interim overcollections.

Many of the commenters support this proposal. However, other commenters express confusion over the seller's reporting obligations when a purchaser recoups overpayments through billing adjustments. Other commenters argue that the current requirements are sufficient and that additional reporting requirements would be both duplicative and burdensome.

After reviewing the comments, the Commission concludes that this additional reporting requirement is necessary for it properly to monitor refunds made by billing adjustments. In addition, the Commission wishes to clarify that when the purchaser makes a billing adjustment to recover interim overcollections, the first seller is relieved of its reporting obligation under §273.302(f). Section 273.302(f)(1)(ii) provides that only the purchaser, not the seller, must report refunds made through billing adjustments. However, when the producer makes lump-sum payments of refunds, the producer must report the refund.

2. Section 270.101—Filing Requirements for Interstate Pipelines

As pointed out in the proposed rule, about half of the potential refund cases arise under the §270.101(e) general refund requirements. Because §270.101(e) does not require natural gas companies to file any reports on general refund obligations, the Commission has had difficulty identifying refunds actually made. The Commission proposal required interstate pipeline companies to make refund reports with their PGA filings when they make billing adjustments to effect §270.101(e) refunds, similar to the reports required with respect to interim collection

[19] 18 CFR 154.102(c)(2) (1984). This statement satisfies the request of one commenter for a clarification that interest must be paid on the unpaid balance before billing adjustments are completed.

[20] The commenter suggests that the threshold be the greater of a $5,000,000 refund or a refund that would result in a price change of more than 1¢ per MMBtu.

[21] Texas Eastern Transmission Corp. v. FERC, No. 83–4390 (5th Cir. filed Aug. 26, 1980). The court heard oral argument on March 8, 1985.

[22] Revisions to the PGA Regulations, 49 FR 18539 (May 1, 1984) (Notice of Inquiry).

[23] *Id.* at 18542.

refunds recovered by billing adjustments.

The majority of the commenters recognize the need for additional reporting requirements and support the proposed amendment to §270.101; some view the additional reporting requirements as a burden on both producers and purchasers. One commenter suggests that the Commission impose reporting requirements on interstate pipeline companies which do not have PGA clauses in their tariffs. Another commenter suggests that the Commission require that interstate pipeline companies report lump-sum refunds as well as billing adjustments in PGA filings and include a description of the status of each refund which is due, but not yet collected.

The proposed reports of general obligation refunds recovered by billing adjustments are necessary in order for the Commission to monitor refunds properly. The Commission agrees that it should require pipeline companies without PGA clauses who recover refunds through billing adjustments to file annual refund reports. Otherwise, the Commission would not be able to monitor refunds made to and by such pipeline companies. The Commission will not require pipeline companies to file status reports of outstanding refund obligations. These reports would not provide the Commission sufficient additional assistance in monitoring refunds to justify their burden.

3. Supplemental Reports by Sellers

The Commission also requested comments on the need for additional reporting requirements for first sellers of natural gas, including requiring that sellers file reports of all § 270.101(e) refunds that they make or requiring sellers to make a one-time report identifying all § 270.101(e) general refund obligations and § 270.302 interim collection refund obligations outstanding as of the effective date of the reporting requirement.

In light of the widespread opposition to these proposals, the Commission has decided not to adopt any additional reporting requirements for first sellers. The Commission expects that the reports required of interstate pipeline companies in conjunction with the policy statement issued with the NOPR will provide staff with sufficient information to monitor effectively the payment of refunds resulting from first sale overcharges. The Commission may, on a case-by-case basis, impose such other reporting requirements as are necessary to ensure that appropriate refunds are made in a timely manner.

One commenter requests that the Commission clarify that the first seller refund and reporting requirements in §§ 270.101(e) and 273.302 apply to pipeline companies that produce natural gas. To the exent pipeline companies are first sellers, they must of course comply with those requirements.

4. Reports by Other Purchasers

The Commission proposed not to require purchasers of first sale gas and other than interstate pipeline companies to file refund reports. Such other purchasers include intrastate pipeline companies, local distribution companies, Hinshaw pipeline companies, and end users. The Commission tentatively concluded that the additional interstate pipeline company filing requirements would be sufficient to enable it to deal effectively with its backlog of refund cases.

The commenters who addressed this issue agree with the Commission's tentative determination. The Commission continues to believe that these additional reports are unnecessary for the Commission to reduce its backlog of refund cases. Accordingly, the Commission will not burden purchasers with any additional reporting requirements.

IV. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions and analyses of rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make an RFA analysis if it certifies that a rule will not have "significant economic impact on a substantial number of small entities."[24]

In view of the considerations discussed below, the Commission has determined, pursuant to section 605(a) of the RFA,[25] that neither the additional filing requirements nor the rule in general will have "a significant economic impact on a substantial number of small entities."

This rule first amends § 273.302(e) to permit billing adjustments to effect refunds required under that section. That section formerly required that refunds be made in single, full-amount, lump-sum payments. There is no requirement that either a seller or purchaser make a billing adjustment. The rule merely permits an alternative procedure for paying already existing refund liabilities of fixed amounts. Accordingly, this aspect of the rule would not have a "significant economic impact on a substantial number of small entities."

The rule would also amend § 154.38(d)(4)(vii) to clarify that the references to refunds in that section include refunds recovered by billing adjustments. This amendment would not have a "significant economic impact on a substantial number of small entities" since it merely clarifies what § 154.38(d)(4)(vii) has always meant.

The rule also requires that interstate pipeline companies file reports with the Commission concerning refunds recovered by billing adjustments. But, the rule does not require interstate pipeline companies to make billing adjustments unless prudency so requires. Therefore, whether an interstate pipeline company must file a report depends on its decision to make a billing adjustment. Furthermore, in cases involving § 273.302 interim collection refunds, the reports would be in lieu of the sellers' § 273.302(f) refund reports.

V. Paperwork Reduction Act

The Commission will submit the information collection provisions in this rule to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR 1320.13 (1984). Interested persons can obtain information concerning the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (Attention: Richard Howe, Jr., ((202) 357–8308). Comments on the information and collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

This rule will become effective August 19, 1985. If OMB's approval has not been received by that date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects

18 CFR Part 154

Natural gas.

18 CFR Part 270

Natural gas, Wage and price controls.

18 CFR Part 273

Natural gas.

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[24] 5 U.S.C. 605(b) (1982).

[25] *Id.*

In consideration of the foregoing, the Commission amends Parts 154, 270, and 273, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1970).

2. Section 154.38(d)(4)(vii) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of Rate.* * * *

(4) * * *

(vii) The jurisdictional portion of all refunds, including those effected by billing adjustments pursuant to § 270.101(e) or § 273.302 of this chapter, received from suppliers (including interest received) applicable to purchases after a PGA clause becomes effective must be flowed through to the company's jurisdictional customers. If the company uses deferred accounting for unrecovered purchased gas costs, the jurisdictional portion of all refunds received (including interest received) must be credited to the unrecovered purchased gas cost account. If the company does not use deferred accounting and holds supplier refunds for more than 30 days, the jurisdictional portion of supplier refunds (including interest received) applicable to purchases after a PGA clause becomes effective must be flowed through to the company's jurisdictional customers with interest. The reporting requirements for refunds accomplished through billing adjustments are set forth in § 270.101(f) and § 273.302(f) of this chapter. An interstate pipeline, not required to make a PGA filing by this section, that recovered refunds through billing adjustments pursuant to § 270.101(e) or § 273.302 during a calendar year, must file a refund report for that year by the following March 1 which sets forth all the information required by § 270.101(f) and § 273.302(f)(2)(i) of this chapter. Any requirement for the serving and filing of other reports, showing details of the computations of any such refunds, must be either as agreed in settlement discussions held among the company, jurisdictional customers, interested State commissions, other interested parties, and the Commission staff, or as prescribed by Commission order.

* * * * *

PART 270—[AMENDED]

3. The authority citation for Part 270 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

4. Section 270.101 is amended by adding a new paragraph (f) to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(f) *Filing Requirements.* An interstate pipeline must include with any Purchased Gas Adjustment (PGA) filing under § 154.38 of this chapter, a refund report identifying all billing adjustments that are reflected in the interstate pipeline's PGA filing to effect refunds required to be made to it by sellers under paragraph (e) of this section. The interstate pipeline must file with the Commission the original and two copies of a refund report showing for each seller:

(1) The amounts of overcharges and interest to be refunded by that seller as determined in accordance with paragraph (e) of this section;

(2) The amounts of, and dates on which, billing adjustments were made by the pipeline to satisfy the seller's refund obligations under paragraph (e) of this section in whole or in part;

(3) The well name and, if available, American Petroleum Institute Well Number of the well that produced the natural gas for which the interstate pipeline was overcharged by that seller; and

(4) The date that overcollection began or, if applicable, the date of stripper gas well disqualification.

5. The authority citation for Part 273 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 2201–3432 (1982), unless otherwise noted.

6. Section 273.302 is amended by revising paragraphs (e)(1) and (f) to read as follows:

§ 273.302 Refunds of interim collections.

* * * * *

(e) *Refund payments.* (1)(i) Except as provided in paragraph (e)(1)(ii) of this section, within sixty (60) days after a determination becomes final denying a first sale eligibility for the price collected under this part, or within sixty (60) days after the date on which an application for determination is withdrawn by the applicant, while it is before the Commission or the jurisdictional agency, the seller must refund to the purchaser the refund amount computed under paragraph (h) of this section together with interest determined in accordance with §§ 154.102(c) and (d) of this chapter on the excess charges that have been collected from the date of payment until the date of refund.

(ii) If a refund required by paragraph (e)(1)(i) of this section is made through a billing adjustment, the seller and purchaser may agree that the billing adjustment will be completed in a reasonable period which may exceed sixty (60) days.

(iii) A purchaser may not use a billing adjustment to recover a refund required by paragraph (e)(1)(i) of this section before the expiration of the sixty (60) day period for the seller to make the refund unless the seller has previously agreed to the billing adjustment. If the seller fails to make a refund within the sixty (60) day period, the purchaser may use a billing adjustment to recover the refund without agreement by the seller. Before making a billing adjustment, a purchaser must provide the seller written notice of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed.

* * * * *

(f) *Filing requirements.* (1) *Sellers.* (i) Except as provided in paragraph (f)(1)(ii), within ninety (90) days of either the date a final determination of eligibility is obtained that the sale is not eligible for the price category stated in the application for determination, or the date a seller withdraws an application, the seller must:

(A) File with the Commission (*1*) an original and two copies of a refund report showing, for each purchaser, the amount of overcharges and interest to be refunded, as determined in accordance with paragraph (e) of this section, the dates on which any refunds were due, and the dates on which refunds were paid; or

(*2*) A statement certifying that no refund is due under this section. Either the refund report or the certification that no refund is required must include the following information: the well name; the American Petroleum Institute Well

Number, if available; the jurisdictional agency with which the application for determination was filed; and, if applicable, the date of withdrawal of the application; and

(B) File with the Commission (*1*) a statement of concurrence by the purchaser that all proper refunds have been made; or

(*2*) If a purchaser does not submit a statement of concurrence to the seller, a statement that no concurrence was received.

(ii) A seller is not required to include in a report filed under paragraph (f)(1)(i) any information regarding a refund recovered by an interstate pipeline through a billing adjustment.

(2) *Interstate Pipelines.* (i) An interstate pipeline must include with any Purchased Gas Adjustment Filing under § 154.38 of this chapter, a refund report identifying all billing adjustments that are reflected in the interstate pipeline's PGA filing to effect refunds required to be made to it by sellers under paragraph (e) of this section. The interstate pipeline must file with the Commission the original and two copies of the refund report showing for each seller:

(A) The amounts of overcharges and interest to be refunded by that seller as determined in accordance with paragraph (e) of this section;

(B) The dates on which any refunds by the seller were due;

(C) The amounts of, and the dates on which, billing adjustments were made by the pipeline to satisfy the seller's refund obligations under paragraph (e) of this section in whole or in part;

(D) The well name and, if available, American Petroleum Institute Well Number of the well that produced the natural gas for which the interstate pipeline was overcharged by that seller; and

(E) If applicable, the date of withdrawal of the seller's application.

(ii) If the interstate pipeline does not submit a statement of concurrence to the seller concerning refunds under § 273.302 of this chapter, the interstate pipeline must submit to the Commission such concurrence or a statement indicating the reason for its refusal to submit its concurrence with the seller. The interstate pipeline's submission is due within thirty (30) days of the date that a refund report or statement that does not include a statement of concurrence by the purchaser is filed by the seller. A duplicate of the submission must be served upon the seller.

* * * * *

[FR Doc. 85–13261 Filed 6–4–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 4H5440/R768; PH–FRL 2845–3]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation for residues of the fungicide iprodione in or on the feed commodity soapstock. This regulation to establish a maximum permissible level for residues of iprodione in or on soapstock was requested by Rhone-Poulenc, Inc. Elsewhere in this issue of the **Federal Register**, tolerances on various raw agricultural commodities are also being established.

EFFECTIVE DATE: Effective on June 5, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 4H5440/R768], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 12, 1984 (49 FR 48374), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, had submitted food/feed additive petition 4H5440 to the Agency proposing that 21 CFR be amended as follows:

1. In Part 193 by establishing a food tolerance for residues of the fungicide iprodione [3-(3,5-dichlorophenyl) *N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichloro-phenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the commodity crude oil (of peanut fractions) at 1.0 ppm.

2. In Part 561 by establishing a feed tolerance for residues of the fungicide iprodione as expressed above in or on the commodity soapstock (of peanut fractions) at 10 ppm.

The petition was subsequently amended (May 8, 1985; 50 FR 19444) by withdrawing the proposed tolerance of 1.0 ppm for crude oil (of peanut fractions).

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP 4F3129, 4F3111/R767) which appears elsewhere in this issue of the **Federal Register**.

The metabolism of iprodione is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the feed additive regulation is sought, and it is concluded that the fungicide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 97 FIFRA) as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) et. seq.)). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and Pests.

Dated: May 23, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended as follows:

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348

2. Section 561.263 is amended by revising the table of feed commodities to read as follows:

§ 561.263 Iprodione.

* * * * *

Feed	Parts per million
Grape, pomace, dry	225.0
Raisin waste	300.0
Soapstock	10.0

[FR Doc. 85-13367 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8029]

Furnishing Statements Required With Respect to Certain Substitute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to statements required to be furnished by brokers and information returns of brokers. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide that a broker must furnish statements to its customers with respect to certain substitute payments received by the broker on behalf of such customers. The regulations also provide that brokers must make returns of information to the Internal Revenue Service respecting any customer to which such broker is required to furnish a statement. These regulations, which supersede the temporary regulations on this subject, affect brokers that receive substitute payments on behalf of customers and provide such brokers with the guidance needed to comply with the law.

DATES: The regulations apply to substitute payments received by brokers after December 31, 1984. The cross-references added to Part 1 under sections 6042 and 6049 are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1984, the **Federal Register** published temporary regulations (T.D. 7987; 49 FR 42715) and proposed amendments (49 FR 42744) to the Income Tax Regulations (26 CFR Part 1) under section 6045 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 146 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 690). Three written comments responding to this notice were received. No requests for a public hearing were received and accordingly none was held. After consideration of all written comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Public Comments

Section 6045(d) requires brokers to furnish written statements to their customers showing the amount of payments in lieu of dividends or tax-exempt interest (or such other items as the Secretary may prescribe) received by brokers on behalf of their customers. The proposed regulations required a broker to furnish a statement informing an individual that a payment is a substitute payment in lieu of a capital gain distribution or a return of capital, provided that the broker had reason to know the character of the payment by January 31 of the calendar year following the year in which the payment was received. Two comments were received suggesting that this requirement be removed from the regulations because, at the time substitute payments are made, brokers are unable to determine that the payments are in lieu of a capital gain distribution or are in lieu of a return of capital. In response to those comments, the final regulations provide that a broker is required to furnish a statement informing an individual that a payment is a substitute payment in lieu of a capital gain distribution or a return of capital, only if the broker has reason to know the character of the payment on the record date of such payment.

The proposed regulations required a broker to determine the identity of the customer whose securities were transferred and on whose behalf the broker received substitute payments. The determination with respect to substitute payments (other than for tax-exempt dividends and tax-exempt interest) had to be made using one of the following methods: (1) specific identification; (2) allocation and selection; or (3) any other method with the prior approval of the Commissioner. Under the allocation and selection method, the broker proportionately allocates the transferred shares of stock between two pools of shares, one consisting of shares owned by individuals and one consisting of shares owned by nonindividuals.

The Internal Revenue Service has received a number of applications for approval of identification methods that purportedly fall under the third method (*i.e.*, a method requiring the prior approval of the Commissioner). The identification methods described in the majority of these applications relate to various forms of the allocation and selection method described in § 1.6045-2(f)(2)(ii). Prior approval by the Commissioner is not required for any type of random or first-in-first-out ("FIFO") allocation method within the pool of nonindividual shares. These applications indicate that the scope of the third method has been misunderstood. The Commissioner's approval is necessary only where identification of customers is based on a nonrandom method other than FIFO identification.

A commentator requested that the allocation and selection method be amended to allow brokers to allocate transferred shares first to shares of the same class and issue borrowed from other brokers or customers and then to the two pools. The final regulations adopt the requested change.

Section 1.6045-2(b)(1) of the proposed regulations provided that a broker need not furnish a statement to a customer on whose behalf the broker receives substitute payments that aggregate less than $10 in a calendar year. A commentator requested that this minimal payments exception be expanded to an annual $10 per issue per customer exception. This request was not adopted in the final regulations.

Section 1.6045-2(a)(4)(ii) of the proposed regulations defined the term "broker," in part, as any person described in § 1.6045-1(a)(1). A commentator requested that the proposed regulations be amended to incorporate specifically the exceptions to the definition of broker provided in example (2) of § 1.6045-1(b). Such an

express incorporation is unnecessary. Because example (2) of § 1.6045–1(b) includes a cross-reference to § 1.6045–1(a) and the proposed regulations defined broker with reference to § 1.6045–1(a), example (2) was included in the definition of broker in the proposed regulations by a series of cross-references. Therefore, no specific incorporation of example (2) is made in the final regulations.

Two commentators requested that the effective date of the requirement to furnish statements be delayed. Section 150(b) of the Tax Reform Act of 1984 provides that section 6045(d) applies to payments received after December 31, 1984. The Tax Reform Act of 1984 does not authorize the Internal Revenue Service to administratively change the statutorily prescribed effective date, and a delay in the effective date of the statement requirement is not adopted in the final regulations. Penalties for failure to file information returns or to furnish written statements, however, may be waived if it can be shown that such failure was due to reasonable cause and not to willful neglect.

Special Analyses

Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The Treasury Department has determined that these final regulations are not major rules under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Bruce H. Jurist of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel in the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1 Through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements; OMB control numbers under the Paperwork Reduction Act.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 1.6045–2 also issued under 26 U.S.C. 6045.

Par. 2. New § 1.6045–2 is added at the appropriate place. The new section is set forth below.

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

(a) *Requirement of furnishing statements*—(1) *In general.* Any broker (as defined in paragraph (a)(4)(ii) of this section) that transfers securities (as defined in § 1.6045–1(a)(3)) of a customer (as defined in paragraph (a)(4)(iii) of this section) for use in a short sale and receives on behalf of the customer a substitute payment (as defined in paragraph (a)(4)(i)) shall, except as otherwise provided, furnish a statement to the customer identifying such payment as being a substitute payment.

2. *Special rule for transfers for broker's own use.* Any broker that borrows securities of a customer for use in a short sale entered into for the broker's own account shall be deemed to have transferred the stock to itself and received on behalf of the customer any substitute payment made with respect to the transferred securities, and shall be required to furnish a statement with respect to such payments in accordance with paragraph (a)(1) of this section.

(3) *Special rule for furnishing statements to individual customers with respect to payments in lieu of dividends*—(i) *In general.* Except as otherwise provided, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual ("individual customer") need not furnish a statement to the customer.

(ii) *Exception for certain dividends.* Any broker that receives on behalf of an individual customer a substitute payment in lieu of—

(A) An exempt-interest dividend (as defined in paragraph (a)(4)(vii) of this section);

(B) A capital gain dividend (as defined in paragraph (a)(4)(vi) of this section);

(C) A distribution treated as a return of capital under section 301(c)(2) or (c)(3); or

(D) An FTC dividend (as defined in paragraph (a)(4)(viii) of this section) shall furnish a statement to the individual customer identifying the payment as being a substitute payment as prescribed by this section, provided that the broker has reason to know not later than the record date of the dividend payment that the payment is a substitute payment in lieu of an exempt-interest dividend, a capital gain dividend, a distribution treated as a return of capital, or an FTC dividend.

(4) *Meaning of terms.* The following definitions apply for purposes of this section.

(i) The term "substitute payment" means a payment in lieu of—

(A) Tax-exempt interest, to the extent that interest has accrued on the obligation for the period during which the short sale is open;

(B) A dividend, the ex-dividend date for which occurs during the period after the transfer of stock for use in a short sale, and prior to the closing of the short sale; or

(C) Any other item specified in a rule-related notice published in the **Federal Register** (provided that such items shall be subject to the rules of this section only subsequent to the time of such publication).

For purposes of this section original issue discount accruing on an obligation (the interest upon which is exempt from tax under section 103) for the period during which the short sale is open shall be deemed a payment in lieu of tax-exempt interest.

(ii) The term "broker" means both a person described in § 1.6045–1(a)(1) and a person that, in the ordinary course of a trade or business during the calendar year, loans securities owned by others.

(iii) The term "customer" means, with respect to a transfer of securities for use in a short sale, the person that is the record owner of the securities so transferred.

(iv) The term "dividend" means a dividend (as defined in section 316) or a distribution that is treated as a return of capital under section 301(c)(2) or (c)(3).

(v) The term "tax-exempt interest" means interest to which the exception in section 6049 (b)(2)(B) applies.

(iv) The term "capital gain dividend" means a capital gain dividend as defined in section 852(b)(3)(C) or section 857(b)(3)(C).

(vii) The term "exempt-interest dividend" means an exempt-interest dividend as defined in section 852(b)(5)(A).

(viii) The term "FTC dividend" means a dividend with respect to which the recipient is entitled to claim a foreign tax credit under section 901 (but not by virtue of taxes deemed paid under section 902 or 960).

(5) *Examples.* The following examples illustrate the definition of a substitute payment in lieu of tax-exempt interest found in paragraph (a)(4)(i)(A) of this section.

Example (1). On September 1, 1984, L, a broker, borrows 200 State Q Bonds (the interest upon which is exempt from tax under section 103) held in street name for customer R and transfers the bonds to W for use in a short sale. The bonds each have a face value of $100 and bear 12% stated annual interest paid semiannually on January 1 and July 1 of each year. The bonds were not issued with original issue discount. On November 1, 1984, W closes the short sale and returns State Q Bonds to L. On January 1, 1985, L receives a $1200 interest payment (6%×$100×200 bonds =$1200) from State Q with respect to R's bonds. Four hundred dollars (2 months the bonds were on loan/6 months in the interest period =⅓×$1200=$400) of the interest payment represents accrued interest on the obligations for the period during which the short sale was open and is a substitute payment in lieu of tax-exempt interest within the meaning of paragraph (a)(4)(i)(A) of this section. L must furnish a statement under paragraph (a) of this section to R for calendar year 1985 with respect to the $400 substitute payment.

Example (2). Assume the same facts as in Example (1), except that W closes the short sale on February 1, 1985. On January 1, 1985, L receives a $1200 payment from W with respect to R's bonds. Eight hundred dollars (4 months the bonds were on loan prior to January 1, 1985/6 months is the interest period =⅔×$1200=$800) of the payment represents accrued interest on the obligation for the period during which the short sale was open and is a substitute payment in lieu of tax-exempt interest. On July 1, 1985, L receives a $1200 payment from State Q. Two hundred dollars (1 month the bonds were on loan after December 31, 1984/6 months in the interest period =⅙×$1200=$200) of the payment represents accrued interest on the obligation for the period during which the short sale was open and is a substitute payment in lieu of the tax-exempt interest. Because both payments are received by L in 1985, L must furnish a statement under paragraph (a) of this section to R for that year with respect to both payments.

(b) *Exceptions*—(1) *Minimal payments.* No statement is required to be furnished under section 6045(d) or this section to any customer if the aggregate amount of the substitute payments received by a broker on behalf of the customer during a calendar year for which a statement must be furnished is less than $10.

(2) *Exempt recipients* (i) *In general.* A statement shall not be required to be furnished with respect to substitute payments made to a broker on behalf of—

(A) An organization exempt from taxation under section 501(a),

(B) An individual retirement plan,

(C) The United States, a possession of the United States, or an instrumentality or a political subdivision or a wholly-owned agency of the foregoing,

(D) A State, the District of Columbia, or a political subdivision or a wholly-owned agency or instrumentality of either of the foregoing.

(E) A foreign government or a political subdivision thereof, or

(F) An international organization.

(ii) *Determination of whether a person is described in paragraph (b)(2)(i) of this section.* The determination of whether a person is described in paragraph (b)(2)(i) of this section shall be made in the manner provided in §5f.6045–1(c)(3)(i)(B) of the Temporary Income Tax Regulations under the Tax Equity and Fiscal Responsibility Act of 1982.

(3) *Exempt foreign persons.* A statement shall not be required to be furnished with respect to substitute payments made to a broker on behalf of a person that is an exempt foreign person as described in § 1.6045–1(g)

(c) *Form of statement.* A broker shall furnish the statement required by paragraph (a) of this section on Form 1099. The statement must show the aggregate dollar amount of all substitute payments received by the broker on behalf of a customer (for which the broker is required to furnish a statement) during a calendar year, and such other information as may be required by Form 1099. A statement shall be considered to be furnished to a customer if it is mailed to the customer at the last address of the customer known to the broker.

(d) *Time for furnishing statements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. Such statements shall be furnished after April 30th of such calendar year but in no case before the final substitute payment for the calendar year is made, and on or before January 31 of the following calendar year.

(e) *When substitute payment deemed received.* A Broker is deemed to have received a substitute payment on behalf of a customer when the amount is paid or deemed paid to the broker (or as it accrues in the case of original issue discount deemed a payment in lieu of tax-exempt interest).

(f) *Identification of customer and recordkeeping with respect to substitute payments*—(1) *Payments in lieu of tax-exempt interest and exempt-interest dividends.* A broker that receives substitute payments in lieu of tax-exempt interest, exempt-interest dividends, or other items (to the extent specified in a rule-related notice published pursuant to paragraph (a)(4)(i)(C) of this section) on behalf of a customer and is required to furnish a statement under paragraph (a) of this section must determine the identity of the customer whose security was transferred and on whose behalf the broker received such substitute payments by specific identification of the record owner of the security so transferred. A broker must keep adequate records of the determination so made.

(2) *Payments in lieu of dividends other than exempt-interest dividends*—(i) *Requirements and methods.* A broker that receives substitute payments in lieu of dividends, other than exempt-interest dividends, on behalf of a customer and is required to furnish a statement under paragraph (a) of this section must make a determination of the identity of the customer whose stock was transferred and on whose behalf such broker receives substitute payments. Such determination must be made as of the record date with respect to the dividend distribution, and must be made in a consistent manner by the broker in accordance with any of the following methods:

(A) Specific identification of the record owner of the transferred stock;

(B) The method of allocation and selection specified in paragraph (f)(2)(ii) of this section; or

(C) Any other method, with the prior approval of the Commissioner.

A broker must keep adequate records of the determination so made.

(ii) *Method of allocation and selection*—(A) *Allocation to borrowed shares and individual and nonindividual pools.* With respect to each substitute payment in lieu of a dividend received by a broker, the broker must allocate the transferred shares (*i.e.*, the shares giving rise to the substitute payment) among all shares of stock of the same class and issue as the transferred shares which were (1)

borrowed by the broker, and (2) which the broker holds (or has transferred in a transaction described in paragraph (a)(1) of this section) and is authorized by its customers to transfer (including shares of stock of the same class and issue held for the broker's own account) ("loanable shares"). The broker may first allocate the transferred shares to any borrowed shares. Then to the extent that the number of transferred shares exceeds the number of borrowed shares (or if the broker does not allocate to the borrowed shares first), the broker must allocate the transferred shares between two pools, one consisting of the loanable shares of all individual customers (the "individual pool") and the other consisting of the loanable shares of all nonindividual customers (the "nonindividual pool"). The transferred shares must be allocated to the individual pool in the same proportion that the number of loanable shares held by individual customers bears to the total number of loanable shares available to the broker. Similarly, the transferred shares must be allocated to the nonindividual pool in the same proportion that the number of loanable shares held by nonindividual customers bears to the total number of loanable shares available to the broker.

(B) *Selection of deemed transferred shares within the nonindividual pool.* The broker must select which shares within the nonindividual pool are deemed transferred for use in a short sale (the "deemed transferred shares"). Selection of deemed transferred shares may be made either by purely random lottery or on a first-in-first-out ("FIFO") basis.

(C) *Selection of deemed transferred shares within the individual pool.* The broker must select which shares within the individual pool are deemed transferred shares (in the manner described in the preceding paragraph) only with respect to substitute payments as to which a statement is required to be furnished under paragraph (a)(2)(ii) of this section.

(3) *Examples.* The following examples illustrate the identification of customer rules of paragraph (f)(2):

Example (1). A, a broker, holds X corporation common stock (of which there is only a single class) in street name for five customers: C, a corporation; D, a partnership; E, a corporation; F, an individual; and G, a corporation. C owns 100 shares of X stock, D owns 50 shares of X stock, E owns 100 shares of X stock, F owns 50 shares of X stock, and G owns 100 shares of X stock. A is authorized to loan all of the X stock of C, D, E, and F. G, however, has not authorized A to loan its X stocks. A does not hold any X stock in its trading account nor has A borrowed any X stock from another broker. A transfers 150 shares of X stock to H for use in a short sale on July 1, 1985. A dividend of $2 per share is declared with respect to X stock on August 1, 1985, payable to the owners of record as of August 15, 1985 (the "record" date). A receives $2 per transferred share as a payment in lieu of a dividend with respect to X stock or a total of $300 on September 15, 1985. H closes the short sale and returns X stock to A on January 2, 1986. A's records specifically identify the owner of each loanable share of stock held in street name. From A's records it is determined that the shares transferred to H consisted of 100 shares owned by C, 25 shares owned by D, and 25 shares owned by F. The substitute payment in lieu of dividends with respect to X stock is therefore attributed to C, D and F based on the actual number of their shares that were transferred to H. Accordingly, C receives $200 (100 shares × $2 per share), and D and F each receive $50 (25 shares each × $2 per share). A must furnish statements identifying the payments as being in lieu of dividends to both C and D, unless they are exempt recipients as defined in paragraph (b)(2) of this section or exempt foreign persons as defined in paragraph (b)(3) of this section. Assuming that A had no reason to know on the record date of the payment that the dividend paid by X is of a type described in paragraph (a)(3)(ii)(A)–(D) of this section, A need not furnish F with a statement under section 6045(d) because F is an individual. (However, A may be required to furnish F with a statement in accordance with section 6042 and the regulations thereunder. See paragraph (h) of this section.) By recording the ownership of each share transferred to H, A has complied with the identification requirement of paragraph (f)(2) of this section.

Example (2). Assume the same facts as in example (1), except that A's records do not specifically identify the record owner of each share of stock. Rather, all shares of X stock held in street name are pooled together. When A receives the $2 per share payment in lieu of a dividend, A determines the identity of the customers to which the payment relates by the method of allocation and selection prescribed in paragraph (f)(2)(ii) of this section. First, the transferred shares are allocated proportionately between the individual pool and the nonindividual pool. One-sixth of the transferred shares or 25 shares are allocated to the individual pool (50 loanable shares owned by individuals/300 total loanable shares-⅙; ⅙×150 transferred shares=25 shares). Assuming A has no reason to know by the record date of the payment that the payment is in lieu of a dividend of a type described in paragraph (a)(3)(ii)(A)–(D) of this section, no selection of deemed transferred shares within the individual customer pool is required. (However, A may be required to furnish F with a statement under section 6042 and the regulations thereunder. See paragraph (h) of this section.) Five-sixths of the transferred shares or 125 shares are allocated to the nonindividual pool (250 loanable shares owned by nonindividuals/300 total loanable shares=⅚;×⅚150 transferred shares=125 shares). A must select which 125 shares within the nonindividual pool are deemed to have been transferred. Using a purely random lottery, A selects 100 shares identified as being owned by C, and 25 shares identified as being owned by D. Accordingly, A is deemed to have transferred 100 shares and 25 shares owned by C and D respectively, and received substitute payments in lieu of dividends of $200 (100 shares × $2 per share) and $50 (25 shares × $2 per share) on behalf of C and D respectively. A must furnish statements to both C and D identifying such payments as being in lieu of dividends unless they are exempt recipients as defined in paragraph (b)(2) of this section or exempt foreign persons as defined in paragraph (b)(3) of this section. A has complied with the identification requirement of paragraph (f)(2) of this section.

(g) *Reporting by brokers*—(1) *Requirement of reporting.* Any broker required to furnish a statement under paragraph (a) of this section shall report on Form 1096 showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096. With respect to each customer for which a broker is required to furnish a statement, the broker shall make a return of information on Form 1099, in the form, manner and number of copies required by Form 1099.

(2) *Use of magnetic media.* Brokers not receiving an undue hardship exception under paragraph (l)(2) of § 1.6045–1 shall file the returns required by this paragraph on magnetic media in accordance with paragraph (l)(1) of § 1.6045–1.

(3) *Time and place of filing.* The returns required under this paragraph (g) for any calendar year shall be filed after September 30 of such year, but not before the final substitute payment for the year is received by the broker, and on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

(h) *Coordination with section 6042.* In cases in which reporting is required by both sections 6042 and 6045(d) with respect to the same substitute payment in lieu of a dividend, the provisions of section 6045(d) control, and no report or statement under section 6042 need be made. If reporting is not required under section 6045(d) with respect to a substitute payment in lieu of a dividend, a report under section 6042 must be made if required in accordance with the rules of section 6042 and the regulations thereunder. Thus, if a broker receives a substitute payment in lieu of a dividend on behalf of an individual customer and the broker does not have reason to know by the record date of the payment that the payment is in lieu of a dividend

of a type described in paragraph (a)(3)(ii)(A)–(D) of this section, the broker must report with respect to the substitute payment if required in accordance with section 6042 and the regulations thereunder.

(i) *Effective date.* These regulations apply to substitute payments received by a broker after December 31, 1984.

Par. 3. Paragraph (a)(2) of § 1.6042–3 is amended by adding the following sentence to the end thereof.

§ 1.6042–3 Dividends subject to reporting.

(a) * * *

(2) * * * See § 1.6045–2(h) for coordination of the reporting requirements under sections 6042 and 6045(d) with respect to payments in lieu of dividends.

* * * * *

Par. 4. Paragraph (a)(5) of section 1.6049–5 is amended by adding the following sentence to the end thereof.

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

(a) * * *

(5) * * * See § 1.6045–2 for reporting requirements with respect to payments in lieu of tax-exempt interest.

* * * * *

PART 602—[AMENDED]

Par. 5. The authority for Part 602 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6045–2(a)(1) . . . 1545–0115" and "§ 1.6045–2(f) . . . 1545–0115" and "§ 1.6045–2(g)(1) . . . 1545–0115."

Approved: May 20, 1985.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–13520 Filed 6–4–85; 8:45 am]

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 18, 19, 20, 22, 170, and 196

[T.D. ATF–207]

Stills; Miscellaneous Provisions

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule implements several recently enacted amendments to the statutes concerning stills used in distilling. These statutory amendments repeal the occupational tax on manufacturers of stills and the commodity tax for each still or condenser manufactured. Also, discretionary authority with respect to the statutory requirements relating to removal and set up of stills is provided. The implementation of these amendments will benefit both the Government and private industry by reducing costs and paperwork.

DATES: These regulations are effective June 5, 1985 and are made applicable by statute retroactively to November 1, 1984.

FOR FURTHER INFORMATION CONTACT: J.R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION: This final rule implements section 451 of the Deficit Reduction Act of 1984, Pub. L. 98–369, 98 Stat. 818. This section of the Act amends the provisions of Chapter 51 of Title 26 of the United States Code (U.S.C.) by repealing the $55 per year occupational tax on manufacturers of stills and the $22 commodity tax on each still or condenser to be used for distilling which is manufactured. Additionally, discretionary authority with respect to the statutory requirements relating to the removal and set up of stills to be used for the purpose of distilling is provided. The statutory provision which requires registration immediately after set up of any still and distilling apparatus to be used for the purpose of distilling, however, remains unchanged.

The following is a discussion of the significant amendments made by the final rule to conform the regulations concerning stills to these statutory changes.

(1) The regulations relating to the liability for, and payment of, occupational and commodity taxes; and the regulations concerning the exportation of stills and condensers with benefit of drawback, or without payment of tax, are removed. These regulations are no longer necessary since the occupational and commodity taxes applicable to stills are repealed. As a result of this change, Internal Revenue Service Form 11, Special Tax Return and Application for Registry, is no longer required to be filed. Also, ATF F 1610 (5620.11), Claim for Internal Revenue Drawback on Distilling Apparatus Exported and Entry for Exportation Thereof, is eliminated.

(2) The mandatory requirement that a manufacturer file notice when a still or other distilling apparatus is removed from the place of manufacture is revised. The revised regulations provide that the notice be filed in letter form when requested by the regional director (compliance). ATF F 110 (5000.13), Notice of Intention to Remove Distilling Apparatus, is eliminated.

(3) The regulations relating to obtaining a permit for the set up of a still are removed. However, it is provided that the regional director (compliance) may require that no still or distilling apparatus be set up without the manufacturer first giving written notice in letter form of that purpose. ATF F 1609 (5110.24), Application and Permit to Set Up Distilling Apparatus, is eliminated.

(4) The requirement that every person having control or possession of a still or distilling apparatus to be used for distilling register the apparatus with ATF immediately upon its being set up remains unchanged. However, the existing registration procedures are revised. It is provided that registration is to be accomplished by listing the still or distilling apparatus on the registration or permit application prescribed by regulation for qualification under 26 U.S.C. Chapter 51. Approval of the application by the regional director (compliance) constitutes registration. If subsequent to registration there is a change in ownership or location of the still or distilling apparatus, the registrant is required to file a letter notice with the regional director (compliance) in whose region the apparatus is located. In addition, the registrant must comply with the prescribed procedures for amendment of the registration or permit application. It is no longer provided that registration may be accomplished by filing ATF F 26 (5100.19). Consequently, this form is eliminated.

Further, the final rule removes Part 196 of Title 27 of the Code of Federal Regulations (27 CFR Part 196) in its entirety and recodifies the regulations relating to stills as 27 CFR Part 170, Subpart C. This change more accurately reflects the new scope of the still regulations and improves the organization of Title 27, CFR. In addition, the provisions of the following rulings have been obsoleted by the statutory changes implemented by this final rule or have been incorporated into the revised regulations—

Revenue Ruling 56–31, 1956–1 C.B. 711;

Revenue Ruling 57–98, 1957–1 C.B. 564;

Revenue Ruling 63–68, 1963–1 C.B. 386; and

Revenue Ruling 64–196, 1964–2 C.B. 532.

ATF believes the changes made by this final rule will reduce the administrative and compliance costs, and the paperwork burden, for both Government and private industry.

Administrative Procedures Act

Since the statutory amendments implemented by this rule are effective November 1, 1984, there is an immediate need for guidance with respect to the provisions contained in this rule. For this reason, ATF has determined that it is impracticable to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, ATF finds, upon good cause shown, that the exception provisions of 5 U.S.C. 553 are applicable to this rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to a regulatory flexibility analysis are not applicable to this final rule.

Executive Order 12291

This final rule is not a "major rule" within the meaning of section 1(b) of Executive Order 12291 on Federal Regulations issued February 17, 1981 (46 FR 13193). Analysis of the rule indicates that it will not result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507 of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Chapter 35). These requirements have been approved by OMB under control number 1512–0341.

List of Subjects

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Fruits, Exports, Labeling, Reporting and recordkeeping requirements, Security measures, Spices and flavorings, Stills, Surety bonds.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol, Authority delegations, Chemicals, Claims, Cosmetics, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

27 CFR Part 22

Administrative practice and procedure, Alcohol, Authority delegations, Claims, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Stills, Surety bonds, Wine.

27 CFR Part 196

Authority delegations, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Liquors, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Stills.

Drafting Information

The principal author of this rule is J. R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

In consideration of the foregoing, and under authority delegated by the Secretary of the Treasury, Title 27, Code of Federal Regulations, is amended as follows:

Section A. Part 18 is amended as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Paragraph 1. The authority citation for Part 18 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 2. The table of sections is amended by revising the entry for § 18.23 to read as follows:

Sec.

* * * * *

18.23 Registry of stills.

* * * * *

Par. 3. Section 18.23 is revised to read as follows:

§ 18.23 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills or distilling apparatus located on concentrate plant premises used for the production of concentrate. As provided under § 170.55, the listing of a still in the application, and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended, 1392, as amended (26 U.S.C. 5179, 5511))

Section B. Part 19 is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

§ 19.3 [Amended]

Par. 2. Section 19.3 is amended by removing the words "27 CFR Part 196—Stills".

Par. 3. Section 19.169 is revised to read as follows:

§ 19.169 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills or distilling apparatus located on plant premises used for distilling. As provided under § 170.55, the listing of a still in the application for registration, and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1355, as amended (26 U.S.C. 5172, 5179))

Par. 4. Section 19.905 is revised to read as follows:

§19.905 Taxes.

Distilled spirits may be withdrawn free of tax from the premises of an alcohol fuel plant exclusively for fuel use in accordance with this subpart. Payment of tax will be required in the case of diversion of spirits to beverage use or other unauthorized dispositions. The provisions of Subpart C of this part are applicable to distilled spirits for fuel use as follows:

(a) Imposition of tax liability (§§ 19.21 through 19.25);

(b) Assessment of tax (§§ 19.31 and 19.32); and

(c) Claims for tax (§§ 19.41 and 19.44).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Section C. Part 20 is amended as follows:

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph 1. The authority citation for Part 20 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201., Pub. L. 85–859, 72 Stat. 1370–1373, as amended (26 U.S.C. 5271–5275), unless otherwise noted.

§ 20.3 [Amended]

Par. 2. Section 20.3 is amended by removing the words "27 CFR Part 196—Stills" and inserting, in their place, the words "27 CFR Part 170—Miscellaneous Regulations Relating To Liquor".

Par. 3. Section 20.66 is revised to read as follows:

§ 20.66 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills or distilling apparatus located on the premises of a permittee used for distilling. As provided under § 170.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

Section D. Part 22 is amended as follows:

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Paragraph 1. The authority citation for Part 22 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201. Pub. L. 85–859, 72 Stat. 1370–1373, as amended (26 U.S.C. 5271–5275), unless otherwise noted.

§ 22.3 [Amended]

Par. 2. Section 22.3 is amended by removing the words "27 CFR Part 196—Stills" and inserting, in their place, the words "27 CFR Part 170—Miscellaneous Regulations Relating To Liquor".

Par. 3. Section 22.66 is revised to read as follows:

§ 22.66 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills on the premises of a permittee used for distilling. As provided in § 170.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

Section E. Part 170 is amended as follows:

1. The regulations in this subpart supersede 27 CFR Part 196 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before November 1, 1984.

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUORS

Paragraph 1. Subpart C is added to Part 170 to read as follows:

* * * * *

Subpart C—Stills

Sec.

170.41 Scope of subpart.
170.43 Forms prescribed.
170.45 Meaning of terms.
170.47 Notice requirement; manufacture of stills.
170.49 Notice requirement; set up of still.
170.51 Failure to give notice; penalty.
170.53 Identification of distilling apparatus.
170.55 Registry of stills and distilling apparatus.
170.57 Failure to register; penalty.
170.59 Records.

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 33504(h), unless otherwise noted.

* * * * *

Subpart C—Stills

§ 170.41 Scope of subpart.

The regulations in this subpart relate to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.

§ 170.43 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including all notices and records, required by this subpart. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(Pub. L. 89–554, 80 Stat. 383, as amended (5 U.S.C. 552))

§ 170.45 Meaning of terms.

When used in this subpart and in the forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words in the masculine shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

AFT officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

Condenser. Any apparatus capable of being used when connected with a still, for condensing or liquefying alcoholic or spirituous vapors, but shall not include condensers to be used with laboratory stills or stills used for distilling water or other nonalcoholic materials where the cubic distilling capacity is one gallon or less.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilling spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Distilling. The conduct by any person of operations that constitute, as defined by 26 U.S.C. 5002, operation as a

distiller. Such operations include: (a) The original manufacture of distilled spirits from mash, wort, or wash, or any materials suitable for the production of spirits; (b) the redistillation of spirits in the course of original manufacture; (c) the redistillation of spirits, or products containing spirits; (d) the distillation, redistillation, or recovery of spirits, denatured spirits, or articles containing spirits or denatured spirits; and (e) the redistillation or recovery of tax-free spirits.

Distilling apparatus. A still or condenser, as defined in this section, and any other apparatus to be used for the purpose of distilling.

Executed under the penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to any document prescribed under this subpart or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this —— (insert type of document), including the documents submitted in support thereof, has been examined by me and, to best of my knowledge and belief, is true, correct and complete."

Manufacturer of stills. Any person who manufactures any still or condenser, as defined in this section, or any other apparatus to be used for the purpose of distilling. The term includes a person furnishing separate parts of a complete still or condenser, of any kind, to a person who assembles same into a still or condenser for distilling and a person who procures materials or apparatus and converts same into a still or condenser for distilling.

Person. An individual, a trust, estate, partnership, association, company, or corporation.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this subpart.

Still. Any apparatus capable of being used for separating alcoholic or spirituous vapors, or spiritous solutions, or spirits, from spirituous solutions or mixtures, but shall not include stills used for laboratory purposes or stills used for distilling water or other nonalcoholic materials where the cubic distilling capacity is one gallon or less.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

United States. The several states and the District of Columbia.

U.S.C. The United States Code.

§ 170.47 Notice requirements; manufacture of stills.

(a) *General.* When required by letter issued by the regional director (compliance) and until notified to the contrary by the regional director (compliance), every person who manufactures any still, boiler (double or pot still), condenser, or other apparatus to be used for the purpose of distilling shall give written notice before the still or distilling apparatus is removed from the place of manufacture.

(b) *Preparation.* The notice will be prepared in letter form, executed under the penalties of perjury, and show the following information:

(1) The name and address of the manufacturer;

(2) The name and complete address of the person by whom the apparatus is to be used, and of any other person for, by, or through whom the apparatus is ordered or disposed of;

(3) The distilling purpose for which the apparatus is to be used (distillation of spirits, redistillation of spirits or recovery of spirits, including denatured spirits and articles containing spirits or denatured spirits);

(4) The manufacturer's serial number of the apparatus;

(5) The type and kind of apparatus;

(6) The distilling capacity of the apparatus; and

(7) The date the apparatus is to be removed from the place of manufacture.

(c) *Filing.* The notice will be filed in accordance with the instructions in the letter of the regional director (compliance). A copy of the notice will be retained at the place of manufacture as provided by § 170.59.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 843, Pub. L. 98–369, 98 Stat. 818 (26 U.S.C. 5101))

§ 170.49 Notice requirement; setup of still.

(a) *General.* When required by letter issued by the regional director (compliance), no still, boiler (double or pot still), condenser, or other distilling apparatus may be set up without the manufacturer of the still or distilling apparatus first giving written notice of that purpose.

(b) *Preparation.* The notice will be prepared by the manufacturer in letter form, executed under the penalties of perjury, and will contain the information specified in the letter of the regional director (compliance).

(c) *Filing.* The notice will be filed in accordance with the instructions in the letter of the regional director (compliance). A copy of the notice will be retained at the manufacturer's place of business as provided by § 170.59.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 843, Pub. L. 98–369, 98 Stat. 818 (26 U.S.C. 5101))

§ 170.51 Failure to give notice; penalty.

Failure to give notice of manufacture of still or notice of setup of still when required to do so is punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both, and any still, boiler (double or pot still), condenser, or other distilling apparatus to be used for the purpose of distilling which is removed or set up without the required notice having been given is forfeitable to the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1405, as amended, 1412, as amended (26 U.S.C. 5615, 5687))

§ 170.53 Identification of distilling apparatus.

(a) *General.* Each still or condenser manufactured will be identified by the manufacturer as follows:

(1) Name of manufacturer.

(2) Address of manufacturer.

(3) Manufacturer's serial number for the apparatus.

(b) *Marking requirements.* The apparatus will be identified in a legible and durable manner. The required identification marks will be placed on the apparatus in a location where they will not be obscured or concealed.

§ 170.55 Registry of stills and distilling apparatus.

(a) *General.* Every person having possession, custody, or control of any still or distilling apparatus set up shall, immediately on its being set up, register the still or apparatus, except that stills or distilling apparatus not used or intended for use in the distillation, redistillation, or recovery of distilled spirits are not required to be registered. The registration will be accomplished by describing the still or distilling apparatus on the registration or permit application prescribed in this chapter for qualification under 26 U.S.C. Chapter 51. Approval of the application will constitute registration of the still or distilling apparatus.

(b) *When still is set up.* A still will be regarded as set up and subject to registry when it is in position over a furnace, or connected with a boiler so that heat may be applied, irrespective of whether a condenser is in position. This rule is intended merely as an illustration and should not be construed as covering all types of stills or condensers requiring registration.

(c) *Change in location or ownership.* Where any distilling apparatus registered under this section is to be removed to another location, sold or otherwise disposed of, the registrant

shall, prior to the removal or disposition, file a letter notice with the regional director (compliance) of the region in which the apparatus is located. The letter notice will show the intended method of disposition (sale, destruction, or otherwise), the name and complete address of the person to whom disposition will be made, and the purpose for which the apparatus will be used. After removal, sale, or other disposal, the person having possession, custody, or control of any distilling apparatus intended for use in distilling shall immediately register the still or distilling apparatus on its being set up or, if already set up, immediately on obtaining possession, custody, or control. The registrant shall also comply with the procedures prescribed in this chapter for amendment of the registration or permit application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

§ 170.57 Failure to register; penalty.

Any person having possession, custody, or control of any still or distilling apparatus set up who fails to register the still or distilling apparatus is subject to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both, and the still or distilling apparatus is forfeitable to the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1398, as amended, 1405, as amended (26 U.S.C. 5601, 5615))

§ 170.59 Records.

A copy of each notice of manufacture, or set up, of still required under the provisions of § 170.47, or 170.49, shall be maintained, in chronological order, by the manufacturer at the premises where the still or distilling apparatus is manufactured. In addition, each manufacturer or vendor of stills shall maintain at their premises a record showing all stills and distilling apparatus (including those to be used for purposes other than distilling) manufactured, received, removed, or otherwise disposed of. The record will also show the name and address of the purchaser and the purpose for which each apparatus is to be used. Any commercial document on which all the required information has been recorded may be used for the record. The records will be kept available for a period of three years for inspection by ATF officers.

(Approved by the Office of Management and Budget under control number 1512-0341)

Subpart D—[Reserved]

Par. 3. Subpart D continues to be reserved.

PART 196—[REMOVED]

Section F. Part 196 is superseded by Subpart C of Part 170 and removed in its entirety effective June 5, 1985.

Signed: April 5, 1985.

Stephen E. Higgins,

Director.

Approved: May 13, 1985.

E.T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–13421 Filed 6–4–85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On February 18, 1985, Indiana submitted amendments to its program to amend the Indiana regulations concerning the location of the public office for filing permit applications and to clarify the proper newspaper for publishing notices of permit application.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSM, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving those amendments. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement these actions.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCA.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32108).

On February 18, 1985, the Indiana Department of Natural Resources submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendments are based primarily on a (previously approved) 1984 revision to Indiana's law, and revise the Indiana regulations as follows:

1. Indiana rules 310 IAC 12–3–26, 12–3–64, 12–3–106 (b) and (c), 12–3–107(c) and 12–3–108(c) are amended to change the location for permit applications to be filed from the county recorder's office to the county library nearest the location where the mining is proposed to occur.

2. Indiana rule 310 IAC 12–3–106(a) is amended to clarify that if proposed mining operations lie within more than one county, advertisements of permit application filing shall be placed in a local newspaper of general circulation for each county.

3. Indiana rule 310 IAC 12–3–106(a)(4) is added to require that newspaper advertisements of permit applications include the names of the owners of property included in the application.

4. Indiana rule 310 IAC 12–3–106(b) is amended to add the list of the county libraries which qualify for permit application filing locations.

5. Indiana rule 12–3–106(c) is amended to add a requirement for a filing fee, and to establish requirements for retention of the permit application in public files, including the requirement that the application remain on file until bond release.

6. Various non-substantive and editorial changes have been made to Sections 310 IAC 12–3–26, 12–3–64, 12–3–106, 12–3–107 and 12–3–108.

OSM published a notice in the **Federal Register** on March 29, 1985, announcing receipt of the proposed program amendments submitted on February 18, 1985, and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendment (50 FR 12571). The public comment period ended April 29, 1985. One comment was submitted in support of the changes. There was no request for a public hearing and the hearing scheduled for April 23, 1985, was not held.

II. Director's Findings

A. General Findings

The Directors finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Indiana on February 18, 1985, meet the requirements of SMCRA and the Federal regulations. All of the amended provisions are cited at the end of this notice in the amendatory language for Section 914.15. Indiana has also made non-substantive changes which the Director finds consistent with Federal requirements.

B. Specific Findings

1. Indiana rules 310 IAC 12–3–26, 12–3–64, 12–3–106(b) and (c), 12–3–107(c) and 12–3–108(c) are amended to change the location for permit applications to be filed from the county recorder's office to the county library nearest the location where the proposed mining is to occur.

The Federal regulations at 30 CFR 773.13(a)(2), specify that permit applications are to be filed with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. The Director has determined that libraries provide adequate access to the public and therefore, finds the State's substitution of "library" as an appropriate public office for filing applications, no less effective than the Federal rules.

2. Indiana rule 310 IAC 12–3–106(a) is amended to clarify that if proposed mining operations lie within more than one county, advertisements of permit application filing shall be placed in a local newspaper of general circulation for each county where the mining operation is to occur.

The Federal rule 30 CFR 773.13(a) requires applicants to place an advertisement in the locality of the proposed mining operation. The Director finds the Indiana revision to be no less effective than the requirements at 30 CFR 773.13(a).

3. Indiana rule 310 IAC 12–3–106(a)(4) is added to require that newspaper advertisements of permit applications include the names of the property owners for lands included in the application.

The Federal regulations at 30 CFR 773.13(a) set forth the minimum requirements that a newspaper advertisement shall contain. The Federal rules do not require the names of the property owners of the lands included in the application. However, the State has the authority to require additional information. Therefore, the Director finds the amendment no less effective than 30 CFR 773.13(a).

4. Indiana rule 310 IAC 12–3–106(b) is amended to list libraries which qualify for permit application filing locations.

Since the Director in Finding 1, above, finds that the State's provisions to require the filing of permit applications in the county library where the mining is proposed to occur is no less effective than 30 CFR 773.13(a)(2), the Director also finds that the State's list of libraries which qualify for permit application filing locations is no less effective than the Federal regulations.

5. Indiana rule 310 IAC 12–3–106(c) is amended to require a filing fee, and to establish requirements for retention of the permit application in public files, including the requirement that the application remain on file until final bond release.

The Federal regulations at 30 CFR 773.13(d) require that the permit application "be available, at reasonable times, for public inspection and copying." OSM interprets the Federal rule to mean that the permit application shall be on file until bond release. Therefore, the Director finds the State provisions no less effective than the Federal regulations.

6. Indiana has also made changes to its regulations which are not substantive and are of an editorial nature. The Director finds these changes to be no less effective than the Federal regulations.

III. Public Comments

In response to the March 29, 1985 **Federal Register** notice inviting comments relating to Indiana's proposed modification of its program, one comment was received from the Hoosier Environmental Council (HEC).

The HEC commented that the provisions of the amendment, if approved, would "provide greater public accessibility to decisions affecting surface mining activity in Indiana". Also, the increased public awareness of the surface mining program would help public officials make the most rational decisions when controversial applications are filed. The Director, based on the above findings, has found that the amended State provisions are no less effective than the Federal regulations.

IV. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on February 18, 1985, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

V. Procedural Matters

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM and exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (i) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(i) The following amendments submitted by the Indiana Department of Natural Resources to OSM on February 18, 1985 are approved effective June 5, 1985: revisions amending Indiana regulations at 310 IAC 12–3–26, 12–3–64, 12–3–106, 12–3–107 and 12–3–108.

[FR Doc. 85–13508 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Extension of Staffing Deadlines for the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the extension of staffing deadlines established in the **Federal Register** dated December 31, 1984, "Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977" (SMCRA). (49 FR 50718) In that notice OSM announced the disapproval of Kentucky's proposed amendment to reduce budget and staffing levels and established required actions Kentucky must take to bring staffing levels to the level previously approved in the State regulatory program. Kentucky was required: to announce position vacancies by February 1, 1985; to have reached the approved permanent program staffing level (408) by May 1, 1985; and, by the fifth of each month beginning on February 5, 1985, to provide a report to OSM describing the actions taken to achieve the approved program staffing levels by May 1, 1985.

Since the publication of the rule denying the proposed amendment, Kentucky has made substantial effort to locate funds and personnel in order to comply with the Director's decision, but has indicated that the deadlines imposed cannot be met. The Director has determined that the best interests of Kentucky's program will be served by extending the hiring period to August 31, 1985, to allow the State additional time to meet approved staffing levels so that qualified personnel can be recruited and selected.

Accordingly, the Director is granting an extension of time to allow Kentucky to reach the approved permanent program staffing level. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement this action.

EFFECTIVE DATE: April 5, 1985. This rule became effective upon publication of the interim final rule in the April 5, 1985 **Federal Register** (50 FR 13567).

ADDRESSES: Copies of the Kentucky program and the Administrative Record for the Kentucky program are available for public inspection and copying at the OSM offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5124, 1100 L Street NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Mr. W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982 **Federal Register** notice.

By a transmittal dated June 29, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to change approved levels of staffing and budget. Kentucky submitted a justification for proposed staffing levels by program area which gave an explanation of and reasons for the changes.

OSM published a notice in the **Federal Register** on July 24, 1984, announcing receipt of the amendment (49 FR 29804). The public comment period ended August 23, 1984. Since no one requested a public hearing, the hearing, scheduled for August 20, 1984, was not held.

OSM subsequently published a notice in the **Federal Register** on December 31, 1984, (49 FR 50718) announcing disapproval of the proposed budget and staffing amendment based on the Director's finding that the proposal failed to meet the requirements of SMCRA and the Federal regulations. Section 503(a)(3) of SMCRA requires that the State regulatory authority have sufficient administrative and technical personnel and sufficient funding to regulate mining in accordance with the Act. The Federal regulations require sufficient legal, administrative, and technical staff and sufficient funding to implement the approved program. The State's justification for the reduced levels relied heavily on the assertion that it has been demonstrated that Kentucky has adequately administered all aspects of the State program with existing staff. However, OSM's oversight program previously documented that Kentucky was encountering problems with the Kentucky State Program and, therefore, the Director disapproved the amendment.

In the December 31, 1984 notice, the Director also established required actions Kentucky must take to bring staffing levels to the level previously approved in the State regulatory program. The State was required: to announce position vacancies by February 1, 1985; to have reached the approved permanent staffing levels by May 1, 1985; and, by the fifth of each month beginning on February 5, 1985, to provide a report to OSM describing actions taken to achieve the approved program staffing levels by May 1, 1985.

II. Extension of Deadline

Following publication of the notice of disapproval of Kentucky's proposed staffing agreement in the December 31, 1984 **Federal Register**, the Director, OSM and the Governor of Kentucky met several times to discuss Kentucky's ability to meet staffing requirements imposed in that notice. The Governor made clear in these meetings that Kentucky wished to retain program primacy but would be unable to meet the deadlines imposed by the Director for staff increases. The State expects to be able to achieve the required staffing

level of 408 in the Kentucky Department of Surface Mining Reclamation and Enforcement by August 1, 1985.

On February 21, 1985, the Director, OSM and the Governor of Kentucky signed an Amendment to Agreement for Grant Number G5143213, the Fiscal Year 1984 Administration and Enforcement Grant to Kentucky, wherein it was agreed that: the State shall meet and maintain by August 31, 1985, the approved program staffing levels; the State shall provide monthly progress reports to OSM on the fifth of each month, describing actions taken to achieve approved levels; and the State must complete advertisement and other recruitment actions for necessary positions to meet approved levels by May 1, 1985.

On April 5, 1985, OSM published an interim final rule announcing the extension of staffing deadlines to reflect the amended deadlines in the grant agreement (50 FR 13567). The interim final rule established new deadlines in 30 CFR 917.16(b). Since reaching the agreement, Kentucky has submitted monthly reports as required by 30 CFR 917.16(b)(3), documenting actions taken and positions filled in accordance with the requirements of the agreement. Kentucky submitted on May 1, 1985, copies of vacancy announcements that has been advertised in accordance with 30 CFR 917.16(b)(1). Kentucky instituted formal training for new inspectors at Eastern Kentucky University, Richmond, Kentucky, to begin May 13, 1985.

III. Public Comments

Thomas J. FitzGerald, Attorney at Law, submitted comments on behalf of the Kentucky Governmental Accountability Project of the Kentucky Resources Council, the Kentucky Conservation Committee, and the Sierra Club, Cumberland Chapter.

Mr. FitzGerald stated that the Sierra Club, Cumberland Chapter and the Kentucky Conservation Committee are parties-plaintiff in the pending case of *Sierra Club et al.* v. *Hodel,* CA No. 82–30, (D.C.E.D. Ky.) which challenges, *inter alia,* the failure to require the State program to contain adequate inspection and enforcement personnel. Mr. FitzGerald stated that his comments in no way concede the sufficiency of the approved staffing level of 408 which is being challenged.

Mr. FitzGerald supported the extension of the deadline for attaining the agreed-upon staffing level provided that the deadlines and timetables are strictly adhered to.

The commenter did not agree with the use of the term "good faith" in describing Kentucky's actions related to staffing efforts. The commenter pointed out that Kentucky has been at odds with OSM on this issue since submission of its proposed regulatory program and that Kentucky has alternately claimed to have adequate staff or to be restricted by inadequate staff in carrying out its program requirements.

The commenter stated that "the inadequacy of the Kentucky staffing level had real and demonstrable adverse effects both on the viability of the State program and in terms of on-the-ground environmental damage. * * * The lack of adequate filed personnel, as well as lack of coherence and commitment in management, has directly correlated into inadequate and incomplete field inspections, an almost wholesale failure in the control of the coal exploration process and the two-acre permitting process, and failure in enforcement of environmental regulations and permit conditions."

The commenter called it ironic that Kentucky's actions are termed "good faith" when Kentucky's position taken in February 1985, was to offer as a "bottom line" the staff number that had recently been disapproved. The commenter said the extension was warranted for fiscal, time and resource reasons and not because of any actions on Kentucky's part.

OSM acknowledges that certain problems that have surfaced in Kentucky's implementation of its approved program have been directly or indirectly related to staffing levels. OSM is seriously concerned that Kentucky meet the requirements contained in this notice within the established deadlines. OSM believes that the staffing levels and schedule for completion of hiring established in this notice will enable the DNERP to meet obligations under the approved Kentucky program.

IV. Director's Decision

In order to implement the agreement signed by the Director and the Governor of Kentucky on February 21, 1985, the Director has extended the deadlines imposed in the December 31, 1984 **Federal Register** notice, effective April 5, 1985. This action was taken to allow Kentucky to obtain necessary funding and to recruit and select the best-qualified persons available.

This action was made effective immediately upon publication of an interim final rule announcing the action in the **Federal Register** on April 5, 1985 (50 FR 13567). This was done to bring the required staffing actions previously imposed on Kentucky into agreement with the grant amendment agreement which was signed by the Governor and the Director on February 21, 1985.

V. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

2. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.16 is amended revising paragraph (b) to read as follows:

§ 917.16 Required program amendments.

* * * * *

(b) Pursuant to 30 CFR 732.17, Kentucky is required to accomplish the following actions or termination of the program approval found in § 917.10 will be initiated on August 31, 1985.

(1) Action to recruit personnel to meet the approved program staffing levels of 408 must begin upon publication of this

notice. No later than May 1, 1985, notices concerning vacant positions must be advertised.

(2) Kentucky must have employed sufficient personnel to reach the approved permanent program level (408) no later than August 31, 1985. Of the approved permanent program level of 408, a minimum of 156 must be inspection and enforcement personnel.

(3) By the fifth of each month, beginning on February 5, 1985, Kentucky will provide a report to OSM describing the actions taken to achieve the approved program staffing levels by August 31, 1985, and of any additional vacancies which may have occurred during the previous month.

[FR Doc. 85-13506 Filed 6-4-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 85-001A]

Individual Participation in Marine Safety Reporting Program (MSRP); Enforcement Policy

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends 33 CFR Part 1 (Subpart 1.07) to set forth Coast Guard enforcement policy when an individual participates in the voluntary Marine Safety Reporting Program (MSRP). The Coast Guard will not assess a penalty for a violation involving the navigation and control of a vessel if the individual has reported the incident to MSRP and if certain conditions are met. This policy will provide mariners with added incentive to voluntarily report safety-related incidents to MSRP.

EFFECTIVE DATE: This amendment is effective June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Glass, Office of Merchant Marine Safety, (202) 426-6251, 7:30 am to 4:00 pm Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Transportation has initiated a test of a voluntary Marine Safety Reporting Program (MSRP). Modeled upon the Aviation Safety Reporting System (ASRS), MSRP is a system by which the marine community can voluntarily submit reports containing information on "near-mishaps" or difficulties encountered with the navigation and control of a commercial vessel. MSRP is intended to supplement existing mandatory reporting requirements to collect information on safety-related problems which would otherwise go unreported. In particular, one objective of MSRP is to develop new insight into the role that human factor considerations play in marine transportation. MSRP will be managed by the Department of Transportation's Transportation Systems Center in Cambridge, Massachusetts.

An individual desiring to report to MSRP will complete an MSRP Report Form and mail it to the Transportation Systems Center. This report will then go to an analyst who reviews the report to determine whether it is complete. If it is not, the analyst will attempt to contact the reporter by telephone to obtain additional information. Following this, the identification strip section of the report form is removed and returned to the reporter to acknowledge receipt of the report. At this time, the report is "sanitized"; that is, all identifying data is obscured to remove any chance that the report could be traced to a specific reporter or vessel. No record is kept of the reporter's identity. After sanitization, the report is analyzed to determine whether the hazard(s) described in the report requires immediate notifications to prevent an impending accident. The report is then processed for inclusion into the MSRP database.

At the end of the test, MSRP will be evaluated to determine whether the program should be continued. This evaluation will focus on the level of support of the marine community, the quality of the information received, and the usefulness of the information received.

At the present time, OMB approval of the report form used will expire on 1 October 1985. A request for extension of the approval period is pending. If approval of the report form is not extended, this test will be terminated on 1 October 1985. If approval for continued use of the form is obtained, the test will be terminated on 1 June 1986.

Persons desiring more detailed information on MSRP or who would like to obtain copies of the MSRP Report Form should contact Mr. A.L. Lavery, Transportation Systems Center, Kendall Square, Cambridge, Massachusetts 02142; telephone (617) 494-2577.

To encourage participation in MSRP, the Coast Guard has agreed not to assess a penalty under this subpart against an individual in certain instances when the individual has reported the incident to MSRP. The case will be dismissed when the individual can show that he/she made a report to MSRP within 15 days from the date of the incident or prior to being informed either in writing or verbally that the Coast Guard was initiating an enforcement action, whichever comes first, and if:

(1) The incident fell within the scope of MSRP in that it involved the navigation and control of a commercial vessel;

(2) The violation/offense did not involve a criminal activity;

(3) The violation/offense was found to be inadvertent and not deliberate;

(4) The violation/offense did not involve an incident which is required to be reported by statute or regulation, e.g., marine casualties, oil/hazardous materials pollution incidents, collisions with aids to navigation, certain navigational system failures, etc.;

(5) The violation/offense was not one where statutes require a mandatory penalty or sanction;

(6) The incident was not one which disclosed a lack of qualification or competency on the part of a licensed/documented individual;

(7) The individual has not used this provision on a prior occasion.

The individual is afforded the opportunity to use his/her report to MSRP as a basis for avoiding an action under this subpart when notified by the hearing officer that a violation appears to have been committed and that a penalty appears to be appropriate. The individual may, in written correspondance, present to the hearing officer the MSRP receipt slip indicating that he/she reported the incident to MSRP. Alternatively, the individual may request a hearing as to the merits of the alleged violation, and present the MSRP receipt slip at the hearing. When the hearing officer determines that the conditions for exercising this policy exist, the decision rendered by the hearing officer shall state that the case is dismissed by reason of the individual's participation in MSRP.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting provisions that are included in this regulation have been submitted by the Office of the Secretary of Transportation for approval to the Office of Management and Budget (OMB). OMB Control Number 2105-0512 has been assigned.

This amendment is published as a final rule because the provisions thereof concern matters relating to an agency general statement of policy involving agency procedure and practice which is excepted under 5 U.S.C. 553 from the rulemaking procedures. Further, since this is only a limited test to determine

the feasibility and desirability of an ongoing MSRP, I find that notice and public procedures thereon are unnecessary and that good cause exists for publishing this amendment as a final rule.

This amendment is being made effective on 1 June 1985. As discussed below, participation in the test is voluntary and those participating may obtain relief from possible penalty action against them. Therefore, under 5 U.S.C. 553(d), it has been determined that good cause exists for making the rule effective in less than 30 days after publication.

Regulatory Evaluation and Certification

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 dated May 22, 1980). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Compared to the total number of individuals employed in the marine industry who are subject to the provisions of this subpart, the number of individuals who are confronted with proceedings under 33 CFR Subpart 1.07 is insignificant. Any impact is further reduced since this amendment affects only a fraction of those individuals confronted with civil penalty action. Reporting to MSRP and the use of the MSRP receipt slip to avoid an enforcement action is voluntary.

Environmental Impact

The Coast Guard has considered the impact of this revision upon the environment and concluded that the action represents changes in administrative matters only and has no impact upon the environment. Consequently, no environmental impact statement is required.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Coast Guard, Freedom of information, Penalties.

PART 1—[AMENDED]

In consideration of the foregoing, Subpart 1.07 of Title 33 Code of Federal Regulations is amended as follows:

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

1. The authority citation for subpart 1.07 is revised to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 2,633, 49 CFR 1.46(b).

2. By adding a new § 1.07–17 to read as follows:

§ 1.07–17 Participation in the voluntary Marine Safety Reporting Program (MSRP).

(a) To encourage participation in MSRP, the Coast Guard has agreed not to assess a penalty under this subpart against an individual in certain instances when the individual has reported the incident to MSRP. The case will be dismissed when the individual can show that he/she made a report to MSRP within 15 days from the date of the incident or prior to being informed either in writing or verbally that the Coast Guard was initiating an enforcement action, whichever comes first, and if:

(1) The incident fell within the scope of MSRP in that it involved the navigation and control of a commerical vessel;

(2) The violation/offense did not involve a criminal activity;

(3) The violation/offense was found to be inadvertent and not deliberate;

(4) The violation/offense did not involve an incident which is required to be reported by statute or regulation, e.g., marine casualties, oil/hazardous materials pollution incidents, collisions with aids to navigation, certain navigational system failures, etc.;

(5) The violation/offense was not one where statutes require a mandatory penalty or sanction;

(6) The incident was not one which disclosed a lack of qualification or competency on the part of a licensed/documented individual;

(7) The individual has not used this provision on a prior occasion.

(b) Use of the MSRP receipt slip will become part of the person's record only for the purpose of documenting the one-time opportunity to use MSRP to avoid an action under this subpart.

3. Section 1.07–25 is amended by adding paragraph (e) to read as follows:

§ 1.07–25 Preliminary matters.

* * * * *

(e) An individual may use a report made to MSRP as a basis for avoiding assessment of a penalty under this subpart by presenting the MSRP receipt slip to the hearing officer either:

(1) In written evidence and argument in lieu of a hearing after being notified by the hearing officer that a violation appears to have been committed and a penalty is appropriate, or;

(2) At a hearing conducted pursuant to this subpart.

4. Section 1.07–65 is amended by adding paragraph (c) to read as follows:

§ 1.07–65 Hearing officer's decisions.

* * * * *

(c) When the hearing officer determines that the incident has been reported to MSRP and the conditions of § 1.07–17(a) exist, the decision shall state that the case is dismissed by reason of the individual's participation in MSRP.

Dated: May 31, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85–13511 Filed 5–31–85; 4:18 pm]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3129, 4F3111/R767; PH–FRL 2845–4]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule (1) establishes tolerances for the combined residues of the fungicide iprodione, its isomer and its metabolite, in or on certain raw agricultural commodities, (2) increases established tolerances for certain raw agricultural commodities of animal origin, (3) revises the tolerance expression for raw agricultural commodities of animal origin, and (4) recodifies the commodity milk. This regulation was requested through petitions submitted by Rhone-Poulenc, Inc. Elsewhere in this issue of the **Federal Register**, a feed additive regulation for iprodione, is also being established.

EFFECTIVE DATE: Effective on June 5, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4F3129, 4F3111/R767], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. M–3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Environmental

Protection Agency, 401 M St. SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register**, which announced that Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, had submitted the following pesticide petitions (PP) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide iprodione as follows:

1. *PP 4F3129.* Published in the **Federal Register** of December 12, 1984 (49 FR 48374). Proposes that tolerances for the combined residues of iprodione be established as follows:

a. Iprodione [3-(3, 5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on peanuts at 0.5 ppm, peanut forage and hay at 150 ppm, and peanut hulls at 7.0 ppm.

b. Iprodione and its non-hydroxylated metabolites (expressed as iprodione equivalents) in or on eggs at 0.01 ppm, kidney of cattle, goats, hogs, horses, and sheep at 3.0 ppm, liver of cattle, goats, hogs, horses, and sheep at 2.0 ppm, meat, fat, and meat byproducts (excluding liver and kidney) of cattle, goats, hogs, horses, and sheep at 0.6 ppm, and meat, fat, and meat byproducts of poultry at 0.05 ppm.

c. Iprodione and its non-hydroxylated and hydroxylated metabolites in or on milk at 0.4 ppm.

2. *PP 4F3111.* Published in the **Federal Register** of October 17, 1984 (49 FR 40659). Proposes that tolerances be established for the combined residues of iprodione, its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the raw agricultural commodity onions at 0.5 ppm.

During the course of review of PP 4F3129, tolerances for residues of iprodione in or on raw agricultural commodities of animal origin were established under PP 3F2964, published in the **Federal Register** of December 5, 1984 (49 FR 47491). The Agency concluded that proposed tolerances for eggs of 0.01 ppm, and meat, fat, and meat byproducts of poultry at 0.05 ppm were not appropriate since tolerances were already established at 0.8 ppm for eggs and 0.4 ppm for poultry meat and meat byproducts, 2 ppm for poultry fat, and 3 ppm for poultry liver. The proposed tolerance of 2 ppm in liver of cattle, goats, hogs, horses, and sheep was not appropriate since tolerances were already established at 3 ppm. It was recommended that these inappropriate tolerances be withdrawn.

The Agency also concluded that a tolerance of 0.5 ppm was appropriate for residues of iprodione in milk, and in the meat, fat (except poultry fat), and meat byproducts (except liver and kidney) of cattle, goats, hogs, horses, poultry, and sheep and that 40 CFR 180.399 (b) and (c) should be combined and simplified to include metabolites containing the 3,5-dichloroaniline moiety.

EPA then issued a notice, published in the **Federal Register** of May 8, 1985 (50 FR 19445), which announced that Rhone-Poulenc Inc. had amended pesticide petition 4F3129 as follows by:

a. Revising the tolerance expression for iprodione residues in raw agricultural commodities of animal origin to read: "for combined residues of iprodione and its metabolites containing the 3,5-dichloroaniline moiety (expressed as iprodione equivalents)".

b. Increasing the proposed tolerance levels for meat, fat, and meat byproducts (excluding liver and kidney) of cattle, hogs, goats, horses, and sheep to 0.5 ppm.

c. Increasing the tolerance level for milk to 0.5 ppm.

d. Withdrawing the tolerance proposals for liver of cattle, goats, hogs, horses, and sheep, meat, fat, and meat byproducts of poultry and eggs as inappropriate.

Upon review of the revised section F, the Agency decided that the tolerance expression for iprodione residues in raw agricultural commodities of animal origin would be more accurately expressed as iprodione, its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolites [3-(3,5-dichlorophenyl)2,4-dioxo-1-imidazolidine-carboxamide] and [*N*-(3,5-dichloro-4-hydroxyphenyl)ureidocarboxamide]. By using this revised tolerance expression, paragraph (c) of 180.399 could be deleted and all the raw agricultural commodities of animal origin could be listed under the new tolerance expression in paragraph (b).

Rhone-Poulenc Inc. amended pesticide petition 4F3111 on February 28, 1985, by revising the tolerance proposal to include only dry bulb onions.

No comments were received in response to these notices of filing.

The data submitted in the petitions and all other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances, include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg body weight/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg body weight/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg body weight/day).

2. A rabbit teratology study in which the following doses were administered by gavage, 0, 100, 200 and 400 mg/kg body weight, resulting in a teratogenic NOEL equal to or greater than 400 mg/kg body weight (considered unacceptable under current guidelines).

3. A rat teratology study in which the following doses were administered by gavage, 0, 100, 200, 400 mg/kg body weight, resulting in a teratogenic NOEL greater than 400 mg/kg body weight.

4. A rat 24-month feeding/oncogenicity study using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study at the highest dose tested.

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, 178.6 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study at the highest dose tested.

6. A 1-year dog feeding study using dosage levels of 100, 600, and 3,600 ppm (2.5, 15, and 90 mg/kg bw/day) with a NOEL of 100 ppm (2.5 mg/kg bw/day) and a LEL of 600 ppm (15 mg/kg bw/day).

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg body weight/day) with a NOEL of 2,400 ppm (60 mg/kg body weight/day, and a LEL of 7,200 ppm (180 mg/kg body weight/day).

Data currently lacking include a second teratology study using gastric intubation, an acute dermal study, and mutagenicity studies including: (1) DNA repair; (2) gene mutation, mammalian, preferably in vitro; (3) chromosomal aberration, mammalian, preferably in vitro.

The acceptable daily intake (ADI) based on the three generation rat reproduction study (NOEL of 25 mg/kg/day) and using a 100 fold safety factor, is calculated to be 0.2500 mg/kg of bw/day. The maximum permitted intake (MPI) for a 60 kg human is calculated to

be 15.00 mg/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 1.6905 mg/day and utilizes 11.27 percent of the MPI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of the chemical.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation, may within 30 days after publication in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12211, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 23, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399 is amended by (1) adding and alphabetically inserting the commodities dry bulb onions, peanuts, peanut forage and hay, and peanut hulls to paragraph (a); (2) revising paragraph (b); and (3) removing paragraph (c) to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Onions, dry bulb	0.5
* * * * *	
Peanuts	0.5
Peanut forage	150.0
Peanut hay	150.0
Peanut hulls	7.0
* * * * *	

(b) Tolerances are established for the combined residues of iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolites [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine-carboxamide] and [*N*-(3,5-dichloro-4-hydroxyphenyl)-ureido-carboxamide], all expressed as iprodione equivalents in or on the following raw agricultural commodities of animal origin:

Commodities	Parts per million
Cattle, fat	0.5
Cattle, kidney	3.0
Cattle, liver	3.0
Cattle, meat	0.5
Cattle, meat byproducts (mbyp) (except kidney and liver)	0.5
Eggs	0.8
Goats, fat	0.5
Goats, kidney	3.0
Goats, liver	3.0
Goats, meat	0.5
Goats, mbyp (except kidney and liver)	0.5
Hogs, fat	0.5
Hogs, kidney	3.0
Hogs, liver	3.0
Hogs, meat	0.5
Hogs, mbyp (except kidney and liver)	0.5
Horses, fat	0.5
Horses, kidney	3.0
Horses, liver	3.0
Horses, meat	0.5
Horses, mbyp (except kidney and liver)	0.5
Milk	0.5
Poultry, fat	2.0
Poultry, liver	3.0
Poultry, meat	0.5
Poultry, mbyp (except kidney and liver)	0.5
Sheep, fat	0.5
Sheep, kidney	3.0
Sheep, liver	3.0
Sheep, meat	0.5
Sheep, mbyp (except kidney and liver)	0.5

(c) [Removed].

[FR Doc. 85–13368 Filed 6–4–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 5E3236/R763; PH–FRL 2845–1]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodity chili peppers. This regulation to establish a maximum permissible level for residues of the herbicide in or on chili peppers was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: Effective on June 5, 1985.

ADDRESS: Written objections, identified by the document control number, [PP 5E3236/R763], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 24, 1985 (50 FR 16104), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 5E3236 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of New Mexico. This petition proposed establishing a tolerance for combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-proponal and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodity chili peppers at 0.5 part per million (ppm).

No comments or request for referral to an advisory committee were received in response to the proposed rulemaking.

The data submitted in the petition and all other relevant material have been

evaluated. The data considered in support of the tolerance included a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg)); a 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg); a rat teratology study with teratogenic and fetotoxic NOEL's of greater than 360 mg/kg; a rabbit teratology study with teratogenic and fetotoxic NOEL's of 360 mg/kg and a maternal NOEL of 120 mg/kg; a 2-generation rat reproduction study with a reproductive NOEL of 300 ppm (15 mg/kg) and an LEL of 1,000 ppm (50 mg/kg); a mouse dominant lethal study negative for mutagenic effects; an AMES mutagenicity assay negative for mutagenic effects; and a 2-year mouse oncogenicity study with a NOEL greater than 3,000 ppm (450 mg/kg), tested at 30, 1,000 and 3,000 ppm.

A 2-year chronic feeding/oncogenicity study in the rat (IBT validated, core supplementary) at dietary doses of 0, 30, 300, and 3,000 ppm with a systemic NOEL of less than 30 ppm, equivalent to 1.5 mg/kg that demonstrated a dose-related decreased spleen weight. Results of the completed 2-year chronic feeding/oncogenicity study in the rat (IBT), show a statistically significant increase in primary liver neoplasms in females of the high dose group (3,000 ppm).

The Agency evaluated dietary exposure to metolachlor residues based on the IBT rat study and has estimated that the residues resulting from this tolerance and previously published tolerances result in a "worst case" oncogenic risk as discussed below. In addition, a new 2-year chronic feeding/oncogenicity study in the rat has been conducted at dietary doses of 0, 30, 300, and 3,000 ppm with a systemic NOEL of 30 ppm, a systemic LEL of 300 ppm (testicular atropy) and an increased incidence of neoplastic nodules and hepatocellular carcinomas. The Q^* (2.0×10^{-3}) used to calculate risk was obtained from the IBT rat chronic feeding/oncogenicity study. A Q^* for the most recent study is not available at present. The Agency will reconsider this risk estimate and reevaluate this and all other tolerances for metolachlor once the new risk assessment is completed.

The risk for the existing tolerances calculated under the new Tolerance Assessment System (TAS) is 1.59×10^{-6}; the risk for the proposed use is 4.2×10^{-8}; and the risk for the existing uses and the proposed use is 1.592×10^{-6}. The incremental increase in risk is extremely small (0.26 percent).

Tolerances have previously been established for residues of metolachlor ranging from 0.02 ppm in meat, milk, poultry, and eggs to 3.0 ppm in peanut forage and hay. The theoretical maximal residue contribution (TMRC) for existing tolerances (as calculated by the TAS) is 0.000794 mg/kg/day for the total diet of the U.S. population. The proposed use will contribute an additional 0.0000021 mg/kg/day, an increase of 0.26 percent.

Use of metolachlor on chili peppers will be geographically restricted to New Mexico only. In order to expand the area of usage on chili peppers, additional residue data will be required from other geographical areas.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 24, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[Amended]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.368(a) is amended by adding and alphabetically inserting the commodity chili peppers to read as follows:

§ 180.368 Metolachlor, tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Peppers, chili	0.5
* * * * *	

[FR Doc. 85-13365 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2780/R767] PH-FRL 2846-1)

Potassium Ricinoleate and Related C_{12}–C_{18} Fatty Acid Potassium Salts; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for potassium ricinoleate and related C_{12}–C_{18} fatty acid potassium salts in or on the raw agricultural commodity catfish when used as an algicide in managed catfish ponds in accordance with good agricultural practice. This regulation is established pursuant to a petition submitted by the University of Southern Mississippi.

EFFECTIVE DATE: Effective on June 5, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 22, 1982 (47 FR 57128), which announced that the University of Southern Mississippi, P.O. Box 5024, Southern Station, Hattiesburg, MS 29406, had filed a pesticide petition (PP 3E2780) with EPA proposing to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for potassium ricinoleate in fish when it results from the use of saponified castor oil as an algicide in catfish ponds.

There were no comments received in response to the notice of filing.

The exemption has been clarified to specify potassium ricinoleate and related C_{12}–C_{18} fatty acid potassium salts and to indicate the raw agricultural commodity catfish. The data in the petition and other relevant material have been evaluated. Potassium ricinoleate and related C_{12}–C_{18} fatty acid potassium salts are formed by the reaction of castor oil and potassium hydroxide. Castor oil USP is cleared for use as a cosolvent under 40 CFR 180.1001(e) for application to animals. Castor oil is cleared for food use as a release agent for hard candy and as a protective coating for vitamin and mineral tablets under 21 CFR 172.876. Potassium hydroxide is affirmed as generally recognized as safe under 21 CFR 184.1631 for use in food at levels not to exceed current good manufacturing practice. Residues in the human or animal diet resulting from the proposed use would be significantly less than dietary burdens from the established clearances. Also, a related material, potassium oleate and related C_{12}–C_{18} fatty acid potassium salts, is exempted from the requirement of a tolerance for residues in all raw agricultural commodities (40 CFR 180.1068).

There are no regulatory actions pending against potassium ricinoleate and related C_{12}–C_{18} fatty acid potassium salts (saponified castor oil).

The pesticide is considered useful for the purpose for which the exemption from the requirement of a tolerance is being sought. The exemption will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 23, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 40—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By adding new § 180.1085, to read as follows:

§ 180.1085 Potassium ricinoleate and related C_{12}–C_{18} fatty acid potassium salts; exemption from the requirement of a tolerance.

Potassium ricinoleate and related C_{12}–C_{18} fatty acid potassium salts are exempted from the requirement of a tolerance for residues in or on the raw agricultural commodity catfish when used as an algicide in managed catfish ponds in accordance with good agricultural practices.

[FR Doc. 85–13512 Filed 6–4–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

46 CFR Part 5

[CGD 85–001]

Individual Participation in Marine Safety Reporting Program (MSRP); Enforcement Policy on Suspension and Revocation Proceedings

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends 46 CFR Part 5 to set forth Coast Guard enforcement policy relating to suspension and revocation proceedings when an individual participates in the voluntary Marine Safety Reporting Program (MSRP). The Coast Guard will not impose any order under this Part which adversely affects a mariner's license, certificate or document if the individual has reported the incident to MSRP and if certain conditions are met. This policy will provide mariners with added incentive to voluntarily report safety-related incidents to MSRP.

EFFECTIVE DATE: This amendment is effective June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Glass, Office of Merchant Marine Safety, (202) 426–6251, 7:30 am to 4:00 pm Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Transportation has initiated a test of a voluntary Marine Safety Reporting Program (MSRP). Modeled upon the Aviation Safety Reporting System (ASRS), MSRP is a system by which the marine community can voluntarily submit reports containing information on "near-mishaps" or difficulties encountered with the navigation and control of a commercial vessel. MSRP is intended to supplement existing mandatory reporting requirements to collect information on safety-related problems which would otherwise go unreported. In particular, one objective of MSRP is to develop new insight into the role that human factor considerations play in marine transportation. MSRP will be managed by the Department of Transportation's Transportation Systems Center in Cambridge, Massachusetts.

An individual desiring to report to MSRP will complete an MSRP Report Form and mail it to the Transportation Systems Center. This report will then go to an analyst who reviews the report to determine whether it is complete. If it is not, the analyst will attempt to contact the reporter by telephone to obtain additional information. Following this, the identification strip section of the report form is removed and returned to the reporter to acknowledge receipt of the report. At this time, the report is "sanitized"; that is, all identifying data is obscured to remove any chance that the report could be traced to a specific reporter or vessel. No record is kept of the reporter's identity. After sanitization, the report is analyzed to determine whether the hazard(s) described in the report requires immediate notifications to prevent an impending accident. The report is then processed for inclusion into the MSRP data base.

At the end of the this test, MSRP will be evaluated to determine whether the program should be continued. This evaluation will focus on the level of support of the marine community, the quality of the information received, and the usefulness of the information received.

At the present time, OMB approval of the report form used will expire on 1 October 1985. A request for extension of the approval period is pending. If

approval of the report form is not extended, this test will be terminated on 1 October 1985. If approval for continued use of the form is obtained, the test will be terminated on 1 June 1986.

Persons desiring more detailed information on MSRP or who would like to obtain copies of the MSRP Report Form should contact Mr. A. L. Lavery, Transportation Systems Center, Kendall Square, Cambridge, Massachusetts 02142; telephone (617) 494-2577.

To encourage participation in MSRP, the Coast Guard has agreed not to seek the imposition of an order which adversely affects a mariner's license, certificate or document; i.e., a warning, admonition, suspension or revocation, in certain instances when the individual has reported the incident to MSRP. The case will be dismissed when the individual can show that he/she made a report to MSRP within 15 days from the date of the incident or prior to being informed either in writing or verbally that the Coast Guard was initiating an enforcement action, whichever comes first, and if:

(1) The incident fell within the scope of MSRP in that it involved the navigation and control of a commercial vessel;

(2) The violation/offense was found to be inadvertent and not deliberate;

(3) The violation/offense did not involve a criminal activity;

(4) The violation/offense did not involve an incident which is required to be reported by statute or regulation, e.g., marine casualties, oil/hazardous materials pollution incidents, collisions with aids to navigation, certain navigational system failures, etc.;

(5) The violation/offense was not one where statutes require a mandatory penalty or sanction;

(6) The incident was not one which disclosed a lack of qualification or competency on the part of a licensed/documented individual; and

(7) The individual has not used this provision on a prior occasion.

The individual is afforded the opportunity to use his/her report to MSRP as a basis for avoiding an action against a license, certificate or document at either of two levels. The individual may ask that the investigating officer accept the MSRP receipt slip in lieu of preferring charges or giving a warning. Alternatively, if the individual desires a hearing on the alleged offense, the MSRP receipt slip may be presented to the administrative law judge at the hearing. It is expected that the administrative law judge will first rule as to whether the charge(s) and specification(s) are proved before making a determination as to whether the conditions for exercising this policy exist. If they do, the administrative law judge shall render an order stating that the case is dismissed by reason of the individual's participation in MSRP.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the reporting provisions that are included in this regulation have been submitted by the Office of the Secretary of Transportation for approval to the Office of Management and Budget (OMB). OMB control Number 2105-0512 has been assigned.

This amendment is published as a final rule because the provisions thereof concern matters relating to an agency general statement of policy involving agency procedure and practice which is excepted under 5 U.S.C. 553 from the rulemaking procedures. Further, since this is only a limited test project to determine the feasibility and desirability of an ongoing MSRP, I find that notice and public procedures thereon are unnecessary and that good cause exists for publishing this amendment as a final rule.

This amendment is being made effective on 1 June 1985. As discussed below, participation in the test is voluntary and those participating may obtain relief from possible penalty action against them. Therefore, under 5 U.S.C. 553(d), it has been determined that good cause exists for making the rule effective in less than 30 days after publication.

Regulatory Evaluation and Certification

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 dated May 22, 1980). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Compared to the total number of individuals holding Coast Guard licenses, certificates or documents, the number of individuals who face proceedings under 46 CFR Part 5 is insignificant. Any impact is further reduced since this amendment affects only a fraction of the individuals confronted with suspension and revocation action. Reporting to MSRP and the use of the MSRP receipt slip to avoid an enforcement action is voluntary.

Environmental Impact

The Coast Guard has considered the impact of this revision upon the environment and concluded that the action represents changes in administrative matters only and has no impact upon the environment. Consequently, no environmental impact statement is required.

List of Subjects in 46 CFR Part 5

Administrative practices and procedures, Investigations, Adminstrative law judge, Investigating officer, Seaman, License, Certificate, Document, Administrative hearings, Suspension, Revocation.

PART 5—SUSPENSION AND REVOCATION PROCEEDINGS

In consideration of the foregoing, Part 5 of Title 46 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 5 is revised to read as follows:

Authority: 46 U.S.C. 7701; 49 CFR 1.46(b).

2. By adding a new § 5.03-17 to read as follows:

§ 5.03-17 Participation in the voluntary Marine Safety Reporting Program (MSRP).

(a) To encourage participation in the Department of Transportation's Marine Safety Reportng Program (MSRP), the Coast Guard will not seek the imposition of an order under this Part which adversely affects a mariner's license, certificate or document if the individual can show that he/she made a report to MSRP within 15 days from the date of the incident or prior to being informed either in writing or verbally that the Coast Guard was initiating an enforcement action, whichever comes first, and if:

(1) The incident fell within the scope of MSRP in that it involved the navigation and control of a commercial vessel;

(2) The violation/offense was found to be inadvertent and not deliberate;

(3) The violation/offense did not involve a criminal activity;

(4) The violation/offense did not involve an incident which is required to be reported by statute or regulation, e.g., marine casualties, oil/hazardous materials pollution incidents, collisions with aids to navigation, certain navigational system failures, etc;

(5) The violation/offense was not one where statutes require a mandatory penalty or sanction;

(6) The incident was not one which disclosed a lack of qualification or competency on the part of a licensed/documented individual; and

(7) The individual has not used this provision on a prior occasion.

(b) An individual who desires to use the MSRP report to avoid an enforcement action under this Part must present the receipt slip to:

(1) The investigating officer during the investigation and,

(2) The administrative law judge during a hearing conducted pursuant to this Part.

(c) The individual may request that the investigating officer accept the receipt slip in lieu of preferring charges or giving a warning, or he/she may request a hearing on the merits of the alleged offense.

(d) When the administrative law judge determines that the incident has been reported to MSRP and the conditions of paragraph (a) exist, the administrative law judge shall render an order stating that the case is dismissed by reason of the individual's participation in MSRP.

(e) Use of the MSRP receipt slip will become a part of the person's record only for the purpose of documenting the one-time opportunity to use MSRP to avoid an action under this Part.

Dated: May 31, 1985.

Clyde Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-13510 Filed 5-31-85; 4:18 pm]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-515; RM-4694]

FM Broadcast Station in Red Bluff, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Channel 274C2 for Channel 272A at Red Bluff and modifies the permit for Station KRBQ(FM), Red Bluff, California to specify operation on Channel 274C2; at the request of Theodore S. Storck.

EFFECTIVE DATE: July 8, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments FM Broadcast Stations. (Red Bluff, California) (MM Docket No. 84-515, RM-4694).

Adopted: May 8, 1985.

Released: May 30, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 24393, published June 13, 1984 issued in response to a petition for rule making filed by Theodore S. Storck, permittee of Station KRBQ(FM), Channel 272A, Red Bluff, California (Storck or KRBQ), requesting the substitution of Class B FM Channel 275 for Channel 272A, at Red Bluff, and to modify his permit for Station KRBQ to specify the new channel. In response to the *Notice*, Storck filed comments restating his interest in Channel 275. Opposition and related comments were filed late by Paradise Broadcasting, Inc. ("Paradise B/c"), licensee of Station KNVR(FM), Channel 244A, Paradise, California.

Late Filed Comments

2. In its Petition for Leave to File Late Comments, Paradise B/c argues that if Channel 275 is substituted for Channel 272A at Red Bluff it will be precluded from upgrading its Class A station to a higher class on Channel 275 at Paradise. Paradise B/c claims that it did not discover the potential adverse impact of the Red Bluff proposal until August 10, 1984.[1] Paradise B/c further claims that when it learned of the Commission's action in Docket 83-1148, *Modification of FM and TV Licensees*, 49 FM 34007, published August 28, 1984, it attempted to find a suitable Class B channel. Paradise B/c states that the study revealed the availability of only two FR channels, 274 and 278, both of which were short spaced to the operation proposed by KRBQ on Channel 275. Subsequently, Paradise B/c filed comments on KRBQ's petition for rule making, proposing that Channel 274 be substituted for Channel 244A at Paradise. Paradise B/c states that Channel 278 could be reserved pending future expressions of interest.

3. In opposition to Paradise's request for leave, Storck contends that the pendency of Docket 83-1148 did not prevent Paradise B/c from filing timely comments. Storck, therefore claims that the untimely comments should not be accepted since no sufficient justification for lateness was given.

[1] Paradise filed comments on September 7, 1984 approximately more than one month after the deadline.

Discussion

4. As noted above, Paradise B/c filed comments to the instant proceeding more than one month after comments were due. In support of its petition for leave to file late comments, Paradise B/c relied on the Commission's action in Docket 83-1148. However we agree with Storck that Paradise B/c's ability to state its proposal was not contingent on the outcome of Docket 83-1148. While the action could have affected Paradise's modification plans, it did not need to wait until it was assured that it would be the successful party for a new channel, before it initiated steps to apply. In addition, we have reviewed Paradise's comments which contained several alternative proposals to the instant proceeding. We find that none of the information contained in the proposals would aid us in making a final determination since all of the alternatives are technically incompatible with the proposed substitution. Consequently, Paradise B/c's comments will not be considered.

5. Originally, Storck requested the allotment of Channel 275 to Red Bluff. In his petition Storck noted that the location of Red Bluff would generally require the allotment of a Class C channel. However, at that time no Class C channels were available that would meet the Commission's mileage separation requirements. As an alternative, Storck requested a Class B allotment. Subsequently, Storck filed supplemental comments requesting that the Commission allot Channel 275 as a Class C2 channel instead of a Class B, in light of the Commission's action in Docket 80-90, 94 F.C.C. 2d 152 (1983), recons. 97. F.C.C. 2d 279 (1984). Thereafter, Storck filed further comments requesting that the Commission allot Channel 274C2 to Red Bluff because it would offer certain advantages, particularly with regard to an antenna site selection. Storck also noted that the proposed site would provide service to Red Bluff and the surrounding area. Although Storck originally requested the substitution of Channel 275 for Chanel 272A at Red Bluff, we believe the public interest would be served by the substitution of Channel 274C2 instead in order to enable better site selection. Moreover, since Storck was the only party to file an expression of interest in the Red Bluff channel it is appropriate to modify his

license to specify operation on Channel 274C2. See *Modification of FM and TV Station Licenses*, 49 FR 34007, published August 28, 1984.

PART 73—[AMENDED]

§ 73.20 [Amended]

6. Accordingly, pursuant to the authority contained in Sections 4(1), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective July 8, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Red Bluff, California	239, and 274C2.

7. It is further ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the permit for Station KRBQ(FM), Red Bluff, California, is modified to specify operation on Channel 274C2, subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

8. It is further ordered, that the Secretary shall send a copy of this *Order* by certified mail, return receipt requested, to: Theodore J. Storck, c/o John Wells King, Esq., Haley Bader and Potts, 2000 M Street, NW., Suite 600, Washington, D.C. 20036.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–13452 Filed 6–4–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83–1325; RM–4584]

TV Broadcast Stations in Longmont, CO; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 25 to Longmont, Colorado, as its first commercial allocation, in response to a petition for reconsideration filed by Saint Vrain Broadcasting Company.

EFFECTIVE DATE: July 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 C.F.R. Part 73

Television broadcasting.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Longmont, Colorado) (MM Docket No. 83–1325, RM–4584).

Adopted: May 8, 1985.
Released: May 28, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for reconsideration,[1] filed by Saint Vrain Broadcasting Company ("Saint Vrain"), of the Report and Order, 49 FR 31306, published August 6, 1984, which dismissed a proposal filed by William G. and Lila Jean Stewart ("Stewart"), to assign UHF Television Channel 25 to Longmont, Colorado. The assignment could provide the community with its first television facility.

2. Longmont (population 42,942),[2] in Boulder County (population 189,625), is located in northeastern Colorado, approximately 50 kilometers (35 miles) north of Denver.

3. As stated in the Notice of Proposed Rule Making, 48 FR 56611, published December 22, 1983, a showing of continuing interest is required before a channel will be assigned. The Stewarts failed to file comments in this proceeding. Reply comments were filed by the Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"). NOAA did not object but noted the proximity of Longmont to the Table Mountain Radio Receiving Zone and requested advance coordination from all applicants for this channel at Longmont, in accordance with Section 73.1030(b) of the Commission's Rules.

4. On reconsideration, Saint Vrain requests that Channel 25 be assigned to Longmont for commercial use and states its intention to apply for the channel. The Stewarts have since filed comments, indicating an interest in Channel 25.

5. In view of the expressed interest and the fact that the assignment of Channel 25 could provide a first television facility to Longmont, we believe that UHF Television Channel 25 should be assigned to that community. A staff engineering study indicates that Channel 25 can be assigned to Longmont in compliance with the mileage separation requirements of § 73.610 of the Commission's Rules. Applicants should comply with the requirements of § 73.1030(b) of the Commission's Rules.

6. Accordingly, it is ordered, that the petition for reconsideration filed herein is granted.

PART 73—[AMENDED]

§73.606 [Amended]

7. It is further ordered, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, that effective July 5, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules is amended as follows:

City	Channel No.
Longmont, CO	25

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–13453 Filed 6–4–85; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given August 24, 1984, Report No. 1476.

[2] Population figures are taken from the 1980 U.S. Census.

47 CFR Parts 73 and 74

Radio and Television Broadcasting; Metrication of Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the FCC rules concerning radio and television broadcasting. Amendments are made to convert these parts to the international system of units (metric system). This action is necessary to conform with the Metric Conversion Act of 1975.

EFFECTIVE DATE: June 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Howard Irvin, Mass Media Bureau, (202) 632-9660

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio, Television.

47 CFR Part 74

Radio, Television.

Order (Proceeding Terminated)

In the matter of Metrication of FCC Rules and Regulations Parts 73 and 74.

Adopted: May 17, 1985.
Released: May 22, 1985.

By the Chief, Mass Media Bureau.

1. This Order converts Subparts E through H of Part 73 and all of Part 74 of the Commission's Rules to the international system of units (metric system). All conversions are made in compliance with the Metric Conversion Act of 1975, and FCC Public Notice 76-737, July, 28, 1976.

Background

2. In 1975, Congress passed the Metric Conversion Act directing conversion of measurement units in the federal rules and regulations to the metric system. The Commission responded with Public Notice 76-737 which adopted a policy for the conversion of the Rules and Regulations to metric units. Docket 80-90 converted Subparts B and C of Part 73 to metric units. This proceeding converts Subparts E through H of Part 73 and all of Part 74 to the metric system.

Discussion

3. In the text of these rules, values were rounded to the first decimal of the applicable metric unit, and the original quantity in the English system of units was retained in parentheses.

4. In determining the minimum distance separations § 73.698, the existing procedure permits actual measured distances to be rounded off to the nearest mile. Because of that, facilities may be spaced up to one-half mile closer than the values specified in the Rules. The new procedure will be more precise and will permit rounding off only to the nearest tenth of a kilometer (approximately six-hundredths of a mile). To maintain the effective minimum distance separations a three step process was used. First, one-half mile was subtracted from each separation distance (in English units) to represent the actual minimum spacing permitted by the rounding procedure that was specified in § 73.611. Second, the English units were converted to metric units. Third, distances were rounded to the nearest tenth of a kilometer as specified in § 73.611 as amended.

5. One of the more complex conversions was the metrication of the estimated field strength curves § 73 699. The estimated field strength curves were metricated by using the computer method of curve "refitting" described in report FCC/OCE RS76-01.

6. Finally, the antenna height above average terrain (HAAT)/power reduction curves (figures 3 & 4 § 73.699) have been replaced by equivalent equations. These equations give the required power reduction when the antenna HAAT exceeds certain limits. TV Broadcast stations will now use these equations to find the allowable transmitter power measured in decibels above one kilowatt (dBk). The equations are the metric equivalent of the power reduction curves and are beneficial for ease and consistency in computer programming.

7. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

8. Notice of Proposed Rule Making is not required, consequently the Regulatory Flexibility Act does not apply.

9. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective 30 days after publication in the **Federal Register**. This action is taken by the Chief, Mass Media Bureau under authority delegated in §§ 0.61 and 0.283 of the Commission's Rules.

10. It is further ordered, that this proceeding is terminated.

11. For further information on this *Order*, contact Howard Irvin, (202) 632-9660, Mass Media Bureau.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

Title 47 Parts 73 and 74 of the Code of Federal Regulations is amended as follows:

The authority citation for Parts 73 and 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

1. 47 CFR 73.609 is amended by revising paragraph (a)(3) to read as follows.

§ 73.609 Zones.

(a) * * *

(3) Zone III consists of that portion of the United States located south of a line, drawn on the United States Albers Equal Area Projection Map (based on standard parallels 29.50 and 45.50 North American datum), beginning at a point on the east coast of Georgia and the 31st parallel and ending at the United States-Mexican border, consisting of arcs drawn with a 241.4 kilometer (150 mile) radius to the north from the following specified points:

	North latitude	West longitude
(a)	29°40'00"	83°24'00"
(b)	30°07'00"	84°12'00"
(c)	30°31'00"	86°30'00"
(d)	30°48'00"	87°58'30"
(e)	30°00'00"	90°38'30"
(f)	30°04'30"	93°19'00"
(g)	29°46'00"	95°05'00"
(h)	28°43'00"	96°39'30"
(i)	27°52'30"	97°32'00"

When any of the above arcs pass through a city, the city shall be considered to be located in Zone II. (See Figure 2 of § 73.699.)

2. 47 CFR 73.610 is amended by revising paragraphs (b)(1), (b)(2), (c)(1), (d) and (e) to read as follows:

§ 73.610 Minimum distance separations between stations.

* * * * *

(b) * * *

(1)

Zone	Kilometers	
	Channels 2-13	Channels 14-69
I	272.7 (169.5 miles)	248.6 (154.5 miles)
II	304.9 (189.5 miles)	280.6 (174.5 miles)
III	353.2 (219.5 miles)	329.0 (204.5 miles)

(2) The minimum co-channel distance separation between a station in one zone and a station in another zone shall be that of the zone requiring the lower separation.

(c) * * *

(1) Channels 2–13 95.7 kilometers (59.5 miles). Channels 14–69 87.7 kilometers (54.5 miles).

* * * * *

(d) In addition to the requirements of paragraphs (a), (b) and (c) of this section, the minimum assignment and station separations between stations on Channels 14–69, inclusive, as set forth in Table II of § 73.698 must be met in either rule-making proceedings looking towards the amendment of the Table of Assignments (§ 73.606(b)) or in licensing proceedings. No channel listed in column (1) of Table II of § 73.698 will be assigned to any city, and no application for an authorization to operate on such a channel will be granted, unless the distance separations indicated at the top of columns (2) through (7), inclusive, are met with respect to each of the channels listed in those columns and parallel with the channel in column (1).

(e) The zone in which the transmitter of a television station is located or proposed to be located determines the applicable rules with respect to co-channel distance separations where the transmitter is located in a different zone from that in which the channel to be employed is located.

3. 47 CFR 73.611 is revised to read as follows.

§ 73.611 Reference points and distance computations.

To calculate the distance between two reference points see paragraph (c) section § 73.208. However, distances shall be rounded to the nearest tenth of a kilometer.

4. 47 CFR 73.612 is amended by revising paragraph (b) to read as follows:

§ 73.612 Protection from interference.

* * * * *

(b) When the Commission determines that grant of an application would serve the public interest, convenience, and necessity and the instrument of authorization specifies an antenna location in a designated antenna farm area which results in distance separation less than those specified in this subpart, TV broadcast station permittees and licensees shall be afforded protection from interference equivalent to the protection afforded under the minimum distance separations specified in this subpart.

* * * * *

5. 47 CFR 73.614 is amended by revising paragraph (b) to read as follows:

§ 73.614 Power and antenna height requirements.

* * * * *

(b) *Maximum power.* Applications will not be accepted for filing if they specify a power which exceeds the maximum permitted boundaries specified in the following formulas:

(1) Channels 2–6 in Zone I:

$$ERP_{Max} = 102.54 - 33.33^{*} \log_{10} (HAAT)$$

And,

$$-10 \text{ dBk} < ERP_{Max} < 20 \text{ dBk}$$

(2) Channels 2–6 in Zones II and III:

$$ERP_{Max} = 67.57 - 17.08^{*} \log_{10} (HAAT)$$

And,

$$10 \text{ dBk} < ERP_{Max} < 20 \text{ dBk}$$

(3) Channels 7–13 in Zone I:

$$ERP_{Max} = 107.57 - 33.24^{*} \log_{10} (HAAT)$$

And,

$$-4.0 \text{ dBk} < ERP_{Max} < 25 \text{ dBk}$$

(4) Channels 7–13 in Zones II and III:

$$ERP_{Max} = 72.57 - 17.08^{*} \log_{10} (HAAT)$$

And,

$$15 \text{ dBk} < ERP_{Max} < 25 \text{ dBk}$$

(5) Channels 14–69 in Zones I, II, and III:

$$ERP_{Max} = 84.57 - 17.08^{*} \log_{10} (HAAT)$$

And,

$$27 \text{ dBk} < ERP_{Max} < 37 \text{ dBk}$$

Where:

ERP_{Max} = Maximum Effective Radiated Power measured in decibels above 1 kW (dBk).
HAAT = Height Above Average Terrain measured in meters.

The boundaries specified are to be used to determine the maximum possible combination of antenna height and ERP_{dBk}. When specifying an ERP_{dBk} less than that permitted by the lower boundary, any antenna HAAT can be used. Also, for values of antenna HAAT greater than 2,300 meters the maximum ERP is the lower limit specified for each equation.

(6) The effective radiated power in any horizontal or vertical direction may not exceed the maximum values permitted by this section.

(7) The effective radiated power at any angle above the horizontal shall be as low as the state of the art permits, and in the same vertical plane may not exceed the effective radiated power in either the horizontal direction or below the horizontal, whichever is greater.

* * * * *

6. 47 CFR 73.615 is revised to read as follows:

§ 73.615 Administrative changes in authorizations.

In the issuance of television broadcast station authorizations, the Commission will specify the transmitter output power and effective radiated power to the nearest 0.1 dBk. Power specified by kWs shall be obtained by converting dBk to kWs to 3 significant figures. Antenna heights above average terrain will be specified to the nearest meter. Midway figures will be authorized in the lower alternative.

7. 47 CFR 73.658 is amended by revising paragraphs (l)(1) (x) and (m) to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(l) * * *

(1) * * *

(x) "Reasonably comparable facilities" means station transmitting facilities (effective radiated power and effective antenna height above average terrain) such that the station Grade B coverage area is at least two-thirds as large (in square kilometers) as the smallest of the market affiliated stations' Grade B coverage areas. Where one or both of the affiliates is licensed to a city different from that of the unaffiliated station, the term "reasonably comparable facilities" also includes the requirement that the unaffiliated station must put a predicted Grade A or better signal over all of the city of license of the other regular (nonsatellite) station(s), except that where one of the affiliated stations is licensed to the same city as the unaffiliated station, and puts a Grade B but not a Grade A signal over the other city of license, the unaffiliated station will be considered as having reasonably comparable facilities if it too puts a predicted Grade B signal over all of the other city of license.

* * * * *

(m) *Territorial exclusivity in non-network arrangements.* No television station shall enter into any contract, arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in § 76.53 of this chapter, (if reference points for a community are not

listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this paragraph, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

* * * * *

8. 47 CFR 73.681 is amended by revising the definition of *Antenna height above average terrain* to read as follows:

§ 73. 681 Definitions.

* * * * *

Antenna height above average terrain. The average of the antenna heights above the terrain from approximately 3.2 (2 miles) to 16.1 kilometers (10 miles) from the antenna for the eight directions spaced evenly for each 45 degrees of azimuth starting with True North. (In general, a different antenna height will be determined in each direction from the antenna. The average of these various heights is considered the antenna height above the average terrain. In some cases less than 8 directions may be used. See § 73.684(d)). Where circular or elliptical polarization is employed, the antenna height above average terrain shall be based upon the height of the radiation center of the antenna which transmits the horizontal component of radiation.

* * * * *

9. 47 CFR 73.683 is amended by revising paragraph (b) to read as follows:

§ 73.683 Field strength contours.

* * * * *

(b) It should be realized that the F (50,50) curves when used for Channels 14–69 are not based on measured data at distances beyond about 48.3 kilometers (30 miles). Theory would indicate that the field strengths for Channels 14–69 should decrease more rapidly with distance beyond the horizon than for Channels 2–6, and modification of the curves for Channels 14–69 may be expected as a result of measurements to be made at a later date. For these reasons, the curves should be used with appreciation of their limitations in estimating levels of field strength. Further, the actual extent of service will usually be less than indicated by these estimates due to interference from other stations. Because of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated. In licensing proceedings these variations will not be considered.

* * * * *

10. 47 CFR § 73.684 is amended by revising paragraphs (c) introductory text, (c)(1), (d), (e), (f), (g), (h), (i), and (j), to read as follows:

§ 73.684 Prediction of coverage.

* * * * *

(c) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9 and 10 of § 73.699) shall be used. If the 50% field strength is defined as that value exceeded for 50% of the time, these F (50,50) charts give the estimated 50% field strengths exceeded at 50% of the locations in dB above 1mV/m. The charts are based on an effective power of 1 kW radiated from a half-wave dipole in free space, which produces an unattenuated field strength at 1.61 kilometers (1 mile) of about 103 dB above 1 mV/m (137.6 mV/m). To use the charts for other powers, the sliding scale associated with the charts should be trimmed and used as the ordinate scale. This sliding scale is placed on the charts with the appropriate gradation for power in line with the horizontal 40 dB line on the charts. The right edge of the scale is placed in line with the appropriate antenna height gradations, and the charts then become direct reading (in uV/m and in dB above 1 uV/m) for this power and antenna height. Where the antenna height is not one of those for which a scale is provided, the signal strength or distance is determined by interpolation between the curves connecting the equidistant points. Dividers may be used in lieu of the sliding scale.

(1) In predicting the distance to the Grade A and Grade B field strength contours, the effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth spherical earth with a radius of 8,495.5 kilometers (5,280 miles) and shall be determined by the following equation:

$$A = 0.0277 \quad H$$

Where:

A is the depression angle in degrees.

H is the height in meters of the transmitting antenna radiation center above average terrain of the 3.2–16.1 kilometers (2–10 miles) sector of the pertinent radial. This formula is empirically derived for the limited purpose specified here. It use for any other purpose may be inappropirate.

* * * * *

(d) The antenna height to be used with these charts is the height of the radiation center of the antenna above the average terrain along the radial in question. In determining the average elevation of the terrain, the elevations between 3.2–16.1 kilometers (2–10 miles) from the antenna site are employed. Profile graphs shall be drawn for 8 radials beginning at the antenna site and extending 16.1 kilometers (10 miles) therefrom. The radials should be drawn for each 45 degrees of azimuth starting with the True North. At least one radial must include the principal community to be served even though such community may be more than 16.1 kilometers (10 miles) from the antenna site. However, in the event none of the evenly spaced radials include the principal community to be served and one or more such radials are drawn in addition to the 8 evenly spaced radials, such additional radials shall not be employed in computing the antenna height above average terrain. Where the 3.2–16.1 kilometers (2–10 mile) portion of a radial extends in whole or in part over large bodies of water as specified in paragraph (e) of this section or extends over foreign territory but the Grade B strength contour encompasses land area within the United States beyond the 16.1 kilometers (10 mile) portion of the radial, the entire 3.2–16.1 kilometers (2–10 mile) portion of the radial shall be included in the computation of antenna height above average terrian. However, where the Grade B contour does not so encompass United States land area and (1) the entire 3.2–16.1 kilometers (2–10 mile) portion of the radial extends over large bodies of water of foreign territory, such radial shall be completely omitted from the computation of antenna height above average terrain, and (2) where a part of the the 3.2–16.1 kilometers (2–10 mile) portion of a radial extends over large bodies of water or over foreign

territory, only that part of the radial extending from the 3.2 kilometer (2 mile) sector to the outermost portion of land area within the United States covered by the radial shall be employed in the computation of antenna height above average terrian. The profile graph for each radial should be plotted by contour intervals of from 12.2-30.5 meters (40–100 feet) and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. In instances of very rugged terrain where the use of contour intervals of 30.5 meters (100 feet) would result in several points in a short distance, 61.0–122.0 meter (200–400 foot) contour intervals may be used for such distances. On the other hand, where the terrain is uniform or gently sloping the smallest contour interval indicated on the topograhic may (see paragraph (g) of this section) should be used, although only relatively few points may be available. The profile graphs should indicate the topography accurately for each radial, and the graphs should be plotted with the distance in kilometers as the abscissa and the elevation in meters above mean sea level as the ordinate. The profile graphs should indicate the source of the topographical data employed. The graph should also show the elevation of the center of the radiating system. The graph may be plotted either on rectangular coordinate paper or on special paper which shows the curvature of the earth. It is not necessary to take the curvature of the earth into consideration in this procedure, as this factor is taken care of in the charts showing signal strengths. The average elevation of the 12.9 kilometer (8 miles) distance between 3.2–16.1 kilometers (2–10 miles) from the antenna site should then be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded for 50% of the distance) in sectors and averaging those values.

Note.—The Commission will, upon a proper showing by an existing station that the application of this rule will result in an unreasonable power reduction in relation to other stations in close proximity, consider requests for adjustment in power on the basis of a common average terrain figure for the stations in question as determined by the FCC.

(e) In instance where it is desired to determine the area in square kilometers within the Grade A and Grade B field strength contours, the area may be determined from the coverage map by planimeter or other approximate means; in computing such areas, exclued (1) areas beyond the borders of the United States, and (2) large bodies of water, such as ocean areas, gulfs sounds, bays, large lakes, etc., but not rivers.

(f) In cases where terrain in one or more directions from the antenna site departs widely from the average elevation of the 3.2 to 16.1 kilometers (2 to 10 mile) sector, the prediction method may indicate contour distances that are different from what may be expected in practice. For example, a mountain ridge may indicate the practical limit of service although the prediction method may indicate otherwise. In such case the prediction method should be followed, but a suppiemental showing may be made concerning the contour distances as determined by other means. Such supplemental showing should describe the procedure employed and should include sample calculations. Maps of predicted coverage should include both the coverage as predicted by the regular method and as predicted by a supplemental method. When measurements of area are required, these should include the area obtained by the regular predicted method and the area obtained by the supplemental method. In directions where the terrain is such that negative antenna heights or heights below 30.5 meters (100 feet) for the 3.2 to 16.1 kilometers (2 to 10 mile) sector are obtained, an assumed height of 30.5 meters (100 feet) shall be used for the prediction of coverage. However, where the actual contour distances are critical factors, a supplemental showing of expected coverage must be included together with a description of the method employed in predicting such coverage. In special cases, the Commission may require additional information as to terrain and coverage.

(g) In the preparation of the profile graph previously described, and in determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from the United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers' maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and Municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. Ordinarily the Commission will not require the submission of topographical maps for areas beyond 24.1 kilometers (15 miles) from the antenna site, but the maps must include the principal community to be served. If it appears necessary, additional data may be requested. United States Geological Survey Topographic Quadrangle Maps may be obtained from the United States Geological Survey, Department of the Interior, Washington, D.C. 20240. Sectional Aeronautical Charts are available from the United States Coast and Geodetic Survey, Department of Commerce, Washington, D.C. 20235.

(h) The effect of terrain roughness on the predicted field strength of a signal at points distant from a television broadcast station is assumed to depend on the magnitude of a terrain roughness factor (Δh) which, for a specific propagation path, is determined by the characteristics of a segment of the terrain profile for that path 40.2 kilometers (25 miles) in length, located between 9.7 and 49.9 kilometers (6 and 31 miles) from the transmitter. The terrain roughness factor has a value equal to the difference, in meters, between elevations exceeded by all points on the profile for 10 percent and 90 percent, respectively, of the length of the profile segment (see § 73.699, Fig. 10d).

(i) If the lowest field strength value of interest is initially predicted to occur over a particular propagation path at a distance which is less than 49.9 kilometers (31 miles) from the transmitter, the terrain profile segment used in the determination of the terrain roughness factor over that path shall be that included between points 9.7 kilometers (6 miles) from the transmitter and such lesser distance. No terrain roughness correction need be applied when all field strength values of interest are predicted to occur 9.7 kilometers (6 miles) or less from the transmitter.

(j) Profile segments prepared for terrain roughness factor determinations should be plotted in rectangular coordinates, with no less than 50 points evenly spaced within the segment, using data obtained from topographic maps, if available, with contour intervals of 15.2 meters (50 feet), or less.

* * * * *

11. 47 CFR 73.685 is amended by revising paragraph (g) to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(g) Applications proposing the use of television broadcast antennas within 61.0 meters (200 feet) of other television broadcast antennas operating on a channel within 20 percent in frequency of the proposed channel, or proposing the use of television broadcast antennas on Channels 5 or 6 within 61.0 meters (200 feet) of FM broadcast antennas, must include a showing as to the expected effect, if any, of such proximate operation.

* * * * *

12. 47 CFR 73.686 is amended by revising paragraphs (b)(1)(ii), (b)(2) introductory text, (b)(2)(v), (b)(2)(vii), (b)(2)(viii), and (c)(2), to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(b) * * *

(1) * * *

(ii) At a point exactly 16.1 kilometers (10 miles) from the transmitter, each radial is marked, and at greater distances at successive 3.2 kilometer (2 mile) intervals. Where measurements are to be conducted at UHF, or over extremely rugged terrain, shorter intervals may be employed, but all such intervals shall be of equal length. Accessible roads intersecting each radial as nearly as possible at each 3.2 kilometer (2 mile) marker are selected. These intersections are the points on the radial at which measurements are to be made, and are referred to subsequently as measuring locations. The elevation of each measuring location should approach the elevation at the corresponding 3.2 kilometer (2 mile) marker as nearly as possible.

(2) *Measurement procedure.* The field strength of the visual carrier shall be measured with a voltmeter capable of indicating accurately the peak amplitude of the synchronizing signal. All measurements shall be made utilizing a receiving antenna designed for reception of the horizontally polarized signal component, elevated 9.1 meters (30 feet) above the roadbed. At each measuring location, the following procedure shall be employed.

* * * * *

(v) A mobile run of at least 30.5 meters (100 feet) is made, which is centered on the intersection of the radial and the road, and the measured field strength is continuously recorded on a chart recorder over the length of the run.

* * * * *

(vii) If, during the test conducted as described in paragraph (b)(2)(iii) of this section, the strongest signal is found to come from a direction other than from the transmitter, after the mobile run prescribed in paragraph (b)(2)(v) of this section is concluded, additional measurements shall be made in a "cluster" of at least five fixed points. At each such point, the field strengths with the antenna oriented toward the transmitter, and with the antenna oriented so as to receive the strongest field, are measured and recorded. Generally, all points should be within 61.0 meters (200 feet) of the center point of the mobile run.

(viii) If overhead obstacles preclude a mobile run of at leat 30.5 meters (100 feet), a "cluster" of five spot measurements may be made in lieu of this run. The first measurement in the cluster is identified. Generally, the locations for other measurements shall be within 61.0 meters (200 feet) of the location of the first.

* * * * *

(c) * * *

(2) *Measurement procedure.* The field strength of the visual carrier shall be measured, with a voltmeter capable of indicating accurately the peak amplitude of the synchronizing signal. All measurements shall be made utilizing a receiving antenna designed for reception of the horizontally polarized signal component, elevated 9.1 meter (30 feet) above street level.

* * * * *

13. 47 CFR 73.698 is amended by removing Tables II and III and revising the column headings of Table IV and redesignating Table IV as Table II to read as follows:

§ 73.698 Tables.

* * * * *

TABLE II

(1)—Channel	(2)—31.4 kilometers (19.5 miles) if beat	(3)—31.4 kilometers (19.5 miles) intermodulation	(4)—87.7 kilometers (54.5 miles) adjacent channel	(5)—95.7 kilometers (59.5 miles) oscillator	(6)—95.7 kilometers (59.5 miles) sound image	(7)—119.9 kilometers (74.5 miles) picture

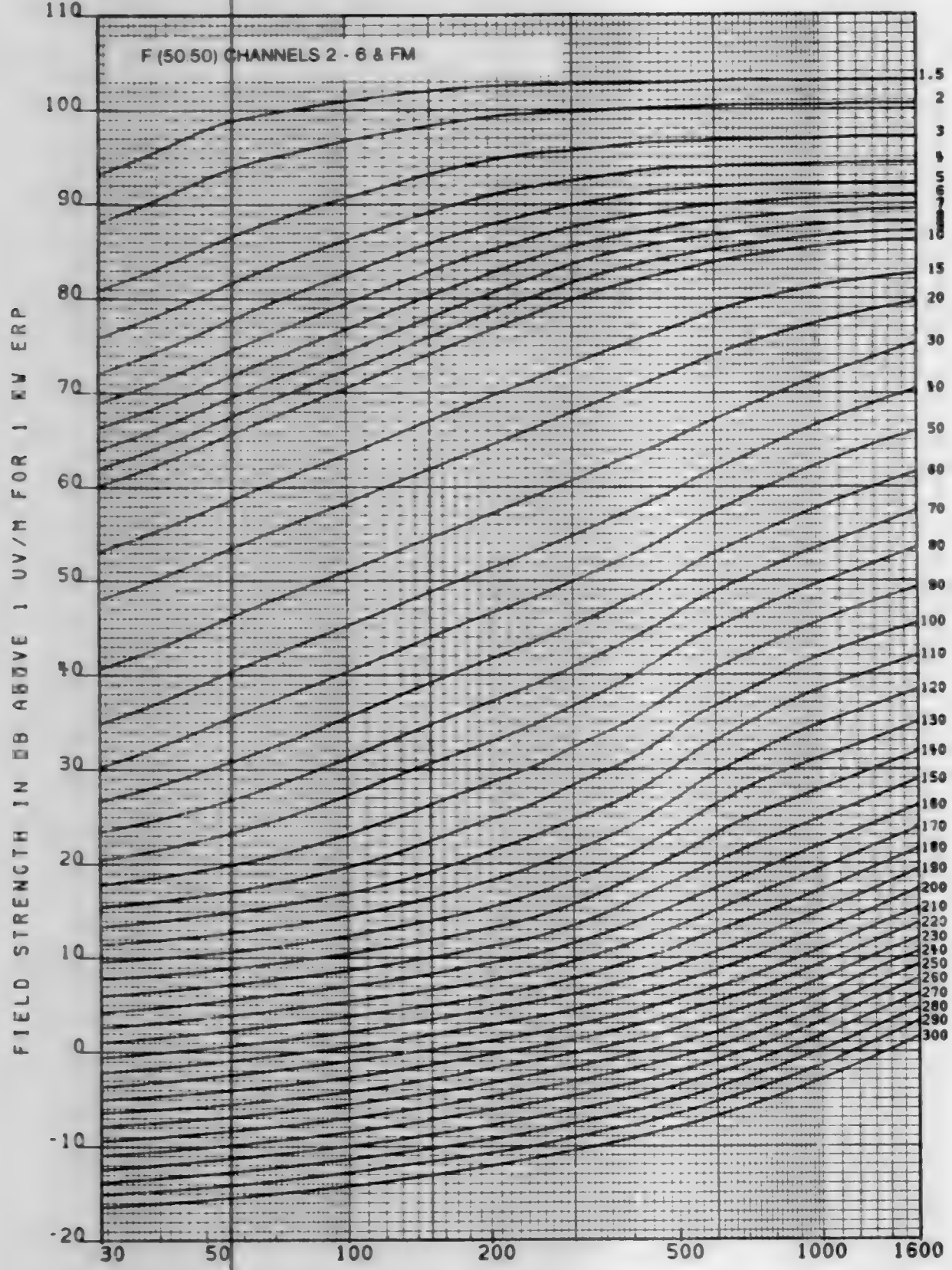
* * * * *

14. 47 CFR 73.699 is amended by removing Figure 3 and Figure 4; and revising Figures 9, 9a, 10, 10a, 10b, 10c, and 10d as follows:

§ 73.699 TV Engineering Charts.

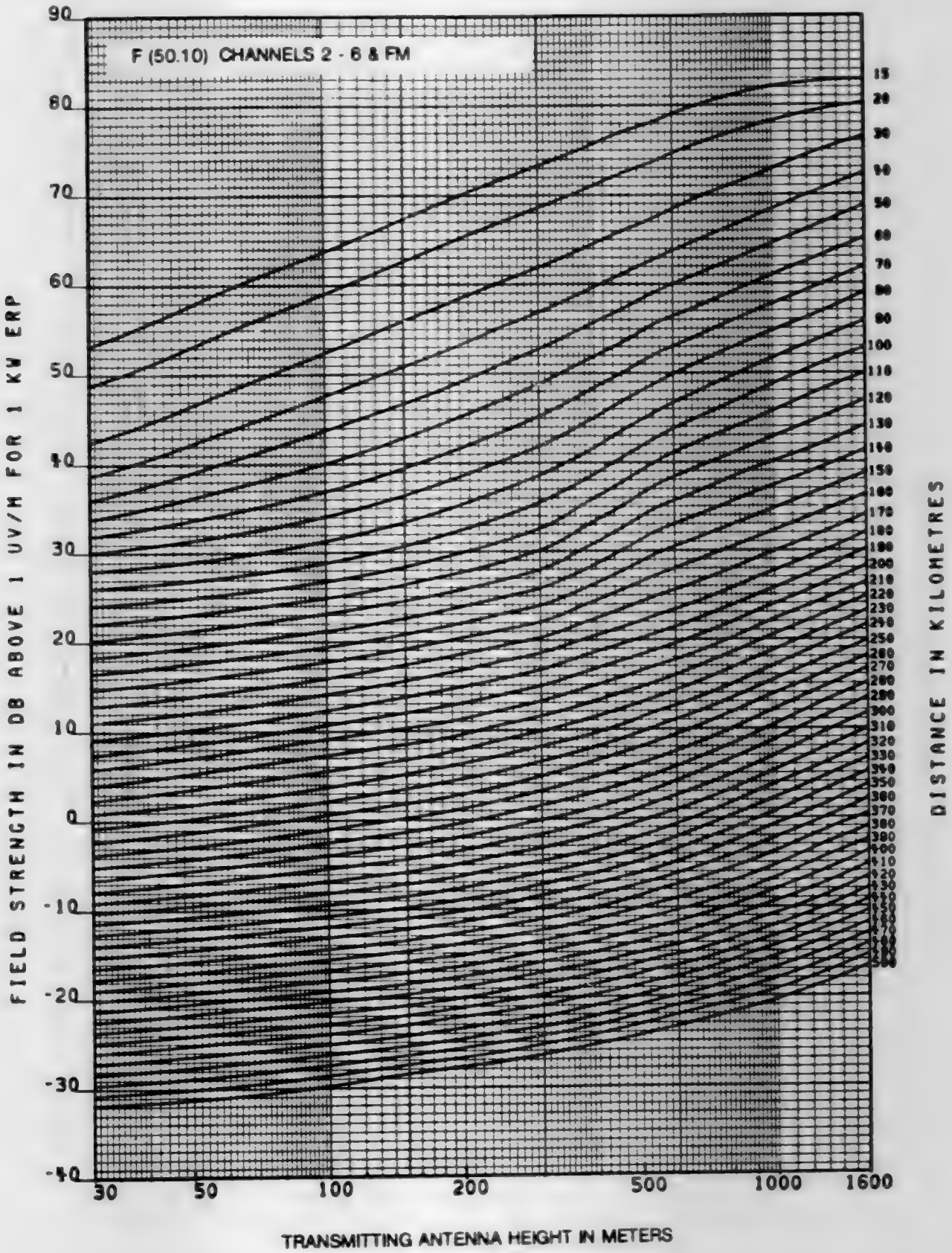
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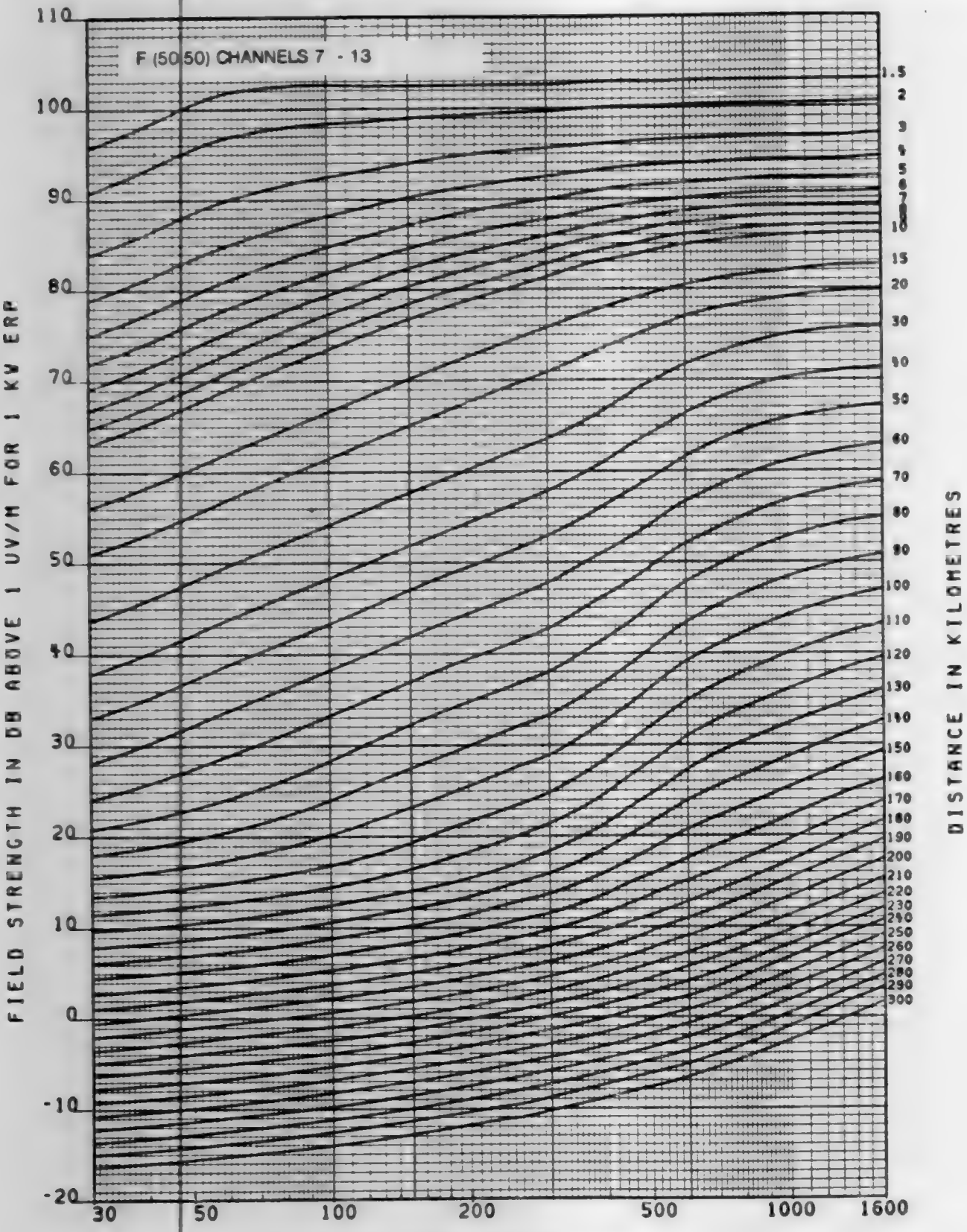
FCC 73.699 Figure 9

ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT
OF THE POTENTIAL RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT
OF THE TIME AT A RECEIVING ANTENNA HEIGHT OF 9 METERS



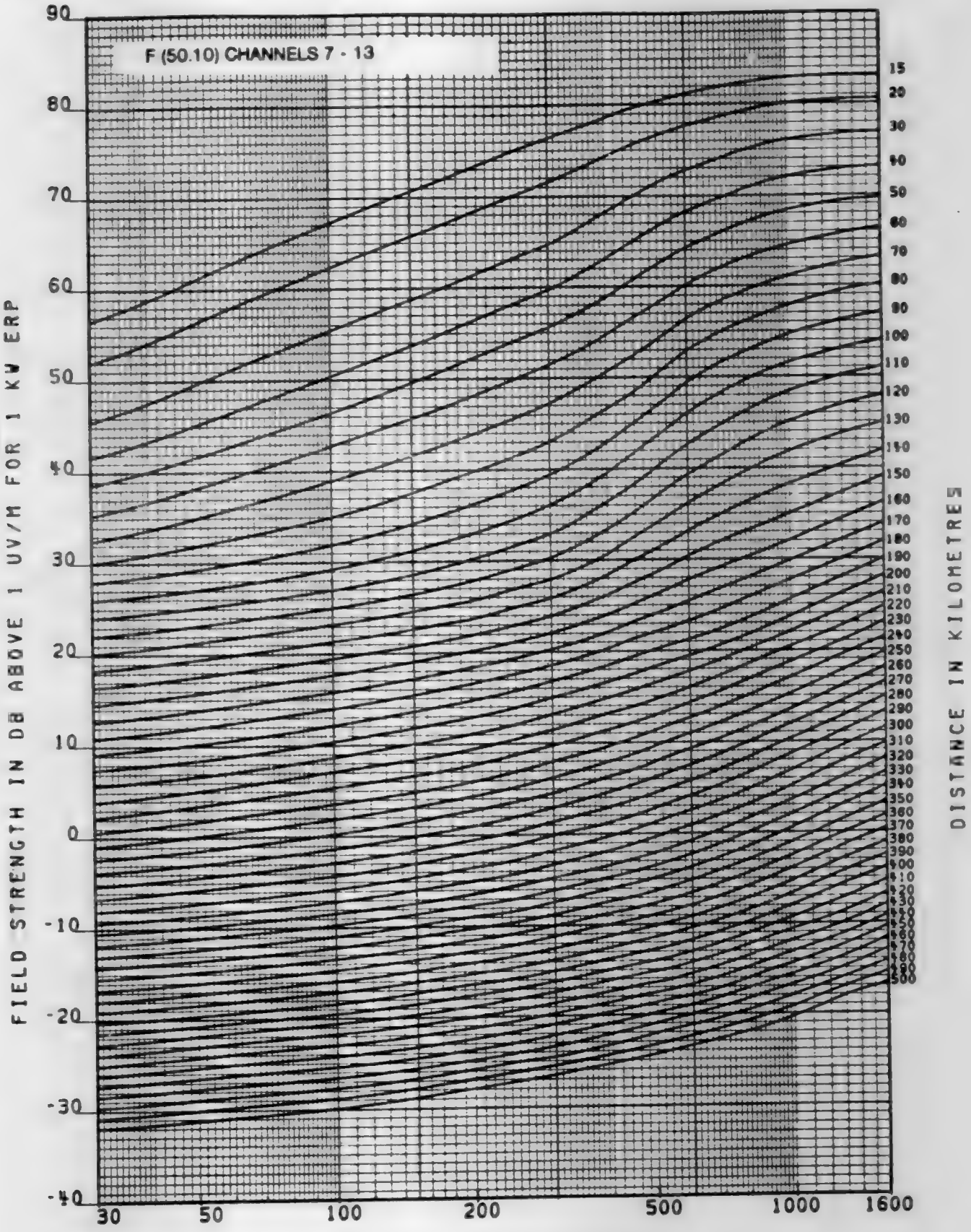
FCC 73.699 Figure 9a

ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT
OF THE POTENTIAL RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT
OF THE TIME AT A RECEIVING ANTENNA HEIGHT OF 9 METERS



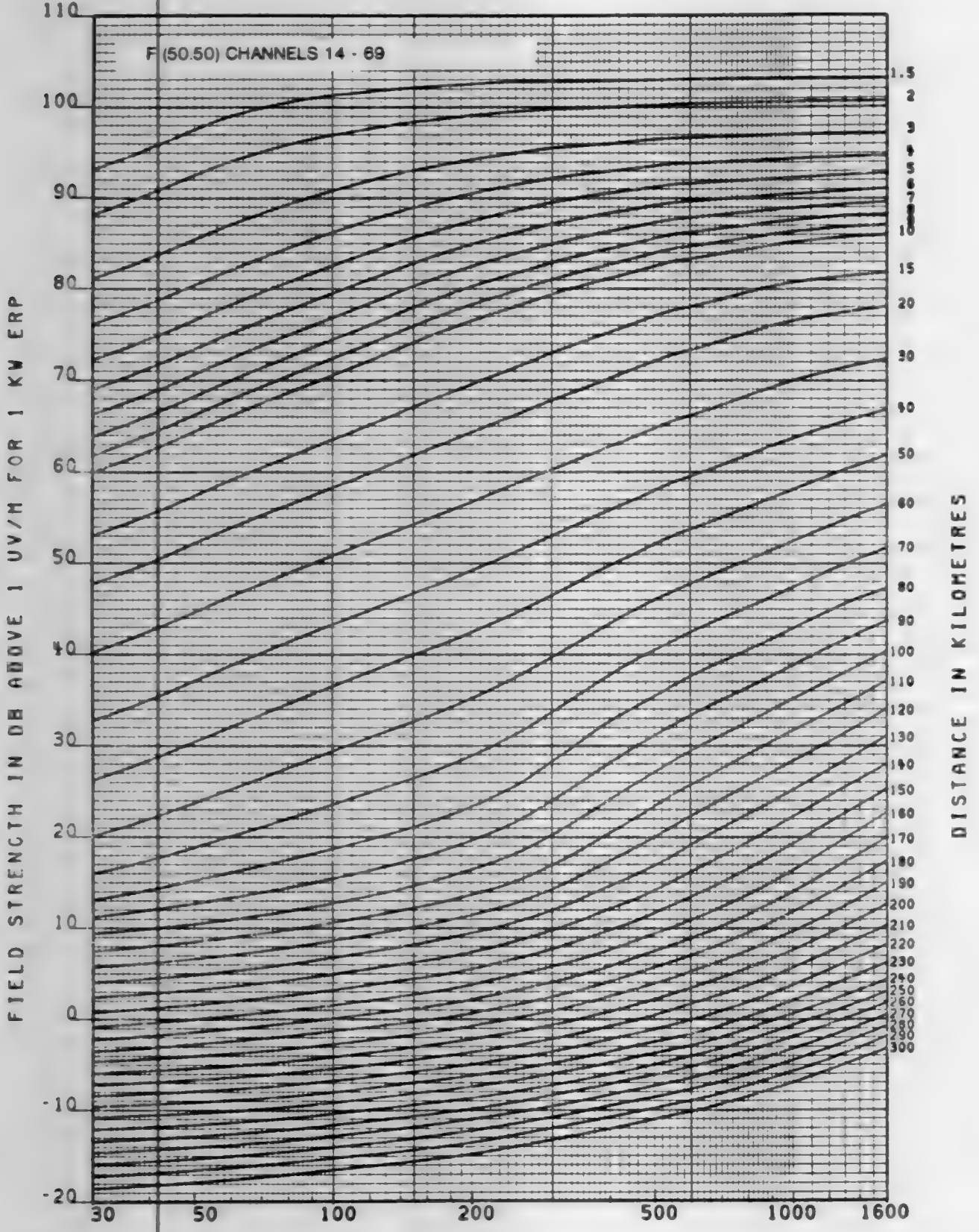
FCC 73.699 Figure 10

ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT
OF THE POTENTIAL RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT
OF THE TIME AT A RECEIVING ANTENNA HEIGHT OF 9 METERS



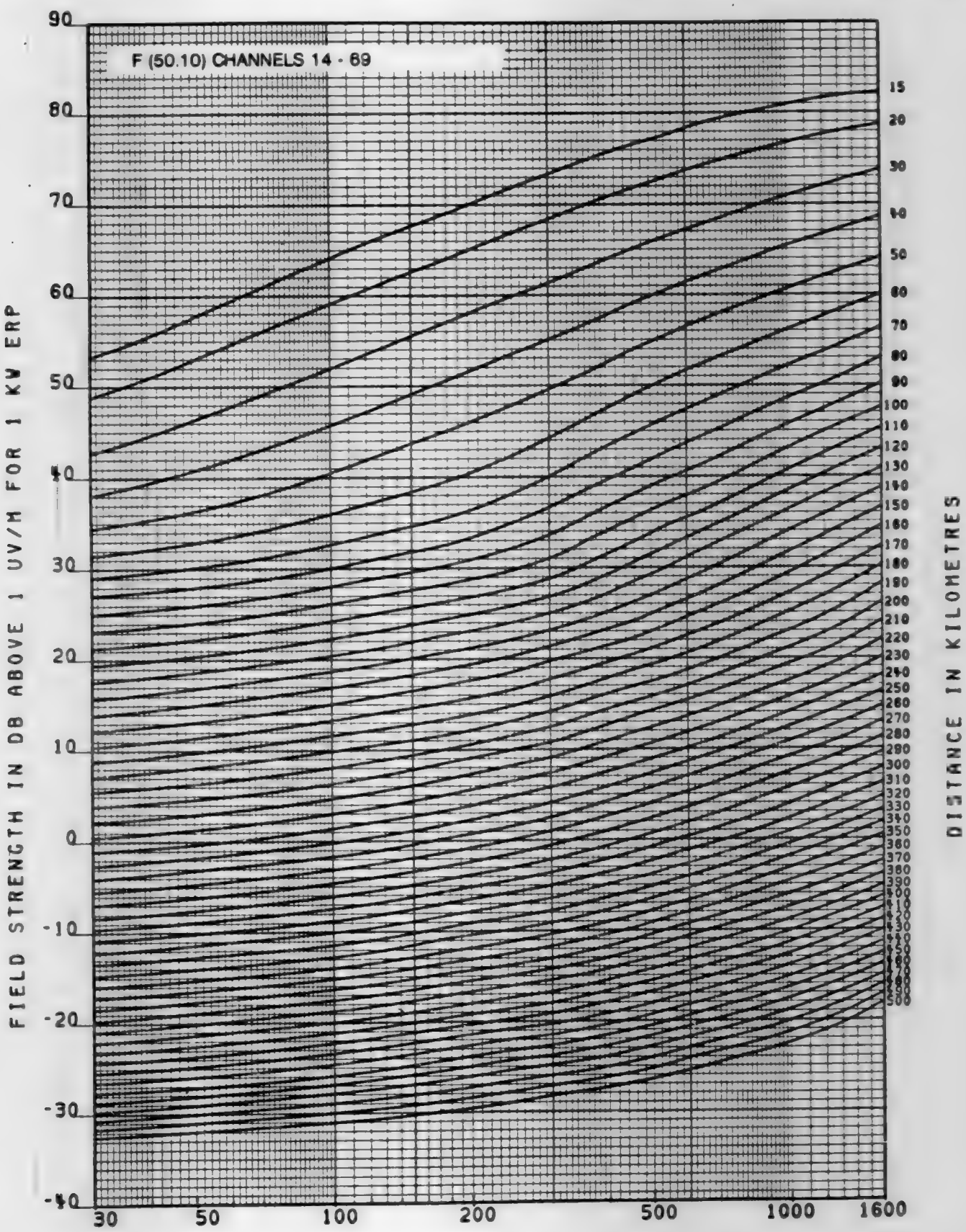
FCC 73.699 Figure 10a

ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT
OF THE POTENTIAL RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT
OF THE TIME AT A RECEIVING ANTENNA HEIGHT OF 9 METERS



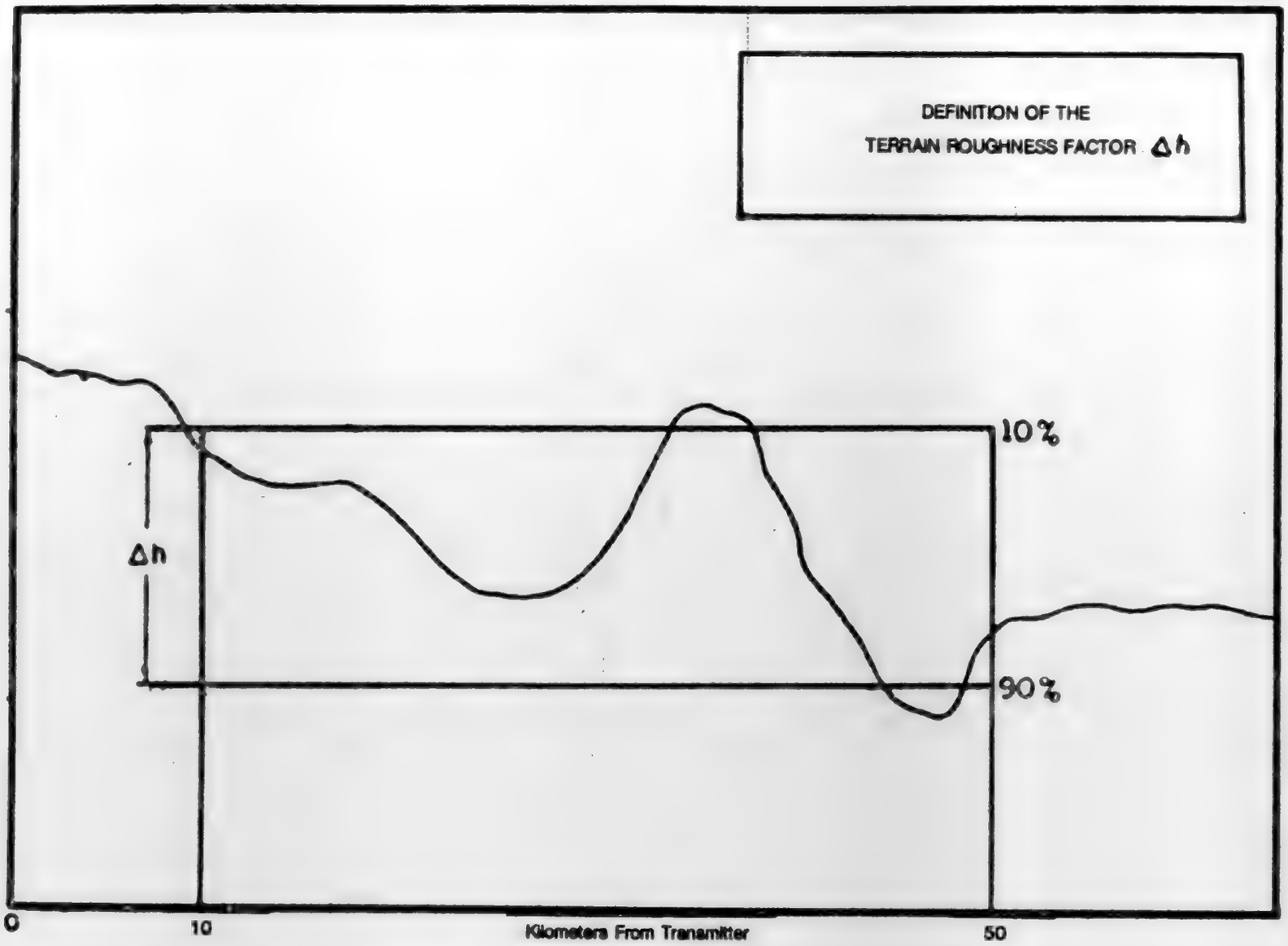
FCC 73.699 Figure 10b

ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT
OF THE POTENTIAL RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT
OF THE TIME AT A RECEIVING ANTENNA HEIGHT OF 9 METERS



FCC 73.699 Figure 10c

ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT
OF THE POTENTIAL RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT
OF THE TIME AT A RECEIVING ANTENNA HEIGHT OF 9 METERS



FCC §73.699 FIGURE 10d

BILLING CODE 6712-01-C

* * * * *

15. 47 CFR 73.1030 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) to read as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

* * * * *

(b) * * *

(1) * * *

(i) All stations within 2.4 kilometers (1.5 miles).

(ii) Stations within 4.8 kilometers (3 miles) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

16. 47 CFR 73.1550 is amended by revising paragraph (a)(2) to read as follows:

§ 73.1550 Extension meters.

(a) * * *

(2) The path from the normal operating location to the transmitter is no longer than 30.5 meters (100 feet) and provides the operator with ready access to the transmitter.

* * * * *

17. 47 CFR 74.24 is amended by revising paragraphs (e) and (h)(2) to read as follows:

§ 74.24 Short-term operation.

* * * * * *

(e) The antenna height of a station operated pursuant to this section shall not increase the height of any man-made antenna supporting structure, or increase by more than 6.1 meters (20 feet) the height of any other type of man-made structure or natural formation. However, the facilities of an authorized broadcast auxiliary station belonging to another licensee may be operated in accordance with the terms of its outstanding authorization.

* * * * *

(h) * * *

(2) A broadcast auxiliary service station operating on frequencies between 470 MHz and 1 GHz must be at least 56.3 kilometers (35 miles) south (or west, as appropriate of the United States-Canada border if the antenna looks within a 200° sector toward the border; or, the station must be at least 8.1 kilometers (5 miles) south (or west, as appropriate) if the antenna looks within a 160° sector away from the border. However, operation is not permitted in either of these two situations if the station would be within the coordination distance of a receiving earth station in Canada which uses the same frequency band. (The coordination distance is the distance, calculated for any station, according to Appendix 28 of the International Radio Regulations.)

* * * * *

18. 47 CFR 74.402 is amended by revising footnote 4 (ii) to read as follows:

§ 74.402 Frequency assignment.

* * * * *

Footnote 4 * * *

(ii) within 241.4 kilometers (150 miles) of New York City; and

* * * * *

19. 47 CFR 74.433 is amended by revising paragraph (c) to read as follows:

§ 74.433 Temporary authorizations.

* * * * *

(c) An informal request for special temporary authority shall be addressed to the FCC in Washington, D.C. and must include full particulars including: licensee's name, call letters of associated broadcast station or stations, name and address of individual designated to receive return authorization, call letters of remote pickup station, if assigned, type and manufacturer of equipment, power output, emission, frequency or frequencies proposed to be used, commencement and termination date, location of proposed operation and purpose for which request is made including any particular justification. In the event that the proposed antenna installation will increase the height of any natural formation or existing man-made structure by more than 6.1 meters (20 feet), a vertical plan sketch showing the height above the ground of any existing structure, the elevation of the site above the mean sea level, and the geographical coordinates of the proposed site, shall be submitted with the application.

* * * * *

20. 47 CFR 74.537 is amended by revising paragraph (c) to read as follows:

§ 74.537 Temporary authorizations.

* * * * *

(c) An informal request for special temporary authorization shall be addressed to the FCC, Washington, D.C. 20554 and shall set forth full particulars including: licensee's name, call letters of the associated broadcast station(s), name and address of individual designated to receive the return authorization, call letters of the aural broadcast STL or intercity relay station, if assigned, type and manufacturer of equipment, power output, emission, frequency or frequencies proposed for use, commencement and termination date and location of the proposed operation, and purpose for which request is made including any particular justification. In the event that the proposed antenna installation will increase the height of any man-made antenna supporting structure, or increase by more than 6.1 meters (20 feet) the height of any other type of man-made structure or natural formation, a vertical plan sketch showing the height above ground of any existing structure, the elevation of the site above mean sea level, and the geopraphic coordinates of the proposed site, shall be submitted with the application.

* * * * *

21. 47 CFR 74.631 is amended by revising paragraph (a) to read as follows:

§ 74.631 Permissible service.

(a) The licensee of a television pickup station authorizes the transmission of program material, orders concerning such program material, and related communications necessary to the accomplishment of such transmissions, from the scenes of events occurring in places other than a television studio, to its associated television broadcast station, to such other stations as are broadcasting the same program material, or to the network or networks with which the television broadcast station is affiliated. Television pickup stations may be operated in conjunction with other television broadcast stations not aformentioned in this paragraph: *Provided,* That the transmissions by the television pickup station are under the control of the licensee of the television pickup station and that such operation shall not exceed a total of 10 days in any 30-day period. Television pickup stations may be used to provide temporary studio-transmitter links or intercity relay circuits consistent with § 74.632 without further authority of the Commission: *Provided, however,* That prior Commission authority shall be obtained if the transmitting antenna to be installed will increase the height of any natural formation or man-made structure by more than 6.1 meters (20

feet) and will be in existence for a period of more than 2 consecutive days.

* * * * *

22. 47 CFR 74.633 is amended by revising paragraph (c), and by redesignating paragraph (f) as paragraph (e):

§ 74.633 Temporary authorizations.

* * * * *

(c) An application for special temporary authority shall set forth full particulars of the purpose for which the request is made, and shall show the type of equipment, power output, emission, and frequency or frequencies proposed to be used, as well as the time, date and location of the proposed operation. In the event that the proposed antenna installation will increase the height of any natural formation, or existing man-made structure, by more than 6.1 meters (20 feet), a vertical plan sketch showing the height of the structure proposed to be erected, the height above ground of any existing structure, the elevation of the site above mean sea level, and the geographic coordinates of the proposed site, shall be submitted with the application.

* * * * *

23. 47 CFR 74.751 is amended by revising paragraph (b)(4) to read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(b) * * *

(4) Any horizontal change of the location of the antenna structure which would (i) be in excess of 152.4 meters (500 feet), or (ii) require notice to the Federal Aviation Administration pursuant to § 17.7 of the FCC's Rules.

* * * * *

24. 47 CFR 74.1251 is amended by revising paragraph (b)(5) to read as follows:

§ 74.1251 Modification of transmission systems.

* * * * *

(b) * * *

(5) Any horizontal change in the location of the antenna structure which would (i) be in excess of 152.4 meters (500 feet), or (ii) would require notice to the Federal Aviation Administration pursuant to § 17.7 of the FCC's rules.

* * * * *

[FR Doc. 85-13018 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 78

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order adopts an alphabetical index of the rules in Part 78 (47 CFR Part 78). The index provides fast access to the rules, reducing the many letters and phone calls to the FCC staff requesting rule location assistance, thus minimizing administrative burdens on both the FCC and personnel of the Cable TV Relay Service.

EFFECTIVE DATE: June 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 78

Cable TV Relay Service.

Order

In the Matter of oversight of the radio and TV broadcast rules.

Adopted: May 21, 1985.
Released: May 31, 1985.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission facilitates the fast location of its regulations in Part 78 of the rules by creating an alphabetical index for this Part.

2. Our experience in alphabetically indexing the rules in Parts 73, 74 and 76 has shown that the process makes possible the location of rules quickly and easily. Such fast access has brought about a better understanding of the rules by broadcasters and their advisors as a result of their ready availability. Providing easy and quick access to the rules has reduced, considerably, the number of letters and phone calls to the FCC requesting help in rule location, thereby minimizing paperwork and administrative workload on the FCC staff and on licensees and their legal and engineering advisors as well.

3. As in the case of the Parts 73, 74 and 76 indexes, revisions and updates will be made in the future to keep this Part 78 index accurate and timely.

4. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public.

5. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

6. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

7. Therefore, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Part 78 of the FCC Rules and Regulations is amended as set fourth in the attached appendix, effective on the date of publication in the **Federal Register.**

8. For further information on this *Order*, contact Steve Crane, Mass Media Bureau, (202) 632-5414.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

1. The authority citation for Part 78 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

PART 78—[AMENDED]

2. An alphabetical index of rules is added to 47 CFR 78 and will be inserted at the end of the Part.

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[FR Doc. 85-13458 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 84-370; RM-4672]

Sharing of Two Police Radio Service Frequency Pairs With Eligibles in the Fire and Special Emergency Radio Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects an error in the Appendix of the Report and Order in Docket No. 84-370 concerning the sharing of two Police Radio Service frequency pairs with eligibles in the Fire and Special Emergency Radio Services.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, Washington, D.C. 20554, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of amendment of Part 90 of the Commission's rules concerning the sharing of two Police Radio Service frequency pairs with eligibles in the Fire and Special Emergency Radio Services; PR Docket No. 84-370, RM-4672.

Released: May 23, 1985.

A *Report and Order* in the above captioned matter was released by the Commission on December 13, 1984, and published in the **Federal Register** (49 FR 49637) on December 21, 1984. This Erratum corrects an error in the Appendix of that item involving the numbering of assignment limitations in the Special Emergency Radio Service. Item 4, of the Appendix should read as follows:

1. Section 90.53 is amended by revising the frequencies 460.525, 460.550, 465.525, and 465.550 in the table, revising paragraph (b)(17), and adding a new paragraph (b)(34):

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation
*	*	*
460.525	Base or mobile	17, 34
460.550	do	17, 34
*	*	*
465.525	Mobile	17, 34
465.550	do	17, 34
*	*	*

(b) * * *

(17) This frequency is shared with the Police and Fire Radio Services and is subject to the coordination requirements specified in § 90.175.

* * * * *

(34) This frequency is assignable only to governmental entities eligible under § 90.35(a) for the dispatch of medical care vehicles and personnel for the rendition or delivery of emergency medical services. This frequency may be designated by common consent for intra-system and inter-system mutual assistance purposes.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-13394 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Chapter 7

[AIDAR Notice 85-6]

Acquisition Regulation; Miscellaneous Changes

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to correct authority citations, and to incorporate a solicitation provision requiring offerors to provide information concerning past performance.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: M/SER/CM/SD/POL, Mr. J. M. Kelly, telephone (703) 235-9107.

SUPPLEMENTARY INFORMATION: In order to ensure that all authority citations in the AIDAR are current and correctly placed as required by 1 CFR 21.43, AID's current authority citation and instructions for placement of authority citations are included in this AIDAR Notice. This is an editorial change.

Since November 23, 1982, AID has had a Contract Information Bulletin (CIB) governing evaluation of contractor performance which required, among other things, inclusion of a provision in solicitations requiring offerors to provide information on past performance.

The CIB was submitted for OMB review as required by the Paperwork Reduction Act; it was approved on June

8, 1984, and given OMB control number 0412–0520.

The CIB requiring the solicitation provision was again submitted for OMB review, as required by OMB Bulletin 85–7. As a result of that review, OMB recommended that the solicitation provision be placed in the AIDAR.

On the basis that the OMB approved solicitation provision has been routinely required since November, 1982, we have determined that placing the requirement in the AIDAR does not establish a new requirement. We therefore have further determined that (for both the authority citation and the solicitation clause):

(1) The changes being made by this AIDAR Notice will not have any significant impact on AID contractors or the general public. Therefore, the change is not considered "significant" under FAR 1.303(b) or FAR 1.501, and public comments have not been solicited.

(2) This AIDAR Notice is not a major rule and is exempt from Sections 3 and 4 of E.O. 12291 by OMB Bulletin No. 85–7, December 14, 1984.

(3) As required by the Regulatory Flexibility Act, it is hereby certified that this AIDAR Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 701, 709, and 752

Government procurement.

1. The following authority citation is established for 48 CFR Chapter 7. This citation revises all authority citations now contained in the Chapter, and applies to each Part within it. This authority citation is to be inserted at the end of each table of contents for a Part or each section where applicable.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., P. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

701.105 [Amended]

2. Section 701.105, OMB Approval under the Paperwork Reduction Act, is amended by adding the following entries to the list of approval information collection and recordkeeping requirements in their proper numerical sequence:

"709.104–3(c),
752.209–70"

The OMB Control Number and expiration date in 701.105 are unchanged.

PART 709—CONTRACTOR QUALIFICATIONS

3. Part 709 is amended by adding a new Subpart 709.1 as follows:

Subpart 709.1—Responsible Prospective Contractors

709.104–3 Application of standards.

(a)—(b) [Reserved].

(c) *Satisfactory performance record.* In order to evaluate the prospective contractor's performance record, the contracting officer shall include the solicitation provision in 752.209–70 in all solicitations.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Subpart 752.2 is amended to add a new section 752.209–70 as follows:

752.209–70 Requirement for past performance references.

The following provision shall be included in all solicitations substantially as follows:

Requirement for Past Performance References (Nov 1982)

The offeror/bidder is required to submit, as part of its proposal/bid, the following additional information with respect to all contracts, grants or cooperative agreements involving the provision of similar or related services over the past three years to AID and to other organizations (both commercial and Governmental). Failure to provide complete information regarding previous similar/related contracts, grants or cooperative agreements may result in eventual disqualification. The information supplied must include the name and address of the organization for which services were performed; the current telephone number of a responsible technical representative of the organization; the number, if any, of each contract, grant or cooperative agreement; and a brief description of the services provided, including the period during which the services were provided. AID may use this information to contact technical representatives on prior contracts, grants or cooperative agreements to obtain information on performance. The contracting officer will consider such performance data along with other factors specified herein in determining whether the offeror/bidder is to be considered responsible as defined in FAR 9.101.

Dated: May 16, 1985.

John F. Owens,

AID Procurement Executive.

[FR Doc. 85–13343 Filed 6–4–85; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 31222-248]

Foreign Fishing; Hake; Final Assessment

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of hake final reassessment.

SUMMARY: NOAA issues this notice of final reassessment for the Southern New England Area of the domestic annual processing (DAP) amount in the foreign fishing regulations for the Hake Fishery of the Northwest Atlantic Preliminary Fishery Management Plan (PMP). Regulations allow NMFS to reassess the DAP for red hake in the Northwest Atlantic area to determine whether additional joint venture processing (JVP) amounts may be made available. The intended effect of the new specifications is to allow processing of joint venture applications in 1985.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION PLEASE CONTACT: Peter Colosi, 617–281–3600, ext. 272.

SUPPLEMENTARY INFORMATION: Foreign fishing regulations that govern the Atlantic hakes PMP contain procedures at § 611.51(b) to reassess DAP. If an application for joint venture fishing is received for an amount of hake which exceeds the JVP specified in the annual initial specifications for the fishing year, the Secretary of Commerce (Secretary) will reassess DAP to determine whether additional JVP can be made available. In making the reassessment, the Secretary will consult with the appropriate fishery management councils, and consider those factors listed at § 611.51(b)(ii) to assess the current and projected U.S. harvesting and processing performance. The preliminary reassessment will be published in the **Federal Register** and a public comment period of 15 days will be provided.

The Secretary has received a joint venture request for 6,000 metric tons (mt) of Southern New England red hake. The request exceeds the current JVP specification of zero (0) mt (refer to NW Atlantic 1–4 area in 50 FR 469, January 4, 1985). Therefore, the Secretary conducted a preliminary reassessment of DAP as discussed above and invited comment (50 FR 15464, April 18, 1985).

The PMP specified a 13,000 mt domestic annual harvest (DAH) and DAP for Southern New England red hake. However, the actual red hake catch from this area has been at low levels in recent years, averaging only 1,300 mt during 1981–1984. The entire U.S. harvest of red hake from this area over the 1981–1984 period was landed in the United States. This level of performance is a reasonable reflection of the past and present DAP. A U.S. fishing effort of 13,000 mt (DAH), which remains in excess of the amounts landed, is still available in this fishery. A substantial amount of red hake may be made available for JVP.

The Secretary expects that the 1981 through 1984 trend will continue in 1985. Catches from traditional hake harvesters are expected to be comparable to last year's level of 1,300 mt. In addition, four new domestic catcher-processor vessels in operation this year have indicated no directed effort toward red hake, although very small amounts of bycatch may occur.

No comments on the preliminary reassessment were received during the 15-day comment period. Therefore, the Secretary adopts as final the reassessment published at 50 FR 15464 (April 18, 1985) as follows. There is no increase in the estimated domestic annual harvest.

FINAL REASSESSMENT OF RED HAKE IN THE NW ATLANTIC 1–4 AREA FOR THE 1985 ANNUAL FISHING YEAR

Specification[1]	Initial amount (mt)	Reassessed amount (mt)
OY or TAC	16,000	...
DAH	13,000	
DAP	13,000	7,000
JVP	0	6,000
Reserve	0	...
TALFF	2,500	

[1] Optimum yield or total allowable catch (OY or TAC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), total allowable levels of foreign fishing (TALFF)

Classification

This action is authorized by 50 CFR 611.51, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

Dated: May 31, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–13490 Filed 6–5–85; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 108
Wednesday, June 5, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 75

[Airspace Docket No. 85-AWA-22]

Proposed Realignment of VOR Federal Airways and Jet Routes; Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign both the low altitude Federal Airway and Jet Route structures associated with the Oklahoma City, OK, (OKC) VORTAC. The OKC VORTAC is being relocated to an on-airport site at the Will Rogers World Airport.

DATE: Comments must be received on or before July 26, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-22, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign both the low altitudes VOR Federal Airways and Jet Routes associated with the Oklahoma City (OKC), OK, VORTAC. The OKC VORTAC is being relocated to an on-airport site (lat. 35°21'31" M., long. 97°36'32" W.) at the Will Rogers World Airport (KOKC). Segments of V-14, V-17, V-77, V-163, V-210, V-272, V-354, V-358, V-436, V-440, V-507, J-20 and J-21 are being amended due to this OKC VORTAC relocation. Additionally, although the legal descriptions of the following Jet Routes will not change because they remain direct routes, the charted depictions of J-6, J-14, J-23, J-74, J-78, and J-98 will be altered in conjunction with the OKC VORTAC relocation. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways and Jet routes, Airspace, Navigation (air).

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.65; and 49 CFR 1.47.

2. § 71.123 is amended as follows:

V–14—[Amended]

By removing the words "Tulsa, OK;" and substituting the words "INT Oklahoma City 052°T(054°M) and Tulsa, OK, 246°T(238°M) radials; Tulsa;"

V–17—[Amended]

By removing the words "INT Duncan 011° and Oklahoma City, OK, 180° radials; Oklahoma City;" and substituting the words "Oklahoma City, OK;"

V–77—[Amended]

By removing the words "Oklahoma City, OK, 202°" and substituting the words "Oklahoma City, OK, 216°T(209°M)"

V–163—[Amended]

By removing the words "INT Ardmore 342° and Oklahoma City, OK, 154° radials; to Oklahoma City," and substituting the words "to Oklahoma City, OK."

V–210—[Amended]

By removing the words "INT Liberal 137° and Oklahoma City, OK, 282° radials; Oklahoma City; INT Oklahoma City 109° and Okmulgee, OK, 241° radials;" and substituting the words "INT Liberal 137°T(126°M) and Oklahoma City, OK, 284°T(277°M) radials; Oklahoma City; INT Oklahoma City 113°T(106°M) and Okmulgee, OK, 238°T(230°M) radials;"

V–272—[Amended]

By removing the words "to McAlester, OK; Fort Smith, AR." and substituting the words "INT Oklahoma City 113°T(106°M) and McAlester, OK, 286°T(278°M) radials; McAlester; to Fort Smith, AR."

V–354—[Amended]

By removing the words "via INT Oklahoma City 045° and Pioneer, OK, 186° radials;" and substituting the words "via INT Oklahoma City 030°T(023°M) and Pioneer, OK, 179°T(170°M) radials;"

V–358—[Amended]

By removing the words "INT Ardmore 327° and Oklahoma City, OK, 180° radials;" and substituting the words "INT Ardmore 327°T(318°M) and Oklahoma City, OK, 195°T(188°M) radials;"

V–436—[Revised]

From Hobart, OK, via INT Hobart 085°T(075°M) and Oklahoma City, OK, 216°T(209°M) radials; Oklahoma City; INT Oklahoma City 068°T(061°M) and Tulsa, OK, 230°T(222°M) radials; to Tulsa.

V–440—[Amended]

By removing the words "INT Sayre 101° and Oklahoma City, OK, 242° radials;" and substituting the words "INT Sayre 104°T(094°M) and Oklahoma City, OK, 248°T(241°M) radials;"

V–507—[Amended]

By removing the words "INT Oklahoma City 282° and Gage, OK, 152° radials;" and substituting the words "INT Oklahoma City 284°T(277°M) and Gage, OK, 152°T(142°M) radials;"

3. The authority citation for Part 75 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a) 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.65; and 49 CFR 1.47.

4. § 75.100 is amended as follows:

J–20—[Amended]

By removing the words "INT Liberal 137° and Oklahoma City, OK, 282° radials;" and substituting the words "INT Liberal 137°T(126°M) and Oklahoma City, OK, 284°T(277°M) radials;"

J–21—[Amended]

By removing the words "INT Dallas-Fort Worth 355° and Oklahoma City, OK, 158° radials; Oklahoma City; Wichita, KS;" and substituting the words "INT Dallas-Fort Worth 355°T(347°M) and Oklahoma City, OK 162°T(155°M) radials; Oklahoma City; Pioneer, OK; Wichita, KS;"

Issued in Washington, D.C., on May 29, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division

[FR Doc. 85–13450 Filed 6–4–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Public Comment and Opportunity for Public Hearing on Modifications to the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referrred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the State's subsidence control regulations.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m., will not necessarily be considered. July 5, 1985.

If requested, a public hearing on the proposed modifications will be held on June 27, 1984, beginning at 10:00 a.m., at the location shown below under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand delivered to: Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: The Penn Harris Motor Inn and Convention Center at the Camp Hill bypass at U.S. 11 and 15, Camphill, Pennsylvania, in the Keystone-A Convention Room.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory agencies listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101.

Office of Surface Mining, Reclamation and Enforcement, 1100 L Street N.W., Washington, D.C. 20240

Pennsylvania Department of Environmental Resources, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenters recommendations. Comments received after the time indicated under DATES or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person

listed under **FOR FURTHER INFORMATION CONTACT** by the close of business June 20, 1985. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statemtns in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** notice (47 FR 33050).

III. Submission of Program Amendment

On April 10, 1985, Pennsylvania submitted to OSM pursuant to 30 CFR 732.17 proposed amendments to 25 Pa. Code Chapter 89, Subchapter F (pertaining to subsidence control) (OSM Administrative Record PA 550).

The amendment deletes the existing subchapter in its entirety and sets forth a new subchapter. The State has indicated that the new subchapter reflects the revised Federal standards for subsidence control at 30 CFR 784.20 and 817.121–817.126 which were adopted July 1, 1983 (48 FR 24638).

Also, certain new provisions relating to general mining requirements, protection of perennial streams and notices of anticipated mining activities are included in the amendment. In addition, the State has eliminated redundant information and reporting requirements and reformatted Subchapter F to provide a more precise presentation of requirements.

The Director is seeking public comment on the adequacy of the proposed regulations in satisfying the criteria for approval of State program amendments at 30 CFR 732.15 and 17. The full text of the amendment submitted by the State is available for public review at the OSM offices listed above under ADDRESSES under Administrative Record No. Pa–550.

V. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292, no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.))

Dated: May 30, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–13507 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300130; PH–FRL 2844–4]

Dimethylpolysiloxane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that dimethylpolysiloxane be exempted from the requirement of a tolerance when used as an inert ingredient (defoaming agent) in pesticide formulations. This proposed regulation was requested by Zoecon Industries.

DATE: Written comments, identified by the document control number [OPP–300130], must be received on or before July 5, 1985.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767), Environmental Protection Agency, Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in room 236 at the

address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail• N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Room 724A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: At the request of Zoecon Industries, the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for dimethylpolysiloxane when used as a defoaming agent in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Dimethylpolysiloxane.

Name and address of requestor. Zoecon Industries, Dallas, TX 75234.

Bases for approval. (1) Dimethylpolysiloxane is cleared under 21 CFR 173.340 as a deforming agent (food additive) with a 10–ppm tolerance in foods.

(2) Dimethylpolysiloxane is cleared under 40 CFR 180.1001(c) (conforming to 21 CFR 173.340) as a defoaming agent in pesticide formulations used on growing crops or to raw agricultural commodities after harvest.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP–300130]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticide and pests.

Dated: May 21, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as set forth below:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by adding and alphbetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
•	•	•
Dimethylpolysiloxane (CAS Registry No. 9016–00–6).	.....	Defoaming agent.
•	•	•

[FR Doc. 85–13053 Filed 6–4–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OOP–300123; PH–FRL 2845–2]

Revocation of Chlordane Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document (1) proposes the revocation of tolerances for residues of the insecticide chlordane (1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-4,7-methanoindene, containing not more than one percent of the intermediate compound hexachlorocyclopentadiene) in or on various raw agricultural commodities; (2) lists the action levels which EPA intends to recommend to the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) to replace the tolerances once the rule revoking the tolerances is final; and (3) lists EPA's recommendations to FDA and USDA regarding retention of existing action levels for food and feed commodities for which no tolerances were established. This proposed regulatory action was initiated by the Environmental Protection Agency.

DATE: Written comments, identified by the document control number [OOP–300123], must be received on or before August 5, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed

confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 26, 1974 (39 FR 41298), of Intent to Cancel registrations of pesticide products containing chlordane. In addition, applications for federal registration of intrastate products containing chlordane were subjected to the terms of a Notice of Intent to Deny Registration, published in the **Federal Register** of May 21, 1975 (40 FR 22587).

A Final Order issued by the Administrator cancelled all the uses which were subject to the Notice of Intent to Cancel and the Notice of Intent to Deny Registration, effective March 6, 1978, with the exception of certain registrations which were to be phased out over specified periods of time, ranging from October 1, 1978 to December 1, 1980, published in the **Federal Register** of March 24, 1978 (43 FR 12372). All food uses of chlordane were cancelled except for uses on citrus, flax, grapes, and strawberries, all of which were phased out during the period of October 1, 1978 to July 1, 1980.

The tolerances established for the residues of chlordane were not revoked concurrently with the cancellation of the pesticide registrations because of the pesticide's slow rate of degradation and its persistence in the environment. Existing action levels were established, based on EPA recommendations, to cover unavoidable residues of this pesticide occurring in food and feed commodities for which no tolerances had been established.

To deal with the issue of persistent pesticide chemicals which have been cancelled, the EPA published a "Policy Statement on Revocation of Tolerances for Cancelled Pesticides" in the **Federal Register** of September 29, 1982 (47 FR 42956). This statement, which was a joint agreement among the EPA, FDA, FSIS and the Agricultural Marketing Service of USDA, sets forth the procedure for replacing formal tolerances for residues of persistent pesticides with action levels at the time the tolerances are revoked. These action levels would cover unavoidable residues occurring in the U.S. food supply as a result of environmental contamination from past legal usage of the pesticides. The policy statement described the factors which EPA would consider when determining appropriate action levels to recommend to FDA or FSIS. These same factors also would be used to recommend that FDA and FSIS lower the action levels as subsequent surveillance data, reviewed periodically, indicated that the residue levels found in the environment had dissipated further.

Based on the above facts and the guidance provided in the policy statement, the Agency now proposes to revoke the existing tolerances for residues listed in 40 CFR 180.122 and the interim tolerances listed in 40 CFR 180.319 specifically for residues of chlordane in or on various raw agricultural commodities.

The Agency has reviewed chlordane residue monitoring data from FDA and FSIS resulting from their surveillance of domestic and imported food and feed commodities during the years 1979 to 1983. Based on its evaluation of these data and its estimate of the levels of chlordane residues occurring in food from environmental sources, the Agency will recommend that FDA establish the following action levels for residues of chlordane, expressed in parts per million (ppm), to replace the existing chlordane tolerances when they are revoked. For consistency with existing FDA action levels, all recommended action levels are for the "the sum of residues of *cis*- and *trans*-chlordane, *cis*- and *trans*-nonachlor, oxychlordane (octachlor epoxide), alpha, beta, and gamma chlordene, and chlordene."

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Existing tolerances (ppm) chlordane	Recommended action levels (ppm) chlordane
Apples	0.3	0.1
Apricots	0.3	0.1
Beans	0.3	0.1
Beets (with or without tops)	0.3	0.1
Beets, greens alone	0.3	0.1
Blackberries	0.3	0.1
Blueberries (huckleberries)	0.3	0.1
Boysenberries	0.3	0.1
Broccoli	0.3	0.1
Brussels sprouts	0.3	0.1
Cabbage	0.3	0.1
Carrots	0.3	0.1
Cauliflower	0.3	0.1
Celery	0.3	0.1
Cherries	0.3	0.1
Citrus fruits	0.3	0.1
Collards	0.3	0.1
Corn	0.3	0.1
Cucumbers	0.3	0.1
Dewberries	0.3	0.1
Eggplant	0.3	0.1
Grapes	0.3	0.1
Kale	0.3	0.1
Kohlrabi	0.3	0.1
Lettuce	0.3	0.1
Loganberries	0.3	0.1
Melons	0.3	0.1
Nectarines	0.3	0.1
Okra	0.3	0.1
Onions	0.3	0.1
Papayas	0.3	0.1
Peaches	0.3	0.1
Peanuts	0.3	0.1
Pears	0.3	0.1
Peas	0.3	0.1
Peppers	0.3	0.1
Pineapples	0.3	0.1
Plums (fresh prunes)	0.3	0.1
Potatoes	0.3	0.1
Quinces	0.3	0.1
Radishes (with or without tops)	0.3	0.1
Radishes, tops	0.3	0.1
Raspberries	0.3	0.1
Rutabagas (with or without tops)	0.3	0.1
Rutabagas, tops	0.3	0.1
Squash	0.3	0.1
Strawberries	0.3	0.1
Summer squash	0.3	0.1
Sweet potatoes	0.3	0.1
Tomatoes	0.3	0.1
Turnips (with or without tops)	0.3	0.1
Turnips, greens	0.3	0.1
Youngberries	0.3	0.1

The Agency will recommend that FDA establish the following action levels for residues of chlordane, expressed in ppm, to replace the existing interim tolerances for residues of chlordane, listed in 40 CFR 180.319, when they are revoked.

TABLE 2—INTERIM TOLERANCES REPLACED BY ACTION LEVELS

Commodities	Existing tolerances (ppm) chlordane	Recommended action levels (ppm) chlordane
Asparagus	0.1	0.1
Bananas	0.03	0.1
Mustard greens	0.1	0.1
Parsnips	0.2	0.1
Pumpkins	0.1	0.1
Spinach	0.1	0.1
Swiss chard	0.1	0.1

EPA will recommend to FDA and FSIS that they may retain the following existing action levels for residues of chlordane. Commodities affected, and listed below, include processed animal feed and the processed feed commodity

rendered animal fat, which is used as an animal feed ingredient; however, there are no established feed additive tolerances in 21 CFR Part 561 for residues of chlordane which would be subject to revocation under section 409(h) of the Federal Food, Drug, and Cosmetic Act. Therefore, a separate Federal Register notice addressing feed additive tolerances or replacement action levels will not be published.

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and recommended action levels (ppm) chlordane
Animal fat (rendered)	0.6
Animal feed (processed)	0.1
Fat of meat from cattle, goats, hogs, horses, sheep, poultry, and rabbits	0.3
Fish	0.3

In order to meet the objectives of the Codex Alimentarius Commission under the Joint FAO/WHO Food Standards Programme of having internationally agreed-upon limits for pesticide residues in food, the action levels being recommended conform with Codex recommended limits wherever possible and practical.

The recommended action level of 0.1 ppm in cucumbers, melons, pineapples, and squash are identical to existing Codex limits for these commodities. The recommended levels of 0.1 ppm in many of the other commodities, however, are not consistent with current Codex limits of either 0.02 ppm or 0.05 ppm for the same commodities.

The multi-residue analytical methodology used by FDA in its monitoring/enforcement programs, which is broad in scope and analyzes for numerous pesticides simultaneously, would not be appropriate for enforcement of a tolerance below 0.1 ppm for chlordane. Therefore, so that tolerance enforcement can be maintained for chlordane throughout a large sampling program, covering many foods, the 0.1 ppm action level is recommended for all the commodities affected. The tolerances being replaced are currently equal to or higher than the recommended 0.1 ppm action level, except for bananas which has an existing tolerance of 0.03 ppm. For consistency with other recommended chlordane action levels and to utilize FDA's multi-residue analytical method, the recommended action level for bananas is also 0.1 ppm.

Current Codex limits for chlordane residues are temporary until the temporary nature of the allowable daily intake (ADI) level is changed. For this reason, because the Codex limits are subject to reevaluation, the 0.1 ppm level is not considered to be in conflict with the stated policy for harmonization of U.S. and Codex limits. Future reevaluations of the action levels, however, will be conducted to assure consistency with updated monitoring data and future Codex limits.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains chlordane may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke all chlordane tolerances in food commodities be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke the tolerances and the interim tolerances for residues of chlordane listed in 40 CFR 180.122 and 180.319. Comments must bear a notation indicating the document control number, [OPP-300123]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerances for residues of chlordane should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 28, 1985

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By amending § 180.319 by removing the entries under "Chlordane" to read as follows:

§ 180.319 Interim tolerances.

* * * * *

Substances	Use	Tolerance in parts per million	Raw agricultural commodities
* * * * *			
Chlordane [Removed]	[Removed]	[Removed]	[Removed]
* * * * *			

§ 180.122 [Removed]

3. Section 180.122 is removed.

[FR Doc. 85-13364 Filed 6-4-85; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 180

[[OPP-300124] PH-FRL 2844-9]

Revocation of Ethyl 4,4'-Dichlorobenzilate Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances established for residues of the insecticide ethyl 4,4'-dichlorobenzilate (chlorobenzilate) in or on certain raw agricultural commodities. This proposed regulatory action was initiated by the Environmental Protection Agency to remove tolerance regulations on the pesticide for which registered uses have been cancelled.

DATE: Written comments, identified by the document control number [OPP-300124], must be received on or before Aug. 5, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

In person, deliver comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 13, 1979 (44 FR 9548), of its intent to cancel registrations and deny applications for registrations of pesticide products containing chlorobenzilate for all uses except for the use on citrus. EPA had determined that the risk of using chlorobenzilate outweighed the benefits and therefore initiated actions to cancel or deny registrations for all uses except citrus. The notice, however, enumerated certain labeling modifications designed to reduce exposure to chlorobenzilate resulting from the chemical's use on citrus grown in Florida, Texas, Arizona, and California.

When a pesticide's registrations for a food or feed use are cancelled because of safety concerns, the associated tolerance or food additive regulation is no longer justified and should be revoked. Such revocation action should discourage domestic misuse and would also make illegal and importation of food commodities bearing residues of the cancelled pesticide.

EPA published a "Policy Statement on Revocation of Tolerances for Cancelled Pesticides" in the **Federal Register** of September 29, 1982 (47 FR 42956). This statement, which was a joint agreement among the EPA, FDA, FSIS and the Agricultural Marketing Service of USDA, discusses the revocation of formal tolerances for residues of cancelled pesticides and the consequent need to determine whether action levels should be establihsed for these pesticides at the time the tolerances are revoked. These action levels would cover unavoidable residues occurring in the U.S. food supply as a result of environmental contamination from past legal usage of the pesticides. For persistent pesticides, it is possible that crops grown in previously-treated fields may contain detectable residues of the pesticides for years after the application of the cancelled pesticide has ceased. For pesticides which degrade rapidly in the environment, however, revoking a tolerance would not necessitate establishment of a replacement action level because residues from past use would not be expected to be present in food commodities at detectable levels.

Based on the above facts and the guidance provided in the policy statement, EPA now proposes to revoke the existing tolerances listed in 40 CFR 180.109 for residues of chlorobenzilate in or on the following raw agricultural commodities:

Commodities	Existing tolerances (ppm) chlorobenzilate
Almonds	0.2
Almonds, hulls	15.0
Apples	5.0
Cottonseed	0.5
Melons	5.0
Pears	5.0
Walnuts	0.2

Available surveillance data from FDA's monitoring of domestic surveillance samples show no detectable cholorobenzilate residues in the crops for which uses have been cancelled. Since chlorobenzilate is only moderately persistent and its uses were cancelled over 5 years ago (for all commodities except citrus), there is no anticipation of a residue problem in or on the raw agriculatural commodities for which uses have been cancelled. Therefore, no action levels are needed to replace the established tolerances for these commodities upon their revocation.

Since chlorobenzilate is still registered and being used on citrus, and since citrus processed commodities (dehydrated and wet citrus pulp and citrus molasses) constitute major feed items, transmission of secondary residues to the meat, fat, and meat byproducts of livestock (except poultry) is anticipated. Therefore, it is appropriate to retain the tolerances, at the existing levels, for citrus and for the meat, fat, and meat byproducts of cattle and sheep.

During the post-publication comment period, EPA will inform other countries of our intended revocation action so that those who might be affected are afforded the opportunity to comment on the action; copies of this proposed rule will be mailed to the members of the Codex Alimentarius Commission.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains chlorobenzilate may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this proposal to revoke certain tolerances for residues of chlorobenzilate. Comments must bear a notation indicating the document control number [OPP-300124]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written

comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerances for residues of chlorobenzilate in almonds, almond hulls, apples, cottonseed, melons, pears, and walnuts should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 28, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. the authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.109 is revised to read as follows:

§ 180.109 Ethyl 4,4'-dichlorobenzilate; tolerances for residues.

Tolerances are established for residues of the insecticide ethyl 4,4'-dichlorobenzilate (chlorobenzilate) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.5
Cattle, mbyp	0.5
Cattle, meat	0.5
Citrus fruits	5.0
Sheep, fat	0.5
Sheep, mbyp	0.5
Sheep, meat	0.5

[FR Doc. 85-13366 Filed 6-4-85; 8:45 am]

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40 CFR Part 261

[SW-FRL-2845-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude solid wastes that will be generated by EPA's Mobile Incineration System located in McDowell, Missouri, from the list of hazardous wastes contained in 40 CFR 261.31. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "site-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude those wastes generated by EPA's Mobile Incineration System from listing as hazardous wastes under 40 CFR 261.

The Hazardous and Solid Waste Amendments of 1984 recently changed the criteria to be used in evaluating delisting petitions. Consequently, our evaluation considered both the factors for which the wastes were originally listed as well as all other factors and toxicants reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on this proposed exclusion until July 5, 1985. Any person may request a hearing on this proposed exclusion by filing a request with Eileen B. Claussen, whose address appears below, by June 20, 1985. The request must obtain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001—Delisting petition (Dioxin)".

The public docket for this proposed exclusion is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Dr. Doreen Sterling, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-6775.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1985, EPA published a final rule ("the dioxin rule") designating as acute hazardous wastes, certain wastes containing tetra-, penta-, and hexachlorinated dibenzo-p-dioxins (CDDs), -dibenzofurans (CDFs), and certain chlorinated phenols. See 50 FR 1978-2006. These regulations also specified certain management standards for these wastes. For incineration, the regulations specify that they must be managed at incinerators shown to achieve 99.9999% (six 9s) destruction

and removal efficiency (DRE) of the principal organic hazardous constituents (POHCs) which are difficult or more difficult to incinerate than the tetra-, penta-, and hexachlorinated dioxins (CDDs), -dibenzofurans (CDFs) isomers.

Under 40 CFR 261.3(c)(2)(i), any residue derived from the treatment of a hazardous waste is a hazardous waste unless otherwise designated, or delisted under the provisions of 40 CFR 260.20 and 260.22. EPA has interpreted this to mean that the residues resulting from the incineration of acute hazardous wastes (*i.e.*, dioxin wastes) are still acute hazardous wastes, unless otherwise designated, or delisted. (In the dioxin regulation, the Agency designated, the residues resulting from six 9's incineration or thermal treatment of dioxin-contaminated soils as toxic wastes (EPA Hazardous Waste No. F028). This waste therefore can be managed at interim status facilities.)

The Agency recognizes, however, that while a waste described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons the opportunity to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents), other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); Section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 3001(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) are evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics—namely, ignitability, reactivity, corrosivity, and EP toxicity.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) that the waste not meet any of the criteria for which it was listed originally and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous, wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Petitioner

The proposed exclusion published today involes EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri.

I. Environmental Protection Agency

A. Petition for Exclusion

The Evironmental Protection Agency, Releases Control Branch (RCB), located in Edison, New Jersey, has petitioned the Agency to exclude from the list of hazardous wastes the process wastewater, the rotary kiln ash, the filter media generated from a cleanable high effeciency air filter (CHEAF) particulate scrubber, and other solids [1] removed from the wastewater which will be generated during the field demonstration of EPA's Mobile Incineration System (MIS) at the Denney Farm site in McDowell, Missouri. The categories of wastes to be incinerated during the field demonstration at the Denney Farm site are listed in Table 1. These wastes are presently listed [2] as EPA Hazardous Waste Nos. F020, F022, F023, F026, F027, and F028 (See Table 2).

Table 1: Categories of Materials to be Incinerated during Field Demonstration at Denney Farm Site in McDowell, MO

Field Demonstration

Liquids: Various dioxin contaminated solvents including:

(1) Mixed solvents* and water from Denney Farm (2590 gallons).

(2) Process waste** from detoxification of dioxin at Syntex Verona plant (15,000 gallons).

(3) Mixed solvents*** from Syntex Verona plant (5,000 gallons).

Solids:

1. Denney Farm contaminated site soil (400,000 pounds).
2. Chemical solids and soils from Denney Farm (30,500 pounds)
3. Drum remnants and trash from Denney Farm (25,000 pounds)
4. Activated carbon from Syntex Verona plant (5,000 pounds)
5. Miscellaneous trash from Syntex Verona plant (25,000 pounds)
6. Spill area soil contaminated with dioxins, Neosho, Mo. (50,625 pounds)
7. Asphaltic material, at old wastewater school, Neosho, Mo. (75 gallons)
8. Drums with residue from Erwin Farm (2,000 pounds)
9. Soil from Rusha Farm (20,000 pounds)
10. Soil from Tally Farm (20,000 pounds)
11. Soil from Times Beach (6,000 pounds)
12. Soil from Piazza Road (6,000 pounds)
13. Soils and other materials from clean-up from Baldwin Park (up to 2,000,000 pounds).

*The solvents used by NEPACCO (the source of the contamination) in their operation in the Verona area were mineral spirits, toluene, and ethylene glycol.

**The solvents used are claimed to be confidential business information (CBI) and are in the CBI docket to this rulemaking.

***The mixed solvents used by Syntex to clean out the old equipment were hexane, isopropyl alcohol, methanol, and water.

Table 2

F020 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulation process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol).

F022 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of

[1] The other solids include particulates collected from the secondary combustion chamber and sludge which is collected from the air pollution control equipment sumps and from the clarifier on the process waterpurge stream treatment system. The carbon filters are not included in the other solids category and hence are not a subject of this notice.

[2] On January 14, 1985 (see 50 FR 1978), EPA amended the regulations for Hazardous Waste Management under RCRA, by listing as acute hazardous waste certain wastes containing particular chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols; this rule becomes effective on July 15, 1985. RCB is petitioning the Agency for an exclusion because the field demonstration of the MIS will be in progress at the time this regulation takes effect.

tetra,- penta,- or hexachlorobenzenes under alkaline conditions.

F023 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5,-trichlorophenol).

F026 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.

F027 Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5,-trichlorophenol as the sole component).

F028 Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

These wastes are listed as acute hazardous wastes (except F028, which is listed as toxic) because they contain tertra,- penta-, and hexachlorinated dibenzo-p-dioxins and -dibenzofurans. In addition, these wastes contain tri-, tetra-, and pentachlorophenols and their derivatives.

RCB has petitioned the Agency to exclude its wastewater and other solids generated from the MIS during the field demonstration because the wastes will neither meet the criteria for which they are listed nor contain any additional constituents nor exhibit any of the characteristics of hazardous waste which could cause the waste to be hazardous. To support their claim, RCB has submitted: (1) documentation on the origin of the wastes to be burned during the field demonstration; (2) a detailed description of the MIS, including schematic diagrams, an engineering description, the incinerator operating conditions, and trial burn procedures; (3) characterization data, including analytical data of the materials incinerated during the trial burn; and (4) the analytical results on the wastewater, rotary kiln ash, and CHEAF media generated during the trial burn. Although the petitioner did not provide analytical data for the other solids, the petitioner claims that the solids collected from the secondary combustion chamber, air pollution control equipments sumps, and clarifier are all derived from the same source; the solid particles either drop out of the secondary combustion chamber as ash or pass into the air pollution control equipment. The petitioner argues that all of these solid particles have been exposed to a higher temperature and, thus, have undergone a more rigorous thermal treatment than the kiln ash and should therefore be expected to contain even lower concentrations of organic constituents than the kiln ash.

Origin of the Wastes

The RCB has provided documentation on the origin of the waste to be burned during the field demonstration and supporting evidence of the relationship between the wastes incinerated during the trial burn and the wastes that will be incinerated during the field demonstration. The history of these wastes is documented in the public record.[3] In particularly, the now defunct Northeastern Pharmaceutical and Chemical Company (NEPACCO), which had leased manufacturing facilities at a chemical plant in Verona, Missouri, has been been identified as the source of the hazardous constituents in the wastes identified in Table 1 and has also been identified as the source of the hazardous constituents in the wastes incinerated during the trial burns.

NEPACCO manufactured Hexachlorophene. This compound, a bactericide, is produced from the reaction of formaldehyde with 2,4,5-trichlorophenol(2,4,5-TCP) at elevated temperatures in the presence of an acid catalyst.[4] NEPACCO also produced 2,4,5-TCP as an intermediate. Although no detailed information is available on NEPACCO's 2,4,5-TCP process, the generic process involves the hydrolysis of 1,2,4,5-tetrachlorobenzene with caustic soda at elevated temperatures.[5] The pharmaceutical grade of Hexachlorophene, produced at the Verona plant, necessitated the purification of 2,4,5-TCP by distillation. Consequently, 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD),[6] a contaminant in 2,4,5-TCP production, became concentrated in the still bottoms at a concentration of approximately 350 ppm. The solid and liquid waste streams resulting from NEPACCO's operation included TCDD-contaminated still bottoms, a high strength refractory wastewater, and an expendable clay filter material used to decolorize the Hexachlorophene before crystallization.[7]

In the early 1970's, Syntex Agribusiness, which had acquired the Verona plant, discovered 4300 gallons of abandoned waste in a tank. This sludge-like material (still bottoms) contained 350 ppm of TCDD. In May 1980, a photolysis process was used to reduce the concentration of TCDD found in the NEPACCO wastes from 350 ppm to 0.2 ppm. In addition, there was a residual of 300 gallons of asphalt-like material left in Tank T-1, which was too viscous to be processed by photolysis. As investigations continued, additional sites were discovered where the NEPACCO wastes had been abandoned. For example, the Region VII [8] investigatory record shows that NEPACCO wastes were discovered at the nearby Denney Farm site, the wastewater school at Neosho, the Rusha Farm site, the Tally Farm site, the Erwin Farm site, and the Baldwin Park site. The record also indicates that it is the NEPACCO wastes that are the major contaminants at the Times Beach and Piazza Road sites. It is these wastes and materials contaminated with these wastes, that are going to be incinerated during the field demonstration of the MIS at the Denney Farm site.

Description of the Mobile Incineration System[9]

The MIS was designed and built to provide a mobile facility for on-site thermal destruction and detoxification of hazardous and toxic organic substances collected from clean-up operations at spills or at uncontrolled hazardous waste sites. The system is designed to provide state-of-the-art

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[3] See especially "Report Preliminary Investigation of Spring River Basin", U.S. EPA Region VII, July 23, 1982; "Report of Investigation Neosho, Mo.," U.S. EPA Region VII July 28, 1982; "U.S.A. vs NEPACCO, Civil Action No. 80-5066-CV-S-W and "consent decree"; Deposition of Russell M. Bliss, Oct. 26, 1984, and "Dioxin Investigation in Southwest Missouri", Daniel H. Harris, USEPA Region VII, Surveillance and Analysis Division(SAD).

[4] See Listing Background Document for wastes containing tetra-penta-, hexachlorodibenzo-p-dioxins (CDDs) or -dibenzofurans(CDFs).

[5] See footnote 4.

[6] For the purposes of this notice the following acronyms and definitions are used:

PCDDs = all isomers of all chlorinated dibenzo-p-dioxins;

PCDFs = all isomers of all chlorinated dibenzofurans;

CDDs and CDFs = all isomers of tetra-, penta-, and hexachlorodibenzo-p-dioxins and -dibenzofurans, respectively

TCDDs and TCDFs = all isomers of tetrachlorodibenzo-p-dioxins and -dibenzofurans, respectively

TCDD and TCDF = the respective 2,3,7,8-isomers. PeCDDs/Fs and HxCDDs/Fs = the penta- and hexachloro compounds.

[7] See footnote 3.

[8] See footnote 3.

[9] See "Consolidated Trial Burn Plan, Quality Assurance Project Plan, and Detailed Sampling/Analytical Procedures", USEPA, Dec. 6, 1984.

thermal destruction of all organic contaminants fed to the system, including persistent, organic non-biodegradable compounds, as well as debris from cleanup operations. The MIS can incinerate sludges, soils, or liquids which contain chlorine or phosphorus-bearing compounds, such as, PCBs, kepone, dioxins, and organophosphate pesticides.

The total system consists of: (1) incineration and air pollution control (APC) equipment mounted on three heavy duty, over-the-road, semi-trailers; (2) combustion and stack gas monitoring equipment housed within a fourth trailer; and (3) ancillary support equipment. The incinerator and APC component consist principally of a: (1) a rotary kiln (kiln); (2) a secondary combustion chamber (SCC); (3) a wetted-throat quench elbow with sump; (4) a cleanable high efficiency air filter (CHEAF); (5) a mass transfer (MX) scrubber; and (6) an induced draft (ID) fan. Ancillary support equipment consists of bulk fuel storage; waste blending, and feed equipment for both liquids and solids; scrubber solution feed equipment; ash receiving drums; and an auxiliary diesel power generator.

During the trial burn, dioxin-contaminated soil and liquids were thermally treated in the kiln at about 1800 °F. Incombustible ash and treated soil were discharged directly from the kiln. The combustion gas from the kiln entered the SCC and was subjected to a temperature of 2,200 °F and had a SCC combustion gas flow rate of about 13,500 actual cubic feet per minute (acfm). The temperatures and combustion gas flow rate were controlled as closely as possible, but varied somewhat from run to run because of normal operational considerations.

The 13,500 acfm flow rate corresponds to a SCC residence time of about 2.6 seconds. The feed rate of contaminated soil was about 2000 lb./hr. Due to the low heat value of the soil, auxiliary fuel was used during the dioxin/soil trial burn runs. Approximately 5 to 6 MM Btu/hr were needed in the kiln and about 4 to 5 MM Btu/hr in the SCC. The actual amount needed depends on the soils' physical properties. The auxiliary fuel came from two sources: fuel oil and the waste liquid containing dioxin.

The dioxin-contaminated waste liquid was prepared by blending existing still bottom wastes with butanol. The dioxin-containing liquid was about 30 to 40% by weight butanol and had a heat value of about 14,500 Btu/lb. This liquid was fired to the kiln at the same time that the dioxin-containing soil was fed to the rotary kiln.

The flue gas, which exits from the SCC, was cooled by water sprays from 2,200 °F to approximately 190 °F. The majority of particles are scrubbed out of the gas stream at this point. Cooling water was collected in the quench sump. The gases then passed into the air pollution control equipment on the third trailer. Here, any submicron-sized particulates are removed from the gas stream in the CHEAF device by entrapment either on the irrigated filter media or in the scrubbing sprays. Acidic gases generated by the destruction process are removed and neutralized in an alkaine scrubber. Gases are drawn through the system by vacuum to ensure that no toxic gases escape from the system. The cleaned gases are discharged from the system through a 40 foot high stack. The quench and CHEAF sumps which collect the scrubbed particles are continuously purged through hydrocyclones which separate the solid particles from the aqueous stream. These solids separate out in a clarifier. The waste stream is then split in two, and each half is then passed through two 50 micron carbon filters. The filtered wastewater is then stored in three holding tanks. Tank A and B have a capacity of 15,000 gallons each; Tank C has a 9,000 gallon capacity if delisted, RCB plans to drip-irrigate (land apply) this filtered wastewater at a rate of 3 gal/min. The water would be released through a 500 foot perforated pipe of ¼ inch diameter. This discharged rate is said to be low enough to prevent runoff. The treated soil will be disposed of at the Denney Farm site.

The MIS's performance is maintained through instruments and automatic safety shutdown controls. The system is controlled and monitored via electrical relay logic and conventional industrial process instrumentation and hardware. Fuel, waste, and combustion air feed rates, combustion temperatures, and stack gas and SCC flue gas concentrations of carbon monoxide (CO), carbon dioxide (CO_2), oxygen (O_2), and nitric oxides (NO_x) are continuously monitored to assure compliance with their RCRA permit. In addition to the required parameters, sulfur dioxide (SO_2) and total hydrocarbons (THC) can also be monitored, if necessary.

Safety interlocks and shut down features comprise a major portion of the control system. The primary function of the waste feed cut-off interlocks is to prevent the feeding of hazardous wastes to the incinerator at conditions that are inadequate to assure proper destruction of those wastes. During the startup and shutdown of the incenerator or during process upsets, the interlock system automatically stops all waste feed systems and prevents their restart until the incinerator is at proper operating conditions; the interlock is then manually reset.

In general, the process parameters that alert and initiate responses to alarm conditions are:

- High or low kiln temperature.
- High or low secondary combustion chamber temperature.
- Low secondary combustion chamber outlet oxygen (O_2). level or oxygen analyzer malfunction.
- High secondary combustion chamber outlet carbon monoxide (CO) level or analyzer malfunction.
- Low water flow from the quench, particulate scrubber, or mass transfer scrubber sumps.
- Very low water level in the quench, particulate scrubber, or mass transfer scrubber sumps.
- High gas temperature at the inlet to the mass transfer scrubber.
- High pressure at the induced-draft inlet.
- High vibration of the induced-draft fan.
- Insufficient burner air or fuel supply.

The system is also monitored manually and can be shut down manually by an operator.

RCB claims that CDDs and CDFs are converted into carbon dioxide, water, and hydrogen chloride. Hydrogen chloride is neutralized by the APC equipment and does not escape to the atmosphere.

Analytical Data

RCB has submitted analytical data which quantifies the organic constituents and EP metals present in: (1) a composite sample taken from drums containing dioxin-contaminated still bottoms which were buried in a trench at the Denney Farm site and (2) a composite sample of soils taken from this trench. These samples were analyzed for all the priority pollutants and any other organic constituent that could reasonably be present in the waste. The maximum concentrations of the EP metals and the organic constituents present in the above mentioned waste are presented in Table 3. These same materials, together with the still bottoms in Tank T–1 (in solvent) at the Verona plant, were incinerated during the trial burn.

RCB has also submitted analytical data on four representative composite samples of the wastewater, kiln ash, and CHEAF media which were generated during the trial burn. Four grab samples

were taken from each tank of wastewater generated during the trial burn and combined to produce one composite sample. These wastewater samples were labeled as A–1, A–2, B–1, and C–2. Tank A and B can hold 15,000 gallons of wastewater, while Tank C can hold 9,000 gallons. Samples labeled A–1, B–1, and A–2 solely represent the wastewater. Tank C contained approximately 6,000 gallons of the wastewater and 2,000 gallons of laundry water. Since the tanks contained all the wastewater generated during the trial burn and since the wastewater has been filtered, RCB claims that the wastewater is homogeneous (*i.e.*, no particulates are present) and that the grab samples are representative of the process wastewater.

Sampling of the ash and CHEAF media was performed in the following manner. During the trial burn, each drum of ash was sampled by taking a 250 cc grab sample from the surface. The samples taken from each drum during a trial burn run (*i.e.*, an 8–12 hr. day) were used to make a single composite for the run. Approximately 30 drums were generated in each run. A total of four composite samples were thus collected, each composite sample represents one run. A core sample was collected from each CHEAF roll generated during the trial burn. Each run consumed one or two CHEAF rolls. The core samples were composited for each run to yield a representative sample for analysis. RCB further claims that the CHEAF media analyses are representative of all the other solids generated during the burn because they were all derived from the same source.

The wastewater, kiln ash, and CHEAF samples were analyzed for the toxic organic constituents found to be present in the still bottom and trench soil (as identified in Table 3) and also for any other toxic organic constituents thought to be present as a by-product of combustion. The maximum organic constituent concentrations and method detection limits are presented in Table 4. RCB has also analyzed the wastewater for volatile organic priority pollutants. These data are presented in Table 5. Analyses for the EP toxicity test metals revealed the maximum concentrations reported in Table 6.

The RCB also claims that the wastewater does not meet the reactivity, corrosivity, or ignitability characteristics because the wastewater is aqueous and the solids have been burned at elevated temperatures in the incinerator.

The petitioner further claims that the wastewater and solids that will be generated during the field demonstration will also be non-hazardous because these wastes are all derived from NEPACCO's Hexachlorophene and 2,4,5-TCP processes, the same source as the trial burn wastes. RCB claims that the maximun quantity of wastes generated during the field demonstration will be 450,000 gallons of wastewater and 2.4 million pounds of solids.

TABLE 3

Hazardous constituents	Maximum concentration, in soil or still bottom, ppm
2,3,7,8-TCDD	272
2,3,4-trichlorophenol	[illegible]
2,4,5-trichlorophenol	[illegible]
2,5-dichlorophenol	[illegible]
3,4-dichlorophenol	1000
2,3,4,5-tetrachlorophenol	[illegible]
2,3,4,6-tetrachlorophenol	100
1,2,2,5-tetrachlorobenzene	120
hexachlorophene	52
1,3-benzenediol, 4,6-dichloro	[illegible]
xylene	[illegible]
Arsenic	11.4
Barium	5.4
Cadmium	0.9
Chromium	21.1
Lead	6.9
Mercury	0.01
Selenium	<10.00
Silver	<0.10

TABLE 4

Parameters analyzed	Wastewater	Detection limit	Kiln ash	Detection limit	CHEAF	Detection limit
TCDDs	ND	3.9 ppt *	ND	0.09 ppb	ND	0.12 ppb.
PeCDDs	ND	2.4 ppt	ND	0.13 ppb	ND	0.03 ppb.
HxCDDs	ND	5.2 ppt	ND	0.18 ppb	ND	0.13 ppb.
TCDFs	ND	4.5 ppt	ND	0.31 ppb	ND	0.12 ppb.
PeCDFs	ND	4.1 ppt	ND	0.29 ppb	ND	0.16 ppb.
HxCDFs	ND	4.8 ppt	ND	0.28 ppb	ND	0.33 ppb.
2,3,4-Trichlorophenol	ND	50 ppb	ND	1.0 ppm	ND	1.0 ppm.
2,4,5-Trichlorophenol	ND	50 ppb	ND	1.0 ppm	ND	1.0 ppm
2,4,6-Trichlorophenol	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
2,5-Dichlorophenol	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
3,4-Dichlorophenol	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
2,3,4,5-Tetrachlorophenol	ND	50 ppb	ND	1.0 ppm	ND	1.0 ppm.
2,3,4,6-Tetrachlorophenol	ND	50 ppb	ND	1.0 ppm	ND	1.0 ppm.
1,2,4,5-Tetrachlorobenzene	ND	50 ppb	ND	1.0 ppm	ND	1.0 ppm.
1,2,3,5-Tetrachlorobenzene	ND	50 ppb	ND	1.0 ppm	ND	1.0 ppm.
Hexachlorophene	ND	500 ppb	ND	10.0 ppm	ND	10.0 ppm.
Polychlorinated Biphenyls (commercial Aroclors)	ND	1 ppb	ND	2.0 ppm	ND	2.0 ppm.
Benz(a)pyrene	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
Benz(a)anthracene	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
Chrysene	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
Dibenzo(a,h)anathracene	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm
Indo(1,2,3-c,d)pyrene	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.
Benz(b)fluoranthene	ND	10 ppb	ND	0.2 ppm	ND	0.2 ppm.

* ppt = parts per trillion

Some CDDs and CDFs were detected in unconfirmed tests, see Table 8.

TABLE 5.—CONCENTRATION, PPB

Constituent	Tank B–1	Tank C–2	Tank A–2
acetone	[illegible]	.....	.....
acrolein	ND	ND	ND
acrylonitrile	ND	ND	ND
benzene	ND	ND	ND
bromoform	ND	ND	ND
carbon tetrachloride	ND	ND	ND
chlorobenzene	ND	ND	ND
chlorodibromomethane	ND	ND	ND

TABLE 5.—CONCENTRATION, PPB—Continued

Constituent	Tank B–1	Tank C–2	Tank A–2
chlorethane	ND	ND	ND
2-chlorethy vinyl ether	ND	ND	ND
chloroform	ND	<10	ND
dichlorobromomethane	ND	ND	ND
dichlorodifluormethane	ND	ND	ND
1,1-dichloroethane	ND	ND	ND
1,2-dichloroethane	ND	ND	ND
1,1-dichloroethylene	ND	ND	ND

TABLE 5.—CONCENTRATION, PPB—Continued

Constituent	Tank B–1	Tank C–2	Tank A–2
1,2-dichloropropane	ND	ND	ND
cis-1,3-dichloropropylene	ND	ND	ND
trans-1,3-dichloropropylene.	ND	ND	ND
ethyl benzene	ND	ND	ND
methyl bromide	ND	ND	ND
methyl chloride	ND	ND	ND
methylene chloride	ND	ND	ND

TABLE 5.—CONCENTRATION, PPB—Continued

Constituent	Tank B-1	Tank C-2	Tank A-2
1,1,2,2 tetrachloroethane	ND	ND	ND
tetrachloroethlene	ND	ND	ND
toluene	ND	ND	ND
trans-1,2-dichloroethylene	ND	ND	ND
1,1,1-trichloroethane	ND	ND	ND
trichloroethylene	ND	ND	ND
trichlorofluoromethane	ND	ND	ND
vinly chloride	ND	ND	ND

*ND = not detected at 10 ppb

TABLE 6.— EP EXTRACT CONCENTRATIONS

Constituent	Wastewater	CHEAF	Kiln ash
AS	<0.4	<0.4	<0.4
Ba	0.012	0.070	0.395
Cd	<0.004	0.015	0.007
Cr	0.83	0.44	0.01
Pb	0.1	<0.1	<0.1
SE	0.6	0.5	0.3
Ag	0.55	<0.01	<0.01
Hg			
PH	9.58	10.11	12.12

B. Agency Analysis and Action

The Agency has reviewed RCB's sampling scheme and believes that the four grab samples taken from the wastewater holding tanks are not biased and adequately represent any variations which may occur in the waste stream petitioned for exclusion. The Agency is satisfied that the grab samples do not mask any possible concentration variations because the wastewater, which has been filtered, is homogeneous. Furthermore, the holding tanks contain all of the wastewater generated during the trail burn.

The Agency also believes that the ash samples are representative because the ash is continuously generated. Thus, the collection of grab samples from the top of each sequentially filled drum is equivalent to the collection of a sample approximately every half hour (*i.e.*, a time composite). Similarly, the core samples collected from the CHEAF media will also represent any variation that could occur over time. In addition, samples were collected from every drum of waste and every CHEAF roll and thus these samples encompass the entire quantity of waste generated during the trial burn.

Normally, a key factor which could vary constituent concentrations in a waste would be the use of different raw materials in a process. However, for the MIS, the rate of organics that can be fed to the incinerator (from a technical standpoint) is a function of the heat duty (*i.e.*, BTUs) within the system. In addition, it is expected that the concentration of the various toxic organic constituents present in the material listed in Table 1 are lower than the concentrations that were present in the still bottoms and soils incinerated during the trial burn.[10] Therefore, since the concentration of the toxic constituents in the wastes to be burned during the field demonstration are expected to be no greater than that found during the trial burn and since MIS is relatively insensitive to small changes in concentration of organics in the feed (as long as the total heat duty remains constant), the Agency believes that as long as the operating parameters are kept within the range allowed by the permit, the results of the trial burn will be representative of the results expected during the field demonstration.

The Agency has evaluated the analytical data provided by RCB. The Agency has evaluated the mobility of the EP metals from RCB's waste using a VHS [11] model. The Agency has evaluated RCB's 450,000 gallons of wastewater and 1200 tons of total solids which are projected to be generated during the field demonstration, separately. The maximum predicted receptor well concentrations, using the wastewater volume, combined solids volume, and the maximum EP results as input parameters, are exhibited in Table 7.

[10] The materials listed in Table 1 are composed of NEPACCO wastes mixed with soil and other inert materials (See footnote 2). Therefore, the mixture of NEPACCO waste and soil should contain lower concentrations of toxic organic constituents than the NEPACCO waste alone.

[11] The model approximates the dispersion of toxicants in an aquifer in the vertical and horizontal directions perpendicular to ground-water flow. The VHS model is used to predict reasonable worst-case contaminant levels in a receptor well 500 ft. from contaminant source. The model primarily considers the maximum extract concentrations from leachate test and the volume of waste to be disposed. The model determines the ability of an aquifer to dilute the toxicant from a specific volume of waste without exceeding a health-based standard at the receptor well. See 50 FR 7896–7900, February 26, 1985 for details. Application of the VHS Model exactly as proposed may not be entirely applicable to a scenario in which liquids are placed in-landfills. The Agency is currently evaluating other disposal scenarios for the management of liquids. However, until this is completed, the Agency will continue to use the VHS model as proposed.

TABLE 7

	VHS Model, calculated receptor well concentrations (ppm)							
	As	[redacted]	Cd	Cr	Pb	Hg	Se	Ag
Solids, field demonstration	0.018	0.02	0.0007	0.02	0.0045	.....	0.02	0.00045
Wastewater, field demonstration (projected)	0.03	0.0009	0.0003	0.06	0.004	.....	0.04	0.04
	Health-Based Standards							
	0.05	1	0.01	0.05	0.05	0.002	0.01	0.05

The wastewater exhibited a chromium level (at the receptor well) above the NIPDWS, while the solids exhibited a chromium level below the NIPDWS. The chromium level in the wastewater thus is potentially of some concern. In addition, both wastewater and solids exhibited selenium levels (at the receptor well) above the NIPDWS. However, the Agency does not believe that the analyses conducted on selenium are sufficient to make a determination as to the hazardousness of this constituent. Selenium was only detected in one out of four samples in the wastewater, one out of four samples in the CHEAF, and one out of four samples in the ash. The non-detect level was less than 0.2 ppm. The Agency, therefore, will require additional testing for selenium and chromium during the field demonstration (as specified later in this notice).

RCB did not submit EP leachate data on mercury because they claimed that the mercury concentrations in the soil and still bottoms fed to the incinerator were 0.02 ppm and <0.01 ppm, respectively. RCB reasoned that even if all the mercury leached out, and assuming a worst case ten-fold attenuation (using the VHS model) the levels at the well would still be below the NIPDWS. The original analyses, however, were performed on only one soil and one still bottom sample. The Agency does not believe that analysis on one sample is sufficient to make the above argument; therefore, the Agency

will require additional testing for mercury during the field demonstration (as specified later in this notice).

The Agency has also reviewed the analytical data provided by RCB, on the organic constituents listed in Table 4 and 5. No CDDs/CDFs were detected in the filtered scrubber water, kiln ash, or CHEAF residue by routine analytical methods (see Table 4). It is the Agency's usual practice to use the detection limit as the possible upper level exposure limit for purposes of hazard evaluation when a constituent is not detected. For example, the detection limits for the TCDDs in Wastewater was reported at 0.98–3.9 ppt. Therefore, TCDDs could be present in the filtered scrubber water in concentrations up to 3.9 ppt.

The Agency has used the hazard evaluation procedure developed by the Agency's Chlorinated Dioxins Workgroup (CDWG) to assess the risks associated with exposure to the CDDs and CDFs in these residues.[12] The procedure, which involves the evaluation of the toxicity of a mixture of CDDs and CDFs by estimation of TCDD equivalents, is based on structure activity relationships in their carcinogenic, reproductive, and biochemical effects. TCDD equivalents are calculated by summing the products of the concentration of each insomer or congeneric group and its toxic equivalence factor (TEF). The product is the TCDD equivalent for each isomer or congeneric group; the sum of the products is the TCDD equivalent concentration of the mixture. The TCDD equivalents estimate for wastewater, ash, and CHEAF are given in Table 8.

[12] Chlorinated Dioxins Workgroup Position Document, "Interim Risk Assessment Procedures for Mixtures of Chlorinated Dioxins and—Dibenzofurans (CDDs and CDFs), April, 1985.

TABLE 8

		Wastewater		Ash		CHEAF	
	TEF factor	DL range, ppt	TCDD equivalents ppt	DL range, ppb	TCDD equivalents ppb	DL range, ppb	TCDD equivalents, ppb
TCDD	1			[1] (0.7 ppt M)	(0.7 ppt M)		
TCDDs	II	0.98–3.9	0.98–3.9	0.06–0.09 (2.6 ppt M)	0.06–0.09 (2.6 ppt M)	0.03–0.12	0.03–0.12
PeCDDs	0.2	1.3–2.4	0.26–0.48	0.02–0.13 (2.9 ppt)	0.004–0.026 (0.58 ppt)	0.01–0.03	0.002–0.006
HxCDDs	0.04	0.37–5.2	0.014–0.208	0.13–0.18 (2.4 ppt)	0.0052–0.0072 (0.96 ppt)	0.03–0.13	0.0012–0.0052
TCDFs	0.1	0.13–4.5	0.013–0.45	0.02–0.31 (0.6 ppt)	0.002–0.031 (0.06 ppt)	0.02–0.12	0.002–0.012
PeCDFs	0.1	0.56–4.1	0.056–0.41	0.02–0.29 (0.6 ppt)	0.002–0.029 (0.06 ppt)	0.04–0.16	0.004–0.016
HxCDFs	0.01	0.49–4.8	0.0049–0.048	0.02–0.28 (1.6 ppt)	0.0002–0.0028 (0.016 ppt)	0.05–0.33	0.0005–0.0033
Total CDDs/CDFs		3.8–24.9 ppt		0.27–1.28 ppb (11.4 ppt)		0.18–0.89	
TCDD equivalents			1–6 ppt		0.07–0.2 ppb (4 ppt)		0.04–0.2 ppb

[1] Values in parenthesis are based on uncertified data. All these values are in ppt. An M following a value means a measured value, not a detection limit. HpCDD, OcCDD and OcCDF were detected at 2.5, 3.4, and 6.7 ppt, respectively; HpCDF was not detected at 1.5 ppt.

In evaluating the detection limits set for kiln ash, CHEAF media, and other solids for the CDDs and CDFs, the Agency does not consider these levels to be of concern. In fact, the actual concentrations of CDDs and CDFs in these residues are likely to be much less than the maximum possible concentrations projected from detection limits. In particular, most of the analyses were performed in accordance with the methods specified in SW–846. These methods, developed for routine use, are not designed to achieve extremely low detection limits. When a research analytical method was applied to the ash, a fifty-fold reduction in the detection limit was achieved.[13] Preliminary results using this method show that the ash residues are likely to contain no more than 4 ppt of TCDD equivalents (see Table 8), (*i.e.*, a fiftieth of the maximum concentration projected from detection limits). The Agency does not consider these levels to be of concern.

With respect to the aqueous waste, the Agency also believes that the maximum estimated concentrations in this medium are not of regulatory concern. As indicated above, the estimated maximum concentration of CDDs and CDFs (6 ppt, based on detection limits), in the wastewater, made by use of the routine analytical method, probably over estimates the concentration by a factor of fifty. Thus, a more realistic estimate for the concentrations of CDDs and CDFs in wastewater would be about 0.1 ppt. The Agency considers this level of CDDs and CDFs in the wastewater from the incineration of these wastes not to be of concern.

With respect to the other constituents listed in Tables 4 and 5, chloroform and acetone were the only constituents detected. They were measured, in only one wastewater sample, at less than 10 ppb and 29 ppb, respectively. The Agency does not consider these levels to be significant for the following reasons: (1) the chloroform concentration is below the 0.1 ppm trihalomethane NIPDWS and there is no evidence indicating that acetone can significantly affect health (acetone is a RCRA listed waste only for ignitability (2) none of these materials were in the feed; and (3) if they were, they would be destroyed during incineration. The Agency, therefore, considers these results to reflect laboratory contamination.

The Agency further believes that the detection limits for the other organic constituents, reported in Table 4, are not of regulatory concern.[14] For many of the chemicals listed in Table 4, the detection limit in wastewater is below a health-based standard. For the solids, the Agency has assumed a partition coefficient (between the solid and aqueous phase) based on the chemical's water solubility. The Agency is currently developing partition coefficients for use in delisting decisions and anticipates that a proposal will be issued shortly. In the interim, the values noted in the public docket will be used.

The Agency believes that RCB has successfully demonstrated that the waste incinerated during the trial burn

[13] See memorandum from Robert Kleopfer to Frank Freestone with attachments (May 15, 1985).

[14] These conclusions are supported by calculations available in the public dockets.

is representative of the waste that will be incinerated during the field demonstration. The Agency further believes that RCB has successfully demonstrated that the wastewater, ash, CHEAF, and other solids (except the activated carbon) generated during the trial burn does not contain detectable levels of CDDs/CDFs or any other toxic organic constituents. EP leachate concentrations, except possibly for chromium, mercury, and selenium, do not constitute a hazard. The Agency cannot make a determination at this time whether mercury and selenium would represent a hazard in the wastewater or solids, since mercury leachate analysis were not performed and since the 0.2 ppm detection limit for selenium was too high. With respect to chromium, the EP results were highly variable (ranging from 0.04 to 0.83 ppm.)

The Agency is proposing to grant an exclusion for the solid residues and wastewater generated from EPA's Mobile Incinerator during the field demonstration at the Denney Farm site in McDowell, Missouri, with the following conditions:

(1) MIS's performance is continuously monitored in order to ensure efficient destruction of the wastes, *i.e.*, meet test burn parameters).

(2) A grab sample must be taken of each tank of wastewater generated during the field demonstration and analyzed for mercury, selenium, and chromium. If mercury, selenium, and chromium EP leachate test results do not exceed 0.03, 0.14, and 0.68 ppm, respectively, the wastewater will be considered non-hazardous.

(3) Grab samples must be taken from each drum of ash or soil and composited daily. A core sample must be collected from each CHEAF roll. An EP leachate test must be performed on these samples and the leachate analyzed for mercury and selenium. If mercury leachate values do not exceed 0.044 ppm in the ash and CHEAF and selenium values do not exceed 0.22 ppm in the CHEAF media and ash, those respective wastes will be considered non-hazardous.

Analyses for mercury, selenium, and chromium should be performed according to SW–846 methodology. However, if RCB can demonstrate through representative sampling on a minimum of 10 samples that the selenium, mercury, and chromium levels in the wastewater and selenium and mercury leachate levels generated from the solids, are below the levels established in the contingencies specified in (2) and (3) above, the Agency will drop these conditions.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: May 30, 1985.

Jack W. McGraw

Acting Assistant Administrator.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix XI, add the following wastestreams in alphabetical order:

Appendix XI—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
(a) Wastes excluded from non-specific sources		
EPA's Mobile Incineration System.	Denney Farm Site; McDowell, MO	Process wastewater, rotary kiln ash, CHEAF media, and other solids (except spent activated carbon) (EPA Hazardous Waste Nos. F020, F022, F023, F026, F027, and F028) generated during the field demonstration of EPA's Mobile Incinerator at the Denny Farm Site in McDowell, MO, after [Insert date of publication in Federal Register], so long as: (1) the incineration is functioning properly; (2) a grab sample is taken from each tank of wastewater generated and the EP leachate values do not exceed 0.03 ppm for mercury, 0.14 ppm for selenium, or 0.68 ppm for chromium; and (3) a grab sample is taken from each drum of soil or ash generated and the leachate values of daily composites do not exceed 0.044 ppm in ash or CHEAF media for mercury or 0.22 ppm is ash or CHEAF media for [illegible]

[FR Doc. 85–13519 Filed 6–3–85; 9:14 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–152; RM–4917]

FM Broadcast Stations in Avalon, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 224A to Avalon, California, as that community's first local FM broadcast service, in response to a petition filed by Food Brokers International, Inc.

DATES: Comments must be filed on or before July 23, 1985, and reply comments must be filed on or before August 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Avalon, California) (MM Docket No. 85–152, RM–4917).

Adopted: May 8, 1985.

Released: May 31, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Food Brokers International, Inc. ("Petitioner"), requesting the allotment of Channel 224A to Avalon, California, as that community's first local FM broadcast service. Petitioner states that it will apply for the channel.

2. A staff engineering study reveals that Channel 224A can be allotted to Avalon in conformity with the minimum distance separation requirements of § 73.207(a) of the Commission's Rules. However, since Avalon is located within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain the Mexican Government's consent to the instant proposal.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the above, the Commission believes it is appropriate to elicit comments on the proposal to

amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Avalon, California		224A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before July 23, 1985, and reply comments on or before August 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Jack Tucey, President, Food Brokers International, Inc., 5442 Jillson Street, Los Angeles, CA 90040 (petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–13463 Filed 6–4–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–156; RM–4938]

FM Broadcast Stations in Claremore, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 264A to Claremore, Oklahoma, as that community's first local FM service, at the request of Mike Warren.

DATES: Comments must be filed on or before July 22, 1985, and reply comments on or before August 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations.

(Claremore, Oklahoma) (MM Docket No. 85–156, RM–4938).

Adopted: May 8, 1985.
Released: May 30, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Mike Warren ("petitioner") requesting the allocation of Channel 264A to Claremore, Oklahoma, as that community's first local FM service. Petitioner states that he will apply for the channel, if allocated. Channel 264A can be allocated to Claremeore in compliance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 11.4 kilometers (7.1 miles) northeast of the community to avoid a short-spacing to Station KXOJ–FM, Channel 265A, Sapulpa, Oklahoma. This site restriction requires that the transmitter be located beyond the distance for which we could assume that a city grade signal could be provided. Therefore, we request that the petitioner furnish us with a signal coverage study showing that a site is available from which a Channel 264A operation could provide the required 70 dBu signal over the entire community of Claremore.

PART 73—[AMENDED]

§ 73.202 [Amended]

2. We believe the public interest would be served by proposing the allocation, as it could provide Claremore with its first local FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Claremore, [illegible]	[illegible]	264A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

4. Interested parties may file comments on or before July 22, 1985, and reply comments on or before August 6, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, 1920 N Street NW., Suite 520, Washington, D.C. 20036 (Counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allocations. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-13456 Filed 6-4-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-142; RM-4775]

FM Broadcast Stations in St. George, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of the ESG Corporation, proposed to allot Class C Channel 259 to St. George, UT, as that community's second FM channel.

DATES: Comments must be filed on or before July 22, 1985, and reply comments on or before August 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of Amendment § 73.202(b), Table of Allotments, FM Broadcast Stations. (St. George, Utah) (MM Docket No. 85-142, RM-4775).

Adopted: May 7, 1985.
Released: May 30, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by ESG Corporation ("petitioner"), seeking the allocation of Class C Channel 259 to St. George, Utah, as that community's second FM channel. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if allotted. The channel can be allotted in compliance with the minimum distance separation requirements.

Part 73—[AMENDED]

§ 73.202 [Amended]

2. In view of the fact that the proposed allotment could provide a second FM service to St. George, Utah, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.
St. George, UT	228A, and 259.

3. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be alloted.

4. Interested parties may file comments on or before July 22, 1985, and reply comments on or before August 6, 1985, and are advised to read the Appendix for the proper procedures. Additionally a copy of such comments should be served on the petitioner, or his counsel, as follows:

ESG Corporation, c/o VIR James P.C., Broadcast Engineering Consultants, 3137 W. Kentucky Avenue, Denver, Colorado 80219

Glen S. Gardner, 729 Picturesque Dr., St. George, Utah 84770.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Table of FM Allotments, § 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterprosals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions

by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-13454 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-155; RM-4877]

TV Broadcast Stations in Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of VHF television Channel 9 to Guymon, Oklahoma, in response to a petition filed by Steven D. King, as that community's first commercial television assignment.

DATES: Comments must be filed on or before July 22, 1985, and reply comments on or before August 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Guymon, Oklahoma) (MM Docket No. 85-155, RM-4877).

Adopted: May 8, 1985.

Released: May 30, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Steven D. King ("petitioner") requesting the assignment of VHF television Channel 9 to Guymon, Oklahoma, as that community's first commercial television assignment. Petitioner has submitted information in support of the proposal and indicated his interest in applying for the channel, if assigned.

2. Guymon (population 8,492), [1] seat of Texas County (population 17,727), is located in Oklahoma panhandle approximately 165 kilometers (100 miles) north of Amarillo, Texas. A staff engineering study reveals that VHF television Channel 9 can be assigned to Guymon consistent with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

PART 73—[AMENDED]

§73.606 [Amended]

3. In view of the above considerations, we believe the petitioner's proposal warrants consideration since it could provide a first commercial television service to Guymon, Oklahoma. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Guymon, OK	*16	9+, and *16

[1] Population figures are extracted from the 1980 U.S Census.

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before July 22, 1985, and reply comments on or before August 6, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Steven D. King, P.O. Box 90357, Atlanta, Georgia 30364.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b) 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments. § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comment. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, it authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certification of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules).

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–13457 Filed 6–4–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–154; RM–4927]

FR Broadcast Stations in Mount Pleasant, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Channel 283C2 for Channel 285A at Mount Pleasant, South Carolina, at the request of Southeast Communications, Inc. We also propose to modity its permit for Station WDXZ to specify operation on the new channel.

DATES: Comments must be filed on or before July 23, 1985, and reply comments on or before August 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments. FM Broadcast Stations. (Mount Pleasant, South Carolina) MM Docket No. 85–154 RM–4927.

Adopted: May 8, 1985.

Released: May 31, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Southeast Communications, Inc. ("Southeast"). Southeast is the permittee of Station WDXZ, Channel 285A, Mount Pleasant, South Carolina. It requests the substitution of Channel 283C2 for its present channel and the modification of its permit to specify operation on the higher powered channel. Channel 283C2 can be allocated in compliance with the Commission's milieage separation and other technical requirements, if the transmitter site is restricted to an area at least 17.0 kilometers (10.6 miles) southwest of Mount Pleasant.

2. In accordance with our established policy, we shall propose to modify the permit of Station WDXZ to specify operation on Channel 283C2. However, if another party should indicate an interest in the Class C2 allocation, the modification could not be implemented unless an additional equivalent channel is allotted. See, *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976) and *Modification of FM and TV Station Licenses,* 49 FR 34007, published August 28, 1984.

3. We believe the public interest would be served by proposing the channel allocation as it could provided Mount Pleasant with its first local widecoverage area FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the community listed below, to read as follows:

City	Channel No.	
	[redacted]	Proposed
Mount Pleasant, SC	285A	[redacted]

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. **Note:** A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

5. Interested parties may file comments on or before July 23, 1985, and reply comments on or before August 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, D.C. 20033 (Counsel to petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation requried by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered

in the proceeding. Any reply comment which has not been served on the persor (s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the persons(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-13459 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-157; RM-4915]

FM Broadcast Stations in Dayton, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 221A to Dayton, Ohio, as that community's fourth FM service, at the request of The Voice of the Black Community, Inc.

DATES: Comments must be filed on or before July 22, 1985, and reply comments on or before August 6, 1985..

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Dayton, Ohio).

Adopted: May 8, 1985.
Released: May 30, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by The Voice of the Black Community, Inc. ("petitioner") seeking the allocation of Channel 221A to Dayton, Ohio, as that community's fourth local commercial service. Petitioner states that it will apply for the channel, if allocated.

2. Channel 221A can be allocated in compliance with the Commission's mileage separation requirements with a site restriction of 5.2 kilometers (3.2 miles) south of Dayton to avoid a short-spacing to Station WAXC, Wapakoneta, Ohio [1], and Station WXCT, Columbus, Ohio. However, our engineering study shows that a Class A allotment at Dayton, even without a site restriction, may not be able to provide the required city-grade service to the entire community. Therefore, we request that the petitioner or any other interested party furnish a showing that the required 70 dBu signal level could be provided to the entire community of Dayton, if allocated as proposed. We also seek comments on whether a Class B or B1 channel is available and whether it would be applied for, if allocated. Additionally, Dayton is located within 320 kilometers (200 miles) of the U.S.-Canada border. Therefore, Canadian concurrence must be obtained before the allotment can be finalized.

3. We believe the public interest would be served by seeking comments on the requested allotment, as it could provide Dayton with additional service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules, with respect to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Dayton, OH	256, 284, and 299	221A, 256, 284, and 299.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are

[1] The site restriction for Channel 221A will avoid a short-spacing to the new transmitter site for Station WAXC(FM), for which a construction permit has been issued.

incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before July 22, 1985, and reply comments on or before August 6, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: William M. Piner, The Voice of the Black Community, Inc., 321 Huron Avenue, Dayton, Ohio 45417 (Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allocations. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself with be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–13460 Filed 6–4–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–165; RM–4926]

FM Broadcast Stations in Gainesville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Kevin Potter and Jack P. Nelson, proposes the allotment of Channel 248C2 to Gainesville, Texas, as that community's second FM service.

DATES: Comments must be filed on or before July 22, 1985, and reply comments on or before August 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Gainesville, Texas).

Adopted: May 20, 1985.
Released: May 30, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed March 19, 1985 by Kevin Potter and Jack P. Nelson ("petitioners"), requesting the allocation of Channel 248C2 to Gainesville, Texas, as that community's second FM service. Petitioners have expressed an intention to apply for the channel.

2. The channel can be allotted consistent with the Commission's minimum distance separation

requirements provided a site restriction is imposed of 24.6 kilometers (15.3 miles) west of Gainesville to avoid short spacings to Station KEGL (FM) Channel 246 at Fort Worth, Texas and Station KDEP–FM, Channel 249A, at Durant, Oklahoma.

3. In view of the fact that the proposed allotment could provide a second FM service to Gainesville, Texas, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules, for the following community:

City	Channel No.	
	Present	Proposed
Gainesville, TX	233	233, and 248C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before July 22, 1985, and reply comments on or before August 6, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, 532 Pearl Street, Frederick, MD 21701 (Counsel to petitioners).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patrica Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comment and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, or original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–13461 Filed 6–4–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–153; RM–4939]

FM Broadcast Stations in Dallas, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 229A to Dallas, Pennsylvania, as that community's first local FM service, at the request of Ronald E. and Denise A. Schacht.

DATES: Comments must be filed on or before July 23, 1985, and reply comments on or before August 7, 1985.

ADDRESS. Federal communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Dallas, Pennsylvania)

Adopted: May 8, 1985.
Released: May 31, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Ronald E. and Denise A. Schacht ("petitioners") requesting the allocation of Channel 229A to Dallas, Pennsylvania, as that community's first local FM allotment.

2. Channel 229A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. Canadian concurrence in the allotment is required as Dallas is located within 320 kilometers (200 miles) of the U.S.-Canada border.

3. We believe the public interest would be served by seeking comments on the proposed allotment, as it could provide Dallas with its first local FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the rules, as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Dallas, PA		229A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *Note:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

5. Interested parties may file comments on or before July 23, 1985, and reply comments on or before August 7, 1985, and are advised to read the Appendix for the proper procedrues. Additionally, a copy of such comments should be served on the petitioner, as follows: Ronald E. Schacht, Denise A. Schacht, 267 Gardner Street, Plymouth, Pennsylvania 18651.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allocations. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(l), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-13462 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 20735; RM-1301; RM-1974; RM-2655]

Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Order reopening docket for filing of further pleadings.

SUMMARY: This action reopens the comment period in Docket 20735 which deals with interference to TV channel 6 stations from noncommercial, educational FM stations operating on FM channels 200–220. The reasons for this action is that the Commission has received an agreement filed by a joint committee of educational FM and TV channel 6 interests proposing a solution to this long standing problem. The Commission views this information as pertinent and has decided to consider it within this proceeding. Thus, the Commission will accept comments from interested parties on this agreement in order to gather the fullest record available.

DATE: Replies are due on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. Lewis, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

Order Reopening Docket for Filing of Further Pleadings

In the matter of Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations; Docket 20735; RM–1301, RM–1974, RM–2655.

Adopted: June 3, 1985.
Released: June 4, 1985.

By the Chief, Mass Media Bureau.

1. On May 28, 1985, the Commission received a petition in the above captioned proceeding which contained an agreement intending to minimize interference to TV Channel 6 stations from educational FM stations. The agreement was filed by a joint committee of TV–6 and educational FM interests. The committee was comprised of representatives from: the Association of Maximum Service Telecasters, the National Association of Broadcasters, Taft Broadcasting Company, McGraw-Hill Broadcasting, the Corporation for Public Broadcasting, National Public Radio, and the National Federation of Community Broadcasters.

2. On October 26, 1984, the Commission adopted final rules in this 11 year proceeding. *See Third Report and Order*, 49 FR 45146 (November 15, 1984). These rules were stayed by an Order adopted on December 28, 1984 (50 FR 5073; February 6, 1985), pending disposition of several Petitions for Reconsideration. While the latest petition was not filed during the appropriate comment period (final replies were due February 14, 1985) the Commission believes it in the public interest to consider this industry wide agreement before a final decision is reached. Also, in order to have a complete record, we shall reopen the comment period for replies to this filing. Because the agreement is largely based on information already contained in the docket file, we believe a 10 day comment period is sufficient for commenters to discern its relative merits.

3. Accordingly, it is ordered, That the record in this Docket 20735 is reopened for comments in response to the aforementioned filing until June 14, 1985.

4. This action is taken pursuant to the authority contained in sections 4(i), 5(d)(1), and 303(r) of the Communication Act of 1934, as amended and Section 1.425 of the Commission's rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85–13697 Filed 6–4–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 82–01; Notice 5]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish an alternative standard.

SUMMARY: This notice is being issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for passenger automobiles in model years 1987–1989, and that a lower alternative standard be established for it. This notice proposes that the requested exemption be granted and that an alternative standard of 11.2 mpg be established for Rolls-Royce for model years 1987–1989.

DATES: Comments on this notice must be received by this agency on or before July 22, 1985.

ADDRESS: Comments on this notice must refer to Docket No. LVM 82–01; Notice 5 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202–755–9384).

SUPPLEMENTARY INFORMATION: Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and which manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technology feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Selection of the type of alternative standard. The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

For model years 1987–1989, the NHTSA believes it is appropriate to establish a separate standard for Rolls-

Royce. No analyses of petitions submitted by other low volume manufacturers for those model years have been completed, so the agency cannot use the second or third approaches described above.

Methodology used to project maximum feasible average fuel economy level for Rolls-Royce. To project the level of fuel economy which could be achieved by Rolls-Royce in model years 1987–1989, the agency used regression relations from the baseline of the 1985 model year vehicles currently being sold, and for which EPA fuel economy data are available. The agency then considered whether there were any technological or other improvements that would be feasible for model year 1987–1989 year Rolls-Royce vehicles, whether or not the company actually plans to incorporate such improvements in those vehicles. This is the same method of analysis used by the agency in evaluating Rolls-Royce's petition for model year 1986 (50 FR 5405, February 8, 1985).

NHTSA has interpreted "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its model year 1987–1989 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, reduced rolling resistance, and mix shifts.

"Economic practicability" has been interpreted as including the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its model year 1987–1989 automobiles and the effects of any shift in the mix of vehicles sold which may result from changes in market demand.

Throughout this analysis, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence design changes which would make the cars unsuitable for five passengers or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to Rolls-Royce.

Baseline fuel economy. The 1985 model year Rolls-Royce vehicles are measured as achieving 11.0 mpg. No change to the vehicle specifications or the emissions certification is planned by Rolls-Royce for this vehicle for the 1986 model year, which led Rolls-Royce to seek a separate standard of 11.0 mpg for the 1986 model year. The agency is proposing to adopt the 11.0 mpg standard in the rulemaking proceeding noted above. (Docket No. LVM 82–01; Notice 3; 50 FR 5405; February 8, 1985).

The fuel economy rating of 11.0, as adopted in model year 1985 and proposed for model year 1986 was used as the baseline and any changes found technologically feasible and economically practicable were added thereto to arrive at a proposed determination of Rolls-Royce maximum feasible average fuel economy for model years 1987–1989.

During model years 1987–1989, Rolls-Royce anticipates importing seven different models, four of which are in the 5000 pound inertia weight class, two in the 5500 pound inertia weight class, and one in the 6000 pound inertia weight class. The four models in the 5000 pound weight class account for 80 per cent of the vehicles imported. Each of the four is projected to have a fuel economy rating of 11.3 mpg. The two models in the 5500 pound weight class, accounting for virtually all of the remaining vehicles, are projected to have a fuel economy rating of 10.9 mpg. The single model in the 6000 pound weight class is projected to have a rating of 10.8 mpg. The fleet average projected by Rolls-Royce for model years 1987–1989 and used as the basis for its petition is 11.2 mpg, an increase of 0.2 mpg over the 1985–1986 baseline.

Weight reduction. In determining whether Rolls-Royce could make weight reductions on its automobiles in model years 1987–1989, the agency has considered two options—downsizing and materials substitution. The goal of downsizing is to reduce the exterior dimensions of the automobile without significantly reducing the interior passenger and luggage volume of the automobile. Any downsizing would necessitate a redesign of the vehicle and retooling. The economic downturn in the automotive industry caused Rolls-Royce to reduce its annual production by approximately one-third (from 3200 vehicles in the 1980 model year to 2200 vehicles in the 1983 model year), its number of employees by 22 percent, and its budget for research and development by a significant amount. Rolls-Royce stated in its petition that it has begun a major project to downsize its vehicles, but that the project's results would not be available in time to be incorporated in its cars during the 1987–1989 model years. Given the current economic position of the company, and the need in any vehicle downsizing to retain the vehicle's image, NHTSA has tentatively concluded that downsizing would not be economically practicable for 1987–1989 model year Rolls-Royce automobiles.

The other primary means of achieving weight reduction is materials substitution. This refers to the substitution of lighter materials, such as aluminum, plastics, and high strength low alloy steels, for currently used materials. Rolls-Royce already uses aluminum in all of its major castings and most of the unstressed body parts of its automobiles.

In its proposed decision to exempt Rolls-Royce from the 1981–1985 model year average fuel economy standards and to establish alternative standards for Rolls-Royce in those model years, NHTSA indicated that it believed that weight reduction through materials substitution would be practicable for Rolls-Royce beginning with the 1984 model year (47 FR 20639, at 20648; May 13, 1982). Rolls-Royce stated in its petition for model year 1986 that it had conducted a research project showing that it could improve the fuel economy of its vehicles by 15 percent by using a combination of weight reduction, reduced engine displacement, and transmission improvements. However, the company encountered problems with achieving the required emissions levels with the new vehicle. Because of the economic situation of the company following its reduced sales from 1980 to 1983, the company stated that it did not feel it could continue with the development work on the redesigned car without a high degree of confidence that the car could satisfy all emissions and safety requirements and be in production by late 1984. Rolls-Royce concluded that it did not have the necessary degree of confidence, and decided not to make the retooling expenditure. Shortly after this decision, Rolls-Royce also determined that work on the project could not be continued, given the current economic status of the company. Based on these facts, NHTSA has tentatively determined that further weight reduction resulting from materials substitution would not be economically practicable for Rolls-Royce in the model years 1987–1989.

Aerodynamic improvements. Rolls-Royce vehicles in 1987–1989 will have a relatively large frontal area, because of the exterior dimensions of the vehicle and the distinctive grille design. A larger

frontal area generally results in more wind resistance than a smaller frontal area, yielding reduced fuel economy.

Any fuel economy gains resulting from aerodynamic improvements to these vehicles would arise only from a complete redesign to lower the aerodynamic drag of these vehicles. Rolls-Royce currently has a project underway to improve the aerodynamics of its vehicles in connection with the downsizing program mentioned above.

Given the company's recent financial difficulties and the scope of a project to redesign its vehicles, NHTSA has tentatively concluded that it would not be economically practicable for Rolls-Royce to implement aerodynamic improvements to increase the fuel economy of its automobiles during model years 1987–1989.

Engine improvements. This agency has examined the question of whether Rolls-Royce could improve the fuel economy of its 1987–1989 cars by reducing the engine displacement or by using an alternative engine. Rolls-Royce plans to continue using its current 412 cubic inch V–8 engine for it automobiles. This size engine is used because of the relatively high weight of the vehicles. In connection with the downsizing program mentioned above, Rolls-Royce plans to reduce the engine displacement. NHTSA does not believe it would be feasible to use the down-sized engine on vehicles in the 5000 and 5500 pound inertia weight class, in that it could not achieve the acceleration performance traditionally offered in luxury cars.

There is conceivably a reduction of engine displacement which would offer satisfactory performance in Rolls-Royce 1987–1989 cars and offer improved fuel economy. However, such a fuel economy improvement would require Rolls-Royce to divert its engineering staff and resources from the downsizing project to such a project, with the promise of smaller fuel economy gains than would be realized if the downsizing project were completed and put into production. Accordingly, NHTSA has tentatively determined that it would not be economcially practicable for Rolls-Royce to reduce its engine displacement before the completion of its downsizing project after model years 1987–1989.

With respect to the use of an alternative engine, the only alternative engine which has been shown to be feasible in cars of this size is the diesel engine. Rolls-Royce has examined the possibility of using diesel engines. However, according to its petition, the company cannot comply with the diesel particulate emission standards for 1987 and later model years because of its vehicle's relatively high weight. Further, the company stated that using the large diesel engine offered on some full-size 1983 Oldsmobiles would double the 0–60 mph acceleration times for Rolls-Royces. After considering these statements, NHTSA has tentatively determined that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the projected fuel economy of its 1987–1989 automobiles by the use of alternative engines.

Drive line improvements. The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower rear axle ratio. Rolls-Royce plans to use the General Motors THM 400 transmission, a heavy duty transmission which does not use a lockup clutch for the torque converter. Using a transmission with a lockup clutch would offer improved fuel economy. However, General Motors offers the lockup clutch only on its lighter-duty 200–4R transmission, and the power and torque output of the Rolls-Royce 412 cubic inch engine is too great to permit the use of that lighter-duty transmission.

Both Ford and Chrysler manufacture transmissions equipped with a lockup clutch but these transmissions are not applied to engines as large as 412 cubic inches. Further, the use of a different transmission would require extensive redesign and would divert engineering staff and finances from the downsizing project. Accordingly, NHTSA has tentatively determined that it would not be technologically feasible and economically practicable for Rolls-Royce to improve its planned 1987–1989 fuel economy by using improved transmissions.

Rolls-Royce 1986 models will use a 3.08 rear axle ratio. The company has run tests using a lower axle ratio (2.69), which showed fuel economy gains of up to 7 percent in highway driving. However, the city driving results showed slightly increased fuel consumption because of increased slip in the transmission's torque converter, and the lower axle ratio increased the oxides of nitrogen emissions above allowable levels. Retuning of the engine and emission control system required extensive re-engineering to avoid a net loss of fuel economy and poorer driveability, so Rolls-Royce did not take this action for model year 1986. The company states that some of the problems can be overcome by model year 1987, so that the 2.69 rear axle will be used in model years 1987–1989. Although its use will not produce the 7 percent improvement in fuel economy originally projected, the new axle ratio accounts for most of the 0.2 mpg improvement in fuel economy for Rolls-Royce automobiles in model years 1987–1989.

Mix shifts. "Mix shifts" refers to shifting the percentage of vehicles sold in each of a manufacturer's model types for the purpose of increasing average fuel economy. Since the most efficient Rolls-Royce 1987–1989 models will achieve a fuel economy level of 11.3 mpg, no significant fuel economy improvement over the 11.2 mpg level could be accomplished by shifting customers to other models.

Impacts of other Federal standards. Rolls-Royce did not claim any negative impacts on its 1987–1989 average fuel economy above those impacts claimed for the 1978 model year, as a result of applicable Federal safety damageability, emissions, or noise standards. In the absence of a specific showing of a fuel economy penalty arising from those standards, NHTSA will assume that whatever fuel economy is lost as a result of compliance with Federal standards will be built into the Environmental Protection Agency's fuel economy test results and will be taken into account by NHTSA in considering the technological feasibility of any actions when setting alternative standards. With respect to the Rolls-Royce petition for 1987–1989, NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

The need of the Nation to conserve energy. As stated above, NHTSA has tentatively determined that is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in model years 1987–1989 above 11.2 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level will result in only a negligible increase in fuel consumption and will not affect the need of the Nation to conserve energy.

For illustrative purposes only, the Rolls-Royce 1987–1989 model year fleet will consume 37 extra barrels of fuel per day over a twelve year period by achieving 11.2 mpg rather than 27.5 mpg. The fuel consumed by passenger automobiles in the United States is about 5 million barrels each day.

Proposed alternative standard. This agency has tentatively concluded that it would be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its 1987–1989 automobiles above an average of 11.2 mpg, that compliance with other Federal automobile standards will not adversely affect achievable fuel economy, and that the national effort to conserve energy will not be affected by

granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for Rolls-Royce for model years 1987–1989 is 11.2 mpg. Therefore, the agency proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce of 11.2 mpg for model years 1987–1989.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended as follows:

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

1. The authority citation for 49 CFR Part 531 would be revised to read as follows:

Authority: Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

2. Section 531.5(b)(2) would be revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) * * *

(2) Rolls-Royce Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2

* * * * *

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined as "an agency statement of general applicability and future effect." The exemption is not generally applicable, since it appies only to Rolls-Royce. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that Rolls-Royce will not be required to pay civil penalties if it achieves its maximum feasible average fuel economy, and purchasers of those vehicles will not have to bear the burden of those civil penalties in the form of higher prices. NHTSA notes that purchasers of those vehicles will be required to pay a gas guzzler tax on these cars. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that this proposal, if adopted as a rule, will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this proposed exemption and alternative standard. Further, since Rolls-Royce's 1987–1989 automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel available.

Since the Regulatory Flexibility Act may apply to a notice exempting a manufacturer from a generally applicable standard, I certify that this proposed exemption would not have a significant economic impact on a substantial number of small entities. This proposal would not impose any additional burdens on Rolls-Royce. It would relieve the company of having to pay civil penalties in model years 1987–1989. Small organizations and small governmental jurisdictions are believed not to be purchasers of Rolls-Royce automobiles. In any event, since the prices of Rolls-Royce automobiles would not be affected by this proposed exemption, the purchasers would not be affected.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket shoud enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 29, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–13399 Filed 6–4–85; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub–6)

Exemption From Regulation; Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening of final rules.

SUMMARY: Upon remand by the United States Court of Appeals for the District of Columbia Circuit, the Commission is reopening this proceeding to consider further whether regulation of boxcar joint rates is necessary under the criteria of 49 U.S.C. 10505. The Court held that the decision did not adequately explain why continued reuglation of boxcar joint rates is unnecessary under the criteria of 49 U.S.C. 10505. It found inadequate support for the conclusion that an exemption would not result in the closing of efficient joint routes, and ruled that the sufficiency of antitrust remedies for such closings was not adequately discussed. It also held that the Commission did not adequately consider whether regulation was necessary to prevent large carriers from imposing unfair divisions of joint revenue on small connecting carriers. In order to better address the issues discussed by the court, we will reopen this proceeding for the limited purpose of receiving further evidence and comment on those issues.

DATES: Evidence and comments are due August 5, 1985. Replies are due September 4, 1985.

ADDRESS: Statements referring to Ex Parte No. 346 (Sub–8) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245

or

Thomas Gire, (202) 275–7957.

SUPPLEMENTARY INFORMATION: At 48 FR 27254, June 14, 1983, the Commission published final rules in the proceeding.

On April 29, 1985, the United States Supreme Court denied the Commission's petition for a writ of certiorari (*ICC* v. *Brae Corp.*, U.S. Sup. Ct., No. 84–550) to review a decision of the United States Court of Appeals for the District of Columbia Circuit [*Brae Corp.* v. *ICC*, 740 F.2d 1023 (D.C. Cir. 1984) (*Brae*)]

The Court of Appeals vacated the exemption of boxcar service from freight rate regulation insofar as the exemption applies to joint rates, *Brae*, at 1070. The court held that the decision did not adequately explain why continued regulation of boxcar joint rates is unnecessary under the criteria of 49 U.S.C. 10505, *Brae* at 1044–1091. It found inadequate support for the conclusion that an exemption would not result in the closing of efficient joint routes, and rules that the sufficiency of antitrust remedies for such closings was not adequately discussed. It also held that the Commission did not adequately consider whether regulation was necessary to prevent large carriers from imposing unfair divisions of joint rate revenue on small connecting carriers.

In order to address the issues discussed by the court, we will reopen this proceeding for the limited purpose of receiving further evidence and comment on those issues. For the guidance of the parties, we set forth specific questions in the appendix to this notice. Of particular interest to us, are the acutal effects of the exemption on carriers during the over 16 months that it was in effect. Evidence and comment relevant to issues raised by the court, though not specifically addressed in the appendix, are also requested.

Exemption of boxcar joint rates from regulation would affect Class III railroads, some of which may be small entities, by ending regulatory review of actions affecting joint rates in which they participate. The Commission previously concluded that any harmful effects of this exemption on small railroads would be limited, since the exemption would not result in the closing of efficient joint routes or deprive the small railroads of essential revenue on such routes. Upon reopening, we will give further consideration to these issues, and, in light of the evidence and argument submitted, reassess our finding that regulation is not needed to carry out the rail transportation policy contained in 49 U.S.C. 101a. The parties should focus particular attention to how the exemption would influence each of the 15 specified policy goals of section 10101a. These conclusions are at issue upon reopening.

This action does not significantly affect the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Railroads.

Authority: 49 U.S.C. 10321(a) and 10505.

Decided: May 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons, joined by Commissioner Lamboley, concurred with a separate expression.

James E. Bayne,

Secretary.

Commissioner Simmons, joined by *Commissioner Lamboley*, concurring:

The court of appeals found that the exemption decision did not adequately consider the potential harm to class III railroads and others which might result from unilateral joint-rate concellations under the exemption. While I realize that practical problems may arise from an environment in which single-line boxcar rates are exempt and joint-line boxcar rates are regulated, this Commission must, nevertheless, fully implement the court's mandate. As I stated in my vote of May 9, 1985, implementation of the court's mandate requires that the Commission provide some procedure under which parties can seek to reinstate joint rates cancelled under the now-vacated exemption.

Appendix—Questions for Participants in Reopened Proceeding

The purpose of reopening is to consider (1) whether an exemption from regulation of boxcar joint rates would result in the closing of efficient routes; (2) whether the threat of partial revocation of the exemption and possible antitrust remedies are sufficient, as a practical matter, to protect small carriers from the closing of efficient routes in which they participate; (3) whether any closing of efficient routes that might occur under an exemption and any resulting harm to small carriers is contrary in overall result to the rail transportation policy of 49 U.S.C. 10101a; (4) whether regulation is necessary to prevent large carriers from imposing unfair divisions of joint revenue on small connecting carriers; and (5) whether any of the abuse predicted by some of the parties has occurred since the exemption became effective on January 1, 1984.

The questions that follow may relate to a situation where a through route involving a large long-haul carrier and a small short-haul carrier is the only rail route available, or to a situation where a large carrier has a single-line route paralleling a joint route where it participates with a small carrier. To the extent other route situations exist, they should also be identified and addressed. Submissions containing information about actual events or abuses while the exemption was in effect would be useful.

1. Under what circumstances, if any, would an exemption result in the closing of efficient joint routes?

2. Would the closing of competing joint routes give a large carrier, with a single-line route, monopoly power over any boxcar movements? To what extent does intermodal competition influence this question? Is it possible for a large carrier to have no monopoly power over shippers in single-line service and still have monopoly power over connecting carriers in joint-line service? If so, what would be the source of monopoly rents accruing to the large carrier?

3. Would large connecting carriers squeeze profits from smaller short-haul connecting carriers? If so, would the smaller carriers' revenues be driven below cost in the short run or in the long

run? Would this affect the short-haul carriers' ability to pay for efficiency-increasing improvements to keep their part of the rail system healthy? If so, does the rail transportation policy, on balance, weigh for or against the exemption?

4. Where a small short-haul carrier provides the sole access to a group of shippers, would this give it leverage in negotiating with the long-haul carrier?

5. Where a joint route with a short-haul carrier is more efficient than a large carrier's single-line route, could the large carrier prevent the smaller carrier from retaining the benefits of efficiency? Is this possible given intermodal or other competition?

6. Are potential antitrust actions and the threat of revocation of the exemption effective and practical deterrents to a large carrier foreclosing a small carrier from markets the small carrier could serve as part of an efficient route?

7. To expand the record concerning the degree of vulnerability of short line railroads, please provide the following information wherever possible:

a. Bridge, line-haul termination, and line-haul originating traffic as a percentage of total traffic transported by short line railroads.

b. Revenue/variable cost ratios for joint rate shipments involving short line railroads, overall and for each participating railroad.

c. The number of long-haul carrier connections available to smaller short-haul carriers.

[FR Doc. 85-13484 Filed 6-4-85; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 108
Wednesday, June 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Public Information Meeting.

SUMMARY: Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on June 25, 1985, at 7:00 p.m., a public information meeting will be held at the Maricopa County Board of Supervisors Auditorium, 201 West Jefferson, Phoenix, Arizona.

The meeting is being called by the Executive Director of the Council in accordance with § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed demolition of the Verde River Sheep Bridge, Yavapai County, Arizona, an undertaking of the Tonto National Forest, U.S. Forest Service that will adversely affect a property included in the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The following is a summary of the tentative agenda of the meeting:

I. An explanatioin of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. A description of the undertaking and an evaluation of its effects on the property by Forest Service personnel.

III. A statement by the Arizona State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the property.

V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 730 Simms Street, Room 450, Golden, CO 80401, telephone (303) 236–2682.

Dated: May 28, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–13485 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 31, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Economic Research Service
Supplemental Qualifications Statement
EMS 459
With application for employment
Individuals or households; 300 responses; 1,200 hours; not applicable under 3504(h)
Joan B. Golden, (202) 447–7929

Revision

• Food and Nutrition Service
Integrated Quality Control Review Schedule
FNS 380–1
On occasion
Individuals or households; State or local governments; 68,700 responses; 70,321 hours; not applicable under 3504(h)
Joe Bonelli, (703) 756–3431.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85–13530 Filed 6–4–85; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1986 Wheat Marketing Quota Program Provisions

AGENCY: ASCS, USDA.

ACTION: Proposed determinations.

SUMMARY: A notice of determination, effective April 15, 1985, was published in the **Federal Register** (50 FR 15466) in which the Secretary of Agriculture (1) proclaimed a national wheat marketing quota of 1,955 million bushels and a national acreage allotment of 54.0 million acres for the 1986 crop of wheat, and (2) determined that all States would be considered as commercial wheat-producing areas and that a producer referendum would be conducted July 19–26, 1985 with respect to the 1986 Wheat Marketing Quota Program. Various other determinations must also be made by

the Secretary with respect to the 1986 Wheat Marketing Quota Program. Accordingly, the Secretary proposes to make the following determinations with respect to the 1986 crop of wheat: (a) The eligibility requirements of voters in the producer referendum and the method of balloting; (b) if marketing quotas are approved, whether a land use (diverted acreage) program should be implemented and the provisions of such a program including diverted acreage requirements and uses; (c) if marketing quotas are disapproved, the level of price support for cooperators and noncooperators; and (d) if marketing quotas are approved, the various levels of price support for cooperators and noncooperators. These determinations are to be made pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act").

EFFECTIVE DATE: Comments must be received on or before July 5, 1985 in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Commodity Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, or call (202) 447–4146. A Preliminary Regulatory Impact and Initial Regulatory Flexibility Analysis describing the options considered in developing the proposed determinations and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title-Wheat Production Stabilization; Number–10.058, and Title-Commodity Loans and Purchases; Number–10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this notice and an Initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Certain determinations set forth in this notice with respect to the 1986 Wheat Marketing Quota Program must be made by the Secretary before the July 19–26, 1985 producer referendum is conducted. Accordingly, it has been determined that the public comment period should be limited to a period of 30 days from the date of publication of this notice in the **Federal Register**. This will allow the Secretary sufficient time to properly consider the comments received before the final program determinations are made.

This notice sets forth proposed determinations with respect to the following issues which are briefly described.

a. *Farm Marketing Quota Determinations.* Pub. L. 74, 77th Congress, as amended, provides that the farm marketing quota for any crop of wheat shall be the actual production of the acreage planted to such crop of wheat on the farm less the farm marketing excess. The farm marketing excess shall be an amount equal to twice the projected farm yield multiplied by the number of acres of such crop of wheat on the farm in excess of the farm acreage allotment for such crop unless the producer, in accordance with regulations issued by the Secretary and within the time prescribed therein, establishes to the satisfaction of the Secretary the actual production of such crop of wheat on the farm. If such actual production is so established, the farm marketing excess shall be an amount equal to the actual production of the number of acres of wheat on the farm in excess of the farm acreage allotment for such crop. In determining the farm marketing quota and farm marketing excess, any acreage of wheat remaining after the date prescribed by the Secretary for the disposal of excess acres of wheat shall be included as acreage of wheat on the farm, and the production thereof shall be appraised in such manner as the Secretary determines will provide a reasonably accurate estimate of such production. Any acreage of wheat disposed of in accordance with regulations issued by the Secretary prior to such date as may be prescribed by the Secretary shall be excluded in determining the farm marketing quota and farm marketing excess. Self-seeded (volunteer) wheat shall be included in determining the acreage of wheat. Marketing quotas for any marketing year shall be in effect with respect to wheat harvested in the calendar year in which such marketing year begins notwithstanding that the wheat is marketed prior to the beginning of such marketing year.

Whenever farm marketing quotas are in effect with respect to any crop of wheat, the producers on a farm shall be subject to a penalty on the farm marketing excess of wheat at a rate per bushel equal to 65 percent of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested. Each producer having an interest in the crop of wheat on any farm for which a farm marketing excess of wheat is determined shall be jointly and severally liable for the entire amount of the penalty on the farm marketing excess.

The farm marketing excess for wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity shall be computed based upon twice the normal production of the excess acreage. Where, upon the application of the producer for an adjustment of penalty or of storage, it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than twice the normal production thereof, the difference between the amount of the penalty or storage which is computed based upon twice the normal production and the actual production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to the Secretary. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed shall be paid by the producer. Any wheat delivered to the Secretary shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United States or in foreign countries in such a manner as to divert it from the normal channels of trade and commerce.

Until the producers on any farm store, deliver to the Secretary, or pay the penalty on the farm marketing excess of any crop of wheat, the entire crop of

wheat produced on the farm and any subsequent corp of wheat subject to marketing quotas in which the producer has an interest shall be subject to a lien in favor of the United States for the amount of the penalty.

The penalty upon wheat stored shall be paid by the producer at the time, and to the extent, of any depletion in the amount of the commodity so stored, except for a depletion resulting from some cause beyond the control of the producer. With respect to wheat which is marketed, the penalty shall be paid by the buyer, who may deduct an amount equivalent to the penalty form the price paid to the producer. If the buyer fails to collect the penalty, such buyer and all persons entitled to share in the wheat marketed from the farm or the proceeds thereof shall be jointly and severally liable for the penalty. The persons liable for the payment or collection of the penalty on any amount of wheat shall be liable also for interest thereon at the rate of 6 percent per annum from the date the penalty becomes due until the date of payment of such penalty.

Whenever the planted acreage of the then current crop of wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. Section 326(b) of the 1938 Act further provides that whenever the actual production of the acreage of wheat is less than the normal production of the farm acreage allotment, there may be marketed, without penalty, from such farm an amount of wheat from the wheat stored under seal together with the actual production of the then current crop which equals the normal production of the farm acreage allotment.

Until the farm marketing excess of wheat is stored or delivered to the Secretary or the penalty thereon is paid, each bushel of the commodity produced on the farm which is sold by the producer to any person within the United States shall be subject to the penalty as specified above.

(b) *Produher Referendum.* Section 336 of the 1938 Act provides that, when a national marketing quota for wheat is proclaimed, the Secretary shall, not later than August 1 of the calendar year in which such national marketing quota is proclaimed, conduct a referendum, by secret ballot, of producers to determine whether they favor or oppose marketing quotas for the marketing year or years for which proclaimed. Any producer who has a farm acreage allotment shall be eligible to vote in the referendum. The Secretary shall proclaim the results of the referendum within thirty days after the date of such referendum and, if the Secretary determines that more than one-third of the producers voting in the referendum voted against marketing quotas, the Secretary shall proclaim that marketing quotas will not be in effect with respect to the crop of wheat produced for harvest in the calendar year following the calendar year in which the referendum is conducted. If the Secretary determined that two-thirds or more of the producers voting in a referendum approve marketing quotas then such quotas shall be in effect with respect to the crop of wheat produced for harvest in the calendar year following the calendar year in which the referendum is held.

(c) *Transfer of Quotas.* Section 338 of the 1938 Act provides that farm marketing quotas for wheat shall not be transferable but, in accordance with regulations prescribed by the Secretary for such purpose, any farm marketing quota in excess of the supply of wheat for such farm for any marketing year may be allocated to other farms on which the acreage allotment has not been exceeded.

(d) *Land Use.* Section 339 of the 1938 Act provides that, during any year in which marketing quotas for wheat are in effect, the producers on any farm (except a new farm receiving an allotment from the reserve for new farms) on which any crop is produced on acreage required to be diverted from the production of wheat shall be subject to a penalty on such crop, in addition to any marketing quota applicable to such crop, unless (1) the crop is designated by the Secretary as one which is not in surplus supply and will not be in surplus supply if it is permitted to be grown on the diverted acreage, or as one the production of which will not substantially impair the purpose of the requirements of section 339. The acreage required to be diverted from the production of wheat on the farm shall be an acreage of cropland equal to the number of acres determined by multiplying the farm acreage allotment by the diversion factor determined by dividing the number of acres by which the national acreage allotment is reduced below fifty-five million acres by the number of acres in the national acreage allotment. The actual production of any crop subject to a penalty shall be regarded as available for marketing and the penalty on such crop shall be computed on the actual acreage of such crop at the rate of 65 percent of the parity price per bushel of wheat as of May 1 of the calendar year in which such crop is harvested, multiplied by the normal yield of wheat per acre established for the farm. Until the producers on any farm pay the penalty on such crop, the entire crop of wheat prduced on the farm and any subsequent crop of wheat subject to marketing quotas in which the producer has an interest shall be subject to a lien in favor of the United States for the amount of the penalty. Each producer having an interest in the crop or crops on acreage diverted or required to be diverted from the production of wheat shall be jointly and severally liable for the entire amount of the penalty. The persons liable for the payment or collection of the penalty shall be liable also for interest thereon at the rate of 6 percent per annum from the date the penalty becomes due until the date of payment of such penalty.

The Secretary may require that the acreage on any farm diverted from the production of wheat be land which was devoted to the production of wheat in the previous year to the extent the Secretary determines that such requirement is necessary to effectuate the purposes of the 1938 Act.

The Secretary may permit the diverted acreage to be grazed in accordance with regulations prescribed by the Secretary.

Since the proclaimed 1986 national acreage allotment of 54.0 million acres is below 55.0 million acres, a land diversion program equal to 1.85 percent of the farm acreage allotment will be in effect if marketing quotas are approved.

(e) *Wheat Marketing Allocation.* Section 379b of the 1938 Act provides that, during any marketing year for which a marketing quota is in effect for wheat, a wheat marketing allocation program shall be in effect. Whenever a wheat marketing allocation program is in effect for any marketing year the Secretary shall determine (1) the wheat marketing allocation for such year which shall be the amount of wheat which, in determining the national marketing quota for such marketing year, the Secretary estimated would be used during such year for food products for consumption in the United States, and that portion of the amount of wheat which, in determining such quota, the Secretary estimated would be exported in the form of wheat or products thereof during the marketing year in which the Secretary determines that marketing certificates shall be issued to producers in order to achieve, insofar as practicable, the price and income objectives of the 1938 Act, and (2) the national allocation percentage which

shall be the percentage which the national marketing allocation is of the national marketing quota. Each farm shall receive a wheat marketing allocation for such marketing year equal to the number of bushels obtained by multiplying the number of acres in the farm acreage allotment for wheat by the projected farm yield, and multiplying the resulting number of bushels by the national allocation percentage.

The 1986-crop wheat marketing allocation will be the sum of the estimate for domestic food consumption—660 million bushels—and estimated exports—1,250 million bushels—or 1,910 million bushels. The national allocation percentage is the product of dividing the national marketing allocation—1,910 million bushels—by the national marketing quota—1,955 million bushels—which shall be .9770.

(e–1) *Marketing Certificates.* Section 379c of the 1938 Act provides that the Secretary shall provide for the issuance of wheat marketing certificates for each marketing year for which a wheat marketing allocation program is in effect for the purpose of enabling producers on any farm with respect to which certificates are issued to receive, in addition to the other proceeds from the sale of wheat, an amount equal to the value of such certificates. The wheat marketing certificates issued with respect to any farm for any marketing year shall be in the amount of the farm wheat marketing allocation for such year, but not to exceed (i) the actual acreage of wheat planted on the farm for harvest in the calendar year in which the marketing year begins multiplied by the normal yield of wheat for the farm, plus (ii) the amount of wheat stored to avoid or postpone a marketing quota penalty, which is released from storage during the marketing year on account of underplanting or underproduction, and if this limitation operates to reduce the amount of wheat marketing certificates which would otherwise be issued with respect to the farm, such reduction shall be made first from the amount of export certificates which would otherwise be issued. The Secretary shall provide for the sharing of wheat marketing certificates among producers on the farm on the basis of their respective shares in the wheat crop produced on the farm, or the proceeds thereform except, that in any case in which the Secretary determines that such basis would not be fair and equitable, the Secretary shall provide for such sharing on such other basis as the Secretary may determine to be fair and equitable. The Secretary shall provide for the issuance of domestic marketing certificates for the portion of the wheat marketing allocation representing wheat used for food products for consumption in the United States.

The Secretary shall also provide for the issuance of export marketing certificates to eligible producers at the end of the marketing year on a pro rata basis. For such purposes, the value per bushel of export marketing certificates shall be an average of the total net proceeds from the sale of export marketing certificates during the marketing year after deducting the total amount of wheat export subsidies paid to exporters. An acreage on the farm which the Secretary finds was not planted to wheat because of drought, flood, or other natural disaster shall be deemed to be an actual acreage of wheat planted for harvest, provided such acreage is not subsequently planted to any crop for which there are marketing quotas or voluntary adjustment programs in effect. Producers on any farm who have planted not less than 90 percent of the acreage of wheat required to be planted in order to earn the full amount of marketing certificates for which the farm is eligible shall be deemed to have planted the entire acreage required to be planted for that purpose.

No producer shall be eligible to receive wheat marketing certificates with respect to any farm for any marketing year in which a marketing quota penalty is assessed for any commodity on such farm or in which the farm has not complied with the land-use requirements of section 339 of the 1938 Act to the extent prescribed by the Secretary, or in which the producer exceeds the farm acreage allotment on any other farm for any commodity in which he has an interest as a producer. No producer shall be deemed to have exceeded a farm acreage allotment for wheat if the entire amount of the farm marketing excess is delivered to the Secretary or stored in accordance with applicable regulations to avoid or postpone payment of the penalty. Any wheat delivered to the Secretary shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United States or in foreign countries or in such other manner as the Secretary determines will divert it from the normal channels of trade and commerce. Notwithstanding any other provision of the 1938 Act, the Secretary may provide that a producer shall not be eligible to receive marketing certificates, or may adjust the amount of marketing certificates to be received by the producer, with respect to any farm for any year in which a variety of wheat is planted on the farm which has been determined by the Secretary, after consultation with State Agricultural Experiment Stations, agronomists, cereal chemists and other qualified technicians, to have undesirable milling or baking qualities and has made public announcement thereof.

The Secretary shall determine and proclaim for each marketing year the face value per bushel of wheat marketing certificates. The face value per bushel of domestic certificates shall be the amount by which the level of price support for wheat accompanied by domestic certificates exceeds the level of price support for wheat not accompanied by certificates (noncertificate wheat).

Marketing certificates and transfers thereof shall be represented by such documents, marketing cards, records, accounts, certifications, or other statements or forms as the Secretary may prescribed.

In any case in which the failure of a producer to comply fully with the terms and conditions of the programs formulated under the 1983 Act precludes the issuance of marketing certificates, the Secretary may, nevertheless, issue such certificates in such amounts as he determines to be equitable in relation to the seriousness of the default.

(e–2) *Marketing Restrictions.* Section 379d of the 1938 Act provides that marketing certificates shall be transferable only in accordance with regulations prescribed by the Secretary. Any unused certificates legally held by any person shall be purchased by Commodity Credit Corporation if tendered to the Corporation for purchased in accordance with regulations prescribed by the Secretary.

During any marketing year for which a wheat marketing allocation program is in effect, (i) all persons engaged in the processing of wheat into food products shall, prior to marketing any such food product or removing such food product for sale or consumption, acquire domestic marketing certificates equivalent to the number of bushels of wheat contained in such product, and (ii) all persons exporting wheat shall, prior to such export, acquire export marketing certificates equivalent to the number of bushels so exported. The costs of the export marketing certificates per bushel to the exporter shall be that amount determined by the Secretary on a daily basis which would make United States wheat and wheat flour generally competitive in the world market, avoid disruption of world maket prices, and

fulfill the international obligations of the United States. The Secretary may exempt from the requirements wheat export for donation abroad and other noncommercial exports of wheat, wheat processed for use on the farm where grown, wheat produced by a State or agency thereof, wheat processed for donation, and wheat processed for uses determined by the Secretary to be noncommercial. A beverage distilled from wheat shall be deemed to be removed for sale or consumption at the time it is placed in barrels for aging except that upon the giving of a bond as prescribed by the Secretary, the purchase of and payment for such marketing certificates as may be required may be deferred until such beverage is bottled for sale. Wheat shipped to a Canadian port for storage in bond, or storage under a similar arrangement, and subsequent exportation shall be deemed to have been exported for purposes of section 379d(b) when it is exported from the Canadian port. Marketing certificates shall be valid to cover only sales or removals for sale or consumption or exportations made during the marketing year with respect to which they are issued and, after being once used to cover a sale or removal for sale or consumption or export of a food product or an export of wheat, shall be void and shall be disposed of in accordance with regulations prescribed by the Secretary. The Secretary may, however, require marketing certificates issued for any marketing year to be acquired to cover sales, removals or exportations made on or after the date during the calendar year in which wheat harvested in such calendar year begins to be marketed as determined by the Secretary even though such wheat is marketed prior to the beginning of the marketing year, and marketing certificates for such marketing year shall be valid to cover sales, removals, or exportations made on or after the date so determined by the Secretary. Whenever the face value per bushel of domestic marketing certificates for marketing year is different from the face value of domestic marketing cetificates for the preceding marketing year, the Secretary may require marketing certificates issued for the preceding marketing year to be acquired to cover all wheat processed into food products during such preceding marketing year even though the food product may be marketed or removed for sale or consumption after the end of the marketing year.

Upon the giving of a bond or other undertaking satisfactory to the Secretary to secure the purchase of a payment for such marketing certificates as may be required, and subject to such regulations as the Secretary may prescribe, any person required to have marketing certificates in order to market or export a commodity may be permitted to market any such commodity without having first acquired marketing certificates.

The term "food products" means flour (excluding flour second clears not used for human consumption as determined by the Secretary), semolina, farina, bulgur, beverage, and any other product composed wholly or partly of wheat which the Secretary may determine to be a food product. The Secretary may administer the exemption for wheat processed into flour second clears through refunds either to processors of such wheat or to users of such clears. For the purpose of such refunds, the wheat equivalent of flour second clears may be determined on the basis of conversion factors authorized by Section 379f of the 1938 Act, even though certificates had been surrendered on the basis of the weight of the wheat.

(e–3) *Assistance In Purchase And Sale of Marketing Certificates.* For the purpose of facilitating the purchase and sale of marketing certificates, Section 379e of the 1938 Act provides that the Commodity Credit Corporation is authorized to issue, buy, and sell marketing certificates in accordance with regulations prescribed by the Secretary. The Corporation may issue and sell certificates in excess of the quantity of certificates which it purchases. In addition, the Corporation may also be authorized to charge, in addition to the face value of the marketing certificates, an amount determined by the Secretary to be appropriate to cover estimated administrative costs in connection with the purchase and sale of the certificates and estimated interest incurred on funds of the Corporation invested in certificates purchased by it.

(e–4) *Conversion Factors.* Section 379f of the 1938 Act provides that the Secretary shall establish conversion factors which shall be used to determine the amount of wheat contained in any food product. The conversion factor for any such food product shall be determined upon the basis of the weight of wheat used in the manufacture of such product.

(e–5) *Authority To Facilitate Transition.* Section 379g of the 1938 Act provides that the Secretary is authorized to take such action as determined to be necessary to facilitate the transition from the program currently in effect to the program provided for in the 1938 Act. This includes the authority to exempt all or a portion of the wheat or food products made therefrom in the channels of trade on the effective date of the program from the marketing restrictions or to sell certificates to persons owning such wheat or food products at such prices as the Secretary may determine.

Whenever the face value per bushel of domestic marketing certificates for a marketing year is substantially different from the face value of domestic marketing certificates for the preceding marketing year, the Secretary is authorized to take such action as the Secretary determines necessary to facilitate the transition between marketing years. This includes the authority to sell certificates to persons engaged in the processing of wheat into food products covering such quantities of wheat, at such prices, and under such terms and conditions as the Secretary may by regulation provide.

(e–6) *Reports and Records.* Section 379h of the 1938 Act applies to processors of wheat, warehousemen and exporters of wheat and food products, and all persons purchasing, selling, or otherwise dealing in wheat marketing certificates. Any such person shall, from time to time on request of the Secretary, report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of the 1938 Act. Such information shall be reported and such records shall be kept in such manner as the Secretary shall prescribe. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary is authorized to examine such books, papers, records, accounts, correspondence, contracts, documents, and memorandums as the Secretary has reason to believe are relevant and are within the control of such person.

(e–7) *Penalties.* Section 379i of the 1938 Act provides that any person who knowingly violates or attempts to violate or who knowingly participates or aids in the violation of any of the provisions of the 1938 Act shall forfeit to the United States a sum equal to two times the face value of the marketing certificates involved in such violation. Such forfeiture shall be recoverable in a civil action brought in the name of the United States.

Further, any person except a producer acting in a capacity as a producer, who knowingly violates or attempts to violate or who knowingly participates or aids in the violation of any provision of

the 1938 Act, or of any regulation governing the acquisition, disposition, or handling of marketing certificates, or who knowingly fails to make any report or keep any record as required, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $5,000 for each violation.

Also, any person who, acting in a capacity as a producer, knowingly violates or attempts to violate or participates or aids in the violation of any provision of the 1938 Act, or of any regulation governing the acquisition, disposition, or handling of marketing certificates or fails to make any report or keep any record as required shall (i) forfeit any right to receive marketing certificates, in whole or in part as the Secretary may determine, with respect to the farm or farms and for the marketing year with respect to which any such act or default is commmitted, or (ii), if such marketing certificates have already been issued, pay to the Secretary, upon demand, the amount of the face value of such certificates, or such part thereof as the Secretary may determine. Such determination by the Secretary with respect to the amount of such marketing certificates to be forfeited or the amount to be paid by such producer shall take into consideration the circumstances relating to the act or default committed and the seriousness of such act or default. In addition, any person who falsely makes, issues, alters, forges, or counterfeits any marketing certificate, or with fraudulent intent possesses, transfers, or uses any such falsely made, issued, altered, forged, or counterfeited marketing certificate, shall be deemed guilty of a felony and upon conviction thereof shall be subject to a fine of not more than $10,000 or imprisonment of not more than ten years, or both.

(e–8) *Regulations.* Section 379j of the 1938 Act provides that the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of the 1938 Act including, but not limited to, regulations governing the acquisition, disposition, or handling of marketing certificates.

(f) *Level of Price Support If Marketing Quotas Are Disapproved.* Section 101(d)(3) of the 1949 Act provides that the level of price support to "cooperators" for any crop of wheat for which marketing quotas have been disapproved by producers shall be 50 percent of the parity price of wheat. The parity price of wheat for May 1, 1985 is $7.07 per bushel. A "cooperator" with respect to any crop of wheat produced on a farm is defined by section 408(b) of the 1949 Act as a producer on whose farm the acreage planted to wheat does not exceed the farm acreage allotment for wheat. Price support also may be made available to noncooperators in accordance with section 101(d)(4) of the 1949 Act at such levels, not in excess of the level of price support to cooperators, as the secretary determines will facilitate the effective operation of the program.

(g) *Level of Price Support If Marketing Quotas Are Approved.* Section 107 of the 1949 Act provides that:

(1) Price support for wheat accompanied by domestic certificates shall be at such level not less than 65 percent or more than 90 percent of the parity price for wheat as the Secretary determines appropriate, taking into consideration the factors specified in section 401(b) of the 1949 Act.

(2) Price support for wheat accompanied by export certificates shall be at such level not more than 90 percent of the parity price for wheat as the Secretary determines appropriate, taking into consideration the factors specified in section 401(b) of the 1949 Act.

(3) Price support for wheat not accompanied by marketing certificates shall be at such level, not in excess of 90 percent of the parity price for wheat, as the Secretary determines appropriate, taking into consideration competitive world prices of wheat, the feeding value of wheat in relation to feed grains, and the level at which price support is made available for feed grains.

(4) Price support shall be made available only to cooperators.

(5) A "cooperator" with respect to any crop of wheat produced on a farm under the program authorized by section 107 of the 1949 Act shall be a producer who: (i) does not knowingly exceed (A) the farm acreage allotment for wheat on the farm or (B) except as prescribed by the Secretary, the farm acreage allotment for wheat on any other farm on which the producer shares in the production of wheat, and (ii) complies with the land-use requirements of section 339 of the 1938 Act. If marketing quotes are not in effect for the crop of wheat, a "cooperator" with respect to any crop of wheat on a farm shall be a producer who does not knowingly exceed the farm acreage allotment for wheat. No producer shall be deemed to have exeeded a farm acreage allotment for wheat if the entire amount of the farm maketing excess is delivered to the Secretary or stored in accordance with applicable regulations to avoid or postpone payment of the penalty, but the producer shall not be eligible to receive price support on such marketing excess. No producer shall be deemed to have exceeded a farm acreage allotment for wheat if the production on the acreage in excess of the farm acreage allotment is stored pursuant to the provisions of the 1938 Act, but the producer shall not be eligible to receive support for such wheat.

Section 401(b) of the 1949 Act provides that the amounts, terms, and conditions of price support operations and the extent to which such operations are carried out shall be determined or approved by the Secretary. The following factors shall be taken into consideration in determining, in the case of wheat for which price support is discretionary, whether a price-support operation shall be undertaken and the level of such support and, in the case of wheat for which price support is mandatory, the level of support in excess of the minimum level prescribed for wheat: (1) The supply of wheat in relation to the demand therefor, (2) the price levels at which other commodities are being supported, (3) the availability of funds, (4) the perishability of the wheat, (5) the importance of the wheat to agriculture and the national economy, (6) the ability to dispose of stocks acquired through a price-support operation, (7) the need for offsetting temporary losses of export markets, and (8) the ability and willingness of producers to keep supplies in line with demand.

Interested persons are requested to comment on the following proposed determinations to be made by the Secretary.

Proposed Determinations With Respect to the 1986 Wheat Marketing Quota Program

(a) *Producer Referendum.* The Secretary intends to conduct the wheat marketing quota referendum for the 1986 crop year provided for by section 338 of the 1938 Act by mail ballot during the week of July 19–26, 1985. Producers shall be eligible to vote in the referendum if the farm has a 1986 wheat acreage allotment. A person shall be considered to be a producer if the person is entitled to share in a crop of the commodity, or the proceeds thereof, or would have been so entitled had the crop been produced, because the person shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper. Any landlord whose return form the crop is fixed, regardless of the amount produced, shall not be considered to be a producer. Comments are requested on the method of balloting and voter eligibility requirements.

(b) *Land Use (Diversion) Program.* Comments are requested concerning whether the Secretary should: (1) Permit the production of alternate crops on the diverted acreage; (2) require that the diverted acreage be land which was devoted to wheat in the previous year; and (3) permit the diverted acreage to be grazed.

(c) *Price Support Levels If Quotas Are Disapproved.* Price support for cooperators will be set at 50 percent of parity. The Secretary proposes not to extend price support to noncooperators if marketing quotas are disapproved. Comments are requested on whether price support should be extended to noncooperators, and if so, at what level.

(d) *Price Support Levels If Quotas Are Approved.* Comments are requested on the levels of price support for wheat. The levels of price support are a combination of (1) the loan and purchase levels and (2) applicable certificate values. The Secretary proposes to establish the loan and purchase level for all wheat (certificates and noncertificate wheat) at between 25 and 47 percent of parity. The Secretary proposes to establish the level of price support per bushel for wheat accompanied by domestic certificates at between 65 and 90 percent of parity. The value per bushel of the domestic certificate would, therefore, be the difference between loan and purchase level and the price support level established between 65 and 90 percent of parity. The total level of price support for wheat accompanied by export certificates will be the sum of the loan and purchase level and the applicable export certificate value per bushel, not to exceed 90 percent of parity. The value per bushel of the export shall be an average of the total net proceeds from the sale of export marketing certificates during the marketing year after deducting the total amount of wheat export subsidies paid to exporters.

Authority: Secs. 326, 336, 52 Stat. 51, 55, as amended (7 U.S.C. 1326, 1336); Pub. L. 74, 77th Cong., as amended, 55 Stat. 203, as amended (7 U.S.C. 1330, 1340); 101, 107, 63 Stat. 1051, as amended, 76 Stat. 630, as amended (7 U.S.C. 1441, 1445a).

Signed at Washington, D.C., on May 31, 1985.

Everett Rank,

Administrator, ASCS.

[FR Doc. 85-13551 Filed 6-4-85; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Export Enhancement Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On May 15, 1985, the Secretary of Agriculture announced an export enhancement program involving up to $2 billion worth of agricultural commodities owned by the Commodity Credit Corporation (CCC). Under the program, agricultural commodities owned by the CCC will be made available through Fiscal Year 1988 as a bonus to U.S. exporters to expand export sales of specified U.S. agricultural commodities in targeted markets.

FOR FURTHER INFORMATION CONTACT: William R. Randolph, Direct Sales Staff, Export Credits, Foreign Agricultural Service, USDA, Washington, D.C. 20250, (Phone (202) 382-9254) for information on submission of offers and requirements for participation and Merrill D. Marxman, Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service, USDA, Washington, D.C. 20250 (Phone (202) 447-3217) for information on the commodities and methods of delivery of the commodities to exporters.

SUPPLEMENTARY INFORMATION: U.S. agricultural exports have declined substantially from the 1981 record level of 162 million tons valued at $44 billion. Current estimates indicate that 1985 exports may fall to 137 million tons valued at $33.5 billion—a 15 percent loss in volume of overseas markets. In 1980, the U.S. supplied nearly 60 percent of the world's agricultural import needs. This year, the U.S. will supply less than 45 percent.

In response, the Commodity Credit Corporation has committed up to $2 billion of its inventory of commodities to an export enhancement program. The objectives are to increase U.S. farm product exports and to encourage trading partners to begin serious negotiation on agricultural trade problems.

Each initiative under the program will meet the following criteria:

Additionality: Sales must increase U.S. agricultural exports above what would have occurred in the absence of a program.

Targeting: Sales will be targeted on specific market opportunities, especially those that challenge competitors which subsidize their exports.

Cost Effectiveness: Sales should result in a net plus to the overall economy.

Budget Neutrality: Sales should not increase budget outlays above what would have accrued in the absence of a program.

Periodically, CCC will issue: Announcements containing the terms and conditions of each initiative under the program; an invitation for offers specifying the commodity to be sold to foreign buyers and the targeted country; and catalogs of CCC-owned commodities which will be made available under the program. In general, the program will work as follows:

(1) To participate under the program, interested parties must qualify prior to submitting a competitive bid to CCC. Interested parties should contact the Direct Sales Staff at the above address (Phone (202) 382-9254 or 382-9241) to obtain the requirements to qualify as a participant under the program.

(2) Exporters will be required to provide CCC with various financial securities in connection with participation in the program.

(3) Exporters will submit competitive bids to CCC for the CCC commodity bonus needed to make a sale of the specified U.S. agricultural commodity competitive in the targeted country.

(4) CCC will examine bids for (a) the competitiveness of the sale to the foreign buyer, with offers and sales from other U.S. exporters and from competitor countries and (b) the competitiveness of the CCC commodity bonus requested for that sale. CCC will reserve the right to reject any or all bids.

(5) Successful bidders will select available commodities from the CCC catalog and request delivery.

(6) The commodities will generally be delivered to the exporter instore at the storing warehouse.

(7) The exporter must furnish evidence of export of the specified commodity to the targeted country.

CCC invites the public to comment on this system and to propose alternate systems at any time during the course of the program.

ADDRESS: Comments and proposed alternate systems should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, D.C. 20250. Arrangements to receive copies of the announcements under the program may be made by writing the Direct Sales Staff, Export Credits, Foreign Agricultural Service, USDA, Washington, D.C. 20250 (Phone (202) 382-9240) or by writing the Kansas City Commodity Office, P.O. Box 205, Kansas City, Missouri 64141 (Phone (816) 926-6421). Arrangements to receive copies of the invitations and catalogs of available commodities may be made by

writing the Kansas City ASCS Commodity Office. Any person presently on a Kansas City Commodity Office mailing list to receive information pertaining to export sales will receive a copy of the announcement, invitation and catalog of commodities.

Signed at Washington, D.C., on May 31, 1985.

Daniel G. Amstutz,

President, CCC.

[FR Doc. 85-13495 Filed 5-31-85; 2:20 pm]

BILLING CODE 3410-01-M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Georgia Advisory Committee to the Commission originally scheduled for June 21, 1985, at the Marriott Hotel Downtown, in Atlanta, Georgia at 3:00 p.m. to 6:00 p.m., has a new meeting place.

The meeting date, convening and adjourning times will remain the same. The meeting place will change to the Holiday Inn Downtown, 175 Piedmont Avenue NE., International Room, Atlanta, Georgia.

Dated at Washington, D.C., May 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-13541 Filed 6-4-85; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a briefing meeting of the Mississippi Advisory Committee to the Commission will convene at 11:00 a.m. until 12:00 noon and a community forum will be held from 12:30 p.m. until 6:00 p.m. on June 19, 1985 at the Old Capitol, House Chamber, 100 South State Street, Jackson, Mississippi. The community forum will continue on June 20, 1985 from 8:30 a.m. until 12:30 p.m. The purpose of the meeting is to hold a briefing session for SAC members and a community forum on civil rights issues in Mississippi.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Louis Westerfield, or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 31, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-13540 Filed 6-4-85; 8:45 am]

BILLING CODE 6335-01-M

Montana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and will adjourn at 1:00 p.m. on June 22, 1985, at the Sheraton Hotel, 400 Tenth Avenue, South, Board Room, Great Falls, Montana. The purpose of the meeting is to provide an orientation for new members and review report from Montana Inter-tribal Policy Board on civil rights concerns of Montana Indians.

Persons desiring additional information, or planning a presentation to the Committee, should contact William Muldrow, director of the Rocky Mountain Regional Office at (303) 844-2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. May 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 13542 Filed 6-4-85; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 10:00 a.m. and will adjourn at 5:00 p.m. on June 21, 1985, at the Lincoln Plaza, 4445 North Lincoln Boulevard, Cherokee Room, Oklahoma City, Oklahoma. The purpose of the meeting is to provide an orientation and program planning session, and a briefing on the proposed Oklahoma fair housing law.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Mr. Charles Fagin or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-13543 Filed 6-4-85; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and will adjourn at 3:00 p.m. on June 19, 1985, at the Henry M. Jackson Federal Building, 915 Second Avenue, Room 268, Seattle, Washington. The purpose of the meeting is to provide an orientation for new members and develop plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Arnold Manseth, or Susan McDuffie, director of the Norhtwestern Regional Office at (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 31, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-13539 Filed 6-4-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA
Title: Application for Federal Fisheries Permit—Amendment F
Form Number: Agency—NOAA 88-156; OMB—0648-0097
Type of Request: Revision of a currently approved collection
Burden: 10,532 respondents; 5,310 reporting hours

Needs and Uses: The information requested is to implement a provision for identifying fish traps and buoys with boats or vessels fishing the traps. This provision will reduce trap poaching and theft and enhance enforcement of fish trap restrictions. Reduction in trap loss and fish poaching will result in substantial savings to fishermen.
Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations.
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395–3785.
Agency: NOAA
Title: Application for an Atlantic Swordfish Permit
Form Number: Agency—None; OMB—0648–0149
Type of Request: Revision of a currently approved collection
Burden: 1,000 respondents; 206 reporting hours
Needs and Uses: The information requested is needed annually to identify the universe of active swordfish fishermen and their general fishing strategies. These data are essential for establishing a statistically valid sampling design to monitor and manage the fishery. All commercial swordfish fishermen must comply. Recreational swordfish fishermen in the mid-Atlantic area must also comply.
Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations.
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 30, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–13410 Filed 6–4–85; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 12–85]

Foreign-Trade Zone 22—Chicago, IL; Application for Subzone for Ford Auto Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Chicago Regional Port District, grantee of Foreign-Trade Zone 22, requesting special-purpose subzone status for the Ford Motor Company's automobile manufacturing plant in Chicago, Illinois, within the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 28, 1985.

The proposed subzone would be located at 12600 South Torrence Avenue, Chicago. The 86-acre facility, employing some 3,000 persons, is currently being renovated to produce a new front-wheel drive car. Some 3 percent of the components used at the plant are subject to Customs duties, including radios, sound systems and speed controls. Close to 4 percent of the finished autos are exported.

Zone procedures will exempt Ford from duty payments on the foreign parts used in its exports. On its domestic sales, the company will be able to take advantage of the same duty rate available to importers of finished autos. The average duty rate on foreign components used at the plant is 7.1 percent, whereas the rate for complete autos is 2.6 percent. The savings from subzone status would contribute to the company's overall costs reduction program, helping its U.S. plants to become more competitive with auto plants abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 S. Canal St., Chicago, IL 60607; and Lt. Colonel Frank R. Finch, District Engineer, U.S. Army Engineer District Chicago, 219 S. Dearborn St., Chicago, IL 60604.

Comments concerning the proposed subzones are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 8, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 55 East Monroe Street, Rm. 1406, Chicago, IL 60603
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529; 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: May 30, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–13521 Filed 6–4–85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 13–85]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzones at Chrysler Auto Parts Plants

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, requesting special-purpose subzone status for three auto components manufacturing plants of the Chrysler Corporation in the Indianapolis Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 28, 1985.

The proposed subzones would be located at Chrysler plants in Indianapolis, Kokomo and New Castle, Indiana, which employ a total of some 8,000 persons. The Indianapolis plant covers 83 acres at 2900 No. Shadeland Ave. and is used to produce electrical components such as alternators, power steering units, starters and distributors. The Kokomo plant involves two contiguous facilities totalling 134 acres at 2401 So. Reed St., which are used to produce transmissions. The New Castle plant is a steering and drive train components production facility covering 91 acres at 1817 I Ave. The components are shipped to Chrysler's plants in the U.S. and abroad.

Zone procedures would allow Chrysler to export finished components without paying Customs duties on foreign materials. On the products used at its domestic auto assembly plants, the company would be able to take advantage of the same duty rate that is available to importers of finished autos. The main foreign component is bearings. The duty rate on bearings is 11.0 percent, whereas the rate for finished

autos is 2.6 percent. The savings from subzone status would contribute to the company's overall cost reduction program, helping its U.S. plants become more competitive with auto plants abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Dwayne G. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 8, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 357 U.S. Courthouse/Federal Office Bldg., 46 E. Ohio Street, Indianapolis, IN 46204

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: May 30, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-13522 Filed 6-4-85; 8:45 am]

BILLING CODE 3510-05-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 83-270R. Applicant: National Aeronautics and Space Administration, NASA Resident Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109. Instrument: Color Film Recorder. Original notice of this resubmitted application was published in the **Federal Register** of August 26, 1983.

Docket No. 85-165. Applicant: Curators of the University of Missouri, Grants and Contracts Administration, 305 Jesse Hall, University of Missouri-Columbia, Columbia, MO 65211. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manfacturer: Jeol, Ltd., Japan. Intended use: Study of the structure and composition of substances that accumulate in aging human eyes as well as changes in tissue that follow laser treatment of glaucoma. The materials to be studied will consist of eye tissue or isolated cells or subcellular fractions either in their native form or following experimental labeling of molecules of interest. Application Received by Commissioner of Customs: May 6, 1985.

Docket No. 85-170. Applicant: University of Illinois at Chicago, Department of Ophthalmology, 1855 W. Tayler, Chicago, IL 60612. Instrument: Besancon Anomalometer and Accessories. Manufacturer: Statice Etudes et Development, France. Intended use: The instrument is intended to be used in investigations to achieve better understanding of retinal function in individuals with congenital color deficiencies and in patients with retinal disorders, and to determine whether the measurement of flicker sensitivity can be used to evaluate the pathogenesis and prognosis of these disorders. Application received by Commissioner of Customs: April 30, 1985.

Docket No. 85-171. Applicant: The Children's Memorial Hospital, 2300 Children's Plaza, Chicago, IL 60614. Instrument: Electron Microscope, Model JEM-1200EX and Accessories. Manufacturer: Jeol Ltd., Japan. Intended use: Study of the ultrastructural and compositional aspects of experimental animal and human specimens. Experiments to be conducted will focus on the cellular aspects of disease processes in humans. The properties and changes in the cell surface molecules will be of primary interest. The ultimate goal of these investigations is to discover and develop methods and techniques which will arrest and/or prevent birth defects and disease processes in humans. Application received by Commissioner of Customs: April 30, 1985.

Docket No. 85-173. Applicant: Auburn University, Auburn, AL 36849. Instrument: Electron Microscope, Model JEM-1200EX and Accessories. Manfacturer: Jeol, Ltd., Japan. Intended use: Study of the effect of composition and structure on the mechanical, electrical, optical and magnetic properties of metal alloys, polymers and ceramic materials. The experiments to be conducted include:

(1) The effect of grain boundary compositional gradients (30-100Å) regions on the fracture properties of 9-12 Chrome steels

(2) The effect of modified ultrastructure and microchemical gradients on the fatigue behavior of high strength alloys

(3) The effect of solidification parameters and processing on ordering in long range ordered alloys

(4) The effect or precipitation and localized defects on the magnetic and electrical properties of semiconductor materials

(5) Elemental and structural analysis of small 20-50 Å regions of ion-implanted surfaces of metals and oxides

(6) The effect of compositional in homogeneities on the ordering parameters in long range ordered alloys.

In addition, the instrument will be used for educational purposes in the following courses:

Materials Engineering 513: Crystallograpy of Materials
Physics 514: Introduction to Electron Microscopy
Mechanical Engineering 670: Failure Analysis of Materials
Materials Engineering 515: Polymer Technology II
Materials Engineering 446: Theoretical Materials.

Application received by Commissioner of Customs: April 30, 1985.

Docket No. 85-174. Applicant: University of Illinois, Department of Metallurgy & Mining Engineering, 1304 W. Green Street, Urbana, IL 61801. Instrument: Electron Microscope, Model H-800-3 and Accessories. Manufacturer: Hitachi, Japan. Intended use: Study of metals and semiconductors according to cutting edge technology. In metals the primary interest is solid state phase changes and their characteristics as seen at the nearly atomic level. In semiconductors, the interest is in their defect content. Application received by Commissioner of Customs: April 30, 1985.

Docket No. 85-175. Applicant: University of Georgia, Department of

Biochemistry, Boyd Graduate Studies Research Center, Athens, GA 30602. Instrument: Fluorescene Sepctrometer, Model PS 60 with Accessories. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended use: Studies of the lifetimes and polarization decay of fluorescence of proteins and living cells. Application received by Commissioner of Customs: May 1, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–13504 Filed 6–4–85; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Spectropolarimeters

This is a decision consolidated pursuant to section 5(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–008. Applicant: Virginia Commonwealth University/Medical College of Virginia, Richmond, VA 23298. Instrument: Spectropolarimeter, Model J–500C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: See notice on page 47283 in the Federal Register of December 3, 1984. Advice submitted by: The National Institutes of Health: March 7, 1985.

Docket No. 85–034. Applicant: Shriners Hospital for Crippled Children, Portland, OR 97201. Instrument: Spectropolarimeter, Model J–500A and Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: See notice on page 50419 in the Federal Register of December 28, 1983. Advice submitted by: The National Institutes of Health: April 2, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: Each foreign instrument to which the foregoing applications relate provides measurement of circular dichroism spectra and high frequency switching (50,000 times per second) between left- and right-circularly polarized light. The National Institutes of Health advises in its respectively cited memoranda that (1) the capabilities of the foreign instruments described above are pertinent to the purposes for which each article is intended to be used and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–13505 Filed 6–4–85; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

Announcing a Workshop for Suppliers and Developers of Dictionary Software

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces a two-day workshop to discuss the emerging national and international standards for an Information Resource Dictionary System. The workshop will be held on July 29–30, 1985, at the National Bureau of Standards, Gaithersburg, Maryland.

Attendance at the workshop is limited due to the size of the conference facility; therefore, attendance is restricted to current suppliers and developers of dictionary software and the registration is on a first come, first served basis with recommended limitation of two participants per company. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

To register, companies should telephone (301) 921–3491 or send a request on company letterhead to: Information Resource Dictionary System Workshop, Attn: Candy Leatherman, National Bureau of Standards, Building 225, Room A255, Gaitherburg, MD 20899.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. Registration requests must be received by close of business July 15, 1985. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contact Patricia Konig or Alan Goldfine (301) 921–3491.

Dated: May 30, 1985.

Raymond G. Kammer,

Acting Director.

[FR Doc. 85–13467 Filed 6–4–85; 8:45 am]

BILLING CODE 3510–13–M

National Telecommunications And Information Administration

[Docket No. 50572–5072]

Policies and Procedures For Use of Facilities at the Institute for Telecommunication Sciences for Proprietary Research Measurements by Private Entities

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Val M. O'Day, Executive Officer; U.S. Department of Commerce, NTIA/ITS.D1; 325 Broadway; Boulder, Colorado 80303; (303) 497–3484.

Notice is hereby given that the Institute for Telecommunication Sciences (ITS) of the National Telecommunications and information Administration will allow specifically designated facilities to be used by private parties on a reimbursable basis for proprietary research measurements, under certain specified conditions.

The facilities, which are located in or around Boulder, Colorado, include:

- Data Communications Test (DCT) facility—The Data Communication Laboratory test bed is used as a tool for:
  - —Verifying the validity of new and developing Federal and ANSI data communication standards. It provides realistic data and suggestions for refinements and improvements of a developing standard to the working standards committees.
  - —Building a representative data base of user-oriented performance paramater values for real world data communication systems such as the ARPANET, several public data networks, and in the future local area networks gateways, and alternate services (since deregulation).
  - —Evaluating the performance of alternative data communication technologies, systems and services in terms of specified user needs.

Three computers including a transportable desktop UNIX system comprise a portion of the equipment used in the testing. Normally one of the computers serves as the local host to one or more networks and the transportable machine is taken to a

distant city to function as the user of the network under test.

Restrictions on DCT Facility: Use of the test bed requires a distant terminal. The Federal Government shall not permit any of its equipment to leave the Boulder Laboratories. The private entity shall provide its own distant site equipment that must operate per ITS specifications (C language programs under UNIX will be provided by ITS.)

• Mobile Millimeter Wave Measurement (MMWM) facility—

A highly-sophisticated, fully-computerized, 10 to 100 GHz channel probe for determining the performance of potential communications path is available from ITS. Each terminal (transmit and receive) can be fixed or mounted on vans that provide a means to perform path measurements in environments ranging from urban to isolated rural locations. Measurements and analysis from remote termials (via telephone or wire) can be conducted to determine occurrence of signal fades and identification of fade mechanism (rain attenuation, multipath phase interference, antenna beam decoupling, ray defocusing, etc.) as well as channel distoration across a 1.5 GHz bandwidth. Instrumentation to measure meteorological parameters such as rain rate, refractive index, water vapor content, etc., is also available for simultaneous observation.

• Table Mountain Radio Quiet Zone (RQZ) facility—

The Table Mountain Radio Quiet Zone is a very unique facility (one of only two in the nation) which is controlled by public law to keep the lowest possible levels of unwanted radio frequency energy across the spectrum from impinging on the area. This allows research concerned with low signal levels (from deep space, extra-terrestrial, low-signal satellite, very sensitive receiver techniques, etc.) to be carried out without the ever present interference found in most areas of the nation.

As the use of electronic systems (garage door openers, computers, citizen band radios, arc welders, appliances, etc.) increases and the number of radio and TV stations increases along with many new uses for the radio frequency spectrum, the average level of electromagnetic energy across the spectrum increases. This is important to companies involved in developing very sensitive receivers and radio signal processing equipment since the front ends of these receivers are often times saturated by background noise (interference).

• Laboratory Atmospheric Simulator (LAS)—

ITS has a unique laboratory atmospheric simulator (LAS)—

ITS has a unique laboratory atmospheric simulator facility to measure the radio refractive index of moist air. This simulatory is designed to provide highly accurate measurements of millimeter wave attenuation in the frequency range 10 to 220 GHz. The laboratory atmospheric simulator permits the pressure to be varied over six orders of magnitude (10^{-3} to 10^{3} millibars), the relative humidity to be varied between 0 and 100 percent, and the temperature to be varied between 270 and 320 degrees kelvin. The simulator provides a means to conduct millimeter wave propagation experiments in a controlled evironment that can represent atmospheric heights from the earth's surface to 120 km. This latter height provides a realistic basis to conduct experiments that are representative of satellite heights for most applications.

• Antenna Turn-Table Platform (ATTP)—

ITS has an antenna turn-table located at its Table Mountain Radio Quiet Zone facility. This facility is located about 12 miles north of Boulder, Colorado. The turn-table is 37 feet in diameter, and its surface is flush with the test range. It is capable of rotating a 22,000 pound test antenna or vehicle up to three (3) revolutions per minute. The turn table is the roof of a below-ground equipment room. There is a 100-ft dielectric tower which can be used to position sources for test-site illumination.

Proprietary measurements consist of laboratory analysis, measurements, or testing of specific materials, chemicals, or devices done for only a private party where the results do not appear in the public domain and are to be treated as confidential information.

The following conditions apply to the use of ITS facilities for proprietary measurements:

• Alternative facilities of equal or superior performance are not otherwise readily available to the user elsewhere.

• Such use has been found by the ITS Director to be useful or beneficial to the Government itself.

• Equal opportunity for access to the facilities is provided to potential users.

• All appropriate costs related to the use of the facility are borne by the user.

• Such use does not interfere with the execution of ITS programs.

• Such use does not present a danger of injury to ITS staff, the users, or the facilities.

• Such use shall be subject to termination at any time at the discretion of ITS.

• Technical staff from ITS assist the private firm in the operation of all measurement facilities.

• All requirements for protection of proprietary information developed or utilized via the use of ITS measurement facilities is the responsibility of the private firm. If information is required to be made available to ITS personnel in assisting in the measurement activities, a "Confidential Conferee" shall be mutually agreed upon by the private firm and ITS to receive such information. The U.S. Government shall not hold any property rights in any patents and inventions developed by the private firm through the use of ITS measurement facilities.

• Personnel from the private firm using the ITS facilities meet the security clearance requirements established for research associates and guest workers.

• The private firm using the ITS facilities enters into a written agreement with ITS whereby the private firm: (a) Agrees to hold ITS, the Department of Commerce, its employees, and agents, harmless from all liability that may arise with the use of the facilities, and (b) agrees to meet with other conditions relevant to such use as are set out in that agreement.

A party interested in the use of an ITS facility should submit a written request to the Director, ITS, specifying which facility it wishes to use and describing the nature of the work that it intends to peform using that facility. Requests should be sent to: Director, Institute for Telecommunication Sciences; U.S. Department of Commerce, NTIA/ITS.D; 325 Broadway; Boulder, Colorado 80303.

After determining that the conditions for such use can and will be met, and upon approval by the Director, the appropriate Deputy Director of ITS overseeing that facility will enter into a written agreement with the private concern specifying the conditions, time frame and costs associated with the use of the facility.

ITS will collect fees according to a schedule appropriate for such reimbursable activities, taking into account all attributable costs associated with the provision of the facilities for private use, including facility equipment use, salaries associated with on-site monitoring of equipment use, and management fees. An estimate of total costs will be developed and made available to the private firm as soon as

practicable after the facilities request is made.

Scott Mason,

Chief, Management Branch, Office of Policy Coordination and Management, National Telecommunications and Information Administration.

[FR Doc. 85-13401 Filed 6-4-85; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Japan

May 31, 1985.

On October 5 and 22, 1984, notices were published in the **Federal Register** (49 FR 40076, 41269) announcing that the Government of the United States requested consultations with the Government of Japan concerning work gloves in Category 631pt. and men's and boys' other coats of man-made fibers in Category 634 under the terms of the Bilateral Cotton, Wool and Man-made Textile Agreement of August 17, 1979, as amended, between the two governments.

The purpose of this notice is to announce that consultations on these categories were held January 28–31, 1985. The following limits were agreed for Categories 631pt. and 634 for goods exported during 1985.

Category	Agreed limit
631pt.	330,000 dozen pairs.
634	95,000 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13503 Filed 6-4-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on July 11 and 12, 1985, in Washington, D.C. The purpose of this meeting is to hear and discuss comments related to implementaion of the Cigarette Safety Act.

DATE: The meeting will be from 9:30 a.m. to 5:00 p.m. on July 11, 1985. It will resume at 9:30 a.m. on July 12, 1985, and will conclude that day.

ADDRESS: The meeting will be in the Auditorium, first floor of the Hubert Humphrey Building, 200 Independence Ave., SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Hylton, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567; 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on July 11 and 12, 1985, to discuss the following topics:

1. The portion of the meeting to be held on July 11, 1985, will be devoted to hearing from any member of the public who wishes to present information or views on the implementation of the Cigarette Safety Act. Examples of the kinds of information which might be presented by interested members of the public include presentations about patented inventions intended to reduce the potential hazard of cigarettes as a source of ignition of upholstered furniture and mattresses, and information about studies or research concerning cigarettes as a source of ignition.

Each person desiring to make a presentation should provide a brief summary to Colin Church, Consumer Product Safety Commission, Room 420, Washington, D.C. 20207, by July 1, 1985. Presentations will be limited to approximately 20 minutes. Additional restrictions on the length of presentations may be imposed, depending upon the number of persons who wish to speak. The Technical Study Group is neither soliciting nor expecting to discuss confidential business information.

2. The portion of the meeting to be held on July 12, 1985, will consist of a review of the Technical Study Group of information that was provided on July 11. In addition, the Group will discuss testing at the Fire Research Center, National Bureau of Standards, and will conduct such other business as it finds appropriate.

The July 12 portion of the meeting will be open to observation by members of the public, but only members of the Technical Study Group may participate in the discussion.

Dated: May 30, 1985.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 85-13448 Filed 6-4-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Veterans' Cost-of-Instruction Payments Program: Application Notice

AGENCY: Department of Education.

ACTION: Veterans' Cost-of-Instruction Payments Program: Application Notice for New Awards for Fiscal Year 1985: Extension of Closing Date.

The Assistant Secretary extends to June 14, 1985, the closing date by which institutions of higher education must submit applications for new awards under the Veterans' Cost-of-Instruction Payments (VCIP) program.

Because of an error in the mailing process, approximately seventy institutions did not receive VCIP applications in the initial mass mail-out in March, 1985. These institutions were unable to apply for new awards by the May 10, 1985 closing date.

The original Notice was published in the **Federal Register** on January 22, 1985 (50 FR 2849). The reader should refer to this application notice for complete information concerning available funds and program information.

Authority for this program is contained in section 420 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070 e-1)

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Office of Postsecondary Education, Division of Higher Education Incentive Programs (VCIP), Attention: 84.540, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education. If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applciant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Division of Higher Education Incentive Programs (VCIP), U.S. Department of Education (Room 3022–ROB–3), 7th and D Streets SW., Washington, D.C.

The Division of Higher Education Incentive Programs will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Further Information: For further information contact the U.S. Department of Education, Office of Postsecondary Education, Division of Higher Education Incentive Programs (VCIP), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245–3253.

(20 U.S.C. 1070 e–1)

Catalog of Federal Domestic Assistance Number 84.064; Higher Education Veterans' Cost-of Instruction Program (VCIP))

Dated: May 31, 1985.

Edward M. Elmendorf,

Assistant secretary for Postsecondary Education.

[FR Doc. 85–13529 Filed 6–4–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER85–518–000 et al.]

Electric Rate and Corporate Regulation Filings; Alamito Co. et al.

Take notice that the following filings have been made with the commission: May 28, 1985.

1. Alamito Company

[Docket No. ER85–518–000]

Take notice that on May 14, 1985, Alamito Company (Alamito) tendered for filing Amendment No. 5 to the Tucson-San Diego Ten Year Power Sale and Interconnection Agreement. That Agreement was assigned by Tucson Electric Power Company to Alamito effective November 1, 1984. The purpose of Amendment No. 5 is to change the capacity factor from 60% to 65% at which San Diego can take delivery of power during the Phase IV period of that Ageement.

Alamito requests an effective date of June 1, 1985.

Comment date: June 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company, an Assumed Business Name of Pacificorp

[Docket No. ER85–519–000]

Take notice that on May 17, 1985, Pacific Power & Light (Pacific) an assumed business name of Pacificorp, tendered for filing Sixth Revised Sheet Nos. 5A, 5B and 5C, superseding Fifth Revised Sheet Nos. 5A, 5B and 5C (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), and a Service Agreement between Pacific and Southern California Edison Company.

Pacific States that the Service Agreement provides for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL–3 under Pacific's Tariff.

Pacific requests an effective date of February 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. ER85–520–000]

Take notice that on May 17, 1985, Tampa Electric Company (Tampa) tendered for filing Service Schedule X providing for extended economy interchange service between Tampa and Jacksonville Electric Authority (Jacksonville). Tampa states that Service Schedule X is submitted for inclusion as a supplement under the existing agreement for interchange service between Tampa and Jacksonville, designated as Tampa's Rate Schedule FERC No. 14.

Tampa proposes an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Jacksonville and the Florida Public Service Commission.

Comment date: June 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ER85–521–000]

Take notice that on May 20, 1985, Kansas Gas and Electric Company (KG&F) tendered for filing proposed changes in its FERC Electric Service Tariff Nos. 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 134, 135, 144, 149, 151, 152, 153, 154, 155, 156, 157 and 159. The proposed changes would modify the fuel adjustment clauses so that the fuel adjustment charges will not be affected by energy produced by facilities underground test operation.

The proposed modification is required to ensure the value of test energy produced by the Wolf Creek nuclear power plant during its precommercial operation will be accounted for properly.

KG&F proposes an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon KG&E's jurisdictional customers and the State Corporation Commission of Kansas.

Comment date: June 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Company

[Docket No. ER85–522–000]

Take notice that on May 20, 1985, Kansas Gas and Electric Company (KG&F) tendered for filing a proposed service schedule in its FERC Electric Service Tariff No. 151. The proposed service schedule would permit the transmission of test energy available to the Kansas Electric Power Cooperative, Inc. (KEPCo) to points of interconnection between KG&E and neighboring utilities.

The proposed service schedule is required to ensure that KEPCo realizes the full value of test energy produced by the Wolf Creek nuclear power plant during the precommercial operation.

KG&E proposes an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon KEPCo and the State Corporation Commission of Kansas.

Comment date: June 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13478 Filed 6-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-522-000 et al.]

Natural Gas Certificate Filings; Arkla Energy Resources et al.

Take notice that the following filings have been made with the commission:

1. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85-522-000]

May 28, 1985.

Take notice that on May 20, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-522-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of natural gas for an existing industrial sale customer, and operation of jurisdictional facilities in connection therewith, and for permission and approval to abandon such service at the expiration of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 18,000 Mcf of natural gas per day on a best-efforts basis for International Paper Company (IPC). Arkla states that it would receive gas purchased by IPC from other suppliers at existing points in Arkansas and Oklahoma and deliver such gas to IPC's plant near Pine Bluff, Arkansas. Arkla also requests flexible authority to add and/or delete sources of gas and/or receipt and delivery points. Arkla states that any changes made under the flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the volume levels proposed.

For the transportation service, Arkla would charge the rate set forth in either its Ecoshare Transportation Rate Schedule or its Rate Schedule TRG-1, it is explained. Arkla states that it would provide the proposed servcie for a limited term ending on August 1, 1985, which term would be automatically renewed for further periods of one year, unless either party gives notice of its desire not to renew.

Arkla states that it is presently providing the transportation servcie pursuant to § 157.209 of the Commission's Regulations.

Arkla also requests abandonment authority permitting abandonment of the transportation service and incidental facilities on the expiration date specified in the transportation agreement between Arkla and IPC.

Comment date: June 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85-523-000]

May 28, 1985.

Take notice that on May 20, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-523-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of natural gas for an existing industrial sale customer, and operation of jurisdictional facilities in connection therewith, and for permission and approval to abandon such service at the expiration of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 18,000 Mcf of natural gas per day on a best-efforts basis for International Paper Company (IPC). Arkla would receive gas purchased by IPC from other suppliers at existing points in Arkansas and Oklahoma and deliver such gas to IPC's plant in Camden, Arkansas, it is stated. Arkla also requests flexible authority to added and/or delete sources of gas and/or receipt and delivery points. Arkla states that any changes made under the flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the volume levels proposed.

For the transportation service, Arkla would charge the rate set forth in either its Ecoshare Transportation Rate Schedule or its Rate Schedule TRG-1, it is explained. Arkla states that it would provide the proposed service for a limited term ending on August 1, 1985, which term would be automatically renewed for further periods of one year, unless either party gives notice of its desire not to renew.

Arkla states that it is presently providing the transportation servcie pursuant to § 157.209 of the Commission's Regulations.

Arkla also requests abandonment authority permitting abandonment of the transportation service and incidental facilities on the expiration date specified in the transportation agreement between Arkla and IPC.

Comment date: June 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85-524-000]

May 28, 1985.

Take notice that on May 20, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-524-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of natural gas for an existing industrial sale customer, and operation of jurisdictional facilities in connection therewith, and for permission and approval to abandon such service at the expiration of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 22,000 Mcf of natural gas per day on a best-efforts basis for Aluminum Company of America (Alcoa). Arkla

would receive gas purchased by Alcoa from other suppliers at existing points in Arkansas and Oklahoma and deliver such gas to Alcoa's plant near Bauxite, Arkansas, it is stated. Arkla also requests flexible authority to add and/or delete sources of gas and/or receipt and delivery points. Arkla states that any changes made under the flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the volume levels proposed.

For the transportation service, Arkla would charge the rate set forth in either its Ecoshare Transportation Rate Schedule or its Rate Schedule TRG–1, it is explained. Arkla states that it would provide the proposed servcie for a limited term ending on August 1, 1985.

Arkla states that it is presently providing the transportation servcie pursuant to § 157.209 of the Commission's Regulations.

Arkla also requests abandonment authority permitting abandonment of the transportation service and incidental facilities on the expiration date specified in the transportation agreement between Arkla and Alcoa.

Comment date: June 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85–525–000]

May 28, 1985.

Take notice that on May 20, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85–525–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of natural gas for an existing industrial sale customer, and operation of jurisdictional facilities in connection therewith, and for permission and approval to abandon such service at the expiration of the trransportation agreement, all as more fuly set forth in the application which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 37,500 Mcf of natural gas per day on a best-efforts basis for Agrico Chemical Company (Agrico). Arkla would receive gas purchased by Agrico from other suppliers at existing points in Arkansas and Oklahoma and deliver such gas to Agrico's plant near Blytheville, Arkansas, it is stated. Arkla also requests flexible authority to add and/or delete sources of gas/or receipt and delivery points. Arkal states that any changes made under the flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the volume levels proposed.

For the transportation service, Arkla would charge the rate set forth in either its Ecoshare Transportation Rate Schedule or its Rate Schedule TRG–1, it is explained. Arkla states that it would provide the proposed service for a limited term ending on August 1, 1985, which term would be automatically renewed for further periods of one year, unless either party gives notice of its desire not to renew.

Arkla states that it is presently providing the transportation service pursuant to § 157.209 of the Commission's Regulations.

Arkla also requests abandonment authority permitting abandonment of the transportation service and incidental facilities on the expiration date specified in the transportation agreement between Arkla and Agrico.

Comment date: June 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85–475–000]

May 28, 1985.

Take notice that on April 30, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP85–475–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue operating a sales tap and the transportation of natural gas under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla proposes to continue operation of sales tap facilities and to continue deliveries of up to 30,000 Mcf of gas per day to Texas Eastman Company's plant near Longview, Texas. Arkla states in its original authorization for this service in Docket No. CP83–275–000 was limited to a term of one year from the date of initial delivery, which occurred on October 8, 1984, and that, hence, the one-year term of Arkla's present authorization will end on October 7, 1985.

Comment date: July 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Colorado Interstate Gas Company

[Docket No. CP85–500–000]

May 29, 1985.

Take notice that on May 9, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1078, Colorado Springs, Colorado 80944, filed in Docket No. CP85–500–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon metering facilities formerly used to effectuate the sale and delivery of natural gas to Reserve Pipeline Company (Reserve) in Finney County, Kansas, under the authorization issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that the metering facilities have not been used for sales since July 1971. CIG asserts that the Reserve facilities are now owned by Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain) and that Rocky Mountain has consented to the proposed abandonment.

Comment date: July 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP85–504–000]

May 29, 1985.

Take notice that on May 10, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–504–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to establish new delivery points for the City of Colorado Springs (Colorado Springs) and for Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), both existing customers, under the certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that Colorado Springs has requested that CIG provide a new point of delivery off of CIG's existing 20-inch Drennan Road sales lateral. CIG indicates that the delivery point would consist of a tap and appurtenant facilities downstream of CIG's Drennan Road lateral measuring facilities and that no additional measuring facilities would be required as all volumes to be delivered at the new delivery point would continue to be metered up-stream of the new delivery point at the existing

measuring facilities adjacent to CIG's 20-inch main transmission line.

CIG states that Peoples has requested that CIG provide a new point of delivery off of CIG's 3-inch and 2-inch loop Castle Rock sales lateral. CIG indicates that the new delivery point would require a new point of interconnection between CIG and Peoples located in Douglas County, Colorado, and that no additional measuring and/or regulating facilities would be required as all volumes to be delivered to Peoples for the town of Castle Rock and environs are and would continue to be metered at the existing Castle Rock measuring facilities.

CIG proposes to construct and operate a new tap on its 20-inch Drennan Road lateral to provide an additional point of delivery to Colorado Springs. CIG indicates Colorado Springs would reimburse CIG for the cost of constructing the proposed facilities. CIG also proposes to add a new point of delivery on its Castle Rock lateral and loop for the benefit of Peoples. CIG indicates that Peoples would construct the proposed taps on CIG facilities and assume the cost of such construction. The total volumes of natural gas to be delivered to either of the two customer companies would not exceed the daily or annual entitlements presently authorized for sale and delivery to Colorado Springs and Peoples, it is explained.

Comment date: July 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation

[Docket No. CP85–505–000]

May 28, 1985.

Take notice that on May 10, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–505–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Shenango, Inc. (Shenango), under the certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 1,030 million Btu equivalent of natural gas per day for Shenango through December 31, 1985. Columbia states that the gas to be transported would be purchased from Industrial Energy Services Company (IESCO) and would be used as process over fuel in Shenango's Neville Island, Pennsylvania, plant.

It is indicated that Shenango has made arrangements to purchase this gas from IESCO. Columbia states that it would receive the gas from IESCO and redeliver the gas to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving Shenango, near Neville Island, Pennsylvania.

Columbia states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from recipt points other that Leach, Kentucky—29.93 cents per million Btu provided the volumes are within CPA's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of CPA's TDE's. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In additiona, Columbia states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: July 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP85–508–000]

May 28, 1985.

Take notice that on May 13, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85–508–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate taps for direct sales to five customers in Kansas and Nebraska under the certificate issued in Docket Nos. CP83–140–000 and CP83–140–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate the taps on its pipeline in Kansas and Nebraska for residential, agricultural and commercial end uses. It is stated that the proposed peak day volume of 68 Mcf and annual volume of 2,520 Mcf to be delivered through the taps would have no negative impact on K N's deliveries to existing customers. K N indicates that the proposed taps would serve the customers listed below with corresponding gas volumes and end uses.

Customer	Location of tap	Approximately quabty to be sold (Mcf)		End use of gas
		Peak day	Annual	
Resident/Occupant, Douglas Keas	Rooks County, Kanasas	2	120	Domestic.
Resident/Occupant, Golda Crabtree	Hall County, Nebraska	25	800	Irrigation.
Resident/Occupant, Thilo Poessnecket	Holt County, Nebraska	25	800	Irrigation.
Resident/Occupant, Helmench & Payne, Inc.	Rooks County, Kanasas	10	600	Small Commercial.
Resident/Occupant, SSA, Inc	Buffalo County, Nebraska	6	200	Irrigation.

Comment date: July 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–482–000]

May 28, 1985.

Take notice that on May 3, 1985, Trancontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–482–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain pipeline and appurtenant facilities in the Ship Shoal area, offshore Louisiana, under the certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to construct and operate approximately 6.48 miles of 24-inch pipeline extending from the producer platform in Ship Shoal area, south addition, Block 332 (Block 332) to a point of connection with the existing 24-inch pipeline of Transco in South Timbalier area, south addition, Block 300, together with a meter and regulator station on the producer plaform, all offshore Louisiana. It is asserted that the proposed facilities would be constructed in order to attach proven and probable gas reserves estimated to be 66,129,000

Mcf which would be purchased by Transco from Arco Oil and Gas Company in Block 332. It is indicated that the estimated average deliverability of the Block 332 reserves is 88,000 Mcf per day.

Transco states that the proposed facilities would be designed with a maximum capacity of 160,000 Mcf per day and would cost an estimated $12,782,000, which would be financed initially through short-term loans and available cash. It is anticipated that the facilities would be completed and placed in service by late 1985.

Comment date: July 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or to make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take futher notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13479 Filed 6-4-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30254; PH-FRL 2845-8]

Janssen Pharmaceutica; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipts of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by July 30, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP-30254] and the file number (43813-RN) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

In person, bring comments to: Room 236, CM No. 2, Attn: PM 21, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be dislcosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby PM 21, (703-557-1900).

SUPPLEMENTARY INFORMATION: Janssen Pharmaceutica, PO Box 344, Washington Crossing, NJ 08560, has submitted an application to EPA to register the product Rodewod 10 OL, EPA File Symbol 43813-RN, containing the active ingredient 1-([2-(2,4-dichlorophenyl)-1,3-dioxolan-2-yl]methyl)-1*H*-1,2,4-triazole at 1.2 percent, pursuant to the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use as wood preservative. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the adress sprovided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: May 24, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-13514 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30086A; PH-FRL 2846-6]

Microbial Pesticides; Procedure for Notification of Small Scale Field Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) issued a notice, published in the **Federal Register** of October 17, 1984 (49 FR 40659), requiring notification to the Agency prior to all small scale field testing involving certain microbial pesticides in order to determine whether an experimental use permit (EUP) will be required for the testing. This notice sets forth procedures for submitting notifications to the Agency pursuant to the Interim Policy on Small Scale Field Testing of Microbial Pesticides.

DATE: This policy is effective June 5, 1985.

ADDRESS:

By mail, submit all notifications to: Ferial Bishop, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring notifications to: Room 716G, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Thomas C. Ellwanger, Jr., Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 241, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1650).

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a notice published in the **Federal Register** of October 17, 1984 (49 FR 40659) which, as part of an interim policy under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, required notification to the Agency of all small scale field tests involving certain microbial pesticides at least 90 days prior to testing in order to determine whether an EUP will be required. The microbial pesticides covered by the notification policy are those which contain naturally occurring microorganisms for use in environments where they are not native (nonindigenous or exotic) or microorganisms which have been genetically altered or manipulated by humans. This notice sets forth procedures for submitting such notification to the Agency to ensure that review of the notification will proceed in a timely manner.

II. Procedures

1. Determine if notification is required. If uncertain of the applicability of the requirement for notification of a particular organism, product, or test, contact Thomas C. Ellwanger at the previously given address.

2. If notification is required, submit eight copies of all information included in the notification as indicated under **ADDRESS.** The types of information to be submitted are those stated in the Iterim Policy (49 FR 40659).

3. Type the phrase "BIOTECH NOTIFICATION" in bold face type at the top of the cover letter submitted with the notification.

4. Identify those portions of the notification for which a confidentiality claim is being asserted. If submission of the notification itself and the fact that such testing is proposed are considered to be confidential, include a statement in the cover letter requesting that this information not be disclosed to the public. Submitters of information required by this Notice are encouraged to make their submittals in accordance with requirements that are described in §§ 158.32 and 158.33 of the proposed section 3 regulations that were published in the **Federal Register** of Septembr 26, 1984 (49 FR 37916). While the proposed data submittal requirements are not yet final (hence not binding on data submitters at this time). the Agency feels that the benefits to submitters and to the Government are significant enough to encourage their use before the section 3 regulations become final.

Early adoption of this new data submittal method will not compromise any protections or entitlements involving a submitter's data that are provided by FIFRA. Submitters may, irrespective of the submittal method they use, assert a claim of confidentiality for all or part of the information submitted with this notification by following the procedures described in 40 CFR 2.203(b). Information so designated will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Information not designated as confidential may be disclosed publicly by EPA without prior notice to the submitter.

5. Submit notification suficiently in advance of the proposed testing date to allow for review of the notification and for the contingency that an EUP may be required. Upon notification, the Agency has 90 days to evaluate the information submitted. If, within 90 days, the Agency determines that an EUP will be required, additional time should be allowed to prepare and submit the EUP application for the Agency to review that submission. FIFRA allows the Agency up to 120 days for the review of an EUP appllication.

Copies of the Interim Policy on Small Scale Field Testing of Microbial Pesticides (49 FR 40659) are available by mail from the address indicated under **ADDRESS.**

These procedures are effective immediately.

Dated: May 29, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-13517 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00204; PH-FRL 2846-5]

Open Meeting of EPA/SFIREG Applicator Certification and Training Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the EPA/SFIREG Applicator Certification and Training Task Force. The meeting will be open to the public.

DATE: Monday, June 24, 1985, beginning at 8:30 a.m. and ending approximately at 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Betty L. Winter, Office of Pesticides and Toxic Substances (TS-788), Environmental Protection Agency, Room E-639A, 401 M Street SW., Washington, DC 20460 (202-382-2912).

SUPPLEMENTARY INFORMATION: The primary topic for discussion at this meeting will be areas for improving current applicator certification and training and programs and the restricted use classification.

Dated: May 30, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13516 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50640; PH-FRL 2846-4]

Sodium Fluoroacetate; Receipt of Application For an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from the State of Montana Department of Agriculture for an Experimental Use Permit (EUP), 53669-EUP-R. The application proposes allowing the use of 0.63 pound of sodium fluoroacetate (Compound 1080) on grain baits to control the Richardson ground squirrel (*Spermophilus richardsoni*). Montana proposes to test up to 600 acres of range, pasture, or hayland in 2 treatment periods (300 acres per treatment period). Up to 1,800 pounds of Compound 1080 treated grain broadcast at 6 pounds per swath acre may be used to test 3 bait concentrations for efficacy against the Richardson ground squirrel. The application proposes that the permit run for 1 year starting May 1, 1985.

DATE: Written comments must be recieved on or before July 5, 1985.

ADDRESS: Comments, in triplicate, should bear the docket control number OPP-50640 and be submitted to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

A copy of the Montana application and any copies of public comments filed regarding this notice will be made available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: William MIller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2600).

SUPPLEMENTARY INFORMATION:

Montana's EUP requests that EPA approve the experimental use up to 1,800 pounds of Compound 1080 treated bait on a maximum of 600 acres of range, pasture, or hayland in Cascade County, Montana. The specific study sites will be selected after the Richardson ground squirrels emerge after winter hibernation. Plot size will be large enough to provide a visual squirrel activity index before baiting of 20 to 40 animals. Visual counts are proposed to establish pretreatment and posttreatment activity indexes on both the treated and untreated control or reference plots. The bait carrier is to be oats, and the bait will be formulated at concentrations of 0.05 percent, 0.35 percent and 0.02 percent and will be dyed yellow with Auramine 0 Concentrate 130 percent to discourage consumption by non-target birds. Bait is to be applied using a broadcast seeder mounted on an all-terrain 3-wheel motorcycle. Baiting will not commence until it has been determined in preapplication bait acceptance tests that the squirrels are accepting the bait. There are two proposed treatment periods to be evaluated: (1) During the breeding period prior to vegetation green-up and (2) post-juvenile emergence and weaning prior to estivation.

The objective is to determine the efficacy of Compound 1080 against the Richardson ground squirrel.

Dated: May 29, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-13515 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100022; PH-FRL 2845-9]

Transfer of Data to Dynamac and Mitre Corporations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer infomration submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Dynamac Corporation of Rockville, MD, under Contract No. 68-02-3990, and to Mitre Corporation of McLean, VA, under Contract No. 68-02-3991. These contractors shall perform services for the Office of Toxic Substances (OTS) of EPA. Some of the information that will be made available to the contractors has been claimed to be confidential business information (CBI). Information will be made available to the contractors consistent with the requirements of 40 CFR 2.301(h). These actions will enable the contractors to fulfill the obligations of their contracts, and this notice serves to notify affected persons.

DATE: Dynamac Corporation and Mitre Corporation will be given access to these documents no sooner than June 10, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 222, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia (703-557-2613).

SUPPLEMENTARY INFORMATION: Under its contract, Dynamac Corporation, which supports health and environmental assessments of Premanufacture Notice (PMN) chemicals follow-up cases undergoing evaluation for potential Significant New Use Rules (SNURs) and new chemicals submitted as PMNs, may review chemical data, including CBI, submitted to EPA under FIFRA.

Under its contract, Mitre Corporation, which supports the health assessment of existing chemicals undergoing review and review of new chemical substances in the Office of Toxic Substances, may review chemical data, including CBI, submitted to EPA under FIFRA.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commerical or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such information as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6, and 7.

Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contracts with Dynamac Corporation and Mitre Corporation.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential business information, whether such disclosure is made by an EPA employee or an EPA contactor.

The contracts with Dynamac Corporation and Mitre Corporation specifically prohibit disclosure of confidential business information to any third party in any form without written

authorization from EPA, and personnel of these contractors will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: May 28, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-13513 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00205; PH-FRL 2847-7]

Subcommittee Meeting of Administrator's Pesticide Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC) Subcommittee on Labeling will hold a meeting to evaluate existing communication networks used to disseminate information regarding the safe use and handling of pesticides. The meeting will be open to the public.

DATE: The meeting will take place on Wednesday, June 19, 1985, at 12 noon and adjourn by 5 p.m.

ADDRESS: The Subcommittee meeting will be held in: Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committe (TS.788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-639, 401 M St., SW., Washington, D.C. 20460, (202-382-2916).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, and time will be set aside for public comments concerning the agenda items. Any member of the public wishing to present an oral or written statement relative to the Subcommittee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above. A complete agenda will be available at the meeting.

Dated: June 3, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13682 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85-134]

Private Networks, Inc., et al.; Memorandum Opinion and Order

In re Applications of Private Networks, Inc. File No. 50183-CM-P-74, Digital Paging Systems File No. 50074-CM-P-74, KC Corporation, File No. 50229-CM-P-74, Greater Media, Inc. File No. 50230-CM-P-74, Vidicom, Inc. File No. 50231-CM-P-74, Multipoint Information Systems, Inc. File No. 50232-CM-P-74, For Constructions Permits in the Multipoint Distribution Service for a new station on Channel 2 at Washington, D.C.

Adopted May 1, 1985.
Released May 24, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Washington, D.C. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications,we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-capitioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth issues (a) and (b)

4. It is further ordered, That Private Networks, Inc., Digital Paging Systems, KC Corporation, Greater Media,Inc., Vidicom, Inc., Multipoint Information Systems, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D, ANSWERING Service, Inc., et al,* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-13455 Filed 6-4-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Washington, D.C., where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

FEDERAL MARITIME COMMISSION

Filing and Effective Date of Assessment Agreement

The Federal Maritime Commission hereby gives notice that on May 22, 1985, the following assessment agreement was filed with the Commission pursuant to the Commission's February 27, 1985 Report and Order in Dockets Nos. 84-6 and 84-8.

Agreement No.: 201-000091-001.

Title: New York Assessment Agreement.

Parties:

New York Shipping Association, Inc. (NYSA)

International Longshoremen's Association, AFL–CIO (ILA)

Synopsis: Effective July 1, 1985, the agreement revokes Assessment Agreement No. LM–86 and the NYSA–ILA Assessment Agreement filed with the Federal Maritime Commission on April 29, 1985, and establishes the assessment program for the funding of obligations under NYSA–ILA collective bargaining agreements.

Dated: May 31, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–13544 Filed 6–4–85; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Assessment Agreement

The Federal Maritime Commission hereby gives notice that, on May 22, 1985, the following assessment agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date to the extent that it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201–000092.

Title: New York Assessment Agreement.

Parties:

New York Shipping Association, Inc.

International Longshoremen's Association, AFL–CIO

Port Authority of New York and New Jersey

Puerto Rico Maritime Shipping Authority

Puerto Rico Marine Management, Inc.

Massachusetts Port Authority

Maryland Port Administration

Sea-Land Service, Inc.

Synopsis: The agreement specifies the arrangements between the parties in resolving the remaining issues in Dockets Nos. 84–6 and 84–8.

Dated: May 31, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–13545 Filed 6–4–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 30, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880)

Proposal to approve under OMB delegated authority the extension with minor revisions to instructions of the following report:

1. Report title: Monthly Survey of Debits to Demand and Savings Deposits

Agency form number: FR 2573

OMB Docket number: 7100–0081

Frequency: Monthly

Reporters: Commercial Banks

Small businesses are affected.

General description of report:

This information collection is voluntary (12 U.S.C. 248(a)(2) and 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects information on debits to demand and savings deposit accounts from a sample of commerical banks. Debits information is used in formulating banking and credit policies. These data are also used in conjunction with other data to interpret money-stock movements and to determine the turnover of deposits of various sectors of the economy.

Board of Governors of the Federal Reserve System, May 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–13475 Filed 6–4–85; 8:45 am]

BILLING CODE 6210–01–M

BancTenn Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act 912 U.S.C. 1842(c)].

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 28, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *BancTenn Corp.*, Kingsport, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Tennessee, Kingsport, Tennessee.

2. *Florida State Bancshares, Inc.*, Destin, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Florida State Bank, Destin, Florida.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincolnshire Bancshares, Inc.*, Lincolnshire, Illinois; to become a bank holding company by acquiring 70 percent of the voting shares of First National Bank of Lincolnshire, Lincolnshire, Illinois.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Hunt & Howell Bancshares, Inc.*, Fayetteville, Arkansas; to become a bank holding company by acquiring 99 percent of the voting shares of First National Bank of Fayetteville, Fayetteville, Arkansas.

2. *Millstadt Bancshares, Inc.*, Millstadt, Illinois; to become a bank holding company by by acquiring 100 percent of the voting shares of The First National Bank of Millstadt, Millstadt, Illinois.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Tolna Bancorp, Inc.*, Tolna, North Dakota; to become a bank holding company by acquiring 80 percent or more of the voting shares of The Farmers & Merchants State Bank, Tolna, North Dakota.

2. *Watford City Bancshares, Inc.*, Watford City, North Dakota; to become a bank holding company by acquiring 84 percent of the voting shares of First International Bank of Watford City, Watford City, North Dakota.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bosque Bancshares, Inc.*, Cransfills Gap, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Centex Bancshares, Inc., Cranfills Gaps, Texas, thereby indirectly acquiring First Security State Bank, Cransfills Gap, Texas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security State Corporation*, Centralia, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank, Centralia, Washington.

Board of Governors of the Federal Reserve System, May 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13476 Filed 6-4-85; 8:45 am]

BILLING CODE 6210-01-M

Southern Jersey Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to comence or to engage *de novo*, either directly or through a subsidiary, in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Southern Jersey Bancorp*, Bridgeton, New Jersey; to engage *de novo* directly in courier services for checks, commercial papers, documents and written instruments; and courier services for audit and accounting media of banking or financial nature, and other business records and documents used in processing such media. These activities would be conducted in southern New Jersey, Philadelphia, Pennsylvania and contiguous counties.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp Financial, Inc.*, Wilmington, Delaware; to engage *de novo* through its subsidiary, MPact Travel Services, Inc., Dallas, Texas, in the issuance and sale of travelers checks pursuant to section 225.25(b)(12).

Board of Governors of the Federal Reserve System, May 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13477 Filed 6-4-85; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of nominations for membership on the Board's Consumer Advisory Council.

SUMMARY: The Board is inviting the public to nominate qualified individuals for eleven appointments to its Consumer Advisory Council. Nominations should include the name, address, and telephone number of the nominee, together with information about past and present positions held, and special knowledge, interests or experience related to consumer credit or other consumer financial services. The Board expects to announce its selection of new members by year-end.

DATE: Nominations should be received by August 9, 1985.

ADDRESS: Nominations should be mailed to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, General Assistant, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3305; or Joy W. O'Connell, TDD at (202) 542-3244.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established by the Congress in 1976 to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

Eleven new members will be selected this year to replace members whose terms expire on December 31, 1985. The Board expects to announce its selection of new members by year-end. The Board is particularly interested in candidates who are familiar with issues in the area of consumer credit and other consumer financial services. In making the appointments, the Board will also seek to complement the qualifications of continuing Council members in terms of affiliation and geographic and minority representation.

The Council meets in Washington, D.C. three times a year. Council members are paid $100 per day for participating in the one- and one-half day meetings and for travel time. The Board also pays travel expenses.

Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and

Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be received no later than August 9, 1985. Nominations should include the name, address and telephone number of the nominee, past and present positions held, and special knowledge, interests or experience relating to consumer financial matters. This information will be made available for public inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

The names and affiliations of current Council members (and the expiration date of each member's term of office) are listed below:

Chairman

Timothy D. Marrinan, Senior Corporate Counsel, First Bank System, Inc., Minneapolis, Minnesota, December 31, 1985

Vice Chairman

Thomas L. Clark, Jr., Deputy Superintendent of Banks, New York State Banking Department, New York, New York, December 31, 1985

Members

Jonathan A. Brown, Acting Director/ Staff Attorney, Public Interest Research Group, Washington, D.C., December 31, 1987

Rachel G. Bratt, Assistant Professor, Department of Urban and Environmental Policy, Tufts University, Medford, Massachusetts, December 31, 1986

Jean A. Crockett, Ph.D., Department of Finance, Wharton Graduate School, University of Pennsylvania, Philadelphia, Pennsylvania, December 31, 1985

Theresa Faith Cummings, Executive Director, Springfield/Sangamon County, Action, Inc., Springfield, Illinois, December 31, 1987

Steven M. Geary, Associate General Counsel, Consumer Credit, Missouri Division of Finance, Jefferson City, Missouri, December 31, 1986

Richard F. Halliburton, Deputy Director, Legal Aid of Western Missouri, Kansas City, Missouri, December 31, 1985

Charles C. Holt, Ph.D., Professor of Management, Management Department, University of Texas at Austin, Austin, Texas, December 31, 1985

Edward N. Lange, Partner, Davis, Wright, Todd, Riese & Jones, Seattle, Washington, December 31, 1987

Kenneth V. Larkin, Director of Development, Earl Warren Legal Institute, Boalt School of Law, University of California at Berkeley, Berkeley, California, December 31, 1985

Fred S. McChesney, Assistant Professor of Law, Emory University, Atlanta, Georgia, December 31, 1987

Fred H. Miller, Professor of Law, University of Oklahoma College of Law, Norman, Oklahoma, December 31, 1986

Margaret M. Murphy, Associate Professor and Director, Columbia Center, Johns Hopkins University, Columbia, Maryland, December 31, 1986

Robert F. Murphy, President, General Motors Acceptance Corp., Detroit, Michigan, December 31, 1986

Helen E. Nelson, President, Consumer Research Foundation, Mill Valley, California, December 31, 1987

Lawrence S. Okinaga, Partner, Carlsmith, Carlsmith, Wichman and Case, Honolulu, Hawaii, December 31, 1986

Joseph Perkowski, Chief Executive Officer, Minneapolis Federal Employees Credit Union, Minneapolis, Minnesota, December 31, 1987

Elva Quijano, Vice President and Executive Professional Officer, Republic Bank of San Antonio, San Antonio, Texas, December 31, 1985

Brenda L. Schneider, Director/ Community Relations, Manufacturers National Bank, Renaissance Center, Detroit, Michigan, December 31, 1987

Paula A. Slimak, Director of Consumer Affairs, City of Cleveland, Cleveland, Ohio, December 31, 1987

Glenda G. Sloane, Director, Housing and Community Development Center for National Policy Review, Catholic University School of Law, Washington, D.C., December 31, 1985

Henry J. Sommer, Supervising Attorney, Community Legal Services, Inc., Northeast Law Center, Philadelphia, Pennsylvania, December 31, 1985

Ted L. Spurlock, V.P. and Director of Credit and Consumer Banking Services, J.C. Penney Company, Inc., New York, New York, December 31, 1987

Mel R. Stiller, Executive Director, Consumer Credit Counseling Service of Eastern Massachusetts, Boston, Massachusetts, December 31, 1987

Christopher J. Sumner, President and Chief Executive Officer, Western Savings and Loan, Company Salt Lake City, Utah, December 31, 1987

Winnie F. Taylor, Associate Professor of Law, Holland Law Center, University of Florida, Gainesville, Florida, December 31, 1985

Michael M. Van Buskirk, Assistant Vice President, Corporate Affairs, Banc One Corporation, Columbus, Ohio, December 31, 1985

Mervin Winston, President, Metropolitan Economic Development Association, Minneapolis, Minnesota, December 31, 1986

Michael Zoroya, Senior Vice President, The May Department Stores, St. Louis, Missouri, December 31, 1987

Board of Governors of the Federal Reserve System, May 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13538 Filed 6-4-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0192]

S.C. Johnson & Son, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that S.C. Johnson & Son, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene/acrylate based copolymers as components of coatings, inks, and adhesives intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3763) has been filed by S.C. Johnson & Son, Inc., Racine, WI 53403, proposing that the food additive regulations be amended to provide for the safe use of styrene/acrylate based copolymers as components of coatings, inks, and adhesives intended for use in contact with food.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 23, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–13472 Filed 6–4–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0212]

General Electric Co.; Premarket Approval of Signa™ System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by General Electric Co., Milwaukee, WI, for premarket approval, under the Medical Device Amendments of 1976, of the Signa™ System (0.5, 1.0, and 1.5 tesla). After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 5, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7514.

SUPPLEMENTARY INFORMATION: On May 11, 1984, General Electric Co., Milwaukee, WI 53201, submitted to CDRH an application for premarket approval of the Signa™ System (0.5, 1.0, and 1.5) tesla). The device is a nuclear magnetic resonance (NMR) imaging device with capability for multislice and cardiac gated operation. The Signa ™ System is indicated for use as a diagnostic imaging device that produces transverse, saggital, coronal, and cross-sectional images that display the internal structure of the head or body. The images produced by the Signa™ System reflect the spatial distribution of protons (hydrogen nuclei) exhibiting magnetic resonance. The NMR properties that determine the image appearance are proton density, spin lattice relaxation time, spin-spin relaxation time, and flow. When interpreted by a trained physician, these images provide information that can be useful in the determination of a diagnosis. Other uses of the Signa™ System remain investigational. On November 19, 1984, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 25, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will published a notice of its decison in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 5, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Recieved petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 29, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–13473 Filed 6–4–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0211]

Pharmafair, Inc.; Premarket Approval of Saltair Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmafair, Inc., Hauppauge, NY, for premarket approval, under the Medical Device Amendments of 1976, of SALTAIR TABLETS (250-milligram salt tablets) for use with soft (hydrophilic) contact lenses. SALTAIR TABLETS are intended for use in the preparation of 27.7 milliliters of normal saline (0.9 percent) solution to be used in heat disinfection of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 5, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On July 20, 1984, Pharmafair, Inc., Hauppauge, NY 11788, submitted to CDRH an

application for premarket approval of SALTAIR TABLETS (250-milligram salt tablets). The device is indicated for use to prepare saline solution for rinsing and heat disinfection of soft (hydrophilic) contact lenses. On October 23, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 22, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), salt tablets for preparing solutions for use in heat disinfection of soft (hydrophilic) contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), such salt tablets are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition for approval, that sponsors of applications for premarket approval of soft contact lenses and lens care solutions for the above use comply with the records and reports provisions of Subpart D in Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved final labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of SALTAIR TABLETS states that the solution prepared from the salt tablets is designed for use in heat disinfection of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solutions at the next printing or at such other time as CDRH prescribes by letter to the manufacturer. A manufacturer who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new salt tablets that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 5, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 29, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–13474 Filed 6–4–85; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, June 27 and Friday, June 28, 1985 from 9:00 a.m. to 5:00 p.m. both days in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Committee will hear reports from the Subcommittee in Uniform Minimum Health Data Sets, the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses, the Subcommittee on Statistical Aspects of Physician Payment Systems; and the Work Groups on Minority Health Data Needs and Data Gaps in Disease Prevention and Health Promotion will also report.

Further information regarding the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Myattsville, Maryland 20782, telephone (301) 436–7050.

Dated: May 23, 1985.

Manning Feinleib, M.D., Dr. P.H.

Director, National Center for Health Statistics.

[FR Doc. 85–13454 Filed 6–4–85; 8:45 am]

BILLING CODE 4160–17–M

National Committee on Vital and Health Statistics, Subcommittee on Statistical Aspect of Physician Payment Systems; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Statistical Aspects of

Physician Payment Systems established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, June 19, 1985 from 9:30 a.m. to 5:00 p.m. in Room 403–A of the Hubert H. Humphery Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Subcommittee will hear presentations from major public and private insurers on the ambulatory care data flow for the patient-physician encounter in their respective programs or organizations and related data needs and problems.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: May 23, 1985.

Manning Feinleib, M.D., Dr. P.H.

Director, National Center for Health Statistics.

[FR Doc. 85–13493 Filed 6–4–85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Sale of Public Lands in Los Angeles, San Bernardino, San Diego, and Riverside Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, CA 16395—sale of public lands in Los Angeles, San Bernardino, San Diego, and Riverside Counties, CA.

SUMMARY: The public lands described in this notice have been examined and found suitable for sale pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976. The proposed sale is consistent with the resource management objectives of the Bureau of Land Management's Southern California Metropolitan Project and is in conformance with the project's Escondido Management Framework Plan/Management Action Summary.

Sale will be by sealed bid. In no case shall lands be sold for less than the appraised market value. The following public lands will be offered for sale at 10:00 am, August 14, 1985, in the La Sierra room of the Raincross Convention Center located at 3443 Orange Street, Riverside California. Unsold parcels will remain available pending disposition as cited in this Notice of Realty Action.

County parcel No.	Serial No.	Legal description	Acres	Appraised values (dollars)	Encumbrances and/or reservations
		T4N-R12W, SBM			
LA-1	CA 17214	Sec. 6, S½NW¼	80.00	28,000	A–1,2; B–1.
LA-2	CA 17215	Sec. 12, Lot 4	4.71	100	A–1.
		T4N-R13W, SBM.			
LA-3	CA 17216	Sec. 4, SW¼NE¼, NE¼SW¼, S½SW¼, SE¼	440.000	310,000	A–1, 3, 4; B–2
		Sec. 9, N½NE¼, SW¼NE¼	5.49	150	A–1,5,6,7; B–2
LA-4	CA 17217	Sec. 5, Lot 22	20.40	10,000	A–1; B–2.
LA-5	CA 17218	Sec. 5, Lots 89–92	42.50	17,000	A–1,8; B–2.
LA-6	CA 17219	Sec. 6, N½NE¼SW¼, N½S½NE¼SW¼, E½E½SE¼SW¼, SE¼SE¼NE¼SW¼	45.12	18,000	A–1; B–2.
LA-7	CA 17220	Sec. 7, Lots 5 & 6, E½NW¼NW¼	40.00	9,500	A–1,9.
LA-8	CA 17221	Sec. 12, NE¼SE¼			
		T5N-R10W, SBM.			
LA-9	CA 17222	Sec. 1, Lots 1,2, W½ of Lot 6	140.40	35,000	A–1,10.
LA-10	CA 17223	Sec. 1, E½SW¼, SW¼SW¼	200.00	90,000	A–1,4,11; B–2(a)&(b); C–1.
		Sec. 12, W½NW¼	191.07	95,000	A–1,D–1.
LA-11	CA 17224	Sec. 6, Lots 5, 13–24, 30–32	109.28	60,000	A–1,10; C–2; D–1.
LA-12	CA 17225	Sec. 7, Lots 1,2 and 5–9	40.00	12,000	A–1.
LA-13	CA 17226	Sec. 12, SW¼SW¼			
		T5N-R11W, SBM.			
LA-14	CA 17227	Sec. 30, Lot 4			
		T5N-R10W, SBM			
		Sec. 25, SE¼SE¼	74.38	60,000	A–1,12; B–1.
LA-15	CA 17228	Sec. 20, NE¼SE¼	120.00	120,000	A–1,10,13.
		Sec. 21, SW¼NW¼, NW¼SW¼	120.00	120,000	A–1,10.
LA-16	CA 17229	Sec. 21, S½NE¼	40.00	50,000	A–1,10.
		Sec. 22, SW¼NW¼	80.00	80,000	A–1; B–1.
LA-17	CA 17230	Sec. 22, NE¼NW¼	30.00	10,000	A–1,7; B–1, and 3.
LA-18	CA 17231	Sec. 24, SW¼NE¼, SE¼NW¼	15.79	4,500	A–1,5; B–1,2, and 3.
LA-19	CA 17232	Sec. 31, W½NE¼SE¼, SE¼NE¼SE¼	40.00	15,000	A–1,5,7; B–1, 2.
LA-20	CA 17233	Sec. 32, Lots 23–25			
LA-21	CA 17234	Sec. 33, SE¼SW¼			
		T1S-R1W, SBM.			
SB-22	CA 17235	Sec. 35, SW¼	160.00	64,000	A–1,14; B–4.
		T4S-R2W, SBM.			
R-23	CA 17236	Sec. 20, Lot 1	5.23	15,000	A–1.
R-24	CA 17237	T6S-R2W, SBM.			
		Sec. 14, Lots 1–16			
		Sec. 24, NW¼NW¼	685.36	250,000	A–1,15; B–4; D–2.
R-25	CA 17238	T8S-R1E, SMB.			
		Sec. 10, Lots 3 and 4			
		Sec. 15, Lots 1–5, 7, 8 and 12			
		Sec. 16, E½			
		Sec. 17, SE¼SE¼			
		Sec. 20, NE¼, E½NW¼ & NW¼SE¼			
		Sec. 21, N½,N½SW¼ and SE¼	1,609.30	1,250,000	A–1; B–4

County/ parcel No.	Serial No.	Legal description	Acres	Appraised values (dollars)	Encumbrances and/or reservations
R-26	CA 17239	T8SR1E SMB; Sec. 27: NE¼SW¼, NW¼SE¼	[illegible]00	100,000	A-1; B-4.
R-27	CA 17240	T8S-R1E, SBM; Sec. 24: SE¼NE¼			
		T8S-R2E, SBM; Sec. 18: Lot 4 Sec. 19: Lots 1 and 2	170.31	150,000	A-1.
R-28	CA 17241	T8S-R2E, SBM; Sec. 14: N½NW¼NW¼	20.00	42,000	A-1.
R-29	CA 17242	Sec. 14: S½NW¼NW¼	20.00	42,000	A-1.
R-30	CA 17243	T7S-R3E, SBM, Sec. 18: E½NE¼SE¼SE¼	5.00	30,000	A-1.
R-31	CA 17244	Sec. 18: E½SE¼SE¼SE¼	5.00	30,000	A-1.
SD-32	CA 17245	T10S-R1W, SBM; Sec. 5: Lot 1	1.71	35,000	A-1,16; B-4.
SD-33	CA 17246	Sec. 24: Lots 1 and 2	22.14	22,000	A-1; B-4
SD-34	CA 17247	T11S-R1W, SBM; Sec. 29: Lot 14	39.94	35,000	A-1.
SD-35	CA 17248	Sec. 31: Lot 6	11.78	18,000	A-1
SD-36	CA 17249	Sec. 32: Lots 8,9 and 11-13	24.84	25,000	A-1
SD-37	CA 17250	T12S-R1W, SBM; Sec. 4: SW¼,NW¼SE¼	200.00	540,000	A-1
SD-38	CA 17251	Sec. 6: Lot 7	18.48	500	A-1,17
SD-39	CA 17252	Sec. 15: Lots 6 and 11	81.26	185,000	A-1.
SD-40	CA 17253	T13S-R1W, SBM; Sec. 20: W½SW¼SE¼	20.00	58,000	A-1
SD-41	CA 17254	Sec. 22: W½W½NW¼SE¼, W½NW¼SW¼SE¼, S½SW¼SE¼	35.00	192,000	A-1
SD-42	CA 17255	T18S-R1W, SBM; Sec. 21: Lot 1	4.99	500	A-1.
SD-43	CA 17256	T9S-R2W, SBM; Sec. 4: SW¼NE¼, SE¼NW¼	[illegible]0.00	120,000	A-1; B-4.
SD-44	CA 17257	Sec. 4: NE¼SW¼, NW¼SW¼	80.00	120,000	A-1, B-4
SD-45	CA 17258	T11S-R2W, SBM, Sec. 22: NE¼SE¼	40.00	160,000	A-1.
SD-46	CA 17259	Sec. 25: Lots 1-16	71.20	390,000	A-1,19.
SD-47	CA 17260	T9S-R3W, SBM; Sec. 10: SW¼SE¼	40.00	90,000	A-1,20, B-4
SD-48	CA 17261	Sec. 15: NW¼NW¼	40.00	280,000	A-1,20,21,22,23,24, B-4.
SD-49	CA 17262	T10S-R3W, SBM, Sec. 33: NW¼NW¼	40.00	300,000	A-1
SD-50	CA 17263	T11S-R3W, SBM; Sec. 9: Lot 9	39.49	99,000	A-1
SD-51	CA 17264	Sec. 9: Lot 16	39.48	[illegible],000	A-1.
SD-52	CA 17265	T10S-R4W, SBM; Sec. 33: Lot 8	8.58	850	A-1.
SD-53	CA 17266	T8S-R5W, SBM, Sec. 25: NE¼NW¼	40.00	40,000	A-1, B-4
SD-54	CA 17267	Sec. 25: SE¼NW¼	40.00	40,000	A-1; B-4
SD-55	CA 17268	T11S-R1E, SBM, Sec. 2: Lots 1-4, S½NW¼	355.51	200,000	A-1,25.
SD-56	CA 17269	T12S-R1E, SBM; Sec. 8: W½NE¼, NW¼SE¼	120.00	84,000	A-1
SD-57	CA 17270	T13S-R1E, SBM, Sec. 1: NE¼SE¼, S½SE¼ sec 12: NE¼			
		T13S-R2E, SBM; Sec. 7: Lots 1 and 2	360.69	649,000	A-1; D-3.
SD-58	CA 17271	T14S-R1E, SBM; Sec. 8: NE¼SW¼	40.00	40,000	A-1
SD-59	CA 17272	Sec. 27: Lot 9	1.07	110	A-1
SD-60	CA 17273	T12S-R2E, SBM; Sec. 26: NW¼NW¼	40.00	72,800	A-1
SD-61	CA 17274	T14S-R2E, SBM, Sec. 5: Lots 2-6 and S½NW¼	170.92	307,000	A-1; C-3,4

County parcel No	Serial No.	Legal description	Acres	Appraised values (dollars)	Encumbrances and/or reservations
SD-62	CA 17275	Sec. 7, Lots 17 and 18	6.28	20,000	A-1, 27.
		T17S-R2E, SBM.			
SD-63	CA 17276	Sec. 15, NE¼NE¼.	40.00	52,000	A-1, 28.
		T17S-R5E, SBM.			
SD-64	CA 17277	Sec. 20, S½SW¼NE¼SE¼	5.00	14,000	A-1.
SD-65	CA 17278	Sec. 26, Lots 4 and 5	7.48	9,700	A-1.
SD-66	CA 17279	Sec. 26, Lot 8	5.00	6,500	A-1.
SD-67	CA 17280	Sec. 29, Lot 18	1.20	3,600	A-1.
SD-68	CA 17281	Sec. 29, Lot 37	4.93	13,800	A-1.
SD-69	CA 17282	Sec. 29, Lot 41	1.35	3,800	A-1.
SD-70	CA 17283	Sec. 29, Lot 48	5.00	14,000	A-1.
		T17S-R6E, SBM.			
SD-71	CA 17284	Sec. 24, Lot 10	21.52	38,700	A-1.
		T17S-R7E, SBM.			
SD-72	CA 17285	Sec. 33, NE¼SE¼	40.00	51,000	A-1; B-4; C-5.
SD-73	CA 17286	Sec. 34, NW¼SW¼	40.00	51,000	A-1; B-4.
		T18S-R7E, SBM.			
SD-74	CA 17287	Sec. 2, Lot 3	39.85	50,600	A-1; B-4.
SD-75	CA 17288	Sec. 2, N½NW¼SW¼NE¼, N½SE¼NW¼	25.00	32,000	A-1; B-4.
SD-76	CA 17289	Sec. 2, SW¼SW¼NE¼, S½SE¼SW¼NE¼, S½SE¼NW¼	35.00	44,500	A-1; B-4.
		T18S-R7E, SBM.			
SD-77	CA 17790	Sec. 2, S½NW¼SW¼	20.00	25,500	A-1; B-4.
SD-78	CA 17291	Sec. 2, S½NW¼SW¼	20.00	25,000	A-1; B-4.
SD-79	CA 17292	Sec. 2, NE¼SW¼	40.00	51,000	A-1; B-4.
SD-80	CA 17293	Sec. 2, SE¼SW¼	40.00	51,000	A-1; B-4.
SD-81	CA 17294	Sec. 3, NE¼SE¼	80.00	102,000	A-1; B-2(c) B-4.
		Sec. 10, NW¼NE¼	37.52	18,000	A-1,29; B-4.
SD-82	CA 17295	Sec. 15, Lot 5	41.35	21,200	A-1, 29; B-4.
SD-83	CA 17296	Sec. 15, Lot 6			

Total Acres Amounts to: 7,302.9

The purpose of this sale is to dispose of scattered, isolated tracts of public land which because of their location, lack of administrative/public access and other characteristics render them difficult and uneconomic for Federal resources management by the Bureau of Land Management or any other Federal department or agency.

Upon publication of this notice of realty action in the **Federal Register** as provided in 43 CFR 2711.1–2(d), the sale parcels will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of segregation or 270 days from the date of publication of this announcement, whichever occurs first.

The sale will be conducted pursuant to FLPMA, the regulatory guidelines for land disposal contained in Title 43 of the Code of Federal Regulations, Part 2710 and BLM sale policy. Disposal shall be by competitive sale, with the exception of sale Parcel No. SB–22 which shall be offered for sale via modified competitive bidding procedures whereby designated bidders have a right to meet the high bid. For Parcel No. SB–22 the following will be the designated bidders: Health Ministry (the right-of-way holder with a water pipeline in the property), Ralph Graham (Oakglen RV); Gene White; Joe and Elizabeth Burkle; George Dickinson; and Carl Howe and Alexander Law all of whom are adjoining property owners.

BLM may accept or reject any and all bids or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

Each parcel will be offered individually for sale by sealed bid only. All sealed bids must be submitted to the BLM's California Desert District Office at 1695 Spruce Street, Riverside, California 92507, no later than 4:30 pm, August 13, 1985. Sealed bids will be for not less than the appraised values specified in this notice with a separate bid submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior, BLM for not less than 10% of the amount bid. The sealed bid envelopes must be marked on the front left corner as shown in the following example:

"BID FOR PUBLIC LAND SALE"

NOTICE OF REALTY ACTION, CA 16395

Parcel No., Serial No.

Sale Date: August 14, 1985

If 2 or more envelopes containing valid bids of the same amount are received for the competitive sale parcels, the determination of which is to be considered the highest bid shall be by drawing. Upon opening all sealed bids for Parcel No. SB–22, the designated bidders attending the sale will have the right to meet the high bid. Refusal or failure to meet the high bid will constitute a waiver of such right. Should more than one designated bidder exercise his right to meet the highest sealed bid, oral bids will be invited. The highest qualifying oral bidder shall submit any additional payment needed to maintain a 10% bid deposit on the sale parcel to the Authorized Officer immediately following the close of the sale. Such payment shall be by cash, personal check, bank draft, money order or any combination thereof.

The successful bidder, whether a sealed or oral bid, shall submit the remainder of the full bid price prior to the expiration of 180 days from the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited and disposed of as other receipts of sale. The next bid will then be honored.

A successful bid will also constitute an application for those mineral interests offered for conveyance in the sale. The mineral interests being offered for conveyance have no known mineral value. A few of the sale parcels do have

prospectively valuable leaseable minerals and will be reserved to the United States, however, only those mineral interests specified in this notice will be reserved. All other mineral interests will be conveyed with the surface estate. The declared high bidder will be required to deposit a $50.00 non-refundable application fee for conveyance of the mineral estate. Failure to deposit this filing fee will result in disqualification as the high bidder.

All unsuccessful bids and payments submitted to the Authorized Officer shall be returned to the parties that submitted them within two weeks after the sale date.

Unsold parcels will be offered over-the-counter on a competitive basis at the BLM's California Desert District Office in Riverside, California. The sale procedure will be by sealed bid submissions at not less than the appraised values specified in this notice. Oral bids will not be entertained. Sealed bids will be opened on August 28, September 11 and September 25, 1985 at 1:00 pm. All bids must be received at the district office no later than 4:30 pm on the day before the sale. Sealed bid envelopes must be marked on the lower left-hand side as shown below:

"BID FOR PUBLIC LAND"

NOTICE OF REALTY ACTION, CA 16395

Over-The-Counter Sale

(Parcel No.)/(Serial No.)

Sale parcels, remaining after the September 25, 1985 over-the-counter land sale, will be available for recreation and public purposes leases/patents, Bureau-benefiting land exchanges and continuing land sales on a first come, first serve basis.

Sale terms and conditions are as follows:

I. Reservations to the United States: There are hereby excepted from these land patents and reserved to the United States the following:

A. Rights-of-way

A–1. A right-of-way for ditches or canals constructed by authority of the United States under the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

A–2. Those rights for a trail granted to the U.S. Forest Service, Angeles National Forest, under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–10278.

A–3. Those rights for a public highway granted to the State of California, Department of Public Works under the Federal Aid Highway Act of August 27, 1958, as amended (23 U.S.C. 317); Grant No. LA–0164756.

A–12. Those rights for a public highway granted to the State of California, Department Public Works (23 U.S.C. 317); Grant No. LA–165099.

A–15. Those rights for an air tanker jettison area granted to the Ryan Air Attack Base, State of California, Division of Forestry under the authority of 44 LD 513; Grant No. R–4395.

A–17. A right to itself, its permittees or licenses, to enter upon, occupy or use any or all of a 50 feet center line corridor reserved for power project 176, right-of-way transmission line, in the N½N½ of Lot 5 Section 6, T.9S., R.2W., SBM; San Diego County, California, for the purposes set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended in 16 U.S.C. 818).

A–25. Those rights for a water storage tank and related ancillary facilities to the State of California, Division of Forestry under authority of 44 LD 513; Grant No. R–1415.

B. Mineral Reservations

B–1. Sodium and potassium

B–2. Oil and Gas

B–3. Borate

B–4. Geothermal Resources

All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

II. Rights of the third parties: The conveyances made by these land patents are subject to all valid existing rights, including the following:

A. Rights-of-Way

A–4. Those rights for a buried gas pipeline granted to Southern California Gas Company under the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 185); Grant No. LA 0146562.

A–5. Those rights for a 500 Kv power line granted to San Diego Gas and Electric Company under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. R3545.

A–6. Those rights for a 220 Kv power line granted to the Southern California Edison Company under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. LA 0150421.

A–7. Those for power line access roads granted to the Southern California Edison Company under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. LA 0150421A.

A–8. Those rights for flood control purposes granted to the County of Los Angeles under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–14390.

A–9. Those rights for a railroad line granted to the Southern Pacific Railroad Company under the Act of March 3, 1875 (43 U.S.C. 934–949); Grant No. S–3431.

A–10. Those rights for a power transmission line and access road granted to the City of Los Angeles, Department of Water and Power under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA-4950.

A–11. Those rights for a telephone line granted to AT&T Communications of California under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. R–04024.

A–13. Those rights for a television antenna granted to Cable Vision, Incorporated under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. LA–0159898.

A–14. Those rights for a buried water pipe line granted to the Health Ministry Foundation under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–14153.

A–16. Those rights for an access road granted to Adolf Schope under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–9422.

A–19. Those rights for a road granted to the Sager Management Corporation under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–8914.

A–20. Those rights for a road granted to the Metropolitan Water District under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–6008.

A–21. Those rights for a communication site and access road granted to the California Department of Forestry under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA 8758.

A–22. Those rights for a water storage tank and access road granted to the Fallbrook Public Utility District under the Act of February 15, 1901 (31 Stat. 790); Grant No. R–4397.

A–23. Those rights for a 12.5 Kv powerline granted to the San Diego Gas and Electric Company under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. R–715.

A–24. Those rights for a 12.5 Kv power line granted to the San Diego Gas and Electric Company under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. LA 0168279.

A–27. Those rights for a road granted to Rudy Reyes under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–13519.

A–28. Those rights for a road granted to John Aggson under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–5582.

A–29. Those rights for a road granted to the Lakeside Sportsman's Club under the Act of October 21, 1976 (43 U.S.C. 1761–1771); Grant No. CA–13205.

B. Oil and Gas Leases

B–2(a) Oil and Gas Lease, CA–13951

B–2(b) Oil and Gas Lease, CA–13953

B–2(c) Oil and Gas Lease, CA–17045

Those rights granted to the lessee by the above described oil and gas leases under the terms and conditions of the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181, as amended).

C. Mining Claims:

Purchaser by accepting this land patent, further acknowledges that the property is encumbered by mining claims filed pursuant to the mining laws of the United States (20 U.S.C. 21 et. seq.). The conveyance of the property by this land patent is made subject to those claims, detailed below, and to any and all rights that the Holders thereof may have pursuant to the laws of the United States and the State of California.

Purchaser, by accepting this land patent further acknowledges that the rights of the Holders of said mining claims may include the right to use both the surface and subsurface of the property and, upon compliance with the applicable laws of the United States and the State of California to fee title to the property. The United States of America by this conveyance does not intend to preclude the grantee, herein from challenging the validity of any mining claim or other encumbrance located on the land conveyed. The purchaser, by accepting this land patent, will hereby waive any liability against the United States in the event of subsequent title litigation.

Mining claims of record include:

C–1. Mining claimant: Texas Gulf Min. & Met. CAMC No. 153867–69; No. 153877–81 and No. 153870–73, No. 153876, and No. 163220–21.

C–2. Mining claimant: Roy Champagne, CAMC No. 130478.

C–3. Mining claimant(s): Shenma Corporation, Clyde and Dudley A'Neals, Kenneth Gurtin, R.E. Evans, John Wrona, Emile Champoux and Yom Hom CAMC No. 44837–38 and No. 14054.

C–4. Mining claimant: James Angevine, CAMC No. 140454 and 44837–38.

C–5. Mining claimants: Lawrence Chapman/Steven Rotsart CAMC No. 149493–99 (lode claims).

D. Grazing Leases

Purchaser, by accepting this land patent, agrees to take the property subject to the existing grazing use of the lessees, described below:

D–1. Mount McDill Grazing Lease, CA–066–6603. Lessee: Belva Lannan

D–2. Raswon Valley Grazing Lease, CA–066–6603. Lessee: Francis Domenigoni

D–3. Santa Teresa Grazing Lease, CA–077–6721. Lessee: Victor Marshall Trust, c/0 Eunice Collins.

The rights of the current lessees to graze domestic livestock on the property according to the conditions and terms of their existing grazing leases, shall cease on February 28, 1989. The purchaser is entitled to receive annual grazing fees from the grazing lessee in an amount not to exceed that which would be authorized under Federal grazing fee published annually in the **Federal Register**

III. All bidders must be either: (1) 18 years of age or older and provide proof of U.S. citizenship: or (2) a State, State instrumentality or political subdivision authorized to hold property: or (3) a corporation authorized to own real estate in the State of California or (4) an entity legally capable of conveying the holding lands or interests therein under the laws of the State of California, and where applicable, the entity shall also meet the requirements for 1 and 3 above.

Further information concerning the sale, including planning documents and environmental assessment, is available in the California Desert District Office, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of this notice, interested parties may submit comments to the California Desert District Manager at the above address. Any adverse comments will be evaluated by the California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: May 29, 1985.

Wes Chambers,

Acting District Manager.

[FR Doc. 85–13387 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–40–M

[U–47389]

Exchange of Public and Private Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 206 of the Federal Land Policy and Management Act of 1976 it is proposed to exchange public land for private land of equal value. The public land is described as: T. 41 S., R. 16 W., SLB&M, Sec. 33, E½ SE¼; Sec. 34, W½ SW¼; T. 42 S., R. 16 W., SLB&M, Sec. 4, Lots 4, 7, 8, 9, SW¼ NE¼, SE¼ NW¼, E½ SW¼; Sec. 9, lots 1 through 6, E½ NW¼, W½ SE¼; Sec. 10, W½, SW¼; Sec. 11, NW¼; Sec. 14, NE¼ NW¼, comprising 1,170.17 acres.

In exchange for these lands, the United States will acquire the following described lands from Thorley Cattle Company: T. 39 S., R. 10 W., SLB&M, Sec. 10, SE¼ NE¼, E½ SE¼; Sec. 11, W½ NW¼, W½ SW¼; Sec. 14, NW¼ SW¼; Sec. 15, E½ NE¼; Sec. 20, S½ NW¼, SW¼ NE¼, SE¼ SE¼, W½ SE¼, E½SW¼; Sec. 21, S½ NW¼, SW¼; Sec. 22, E½ NE¼ SE¼; Sec. 27, NW¼, N½ SW¼, N½ SE¼; Sec. 28, SE¼ NW¼, NE¼ SW¼, S½ SW¼, SE¼; Sec. 29, E½ NE¼, SE¼; Sec. 33, NW¼ NW¼, E½ NW¼, NE¼; Sec. 34, W½ NW¼ comprising 2,220 acres.

The public lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of this exchange is to acquire non-Federal lands to block up scattered tracts of public lands in the Kolob/Deep Creek area, complementing a 1976 exchange for lands in the same area. Legal public access will be provided to the offered lands which will allow access to a block of public land about 11,000 acres in size, including the Deep Creek Wilderness Study Area. The benefiting resources will be recreation, wildlife, watershed, and livestock grazing.

DATES: Comments must be submitted by July 25, 1985.

ADDRESS: Detailed information concerning this exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Dixie Resource Area Office, 225 North Bluff, St.George, Utah. Comments should be submitted to the Cedar City District Manager, Bureau of Land Management, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to this exchange are:

1. The exchange will include surface and subsurface rights on the public land and surface and a portion of the subsurface rights on the private land. Both the offered and selected lands are encumbered by oil and gas leases. Upon expiration, the current lease holders rights would be terminated.

2. A quitclaim deed for the offered lands to the United States will reserve a road right-of-way for public access, a coal reservation to Thomas A. and Jane R. Thorley on 440 acres, and the State of Utah's right to all minerals on 240 acres.

3. Title transfer of the public land will be subject to valid existing right-of-way and reservations including:

a. U–39351 for a buried waterline and access road.

b. U–40387 for a 13.2–kV transmission line.

c. U–51357 for a 69–kV transmission line.

d. U–51390 for buried drain lines.

e. U–55643 for protection of an endangered plant species.

f. A reservation to the United States for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (26 Stat. 391, 43 U.S.C 945 (1970)).

Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department.

Dated: May 28, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85–13481 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–DQ–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Rights-of-Way, Principles and Procedures; Amendment of Cost Reimbursement Procedures, 43 CFR 2800.

Abstract: Respondents supply identifying information and data on monetary value of the rights and privileges sought by the applicant, costs incurred for the benefit of the general public interest, rather than for the exclusive benefit of the applicant and public services provided necessary to determine who may be entitled to a set-off against reimbursement of costs to the government.

Bureau Form Number: None Required.

Frequency: About 17 per year.

Description of Respondents: Right-of-Way applicants for which the authorized officer determines that the Bureau's application processing activities will cost in excess of $5,000.

Annual Responses: 17.

Annual Burden Hours: 850.

Bureau Clearance Officer: Rebecca Daugherty 202–653–8853.

Dated: May 30, 1985.

Robert F. Burford,

Director.

[FR Doc. 85–13465 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–84–M

Susanville District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 95–579 (FLPMA) that a meeting of the Susanville District Grazing Advisory Board will be held on July 18, 1985.

The meeting will begin at 10:00 a.m. at the Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, California. The agenda will include a discussion of allocation FY86 project funds, report on the wild horses and burro program, status of BLM–FS interchange, status of grazing fee study, preparation for Advisory Board Chairman's meeting, update on prescribed fire projects, and other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:30 p.m. and 4:30 p.m. on July 18, 1985, or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1090, Susanville, California 96130, by July 11, 1985. Depending upon the number of persons wishing to make oral statements, a per person list limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

C. Rex Cleary,

District Manager.

[FR Doc. 85–13482 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–40–M

[A–12830, et al.]

Boulder Canyon Project, AZ; Proposed Modification and Continuation of Withdrawals

As a result of the review made pursuant to Section 204(l) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to continue the existing withdrawals on lands described below for a period of 50 years, subject to review of the withdrawals and extension for an additional period as appropriate. The withdrawals will be terminated as to other lands comprising approximately 114,690 acres.

The lands were withdrawn for use by the Bureau of Reclamation for:

1. Construction of Hoover Dam, power plant, and reservoir (Lake Mead) for purposes of controlling floods, improving navigation and regulation of the flow of the Colorado River, providing for storage and delivery of the stored waters thereof, and generating of electrical energy;

2. Construction of Davis Dam, power plant, and reservoir (Lake Mohave) for purposes of irrigation flood control, navigation, power, fish and wildlife, municipal water supply, and generation of electrical energy.

The existing withdrawals, made by Secretarial Orders issued to the Reclamation Act of June 17, 1902, Boulder Canyon Act of December 21, 1928, and the Reclamation Project Act of August 4, 1939, segregate the lands from operation of the public land laws, including the mining laws. The lands have been and will remain open to mineral leasing.

The lands are withdrawn for the Lake Mead National Recreation Area under the act of October 8, 1964; however they remain subject to the primary use for reclamation and power purposes so long as they are withdrawn or needed for such purposes.

The following described land are included in the proposed continuation:

Gila and Salt River Meridian, Arizona

T. 30 N., R. 14 W.,
Secs. 3, 4, 9, 10, 15, 16, 22, 23, 24, 25, 26, and 36.*
T. 30½ N., R. 14 W.,
Secs. 34 and 35.*
T. 31 N., R. 14 W.,
Secs. 28, 29, 30, 32, and 33.*
T. 31 N., R. 15 W.,
Secs. 5, 6, 7, 8, 9, and 16.*
Secs. 21 to 28, inclusive.*
T. 32 N., R. 15 W.,
Secs. 30, 31, and 32.*
T. 31 N., R. 16 W.,
Sec. 4.*
T. 32 N., R. 6 W.,
Secs. 3 to 11, inclusive;*
Secs. 14, 15, and 16;*
Secs. 21, 22, and 23.*
Secs. 25, 26, 27, and 28;*
Secs. 33, 34, 35, and 36.*
T. 32½ N., R. 16 W.,
Secs. 31, 32, 33, and 34.*
T. 33 N., R. 16 W.,
Secs. 15, 16, 21, 22, 27, 28, 29, 33, and 35.*
T. 30 N., R. 17 W.,
Secs. 5 and 6.*
T. 31 N., R. 17 W.,
Secs. 3, 4, 9, 10, 15, 16, 17, 20, 21, 28, 29, 31, and 33.*
T. 32 N., R. 17 W.,
Secs. 1, 11, 12, 13, 14, 22, 23, 26, 27, 33, 34, and 35.*
T. 30 N., R. 18 W.,
Secs. 1, 2, 3, 4, 6, 7, 8, 9, 17, and 18.*
T. 30 N., R. 19 W.,
Secs. 1 and 2.*
T. 31 N., R. 19 W.,
All of township.*
T. 32 N., R. 19 W.,
All of township.*
T. 31 N., R. 20 W.,
All of township.*
T. 32 N., R. 20 W.,
All of township.*
T. 21 N., R. 21 W.,
Secs. 6 and 7;*
Sec. 18, SW¼ and SE¼;*
Sec. 30, lot 4 all within a strip of land 300 feet in width landward from the existing bank of the Colorado River.
T. 31 N., R. 21 W.,
Secs. 2, 3, 10, 11, 12, and 13;*
T. 32 N., R. 21 W.,
All of township.*
T. 21 N., R. 22 W.,
All of township.*
T. 22 N., R. 22 W.,
All of township.*
T. 23 N., R. 22 W.,
All of township.*
T. 24 N., R. 22 W.,
All of township.*
T. 25 N., R. 22 W.,
All of township.*
T. 26 N., R. 22 W.,
All of township.*
T. 27 N., R. 22 W.,
Secs. 30 and 31.*
T. 29 N., R. 22 W.,
Secs. 18, 19, 20, 29, 31, and 32.*
T. 31 N., R. 22 W.,
Secs. 4, 5, 6, and 7.*
T. 32 N., R. 22 W.,
Secs. 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36.*
T. 27 N., R. 23 W.,
Secs. 1, 12, 13, 24, and 25.*
T. 28 N., R. 23 W.,
Secs. 1, 2, 12, 13, 14, 23, 24, 25, and 36.*
T. 29 N., R. 23 W.,
Secs. 1, 2, 12, 13, and 36.*
T. 30 N., R. 23 W.,
Sec. 2, lots 3 and 4, S½NW¼, W½SW¼;
Secs. 3, 10, 11, 14, and 15, all;
Secs. 22, 27, and 34.*
T. 31 N., R. 23 W.,
Secs. 12, 13, 14, 23, 24, 25, and 26;
Sec. 35 W½;
Secs. 36.*
T. 32 N., R. 23 W.,
All of township.*

The areas described aggregate approximately 67,689 acres in Mohave County Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources, and will review the withdrawl rejustification to ensure that continuation or modification would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. The authorized officer will also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawals will be continued or modified, and if so, for how long. The final determination will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

All communications in connection with this proposed action should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 16563, Phoenix, Arizona 85011.

Dated: May 28, 1985.

John T. Mezes,

Chief, Branch of Lands and Minerals Operation.

[FR Doc. 85-13480 Filed 6-4-85; 8:45 am]

BILLING CODE 4310-32-M

*All land lying inside a line 300 feet landward from the high water mark, rising from the 655 foot elevation of Lake Mohave and the 1,229 foot elevation of Lake Mead.

[F-14954-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Olgoonik Corporation, Inc., for approximately 15.11 acres. The lands involved are in the vicinity of Wainwright.

U.S. Survey No. 4418, Alaska, situated in and near the town of Wainwright:

Tract A, Block 22, lot 1;
Tract C;
Tract E;
Tract F;
Tract G;
Tract H.

A notice of the decision will be published once a week for four (4) consecutive weeks, in The Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 5, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-13498 Filed 6-4-85; 8:45 am]

BILLING CODE 4310-JA-M

[U-51197-AR]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas

lease U–51197–AR for lands in Wayne County, Utah, was timely filed and required rentals and royalties accruing from October 1, 1984, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U–51197–AR as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective October 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–13469 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–DQ–M

[U–8971, U–9063, and U–9729]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases U–8971, U–9063, and U–9729 for lands in Uintah County, Utah, was timely filed and required rentals and royalties accruing from October 1, 1980, for lease U–8971, and from December 1, 1980, for leases U–9063 and U–9729.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee per lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of leases U–8971, U–9063, and U–9729 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective October 1, 1980, for lease U–8971, and effective December 1, 1980, for leases U–9063 and U–9729, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–13468 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Receipt of Endangered Species Permit Application

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–694115

Applicant: David Evans, Duluth, MN

The applicant requests a permit to take (capture, band, release) peregrine falcons (*Falco peregrinus anatum*) in Minnesota and Wisconsin for scientific research.

PRT–694483

Applicant: New York Zoo, Bronz, NY

The applicant requests a permit to import 5 radicated tortoises (*Geochelone radiata*) from the Zurich Zoo, Switzerland, for enhancement of the propagation of the species.

PRT–694714

Applicant: Columbus Zoo, Powell, OH

The applicant requests a permit to purchase one female jaguar (*Panthera onca*) from Earl Tatum, Holiday Island, Arkansas, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 31, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–13499 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Mobil Producing Texas & New Mexico Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Producing Texas & New Mexico Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2392, Block A–572, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on May 24, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 28, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–13509 Filed 6–4–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 303-TA-16 (Preliminary)]

Lime Oil From Peru; Preliminary Countervailing Duty Investigation

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303-TA-16 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Peru of lime oil, provided for in item 452.11 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Peru. As provided in section 303, the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by July 15, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 29, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 29, 1985 by Parman-Kendall Inc., Goulds, Florida.

Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 21, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202-523-0369) not later than June 20, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before June 26, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-13497 Filed 6-4-85; 8:45 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp.; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Provisional Operating License No. DPR-16, issued to the GPU Nuclear Corporation (the licensee) for operation of the Oyster Creek Nuclear Generating Station (OCNGS) in Ocean County, New Jersey. Notice of consideration of issuance of this amendment was published in the **Federal Register** on February 27, 1985 (50 FR 7987).

The amendment, as proposed in the justification for the change by the licensee, would change the OCNGS Apendix B Technical Specifications, Section 3.1.4, Water Quality Study, to reduce the frequency of calibrating the instruments for measuring water salinity, water temperature and dissolved oxygen. The licensee's application for changes to Section 3.1.4 was incomplete in that it did not address the following changes which are also in the licensee's proposed rewording of Section 3.1.4: (1) Changing water temperature to temperature, (2) changing the frequency of calibrating pH measuring instruments from daily before each use to daily, and (3) deleting the existing requirement that the water quality measurements are made monthly.

All other provisions of the amendment request have been approved by Amendment No. 83.

Notice of issuance of Amendment No. 83 will be published in the Commission's next regular biweekly **Federal Register** Notice.

The licensee was notified of the Commission's denial of the proposed technical specification changes by letter dated May 30, 1985.

By July 5, 1985, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 1 and 25, 1984, and (2) the Commission's Safety Evaluation issued with Amendment No. 83 to DPR-16 dated May 30, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Ocean County Library, 101 Washington Street, Toms River, New Jersey. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of May 1985.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-13535 Filed 6-4-85; 8:45 am]

BILLING CODE 7590-01-M

[License No. 25-18304-01, EA-84-78; Docket No. 30-14821, ASLBP 85-508-01-OT]

Reich Geo-Physical, Inc.; Hearing

May 30, 1985.

In the matter of Reich Geo-Physical, Inc.; 1109 Arlington Drive, Billings, Montana 59101.

The evidentiary hearing in this matter will commence at 9:00 a.m. MDST on July 24, 1985 at Room 2222, Federal Building, 316 North 26th Street, Billings, Montana 59101.

Bethesda, Maryland, May 30, 1985.

Ivan W. Smith,

Administrative Law Judge.

[FR Doc. 85-13536 Filed 6-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. SO-244]

Rochester Gas and Electric Corp.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Rochester Gas and Electric Corporation (the licensee) for an amendment to Facility Operating License No. DPR-18, issued to the Rochester Gas and Electric Corporation for operation of the R.E. Ginna Nuclear Power Plant in Wayne County, New York.

The amendment, as proposed by the licensee, would change the Technical Specifications to delete the requirement that charcoal filters operate while fuel assemblies are being moved in the auxiliary building.

The licensee was notified of the Commission's denial of the proposed Technical Specification changes by letter dated May 30, 1985.

By July 5, 1985 the license may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, NW., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 13, 1985, and (2) the Commission's Safety Evaluation dated May 30, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulartory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of May 1985.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Divisicn of Licensing.

[FR Doc. 85-13537 Filed 6-4-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of a Form

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of a form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S.C. Chapter 35), this notice announces a proposed extension of OPM Form 1170, which collects information from the public. Supplemental Qualifications Statements are completed by applicants for Federal positions throughout the Federal Government. The Office of Personnel Management then uses the information to examine the qualifications of applicants. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATE: Comments on this proposal should be received on or before June 20, 1985.

ADDRESSES: Send or deliver comments to—

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, D.C. 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

[FR Doc. 85-13486 Filed 6-4-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14544; (File No. 812-5989)]

Alliance Capital Management Corp.; Application and Opportunity for Hearing

May 30, 1985.

Notice is hereby given that Alliance Capital Management Corporation ("Alliance" or "Applicant"), 140 Broadway, New York, New York 10005, an investment adviser registered under the Investment Advisers Act of 1940, filed an application on November 19, 1984, and amendments thereto on December 13, 1984 and May 2, 1985, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), for an order exempting Applicant from section 15(a) of the Act to permit Applicant's

(i) Serving as investment adviser to Chemical Fund, Inc. ("Chemical") and Surveyor Fund, Inc. ("Surveyor") (Chemical and Surveyor are collectively referred to herein as the "Funds" and individually as a "Fund") pursuant to interim agreements prior to shareholder approval of new management agreements between Applicant and the Funds, and

(ii) Receiving retroactive reimbursement from each of the Funds of Applicant's costs of providing the services covered by the interim management agreements (but not to exceed the management fee payable by each Fund under its management agreement with the previous investment adviser) from the effective date of the interim management agreements (i.e., November 20, 1984) until March 6, 1985, the date on which shareholders of the Funds approved the new management agreements.

All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicant states that the investment manager for the Funds prior to November 20, 1984, was Eberstadt Fund Management, Inc. ("EFM"), a wholly-owned subsidiary of Eberstadt Asset Management, Inc. ("EAM"). EAM was a wholly-owned subsidiary of Putnam/Eberstadt Mutual Funds, Inc. ("PEMF"), which is a wholly-owned subsidiary of Marsh & McLennan Companies, Inc. ("Marsh & McLennan").

Applicant states that during 1984, and for a substantial period prior thereto, the Boards of Directors of both Funds were dissatisfied with the commitment of the Marsh & McLennan organization to the management services performed for the Funds by EFM. After a series of meetings with Marsh & McLennan, the Boards of Directors of the Funds decided to explore alternative arrangements. According to the application, a joint meeting of the Board of Directors of the Funds was held on October 25, 1984 for the purpose, among other things, of considering the alternative of new management agreements with Applicant. During the meeting, Applicant and Marsh & McLennan announced an agreement in principle for Alliance's acquisition of EAM and its subsidiary EFM, the consummation of which, according to the application, could be deemed to result in an assignment of the existing advisory agreement and its termination in accordance with the Act. Applicant states that, subsequent to this announcement, the Boards, including a majority of directors who were not interested persons of Marsh & McLennan, PEMF, EAM, EFM, DLJ or Applicant, approved the management and distribution agreements with Applicant. Subsequently, the management agreements were submitted to and approved by the shareholders of both Funds on March 6, 1985.

Applicant further states that the management agreements between the Funds and EFM terminated and the interim management agreement between each Fund and Applicant became effective upon the acquisition by Applicant of all the outstanding stock of EAM on November 20, 1984. The interim management agreement for each Fund remained in effect until March 6, 1985. Except for the terms and conditions of payments to be made by each Fund to Applicant pursuant to the interim management agreement, the terms of each interim management agreement and of each new management agreement were substantially identical to the terms of each Fund's management agreement with EFM.

Applicant represents that under the terms of each interim management agreement, Applicant agreed to perform its services at no charge to the Funds; provided, however, that Applicant would be entitled to reimbursement of its costs upon issuance of the order sought in the application. Following issuance of such an order, each Fund was to reimburse Applicant retroactively for the costs of the services performed pursuant to the interim management agreement during the period from the effective date of said agreement to the date of shareholder approval of the new management agreement. Such reimbursement could not in either case exceed the management fees which would have been payable by such Fund under its management agreement with EFM.

Applicant believes that a significant factor leading to the decisions by the Boards of Directors of the Funds to approve Applicant as successor investment manager to the Funds was the perception that Applicant, together with administrative and managerial personnel of EFM whom Applicant proposed to retain, would be well qualified to provide the advisory and administrative services needed by the Funds. In view of the Funds' decision, Applicant also believes that the prompt acquisition of EAM by Applicant was in the best interest of the Funds since the disruption and the possible loss of certain key EFM personnel that could have resulted from an unduly long transition period was avoided.

Applicant states that it has performed the services for the Funds called for in the interim management agreements but will not receive reimbursement for its costs for the period during which the interim management agreements were in effect until, and unless, the order sought herein has been granted. Applicant believes it is in the public interest, in the interest of investors and otherwise consistent with the purposes of the Act that an investment company be able to achieve an orderly and expeditous change in its investment adviser. When, as in this case, a new adviser is selected by the independent directors of an investment company, the new adviser undertakes to bear the expenses of its substitution as the new adviser, and the new adviser to perform at cost, which may not exceed the management fees previously approved by the shareholders of the investment company, until the management agreements are approved by shareholders, both the public interest and the interest of shareholders in the investment company are fully protected. In addition, Applicant states that the purposes and policies or the Act are served fully if the new adviser's management agreement is submitted to the investment company's shareholders at the earliest practicable date following the change in adviser.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are

disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date on order disposing of the application will be issued unless the Commission ordered a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13524 Filed 6-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14547; 812-6066]

Tax Exempt Cash Management, Inc.; Application for an Order Exempting Applicant From Provisions

May 30, 1985.

Notice is hereby given that Dreyfus Tax Exempt Cash Management, Inc. ("Applicant"), 600 Madison Avenue, New York, New York 10022, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 27, 1985, requesting an order of the Commission, pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 12(d)(3) of the Act to the extent necessary to permit Applicant to acquire rights to sell its portfolio securities to broker-dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the relevant provisions.

Applicant, organized as a Maryland corporation on January 27, 1984, states that it is a money market mutual fund whose investment objective is to provide investors with as high a level of current income exempt from federal income tax as is consistent with the preservation of capital and the maintenance of liquidity. Applicant indicates that it invests principally in debt obligations issued by states, territories and possession of the United States and the District of Columbia and their political subdivisions, agencies and instrumentalities, or multistate agencies or authorities, the interest from which is, in the opinion of bond counsel to the issuer, exempt from federal income tax (collectively, "Municipal Obligations"). Applicant, in accordance with Rule 2a-7 of the Act, intends to utilize the amortized cost method of portfolio valuation.

Applicant states that it is authorized to purchase "stand-by commitments" which give Applicant a right to sell the prinicipal amount of the Municipal Obligations it has purchased from a broker-dealer back to the seller, at Applicant's opinion, at a specified price. Applicant represents that it is permitted to acquire stand-by commitments solely to facilitate portfolio liquidity.

According to the application, the stand-by commitments Applicant acquires: (1) Will be in writing and will be physically held by Applicant's custodian; (2) will be exercisable by Applicant at any time prior to the maturity of the underlying security; (3) will be entered into only with broker-dealers which, in the opinion of Applicant's investment adviser, present a minimal risk of default; (4) will provide Applicant with an unconditional and unqualified right to exercise them; (5) will not be transferable, although Municipal Obligations purchased subject to stand-by commitments could be sold to a third party at any time, even though the stand-by commitments remain outstanding; and (6) will have an exercise price which will be (i) Applicant's acquisition cost of the Municipal Obligations purchased subject to the commitment (excluding any accrued interest that Applicant paid at the time of acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period Applicant owns the securities, plus (ii) all interest accrued on the underlying Municipal Obligations since the most recent interest payment date during the period the Municipal Obligations are held by Applicant. Applicant states that the acquisition or exercisability of a stand-by commitment will not affect the valuation or maturity of the underlying portfolio security.

Applicant represents that the total amount "paid", directly or indirectly, for outstanding stand-by commitments will not exceed ½ of 1% of the value of Applicant's total assets calculated immediately after any stand-by commitment is acquired. The application indicates that, because Applicant values its Municipal Obligations on an amortized cost basis, the amount payable under a stand-by commitment will be the same as the value assigned by Applicant to the underlying Municipal Obligations. Applicant states that in the unlikely event that the market or fair value of Municipal Obligations in Applicant's portfolio was not substantially equivalent to the amortized cost value, Applicant would value the Municipal Obligations on the basis of available market information and hold them to maturity. In such a situation, Applicant expects that it would refrain from exercising stand-by commitments to avoid imposing a loss on a broker-dealer, which would jeopardize Applicant's business relationship with that entity.

Applicant states that stand-by commitments may be available without the payment of any direct or indirect consideration; however, if necessary or advisable, Applicant proposes to pay for stand-by commitments, either separately in cash or by paying a higher price for the Municipal Obligations that are acquired subject to the stand-by commitment. Applicant further asserts that it is difficult to evaluate the likelihood of the use of, or the potential benefit of, a stand-by commitment. Consequently, Applicant's board of directors intends to determine that stand-by commitments have a "fair value" of zero, regardless of whether any direct or indirect consideration was paid. However, where Applicant has paid for a stand-by commitment, its cost will be reflected as unrealized depreciation for the perod during which the stand-by commitment is held. In addition, Applicant states that for purposes of computing the dollar-weighted average maturity of its portfolio, the maturity of a portfolio security shall not be considered shortened or otherwise affected by any stand-by commitment.

Applicant states that the proposed acquisition of stand-by commitments will not affect the calculation of its net asset value per share and will not pose new investment risks, but rather will improve the liquidity of its portfolio securities. Applicant asserts that the acquisition of stand-by commitments will not meaningfully expose its assets to the entrepreneurial risks of the investment banking business. Applicant states that the stand-by commitments purchased by Applicant will be secured to the extent of the value of the Municipal Obligations which are subject to the stand-by commitments so that a stand-by commitment will present qualitatively no greater risk than the risk of loss faced by any investment company which is holding securities pending settlement after having agreed to sell the securities to a broker-dealer in the ordinary course of business. Applicant represents that its investment adviser intends to evaluate periodically the credit of institutions issuing stand-

by commitments. Applicant further states that it will not acquire stand-by commitments to promote reciprocal practices, to encourage the sale of its shares, or to obtain research services.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 24, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13523 Filed 6-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23712; 70-6384]

New England Electric System; Proposed Issuance and Sale of Common Stock Pursuant to the System Incentive Thrift Plan and Request for Exception From Competitive Bidding

May 30, 1985.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By orders in this proceeding dated January 20, 1980, and February 12, 1980 (HCAR Nos. 21387 and 21428), NEES was authorized to issue and sell from time to time through December 31, 1984, up to 1,000,000 shares of its authorized but unissued common shares, $1 par value, pursuant to the New England Electric System Companies Incentive Thrift Plan (the "Plan"). NEES has issued, on a monthly basis through April 30, 1985, approximately 453,000 of the authorized 1,000,000 shares.

NEES now proposes to extend the period for issuing common shares pursuant to the Plan through December 31, 1988. The Plan has been amended since the prior Commission orders to comply with various amendments to Federal tax laws and to qualify as a cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1954, as amended.

The proceeds from the continued sale of common shares will be added to the general funds of NEES and used for any or all of the following purposes: (i) Investment in subsidiaries through loans to such subsidiaries, purchase of additional shares of their capital stocks, or capital contributions; (ii) payment of indebtedness of NEES; or (iii) other corporate purposes of NEES.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 24, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13528 Filed 6-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14545; File No. 812-5970]

Pruco Life Insurance Co. et al.; Application and Opportunity for Hearing

May 29, 1985.

Notice is hereby given that Pruco Life Insurance Company, on its own behalf and as sponsor and depositor of the Pruco Life Variable Appreciable Account, Pruco Life Insurance Company of New Jersey, on its own behalf and as sponsor and depositor of the Pruco Life of New Jersey Variable Appreciable Account, Pruco Life Series Fund, Inc., The Prudential Insurance Company of America, and Pruco Securities Corporation (collectively, "Applicants"), 213 Washington Street, Newark, New Jersey 07102, filed an application on October 25, 1984, and amendments thereto on January 23, 1985, and May 15, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 6e-2 (b)(1), (b)(12), (b)(13), (c)(1)(ii), (c)(4) and 22c-1 thereunder to the extent necessary, as described in the application. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and to the Act and the rules thereunder for the text of relevant provisions.

Applicants have previously been granted an exemptive order by the Commission in connection with the issuance of certain Variable Appreciable Life Insurance Contracts ("Contracts") that have characteristics similar to those scheduled premium varible life insurance contracts contemplated by Rule 6e-2 under the Act and other characteristics more like flexible premium variable life insurance contracts contemplated by Rule 6e-3(T), a rule that had not yet been adopted by the Commission at the time the exemptive order was granted. *See* Investment Company Act Release Nos. 14121 (Aug. 31, 1984) (notice) and 14171 (Sept. 24, 1984) (order). Interested persons are referred to Investment Company Act Release No. 14121 for a description of the Applicants, the Contracts and the relief granted. Applicants now request exemptive relief in order to amend the Contracts to permit contractowners to increase the face amount of insurance originally provided for an to decrease the face amount and to make certain charges in connection with such increases or decreases.

1. Increases in Face Amount

Applicants request exemption from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 6e-2 (b)(1), (b)(12), (b)(13), (c)(4) and 22c-1 thereunder to the extent necessary, to permit the deduction of a contingent deferred sales load and a contingent deferred administrative charge upon surrender or lapse within ten years after the contract owner elects to increase the face amount of his or her Contract. Applicants state that immediately after an increase in face amount, the face amount of insurance (which is also the Contract's guaranteed

minimum death benefit), the death benefit and the cash value will be equal to what the sum of the corresponding items would have been under both Contracts had the initial Contract remained unchanged and a new Contract been issued. The scheduled premiums thereafter will be slightly less than the sum of the scheduled premiums that would be charged had two Contracts been issued due to certain reduced charges reflected therein as described *infra*. According to Applicants, the increase will not go into effect until the completion of the same underwriting process that would have taken place had a second contract been issued.

Applicants state that there will be assessed upon lapse or surrender following an increase in face amount the sum of (a) the deferred sales and administrative charges that would have been assessed if the original Contract had not been amended and had lapsed or surrendered; and (b) the deferred sales and administrative charges that would have been assessed if the increase in death benefit had been achieved by the issuance of a new Contract, and that Contract had lapsed or surrendered. Thus, the maximum additional deferred sales charge will equal 25% of the first year's premium attributable to the increased face amount (the "incremental premium") (whether or not it is paid in the first year after the increase) and 5% of the incremental premiums for the next four years. According to Applicants, the deferred sales charge cumulates each year that surrender or lapse does not occur, although it is applied only to the actual amount (as opposed to the scheduled amount) of incremental premiums paid during the first five years and seven months subsequent to an increase in face amount, and begins thereafter to be reduced until it becomes zero at the end of the tenth year. The deferred administrative charge assessed will be $5.00 for each $1,000 face amount increased but only if lapse or surrender occur within ten years after an increase, and is reduced uniformly to zero after the fifth anniversary of the increase in face amount. All premiums paid after the increase in face amount will be deemed by Applicants to be partially in payment of the original Contract and partially in payment of the increase in insurance in the same proportion as that of the original scheduled premium and the increase in scheduled premiums (the "Proportionality Principle").

In support of their proposal to permit increases in face amount, Applicants represent that this may now be accomplished only through the purchase of an additional Contract which will involve paying two periodic premiums: A single Contract with an increased face amount, on the other hand, will result in fewer, although larger, payments and thus fewer $2.00 premium processing charges and only one $2.50 monthly deduction for administrative charges. These efficiencies, Applicants explain, will result in lower scheduled payments after an increase than would be required by adding two payments for separate contracts. In support of their proposal to impose a new schedule of deferred sales charges, Applicants assert that, because a contractowner's decision to increase the face amount of a Contract is similar to a decision to purchase a new Contract, such an increase is expected to involve comparable sales and distribution expenses to that which would have been incurred had a second Contract been sold. Applicants argue that the Commission recognized the appropriateness of assessing sales loads following an increase in face amount comparable to new sales of the same contract in adopting Rule 6e–3(T) in Investment Company Act Release No. 14234 (November 14, 1985). Applicants will offer each contractowner who elects to increase the face amount of his or her Contract a "free-look" right with respect to the incremental premium, the increased face amount and the portion of charges attributable thereto (all measured according to the Proportionality Principle described *supra*) on the terms set forth in Rule 6e-2(b)(13)(viii), and a right to convert the increased face amount of the Contract to a fixed benefit policy with the same face amount as the increase for 24 months after the requested increase in face amount on terms identical to those offered contractholders for the first 24 months of a new Contract. In this respect, contractowners will not be offered a fixed benefit whole life policy on the terms set forth in Rule 6e–2(b)(13)(v)(B), but instead will receive a Pruco Life general account funded universal life contract. Absent exemptive relief, Applicant believe it may not be permissible to offer such an exchanging contractowner a universal life policy instead of a whole life policy and request exemptive relief from section 27(d) and Rule 6e–2(b)(13)(v)(B) to the extent necessary to make such an offer.

In support of their proposal to deduct a new schedule of deferred administrative charges, Applicants explain that additional costs associated with processing applications and determining insurability will be incurred upon an increase in face amount. Notwithstanding these costs, Applicants state the deferred administrative charges will be deducted only upon withdrawal or lapse during the first ten years after an increase in face amount, and will be uniformly reduced after the fifth year.

In support of the Proportionality Principle described above, Applicants state that this principle recognizes that the contractowner will hold a single integrated contract that will lapse or become paid up as a unit. Moreoever, Applicants explain that the application of this principle will result in contractowners who lapse or surrender after an increase in face amount receiving the advantage of the lower deferred sales charge applicable to payments due after the first and after the fifth contract years, when lapse or surrender occurs at a time when less than all of the scheduled payments have been made, and also of the reductions in deferred sales charges that are made after the fifth contract year. Applicants acknowledge, however, that a contractowner could not thereafter choose which contract he or she wishes to lapse should the contractholder's financial circumstances change after an increase in face amount and that this might be considered a disadvantage of a unified Contract under the Proportionality Principle as opposed to ownership of two Contracts.

2. Decreases in Face Amount

Applicants request exemption from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) and Rules 6e–2(b)(1), (12), (13), (c)(1)(ii), (c)(4) and 22c–1 in order to permit contractowners to decrease the face amount of insurance, to deduct an amount of the deferred sales and administrative charges upon a decrease in face amount proportionate to the reduction in face amount, and to permit a decrease in face amount below the initially stated amount of death benefit. Applicants state that upon a decrease in face amount, scheduled premiums and all other contract values will be reduced in proportion to the decrease in face amount except for the cash surrender value which will remain the same, less a $15 administrative charge (from which Applicants anticipate receiving no profit) that will be deducted from that value. This, according to Applicants, will result in the collection of a portion of the Contract's deferred sales and administrative charges.

In support of their proposal, Applicants state that they view a reduction in the Contract's face amount

without the withdrawal of any of the Contract's current cash surrender value as a partial surrender of the Contract. According to Applicants, it is appropriate to assess a pro rata portion of the then applicable deferred sales and administrative load because Applicants will henceforth collect lower premiums and assess lower mortality charges which are used in part to offset distribution and administrative expenses of persisting contractowners. Moreover, Applicants argue that if a portion of the load were not collected at that time, a contractholder could avoid the deferred load by first reducing the face amount and then surrendering the Contract. Applicants assert that permitting a contractowner to reduce the face amount of his or her policy, subject to the deduction of the deferred charges and the $15 administrative charge, gives the contractowner flexibility in determining his or her insurance needs when those needs are reduced without reducing the investment base of the contract.

Applicants acknowledge that a decrease in face amount may not be a "redemption" within the meaning of the Act beause no cash value is paid out, and that the collection of deferred charges upon such an event may be viewed as deductions from cash value and not as deferred charges within the terms of Applicants' original exemptive relief. Therefore, Applicants seek relief from those sections of the Act and Rule 6e–2 that would prohibit the deduction from cash value of such sales and administrative charges. Similarly, because a decrease in face amount may not involve a "partial withdrawal or partial surrender" within the meaning of paragraph (c)(3) of Rule 6e–2, Applicants seek relief from paragraph (c)(1)(ii) of Rule 6e–2 which requires a guaranteed death benefit equal to the initial stated amount of death benefit.

In support of its request for relief from paragraph (c)(1)(ii), Applicants explain that the initial guaranteed minimum death benefit of the contract was based upon an assumed schedule of payments, and that, since the schedule of payments is reduced subsequent to a decrease in face amount, it is appropriate for the guaranteed minimum death benefit to be reduced to reflect the new schedule of payments. Moreover, Applicants state that the charge deducted for the guaranteed minimum death benefit (one cent per $1,000 of face amount per month) will be reduced to reflect the lower guaranteed minimum death benefit.

3. Deduction of Insurance Charges From Cash Values

Applicants request relief from sections 26(a)(2) and 27(c)(2) of the Act to permit the deduction of mortality (cost of insurance), substandard risk, incidental benefit, and guaranteed minimum death benefit charges from cash value. Applicants assert that it is more appropriate and equitable to deduct these insurance charges from cash value rather than to impose a charge structure that requires contractowners who pay premiums more frequently to subsidize the insurance risks assumed under the Contracts of contractholders who pay less premiums. While Applicants state their belief that sections 26(a)(2) and 27(c)(2) do not apply to these insurance charges, to avoid any question of full compliance with the Act, they request relief to permit the deduction of these charges.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 24, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13525 Filed 6–4–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22085; File No. SR–NSCC–85–4]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change

May 29, 1985.

On April 25, 1985, National Securities Securities Clearing Corporation ("NSCC") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934. The Commission is publishing this notice to solicit public comment on the proposal.

NSCC's proposal amends Sections V.C. and VI.I.A. of its Procedures to enable NSCC to make available to NSCC Members a supply of Clearance/Settlement Statements (086 forms), which Members may use to prepare their daily NSCC settlement figures. NSCC's Procedures previously required NSCC to provide daily computer printouts of the Clearance/Settlement Statements, which contained no information except for a once-a-month billing.[1] NSCC simply seeks to eliminate this unnecessary generation of daily computer printouts. To provide sufficient time for the ordering and printing of new forms, NSCC will not implement this new rule change until June 3, 1985.

NSCC believes that its proposed rule change is consistent with section 17A of the Act because it does not affect the rights or obligations of NSCC's Members and does not affect adversely the safegarding of securities or funds in NSCC's custody or control for which it is responsible. Rather, the rule change merely replaces daily computer-generated forms with a supply of printed forms.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register.** Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington D.C. 20549. Copies of the submission, with accompanying exhibits, and of all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the

[1] Once each month NSCC informs NSCC members of their Monthly Charges and Commission Billings by including those amounts on Members' Settlement Statements.

proposal's file number and should be submitted by June 26, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13526 Filed 6-4-85; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES INFORMATION AGENCY

Grants Program; Accredited U.S. Institutions of Higher Education in Support of an Undergraduate Scholarship Program for Central American Students

Reference: OMB clearance number 3116-0179; Expiration date January 31, 1987

The Bureau of Educational and Cultural Affairs has issued an update which includes revisions and additions to the Request for Proposals for the Central America Program of Undergraduate Scholarships (CAMPUS). The revisions contained therein respond to new information obtained through development of the program in Central America. Additional information is also provided in response to inquiries from interested institutions.

To receive a copy of this update, interested academic institutions should contact: Dr. Alan Adelman, E/AEL, United States Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547, Telephone: (202) 485-7398.

Dated: May 24, 1985.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 85-13487 Filed 6-4-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 108
Wednesday, June 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 10, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13533 Filed 5-31-85; 4:33 pm]

BILLING CODE 6210-01-M

2

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE:

June 17, 1985, 6:00-9:00 p.m.
June 18, 1985, 9:30 a.m.-12:30 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open, except for the portion to be held as Closed Session to discuss personnel matters as defined in Section 1004.4(b) of 22 CFR Chapter 10.

MATTERS TO BE CONSIDERED:

June 17, 1985

1. Chairman's Report
2. President's Report
3. Approval of the Minutes of March 21-22, 1985
4. Closed Session to discuss personnel matters as defined in Section 1004.4 (b) of 22 CFR Chapter 10

June 18, 1985

5. Advisory Council
6. Report of the Audit Committee
7. Plans for IAF's 15th Anniversary
8. Costa Rico Program
9. Other Business

CONTACT PERSONS FOR MORE INFORMATION:

Robert W. Mashek, Secretary to the Board of Directors, (703) 841-3844
Charles M. Berk, General Counsel, (703) 841-3812

Dated: June 3, 1985

Charles M Berk,

Sunshine Act Officer.

[FR Doc. 85-13608 Filed 6-3-85; 5:08 pm]

BILLING CODE 7025-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 3, 10, 17, and 24, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 3

Monday, June 3

1:30 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Wolf Creek (Public Meeting)

Tuesday, June 4

2:00 p.m.
Oral Argument on Shoreham (Public Meeting)

Thursday, June 6

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of June 10—Tentative

Monday, June 10

10:00 a.m.
Briefing by Representatives of INPO Accrediting Board (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Final Rule on Backfitting (Public Meeting)

Tuesday, June 11

1:30 p.m.
Discussion of Adjudicatory Matter (Closed—Ex. 10)
2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Limerick (Public Meeting)
4:00 p.m.
Discussion/Possible Vote on Review of ALAB-800 and Related Matters (Shoreham) (Public Meeting)

Wednesday, June 12

10:00 a.m.
Continuation of 5/16 Briefing on Mid-Year Budget and Program Review (Public Meeting)

Thursday, June 13

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of June 17—Tentative

Wednesday, June 19

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)
2:00 p.m.
Staff Briefing on Final Rule on HEU Regulations for Domestic Non-Power Reactors (Public Meeting)

Thursday, June 20

11:00 a.m.
Periodic Meeting with Advisory Panel for Decontamination of TMI-2 (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, June 21

10:00 a.m.
Continuation of 5/15 Briefing on Proposed Revision of Part 20 (Public Meeting)

Week of June 24—Tentative

Wednesday, June 26

10:00 a.m.
Briefing on Safety Goal Evauation Plan (Public Meeting)

Thursday, June 27

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Severe Accident Policy Statement" and "Disposition of Hearing Requests Regarding Nuclear Materials Licenses" scheduled for May 30, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85–13532 Filed 5–31–85; 4:33 pm]

BILLING CODE 7590–01–M

4

RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 11, 1985, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Canadian Service
(3) Centralization of Control Over Criminal Investigations and the Decision to Refer Cases for Prosecution

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: May 31, 1985.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85–13594 Filed 6–3–85; 11:49 am]

BILLING CODE 7905–01–M

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Federal Register

Vol. 50, No. 108

Wednesday, June 5, 1985

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Air Specialties Corp. d.b.a. Total Air

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Air Specialties Corp. d.b.a. Total Air to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: May 23, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Air Specialities Corp. d.b.a. Total Air on April 22, 1985, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

2. In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Air Specialties Corp. d.b.a. Total Air.

Dated: May 28, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–13632 Filed 6–5–85; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 238

Contracts With Transportation Lines; Addition of Haiti Air

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Haiti Air to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: May 17, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Haiti Air on May 17, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Haiti Air.

* * * * *

Dated: May 24, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–13633 Filed 6–5–85; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-043]

Horses From CEM Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the treatment and testing of stallions and mares over 731 days of age for importation into the United States from countries where contagious equine metritis (CEM) exists. Prior to the effective date of this document, the regulations required that a salaried veterinary officer of the national government of the country of origin supervise certain treatment and specimen collection for stallions and mares and that the veterinarian sign a certificate indicating such supervision. This action allows veterinarians authorized by the National Veterinary Services of the country of origin, in addition to salaried veterinarians of the National Veterinary Services of the country of origin, to supervise such treatment and specimen collection. This document further provides that, if the certificate is signed by a veterinarian authorized by the National Veterinary Services of the country of origin, that the certificate be endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so. This action is necessary because it has been determined that supervision of the treatment and testing by veterinarians authorized by the National Veterinary Services of the country of origin and subsequent endorsement by a salaried veterinarian of the National Veterinary Services of the country of origin would be adequate to help ensure that such horses are free from CEM without imposing an unwarranted burden on the animal health authority of the country of origin.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. A.A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases.

Section 92.2(i) of the regulations, among other things, authorizes the importation of certain stallions and mares over 731 days of age into the United States from countries affected with contagious equine metritis (CEM) if specific requirements to prevent their introducing CEM into the United States are met, and if the animals imported are moved into approved States for further inspection, treatment, and testing.

Prior to the effective date of this document, the regulations in § 92.2(i)(2)(iv) required, for stallions over 731 days of age imported for permanent entry, that among other things, certain scrubbing, packing, and collection of specimens be conducted in the country of origin under the supervision of a salaried veterinary officer of the national government of the country of origin. Also, prior to the effective date of this document, the regulations in § 92.2(i)(2)(iv) required that compliance with these requirements be reflected on the certificate accompanying the stallions and that the certificate be signed by the salaried veterinary officer who supervises the scrubbing, packing, and collection of specimens.

In addition, prior to the effective date of this document, the regulations in § 92.2(i)(2)(v) required, for mares over 731 days of age, that, among other things, certain surgery, topical treatment, and specimen collection be conducted in the country of origin under the supervision of a salaried veterinary officer of the national government of the country of origin. Prior to the effective date of this document, the regulations in § 92.2(i)(2)(v) also required that compliance with these requirements be reflected on the certificate accompanying the mares and that the certificate be signed by the salaried veterinary officer who supervises the surgery, topical treatment, and specimen collection.

In a document published in the **Federal Register** on February 21, 1985 (50 FR 7181-7182), the Department proposed to amend the regulations by providing that the supervision of the treatment and specimen collection for stallions and mares required by § 92.2(i)(2) (iv) and (v) shall be allowed to be conducted either by a salaried veterinarian of the National Veterinary Services of the country of origin or by any veterinarian who is authorized to do so by the National Veterinary Services of the country of origin. Further, it was proposed to provide that the certificate must be signed by the veterinarian who supervised the required treatment and specimen collection. It was further proposed that if the person who conducted the supervision was not a salaried veterinarian of the National Veterinary Services of the country of origin, that the certificate must be endorsed by a salaried veterinary officer of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so.

The document of February 21, 1985, invited the submission of written comments on or before April 22, 1985. The only comment received, from the Ministry of Agriculture, Fisheries and Food (MAFF) of Great Britain, endorsed the proposal.

Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that this amendment will not have any significant effect on the number of horses imported into the United States or on the cost of importing these animals.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry & poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. In paragraph (i)(2)(iv) of § 92.2 "signed by a salaried veterinary officer of the national government of the country of origin" is changed to "either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so,".

3. In paragraph (i)(2)(iv)(A) of § 92.2 "veterinary officer" is changed to "veterinarian".

4. In paragraph (i)(2)(iv)(B) of § 92.2 "veterinary officer" is changed to "veterinarian".

5. In paragraph (i)(2)(v)(A)(*2*) of § 92.2 "signed by a salaried veterinary officer of the national government of the country of origin" is changed to "either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so,".

6. In paragraph (i)(2)(v)(A)(*2*)(*i*) of § 92.2 "the salaried veterinary officer of the national government of the country of origin" is changed to "the veterinarian signing the certificate".

Done at Washington, D.C., this 3rd day of June 1985.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–13659 Filed 6–5–85; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 84–127]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The regulations in 9 CFR 113.65 through 113.166 which prescribe Standard Requirements for live bacterial vaccines, inactivated bacterial products, killed virus vaccines, and live virus vaccines have been reviewed in accordance with the Agency's plan to periodically review existing regulations. As a result of this review, proposed revisions were published in the Federal Register on Wednesday, October 27, 1982, and on Wednesday, November 24, 1982, which would update certain aspects of this group of Standard Requirements. This proposed action would conclude the proposals to revise them at this time.

This final rule revises the requirements for tests conducted on Brucella Abortus Vaccine; Anthrax Vaccine; Erysipelothrix Rhusiopathiae Vaccine; Erysipelothrix Rhusiopathiae Bacterin; Feline Panleukopenia Vaccine, Killed Virus; Bluetongue Vaccine; Encephalomyelitis Vaccine, Venezuelan; and Rabies Vaccine, Modified Live Virus. Certain live animal tests (*in vivo* tests) have been replaced by *in vitro* procedures.

EFFECTIVE DATE: This amendment becomes effective June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The final rule would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions reduce regulatory requirements.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action would not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing. This action permits use of more economical methods in potency testing of certain vaccines and bacterins.

Background

Standard Requirements consist of test methods, procedures, and criteria established by Veterinary Services for evaluating biological products for purity, safety, potency, and efficacy. Until such Standard Requirements are developed by Veterinary Services and are codified in the regulations (9 CFR Part 113), the test methods, procedures, and criteria to be used in the evaluation of a product are developed by the licensees and are written into the applicable Outlines of Production which are required to be approved by and filed with Veterinary Services.

When Standard Requirements for a biological product have been developed by Veterinary Services, they are proposed for codification in the regulations. Such codification assures uniformity and general availability of such Standard Requirements to all licensees, applicants, and to the general public.

These proposed amendments revise the Standard Requirements for evaluating licensed Brucella Abortus Vaccine; Anthrax Spore Vaccine; Erysipelothrix Rhusiopathiae Vaccine; Erysipelothrix Rhusiopathiae Bacterin; Feline Panleukopenia Vaccine, Killed Virus; Bluetongue Vaccine; Encephalomyelitis Vaccine, Venezuelan; and Rabies Vaccine, Modified Live Virus.

Potency tests for serial release of Anthrax Spore Vaccine currently require tests by spore count and by vaccination and challenge of guinea pigs. Experience has shown that serials which meet the

required spore count satisfactorily meet the requirements of the guinea pig test and vice versa. This revision makes the continued use of guinea pigs unnecessary. The highly persistent nature of this organism has caused manufacturers to set aside space solely for conducting these animal tests. This revision removes the continuing need for providing these special facilities for evaluation of Anthrax Spore Vaccine.

Results of research studies conducted over the last 5 or 6 years have shown that Brucella Abortus Vaccine containing fewer viable organisms than currently required by the Standards gave equal protection. The product containing fewer organisms sharply reduced the number of vaccinated animals with persistent titers. These titers are used to disclose infected animals in control and eradication programs. Presence of animals with titers resulting from vaccine increases the difficulty and cost of the control and eradication effort. This revision provides a new dosage form which reduces the number of organisms from a minimum of 25 billion per dose to 3 billion per dose at expiration. It establishes a maximum number of organisms at release of 10 billion per dose for this dosage form. A two-stage potency test is provided to ensure that an unsatisfactory serial will not be accepted and that a satisfactory serial will not be rejected. The new dosage form also reduces the dose volume from 5 ml to 2 ml. This results in more doses per volume of culture and reduces container and shipping costs. In order to have properly evaluated Brucella Abortus Vaccine available for use in control programs in States where the number of organisms per dose is established at current levels by legislation, provision for continued production of standard vaccine is made by continuing the present potency test in 9 CFR 113.65(c).

Potency tests for serial release of Erysipelothrix Rhusiopathiae Vaccine currently require tests in either mice or swine. These were adapted from tests applied to bacterins. Advances in manufacturing and testing techniques have made application of the Master Seed concept to this bacterial vaccine feasible. This concept provides for one host animal test and a concurrent *in vitro* test to measure protective ability and relative strength of the product. Following this, potency is measured by the *in vitro* test, eliminating the need for animals to test each serial.

Test requirements for Erysipelothrix Rhusipathiae Bacterin in 9 CFR 113.104 currently provide for a choice of a mouse potency test or a swine potency test. Historically, the mouse test has been more difficult to pass satisfactorily but the swine test is substantially more expensive. Cooperative efforts with industry members have resulted in improvement of the mouse potency test to reduce the likelihood of rejecting a serial which would protect the host species. This revision substitutes the improved mouse test for the current mouse test and deletes the swine potency test. This represents another step in the recent efforts to substitute *in vitro* procedures and small laboratory animal tests for tests in pet and large domestic species.

Standard Requirements for killed virus Feline Panleukopenia Vaccines were established in 9 CFR 113.123 when all or nearly all were produced by inactivating virus-bearing tissues obtained from cats which had been inoculated with virulent feline panleukopenia virus. The most effective method for detecting uninactivated virus in these preparations was the inoculation of susceptible cats and observing changes associated with exposure to the virus. The only killed virus Feline Panleukopenia Vaccines licensed at present are those produced in cell cultures. Because of the high cost and difficulty in maintaining consistent quality in the tissue origin vaccines, all licensed vaccines are now produced in cell cultures. There is no reason to accept tissue origin vaccines for licensure nor to expect any applications for such licensure. This revision of 9 CFR 113.123 deletes reference to tissue origin vaccine and eliminates the special blood studies needed for safety tests of that type of vaccine. More suitable, less expensive tests for inactivation would remain for cell culture products as specified in 9 CFR 113.120(a).

When the current requirements were established for Bluetongue Vaccine, only one serotype was considered. The virus used in production had been carefully studied and was known to be free from risk of transmission from vaccinated sheep to unvaccinated susceptible sheep. Serological response in sheep had been clearly correlated with protection. As a result, there was no need to require tests for transmissibility nor vaccination-challenge studies for efficacy. Recently, additional serotypes have been found for which protective vaccines are needed. It is necessary to assure that newly developed modified live vaccine viruses will not be transmitted and revert to virulence. This revision of 9 CFR 113.138 utilizes an improved *in vitro* method as the sole measure of serial potency. This *in vitro* method would be correlated with protection in accordance with the Master Seed principle. This removes the need for sheep to be used for each serial potency test and will result in substantial savings in time and money.

Standard Requirements for evaluating vaccine for Venezuelan equine encephalomyelitis were developed and adopted at a time when a serious disease emergency existed in the United States. The test methods were based in part on the evaluation of vaccine intended for human use. Some of the requirements were also based on the possible interaction between this and other arthropod-borne encephalitides. Newly developed methods and years of experience with the vaccine virus have shown that a number of these restrictions are no longer necessary. *In vitro* tests can be used instead of guinea pigs to measure serial potency. Horses used in the immunogenicity trial do not have to be seronegative to Eastern and Western equine encephalomyelitis. Evaluations of serological response on prevaccination day 14 and postvaccination day 14 have been found unnecessary and are deleted from the immunogenicity test. The number of mice used to detect increased vaccine virus virulence are reduced without risk of failing to detect adverse serial to serial changes.

Current standards for potency tests of modified live Rabies Vaccines were developed at a time when production was limited to Flury strain viruses which were well adapted to mouse titrations. New virus strains and test methods have made this restriction inappropriate. *In vitro* tests correlated with host animal protection have been shown to be equally reliable and substantially less expensive. This revision permits use of any method supported by data acceptable to Veterinary Services which accurately measures product potency.

Comments Received

On June 11, 1984, a notice of proposed rulemaking was published in the **Federal Register** at 49 FR 24025 discussing this revision and soliciting comments.

Comments were received from 10 licensed manufacturers, one Department research laboratory and one Department testing laboratory. All recommended adoption of the proposed amendment.

Three comments were received in regard to the proposed amendment to the requirements for Brucella Abortus Vaccine in 9 CFR 113.65. The Department testing laboratory suggested deletion of the potato agar slant in 9 CFR 113.65(a)(2) because this same

medium is specified in the test prescribed in 9 CFR 113.65(a)(3)(i). The Agency agrees that this portion of the test is redundant and unnecessary. Therefore, the requirement for inoculation of a potato agar slant has been deleted. The Department testing laboratory also suggested changing the method of measurement in 9 CFR 113.65(b)(1) from "per mil" to "per dose" to be consistent with the evaluation criteria in (b)(3) which specifies the required number of organisms per dose. This was accepted. At the suggestion of the testing laboratory, conditions for incubation of samples specified in the testing standards in 9 CFR 113.65 (a)(2), (b)(1), and (c)(1) have been added to ensure consistent results. Two licensees suggested increasing the range of acceptable organism count from 3 to 10 billion organisms to 2.7 to 11 billion organisms. Regulations and procedural directives governing the Department Brucellosis Eradication Program, developed in cooperation with representatives of the livestock industry, specify that a dose of vaccine must contain between 3 and 10 billion organisms per dose. The licensees also suggested alternatives for disposition of serials containing more than 10 billion organisms per dose. These special alternative provisions are considered unnecessary. Serial containing more than 10 billion organisms per dose when prepared may be held until the organism count has declined, a retest conducted, and release granted under the provisions of 9 CFR 114.18. Therefore, these recommendations were not adopted.

The testing laboratory suggested retaining the description of plating procedures currently described in 9 CFR 113.66(c)(2). Continued use of this description will assist in assuring consistent results and avoid rejection of satisfactory serials. Therefore, this suggestion was adopted.

Three licensees, while agreeing with the proposed rulemaking, suggested increasing the interval between the original immunogenicity test and the repeat test in 9 CFR 113.66 for Anthrax Spore Vaccine and 113.138 for Bluetongue Vaccine from 3 to 5 years. The extended time was recommended in order to allow for more extensive evaluation of the product before the repeat test is required. This repeat immunogenicity test was established at 3 years to allow for early detection of changes attributable to storage and to correct, as soon as possible, any unexpected or adverse reaction attributable to the product. The Agency believes that conducting the repeat immunogenicity test at 3 years, rather than 5 years, has good scientific merit. Therefore, the suggested change was not adopted.

The Department's testing laboratory suggested that the tests in 9 CFR 113.67(c)(2) for potency of Erysipelothrix Rhusiopathiae Vaccine be revised by specifying two replicates titrations per sample, rather than the five replicate titrations specified in (b)(2). Five replicate titrations would be unnecessary for a valid test for serial release, therefore, the suggested change was adopted.

One licensee suggested that a revision be made in 9 CFR 113.104(c) to provide for an alternate swine potency test of Erysipelothrix Rhusiopathiae Bacterin to be described in a filed Outline of Production. The suggestion was made because the deleted swine test is essential for testing products inherently lethal for mice. Reference to an exemption from a prescribed test is not considered necessary in 9 CFR 113.104. Provisions for conducting an alternate potency test on mouse lethal products is contained in 9 CFR 113.4. A special note to this effect was not deemed necessary in the revision of 9 CFR 113.104(c). Another licensee requested addition of a provision requiring that new lots of the Standard Reference Bacterin specified in 9 CFR 113.104(c)(1) for Erysipelothrix Rhusiopathiae Bacterin be subjected to evaluation by potential users before adoption for use. Inclusion of these stipulations in Standard Requirements would not be appropriate. Other more appropriate means are available to ensure the uniformity of test results when a new reference is distributed. Lot-to-lot variations have been shown to be very small, because each new lot is evaluated by the Department's testing laboratory against the previous lot. Supplies of each new lot are supplied to manufacturers for comparative studies before their supply of the previous lot is expended. Therefore, this regulatory restriction was not adopted.

One licensee proposed deletion of the restriction in 9 CFR 113.123 limiting preparation of Feline Panleukopenia Vaccine to the fifth passage from Master Seed. Such limit is considered necessary to ensure that changes in immunogenicity through cultural passage of the virus do not occur. Use of serum neutralization tests in a small number of cats in the potency test would be unlikely to detect small, but significant, changes in protective ability. The limit does not unduly restrict the amount of production seed which can be prepared without recourse to a new Master Seed. Therefore, this proposal was not accepted.

Four comments were received regarding the evaluation of transmissibility of new Bluetongue Vaccine viruses. Two considered the 10^3 pfu per ml in 9 CFR 113.138(b) too low and two considered it too high. One suggested that vector transmission studies be conducted if any detectable viremia were shown. Another suggested that laboratory vector transmission studies are not reliable. Other comments involving the proposed tests for transmissibility included need for a provision to judge a virus where the viremia was precisely $10^{3.0}$ per ml. One licensee suggested a less specific interval for blood collection. Another licensee wanted to increase the period needed to ascertain the viremia. Because of the potential inadequacy of the viremia studies to adequately evaluate all vaccine viruses, the Agency has determined that this method should not be specified. The need remains for assurance that vaccine virus will not be transmitted from vaccinated sheep and cause disease in susceptible sheep. Therefore, a general statement has been added to 9 CFR 113.138(b) to require demonstration of safety from transmission and reversion to virulence in a test acceptable to Veterinary Services. This will allow for acceptance of data appropriate to the specific vaccine virus under consideration.

Two suggestions were made to disregard or lower the temperature response as a measure of bluetongue infection in 9 CFR 113.138(c)(4) for evaluation of Bluetongue Vaccine. Another strongly concurred with this inclusion. Temperature response of at least 3° F is is considered to be a consistent finding in bluetongue infection. Therefore, this measurement was retained.

One licensee suggested that the challenge virus prescribed in 9 CFR 113.138(c)(4) be standardized at 10^5 egg lethal doses or greater and that the postchallenge observation period be extended from 14 to 21 days. The effectiveness of a challenge virus in the host animal is not related to the lethality in chicken embryos. Maximum effect from such challenges can be seen in less than 14 days. Therefore, these suggestions were not adopted.

One licensee suggested extending the perchallenge period specified in 9 CFR 113.138(c)(4) from 21 to 28 days to 28 to 35 days. No evidence has been presented to indicate that immunization of susceptible sheep would require more than 21 days. Therefore this suggestion was not adopted.

One licensee suggested deleting the required serum neutralization response in 9 CFR 113.138(c)(4)(ii) as measure of immunization. This suggestion was based on the belief that certain effective vaccines may not produce neutralizing antibodies in vaccinated animals. No experimental or field evidence has been reported to support this belief. Therefore, this suggestion was not adopted.

One licensee recommended against licensure of live virus vaccines for bluetongue because of the possibility of viral recombination which would result in the appearance of new serotypes. These new serotypes would result in increased incidence of disease and attendant losses. At present, five serotypes of bluetongue virus are known to exist in the United States. The proposed revision does not suggest that multivalent bluetongue vaccines or that heterologous serotype bluetongue vaccines will be approved. No increased risk of recombinant serotypes will occur as a result of new modified monovalent homologous vaccine serotypes. Therefore, this recommendation was not adopted.

Two licensees suggested that the range of virus titer used in the serum neutralization tests in 9 CFR 113.138(c)(1) for Bluetongue Vaccine and 113.143(b)(2) for Encephalomyelitis Vaccine, Venezuelan, should be increased. The Agency agrees that the range should be increased. Newer test methods have been developed which can ensure accurate results outside the proposed parameters. Therefore, each of the values was changed to "60 to 300 $TCID_{50}$."

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Accordingly, 9 CFR Part 113 is amended as follows:

1. The authority citation for Part 113 continues to read as follows:

Authority: 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.65 is amended by revising paragraphs (a)(2), (b) and by adding paragraph (c) to read as follows:

§ 113.65 Brucella Abortus Vaccine.

(a) * * *

(2) Two final container vials of completed product shall be tested by inoculating one tube of Dextrose Andrades broth with gas tube and one tube of thioglycollate broth from each vial. The inoculated media shall be incubated at 35 to 37 °C for 96 hours. If growth not typical of *Brucella abortus* organisms is evident, the serial or subserial is unsatisfactory.

* * * * *

(b) *Bacterial count requirements for reduced dose vaccine.* Each serial and each subserial shall be tested for potency.

(1) Two final container vials of completed product shall be tested for the number of viable organisms per dose of rehydrated vaccine. A bacterial count per vial shall be made on tryptose agar plates from suitable dilutions using 1 percent peptone as a diluent. The inoculated media shall be incubated at 35 to 37 °C for 96 hours.

(2) If the average count of the two final container samples of freshly prepared vaccine contains less than 3.0 or more than 10.0 billion organisms per dose, the serial or subserial is unsatisfactory.

(3) If the average count on the initial test is less than the minimum or greater than the maximum required in paragraph (b)(2) of this section, the serial or subserial may be retested one time using four additional final container vials. The average count of the retest is determined. If the average count of the four vials retested is less than the required minimum or greater than the required maximum, the serial or subserial is unsatisfactory. If the average count of the four vials retested is within the required limits described in paragraph (b)(2) of this section, the following shall apply:

(i) If the average count obtained in the initial test is less than one-third or more than three times the average count obtained on the retest, the average count of the initial test shall be considered the result of test system error and the serial or subserial is satisfactory.

(ii) If the average count obtained in the initial test is one-third or more than the average retest count or three times or less than the average retest count, a new average count shall be determined from the counts of all six vials. If the new average is less than the minimum or greater than the maximum required in paragraph (b)(2) of this section, the serial or subserial is unsatisfactory.

(4) If tested at any time within the expiration period, each dose of rehydrated vaccine must contain at least 3.0 billion viable organisms per dose.

(c) *Bacterial count requirements for standard vaccine.* Each serial and subserial shall be tested for potency.

(1) Two final container samples shall be tested for the number of viable organisms per milliliter of rehydrated vaccine. One bacterial count per vial shall be made on tryptose agar plates from suitable dilutions using 1 percent peptone as a diluent. The inoculated media shall be incubated at 35 to 37 °C for 96 hours.

(2) If the average count of the two final container samples of freshly prepared vaccine does not contain at least 10 billion viable organisms per milliliter, the serial or subserial is unsatisfactory.

(3) If the initial bacterial count is less than 10 billion organisms per milliliter, the serial or subserial may be retested one time using four samples. If the average count of the four vials retested is less than the required minimum, the serial or subserial is unsatisfactory.

(4) If tested at any time within the expiration period, each milliliter of rehydrated vaccine does not contain at least 5 billion viable organisms per milliliter, the serial or subserial is unsatisfactory.

3. Section 113.66 is revised to read:

§ 113.66 Anthrax Spore Vaccine—Nonencapsulated.

Anthrax Spore Vaccine—Nonencapsulated shall be a live spore suspension prepared from nonencapsulated variants of *Bacillus anthracis*. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.64 and the requirements in this section.

(b) Each lot of Master Seed shall be tested for immunogenicity as follows:

(1) Forty-two susceptible guinea pigs from the same source each weighing 400 to 500 grams, shall be used as test animals (30 vaccinates and 12 controls).

(2) An arithmetic mean spore count of vaccine produced from the highest passage of the Master Seed shall be established before the immunogenicity test is conducted. The guinea pigs used as vaccinates shall be injected as recommended on the label with a predetermined number of vaccine spores. To confirm the dosage, five replicate spore counts shall be conducted on a sample of the vaccine dilution used.

(3) Fourteen to fifteen days postvaccination the vaccinates and controls shall each be challenged with not less than 4,500 guinea pig LD_{50} of a virulent suspension of *Bacillus anthracis* furnished or approved by Veterinary Services and observed for 10 days.

(4) If at least 10 of the 12 controls do not die from *Bacillus anthracis* within the 10-day postchallenge observation period the test is invalid and may be repeated.

(5) If at least 27 of 30 of the vaccinates do not survive the 10-day postchallenge observation period, the Master Seed is unsatisfactory.

(6) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. The vaccinates and controls must meet the criteria prescribed in paragraphs (b)(4) and (b)(5) of this section.

(7) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test Requirements for Release.* Each serial and subserial shall meet the applicable general requirements prescribed in 9 CFR 113.64 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* Samples of completed product from each serial or first subserial shall be tested for safety in sheep or goats by the methods described in 9 CFR 113.45(a).

(2) *Spore Count Requirements.* Final container samples of completed product shall be tested for spore count. Samples shall be diluted in tenfold steps. Each dilution expected to yield 30 to 300 colonies per plate shall be plated in triplicate on tryptose agar, inverted, and incubated at 35 to 70° C for 24 hours to 28 hours. Each plate having uniformly distributed colonies shall be counted and an average count determined. To be eligible for release, each serial and each subserial shall have a spore count sufficiently greater than that of the vaccine used in the immunogenicity test to assure that when tested at any time within the expiration period, each serial and subserial shall have a spore count of at least twice that used in the immunogenicity test but not less than 2,000,000 spores per dose.

4. Section 113.67 is revised to read:

§ 113.67 Erysipelothrix Rhusiopathiae Vaccine.

Erysipelothrix Rhusiopathiae Vaccine shall be prepared as a desiccated live culture of an avirulent or modified strain of *Erysipelothrix rhusiopathiae.* Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production.

(a) The Master Seed shall meet the applicable requirements prescribed in § 113.64 and the requirements in this section.

(b) Each lot of Master Seed used for vaccine production shall be tested for immunogenicity. The selected bacterial count from the lot of Master Seed shall be established as follows:

(1) Thirty *Erysipelothrix rhusiopathiae* susceptible swine shall be used as test animals (20 vaccinates and 10 controls) for each route of administration recommended on the label.

(2) An arithmetic mean count of the colony forming units from vaccine produced from the highest passage of the Master Seed shall be established before the immunogenicity test is conducted. The 20 swine to be used as vaccinates shall be injected as recommened on the label with a predetermined quantity of vaccine bacteria. The 10 control swine shall be held separately from the vaccinates. To confirm the dosage calculation, an arithmetic mean count shall be established by conducting five replicate titrations on a sample of the bacterial vaccine dilution used. Only plates containing between 30 and 300 colonies shall be considered in a valid test.

(3) The vaccinates and controls shall be examined and their average body temperature determined prior to challenge. Fourteen to twenty-one days postvaccination, the vaccinates and controls shall be challenged with a virulent *Erysipelothrix rhusiopathiae* culture and observed for 7 days. The challenge culture and instructions for preparation and use shall be obtained from Veterinary Services.

(4) A satisfactory challenge shall be evidenced in the controls by a high body temperature or clinical signs including, but not limited to acute illness with hyperemia of the abdomen and ears, possibly terminating in sudden death; moribundity, with or without metastatic skin lesions; depression with anorexia, stiffness, and/or joint involvement; or any combination of these symptoms and lesions.

(5) If at least 80 percent of the controls do not show characteristic signs during the observation period including, but not limited to a body temperature of 105.6 °F or higher on at least 2 consecutive days, the test shall be considered inconclusive: *Provided,* That control pigs which meet the criteria requirements for susceptibility except for high body temperature shall be considered susceptible if sacrificed and organisms identified as *Erysipelothrix rhusiopathiae* can be isolated from the blood, spleen, or other organs.

(6) To demonstrate immunity after challenge, the vaccinates shall remain free of clinical signs and the body temperature shall not exceed 104.6 °F on 2 or more consecutive days. If at least 90 percent of the vaccinates do not remain free from clinical signs and high body temperature throughout the observation period, the Master Seed is unsatisfactory.

(7) The Master Seed shall be retested for immunogenicity in 3 years. Only five vaccinates and five controls need to be used in the retest: *Provided,* That at least four of five vaccinates and four of the five controls shall meet the criteria prescribed in paragraphs (b)(5) and (b)(6) of this section.

(8) An Outline of Production change shall be made before authority for use of a new Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable requirements in § 113.64 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* Samples of completed product from each serial or first subserial shall be tested for safety in young adult mice as prescribed in § 113.33(b) and in swine as prescribed in § 113.44.

(2) *Bacterial count requirements.* Final container samples of completed product from each serial and each subserial shall be tested for bacterial count using the method used in paragraph (b)(2) of this section. Two replicate titrations shall be conducted on each sample. To be eligible for release, each serial and subserial shall have a bacterial count sufficiently greater than that of the vaccine used in the immunogenicity test to assure that, when tested at any time within the expiration period, each serial and subserial shall have a bacterial count two times greater than that used in such immunogenicity test.

5. Section 113.104 is amended by revising paragraph (c) to read as follows:

§ 113.104 Erysipelothrix Rhusiopthiae Bacterin.

* * * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency using the mouse protection test provided in this paragraph. A mouse dose shall be 1/10 of the least dose recommended on the label for swine. Such swine dose shall not be less than 1 ml.

(1) The ability of the bacterin being tested (Unknown) to protect mice shall be compared with a Standard Reference Bacterin (Standard) which is either

supplied by or acceptable to Veterinary Services.

(2) At least three threefold dilutions shall be made with the Standard and the same threefold dilutions shall be made for each Unknown. Dilutions shall be made with physiological saline solution.

(3) For each dilution of the Standard and each dilution of an Unknown, a group of at least 20 mice, each weighing 16 to 22 grams, shall be used. Each mouse in each group shall be injected subcutaneously with one mouse dose of the appropriate dilution.

(4) Each of 20 injected mice from each group shall be challenged subcutaneously 14 to 21 days after being injected. A dose containing at least 100 mouse LD_{50} of a suitable culture of *Erysipelothrix rhusiopathiae* shall be used. All survivors in each group of mice shall be recorded 10 days postchallenge.

(5) Test for valid assay: At least two dilutions of the Standard shall protect more than 0 percent and two dilutions shall protect less than 100 percent of the mice injected. The lowest dilution of the Standard shall protect more than 50 percent of the mice. The highest dilution of the Standard shall protect less than 50 percent of the mice.

(6) The relative potency (RP) of the Unknown is determined by comparing the 50 percent endpoint dilution (highest bacterin dilution protecting 50 percent of the mice) of the Unknown with that of the standard by the following formula:

$$RP = \frac{\text{Reciprocal of 50 percent endpoint dilution of Unknown}}{\text{Reciprocal of 50 percent endpoint dilution of Standard}}$$

(7) If the RP of the Unknown is less than 0.6, the serial being tested is unsatisfactory.

(8) If the 50 percent endpoint of an Unknown in a valid test cannot be calculated because the lowest dilution does not exceed 50 percent protection, that serial may be retested in a manner identical to the initial test: *Provided*, That, if the Unknown is not retested or if the protection provided by the lowest dilution of the Standard exceeds the protection provided by the lowest dilution of the Unknown by six mice or more; or, if the total number of mice protected by the Standard exceeds the total number of mice protected by the Unknown by eight mice or more, the serial is unsatisfactory.

(9) If the 50 percent endpoint of an Unknown in a valid test cannot be calculated because the highest dilution exceeds 50 percent protection, the Unknown is satisfactory without additional testing.

(10) If the RP is less than 0.6, the serial may be retested by conducting two independent replicate tests in a manner identical to the initial test. The average of the RP values obtained in the retests shall be determined. If the average RP is less than 0.6, the serial is unsatisfactory without further testing. If the average RP obtained in the retests is equal to or greater than 0.6, the following shall apply:

(i) If the RP obtained in the original test is one-third or less than the average RP obtained in the retests, the initial RP may be considered a result of test system error and the serial is satisfactory for potency.

(ii) If the RP value obtained in the original test is more than one-third the average RP obtained in the retests, a new average shall be determined using the RP values obtained in all tests. If the new average is less than 0.6, the serial is unsatisfactory.

6. Section 113.123 is amended by revising the introductory text and paragraph (a) to read:

§ 113.123 Feline Panleukopenia Vaccine, Killed Virus.

Feline Panleukopenia Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed. The Master Seed shall meet the applicable requirements prescribed in § 113.120. Each serial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements for safety and potency provided in this section.

(a) *Safety test.* The vaccinates used in the potency test in paragraph (b) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided*, That, if not repeated, the serial is unsatisfactory.

* * * * *

7. Section 113.138 is revised to read:

§ 113.138 Bluetongue Vaccine.

Bluetongue Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing the seeds for vaccine production. All serials of vaccine shall be prepared from the first through the tenth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) Each lot of Master Seed shall be tested for transmissibility and reversion to virulence in sheep using a method acceptable to Veterinary Services. If reversion to virulence is demonstrated, the Master Seed is unsatisfactory.

(c) Each lot of Master Seed used for vaccine production shall be tested for immunogenicity. The selected virus dose from the lot of Master Seed shall be established as follows:

(1) Twenty-five lambs, susceptible to the bluetongue virus serotype contained in the vaccine, shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serums tested. A lamb shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution in a constant virus varying serum neutralization test with 60 to 300 $TCID_{50}$ of bluetongue virus or another method acceptable to Veterinary Services.

(2) A geometric mean titer of the vaccine produced from the highest passage from the Master Seed shall be established before the immunogenicity test is conducted. The 20 lambs to be used as vaccinates shall be administered a predetermined quantity of vaccine virus by the method recommended on the label. To confirm the virus dosage administered, five replicate virus titrations shall be conducted on a sample of the vaccine used.

(3) At least once during the period of 14 to 18 days postvaccination, individual serum samples shall be collected from each of the vaccinates and tested for virus neutralizing antibody using the 60 to 300 $TCID_{50}$ of bluetongue virus.

(4) Twenty-one to twenty-eight days postvaccination the vaccinates and the controls shall each be challenged with virulent bluetongue virus and observed for 14 days. The rectal temperature of each animal shall be taken and recorded for 17 consecutive days beginning 3 days prechallenge. The presence or absence of lesions or other clinical signs of bluetongue noted and recorded on each of 14 consecutive days postchallenge.

(i) If at least four of the five controls do not show clinical signs of bluetongue and a temperature rise of 3° F or higher over the prechallenge mean temperature, the test shall be considered inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates tested as prescribed in paragraph (c)(3)

of this section do not have bluetongue neutralizing antibody titers of 1:4 final serum dilution or higher, or if more than one of the vaccinates shows a temperature rise of 3 °F or higher than its prechallenge mean temperature for 2 or more days, or if more than one of the vaccinates exhibits clinical signs of bluetongue, the Master Seed is unsatisfactory.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(6) The Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five vaccinates and five controls need be used in the retest: *Provided,* That five of five vaccinates and at least four of the five controls shall meet the criteria prescribed in paragraphs (c)(4) of this section.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* The mouse safety test prescribed in 113.33(a) and the lamb safety test prescribed in 113.45 shall be conducted.

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (c) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test.

8. Section 113.143 is revised to read:

§ 113.143 Encephalomyelitis Vaccine, Venezuelan.

Encephalomyelitis Vaccine, Venezuelan, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 except (b), and the requirements prescribed in this section.

(b) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose from the lot of Master Seed shall be established as follows:

(1) Tests conducted by the Department have established that horses having Venezuelan equine encephalomyelitis antibody titers of 1:20 by the hemagglutination-inhibition (HI) method or 1:40 by the serum neutralization (SN) method were immune to challenge with virulent virus. The immunogenicity test is based on the demonstration of a serological response of at least that magnitude following vaccination of serologically negative horses.

(2) At least 22 horses (20 vaccinates and 2 controls), susceptible to Venezuelan equine encephalomyelitis, shall be used as test animals. Blood samples shall be taken from each horse and the serums individually tested for neutralizing antibody. Horses shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution in a constant virus-varying serum neutralization test using 60 to 300 $TCID_{50}$ of Venezuelan equine encephalomyelitis virus.

(3) A geometric mean titer of the vaccine produced from the highest passage of the Master Seed shall be established using a method acceptable to Veterinary Services before the immunogenicity test is conducted. The 20 horses used as vaccinates shall be injected with a predetermined quantity of vaccine virus by the method to be recommended on the label. To confirm the dosage administered, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(4) Twenty-one to twenty-eight days postvaccination, blood samples shall be drawn from all test animals. For a valid test, the controls shall remain seronegative at 1:2 final serum dilution. In a valid test, if at least 19 of 20 vaccinates do not have antibody titers of at least 1:20 in a haemagglutination-inhibition test or at least 1:40 in a serum neutralization test, the Master Seed is unsatisfactory.

(5) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot is discontinued. Only five vaccinates and two controls need to be used in the retest: *Provided,* That five of five vaccinates and the two controls shall meet the criteria in paragraph (b)(4) of this section.

(6) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and special requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* The mouse safety test prescribed in § 113.33(b) shall be conducted.

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the method in paragraph (b)(3) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of the vaccine used in the immunogenicity test prescribed in paragraph (b) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in the immunogenicity test, but not less than $10^{2.5}$ $TCID_{50}$ per dose.

9. Section 113.147 is amended by revising paragraph (d)(2) to read as follows:

§ 113.147 Rabies Vaccine.

* * * * *

(d) * * *

(2) *Virus titrations.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(1) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently higher than the titer of the vaccine virus used in paragraph (b) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer equal to or greater than that used in the immunogenicity test.

Done at Washington, D.C., this 31st day of May 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–13577 Filed 6–5–85; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 82N-0293]

New Drug and Antibiotic Regulations; OMB Approval of Requirements; Clarifications

Correction

In FR Doc. 85-12358 beginning on page 21237 in the issue of Thursday, May 23, 1985, make the following correction:

§ 314.430 [Corrected]

On page 21238, third column, in § 314.430, the paragraph designated as "(l)" should have been designated as "(e)".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS LONG BEACH (CGN 9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect on this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS LONG BEACH (CGN 9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a) pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on the technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority for Part 706 continues to read in part as follows:

Authority: Executive Order 11964 and 33 U.S.C. 1605 * * *.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull Annex I, sec. 2(a)(ii)	Aft masthead light less than 4.5 meters above forward masthead light Annex I, sec. 2(a) (ii)	Masthead lights not over all other lights and obstructions Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim, Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light, Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS LONG BEACH	CGN 9						X	X	13.5

Dated: May 10, 1985.

James P. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-13501 Filed 6-5-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS NICHOLSON (DD 982) and USS COMTE DE GRASSE (DD 974) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS NICHOLSON (DD 982) and USS COMTE DE GRASSE (DD 974) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special functions as naval destroyers. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority for Part 706 continues to read in part as follows:

Authority: Executive Order 11964 and 33 U.S.C. 1605 * * *.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights when towing less than required by Annex I, sec 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS NICHOLSON	DD 962						X	X	46.4
USS COMTE DE GRASSE	DD 974						X	X	46.4

Dated: May 10, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85–13502 Filed 6–5–85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 719

Regulations Supplementing the Manual for Courts-Martial

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the regulations supplementing the Manual for Courts-Martial in order to reflect changes to Chapter I of the Manual of the Judge Advocate General.

EFFECTIVE DATE: July 17, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander P. M. Jones, JAGC, U.S. Navy, Military Justice Division, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, Virginia 22332, Telephone Number: (202) 325–9890.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 719, which is derived from Chapter I of the Manual of the Judge Advocate General, to reflect changes in that regulation. The amendment relates to internal Naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR Parts 296 and 701. It has also been determined that his final rule is not a "major rule" within the criteria specified in Executive Order 12498, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 719

Military law, Military personnel.

PART 719—[AMENDED]

Accordingly, 32 CFR Part 719 is amended as follows:

1. The authority citation for Part 719 continues to read as follows:

Authority: 3 U.S.C. 301; 5 U.S.C. 301; 10 U.S.C. 815; 5031, and 5148; 32 CFR 700.206 and 700.1202.

2. Section 719.112 is amended by revising the italicized heading and the first sentence of paragraph (a), the italicized heading and the first and second sentences of paragraph (b), the italicized heading and the first sentence of paragraph (c), the italicized heading and the second sentence of paragraph (d), paragraph (f), and the italicized

heading and the first and second sentences of paragraph (g), to read as follows:

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government or the defense in the investigation and/or the trial of the principal offender. * * *

(b) *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government or the defense shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, i.e., any officer exercising general court-martial jurisdiction. Such recommendation will be forwarded by the trial counsel or defense counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have yet been preferred. * * *

(c) *Civilian witnesses.* Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination, then the approval of the Attorney General of the United States or his designate must be obtained prior to the execution or issuance of an order to testify to such civilian witness. * * *

(d) * * * See section 0116f of the Manual of the Judge Advocate General regarding relations between the Departments of Defense and Justice.

* * *

* * * * *

(f) *Post-testimony procedure.* After a witness immunized in accordance with paragraphs (c) and (d) of this section has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530 via the Judge Advocate General (Code 20).

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(g) *Review.* Under some circumstances, the officer granting immunity to a witness may be disqualified from taking reviewing action on the record of the trial before which the witness granted immunity testified. A successor in command not participating in the grant of immunity would not be so disqualified under those circumstances.

* * * * *

3. Section 719.115 is amended by revising paragraph (a)(1), the first sentence of paragraph (a)(3)(ii), paragraph (a)(4)(i), paragraph (a)(4)(iv), the italicized heading, and the introductory text of paragraph (a)(5), paragraph (a)(6), paragraph (b)(1), and the heading and the first sentence of paragraph (b)(2), to read as follows:

§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) *Release of information*—(1) *General.* There are valid reasons for making information available to the public concerning the administration of military justice. The task of striking a fair balance among the protection of individuals accused of offenses, improper or unwarranted publicity pertaining to their cases, public understanding of the problems of controlling misconduct in the military service, and the workings of military justice, requires the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably be expected to have such an effect.

* * * * *

(3) * * *

(ii) Except in unusual circumstances, information which is subject to release under the regulation should be released by the cognizant public affairs officer; requests for information received from representatives of news media should be referred to the public affairs office for action. * * *

(4) * * *

(i) The accused's name, grade, age, unit, regularly assigned duties, duty station, and sex.

* * * * *

(iv) The identity of the apprehending and investigative agency, and the identity of accused's counsel, if any.

* * * * *

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released, except as provided in paragraph (a)(6) of this section.

* * * * *

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under paragraph (a)(5) of this section or the nonrelease of information permitted under paragraph (a)(4) of this section. Attention should be given to the Secretary of the Navy instructions implementing the Freedom of Information Act (5720.42 series) and the Privacy Act (5211.5C series). Consultation with the command judge advocate, if one is assigned, or with the cognizant Naval Legal Service Office concerning interpretation and application of these instructions is encouraged.

(b) *Spectators.* (1) The sessions of courts-martial shall be open to the public, which includes members of both the military and civilian communities. In order to maintain the dignity and decorum of the proceedings or for other

good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, exclude specific persons from the courtroom, and close a session. Video and audio recording and taking of photographs, except for the purpose of preparing the record of trial, in the courtroom during the proceedings and radio or television broadcasting of proceedings from the courtroom shall not be permitted. The military judge may, as a matter of discretion, permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed from the courtroom or by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

(2) *At pretrial hearings.* In any preliminary hearing, including a hearing conducted pursuant to 10 U.S.C. 832 or a court of inquiry or investigation conducted pursuant to the Manual of the Judge Advocate General, the presiding officer, upon motion of the Government or the defense or upon his motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded thereform. * * *

4. Section 719.138 is amended by revising paragraph (a), the heading and first and second sentence of paragraph (b), paragraph (d), the italicized heading and the introductory paragraph of paragraph (i)(1), paragraph (i)(2), paragraph (j), the heading of paragraph (k) and paragraph (k)(1), and the first sentence of paragraph (k)(3).

§ 719.138 Fees of civilian witnesses.

(a) *Method of Payment.* The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed public voucher for such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial;

(2) Summary court officer;

(3) Counsel for the court in a court of inquiry;

(4) Recorder or junior member of a board to redress injuries to property, or

(5) Military or civil officer before whom a deposition is taken. The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 6), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

(b) *Obtaining money for advance tender or payment.* Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

* * * * *

(d) *Certificate of person before whom deposition is taken.* The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned.

* * * * *

(i) *Rates for civilian witnesses prescribed by law—* (1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a Naval tribunal at a specified place or to appear at a place where his deposition is to be taken for use before a court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. 1821. Witness and subsistence fees are not prorated. Instead any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this paragraph shall be construed as authorizing the payment of attendance fees to witnesses for:

* * * * *

(2) *Civilian witnesses in Government employ.* When summoned as a witness, a civilian in the employ of the Government shall be paid as authorized by Joint Travel Regulations.

(j) *Supplemental construction of section.* Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested or whose testimony is determined not to meet the standards of relevancy and materiality set forth in accordance with MCM, 1984, R.C.M. 703.

(k) *Expert witnesses.* (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the nearest officer exercising general court-martial jurisdiction having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Naval Base, Pearl Harbor. See paragraph (1) of this section for fees payable to foreign nationals.

* * * * *

(3) An expert witness employed in strict accordance with MCM, 1984, R.C.M. 703(d), may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). * * *

* * * * *

5. Section 719.142 is revised to read as follows:

§ 719.142 Suspension of counsel.

(a) *Report of Allegations of Misconduct or Disability.* When information comes to the attention of a member of a court-martial, a military judge, trial or defense counsel, staff judge advocate, member of the Navy-Marine Corps Court of Military Review or other directly interested or concerned party that a judge advocate or civilian

who is acting or is about to act as counsel before a proceeding conducted under the UCMJ or MCM is or has been unable to discharge properly all the duties of his or her position by reason of mental or physical disability or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a judge advocate or attorney, such information should be reported to the commanding officer of that judge advocate or, in the case of civilian counsel, to the officer exercising general court-martial jurisdiction over the command convening the proceedings or to the Judge Advocate General.

(b) *Form of Report.* The report shall:

(1) Be in writing, under oath or affirmation, and made and signed by the individual reporting the information.

(2) State that the individual reporting the information has personal knowledge or belief or has otherwise received reliable information indicating that:

(i) The counsel is, or has been, unable to discharge properly all the duties of his or her office by reason of mental or physical disability; or

(ii) The counsel is or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession; or

(iii) The counsel is unworthy or unqualified to perform his or her duties;

(3) Set forth the grounds of the allegation together with all relevant facts; and

(4) Be forwarded to the appropriate authority as set forth in paragraph (a).

(c) *Consideration of the Report*—(1) *Action by the Commanding Officer of a judge advocate.* Upon receipt of the report, the commanding officer:

(i) Shall dismiss any report relating to the performance of a judge advocate more properly appealed under law or any report that is frivolous, unfounded, or vague and return it to the reporting individual;

(ii) May make further inquiry into the report at his or her discretion to determine the merits of the report. The commanding officer may appoint an officer to investigate informally the allegations of the report to determine whether further action is warranted. Any officer so appointed should be a judge advocate senior in rank to the judge advocate being investigated;

(iii) May take appropriate action to address and dispose of the matter being mindful of such measures as warning, counseling, caution, instruction, proceedings in contempt, therapy, and other punitive or administrative action; or

(iv) Shall, if the commanding officer is of the opinion that evidence of disability or professional or personal misconduct exists, and that remedial measures short of suspension or decertification are not appropriate or will not be effective, forward the original complaint, a written report of the inquiry or investigation, all other relevant information, and his or her comments and recommendations to the officer in the chain of command exercising general court-martial authority.

(2) *Action by Officer Exercising General Court-Martial Authority.* (i) Upon receipt of a report of an allegation of misconduct or disability of a counsel, the officer exercising general court-martial convening authority:

(A) May take the action authorized by subsections (c)(1)(i), (ii) or (iii); or

(B) Shall, if he or she considers that evidence of disability or professional or personal misconduct exists and that other remedial measures short of suspension or decertification are not appropriate or will not be effective, appoint a board of officers to investigate the matter and to report its findings and its recommendations. This board shall be comprised of at least three officers, each an Article 27(b), Uniform Code of Military Justice, certified judge advocate. If practicable, each of the officers of the board should be senior to the judge advocate under investigation. If the counsel is a member of the Marine Corps, a majority of the members of the board should be Marine Corps judge advocates. The senior officer of the board shall cause notice to be given to the counsel, judge advocate or civilian (respondent), informing him or her of the misconduct or other disqualification alleged and affording him or her the opportunity to appear before the board for a hearing. The respondent shall be permitted at least ten (10) days' notice prior to the hearing. Failure to appear on a set date after notice shall constitute waiver of appearance, absent good cause shown. The respondent shall be generally afforded the rights of a party as set out in section 0304 of this Manual, except that, in the event the judge advocate respondent wishes to have military counsel appointed, he or she shall not have the right to select or identify a particular military counsel. A civilian respondent may not be represented by military counsel, but may be represented by civilian counsel at no expense to the Government. Upon ascertaining the relevant facts after notice and hearing, a written report of the findings and recommendations of the board shall be made to the officer who convened the board. In all cases, a written copy of the board's findings and recommendations shall be provided to the respondent. The respondent shall be given an opportunity to comment on the report in writing.

(ii) Upon receipt of the report of the board of investigation, the officer exercising general court-martial authority shall:

(A) Return the report to the board for further investigation, if the investigation is determined to be incomplete; or

(B) Forward the report of the board of investigation to the Judge Advocate General together with comments and recommendations concerning suspension of the counsel involved.

(3) *Action by the Judge Advocate General.* (i) Upon receipt of a report of an allegation of misconduct or disability of a counsel, the Judge Advocate General:

(A) May take the action authorized by subsections (c)(1)(i), (ii), or (iii);

(B) May appoint a board of officers for investigation and hearing in accordance with subsections (c)(2)(i)(B) or

(C) May request the officer exercising general court-martial jurisdiction over the command of the respondent (if judge advocate counsel) or over the proceedings (if civilian counsel) to take the matter for investigation and hearing in accordance with subsection (c)(2)(i)(B).

(ii) Upon receipt of the report of the investigating board, the Judge Advocate General:

(A) May determine whether the respondent is to be suspended or decertified and, if so, whether for a stated term or indefinitely;

(B) May determine that the findings of the board do not warrant further action; or

(C) May return the report to the sending officer with appropriate instructions for further inquiry or action. The Judge Advocate General may, sua sponte, or upon petition of the respondent, modify or revoke any prior order of suspension or dismissal of a report. Further, if the Judge Advocate General suspends counsel, the Judge Advocates General of the other armed forces will be notified.

(d) *Grounds justifying suspension of counsel or suspension or decertification of a Judge Advocate.* (1) Suspension or decertification is to be employed only after it has been established that a counsel has been unable to discharge properly all the duties of his or her office by reason of mental or physical disability or has been engaged in professional or personal misconduct of

such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a counsel Action to suspend or decertify should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has initiated an aggressive, zealous or novel defense, or the apparent misconduct stems from inexperience or lack of instruction.

(2) Specific grounds for suspension or decertification include, but are not limited to, the following:

(i) Demonstrated incompetence while acting as counsel before, during or after a court-martial.

(ii) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics.

(iii) Fabricating papers or other evidence.

(iv) Tampering with a witness.

(v) Abusive conduct toward the court-martial, the Navy-Marine Corps Court of Military Review, the military judge, or opposing counsel.

(vi) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel in the Manual for Courts-Martial.

(vii) Conviction of an offense involving moral turpitude or conviction for violation of article 48, UCMJ.

(viii) Disbarment by a State Bar, Federal Court, or the United States Court of Military Appeals.

(ix) Suspension as counsel by the Judge Advocate General of the Navy, Army, or Air Force or the General Counsel of the Department of Transportation.

(x) Flagrant or repeated violations of the *Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial* as outlined in Appendix A–1-p(1) of the Manual of the Judge Advocate General.

(xi) Flagrant or repeated violations of the provisions of section 0134 of this Manual of the Judge Advocate General dealing with the *Release of Information Pertaining to Accused Persons; Spectators at Judicial Sessions.*

(xii) Failure to meet the rules set forth in the ABA Code of Professional Responsibility and the ABA Standards on *Fair Trial and Free Press* and *The Prosecution Function and the Defense Function.* In view of the unique mission and personal requirements of the military, many of the rules and principles of the ABA Code or Standards are not applicable to the military lawyer. Accordingly, the rules are to be used as a guide only, and a failure to comply with the specific wording of a rule is not to be construed as a violation of the rule where common sense would indicate to a reasonable person that there is a distinction between the civilian context, which the codes were drafted to embrace, and the unique concerns of the military setting, where the codes serve as a general guide.

6. Section 719.143 is revised to read as follows:

§ 719.143 Petition for new trial under 10 U.S.C. 873.

(a) *Statutory provisions.* 10 U.S.C. 873, provides, "At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, that Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

(b) *Submission Procedures:* At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court-martial. The petition for new trial may be submitted by the accused personally, or by accused's counsel, regardless of whether the accused has been separated from the service. A petition may not be submitted after the death of the accused.

(c) *Contents of petitions:* The form and contents of petitions for new trial are specified in MCM, 1984, R.C.M. 1210(c). The petition for a new trial shall be written and shall be signed under oath or affirmation by the accused, by a person possessing the power of attorney of the accused for that purpose, or by a person with the authorization of an appropriate court to sign the petition as the representative of the accused. The petition shall contain the following information, or an explanation why such matters are not included:

(1) The name, service number, and current address of the accused;

(2) The date and location of the trial;

(3) The type of court-martial and the title or position of the convening authority;

(4) The request for the new trial;

(5) The sentence or a description thereof as approved or affirmed, with any later reduction thereof by clemency or otherwise,

(6) A brief description of any finding or sentence believed to be unjust;

(7) A full statement of the newly discovered evidence or fraud on the court-martial which is relied upon for the remedy sought;

(8) Affidavits pertinent to the matters in subsection (6)i; and

(9) Affidavit of each person whom the accused expects to present as a witness in the event of a new trial. Each affidavit should set forth briefly the relevant facts within the personal knowledge of the witness.

(d) *Who may act on petition.* If the accused's case is pending before a Court of Military Review or the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise, the Judge Advocate shall act on the petition.

(3) *Ground for New Trial.* A new trial may be granted only on grounds of newly discovered evidence or fraud on the court-martial.

(1) A new trial shall not be granted on the grounds of newly discovered evidence unless the petition shows that;

(i) The evidence was discovered after the trial,

(ii) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and

(iii) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

(2) No fraud on the court-martial warrants a new trial unless it had a substantial contributing effect on a finding of guilty or the sentence adjudged.

(f) *Action on the petition.* (1) The authority considering the petition may cause such additional investigation to be made and such additional information to be secured as that authority believes appropriate. Upon written request, and in his discretion, the authority considering the petition may permit oral argument on the matter.

(2) When a petition is considered by the Judge Advocate General, any hearing may be before the Judge Advocate General or before an officer or officers designated by the Judge Advocate General.

(3) If the Judge Advocate General believes meritorious grounds for relief under Article 74, Uniform Code of Military Justice have been established but that a new trial is not appropriate, the Judge Advocate General may act under article 74, Uniform Code of Military Justice, if authorized, or transmit the petition and related papers

to the Secretary concerned with a recommendation.

(4) The Judge Advocate may also, in cases which have been finally reviewed but have not been reviewed by a Court of Military Review, act under article 69, Uniform Code of Military Justice.

7. Section 719.144 is revised to read as follows:

§ 719.144 Application for relief under 10 U.S.C. 869, is cases which have been finally reviewed.

(a) *Statutory provisions.* 10 U.S.C. 869 provides in pertinent part, "The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time."

(b) *Time Limitations.* In order to be considered by the Judge Advocate General, an application for relief must be placed in military channels if the applicant is on active duty, or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority. An application not filed in compliance with these time limits may be considered if the Judge Advocate General determines, in his or her sole discretion, that "good cause" for failure to file within the time limits has been established by the applicant.

(c) *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that reviewed the case under 10 U.S.C. 864(a) or (b). If the original record of trail is held by the command that reviewed the case under 10 U.S.C. 864(a) or (b), it shall be forwarded as a enclosure to the endorsement. If the original record of trial has been filed in the National Personnel Records Center, the endorsement will include all necessary retrieval data (accession number, box number, and shelf location) obtained from the receipt returned from the National Personnel Records Center to the sending activity. This endorsement shall also include information and specific comment on the grounds for relief asserted in the application, and an opinion on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(d) *Contents of applications.* All applications for relief shall contain:

(a) Full name of the applicant;

(2) Social Security number and branch of service, if any;

(3) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;

(4) Address at time the application is forwarded;

(5) Date of trial;

(6) Place of trial;

(7) Command title of the organization at which the court-martial was convened (convening authority);

(8) Command title of the officer exercising review authority in accordance with 10 U.S.C. 864 over the applicant at the time of trial, if applicable;

(9) Type of court-martial which convicted the applicant, and sentence adjudged;

(10) General grounds for relief which must be one or more of the following:

(i) Newly discovered evidence;

(ii) Fraud on the court;

(iii) Lack of jurisdiction over the accused or the offense;

(iv) Error prejudicial to the substantial rights of the accused:

(v) Appropriateness of the sentence;

(11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);

(12) Any other matter which the applicant desires to submit;

(13) Relief requested; and

(14) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in paragraph (b) of this section, if applicable; and

(15) If the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application. The applicant's copy of the record of trial will *not* be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(e) *Signatures on applications.* Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

8. Section 719.155 is amended by revising paragraphs (b) and (c).

§ 719.155 Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.

* * * * *

(b) *Submission procedures.* Applications for relief will be submitted to the Secretary using the following address: Secretary of the Navy (Judge Advocate General, Code 20), 200 Stovall Street, Alexandria, VA 22332–2400. Except in unusual circumstances, applications will not normally be considered if received within five (5) years of the execution of the punitive discharge or dismissal, or within five (5) years of disapproval of a prior request under 10 U.S.C. 874(b).

(c) *Contents of the application.* All applications shall contain:

(1) Full name of the applicant;

(2) Social Security Number, service number (if different), and branch of service of the applicant;

(3) Present age and date of birth of the applicant;

(4) Present residence of the applicant;

(5) Date and place of the trial, and type of court-martial which resulted in the punitive discharge or dismissal;

(6) Command title of the convening authority of the court-martial which resulted in the punitive discharge or dismissal;

(7) Offense(s) of which the applicant was convicted, and sentence finally approved from the trial which resulted in the punitive discharge or dismissal;

(8) Date the punitive discharge or dismissal was executed;

(9) Applicant's present marital status, and number and ages of dependents, if any;

(10) Applicant's civilian criminal record (arrest(s) with disposition, and conviction(s)), both prior and subsequent to the court-martial which

resulted in the punitive discharge or dismissal;

(11) Applicant's entire court-martial record (offense(s) of which convicted and finally approved sentence(s)), and nonjudicial punishment record (including offense(s) and punishment(s) awarded);

(12) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(13) Applicant's full employment record since the punitive discharge or dismissal was executed;

(14) The specific type and character of administrative discharge requested pursuant to 10 U.S.C. 874(b) (a more favorable administrative discharge than that requested will not be approved);

(15) At least three but not more than six character affidavits, (The character affidavits must be notarized, must indicate the relationship of the affiant to the applicant, and must include the address of the affiant as well as specific reasons why the affiant believes the applicant to be of good character. The affidavits should discuss the applicant's character primarily as reflected in the civilian community subsequent to the punitive discharge or dismissal which is the subject of the application);

(16) Any matters, other than the character affidavits, supporting the considerations described in subparagraph (18) below;

(17) Any other relief sought within the Department of the Navy and outside the Department of the Navy including dates of application and final dispositions;

(18) A statement by the applicant, setting forth the specific considerations which the applicant believes constitute "good cause," so as to warrant the substitution of an administrative form of discharge for the punitive discharge or dismissal previously executed. (In this connection, 10 U.S.C. 874(b) does not provide another regular or extraordinary procedure for the review of a court-martial. Questions of guilt or innocence, or legal issues attendant to the court-martial which resulted in the punitive discharge or dismissal, are neither relevant nor appropriate for consideration under 10 U.S.C. 874(b). As used in the statute, "good cause" was envisioned by Congress to encompass only Secretarial exercise of clemency and ultimate control of sentence uniformity. Accordingly, in determining what constitutes "good cause" under 10 U.S.C. 874(b), the primary Secretarial concern will be with the applicant's record in the civilian community subsequent to his or her punitive separation. Material submitted by the 10 U.S.C. 874(b) applicant should be consistent with the foregoing.)

* * * * *

Dated: May 29, 1985

William F. Roos, Jr.,

Lieutenant, Judge Advocate Generals Corps, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-11386 Filed 6-5-85; 8:45 am]

BILLING CODE 3810-AE-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1903

Security Protective Service

AGENCY: Central Intelligence Agency.

ACTION: Final rule—Correction.

SUMMARY: This document corrects the authority citation for FR Doc 85-11047, which promulgated regulations to protect foreign intelligence facilities within the United States, appearing at page 19154, 6 May 1985, as follows:

Authority: Sec. 401, Intelligence Authorization Act for Fiscal Year 1985 (50 U.S.C. 403o).

FOR FURTHER INFORMATION CONTACT: David Holmes, Office of General Counsel, Centeral Intelligence Agency, (703) 351-5648.

Dated: May 30, 1985.

David Holmes,

Office of General Counsel, Central Intelligence Agency.

[FR Doc. 85-13671 Filed 6-5-85; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-85-07]

Special Local Regulations; International Freedom Festival Fireworks Display, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Fireworks Display. This event will be held on the Detroit River on 01 July 1985. In case of inclement weather, the event will be held on 02 July 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective and terminate on July 1, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC CARY H. LINDSAY, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until April 10, 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Freedom Festival Fireworks Display will be conducted on the Detroit River on 01 July 1985. An unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0907 to read as follows:

§ 100.35-0907 International Freedom Festival Fireworks Display, Detroit River.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:00 p.m. (local time) until 12:00 p.m. on 1 July 1985:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel

traffic, from 8:00 p.m. (local time) until 12:00 p.m. on 01 July 1985:

The area bound on the south by the International Boundary, on the west by 083 degrees 03 minutes West, on east by 083 degrees 02 minutes West, and the north by the U.S. shoreline.

(b) *Special Local Regulations* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:30 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 5:00 p.m. on 01 July 1985, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: COBO HALL, VETERANS MEMORIAL BLDG., and the FORD AUDITORIUM. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the Road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on 01 July 1985 is inclement, the fireworks display and the river closure will be postponed until 8:00 p.m. to 12:00 p.m. on 03 July 1985. If postponed, notice will be given on 01 July 1985 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: May 24, 1985

B K. Schaeffer,

Chief of Staff, Captain, U.S. Coast Guard, Ninth Coast Guard District.

[FR Doc. 85-13559 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD3 85-16]

Regatta; Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the annual Harvard-Yale Regatta. This crew shell race is being sponsored by the Harvard-Yale Regatta Committee of Needham, Massachusetts. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective on June 8, 1985.

FOR FURTHER INFORMATION CONTACT: Lt. D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 25, 1985, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 16314). Interested persons were requested to submit comments, and one comment was received. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Lt. D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual Harvard-Yale Regatta is a crew race event to be held on the Thames River in New London, Connecticut. It is sponsored by the Harvard-Yale Regatta Committee and is well known to the boaters and residents of this area. This event is traditionally held each year on the first or second Saturday in June. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations and thereafter provide the public with full and adequate notice of this annual crew race by publication in the Third District Local Notice to Mariners. Due to the large number of spectator boats present on the river for the purpose of watching this crew race it is anticipated that there will be considerable congestion in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the area prior to, during, and after the races. The crew shells will race upriver again this year. This has helped to reduce congestion at the Penn Central Draw Bridge at the conclusion of the races last year and ensured the safe movement of the spectator fleet down the Thames River after the races. Any races not held will be postponed until the next day. Three races are scheduled, starting with a 2 mile freshman race followed by the junior varsity's 3 mile race and the 4 mile varsity race. The sponsor is providing patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet.

Discussion of Comments

One comment was received from the sponsor mentioning that the spelling of Monocoke Hill in paragraph (c)(6)(i) was incorrect. The spelling has been corrected to read Mamacoke Hill.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area early in the boating season for the duration of the races. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.304 to read as follows:

§ 100.304 Harvard-Yale Regatta, Thames River, New London CT.

(a) *Regulated area.* The Thames River at New London, Connecticut, from the Penn Central Draw Bridge to Bartlett Cove.

(b) *Effective period.* This regulation will be effective from 10.00 a.m. to 1:30 p.m. on June 8, 1985, and thereafter annually on the first or second Saturday in June as published in the Third District Local Notice to Mariners and in a **Federal Register** notice. In case of postponement due to weather, this regulation will be in effect the following day.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(3) No person or vessel may transit through the regulated area during the effective period unless participating in the event, or as authorized by the sponsor or Coast Guard Patrol personnel. The Patrol Commander may open up the regulated area to allow for vessel movement between scheduled races.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel.

(5) The last 1000 feet of the race course near the finish line will be delineated by four (4) temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event.

(6) Spectator craft shall not anchor:

(i) To the west of the race course, between Mamacoke Hill and Bartlett Point Light.

(ii) Within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course

(7) During the effective period all vessels shall proceed at a speed not to exceed six (6) knots in the regulated area.

(8) Spectator vessels shall not follow the crews during the races.

(9) Swimming is prohibited in the vicinity of the race course during the races.

(10) A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating drydocks.

(11) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(12) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated May 24, 1985.

P. A. Welling,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85-13562 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-85-09]

Special Local Regulations; Budweiser Unlimited Hydroplane Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Budweiser Unlimited Hydroplane Regatta to be held on Onondaga Lake. This event will be held on 14, 15 and 16 June 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on June 14, 1985 and terminate on June 16, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC CARY H. LINDSAY, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The appliction to hold this event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for delayed effective date.

Drafting Information

The drafters of this regulation are MSTC CARY H. LINDSAY, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Budweiser Unlimited Hydroplane Regatta will be conducted on Onondaga Lake on 14, 15 and 16 June 1985. This event will have 10 hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Oswego, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0909 to read as follows:

§ 100.35-0909 Budweiser Unlimited Hydroplane Regatta

(a) *Regulated Area.* That portion of Onondaga Lake bounded by a line between Lakeview Point; thence, the end of the northern Liverpool breakwall; thence, the shoreline to Onondaga Outlet Lighted Aid "5" to Onondaga Outlet Lighted Aid "6"; thence, the shoreline to Lakeview Point.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 8:30 A.M. (local time) until 6:30 P.M. on the 14, 15 and 16 June 1985.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event of any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: May 24, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85-13560 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-85-06]

Special Local Regulations; Stroh Thunderfest, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Stroh Thunderfest to be held on the Detroit River. This event will be held on 27, 28, 29 and 30 June 1985. In the event of inclement weather, this event will be held on July 1 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on June 27, 1985 and terminate on July 1, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC CARY H. LINDSAY, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC CARY H. LINDSAY, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Stroh Thunderfest will be conducted on the Detroit River on the 27-29, and 30 June 1985. This event will have an estimated 25 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0906 to read as follows:

§ 100.35-0906 Stroh Thunderfest, Detroit River.

(a) *Regulated Area:* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound on the west by the Belle Isle Bridge and on the east a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 8:00 A.M. (local time) until 12:00 A.M. and from 1:00 P.M. until 5:00 P.M. on the 27, 28, 29 and 30 June 1985.

(2) In addition, two safety zones for race craft will be established. The first will be from the Waterworks Intake Crib Light (LL 1022) eastward to the Detroit Edison Lighted Buoy 1A (LL 1023) then north to the Edison Boat Club. The second safety zone will be within an area bound by a line drawn from the center span of the Belle Isle Bridge to the stacks at the Uniroyal Plant, north to the U.S. shore.

(3) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(4) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(5) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(6) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: May 24, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85-13563 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-85-08]

Special Local Regulations; 4th of July Fireworks Display, Toledo/Maumee River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Toledo 4th of July Fireworks Display to be held on the Maumee River on July 4, 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective and terminate on July 4, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received with sufficient time remaining to publish proposed rules

in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Toldeo 4th of July Fireworks Display will be conducted on the Maumee River on July 4, 1985. An unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Toledo, OH).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0908 to read as follows:

§ 100.35–0908 4th of July Firework Display, Toledo/Maumee River.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 9:00 p.m. (local time) until 11:00 p.m. on July 4, 1985:

That portion of the Maumee River within a 500 foot radius of the fireworks barges located at the City of Toledo Division of Streets, Harbor and Bridges Building Dock.

(2) The following portion of the Maumee River will be closed to all vessel traffic, from 9:00 p.m. (local time) until 11:00 p.m. on July 4, 1985.

That portion of the Maumee River from the Cherry Street Bridge to the Anthony Wayne Bridge.

(b) *Special Local Regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:30 p.m. local or when the fireworks display ends, whichever comes first.

(2) Two 60 foot fireworks barges will be moved to positions in the Maumee River at the City of Toledo Division of Streets, Harbor and Bridges Building Dock after 5:00 p.m. on July 4, 1985, and will be removed immediately after the fireworks display ends.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels mill be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: May 24, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff. Ninth Coast Guard District.

[FR Doc. 85–13561 Filed 6–5–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD Regulation 85–06]

Safety Zone Regulations; Chesapeake Bay, Baltimore Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Baltimore Inner Harbor, Fort McHenry National Monument, Baltimore, Maryland. This safety zone is needed to protect watercraft from a possible safety hazard associated with the June 14th fireworks display. Entry into this zone is prohibited unless authorized the Captain of the Port Baltimore.

EFFECTIVE DATES: This regulation becomes effective beginning at 6:00 PM EDT June 14, 1985 and terminates at 10:30 PM EDT June 14, 1985 unless terminated earlier by the Captain of the Port Baltimore.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.E. Henrickson, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202, (301) 962–5105.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying the effective date of this safety zone would be contrary to the public interest since action is needed to safeguard watercraft and their occupants on this scheduled fireworks date.

Drafting Information

The drafters of this regulation are CWO D.L. Hutchinson, project officer for the Captain of the Port Baltimore, MD and LCDR M.J. Perrone, Project Attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur on 14 June 1985. This safety zone is necessary due to the hazards involved with the location of the barge used for the display platform and the flammable nature of the fireworks. This action will prevent possible damage to watercraft and their occupants in the event of a collision with the barge or a stray pyrotechnic projectile.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 105—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.49 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0506 is added to read as follows:

§ 165.T0506 Safety Zone: Chesapeake Bay, Severn River, Annapolis, MD.

(a) *Location.* The following area in the Baltimore Harbor is a safety zone: A line beginning at the Fort McHenry Front Range Light (LLN 2790) approximate position 39–15–50N, 076–34–41W then following the shoreline south to the southeast bottom corner of the Fort McHenry reservation approximate position 39–15–40N, 076–34–48W then following a line due east to the charted western edge of the east channel approximate position 39–15–40N, 076–34–32W then north following the edge of the charted channel to approximate position 39–15–50N, 076–34–34W then following a line due west to the point of beginning. The barge used for fireworks platform shall be anchored within the safety zone approximate position 39–15–48N, 076–34–37W.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is

prohibited unless authorized by the Captain of the Port Baltimore, MD.

Dated: May 23, 1985.

R.C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 85-13564, Filed 6-5-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 28-45-5]

Approval and Promulgation of Implementation Plans; Vermont; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in a table which summarizes approval actions already taken to incorporate Vermont Air Pollution regulations into the State Implementation Plan (SIP). The table was published November 23, 1984 (49 FR 46141) and is located at 40 CFR 52.2381.

FOR FURTHER INFORMATION CONTACT: Beth M. Hassett, FTS 223-4880; (617) 223-4880.

SUPPLEMENTARY INFORMATION: On November 23, 1984, EPA published a table identifying Vermont regulations which have been submitted to and adopted by EPA as revisions to the Vermont State Implementation Plan (SIP). This table was for informational purposes only and did not have any independent regulatory effect. The table, located at 40 CFR 52.2381, incorrectly listed information for Subchapter V of the Vermont SIP. For sections 5-501 and 5-502, the original section entitled "Comments" inaccurately listed or omitted State regulations which are not federally approved. This notice corrects these errors and prints Subchapter V in its entirety.

(42 U.S.C. 7401, 7410, 7411, 7601)

Dated: May 23, 1985.

Paul Keough,

Acting Regional Administrator, Region I.

PART 52—[AMENDED]

§ 52.2381 [Corrected]

On page 46142, § 52.2381, is corrected by revising Subchapter V to read as follows:

TABLE 52.2381—TABLE OF EPA APPROVED REGULATIONS

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register Citation	Section 52.2370	Comments
. . . . .					
Subchapter V Review of New Air Contaminant Sources					
Section 5-501 Review of construction or modification of air contaminant	12/10/72	5/31/72	37 FR 10899	(b)	
	12/10/72	5/14/73	38 FR 12713	(c)(3)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
	3/24/79	1/30/80	45 FR 6781	(c)(9)	Except 5-501(3)
	11/04/79	2/19/80	45 FR 10775	(c)(10)	Except 5-501(3).
	11/03/81	2/10/82	47 FR 6014	(c)(15)	
Section 5-502 Major stationary sources and major modifications	3/24/79	1/30/80	45 FR 6781	(c)(9)	Except 5-502(5).
	11/04/79	2/19/80	45 FR 10775	(c)(10)	Except 5-502(5).
	11/03/81	2/10/82	47 FR 6014	(c)(15)	
. . . . .					

[FR Doc. 85-13518 Filed 6-4-85; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 52

[A-10-FRL-2842-4]

Approval and Promulgation of State Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking addresses the State Implementation Plan (SIP) revision submitted on May 29, 1984 by the State of Idaho Department of Health and Welfare pursuant to the requirements of Part D of the 1977 Clean Air Act (hereinafter referred to as the Act) and later supplemented with additional material on January 3, 1985, and March 25, 1985. In today's action EPA is approving the 1984 carbon monoxide (CO) plan for the Boise-Ada County nonattainment area based on review of the mentioned materials. With this Notice the Boise-Ada County CO plan is now a federally enforceable part of the SIP as required by the Act. The plan includes the implementation of a mandatory inspection and maintenance program in Ada County which started on August 1, 1984.

EFFECTIVE DATE: August 5, 1985.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460

Air Programs Branch (10A-81-7), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Idaho, Department of Health and Welfare, 450 W. State Street, Boise, Idaho 83720

Copy of the State's submittal may be examined at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-7369, (FTS) 399-4233.

SUPPLEMENTARY INFORMATION:

I. Background

On May 29, 1984, the State of Idaho Department of Health and Welfare (IDHW) officially submitted to EPA a revision to the carbon monoxide (CO) SIP for the Boise-Ada County area. The plan included the implementation of a

mandatory inspection and maintenance (I/M) program on August 1, 1984. This program successfully started on that date. On September 18, 1984 (49 FR 36511), EPA proposed to approve the revision. Additional material was then submitted on January 3, 1985 and March 25, 1985. Today's action gives final approval to that Boise-Ada County CO SIP revision. Additional background information and plan description can be found in the September 18, 1984 proposed rulemaking.

II. Response to Comments

No comments were received.

III. Summary of Rulemaking Action

With this notice EPA is approving the 1984 Boise CO attainment plan and establishing a new attainment date of December 31, 1986. This approval is based on review of the SIP revision submitted by the IDHW to EPA on May 29, 1984 and additional material submitted on January 3, 1985 and March 25, 1985.

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410(b) and 7502))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the Implementation Plan for the State of Idaho was approved by the Director of the Office of Federal Register in July 1, 1982.

Dated: May 22, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7410(b) and 7502

Subpart N—Idaho

2. In § 52.670, paragraph (c)(23) is added as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(23) On May 29, 1984, the State of Idaho Department of Health and Welfare submitted the Boise-Ada County carbon monoxide attainment plan as an official State Implementation Plan revision. The submittal was then supplemented on January 3, 1985.

3. In Section 52.679, the entry for Chapter VIII—Nonattainment Area Plans is revised as follows:

§ 52.679 Contents of Idaho State implementation Plan.

* * * * *

Chapter

VIII—Non-Attainment Area Plans (submitted 1/15/80)

VIII-a—Silver Valley Nonattainment Plan (submitted 1/15/80).

VIII-b—Lewiston Nonattainment Plan (submitted 12/4/80)

VIII-c—Transportation Control Plan for the carbon monoxide of Ada County (submitted on 5/24/84, 1/3/85, and 3/25/85)

VIII-d—Pocatello TSP Nonattainment Plan (submitted 3/7/85)

VIII-e—Soda Springs Nonattainment Plan (submitted 1/15/80)

* * * * *

4. Section 52.680 is revised to read as follows:

§ 52.680 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information in Idaho's plan, except where noted.

Air Quality Control Regions	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Eastern Idaho Intrastate	a	d	d	a	a	a	a
Eastern Washington-Northern Idaho Interstate (Idaho)	b	d	a	a	a	a	a
Idaho Intrastate	d	d	a	a	a	a	a
Metropolitan Boise Interstate:							
1. Boise-Ada County area	d	d	a	a	a	c	a
2. Remainder of AQCR	d	d	a	a	a	a	a

a. Air Quality levels presently below secondary standards
b. Dec. 31, 1982
c. Dec. 31, 1986
d. Date not established.

[FR Doc. 85-12841 Filed 6-5-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM-193, Amt. No. 173-188]

Tritium and Carbon-14; Low Specific Activity Radioactive Materials Transported for Disposal or Recovery

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The Materials Transportation Bureau (MTB) is amending § 173.425 of the Hazardous Materials Regulations (HMR) to except certain low specific activity radioactive materials containing tritium (hydrogen-3) or carbon-14 from most requirements of the HMR when the materials are being transported for disposal or reclamation. This amendment allows the shipment of waste materials such as scintillation counting media, animal carcasses and tissue containing not more than 0.05 microcuries per gram (1.9 megabecquerels per kilogram) of tritium or carbon-14 without further consideration of their radioactive hazards. This action is consistent with the Nuclear Regulatory Commission (NRC) provisions specified in new section 20.306, Title 10, Code of Federal Regulations relating to the disposal by NRC licensees of tritium and carbon-14 low specific activity radioactive materials.

EFFECTIVE DATE: These amendments are effective August 1, 1985. However, compliance with the regulations as amended herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: R.R. Rawl, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–2313.

SUPPLEMENTARY INFORMATION:

I. Background

On August 23, 1984, MTB published a notice of proposed rulemaking (Notice 84–8) in the **Federal Register** (49 FR 33469). That notice proposed allowing materials containing low levels of tritium or carbon-14 to be transported without regard to their radioactive properties. The proposal would relax requirements of the HMR for transportation to be consistent with NRC provisions in 10 CFR 20.306 for disposal of tritium and carbon-14 containing wastes that have specific activities of 0.05 microcuries per gram (1.9 megabecquerels per kilogram) or less.

The requirements of § 173.425 address most shipments of low-level radioactive waste transported from NRC or Agreement State licensees to licensed disposal facilities. Medical, biomedical, and related research institutions generate relatively large volumes of tritium and carbon-14 contaminated wastes that meet the definition of low specific activity radioactive material (§ 173.403(n)(4)(iii)). Much of the waste from these institutions is several orders of magnitude below the maximum activity level limit established for low specific activity radioactive materials. However, they still exceed the statutory definition of radioactive materials (49 U.S.C. 1807) which includes any material having a specific activity greater than 0.002 microcuries per gram (74 kilobecquerels per kilogram) of material.

Most scintillation media wastes also meet the definition of a flammable liquid and are suspected to be carcinogens as well. Animal carcasses and tissues are not classified as hazardous materials *per se* but their disposal is often times handled in the same manner as hazardous materials. The flammability of the very low specific activity scintillation media is considered by MTB to present a greater hazard in transportation than their radiotoxicity. The propsal was, therefore, to require that very low specific activity scintillation media be packaged, marked, labeled and otherwise prepared for shipment and transported on the basis of their flammability or another acute hazard, if present. Animal carcasses and tissues containing low levels of tritium or carbon-14 which do not meet the definition of another hazard class could be transported as materials not subject to the HMR.

The NRC investigation of problems associated with these low activity wastes from the biomedical community resulted in rules documents published in the **Federal Register** on October 8, 1980 (45 FR 67018) for the proposed rule, and March 11, 1981 (46 FR 16230) for the final rule. As adopted, the new § 20.306 in 10 CFR allows licensees greater latitude in the disposal of certain wastes containing low concentrations of tritium and carbon-14. In essence, if the specific activity of animal carcasses and tissues and liquid scintillation media is not greater than 0.05 uCi/g (1.9 MBq/kg) they may be disposed of without regard to the radioactive nature of the materials. When compared to other radionuclides, the fundamentally lower radiation hazards of tritium and carbon-14 allow these low activity wastes to be disposed of safely when emphasis is placed on the other hazardous or noxious properties presented by the materials.

II. Comments Received

MTB received comments on the proposed rule change from nine companies and one individual. All but one of the comments expressed a position and were supportive of the proposal. Several encouraged expansion of the scope of the change and some raised specific points as needing clarification.

Several commenters pointed out that the term "disposal" is used differently by the NRC and Environmental Protection Agency. In some cases "disposals" is used in a narrow manner and refers only to land burial or incineration. In other usages "disposal" is expanded to include beneficial reuse. The commenters encouraged MTB to ensure that the scope of the final rule incorporates the broader application of the term.

The NRC has determined that these materials may meet their ultimate disposition without regard to their radioactivity. MTB further believes that transportation of these waste materials presents less of a hazard than their disposition. Consequently, the radiological safety aspects of their transportation is assured regardless of their ultimate method of disposition. MTB agrees that transport of these materials for beneficial reuse should be included and so the words "or recovery" are added to "disposal" in § 173.425(d).

One commenter believed that the proposed rule implied that these low specific activity (less than 0.05 μCi/g or 1.9 MBq/kg) *must* be transported in accordance with § 173.425 in all situations. MTB would like to clarify that this is not the case.

Disregarding for a moment any other hazardous properties of these materials, there are several different situations which may apply to a low specific activity material. If the material has a specific activity of 0.002 μCi/g (74 kBq/kg) or less, then it is not regulated as radioactive by the HMR. If the material has a high enough specific activity to be regulated but the total activity in each package does not exceed 2.0 mCi (74 MBq) of tritium or 6.0 mCi (222 MBq) of carbon-14, then the package could be shipped as a "limited quantity" in accordance with §§ 173.421 and 173.421–1 (multiple hazard radioactive materials in this category would be governed by § 173.421–2). If the material exceeds both the threshold specific activity for regulation in transportation and the total activity limit for limited quantities, *then* the material would be transported in accordance with § 173.425. There is also the option of packaging and transporting these materials as Type A quantities (§ 173.415).

It should also be noted that a recent MTB rulemaking (Docket HM–139G) has been published (50 FR 11700) which allows yet another option for shipping flammable scintillation media waste such as xylene, toluene and acetone containing low levels of tritium and carbon-14. Since the new § 173.425(d) allows disregard of the radioactive nature of the material, it can be shipped in accordance with the recently added § 173.12. Alternatively, a shipper of these materials could prepare them for transportation in accordance with §§ 173.118 or 173.119 of the HMR.

One commenter suggested increasing the number of radionuclides which would be covered by this rule. MTB is relying, in part, on the regulatory evaluation performed by the NRC in their earlier rulemaking action. Since the NRC action was specifically limited to tritium and carbon-14, MTB is limiting its actions to these radionuclides as well. If the NRC adds other

radionuclides to CFR 20.306, they would automatically be incorporated into the provisions of this final rule since §173.425(d) refers generically to the NRC requirement.

One commenter questioned whether or not facilities would be allowed to incinerate the low specific activity (less than 0.05 μCi/g or 1.9 MBq/kg) tritium and carbon-14 wastes. This rulemaking has absolutely no effect on the Federal, State or local requirements which govern acceptable techniques for disposal or processing. The licensing or permitting of these operations are not under the jurisdiction of DOT. This rulemaking only relaxes the regulatory requirements for transportation in the course of disposal or recovery of the materials.

III. Administrative Notices

A. Executive Order 12291

The MTB has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected, I certify this final rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation.

In consideration of the foregoing, Part 173 of Title 49, Code of Federal Regulations is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read in part as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e). * * *

2. In 173.425, paragraph (d) is added to read as follows:

§ 173.425 Transport requirements for low specific activity (LSA) radioactive materials.

* * * * *

(d) Except for transportation by aircraft, low specific activity material that conforms with the provisions specified in 10 CFR 20.306 is excepted from all requirements of this subchapter pertaining to radio-active materials when offered for transportation for disposal or recovery. A material which meets the definition of another hazard class is subject to the provisions of this subchapter relating to that hazard class.

Issued in Washington, D.C., on May 31, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85-13602 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-12; Notice 5]

Lamps, Reflective Devices, and Associated Equipment; Clarifications

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; clarifying amendments.

SUMMARY: This notice clarifies the final rule published on November 26, 1984 (49 FR 46386), relating to lamps, reflective devices, and associated equipment through non-substantive amendments to paragraph S4.1.1.11 and Figure 1a.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2154).

SUPPLEMENTARY INFORMATION: Following publication of the harmonization amendments to Standard No. 108 on November 26, 1984 (49 FR 46366), the agency received several requests for clarification. After due consideration, it has decided that clarification is best provided by non-substantive amendments to the provisions in question.

The harmonization amendments substituted new paragraphs S4.1.1.11 and S4.1.1.12 for the old ones, requiring new Figures 1a, 1b, and 1c to replace former Figure 1. With respect to motorcycle turn signal lamps, the values of Figure 1b have been substituted for those specified in paragraph S4.1.1.30 (which was unchanged and which allowed alternative compliance with either one-half of certain SAE values, or those of Figure 1). This means that S4.1.1.30 has been superseded, is technically incorrect, and may be eliminated from the standard. However, because new paragraph S4.1.11 has omitted stating that motorcycle turn signal lamps need meet only one-half the sums given in Figure 1b, the impression has been created that the grouped minimum candlepower method for testing motorcycle turn-signal lamps is no longer available. The agency intended no change in this requirement. NHTSA is therefore amending paragraph S4.1.1.11 to correct the misimpression, and to delete paragraph S4.1.1.30.

Paragraph S4.1.1.11 also references values in Figures 1a and 1b that are substituted for those in Table 1 of SAE "J585e Taillamps (at H or above)". The agency intended to state "(Maximum at H or above)", an omission which could create confusion and is now being corrected.

Finally a footnote is being added to Figure 1a to clarify that values shall be truncated after one digit to the right of the decimal point. For example, 95 cd × 12.6% = 11.875 cd, but the value to use is 11.8 cd, dropping the last two digits. The Figure is also being changed graphically to assure easier reading of the test grid percentages.

Because these amendments are non-substantive and provide clarifications, it is hereby found for good cause shown that notice and comment are unnecessary and an effective date earlier than 180 days after issuance is in the public interest. The amendments are effective upon publication in the **Federal Register**.

List of Subject in 49 CFR Part 571

Imports, Motor vehicles safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

Section 571.108 is amended as follows:

1. The last sentence in paragraph S4.1.1.11 is revised to read:

S4.1.1.11 * * * The values specified in Figure 1a and Figure 1b are substituted for those specified in Table 1 of the following SAE Standards: J222 *Parking Lamps*, J585e *Taillamps* (maximum at H or above), J585c *Stop Lamps*, and J588e *Turn Signal Lamps*, except that motorcycle turn signal lamps need meet only one-half of the minimum

photometric values specified in Figure 1b".

2. Paragraph S4.1.1.30 is removed.

3. Figure 1a is revised as follows:

FIGURE 1a —REQUIRED PERCENTAGES OF MINIMUM CANDLEPOWER OF FIGURE 1b.

Test points (deg)		Turn sig-nal	Stop	Park-ing	Tail
10U, 10D	5L, 5R	20	20	20	20
5U, 5D	20L, 20R	12.5	12.5	10	15
	10L, 10R	37.5	37.5	20	40
	V	87.5	87.5	70	90
H	10L, 10R	50	50	35	40
	5L, 5R	100	100	90	100
	V	100	100	100	100

Note —Minimum design candlepower requirements are determined by multiplying the percentages given in this figure by the minimum allowable candlepower values in Figure 1b. The resulting values shall be truncated after one digit to the right of the decimal point.

The lawyer and program official principally responsible for this notice are Z. Taylor Vinson and Ken Rutland, respectively.

Issued on: May 30, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-13488 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 50, No. 109
Thursday, June 6, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-338]

Importation of Mangoes From Belize

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: A document published in the Federal Register on May 6, 1985, proposed to amend the "Subpart—Fruits and Vegetables" regulations by adding provisions to allow the entry into the United States of mangoes from Belize if the mangoes originate from premises that have been subjected to aerial applications of technical malathion bait spray and meet certain other conditions. This document reopens the comment period for this proposal. This action is needed to allow industry representatives and other interested persons adequate time in which to prepare comments.

DATES: Comments on the proposed regulation must be received on or before August 5, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION: On May 5, 1985, the Department published in the Federal Register (50 FR 19158–19160) a proposal to amend the "Subpart—Fruits and Vegetables" regulations (contained in 7 CFR 319.56 *et seq.*) by adding provisions to allow the entry into the United States of mangoes from Belize if the mangoes originate from premises that have been subjected to aerial applications of technical malathion bait spray, and meet certain other conditions.

A 15-day period was provided for receiving comments on the proposal. This comment period expired on May 21, 1985. The Department has received two requests to reopen the comment period based on the assertion that additional time is needed for the development of comments.

In support of the 15-day comment period, the proposal indicated that a final rule would have to be adopted as soon as possible if it were to be adopted in time to allow mangoes from Belize to be imported into the United States during the 1985 mango season. It now appears that no mangoes could be eligible under the provisions of the proposal to be imported into the United States from Belize during the 1985 mango season. Further, it has been determined that additional time is needed to allow industry representatives and other interested persons adequate time in which to prepare comments. Accordingly, the comment period is reopened for 60 days.

Done at Washington, D.C., this 3rd day of June 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–13658 Filed 6–5–85; 8:45 am]

BILLING CODE 3410–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 74, 82, 201, and 701

[Docket Nos. 77N–0009 and 78P–0164]

Colors Additives; Proposed Use of Abbreviations for Labeling Foods, Drugs, Cosmetics, and Medical Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to permit the use of abbreviated names for certain color additives that are used in foods, drugs, cosmetics, and medical devices. FDA is also proposing to change the common or usual name of Ext. D&C Yellow No. 7 to D&C Yellow No. 12, so that D&C Yellow No. 7 and Ext. D&C Yellow No. 7 can be readily distinguished when their abbreviated names are used. For the same reason, FDA is also proposing to change the common or usual name of Ext. D&C Violet No. 2 to D&C Violet No. 3. The agency is proposing these actions as a result of petitions submitted by the Grocery Manufacturers of America, Inc. (GMA), and of FDA's reconsideration of earlier actions involving the names for color additives used on labels.

DATES: Written comments by August 5, 1985. The proposed effective date of any final rule based on this proposal is its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0180.

SUPPLEMENTARY INFORMATION:

I. Background

A. Initial GMA Petitions

The GMA submitted two petitions to FDA that relate to how color additives are to be declared on the labeling of foods. One of these petitions (Docket No. 77N–0009) requested that the agency permit FD&C Yellow No. 5 to be declared by the abbreviated name "Yellow 5" when the name of this certified color additive is listed in the ingredient statement of a food label. By letter dated February 11, 1980, FDA denied this petition.

GMA's other petition (Docket No. 78P–0164) requested that FDA amend 21 CFR 101.22 to establish a uniform format for the label declaration of color additives in food, and that the agency permit abbreviated names to be used for certified color additives when these additives are listed in the ingredient statements of foods labels. In a second letter dated February 11, 1980, the

agency denied this petition because of the agency's concern that FD&C Yellow No. 5 be appropriately identified because of its known sensitizing and allergenic properties and also because of the potential for consumer confusion if abbreviated terms are used for certified color additives. One possible source of confusion was the similarity in the names "Citrus Red No. 2" and "FD&C Red No. 2." The agency noted that the appearance of the name "Red 2" in the labeling of a food containing Citrus Red No. 2 could suggest to consumers that the color additive present in the food is FD&C Red No. 2, which is no longer approved for food use.

B. Petitions for Reconsideration

Subsequently, GMA requested that FDA reconsider each of these decisions. The petitioner argued that, with the exception of FD&C Yellow No. 5, food manufacturers are not required to list the names of the individual color additives used in their products, and that by permitting the use of abbreviated names, FDA would be encouraging manufacturers to list voluntarily on the label of their products the names of the individual color additives that they used.

The petitioner also argued that consumers would not be confused if abbreviated names for certified color additives appear in the labeling of foods and the full common or usual appear in the labeling of drugs and cosmetics, because there is no overlap in the names of certified color additives approved for use in foods and the names of those approved for use only in drugs and cosmetics. GMA stated that the only possible source of confusion was in the names of D&C Violet No. 2 and Ext. D&C Violet No. 2 and D&C Yellow No. 7 and Ext. D&C Yellow No. 7, but that none of these color additives are listed for use in foods.

Finally, the petitioner acknowledged the possibility for confusion between Citrus Red No. 2 and FD&C Red No. 2 but argued that it is very unlikely that the abbreviated name "Red 2" would appear on the labeling of foods because the only use of Citrus Red No. 2 is to color the skins of oranges under specified circumstances.

II. Proposal To Permit the Use of Abbreviated Names

FDA has reviewed GMA's petitions for reconsideration and has tentatively decided that it is in the public interest to reconsider and to modify its earlier position. Under the Federal Food, Drug, and Cosmetic Act (the act), individual color additives, except FD&C Yellow No. 5, need be declared only by the collective term "coloring" when used to color foods. Therefore, if FDA permits the use of abbreviated names for these color additives, there is a possibility that more manufacturers will voluntarily declare on the product labels of foods the names of the color additives that they have used. These voluntary declarations will be more informative to consumers than the collective term required under the act. Morever, the labeling scheme that the agency is proposing should prevent any consumer confusion.

Consistent with these tentative views, on January 28, 1983, the agency issued an advisory opinion (Docket Nos. 77N–0009 and 78P–0164) in response to GMA's petitions for reconsideration that states that specified abbreviated terms may be used for color additives as an alternative to the use of the common or usual names when declaring these ingredients on food labels. FDA is now proposing to incorporate that advisory opinion into its regulations. A copy of FDA's advisory opinion to GMA has been placed on file in the Dockets Management Branch (address above).

FDA is therefore proposing to amend 21 CFR 70.25 by adding a new paragraph (e) to permit the use of abbreviated names for those certified color additives listed for use in food in 21 CFR Parts 74 and 82. However, FDA believes that the name "Citrus Red" is a more appropriate abbreviated name than "Red 2" for the color additive Citrus Red No. 2 and is proposing that this term be used as the abbreviated name for this color additive to avoid consumer confusion.

III. Other Proposed Actions

FDA further proposes to allow the use of abbreviated names for color additives in the labeling of drugs, cosmetics, and medical devices. The agency believes that the labeling requirements for these products should be consistent unless there are compelling reasons to do otherwise. Therefore, the agency is proposing to revise 21 CFR 201.20 and 701.3 to permit the use of abbreviated names in the labeling of drugs, cosmetics, and medical devices. FDA advises that although it is proposing to permit the use of either the abbreviated term "Yellow 5" or the complete common or usual name "FD&C Yellow No. 5" on the label of OTC and prescription drugs, it is not proposing any change in the requirement that the name "tartrazine" accompany the common or usual name (or, if the agency adopts this proposal, the abbreviated name) of this color additive on the label of these products.

The agency also is proposing to change the common or usual name of Ext. D&C Yellow No. 7 to D&C Yellow No. 12 to avoid confusion between this color additive and D&C Yellow No. 7. The agency is also proposing to change the common or usual name of Ext. D&C Violet No. 2 to D&C Violet No. 3 for the same reason. If these changes are adopted, the abbreviated names for these color additives could be used without concern about confusion or overlap with similar names for different color additives in drugs and cosmetics.

Food manufacturers have been able to use abbreviated names for color additives since FDA issued its advisory opinion in 1983. The agency believes that drug, cosmetic, and medical device manufacturers should have the same flexibility. Therefore, FDA is permitting the use of abbreviated names on labels in accordance with provisions of this proposal pending publication of a final rule. Additionally, if the final rule issues as proposed, FDA will permit manufacturers to continue to use labeling bearing the names Ext. D&C Yellow No. 7 and Ext. D&C Violet No. 2 until their stocks of that labeling have been exhausted.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–345), FDA has analyzed the economic impacts that the proposed rule would have, if promulgated. The effect of this proposal is to permit manufacturers to use 50 percent less label space for the same information covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action and that the proposed rule, if promulgated, will not be a major rule as defined by Executive Order 12291.

List of Subjects

21 CFR Part 70

Color additives, Cosmetics, Definitions, Foods, Drugs, Medical

devices, Labeling, Packaging and containers.

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics; Drugs.

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 701

Cosmetics, Labeling.

Therefore, under the Fair Packaging and Labeling Act and the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

A1. The authority citation for Parts 70, 74, and 82 is revised to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

PART 70—COLOR ADDITIVES

A2. Part 70 is amended in § 70.25 by adding new paragraph (e), to read as follows:

§ 70.25 Labeling requirements for color additives (other than hair dyes).

* * * * *

(e) *Declaration of the presence of certain color additives that have been certified for use in foods, drugs, cosmetics, and medical devices.* When the following certified color additives are declared by name in the list of ingredients of a food, drug, cosmetic, or medical device, they may be declared by the name specified in applicable color additive regulations in Parts 74 and 82 of this chapter, or they may be declared by the appropriate abbreviated names as follows:

(1) Citrus Red No. 2 may be abbreviated as "Citrus Red."

(2) Any color additive listed by a name beginning with "FD&C" or "D&C" may be abbreviated by omitting "FD&C," "D&C," and "No.". For example, FD&C Blue No. 1 may be abbreviated as "Blue 1" and D&C Violet No. 2 may be abbreviated as "Violet 2."

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

A3. Part 74 is amended:

a. In § 74.705 by revising paragraph (d)(2), to read as follows:

§ 74.705 FD&C Yellow No. 5.

* * * * *

(d) * * *

(2) Foods for human use that contain FD&C Yellow No. 5, including butter, cheese, and ice cream, shall specifically declare the presence of FD&C Yellow No. 5 by listing the color additive as FD&C Yellow No. 5 or Yellow 5 among the list of ingredients.

* * * * *

b. In § 74.1705 by revising paragraph (c)(2) and (3), to read as follows:

§ 74.1705 FD&C Yellow No. 5.

* * * * *

(c) * * *

(2) The label of OTC and prescription drug products intended for human use administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 5 shall specifically declare the presence of FD&C Yellow No. 5 by listing the color additive using the names FD&C Yellow No. 5 and tartrazine. The label shall bear a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)", except that where the common or usual name FD&C Yellow No. 5 appears, the abbreviated term "Yellow 5" may be substituted. The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as: antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

(3) The labeling required by § 201.100(d) of this chapter for prescription drugs for human use containing FD&C Yellow No. 5 that are administered orally, nasally, vaginally, or rectally shall, in addition to the label statement required under paragraph (c)(2) of this section, bear the warning statement "This product contains FD&C Yellow No. 5 (tartrazine) which may cause allergic-type reactions (including bronchial asthma) in certain susceptible individuals. Although the overall incidence of FD&C Yellow No. 5 (tartrazine) sensitivity in the general population is low, it is frequently seen in patients who also have aspirin hypersensitivity." This warning statement shall appear in the "Precautions" section of the labeling. The abbreviated term "Yellow 5" may be substituted for the common or usual name "FD&C Yellow No. 5."

* * * * *

§ 74.170a [Redesignated as § 74.1712]

c. By redesignating § 74.1707a *Ext. D&C Yellow No. 7* as § 74.1712 *D&C Yellow No. 12* and amending new § 74.1712 by removing the words "Ext. D&C Yellow No. 7" wherever they appear in the text and inserting in their place the words "D&C Yellow No. 12".

§ 74. 2602a [Redesignated as § 74.2603]

d. By redesignating § 74.2602a *Ext. D&C Violet No. 2* as § 74.2603 *D&C Violet No. 3* and amending new § 74.2603 by removing the words "Ext. D&C Violet No. 2" wherever they appear in the text and inserting in their place the words "D&C Violet No. 3".

§ 74.27070a [Redesignated as § 74.2712]

e. By redesignating § 74.2707a *Ext. D&C Yellow No. 7* as § 74.2712 *D&C Yellow No. 12* and amending new § 74.2712 by removing the words "Ext. D&C Yellow No. 7" wherever thay appear in the text and inserting in their place the words "D&C Yellow No. 12", and in paragraph (a) by revising the reference "§ 74.1707a" to read "§ 74.1712".

PART 82—LISTING OF CERTIFIED PROVISONALLY LISTED COLORS AND SPECIFICATIONS

§ 82.2702a [Redesignated as § 82.2712]

A4. Part 82 is amended by redesignating § 82.2702a *Ext. D&C Yellow No. 7* as § 82.2712 *D&C Yellow No. 12* and amending new § 82.2712 by removing the words "Ext. D&C Yellow No. 7" wherever they appear in the text

and inserting in their place the words "D&C Yellow No. 12", and by revising the reference "§ 74.1707a" to read "§ 74.1712".

PART 201—LABELING

B1. The authority citation for Part 201 is revised to read as follows:

Authority: Secs. 501, 502, 701, 52 Stat. 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 351, 352, 371); 21 CFR 5.10, 201.20 also issued under sec. 706, 74 Stat. 399–407 as amended (21 U.S.C. 376).

2. Part 201 is amended in § 201.20 by revising the second sentence in paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 201.20 Declaration of presence of FD&C Yellow No. 5 in certain drugs for human use.

(a) * * * The labeling shall bear a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)", except that where the common or usual name FD&C Yellow No. 5 appears, the abbreviated term "Yellow 5" may be substituted. * * *

(b) * * * This warning statement shall appear in the "Precautions" section of the labeling. The abbreviated term "Yellow 5" may be substituted for the common or usual name "FD&C Yellow No. 5."

PART 701—COSMETIC LABELING

C1. The authority citation for Part 701 is revised to read as follows:

Authority: Secs. 601, 602, 701, 704, 52 Stat. 1054 as amended, 1055–1057 as amended (21 U.S.C. 361, 362, 371, 374); 21 CFR 5.10, 701.3 also issued under secs. 5(c), 6(a), 80 Stat. 1298, 1299 (15 U.S.C. 1454, 1455).

C2. Part 701 is amended in § 701.3 by revising paragraph (c)(1), to read as follows:

§ 701.3 Designation of ingredients.

* * * * *

(c) * * *

(1) The name specified in § 70.25(e) or Subpart C of Part 73 or Subpart C of Part 74 or Part 82 or § 701.30 as established by the Commissioner for that ingredient for the purpose of cosmetic ingredient labeling pursuant to paragraph (e) of this section;

* * * * *

Interested persons may, on or before August 5, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–13565 Filed 6–5–85; am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Subtitle A

Natural Resource Damage Assessment; Extension of Comment Period

AGENCY: Department of the Interior.

ACTION: Notice of Extension of Comment Period on the Development of the Natural Resource Damage Assessment Regulations.

SUMMARY: A notice requesting comments on the development of the Natural Resource Damage Assessment regulations, being developed in accordance with the mandates of section 301(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), was published in the **Federal Register** on January 11, 1985, (50 FR 1550). The comment period was open through May 31, 1985. In response to a request that the comment period be extended, the comment period is extended by this notice to July 1, 1985.

DATE: Comments should be submitted by July 1, 1985. Comments received or postmarked after that date may not be considered in the decisionmaking process for the issuance of a proposed rule.

ADDRESS: Written comments or inquiries may be addressed to CERCLA 301 Project, Room 4354 Main Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Keith Eastin, Associate Solicitor, (202) 343–4344.

Dated: June 3, 1985.

Keith Eastin,

Associate Solicitor.

[FR Doc. 85–13614 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

Federal Acquisition Regulation (FAR); Implementation of Executive Order 12448 Regarding Voiding and Rescinding Contracts; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects section 3.704, Policy, of the proposed rule published in the **Federal Register** on Friday, May 31, 1985 (50 FR 23157).

DATES: The period of comment is extended to July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523–4755/

In FR Doc. 85–13105 issued Friday, May 31, 1985, make the following correction:

Section 3.704 is corrected to read as follows:

3.704 Policy.

(a) In cases in which there is a final conviction for any violation of 18 U.S.C. 201–224 involving or relating to contracts awarded by an agency, the agency head or designee shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred, in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under 18 U.S.C. 201–224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency should consider initiating debarment proceedings in accordance with FAR Subpart 9.4, Debarment, Suspension and Ineligibility, if debarment has not been initiated or is not in effect at the time the final conviction is entered.

Dated: June 3, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–13605 Filed 6–5–85; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 50, No. 109
Thursday, June 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Correction

In FR Doc. 85–13120 appearing on page 23169 in the issue of Friday, May 31, 1985, make the following correction: In the first column, last line, "254–7029" should read "254–7020".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Tracy Property Public Fish and Wildlife Development Measure, Resource Conservation and Development Program, Massachusetts

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tracy Property Public Fish and Wildlife Development Measure, Berkshire County, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Rex O. Tracy, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts, 01002, telephone (413) 256–0442.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rex O. Tracy, State Conservationist, has determined that the preparation of the review of an environmental impact statement are not needed for this project.

The project concerns improving the fish and wildlife habitat within a 200 acre tract known as the "Tracy Property" as described in the Tracy Property Public Fish and Wildlife Development RC&D Measure Plan. The planned works of improvement includes: The installation of a gabion grade control structure at the outlet of an 11.4 acre pond; rock rip rap outlet protection; a twelve vehicle space gravel parking lot; entrance gate; two and one-half miles of hiking trails with vistas; two one-acre clear cut wildlife plots and vegetative releasing of an apple tree grove.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rex O. Tracy.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects is applicable)

Dated: May 22, 1985.

Rex O. Tracy,

State Conservationist.

[FR Doc. 85–13363 Filed 6–5–85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Artificial Reef Plan

AGENCY: National Marine Fisheries Service (NFMS), NOAA, Commerce.

ACTION: Notice of availability of a draft artificial reef plan and request for comments.

SUMMARY: NOAA issues this notice that copies of a draft National Artificial Reef Plan are available and comments are requested. This draft plan has been developed to provide guidance on planning, siting, designing, permitting, installing, monitoring, managing, and maintaining artificial reefs. Copies of the draft plan may be obtained from the address below.

DATE: Comments on the draft plan should be submitted on or before July 15, 1985.

ADDRESS: Requests for copies and comments should be sent to Mr. Richard B. Stone, National Marine Fisheries Service, Page 2, Room 420, Washington D.C. 20235. Please mark, "National Artificial Reef Plan" on the envelope.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone (Recreational Fisheries Officer), 202–634–7449.

SUPPLEMENTARY INFORMATION: The National Fishing Enhancement Act of 1984 (Act) mandates the preparation of a long-term National Artificial Reef Plan. This draft plan has been formulated by the Federal Agencies involved in reviewing and approving permits for artificial reefs under direction of the Act, in consulation with representatives of Fishery Management Councils, Interstate Fisheries Commission, industry, recognized artificial reef authorities, and the public. Following public comment a final plan will be submitted to Congress prior to November 8, 1985, as required by the Act.

Artificial reefs can enhance recreational and commercial fishing opportunities; however, creating a successful reef entails more than placing miscellaneous materials in ocean, estuarine, or fresh water environments. Planning is needed to ensure the benefits of artificial reefs. If materials are improperly placed or constructed, all or part of a reef can disappear or break apart and interfere with commercial fishing operations or damage natural reefs. The purpose of this plan is to guide the management of artificial reefs to obtain maximum benefits.

Dated: June 3, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-13639 Filed 6-5-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Organization of the Joint Chiefs of Staff; National Defense University Board of Visitors; Meeting

AGENCY: National Defense University, DoD.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATE: The meeting will be held between 0900–1145 and 1330–1600, July 10, 1985.

ADDRESS: The meeting will he held in the Theodore Roosevelt Hall (Building 61), Fort Lesley J. McNair, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To reserve space, interested persons should write or phone 475–1145, the Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, DC 20319.

SUPPLEMENTARY INFORMATION: The discussion will include progress and plans for the National Defense University and the curricula, faculty, and students of the Industrial College of the Armed Forces, the National War College, and the Armed Forces Staff College. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-serve basis.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1985.

[FR Doc. 85-13572 Filed 6-5-85; 8:45 am]

BILLING CODE 3810-01-M

Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities; Meeting

AGENCY: Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of Subsection (a) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that an open meeting of the Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities has been scheduled as follows:

DATE: 13 June 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: Crystal City Marriott Hotel, Arlington VA.

FOR FURTHER INFORMATION CONTACT: LTC Michael Averbuch, Deputy Staff Director, Blue Ribbon Panel on Sizing DoD MTF c/o ASD (HA), Room 3E349, The Pentagon, Washington, D.C. 20301 [(202) 653–0080/0081].

SUPPLEMENTARY INFORMATION: This meeting of the Panel will continue discussion of issues relevant to sizing of medical treatment facilities. The meeting is open to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1985.

[FR Doc. 85-13631 Filed 6-5-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Section 10 and/or Section 9 and Section 404 Permits To Construct a Multi-Purpose Dam and Reservoir in St. Helena and East Feliciana Parishes, LA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action.* This statement will analyze work proposed in a permit applicaton submitted by Louisiana Department of Transportation and Development. This work would consist of a multi-purpose dam and reservoir in and across the Amite River at a point about 97.2 miles above the mouth of the waterway, approximately 6 miles southwesterly from Darlington, Louisiana. The primary purpose would be to reduce flooding potential in the Amite River Basin, south of the proposed dam. A secondary purpose would be to provide for water-related recreational activities. Hydrolectric power generation and potable water supply are potential features. The proposed dam, appurtenant structures and work would be located within an area about 19,550 feet long and 3,650 feet wide at the Amite River, 5,100 feet wide at the extreme eastern end, and with the dam being approximately 510 feet wide at its widest point. The top of the dam would be at 200.0 feet NGVD; the river channel bed is at about 114.0 feet NGVD. The minimum normal pool (at 170.0 feet NGVD) would cover 15,300 acres. The design surcharge elevation (1983 flood) would be 184.9 feet NGVD with a pool surface area of 17,200 acres. In the event of the probable maximum flood, water would reach 192.0 feet NGVD and would cover 19,500 acres.

2. *Alternatives.* Alternatives, such as no action, different normal pool sites, including a dry reservoir, the construction of several smaller reservoirs on tributaries entering the Amite River, and a combination of zoning, stormwater retention, and building restriction ordinances will be discussed in the DEIS.

3. *Scoping Process.* a. A public hearing was held October 3, 1984, to present the findings of the preliminary study made by the U.S. Army Corps of Engineers, New Orleans District, on flood control for the Amite River and tributaries and to solicit comments from the public, as well as Federal and state agencies. On the basis of this preliminary study, a 4,100-acre dual purpose reservoir (normal pool size) at this site was considered an economically feasible approach to flood control in the lower Amite. At the time of this meeting, the Governor of Louisiana announced that the State would build a reservoir at this site. The "Amite River and Tributaries Initial Evaluation Report on Flood Control", published in December 1984, contains the results of the study and public comments.

b. Significant issues to be discussed in the DEIS include: Flood protection, promotion of residential and commercial/industrial growth in wetlands, loss of sand and gravel resources, impact on quantity and quality of downstream flow and impact on salinity levels in Lake Maurepas, impact on fishery and wildlife resources resulting from construction, operation and maintenance.

c. No formal assignments are currently planned for input into the DEIS by other Federal and state agencies. The applicant anticipates close coordination with other state agencies. Informal meetings will be held, and communication maintained throughout the EIS process with all concerned agencies.

d. Periodic reviews will be held with various Federal, state, and local agencies; they will be kept apprised of the progress.

4. *Scoping Meetings.* Two public meetings will be held. The first will be in East Baton Rouge Parish, Baton Rouge, Louisiana, on Tuesday, June 25, 1985, at 7:00 p.m. at Southeast Middle School. The second will be in Greensburg, St. Helena Parish, Louisiana, on Thursday, June 27, 1985, at Greensburg High

School. The meeting will consist of an introduction and description of the proposed project, the EIS process, and scoping process, after which the atendees will be divided into workshop groups, allowing individuals more freedom to input their ideas and concerns. Comments made by individuals in the workshops will be recorded, compiled, and analyzed. A summary of the results will be forwarded to each participant who requests a copy.

5. *Availability.* The DEIS is scheduled to be available to the public in December 1986.

ADDRESS: Questions concerning the proposed action and DEIS may be directed to either Dr. Mary L. Plumb-Mentjes at (504) 838–2292 or Dr. Lloyd Baehr at (504) 838–2259, both at the New Orleans District, U.S. Army Corps of Engineers, Regulatory Assessment Section (LMNOD–SA), Post Office Box 60267, New Orleans, Louisiana 70160.

Eugene S. Witherspoon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–13650 Filed 6–5–85; 8:45 am]

BILLING CODE 3710-84-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 8, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 3, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Application for Disaster Assistance under section 7 of Pub. L. 81–874
Agency Form Number: ED 423
Frequency: Non-recurring
Affected Public: Local educational agencies
Reporting Burden: Responses: 250; Burden Hours: 500
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application provides data to determine eligibility of local educational agencies for disaster assistance under section 7 of Pub. L. 81–874.

Type of Review Requested: Reinstatement
Title: Financial and Performance Status Reports—State Educational Agency and Desegregation Assistance Center Programs
Agency Form Number: ED 296–1
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 146; Burden Hours: 876
Recordkeeping Burden: Recordkeepers: 146; Burden Hours: 292

Abstract: Grantees under Title IV of the Civil Rights Act of 1964 are required to submit financial and performance status reports annually. These reports are used to monitor compliance with terms and conditions of grant awards.

Type of Review Requested: Extension
Title: Women's Educational Equity Act Performance Report
Agency Form Number: ED 436–2
Frequency: Annually
Affected Public: Individuals or households; State or local governments; Non-profit institutions
Reporting Burden: Responses: 70; Burden Hours: 350
Recordkeeping Burden: Recordkeepers: 70; Burden Hours: 14

Abstract: Grantees under the Women's Educational Equity Act Program are required to submit performance reports at the completion of their projects. Reports are used to monitor compliance with terms and conditions of grant awards.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: Application for Federal Student Aid
Agency Form Number: ED 255
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden: Responses: 5,800,000; Burden Hours: 6,670,000
Recordkeeping Burden: Recordkeepers: 5,800,000; Burden Hours: 116,000

Abstract: This form collects the data necessary to determine student eligibility for Federal student aid. The information is used to calculate a Student Aid Index for the distribution of Pell Grants and a uniform methodology number which financial aid administrators may use to award other types of financial aid.

Type of Review Requested: Extension
Title: Application for Grants Under the Graduate and Professional Opportunity Fellowships Program
Agency Form Number: ED 591
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 174; Burden Hours: 3,480
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used to obtain data from institutions of higher education in order to competitively award grants under the Graduate and Professional Opportunity Fellowships Program.

[FR Doc. 85–13624 Filed 6–5–85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Challenge Grant Program; Application Notice of Non-Competing Continuation Awards for Fiscal Year 1986

Applications are invited for non-competing continuation awards under the Challenge Grant Program. This program is one of the Institutional Aid Programs and is authorized by Title III of the Higher Education Act of 1965, as amended (HEA). Specifically, the Challenge Grant Program is authorized by sections 331–332 and 341–347 of the HEA (20 U.S.C. 1064–1069c).

Under this program, the Secretary awards development grants to eligible institutions of higher education to assist them in carrying out their long-range development plans, thereby assisting them in becoming self-sufficient. Federal assistance is provided on a matching basis as an incentive for institutions to seek alternative sources of funding to achieve self sufficiency. Institutions may use the funds awarded under the program to improve their academic quality and to strengthen their planning, management, and fiscal capabilities.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a non-competing continuation award should be mailed or hand-delivered by October 1, 1985.

If an application for a non-competing continuation awared is late, the Department may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.031F (Institutional Aid Programs—Challenge Grant Program), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 4, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daly except Saturdays, Sundays, and Federal holidays.

Available funds: The Administration's budget for Fiscal Year 1986 requested an appropriation of $141,208,000 for the Institutional Aid Programs. Of that amount, approximately $4,800,000 has been requested to fund approximately 16 non-competing continuation grants under the Challenge grant program.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Since the actual level of Fiscal Year 1986 appropriations for these programs has not yet been established by the Congress, it is not possible to provide data on the precise amount of funds available. Pending resolution of the final level of appropriations, applications are invite to allow sufficient time for evaluation of these applications.

Application forms: Application forms for non-competing continuation awards are expected to be ready for mailing no later than August 1, 1985. They will be mailed routinely to currently funded projects. If a grantee does not receive the forms by August 15, 1985, the grantee should telephone the Division of Institutional Development at (202) 245–9091 for the Challenge Grant Program applications.

Applications must be prepared and sumitted in accordance with the regulation, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed eight (8) pages in length per activity. The Secretary further urges that the applicants not submit information that is not requested. (Approved by the Office of Management and Budget under Control Number 1840–0113).

Application regulations: The regulations applicable to this program include the following:

(a) Eduction Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78; and

(b) Regulations for the Institutional Air Programs in 34 CFR Parts 624–627.

Further information: For further information, contact: Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–9091.

(20 U.S.C. 1051–1069)

(Catalog of Federal Domestic Assistance Number : 84.031F—Challenge Grant Program)

Dated: June 3, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85–13623 Filed 6–5–85; 8:45 am

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP84–444–001 et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP84–444–001]

May 30, 1985.

Take notice that on May 10, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84–444–001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Cincinnati Paperboard Corporation (Paperboard) under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set

forth in the request which is on file with the Commission and open to public inspection.

By request notice on June 12, 1984, in Docket No. CP84–444–000 pursuant to § 157.205 of the Commission's Regulations, Columbia was authorized to transport up to 2.2 billion Btu equivalent of natural gas per day through May 6, 1985, to Paperboard's Cincinnati, Ohio, plant.

Columbia proposes to continue the above-described transportation through December 31, 1985, on the same terms and conditions as the existing transportation authority.

Comment date: July 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation, United Gas Pipe Line Company

[Docket No. CP85–492–000]

May 30, 1985.

Take notice that on May 7, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–492–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas and for permission and approval to abandon an existing transportation service all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to exchange up to a maximum daily quantity of 15,000 Mcf of natural gas. Applicants state that a portion of the gas reserves underlying Eugene Island (EI) Block 57, offshore Louisiana is committed to Transco by a gas purchase agreement with Amerada Hess Corporation and that a portion of the gas reserves underlying High Island Blocks 110, 111, 137 and 138 (HI Block 111 Field), offshore Texas, is committed to United by a gas purchase agreement with Texaco Producing Inc. As proposed, Transco would receive United's natural gas at HI Block 111 and United would receive equivalent quantities on behalf of Transco at EI Block 32. Applicants propose that any imbalances would be eliminated at existing interconnections located (1) at Starks in Calacsieu Parish, Louisiana; (2) in Victoria County, Texas; (3) at Johnson's Bayou in Cameron Parish, Louisiana; (4) at Gibson in Terrebonne Parish, Louisiana; and (5) at any other mutually agreeable points. Applicants state that the exchange agreement would remain in force for five years and would be continued year to year thereafter and that neither company would assess a transportation charge for the proposed service.

Applicants also request that Transco be granted authorizaton to abandon the transportation service currently provided for United pursuant to Transco's Rate Schedule X–164. Under this service, Transco was authorized by the Commission's August 8, 1978, order in Docket No. CP78–212 (4 FERC ¶ 61,130) to transport on a firm basis up to 30,000 Mcf per day of United's gas produced from the HI Block 111 field and deliver equivalent quantities to United in Victoria County, Texas. As part of the exchange agreement, Applicants agreed to terminate this transportation service, it is stated.

Comment date: June 20, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–501–000]

May 29, 1985.

Take notice that on May 9, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–501–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to West Texas Gas, Inc. (West Texas), for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell up to 40,000 Mcf of natural gas per day to West Texas for resale to residential, irrigation and other customers in Texas. Applicant claims the proposed sales are the result of West Texas' acquisition of natural gas distribution properties from Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), known as the Dalhart system and the Spearman system. Applicant states that as a result of the acquisition by West Texas of the Dalhart and Spearman systems it has entered into an agreement with West Texas to sell and deliver up to 40,000 Mcf of natural gas per day to West Texas in order to serve the customers formerly served by Peoples. Applicant also proposes to sell West Texas overrun volumes of natural gas on a best-efforts basis.

It is stated that Applicant would charge West Texas the Panhandle Area Rate as filed in Volume No. 2 of Applicant's FERC Gas Tariff, currently said to be $3.4139 per Mcf.

Applicant claims West Texas is better able to serve the natural gas requirements of the Dalhart and Spearman systems in a more efficient manner because of West Texas' physical proximity to those systems.

Comment date: June 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP85–481–000]

May 29, 1985.

Take notice that on May 2, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–481–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation, on an interruptible basis, of up to 110,000 Mcf of natural gas per day for the account of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), and authorizing the addition and deletion of delivery and redelivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to their April 18, 1980, agreement, as amended, volumes of gas delivered to CIG for Northern's account or gas volumes that Northern would deliver to CIG would at various delivery points in Colorado and Wyoming.

The gas being received by CIG for Northern's account is delivered to Mountain Fuel Resources, Inc., for redelivery to Wyoming Interstate Company, Ltd., and Trailblazer Pipeline Company for ultimate delivery to Northern in Gage County, Nebraska, it is asserted.

It is also ascertained that CIG cooperates with Northern in arranging for the transportation and redelivery to Northern of the gas supplies remote from Northern's system, but in the general vicinity of CIG's facilities. The proposed transportation service would assure Northern of long-term access to its assigned gas reserves and it would eliminate the filing of biennial contract amendments, it is noted. It is also noted that gas is currently being transported under Part 284 of the Regulations and is being used for Northern's system supply.

No new facilities are required to transport these gas supplies, it is asserted. It is explained that the term of the agreement has been extended to October 6, 1986, and year to year thereafter.

CIG states that it is currently charging Northern 36.08 cents per Mcf for each Mcf of natural gas transported. CIG has also indicated that the aggregate volume of natural gas currently being delivered to CIG by Northern or by others for Northern's account is approximately 3,370 Mcf per day.

Comment date: June 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth Inc.

[Docket No. CP85-283-001]

May 29, 1985.

Take notice that on May 13, 1985, Northern Natural Gas Company, Division of InterNorth Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-283-001, an amendment to its pending application filed on February 14, 1985, in Docket No. CP85-283-000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) so as to reflect a proposed extension for the term of service proposed by Applicant, all as more fully set forth in the amendment on file with the Commission and open to the public inspection.

In Docket No. CP85-283-000, Applicant requested authorization to transport up to 20,000 Mcf of natural gas per day and up to 5,840,000 Mcf of natural gas per year on behalf of Northern Petrochemical Company (Shipper). It was stated that Shipper would purchase gas from Northern Gas Marketing, Inc., and would cause the natural gas to be delivered to Applicant at 13 receipt points in Kansas and Oklahoma as designated in the original gas transportation agreement dated December 14, 1984. Applicant also proposed to transport Shipper's volumes pursuant to its Rate Schedule EUT-1 and deliver thermally equivalent volumes to an existing interconnection located in Jo Davies County, Illinois, between Applicant and Northern Illinois Gas Company (Northern Illinois). Northern Illinois would then transport these volumes directly to Shipper's plant located in Morris, Illinois, it was stated. Applicant also requested flexible authority to add and delete receipt/delivery points under the proposed service. The proposed term of service would have expired on June 30, 1985.

Protests were filed by National By-Products Inc., and The Firestone Tire and Rubber Company and as a result, Applicant's original request in Docket No. CP85-283-000 is currently being treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act, it is noted. On May 13, 1985, Applicant filed an amendment to the December 14, 1984, transportation agreement. Applicant's amended service would continue until November 30, 1985, it is proposed. No other change to the original request under blanket authorization was proposed.

Comment date: June 19, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Consolidated Gas Transmission Corporation

[Docket No. CP85-480-000]

June 3, 1985.

Take notice that on May 2, 1985, as supplemented May 13, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-480-000 an application pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and § 284.107 of the Commission's Regulations authorizing Applicant to exchange natural gas with Cranberry Pipeline Corporation (Cranberry) for a period in excess of two years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of an exchange agreement dated August 18, 1983, as amended February 22, 1985, it would exchange up to 5,000 dt equivalent of gas per day with Cranberry for a term to expire March 1, 1998. Applicant further states that it commenced such exchange service for Cranberry on January 16, 1985, pursuant to § 284.102 of the Commission's Regulations and would continue under such authority for a term of two years.

It is asserted that the proposed service would be rendered on a gas-for-gas exchange basis, therefore no rate would be charged.

Comment date: June 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Bridgeline Gas Distribution Company

[Docket No. CP85-509-000]

June 3, 1985.

Take notice that on May 13, 1985, Bridgeline Distribution Company (Applicant), P.O. Box 60252, New Orleans, Louisiana 70160, filed in Docket No. CP85-509-000 an application pursuant to section 7 of the Natural Gas Act and § 284.222 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the sale, transmission or assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant agrees to comply with the conditions as set forth in § 284.222(e) of the Commission's Regulations.

Comment date: July 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor,

the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13625 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2174-000 et al.]

Interlocking Directorate Applications; Robert E. Byrnes et al.

May 29, 1985.

Take note that the following filings have been made with the Commission:

1. Robert E. Byrnes

[Docket No. ID-2174-000]

Take notcie that on May 9, 1985, Robert Byrnes (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President—the Cincinnati Gas & Electric Company

Vice President, Director—The Union Light, Heat and Power Company

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Ernest D. Huggard

[Docket No. ID-1811-005]

Take notice that on May 16, 1985, Ernest D. Huggard (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Chief Executive Officer—Atlantic City Electric Company

President—Deepwater Operating Company

Comment date: June 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13627 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-033]

Pennzoil Co., Nineteenth Amendment to Application for Immediate Clarification or Abandonment Authorization

May 31, 1985

Take notice that on May 28, 1985, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-033 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to ten new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Nineteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidatd Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it shoud not be found to be in violation of its duty * * * to provide adequate gas service to all applicants * * * and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, June 10, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-033.

Under the procedure herein provided for, Unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13634 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-494-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Scott Paper Co. et al.

June 3, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Scott Paper Company

[Docket No. QF85-494-000]

On May 13, 1985, Scott Paper . Company of Scott Plaza, Philadelphia, Pennsylvania 19113 (Applicant) submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to the

Applicant's integrated pulp and paper-making plant in Mobile, Alabama. The facility will consist of four boilers plus a fifth standby boiler supplying steam to three automatic extraction, non-condensing steam turbine-generators plus a fourth automatic extraction condensing steam turbine generator for standby service. The primary energy sources will be biomass, coal, and black liquor solids recovered from the pulping process at the plant. Limited amounts of natural gas or fuel oil will be used for start-up, shutdown, and emergency purposes. The net electric power production capacity will be approximately 95.6 megawatts. Installation of the facility began in late 1983 and is expected to be completed and fully operational by late 1985.

2. Riverside Hospital

[Docket No. QF85-498-000]

On May 17, 1985, riverside Hospital, (Applicant) of 1600 North Superior Street, Toledo, Ohio 43604, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Riverside Hospital at Toledo, Ohio. It will consist of a duel-fuel (Natural Gas/No. 2 Fuel Oil) engine, with heat recovery boiler. Saturated steam will be produced by passing the exhaust gases from the engine through a waste heat boiler, and by utilizing a heat exchanger to recover heat from the engine lube oil system. The steam will be used in the Hospital for thermal energy and the production of chilled water via absorption chillers for air conditioning purposes, and the hot water will be used in the laundry. The primary energy source of the facility will be natural gas. The electric power production capacity will be 565 kW. The installation of the facility will begin in April 1986.

3. Deaconess Hospital

[Docket No. QF85-499-000]

On May 20, 1985, Deaconess Hospital, (Applicant) of 4229 Pearl Road, Cleveland, Ohio 44109, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Deaconess Hospital at Cleveland, Ohio. It will consist of a dual-fuel (Natural Gas/No. 2 Fuel Oil) engine, with heat recovery boiler. Hot water will be produced by passing the exhaust gases from the engine through a heat exchanger, and recovering heat from the engine lube oil system. The thermal output from the congeneration system will provide heating, hot water and refrigeration services to the hospital. The primary energy source of the facility will be natural gas. The electric power generation capacity will be 665 kW. Installation of the facility will begin in April 1986

4. Fluidized Energy Frackville Associates

[Docket No. QF85-204-001]

On May 20, 1985, Fluidized Energy Frackville Associates (Applicant) of 3141 Bordentown Avenue, Parlin, New Jersey 08859, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulation. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Morea, Pennsylvania. The facility will consist of a fluidized bed combustor, a boiler and a 40 megawatt extraction steam-turbine/generator. The primary energy source will be "culm coal". The extracted steam will supply an adjacent prison facility now under construction. The facility is expected to be in operation in early 1987.

5. The Brooklyn Union Gas Company

[Docket No. QF85-503-000]

On May 13, 1985, The Brooklyn Union Gas Company (Applicant) of 195 Montague Street, Brooklyn, New York 11201, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulation. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's General Office at the foregoing address. The facility will consist of a natural gas fired internal combustion engine driving an induction type electric generator. Exhaust heat recovered from the engine exhaust gas, jacket water, and lubicating oil, utilizing water as the heat transfer medium, will be used for building heating and/or absorption. The primary energy source will be natural gas. The electric power production capacity will be 60 megawatts. Installation of the equipment is anticipated by June 1985.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13626 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8368-001]

Seaward Development—Hart Island Associates; Surrender of Preliminary Permit

June 3, 1985

Take notice that the Seaward Development—Hart Island Associates, Permittee for the Hart Island Project No. 8368 located on the Connecticut River in Sullivan County, New Hampshire, and Windsor County, Vermont, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 27, 1984, and would have expired on November 30, 1987. The Permittee states that analysis of the Hart Island Project did not indicate feasibility for development.

The Permittee filed the request on May 9, 1985, and the preliminary permit for Project 8368 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13635 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-39-000]

South Carolina Public Service Authority; Filing

May 31, 1985.

Take notice that on May 20, 1985, the South Carolina Public Service Authority ("Authority") filed an application seeking an order authorizing the issuance of up to $205,000,000 in Electric System Expansion Revenue Bonds, Refunding series. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction. The bonds are to be sold at a negotiated sale with a single underwriting group. The proceeds will be used to refund up to $179,000,000 outstanding Electric System Expansion Revenue Bonds and for other purposes.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13636 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-17-000]

State of West Virginia (Bradley Davis No. 1 Well FERC JD No. 85-02394); Effectiveness of Withdrawal

June 3, 1985.

Take notice that on April 29, 1985, Anvil Oil Company, Inc. filed a letter requesting withdrawal of its February 15, 1985, petition to reopen and vacate the Natural Gas Policy Act section 107 well category determination applicable to the above-referenced well. The section 107 well category determination was approved by the West Virginia Department of Mines, Oil and Gas Division, and notice of such determination was filed with the Commission on December 31, 1984. The determination became final after 45 days on February 14, 1985, pursuant to § 275.202(a) of the Commission's regulations.

No objection to the requested withdrawal has been received. Pursuant to Rule 216(b) (18 CFR 382.216(b)), the withdrawal was effective as of May 14, 1985, fifteen days after filing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13637 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-33-000]

Williston Basin Interstate Pipeline Co.; Petition for Adjustment

June 3, 1985.

Take notice that on May 16, 1985, Williston Basin Interstate Pipeline Company (Williston), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. SA85-33-000 a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978, wherein Williston seeks an exemption from the filing requirements of § 281.204(b)(2) of the Commission's Regulations, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Williston states that the collection and review of essential agricultural use requirements data and the preparation of the annual update of its index of customer requirements under § 281.204(b)(2) of the Commission's Regulations require considerable additional work and expense on the part of agricultural users, Williston's jurisdictional customers, Williston's personnel and Williston's Data Verification Committee. Further, Williston states that it would be able to meet the full requirements of its customers for the foreseeable future as indicated in Williston's FERC Form 16, filed October 12, 1984, and Williston's FERC Form 15, for the year ending December 31, 1984. Williston maintains that should it not meet it full customer requirements or should its FERC Form 16 project a supply deficiency, Williston would make the appropriate tariff filing in a timely fashion to comply with the Commission's Regulations, specifically § 281.204(b)(2).

The procedures applicable to the conduct of this adjustment are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in the adjustment proceeding shall file a motion to intervene with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13638 Filed 6-5-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-005600-054.

Title: Philippines North America Conference.

Parties: American President Lines, Ltd.
Hapag-Lloyd Aktiengesellschaft
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify the agreement by clarifying the existing authority of the parties to serve East Canada coastal points via minilandbridge service. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 202-009648A-025.

Title: Inter-American Freight Conference.

Parties:
A. Bottacchi S.A. De Navegacion
A/S Ivarans Rederi
Colonial Carib Carriers, Ltd.
Companhia Maritima Nacional
Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritima Netumar
Cylanco S.A.
Expresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A)
Empresa De Navegacao Allianca S.A.
Flota Mercante Del Estado

Frota Amazonica S.A.
Georgia-Aztec Line
High Seas Company Limited
Van Nievelt Goudriaan & Co. B.V.
J. Lauritzen Holding A/S
Kimberly Navigation Company
Lineas Maritimas Paraguayas S.A.
Lumber Carriers Limited
Mortensen and Lange
Passaat Line N.V.
Reefer Express Lines Pty. Ltd.
R.M.C. Lines, Inc.
Ship Operators (International) Inc.
Transportacion Maritima Mexicana S.A.
United States Lines (S.A.), Inc.

Synopsis: The proposed amendment would restate the agreement to conform with the format, organization and content requirements of the Commission's Regulations.

Dated: June 3, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13609 Filed 6-5-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Deposit Guaranty Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applictions are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.*, Jackson, Mississippi; to acquire 100 percent of the voting shares or assets of Deposit Guaranty Omaha, N.A., Omaha, Nebraska.

Deposit Guaranty has also applied to engage *de novo* through its subsidiary, DGC Services, Inc., Jackson, Mississippi, in the activities of making, acquiring or servicing loans and extensions of credit.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sterling Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares or assets of First National Bank of West University Place, Houston, Texas.

Sterling Bancshares, Inc., has also applied to acquire First University Service Corporation, Houston, Texas, thereby engaging in trust activities in the state of Texas.

Board of Governors of the Federal Reserve System, May 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13573 Filed 6-5-85; 8:45 am]

BILLING CODE 6210-01-M

First Eastern Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Eastern Corp.*, Wilkes-Barre, Pennsylvania; to acquire Ideal Consumer Discount Company, Nanticoke, Pennsylvania, thereby engaging in the activities of making or acquiring loans or other extensions of credit such as would be made by a consumer finance company.

Board of Governors of the Federal Reserve System, May 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13574 Filed 6-5-85; 8:45 am]

BILLING CODE 6210-01-M

National Commerce Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 28, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *National Commerce Corporation,* Birmingham, Alabama; to acquire 100 percent of the voting shares or assets of MetroBank, Birmingham, Alabama.

2. *SouthTrust Corporation,* Birmingham, Alabama; to acquire 80 percent of the voting shares or assets of First State Bank of Albertville, Albertville, Alabama.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ruston Bancshares, Inc.,* Ruston, Louisiana; to acquire 9.6 percent of the voting shares or assets of Security Bancshares, Inc., Monroe, Louisiana, thereby indirectly acquiring Security Bank, Monroe, Louisiana.

c. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Moore Financial Group Incorporated,* Boise, Idaho; to acquire 100 percent of the voting shares or assets of Continental Bank and Trust Company, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, May 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13575 Filed 6-5-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974; Correction

AGENCY: General Services Administration.

ACTION: Notification of correction to system of records.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

On May 16, 1985, GSA published in the **Federal Register** (50 FR 20501) a notice of a revised system of records, Travel Charge Card Program GSA/GOVT-3 (85-11863). The following routine use was omitted from the notice.

GSA/GOVT-3

SYSTEM NAME:

Travel Charge Card Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

i. To disclose information to GSA contract agents assigned to participating agencies for billing of travel expenses.

* * * * *

Dated: May 30, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-13601 Filed 6-5-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Prevention Research on Mutual Support Approaches with Bereaved Populations

AGENCY: The National Institute of Mental Health, ADAMHA, HHS.

ACTION: Issuance of an announcement for Prevention Research on Mutual Support Approaches With Bereaved Populations, MH-86-05.

SUMMARY: The National Institute of Mental Health announces the availability of an announcement concerning support for Prevention Research on Mutual Support Approaches with Bereaved Populations. Controlled experiments are encouraged to assess outcome of support interventions with bereaved individuals and families. Intervention research can address questions of causality and test hypotheses for high-risk groups facing bereavement. Support may be requested for up to 5 years.

Receipt date of applications for FY 1986 funding: Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures.

For further information or a copy of the announcement, contact: Anita Eichler, Project Officer, Bereavement Research Initiative, Center for Prevention Research, Division of Prevention and Special Mental Health Programs, National Institute of Mental Health, Parklawn Building, Room 11C-06, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4283.

Donald Ian Macdonald, M.D.,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-13552 Filed 6-5-85; 8:45 am]

BILLING CODE 4160-20-M

Research on Family Stress and the Care of Alzheimer's Disease Victims

AGENCY: The National Institute of Mental Health.

ACTION: Issuance of Grant Announcement on Research on Family Stress and the Care of Alzheimer's Disease Victims, MH-86-07.

SUMMARY: The National Institute of Mental Health seeks applications for studies which will increase knowledge and improve research methodology on family stress related to the care of individuals with Alzheimer's disease (AD) and the development of family care and service delivery models. Applications should focus on the generation of systematic information on the nature, consequences, and the interplay of stress associated with understanding and enhancing family support; the identification, treatment, and management of excess disability in AD patients and strategies to maximize their functional level at all stages of the disease; the prevention of psychopathology and the promotion of mental health among family caregivers; and research on the design and delivery

of services which provide treatment and clinical interventions for individuals with AD and for the family members who care for them. Support may be requested for up to 3 years.

Receipt date of applications for FY 1986 funding: Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures.

For further information or a copy of the announcement, contact: Enid Light or Barry D. Lebowitz, Ph.D., Center for Studies of the Mental Health of the Aging, National Institute of Mental Health, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 433–1185.

Donald Ian Macdonald, M.D.,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–13554 Filed 6–5–85; 8:45 am]

BILLING CODE 4160-20-M

Treatment Development and Assessment Research Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory body scheduled to assemble during the month of June 1985.

Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, June 27–28; 9:00 a.m., Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open—June 27; 9:00–10:00 a.m., Closed-Otherwise, Contact: Pamela J. Mitchell, Parklawn Building, Room 9C18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 1367

Dated: May 31, 1985.

Robin I. Kawazoe,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–13566 Filed 6–5–85; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–85–800]

Designation; Camden Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: This designation is effective May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, N.Y. 10278, telephone (212) 264–2761. (This is not a toll-free number.).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Special Assistant to Manger
2. Chief, Valuation Branch
3. Chief, Property Disposition Branch
4. Chief, Loan Management Branch

This designation supersedes the designation effective June 9, 1976.

Authority: Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971.

Joseph D. Monticciolo,

Regional Administrator, Regional Housing Commissioner, Region II.

[FR Doc. 85–13570 Filed 6–5–85; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N–85–1535]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Existing Housing Allowances for Tenant Furnished Utilities and Other Services for use in the section 8 Existing Housing Assistance Payments and Housing Voucher Programs
Office: Housing
Form Number: HUD–52667
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 6,000
Status: Revision
Contact: Myra Newbill, HUD, (202) 755–7707, Robert Fishman, OMB, (202) 395-6880

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requirements Associated With the Office of Interstate Land Sales Registration
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses and Other For-Profit
Estimated Burden Hours: 49,502
Status: Reinstatement
Contact: John R. Brady, HUD, (202) 755–0502, Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: May 28, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85–13569 Filed 6–5–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Izembek National Wildlife Refuge, AK; Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Izembek National Wildlife Refuge, Alaska, pursuant to Sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Section 3(d) of the Wilderness Act of 1964, and Section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes two strategies for long-term management of the 315,000-acre refuge. Each alternative also examines a possible addition to the National Wilderness Preservation System.

DATES: Comments on the final CCP/EIS must be submitted on or before July 8, 1985, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786–3399.

A final CCP/EIS has been prepared for general distribution. Copies of the final comprehensive plan will be sent to all persons and organizations who participated in either the scoping, alternative workshops, and/or public hearing/meetings. Copies of the final document are available upon request from Mr. William Knauer.

Copies of the final CCP/EIS have been sent to all agencies that participated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the final may obtain one by contacting Mr. Knauer. Copies of the final CCP/EIS are also available for review at the above location, at the Izembek National Wildlife Refuge Office, Cold Bay, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Street, NW., Department of the Interior, Washington, D.C. 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Izembek National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of Section 304 of ANILCA relating to preparation of comprehensive conservation plans. In addition, the final CCP/EIS and Wilderness Review also describes the general wilderness suitability of various acreages of non-wilderness refuge lands, under such management alternative, in order to comply with Section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1987.

Major issues addressed by the plan include fish and wildlife management; disturbance of migratory bird populations; development and use of adjacent state and private lands; public use; and wilderness management. This plan describes two alternative strategies, each of which provides broad policy guidance for managing the Refuge. The Service's preferred alternative (Alternative A) would ensure the continuity of existing managment regulations and programs which have enabled the agency to meet its objectives in the past. The level of development in this preferred alternative should be sufficient to meet the needs of refuge users for the foreseeable future. In maintaining the Refuge's natural diversity, the proposal would ensure support of key fish and wildlife populations and habitats by minimizing potential impacts from development and of continued subsistence use of the resources of the Refuge.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the October 29, 1981, **Federal Register**. Other government agencies and the general public contributed to the development of this final CCP/EIS and Wilderness Review. After dissemination of the draft version five public meetings were held in the communities of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point, Alaska, on November 5, 6, 7, 8, and 9, 1984. A public hearing was held in Anchorage, Alaska, on November 1, 1984.

The U.S. Fish and Wildlife Service will issue a Record of Decision on this CCP/EIS after July 8, 1985.

Dated: May 30, 1985.

David L. Olsen,

Acting Regional Director.

[FR Doc. 85–13547 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Bay Mills Reservation, MI; Ordinance Providing for the Introduction of Intoxicating Liquors

May 17, 1985.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Bay Mills liquor ordinance was duly adopted by the Bay

Mills General Tribal Council on June 25, 1984 and amended on March 10, 1985. The instant ordinance provides for the introduction, use, sale and distribution of alcoholic beverages within areas of Indian country under the jurisdiction of the Bay Mills Indian Community of Michigan. The ordinance reads as follows.

Theodors C. Krenzke,

Acting Deputy Assistant Secretary—Indian Affairs.

Resolution

This resolution is made this 25th day of June, 1984, by the Bay Mills Executive Council in accordance with the Constitution and Corporate Charter thereof.

Whereas, the Bay Mills Indian Community General Council has previously enacted a Tribal Criminal Code; and

Whereas, it has become apparent after several years of experience with the said Code that certain additions thereto are required in order to properly protect the health, safety and welfare of the members of the Bay Mills Indian Community.

Now, Therefore Be It Resolved, that the following additions to the Bay Mills Indian Community are hereby adopted and enacted, subject only to the approval of the Secretary of the United States Department of the Interior, or his designate:

Chapter VI—Part Two—Section 660

Alcoholic Beverages

660. *Alcoholic Beverages; Compliance with federal and tribal law with respect thereto.* No Indian person shall sell, trade, transport, manufacture, use, or possess any beer, ale, wine or other alcoholic beverage; nor any other substance whatsoever capable of producing alcoholic intoxication, nor aid not abet any Indian person or non-Indian person in any of the foregoing, without first complying with the terms and conditions of the liquor ordinance of the Bay Mills Indian Community as approved by the General Tribal Council on June 25, 1984;

The federal Indian liquor laws and the ordinances of the Bay Mills Indian Community pertaining thereto: Any person violating the provisions of this ordinance within the jurisdiction of the Bay Mills Indian Community shall be deemed guilty of an offense, and upon the conviction thereof, shall be sentenced to a period of imprisonment not to exceed six months, a fine not to exceed five hundred dollars ($500), or both, such imprisonment and fine together with court cost.

661. *Tribal Licenses for the Sale of Alcoholic Beverages; Procedure for Application and Issuance.* Upon proper application submitted to the Executive Council of the Bay Mills Indian Community by an Indian person twenty-one (21) years of age or over; the said Council may issue a license for on-premises and/or off-premises sale of alcoholic beverages, on specific federal Indian reservations.

662. All applications for such licenses must be submitted to the Executive Council in writing setting forth the name, address, age and tribal affiliation of the applicant, together with the legal description of the premises upon which such sale in proposed to take place. The form upon which such application shall be made shall be supplied by the Executive Council on the Bay Mills Indian Community and may require such further information as such Executive Council shall from time to time require of all such applications.

663. Licenses for the sale of alcoholic beverage issued by the Executive Council of the Bay Mills Indian Community shall remain the property of such applicant, and shall be effective for a period of one year from the date of issuance.

664. *Number of Licenses to be Issued; Compliance by Licensees with certain State laws.* The Bay Mills Indian Community Executive Council shall have the sole power and authority to determine, in its sole and only discretion, the number of any type of licenses for the sale of alcoholic beverage that may from time to time be issued.

665. Any holder of a license for the sale of alcoholic beverage issued by the Executive Gouncil of the Bay Mills Indian Community shall be required to comply, as a condition of retaining such license, with all applicable tribal laws and ordinances and shall further observe the laws of the State of Michigan, insofar as times of sale and minimum ages of persons to whom sales are made.

666. *Executive Council to be sole judge of qualification of Applicants; Suspensions and/or Revocation of Licenses.* The Executive Council of the Bay Mills Indian Community shall be the sole judge of the qualifications of applicants for licenses authorizing the licensee to sel alcoholic beverages. No applicant for such license shall be refused for arbitrary and/or capricous reasons; however, the Executive Council may take into account its decision as to whether or not to issue such a license whether or not the applicant has a prior criminal record, whether or not evidence exists that a person or persons other than the applicant will in reality have any financial or other interest in the licenses, and the prior conduct of the applicant as a licensee, if the applicant shall have previously been a licensee.

667. The Executive Council of the Bay Mills Indian Community may suspend or revoke the license issued to any applicant pursuant to these provisions for any violation of any provision of Chapter VI—Part Two—Section 660 or for any violation by the licensee, in the course of his business of selling alcoholic beverage of any portion of the criminal laws of the Bay Mills Indian Community.

Upon receipt of any complaint with respect to any tribal licensee, the Executive Council shall cause such complaint to be placed in writing, shall cause a copy of such complaint to be served personally or by registered mail upon the licensee, and shall cause a hearing to be held upon such complaint not less than (7) seven days nor more than twenty one (21) days after service of complaint upon the licensee. If at such hearing it is proved by a preponderance of the evidence that the allegations contained within the complaint are correct, and that the licensee has violated any of the provisions of Chapter VI—Part Two—Section 660, or during the course of operating his business for the sale of alcoholic beverages has violated any of the criminal statutes of the Bay Mills Indian Community, the Executive Council may impose a suspension or revocation of the license of the involved licensee, the determination of the type of penalty to be imposed in the sole and only discretion of the said Executive Council.

Certification

The foregoing resolution was duly adopted by the Bay Mills General Tribal Council with a quorum present during (*regular*-special) session on the 25th day of June, 1984, with a vote of 46 for, 8 against and 0 abstaining.

Corrine A. Cameron,

Secretary, Bay Mills General Tribal Council

Resolution

668. "The Ordinance in no way purports to assert criminal jurisdiction over non-Indians in violation of the present status of the law".

Certification

The above section was duly adopted by the Bay Mills General Tribal Council at a meeting held at Bay Mills, Michigan on the 10th day of March, 1985, with a

quorum present during regular session with a vote of 35 for 0 against and 3 abstaining.

Irma C. Parrish,
Tribal Chairperson.
Corrine A. Cameron,
Secretary.

[FR Doc. 85–13670 Filed 6–5–85; 8:45 am]
BILLING CODE 4310–05–M

Bureau of Land Management

Environmental Assessment; South Bearpaw Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Planning Amendment Decision, South Bearpaw Unit.

The Bureau of Land Management has prepared an environmental assessment (EA) to amend the South Bearpaw Management Framework Plan for the management of the wild horse herd in the Ervin Ridge area. The EA was released to the public on August 4, 1983. A 30-day comment period followed. Based on the findings of the EA and upon the comments received, it was determined that the three alternative management programs addressed were not major Federal actions which significantly affects the quality of human environment, nor were they hightly controversial in regard to the use of resources. Therefore, no environmental statement is required on these alternatives.

The Bureau of Land Management will implement Alternative C as described in the EA. Alternative C provides for removal of all wild free-roaming horses in the Ervin Ridge area. Implementation will begin 30 days following this publication notice in the **Federal Register**. A capture plan has been prepared indicating the method of removal. The method of disposal will be adopton through the BLM's adopt-a-horse program.

The primary consideration determining the decision was the feasibility of managing a wild horse herd in the Ervin Ridge area to benefit the public and to protect the one remaining horse from malicious death or harassment.

The lack of legal public access, the high cost of managing a wild horse herd, including reintroduction of horses from other areas and periodic introduction of male horses to prevent inbreeding, and the high probability of limited funds and manpower in the foreseeable future are the prime considerations making the feasibility of managment questionable.

There were ten comments received on the EA. Of these comments, seven favored the removal of the horses, one favored management of a horse herd (Alternative B), one provided comment to the text only, and one requested more information. Informal discussions with people within the local area indicate a preference for removing the wild horses.

Protests should be made to the Director (202), Bureau of Land Management, 1800 C Street, NW, Washington, D.C. 20240 within 30 days of the date of publication in the **Federal Register.** Protests should include the name, mailing address, telephone number and interest of the person filing the protest; a statement of issue or issues being protested; a statement of the part or parts of the amendment being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or any indication of the date the issue or issues were discussed for the record; and a concise statement explaining why the District Manager's decision is believed to be wrong.

DATES: Implementation will begin 30 days following publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Area Manager, Havre Resource Area, Drawer 911, Havre, Montana 59501.

Dated: May 31, 1985.

Glenn W. Freeman,
District Management.

[FR Doc. 85–13666 Filed 6–5–85; 8:45 am]
BILLING CODE 4310–DN–M

[M–64213]

Exchange of Public and Private Lands in Carter, Dawson, Garfield, McCone, Roosevelt, and Rosebud Counties, MT

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana

T. 20 N., R. 34 E.,
Sec. 35: SW¼NW¼.
T. 20 N., R. 35 E.,
Sec. 32: W½NW¼, NW¼SW¼.
Aggregating 160.00 acres, Garfield County.
T. 8 N., R. 42 E.,
Sec. 8: N½NE¼.
Aggregating 80.00 acres, Rosebud County.
T. 25 N., R. 47 E.,
Sec. 3: NW¼SW¼.
Aggregating 40.00 acres, McCone County.
T. 29 N., R. 54 E.,
Sec. 3, Lots 1, 3.
T. 30 N., R. 54 E.,
Sec. 34: Lot 2.
Aggregating 57.99 acres
T. 27 N., R. 57 E.,
Sec. 21: SE¼SE¼;
Sec. 22: S½SW¼, SW¼SE¼,
Sec. 23: Lot 8,
Sec. 26: Lots 5, 6.
T. 27 N., R. 58 E.,
Sec. 19: Lots 1, 2.
Aggregating 397.75 acres, Roosevelt County.
T. 4 N., R. 55 E.,
Sec. 14: S½,
Sec. 26: NW¼NE¼, N½NW¼, SW¼, SW¼SE¼;
Sec. 28: W½NE¼, NW¼, N½SW¼.
T. 3 N., R. 55 E.,
Sec. 2: Lot 4.
T. 3 N., R. 56 E.,*
Sec. 6: SW¼NW¼.
T. 3 N., R 57 E.,
Sec. 2: E½SE¼.
*1132.72 acres, Carter County.

***Note.**—The entire 1132.72 acres in Carter County will not be used in this proposed exchange. The actual acreage of this portion will be dependent upon final appraisals.

In exchange for these lands, the United States Government will acquire the surface estate in the following described lands from John Hess of Glendive, Montana:

Principal Meridian, Montana

T. 13 N., R. 53 E.,
Sec. 12: Lots 5, 6.
T. 13 N., R. 54 E.,
Sec. 6: Lot 9,
Sec. 7: Lots 8–10.
Aggregating ±300.00 acres, Dawson County.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. All comments will be evaluated by the Montana State Director, who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination.

FOR FURTHER INFORMATION CONTACT: Information concerning this exchange is available for review at the Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana.

SUPPLEMENTARY INFORMATION: The purpose for this exchange is to acquire the non-federal lands for public use on the Yellowstone River. The lands are an island and are physically located halfway between a boat launch site on

public land near Fallon, Montana, and another parcel of public land downstream from Fallon 18 miles. Public use of this island will include but not be limited to hunting, camping, livestock grazing and wildlife use. The public lands being exchanged are scattered, isolated parcels ranging in size from 40 to 320 acres. Most are without legal access and none possess any unique or special resource or public use values. The exchange is consistent with the Bureau's planning decisions for these public lands and local and state governments have been notified prior to this Notice.

This exchange is based on equal fair market value determined by standard appraisal methods. The public lands which are proposed for exchange have been examined by pertinent resource specialists and have been determined to be suitable for exchange. The publication of this notice segregates the public lands from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The exchange will be subject to:

1. The exchange of surface estate only. All mineral ownership will remain the same.

2. The patent issued by the United States will reserve all minerals and a right-of-way for ditches or canals to the United States in accordance with 43 U.S.C. 945.

3. All valid existing rights of record.

4. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

Dated: May 28, 1985.

Bruce G. Whitmarsh,

Acting District Manager.

[FR Doc. 85–13667 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–ON–M

Hearing To Discuss the Use of Helicopters and Motorized Vehicles To Gather Wild Horses; Ely District

AGENCY: Bureau of Land Management, Interior.

ACTION: Ely District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses in FY 85 and FY 86.

SUMMARY: In accordance with Pub. L. 92–195, as amended by Pub. L. 94–579 and Pub. L. 95–514, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Ely District during FY 85 and FY 86.

DATE: July 9, 1985—1:00 p.m.

ADDRESS: The hearing will take place at the Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301. Telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: The use of helicopters and motorized vehicles to gather wild horses from the Monte Cristo herd management area during FY 85 and from the Antelope, Cherry Creek, Buck and Bald, Sand Springs and Wilson Creek herd management areas during FY 86 will be discussed. The FY 86 gathers are subject to change depending on the availability of funds and the capability to process and adopt out the horses gathered.

The authority for the use of helicopter and motor vehicles in gathering and transporting wild horses is 43 CFR 4730.7 and 4740.2.

This hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Robert E. Brown, Ely District Wild Horse Specialist, by July 3, 1985. Written statements must be received by this date also.

FOR FURTHER INFORMATION CONTACT: Robert E. Brown, Wild Horse Specialist, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, or phone (702) 289–4865.

Dated: May 31, 1985.

Merrill L. DeSpain,

District Manager.

[FR Doc. 85–13653 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–HC–M

Las Cruces District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Las Cruces District, New Mexico.

ACTION: Notice of meeting.

DATE: July 16, 1985, 10:00 a.m.

ADDRESS: Bureau of Land Management, Socorro Resource Area, Conference Room, 198 Neel Avenue, Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Robert R. Calkins, Associate District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005, (505) 525–8228.

SUPPLEMENTARY INFORMATION:

Agenda

1. Introduction of New District Manager.
2. Approval of Minutes.
3. Update of Range Improvement Projects.
4. Discussion of Interim Management Policy and Guidelines for Lands Under Wilderness Review.
5. Other Business.

Public comment will be heard by the Board at 1:30 p.m.

Daniel C. B. Rathbun,

District Manager.

[FR Doc. 85–13651 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–FB–M

Susanville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579 (FLPMA), that a District Advisory Council meeting will be held on July 8, 1985 at 8:00 a.m. to 4:30 p.m. in the Susanville BLM District Office, 705 Hall Street, Susanville, California 96130.

The Agenda will include:

(1) Discussion of Eagle Lake/Cedarville Draft EIS Preliminary Wilderness recommendations.

(2) Fort Sage Technical Review Team Progress Report.

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Louisa Beld, Public Information specialist, (916) 257–5381.

Ben F. Collins,

Associate District Manager.

[FR Doc. 85–13643 Filed 6–5–85; 8:45 am]

BILLING CODE 4333–09–M

Las Cruces District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

DATE: July 9, 1985, 9:30 a.m.

ADDRESS: Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Daniel C. B. Rathbun, District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005, (505) 525–8228.

SUPPLEMENTARY INFORMATION:

Agenda

1. Approval of Minutes.
2. Introduction of New District Manager.

3. Wilderness Interim Management Policy and Instructions.
4. White Sands Missile Range—State Land Office Exchange.
5. Review of White Sands Resource Management Plan (RMP) Comments.
6. Gila River Management Plan Objectives and Planned Actions.

The meeting will be open to the public and interested persons may make oral statements to the Board during an allotted time period, beginning at 2:00 p.m. and lasting for at least one-half hour. The District Manager may establish a time for oral statements depending on the number of persons wishing to make statements. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005 by July 8, 1985.

Daniel C. B. Rathbun,

District Manager.

[FR Doc. 85–13644 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–FB–M

Federal Minerals Exchange; Gila, Maricopa, Mohave, Pima, Pinal, and Yavapai Counties, AZ; Realty Action

Correction

In FR Doc. 85–11212 beginning on page 19586 in the issue of Thursday, May 9, 1985, make the following corrections:

Gila and Salt River Meridian, Arizona

Page 19586, Column 2:

Township 7 North, Range 6 West,
Section 33: S½NE¼, W½SE¼.

Page 19586, Column 3:

Township 6 South, Range 11 East,
Section 22: N½, E½SW¼, SE¼.
Township 6 South, Range 13 East,
Section 12: S½;
Section 33: S½;
Section 34: N½, N½SW¼.
Township 10 South, Range 6 East,
Section 19: Lots 1–4, E½W½, E½.

Page 19587, Column 2:

Township 25 North, Range 16 West,
Section 32: E½, NE¼NW¼, SW¼.

Page 19587, Column 3:

Township 16 North, Range 17 West,
Section 36: SW¼NE¼, W½, S½SE¼.

BILLING CODE 1505–01–M

[NW 34139]

Proposed Reinstatement of Termination Oil and Gas Lease; New Mexico

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Under the provisions of PL 97–451, Texaco, Inc., petitioned for reinstatement of oil and gas lease NM 34139 covering the following described lands located in Grant County, New Mixico:

T. 25 S., R. 14 W., NMPM, New Mexico
Sec. 19, Lots 1, 2, 3, 4, E½W½, NE¼, E½SE¼;
T. 25 S., R. 15 W., NMPM, New Mexico
Sec. 22, N½;
Sec. 23, S½NW¼, E½SW¼, E½SE¼, NE¼;
Sec. 25, S½N½, N½S½;
Sec. 26, NE¼NE¼, S½NE¼, E½NW¼;
Sec. 28, S½;
Sec. 33, N½.
Containing 2438.21 acres.

It has been shown to my satisfation that failure to make timely payment of rental was due to inadvertence.

No valid lease have been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination. February 1, 1985.

Dated: May 31, 1985.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 85–13648 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–FM–M

[NM–A–43584–(Okla.)

Proposed Reinstatement of Termination Oil and Gas Lease; New Mexico

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Under the provisons of Pub. L. 97–451, Whitmar Exploration Company petitioned for reinstatement of oil and gas lease NM–A 43584–(Okla.) covering 2,149.52 acres in T. 5 N., R. 23 E., I.M., LeFlore County, Oklahoma.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at rate of 16⅔ percent. Reimbursement for cost of the publication of this noticed shall be paid by the lessee.

Reinstatement of the lease will be effective as the date of termination, April 1, 1985.

Dated: May 31, 1985.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 85–13649 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–FB–M

[NM 34143]

Proposed Reinstatement of Termination Oil and Gas Lease; New Mexico

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Under the provisions of PL 97–451, Texaco, Inc., petitioned for reinstatement of oil and gas lease NM 34143 covering the following described lands located in Grant County, New Mexico:

T. 26 S., R. 15 W., NMPM, New Mexico
Sec. 1, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 4, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, SE¼NW¼, E½SW¼, S½NE¼, SE¼;
Sec. 11, All.
Containing 2291.36 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination. January 1, 1985.

Dated: May 31, 1985.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 85–13647 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–FB–M

[A–822; A 3753

Charleston Dam and Reservoir, AZ; Modification and Continuation of Withdrawal

As a result of the review made pursuant to section 204(1) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to continue the subject withdrawal for a period of 20 years, rather than for an idefinite term.

The land was withdrawn for use by the Bureau of Reclamation for construction of the Charleston Dam and

Reservoir as a multi-purpose facility to provide water conservation, flood control, fish and wildlife benefits, and recreation facilities. The reservoir is estimated to develop 12,000 acre-feet of supplement water for the Central Arizona Project water users per year, and regulate the water supply of downstream users in the San Pedro Valley.

The existing withdrawal, made by Public Land Order 5269 of October 11, 1972, withdrew the land from operation of the public land and mining laws, but not the mineral leasing laws.

No change in the segregative effect to the withdrawal or use of the land is proposed.

The following described land is included in the proposed modification:

Gila and Salt River Meridian, Arizona

T. 21 S., R. 21 E.,
Section 1, lots 1, 2, 3, and 4;
Section 12, lots 1 and 2, S½NE¼, SE¼NW¼, N½SE¼.
T. 21 S., 22 E.,
Section 5, lots 1 and 2, NW¼SE¼, S½SE¼;
Section 6, lots 3 and 9, inclusive, SE¼SW¼, excluding Mineral Patents 8967, 8968, 8969, 8969, 14930;
Section 7, lots 1 and 2, N½NE¼, SW¼NE¼, E½NW¼, NW¼SW¼;
Section 9, S½NW¼;
Section 33, lot 1 NE¼, E½NW¼.
T. 22 S., R. 22E.,
Section 4, lot 11, lots 23 to 33, inclusive, lots 36, 39, 40, 45, 46, 50, 57, 59, 62, 63, lots 67 to 70, inclusive, lots 72, 73, 76, 77, lots 82 to 85, inclusive, lots 87 to 90, inclusive, lots 93 to 103, inclusive;
Section 9, lots 1, 2, 3, and 4, E½NE¼.

Containing approximately 1,988.63 acres in Cochise County, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to detemine the existing and potential demand for the land and its resources, and will review the withdrawal rejustification to ensure that continuation or modification would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. The authorized officer will also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress who will determine whether or not the withdrawal will be continued or modified, and if so for how long. The final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed action should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 16563, Phoenix, Arizona 85011.

Dated: May 29, 1985.

John T. Mezes,

Chief, Branch of Lands and Minerals Operation.

[FR Doc. 85-13663 Filed 6-5-85; 8:45 am]

BILLING CODE 4310-32-M

[A-13441]

Orme Dam and Reservoir AZ; Proposed Modification and Continuation of Withdrawal

May 29, 1985.

As a result of the review made pursuant to section 204(1) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to continue the subject withdrawal for a period of 20 years, rather than for an indefinite term, subject to review and extension of the withdrawal, if appropriate.

The land was withdrawn for use by the Bureau of Reclamation for construction of Orme Dam and Reservoir as part of the Central Arizona Project and to regulate Colorado River water conveyed by the Granite Reef Aqueduct, conserve water, provide flood protection to the Phoenix metropolitan area, and provide for water-based recreation.

The existing withdrawal, made by Secretarial Order of March 17, 1952, withdrew the lands from operation of the public land and mining laws. The land has been and will continue to be open to mineral leasing.

No change in the segregative effect of the withdrawal or use of the land is proposed.

The following described land is included in the proposed modification:

Gila and Salt River Meridian, Arizona

T. 3 N., R. 7 E.,
Section 16, lots 9, 10, 11, and 12;
Section 21, lots 9, 10, 11, and 12, E½E½;
Section 22, W½W½;
Section 27, W½NW¼;
Section 28, lots 9, 10, 11, and 12, E½E½.
T. 4 N., R. & E.,
Section 5, lots 1 to 11, inclusive, S½NW½, N½SW½, SW½SW½.
T. 5 N., R. 7 E.,
Section 32, lots 1, 5, 6, 7, 8, 10, and 11, E½E½.

Containing 1,806.06 acres in Maricopa County, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources, and will review the withdrawal rejustification to ensure that continuation or modification would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. The authorized officer will also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued or modified, and if so, for how long. The final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed action should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operation.

[FR Doc. 85-13664 Filed 6-5-85; 8:45 am]

BILLING CODE 4310-32-M

[OR-20264]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a land withdrawal for the Klamath Project continue for an additional 50 years. The

land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Bureau of Land Management Order of February 11, 1947, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximately three miles southeast of the City of Klamath Falls and contains 59.60 acres within Sections 21, 25, and 27, T. 39 S., R. 9 E., W.M., Klamath County, Oregon.

The purpose of the withdrawal is to protect the Klamath Reclamation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 30, 1985

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–13662 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–33–M

[OR–22073 (WASH)]

Washington; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army proposes that a portion of the land withdrawal for the Vancouver Barracks continue for an additional 50 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Department of the Army proposes that a portion of the existing land withdrawal made by the Executive Order of January 13, 1878, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located within the City of Vancouver near the Columbia River in Clark County, Washington. A total or 53.47 acres are affected.

The purpose of the withdrawal is to protect the Vancouver Barracks Army Post. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 30, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–13661 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–33–M

[Coal Lease Application ES 32662]

Competitive Coal Lease Offering by Sealed Bid; Tuscaloosa County, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that as a result of an application filed by Russell Coal Company (ES 32662) for coal resources in the Middle Utley Coal Bed (Tuscaloosa County, Alabama), this coal resource will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. 181), as amended. The applicant has satisfactorily demonstrated under the emergency leasing regulation 43 CFR 3425.1–4 that if the coal deposits are not leased, they will be bypassed in the reasonably foreseeable future.

The application has been listed as a single parcel.

Parcel One

Application ES 32662 (East Poplar Hollow Tract)

T. 17 S., R. 9 W., Tuscaloosa County, Alabama

Portions of Sections 3, 4 and 9.
Containing approximately 310 acres.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid for the tract equals or exceeds the fair market value (FMV) of the tract as determined by the authorized officer after the sale.

The Department of the Interior has established a minimum bid of $100 per acre. The minimum bid is not to be considered as representing the amount for which the tract may actually be leased, since FMV will be determined in a separate postsale analysis. If identical high sealed bids are received, the tying high bidders will be asked to submit follow-up sealed bids until a high bid is received. All tie-breaking bids must be submitted within 5 minutes following the authorized officer's announcement at the sale that identical high bids have been received.

DATE: The sale will be held at 10:00 a.m., June 27, 1985, in the Eastern States Office Public Room, 350 South Pickett Street, Alexandria, Virginia 22304. All bids must be submitted to the Bureau of Land Management, Eastern States Office, at the above address. The bids should be sent by certified mail, return receipt; or be hand-delivered on or before 4:00 p.m., June 26, 1985. Any bids

received after 4:00 p.m., June 26, 1985 will not be considered.

SUPPLEMENTARY INFORMATION: The coal resource being offered is to be Surface-Mined from the Middle Utley Coal Bed (East Popular Hollow Tract), Tuscaloosa County, Alabama. The complete legal description is available at the Eastern States Office at the address listed above.

The proximate analysis of the tract is as follows:

East Poplar Hollow Tract

1. Moisture (%)	1.4–2.4
2. Ash (%)	6.6–11.7
3. Sulfur (%)	1.6–3.9
4. Btu/lb	13.109–14.000
5. Approx. tons in place	132.000

Other detailed chemical analysis are available upon request from the Bureau of Land Management, Eastern States Office, Branch of Fluid and Solid Minerals at the address listed above.

Rental and Royalty

Any lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12½ percent of the value of the coal produced by surface mining methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability

Bidding instructions and bidder qualifications are included in the Detailed Statement of the Lease Sale. Copies of the Statement and of the proposed coal lease are available at the Bureau of Land Management, Jackson District Office, P.O. Box 11348, Delta Station, Jackson, Mississippi 39213. Case file documents are available for public inspection at the Eastern States Office.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Coalgate, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0149.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 85–12364 Filed 6–5–85; 8:45 am]

BILLING CODE 4310-GJ-M

[NM-39284]

Exchange of Lands; Santa Fe and Taos Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on a private land exchange with Mr. Louis Menyhert.

SUMMARY: Pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the following described lands have been determined to be suitable for disposal by exchange:

New Mexico Principal Meridian

T. 17 N., R. 8 E.,
Section 24: E½NE¼, NE¼SE¼, S½S½
The areas described amount to 280 acres.

In exchange for these lands, the United States will acquire the following described lands from Mr. Menyhert:

NEW MEXICO PRINCIPAL MERIDIAN

	Acres
T 26 N., R 11 E., Sec. 2: All	622.40
T 27 N., R. 11 E.,	
Sec. 1: All	639.22
Sec 36: All	593.61
T 29 N., R. 9 E.,	
Sec. 11: N½NE¼	80.00
Sec. 12: N½N½NW¼SE¼, W½NE¼SE¼, E½SE¼SE¼, NE¼NE¼SE¼ NW¼SE¼N½	390.00
Sec. 13: NE¼NE¼NE¼, S½NE¼NE¼, SE¼NE¼, SW¼NW¼, NE¼SW¼, W½SW¼, SE¼	350.00
Sec 24: All	640.00
Sec 25: All	640.00
T 29 N., R. 10 E.,	
Sec. 18: S½	320.46
Sec 19: All	641.52
T 30 N., R. 11 E.,	
Sec. 19: S½NW¼, SE¼	238.76
Sec. 30: All	638.32
T 31 N., R. 9 E.,	
Sec. 10: SW¼NW¼, NW¼SW¼, SE¼SW¼N½SE¼	200.00
T 31 N., R. 11 E.,	
Sec. 17: SW¼, NW¼SE¼, S½SE¼	280.00

The areas described amount to 6,284.99 acres.

The public lands identified for disposal are located about 3 miles west of the City of Santa Fe and have high value for residential development. However, they only have limited potential for public use as compared to the private lands north and west of Taos which have high values for wildlife habitat, livestock grazing and public recreation. In fact portions of the private lands have been identified as critical winter elk habitat and a buffer zone for the Rio Grande Wild and Scenic River.

This exchange proposal is consistent with recommendation L–7.3 in the Rio Grande Management Framework Plan (MFP). A BLM grazing allotment will be reduced by 280 acres, but the amount of grazing use will remain unchanged.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations:

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945). Publication of this notice segregates the public land from the operation of all the public land laws, including the mining laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

Further information concerning the exchange, including environmental assessment/land report is available for review at the Albuquerque District Office, 505 Marquette Ave., NW., Albuquerque, New Mexico.

For a period of 45 days from the date of this publication, interested parties may submit comments to Albuquerque District Manager, P.O. Box 6770, Albuquerque, New Mexio 87197–6770.

Dated: May 28, 1985.

Michael F. Reitz,

District Manager.

[FR Doc. 85–13596 Filed 6–5–85; 8:45 am]

BILLING CODE 4310-FB-M

Exchange of Public Land; California

The following described public land has been determined to be suitable for disposal under the provisions of Pub. L. 94–579, the Federal Land Policy and Management Act of 1976, Section 206 (90 Stat. 2756).

Mount Diablo Meridian, California

T. 6 N., R. 14 E.,
Sec. 29, Lots 2 and 6
Containing 79.95 acres more or less.

In exchange for both the surface and mineral estates, the United States Government will acquire the surface and mineral estates of the following described lands:

Mount Diablo Meridian, California

T. 17 N., R. 9 E.,
Sec. 16, Nevada County Assessor's Parcels, 62–090–17, 18, 19, 20 and 34.
Containing 58.16 acres more or less.

The purpose of this exchange is to bring that portion of the South Yuba Campground and its improvements, which were inadvertently constructed on private property, back into federal

ownership. The acquired non-federal lands add to the South Yuba Recreation Area, a long term management area of significant public value. The exchange is in the public interest and consistent with the Bureau's planning. It has been presented to the Board of Supervisors of Calaveras County who approved it without any conditions attached.

The publication of this notice segregates the applied-for public lands from all other forms of appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

There will be reserved to the United States a right-of-way for ditches and canals constructed by the authority of the United States (43 U.S.C. 945) for lands being transferred out of Federal ownership.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the Folsom Resource Area Office, BLM, 63 Natoma Street, Folsom, California 95630.

For a period of 45 days from the first publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 361–4191. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Bureau.

Dated: May 30, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85–13599 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–40–M

[Realty Action C–40236]

Noncompetitive Sale of Public Land in Garfield County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following-described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1701, 1713) at the appraised fair market value.

Parcel	Serial No.	Legal description	Acres	Appraised
304	C–40236	Sixth Principal Meridian, Township 5 South, Range 89 West, Section 9: S½SW¼S W¼NE¼	5.00	$

The land is being offered to William G. Bullock, Roger W. Bullock and Scott M. Balcomb, trustees for the Possum Creek Ranch, by direct sale at the appraised fair market value. No other bids or bidders will be considered.

The land has not been used for and is not required for any Federal purpose. The parcel is difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the *Glenwood Springs Resource Management Plan,* January 1984.

All minerals, excepting oil, gas and geothermal resources, beneath the parcel will also be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)).

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945), for oil, gas and geothermal resources, and for oil and gas lease C–38608.

The publication of this notice in the **Federal Register** will segragate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2711.1–2(d), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. This segregation will expire 270 days from the date of publication of this notice.

Sale Procedures

The designated bidders, William G. Bullock, Roger W. Bullock and Scott M. Balcomb, as trustees for the Possum Creek Ranch, will be required to submit payment of at least 10 percent of the fair market value by cash, certified or cashier check, or money order to the BLM at 50629, Highway 6 and 24. Glenwood Springs, Colorado, on the first day of August, 1985. On this same date, the bidder will be required to deposit an additional $50.00 nonrefundable filing fee and application for the conveyance of offered minerals pursuant to 43 CFR 2720.1–2(c).

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forefeiture of the deposit.

Further Information and Public Comment

Additional information concerning this sale offering, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 24, 1985.

Dick Freel,

Associate District Manager.

[FR Doc. 85–13598 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–JB–M

[N–41609]

Non-Competitive Sale of Public Land in Washoe County, NV

The following described land comprising 1.61 acres has been identified as suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, 1713, at no less than fair market value:

Mt. Diablo Meridian

T. 20 N., R. 20 E.,
Sec. 7, lot 10.
Comprising 1.61 Acres.

The land is hereby segregated from appropriation under the public land

laws including the mining laws, preceding disposition of this action.

The land is being offered by direct sale to Albert C. Nix at fair market value to resolve an inadvertent occupancy trespass and to protect his equity investment in the improvements on the land.

The proposed sale is consistent with the Bureau's Planning System and is compatible with local government plans.

The tract location and its characteristics make it difficult to manage as part of the public lands and it is not suitable for management by another Federal department or agency.

Patent for the parcel when issued will contain the following reservations to the United States:

1. At right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

There are no known values for locatable, saleable and leaseable minerals. In accordance with Section 209(b)(1)(1) of Pub. L. 94–579, mineral interests will be conveyed simultaneously with the surface estate upon submission of an application pursuant to 43 CFR 2720.1–1 and 2720–1–2.

And will be subject to:

1. Those rights for access road and utility purposes which have been granted to Sun Valley Water and Sanitary District, is successors or assignees, by Right-of-Way N–38419.

2. An easement extending 25 feet in width on either side of the centerline of the exsiting dirt road intersecting the eastern portion of the land to insure access to other public lands.

Detailed information concerning the sale is available for review at the Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701.

The land will be offered for sale no earlier than 60 days after the date of publication of this notice in the **Federal Register.** For a period of 45 days from the publication of this notice in the **Federal Register,** interested parties may submit comments to the Carson City District Office. Any Adverse comments will be evaluated and this notice will be upheld, modified or vacated.

Dated this 16th day of May 1985

Norman L. Murray,

Acting District Manager, Carson City District

[FR Doc. 85–13597 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–HC–M

[Serial No. I–05278]

Withdrawal and Reservation of Lands; Idaho

Notice of an application, serial number I–05278, for withdrawal and reservation of lands was published as **Federal Register** Doc. 58–5832 on pages 5794–5802 of the issue for July 31, 1958. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Subpart 2091, such lands will be at 9:00 a.m. on July 5, 1985, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are:

Boise Meridian, Idaho

Yellow Pine Administrative Site, Boise National Forest.

T. 19 N., R. 8 E.,

Sec. 28, NW¼SE¼.

The area described aggregates 40 acres in Valley County.

Dated: May 29, 1985.

Vincent S. Strobel,

Acting Deputy State Director for Operations

[FR Doc. 85–13600 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–GG–M

[Serial No. I–15343]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers proposes that a 3,680 acre withdrawal for the Mountain Home Air Force Base continue for an additional 50 years, which is the estimated time the lands will continue to be used as an Air Force Base. The lands would remain closed to surface entry and mining but would be open to mineral leasing to the extent compatible with military operations and subject to approval of the Air Force.

DATE: Comments should be received on or before September 4, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

The Corps of Engineers proposes that the existing land withdrawal made by Public Land Order 987 of July 30, 1954, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is located in the following-described township and sections:

Boise Meridian

T. 4 S., R. 5 E.,

Secs. 20, 21, 22, 27, 28, 29, 32, 33 and 34.

The area involved totals 3,680 acres in Elmore County

The purpose of the withdrawal is to provide a base of operations for the training and deployment of Air Force personnel and equipment and for interagency military training exercises and programs. The withdrawal presently segregates the land from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. No change is proposed in the purpose of the withdrawal, but its segregative effect would be modified to allow mineral leasing where compatible with military operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The athorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 29, 1985.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 85–13582 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanaory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503; telephone (202) 395–7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Suspension of Operations—30 CFR 250.12.

Abstract: Respondents are required to submit to the Director, Minerals Management Service, a request for suspension of operations. This information will be used to determine the propriety of granting and the terms of a suspension of operations requested by the lessee.

Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Federal oil and gas lessees
Annual Responses: 100
Annual Burden Hours: 800
Bureau Clearance Officer: Dorothy Christopher, (703) 435–6214

Dated: March 15, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85–13553 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1981, Block 314, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on May 28, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCDs and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–13595 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that ODECO Oil & Gas Company, Unit Operator of the Ship Shoal Block 113 Field Federal Unit Agreement No. 14–08–0001–2930, submitted on May 22, 1985, as proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 113 Federal unit.

The purpose of the Notice is to inform the public, pursuant to Section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–13603 Filed 6–5–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 4734 and 4576, Blocks A–6 and 201, respectively, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on May 30, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf

of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 31, 1985

John L. Rankin,

Regional Director; Gulf of Mexico OCS Region.

[FR Doc. 85-13645 Filed 6-5-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3377, Block A-281, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on May 29, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 31, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-13642 Filed 6-5-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Delegation of Authority No. 148]

Delegation of Authority Concerning Acquisition Functions; Assistant to the Administrator for Management

1. Pursuant to the authority delegated to me by Executive Order No. 12163, dated September 29, 1979, as amended, I hereby delegate authority to the Assistant to the Administrator for Management (with authority to successively redelegate to such officers as he designates) to sign on behalf of A.I.D the following:

A. U.S. Government contracts;

B. Agreements with any Agency of the U.S. Government to undertake specific projects or programs financed in whole or in part by A.I.D. This delegation does not include the authority to execute general agreements;

C. Amendments, modifications, ratifications or other extraordinary contractual actions pursuant to Sections 3 or 4 of Executive Order 11223.

D. With respect to those contracts referred to in paragraph 1.A above, to make findings and determinations with respect to advance payments, including those financed by letters of credit, and to approve contract provisions relating to such advance payments.

2. Definition—For the purposes of this delegation of authority and any redelegation pursuant thereto, "U.S. Government contract" means any acquisition by the U.S. Government, and any subcontracts entered into thereunder.

3. A.I.D. Delegation of Authority No. 99, as amended (38 FR 12834), and all redelegations thereunder are hereby revoked in their entirety.

4. Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

5. Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

6. This delegation of authority shall be effective on June 1, 1985.

Dated: April 8, 1985.

James A. Norris,

Counselor to the Agency.

[FR Doc. 85-13563 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

[Delegation of Authority No. 148.1]

Delegation of Authority; Procurement Executive

Pursuant to the authority delegated to me by Delegation of Authority No. 148 from the Administrator, dated June 1, 1985, I hereby redelegate to the Procurement Executive, Agency for International Development, all the authority (including the authority to successively redelegate) contained in Delegation of Authority No. 148, except that the authority to sign amendments, modifications, ratifications or other extraordinary contractual action pursuant to Sections 3 or 4 of Executive Order 11223 may not be further redelegated by the Procurement Executive.

In the absence of the Procurement Executive, his authority may be exercised by a qualified individual who has been designated to act in such capacity.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued

in effect, according to their terms, until modified, revoked, or susperseded by action of the officer to whom I have redelegated relevant authority in this redelegation.

Actions within the scope of this redelegation and any redelegations hereunder heretofore taken by the official designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective on June 1, 1985.

Dated: April 26, 1985.

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 85–13584 Filed 6–5–85; 8:45 am]

BILLING CODE 6116–01–M

[Delegation of Authority No. 148.1.1]

Delegation of Authority Concerning Acquisition Functions; Director, Office of Contract Management

Pursuant to the authority redelegated to me by Redelegation of Authority No. 148.1, dated June 1, 1985, I hereby redelegate to the Director, Office of Contract Management, with power to successively redelegate, all the authority delegated to me by Delegation of Authority No. 148.1, except the following:

1. Authority to approve actions under Executive Order No. 11223.

2. Authority to approve dollar advances to profit making organizations may not be further redelegated; authority to approve local currency advances to profit making organizations may be further redelegated.

3. Authority to issue redelegations of authority, permanent or ad hoc, is not redelegated.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This authority may be exercised by persons performing the function of the Director, Office of Contract Management, in an "acting" capacity.

Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective June 1, 1985.

Dated: May 15, 1985.

John F. Owens,

Procurement Executive.

[FR Doc. 85–13585 Filed 6–5–85; 8:45 am]

BILLING CODE 6116–01–M

[Delegation of Authority 149]

Delegation of Authority Concerning Assistance Functions; Assistant to the Administrator for Management

1. Pursuant to the authority delegated to me by Executive Order No. 12163, dated September 29, 1979, as amended, I hereby delegate authority to the Assistant to the Administrator for Management (with authority to successively redelegate to such officers as he may designate) to sign on behalf of A.I.D. the following:

A. Grants (except to agencies of foreign governments) and cooperative agreements;

B. Grants which are centrally funded to international organizations composed primarily of foreign governments.

C. With respect to those grants and cooperative agreements referred to in paragraphs (A) and (B) above, to approve provisions relating to advance payments.

2. For the purposes of this delegation, "mission" means the A.I.D. mission or the principal A.I.D. office or representative (including an embassy designated to so act) in a foreign country in which there is a program or activity administered by A.I.D.

3. Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

4. Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This delegation of authority shall be effective on June 1, 1985.

Dated: April 18, 1989.

James A. Norris,

Counselor to the Agency.

[FR Doc. 85–13586 Filed 6–5–85; 8:45 am]

BILLING CODE 6116–01–M

[Delegation of Authority No. 149.1]

Delegation of Authority; Associate Assistant to the Administration for Management

Pursuant to the authority delegated to me by Delegation of Authority No. 149 from the Administrator, dated June 1, 1985, I hereby redelegate to the Associate Assistant to the Administrator for Management, all the authority (including the authority to successively redelegate) contained in Delegation of Authority No. 149.

The authority delegated herein may be exercised by persons performing the function of Associate Assistant to the Administrator for Management in an "acting" capacity.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have redelegated relevant authority in this redelegation.

Actions within the scope of this redelegation and any redelegations hereunder heretofore taken by the official designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective on June 1, 1985.

Dated: April 26, 1985.

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 85–13587 Filed 6–5–85; 8:45 am]

BILLING CODE 6116–01–M

[Redelegation of Authority No. 149.1.1]

Redelegation of Authority Regarding Assistance; Mission Directors and Principal A.I.D. Officers

Pursuant to the authority delegated to me by the Assistant to the Administrator for Management under Redelegation of Authority No. 149.1, I hereby redelegate to Mission Directors or A.I.D. Principal Officers in the field, the authority to execute the following:

1. Cooperative agreements in an amount not exceeding $100,000 (or local currency equivalent) in the aggregate.

2. U.S. government grants (other than grants to foreign governments or agencies thereof) in an amount not exceeding $5 million.

The Mission Director or A.I.D. Principal Officer may approve the making of advance payments to non-profit organizations.

The authority herein delegated shall not be redelegated but may be exercised by authorized persons who are performing the functions of the Mission Director or A.I.D. Principal Officer in an acting capacity.

The authority redelegated herein shall be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and is not in derogation of the authority of the Director of the Office of Contract Management to exercise the functions herein redelegated.

This redelegation of authority is effective on June 1, 1985.

Dated: May 15, 1985.

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 85-13588 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

[Delegation of Authority No. 149.1.2]

Delegation of Authority Concerning Assistance Functions; Director, Office of Contract Management

Pursuant to the authority redelegated to me by Redelegation of Authority No. 149.1, dated June 1, 1985, I hereby redelegate to the Director, Office of Contract Management, with power to successively redelegate, all the authority delegated to me by Delegation Authority No. 149.1, except the following:

1. Authority to approve dollar advances to profit making organizations may not be further redelegated; the authority to approve local currency advances to profit making organization may be further redelegated by the Director, Office of Contract Management.

2. Authority to issue redelegations of authority, permanent or ad hoc, is not redelegated.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This authority may be exercised by persons performing the function of the Director, Office of Contract Management, in an "acting" capacity.

Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective on June 1, 1985.

Dated: May 15, 1985

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 85-13589 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

[Delegation of Authority No. 150]

Delegation of Authority Concerning Excess Property; Assistant to the Administrator for Management

Pursuant to the authority delegated to me by Executive Order No. 12163, dated September 29, 1979, as amended, I hereby delegate authority to the Assistant to the Administrator for Management (with authority to successively redelegate) to exercise so much of the function contained in section 608(a) of the Foreign Assistance Act of 1961, as amended (the Act), as consists of acquiring, storing, renovating, rehabilitating, packing, crating, handling, transporting, and other acts related thereto, of property classified as domestic or foreign excess property pursuant to the Federal Property and Administrative Services Act of 1949, as amended, or other property, in advance of known requirements. The exercise of this function is subject to such limitation as to the funds made available and as to the furnishing of such property as are contained in section 608(a) of the Act.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This delegation of authority shall be effective on June 1, 1985.

Dated: April 8, 1985.

James A. Norris,

Counselor to the Agency.

[FR Doc. 85-13590 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

[Delegation of Authority No. 150.1]

Delegation of Authority; Associate Assistant to the Administrator for Management

Pursuant to the authority delegated to me by Delegation of Authority No. 150 from the Administrator, dated June 1, 1985, I hereby redelegate to the Associate Assistant to the Administrator for Management, all the authority (including the authority to successively redelegate) contained in Delegation of Authority No. 150.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have redelegated relevant authority in this redelegation.

Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective on June 1, 1985.

Dated: April 26, 1985.

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 85-13591 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

[Delegation of Authority No. 150.1.1]

Delegation of Authority Concerning Excess Property; Director, Office of Commodity Management

Pursuant to the authority redelegated to me by Redelegation of Authority No. 150.1, dated June 1, 1985, I hereby redelegate to the Director, Office of Commodity Management, with power to successively redelegate, all the authority delegated to me by Delegation of Authority No. 150.1.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This authority may be exercised by persons performing the function of the Director, Office of Commodity Management, in an "acting" capacity.

Actions within the scope of this delegation and any redelegations

hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective June 1, 1985.

Dated: May 15, 1985.

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 85-13592 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

[Delegation of Authority No. 150.1.1.1]

Delegation of Authority Concerning Excess Property; Chief, Government Property Resources Division

Pursuant to the authority redelegated to me by Redelegation of Authority No. 150.1.1, dated June 1, 1985, I hereby redelegate to the Chief, Government Property Resources Division, without power to successively redelegate, all the authority delegated to me by Delegation of Authority No. 150.1.1.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have delegated revelant authority in this delegation.

This authority may be exercised by persons performing the function of the Chief, Property Resources Division, Office of Commodity Management, in an "acting" capacity.

Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority shall be effective June 1, 1985.

Dated: May 17, 1985.

William C. Schmeisser, Jr.,

Director, Office of Commodity Management.

[FR Doc. 85-13593 Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632-3378, IRM/PE, Room 708B, SA-12, Washington, D.C. 20523.

Date Submitted: May 23, 1985.
Submitting Agency: Agency for International Development.
OMB Number: None.
Form Number: None.
Type of Submission: New.
Title: Overseas Information Collections.

Purpose: The Agency collects information for the design, implementation, and evaluation of projects carried out in LDCs (less developed countries). This data represents collections that are specifically designed and collected within the country. These collections affect the inhabitants of the developing country in the development of its human and economic resources.

Date Submitted: May 23, 1985.
Submitting Agency: Agency for International Development.
OMB Number: None.
Form Number: None.
Type of Submission: New.
Title: Education and Human Resource Programs of A.I.D.

Purpose: AID collects a variety of education and training information throughout the developing world in order to: provide information to policy makers and program administration; access formal and nonformal education programs; and develop new approaches to provide education and training to LDC (less developed countries) citizens. Governments, private organizations and international specialized agencies use this data.

Date Submitted: May 23, 1985.
Submitting Agency: Agency for International Development.
OMB Number: None.
Form Number: None.
Type of Submission: New.
Title: Health and Population Programs of A.I.D.

Purpose: AID collects a variety of health and population information throughout the developing world in order to: provide information to policy makers and program administration; access health and family planning programs; and, develop new ways to combat diseases and regulate fertility. Governments, private organizations and international specialized agencies (e.g. WHO) use this data.

Date Submitted: May 23, 1985.
Submitting Agency: Agency for International Development.
OMB Number: None.
Form Number: None.
Type of Submission: New.
Title: Agriculture, Rural Development and Nutrition.

Purpose: The Science and Technology Bureau requires periodic sources of information on the social and economic conditions of agriculture, nutrition and rural areas of developing countries. Projects are then prepared and evaluated to provide technical and financial assistance in support of those countries' development programs.

Date Submitted: May 23, 1985.
Submitting Agency: Agency for International Development.
OMB Number: None.
Form Number: None.
Type of Submission: New.
Title: Energy, Private and Voluntary Organizations, and Selected Development Activities (Data collections created in the U.S., but conducted in other countries).

Purpose: This type of data collection is used to follow-up on LDC (less developed countries) participants trained in the U.S. under our programs to see how they are utilizing the information learned and the impact the training has had on the energy situation in a country. This type of data collection is also used to follow-up on performance of equipment placed in an LDC.

Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: May 23, 1985.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 85-13646, Filed 6-5-85; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-234 (Sub-IX)]

Prairie Trunk Railway; Abandonment Exemption; Entire Line

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission, exempts from the requirements of 49 U.S.C 10903, *et seq.*, the abandonment by Prairie Trunk Railway of its entire line, which is located in Gallatin, White, Wayne, Clay, Effingham, Fayette, Shelby, Christian,

and Sangamon Counties, IL, a distance of 183 miles.

DATES: This exemption will be effective on July 8, 1965. Petitions to stay must be filed by June 17, 1985, and petitions for reconsideration must be filed by June 26, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-234 (Sub-No. IX) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 14, 1985

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley, joined by Commissioner Simmons, concurred with separate expression

James H. Bayne,
Secretary.

[FR Doc. 85-13618 Filed 6-5-85; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29975 et al.]

Chicago and North Western Transportation Co. and Western Railroad Properties, Inc.—Notes and Assumption of Obligations; Construction and Operation—in Campbell County, WY; Exemption From 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of (1) acceptance of construction application and securities modification petition and (2) the filing of related exemption petitions.

SUMMARY: The Commission is accepting as complete for consideration the application of the Chicago and North Western Transportation Company and Western Railroad Properties, Incorporated to construct and operate 10.7 miles of railroad extending from milepost 24.5 near Coal Creek, WY to milepost 13.8 at Caballo Mine in Campell County, WY. Applicants have also filed (1) a petition to modify previously granted financing authority to permit use of the funds for the proposed construction project and (2) alternative petitions for exemption of the construction and financing proposals.

DATES: Written comments on the application, exemption, and petition must be filed by June 20, 1985. Replies must be filed by June 25, 1985.

ADDRESSES: An original and 10 copies of all comments referring to Finance Docket Nos. 29975, 30700, and 30700 (Sub-No. 1) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Comments should also be served on applicants' representation:

James P. Daley, One North Western Center, 165 North Canal Street, Chicago, IL 60606
Fritz R. Kahn, 1660 L Street, NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

or

Mont L. Burrup, (202) 275-6447.

SUPPLEMENTARY INFORMATION: Chicago and North Western Transportation Company (CNW) and its subsidiary, Western Railroad Properties, Incorporated (WRPI), seek to construct and operate a 10.7 mile line of railroad extending from milepost 24.5 near Coal Creek to milepost 13.8 at Caballo Mine, in Campbell County, WY. The proposed construction will extend north from an existing line jointly owned and operated by CNW/WRPI and the Burlington Northern Railroad Company (BN). Construction of the line will enable applicants to provide direct rail service to three operating coal mines in the Southern Powder River Basin—The Caballo Mine of Exxon Coal USA, Inc. (operated by Carter Mining Company, a division of Exxon), the Belle Ayr Mine of AMAX Coal Company, and the Caballo Rojo Mine of Mobil Coal Producing, Inc. Approval of this proposal will enable applicant to extend to these coal mines a rail service competitive with that currently being provided by BN.

Concurrent with the submission of the construction and operation application in Finance Docket No. 30700, CNW and WRPI filed in Finance Docket No. 30070 (Sub-No. 1) a petition for exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10901 for that construction and operation.

In Finance Docket No. 29975 applicants seek (1) either (a) modification of a previously approved financing plan so as to enable that plan to embrace the proposed construction project, or (b) exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11301 with respect to financing the contruction project, and (2) an exemption under 49 U.S.C. 10505 from the section 11301 requirements for the potential issuance of notes in an aggregate amount not to exceed $22 million to Exxon Coal USA, Inc., pursuant to a tonnage guarantee agreement by Exxon.

In a decision served May 3, 1985, CNW was granted a partial waiver of the 6-month prefiling environmental notification requirement of 49 CFR 1105.9(b) and 1150.1(b). It has, however, submitted its environmental documentation with the application, and the Commission's Section of Energy and Environmental will soon be releasing an environmental assessment.

The application contains the information required by 49 CFR 1150 and is accepted for consideration. Interested persons are invited to comment on the application, the petition for modification, and the exemption petitions, by the date set forth above.

Decided: May 30, 1985

By the Commission's Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85-13617 Filed 6-5-85; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30659]

Central Montana Rail, Inc.; Modified Certificate of Public Convenience and Necessity

May 30, 1985.

On May 3, 1985, a notice was filed by the Central Montana Rail, Inc. (CMR) for a modified certificate of public convenience and necessity under 49 CFR Part 1150, Subpart C. That carrier is now authorized to provide service over a line of railroad between milepost 71.00, Spring Creek Junction, and milepost 137.14, near Geraldine, MT, in Fergus, Judith Basin and Chouteau Counties, MT a distance of approximately 66.12 miles connecting with the Burlington Northern Railroad Company at Spring Creek Junction, MT. The line was formerly owned by Burlington Northern Railroad Company (BN) but was authorized to be abandoned.[1] The line was donated to

[1] Docket No. AB-6 (Sub-No. 175) *Burlington Northern Railroad Company—Abandonment—In Fergus, Judith Basin and Chouteau Counties, MT.* dated April 23, 1984, served April 27, 1984

the State of Montana in March, 1985. The state of Montana is providing five million dollars, received from the BN in a settlement, to be used for the start-up of the CMR. Up to 3.5 million dollars is available from Federal Railroad Administration funds for rehabilitation. All monies will be administered by the State of Montana. The operating agreement between the State and CMR is for a twenty-five year period which began September 5, 1984.

This notice must be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13619 Filed 6-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30650]

The AT&L Railroad Company, Inc. and Wheeler Brothers Grain Company, Inc.; Exemption Under 49 U.S.C. 10746 and 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts The AT&L Railroad Company, Inc. (AT&L) (a) from the provisions of 49 U.S.C. 10746, and (b) from the provisions of 49 U.S.C. 10901 to operate approximately 18 miles of track between Geary and Watonga, in Blaine County, OK.

DATES: This exemption will be effective June 3, 1985. Petitions to reopen must be filed by June 26, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30650 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary P. March, WHITMAR Transportation Service, 6007 SW 27th Street, Topeka, KS 66614.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or call toll free (800) 424-5403.

Decided: May 29, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Aimmons, Lamboley and Strenio. Commissioner Lamboley concurred in the result.

James H. Bayne,

Secretary.

[FR Doc. 85-13616 Filed 6-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-3)]

Intrastate Rail Rate Authority; Colorado

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission is extending the provisional certification of Colorado under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, to permit it to modify its standards and procedures as required in the full decision.

DATES: Colorado's provisional certification will expire August 5, 1985 unless prior to that date Colorado files the required standards and procedures.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 17, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-13615 Filed 6-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Badische Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on May 15, 1985, a proposed consent decree in *United States* v. *Badische Corporation*, Civil Action No. G-85-52, was lodged with the United States District Court for the Southern District of Texas, Galveston Division. This consent decree settles a lawsuit filed December 20, 1984, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against the Badische Corporation for alleged discharges of pollutants from Badische's Freeport, Texas, plant in violation of section 301 of the Act, 33 U.S.C. 1311, and Badische's National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to section 402 of the Act, 33 U.S.C. 1342. The key provision of the proposed consent decree is that Badische agrees to pay a civil penalty of $100,000 with respect to the violations of the Clean Water Act alleged in the Complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Badische Corporation*, D.J. Ref. 90-5-1-1-2304.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: B. Ralph Corley, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767-9971.

United State Attorney's Office

Contact: Frances H. Stacy, Assistant United States Attorney, Southern District of Texas, Land and Natural Resources Division, Room 12517, 515 Rusk Avenue, Houston, Texas 77002, (713) 229-2693.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-13660 Filed 6-5-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health: Full Committee Meeting and Subgroup Meetings

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on June 20, 21, 1985 at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

On Thursday June 20th the Committee will be divided into two Subgroups. One will address expanding the scope of the OSHA Hazard Communication Standard. The other Subgroup will consider inspection initiatives in the chemical industry. The Subgroups will meet in Room N-3437 beginning at 9:30 A.M. on June 20. The full Committee will meet in Room N-3437 beginning at 9:00 a.m. on June 21st. The meeting agenda for the full committee on June 21st will incude Subgroup Reports and reports on OSHA and NIOSH activities. The public is invited to attend these meetings.

The National Advisory Committee on Occupational Safety and Health was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

Written data or views concerning these agende items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Committee chairperson to the extent which time permits.

For additional information contact: Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3662, Third Street and Constitution Avenue, NW, Washington, D.C. 20210, Telephone: 202-523-8024.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C., this 31st day of May 1985.

Robert A. Rowland,

Assistant Secretary.

[FR Doc. 85-13579 Filed 6-5-85; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-35]

NASA Advisory Council, History Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATE AND TIME: June 27, 1985, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue, Room 7096, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code LBH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2699).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains an archives and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Melvin Kranzbeg, consists of 8 members.

This meeting will be closed to the public from 11 to 11:30 a.m. and from 1:30 to 2:30 p.m. on June 27 for a discussion of the qualifications of (1) an additional member to serve on the committee, and (2) candidate historians to do two contract projects. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(b)(6), it has been determined that the meeting will be closed to the pubic for this period of time. The remainder of the meeting will be open to the public. Visitors will be requested to sign a visitor's register.

Type of meeting: Open, except for a closed session as noted in the agenda below.

Agenda

June 27, 1985

8:30 a.m.—Program Status and Review
9 a.m.—Five Year Plan: Discussion and Recommendation.
10 a.m.—Committee Recommendation on Electronic Records.
11 a.m.—New Member (Closed Session).
12:30 p.m.—Tour of Headquarters History Office.
1:30 p.m.—Proposal Evaluation: (1) Space Station History Project (2) New Series Volume II (Closed Session).
2:30 p.m.—Other Committee Business.
3 p.m.—Adjourn.

Dated: May 30, 1985.

Richad L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-13550 Filed 6-5-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before August 5, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, D.C. 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the

Federal Register, Room 8401, 1100 L St., NW, Washington, D.C.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval:

1. Department of Agriculture, Agricultural Research Service (NC1–176–85–1). Schedules and checklists rejected for incompleteness, inconsistency, or other reasons from a study of consumers' purchases undertaken by the former Bureau of Home Economics, 1935–36.

2. Department of the Air Force (NC1–AFU–85–24). Motor vehicle dispatch records consisting of Air Force Form 868, Request for Motor Vehicle Services, and related documents.

3. Department of the Air Force, Air War College, Air University (NC1–AFU–85–22). Academic records relating to the training progress of nonresident students, including writing assignments, course completion letters, and related correspondence.

4. Central Intelligence Agency (NC1–263–84–3). This CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempted from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

5. Internal Revenue Service, Dallas District Office, Audit Division (NC1–58–85–9). Record cards documenting efforts to determine the value of corporation stock for tax purposes.

6. National Archives and Records Administration: records accessioned from the Veteran's Administration (NC2–15–84–2). Routine correspondence, registers, vouchers and bills, cross-reference cards, and other records relating to prosthetic appliances, 1862–1935.

7. National Archives and Records Administration: records accessioned from the Veteran's Administration, Law Division of the Bureau of Pensions (NC2–15–84–3). Correspondence, notes, expenditures reports, and other administrative records, 1888–1929, relating to routine legal proceedings and fraud investigations.

8. Peace Corps, Office of Administrative Services (NC1–362–85–1). Case files containing copies of personnel actions (such as emergency leave or early termination) regarding volunteers or trainees.

9. U.S. Postal Service, Finance Group (NC1–28–85–1). Paid money orders, money order vouchers, and microfilm of paid money orders.

10. United States Information Agency (NC1–306–79–5). Motion picture films, videotapes, and kinescope films which are duplicated at other institutions or which show routine panel discussions, training sessions, ambassadors presenting credentials and other ceremonial occasions.

Dated: May 31, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–12294 Filed 6–5–85; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Artists in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Artists in Education Advisory Panel (Special Projects/Challenge) to the National Council on the Arts will be held on June 19–20, 1985, from 8:00 a.m.—10:00 p.m., and on June 21, 1985, from 8:00 a.m.—5:00 p.m in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 21, 1985, from 3:00 p.m.–5:00 p.m. to discuss Five-Year Planning Document and other policy issues.

The remaining sessions of this meeting on June 19–20, 1985, from 8:00 a.m.—10:00 p.m.; and on June 21, 1985, from 8:00 a.m.—3:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applicantions for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John. H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

May 28, 1985.

[FR Doc. 85–13580 Filed 6–5–85; 8:45 am]

BILLING CODE 7537–01–M

President's Committee on the Arts and Humanities; Meeting

Plenary Meeting IX of the President's Committee on the Arts and the Humanities will convene at 9:00 a.m. on Wednesday, June 19, 1985 in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on June 19 will include:

- Briefings by the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities, and Director of the institute of Museum Services on the highlights of their activities.
- Summary of activities of the commission.
- Presentation by Dr. Daniel J. Boorstin, Librarian of Congress—"The Library of Congress in the American Tradition: Converging Private and Public Interest."

• Presentation by Mr. Schuyler G. Chapin, Dean of the School of the Arts at Columbia University and Chairman of the American Symphony Orchestra League—"Needs of American Symphony Orchestras."

This meeting is expected to adjourn before lunch. Please notify the President's Committee (202) 682-5409 or (212) if you wish to attend.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts

May 28, 1985

[FR Doc. 85-13581 Filed 6-5-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1984; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG-0090, Vol. 7, No. 4 ("Report to Congress on Abnormal Occurrences: October-December 1984"). This report will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, D.C. about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

Four Control Rods Fail to Insert During Testing

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place—On October 6, 1984, during quarterly individual control rod scram testing for Susquehanna Unit 1, four rods failed to insert. Nine other rods hesitated before scramming; however, they did fully scram within the time allowed by the plant's technical specifications. Susquehanna Unit 1, which utilizes a General Electric (GE)-designed boiling water reactor (BWR), is operated by the Pennsylvania Power and Light Company (PP&L). The plant is located in Luzerne County, Pennsylvania.

Nature and Probable Consequences—GE-designed BWRs utilize control rods driven in from the bottom of the core. During a reactor scram, the rods must be rapidly inserted into the core against the force of gravity. To accomplish this, as well as normal withdrawals and insertions of control rods, each control rod drive (each control rod has its own drive) is operated by a double acting piston which moves the control rod in and out of the core by a hydraulic system which provides water under pressure to operate the piston. To withdraw a rod, water under pressure is admitted to the area above the piston (to provide the motive force), and water under the piston exits to an exhaust header. The opposite takes place to insert a rod. During normal rod insertion or withdrawal, the system is designed to move the rod relatively slowly and movement is limited to a short distance of travel.

During a scram, a separate set of valves functions to effect rod movement. Each control rod drive has a scram inlet valve and a scram outlet valve. At Susquehanna, these valves are normally held closed during reactor operation by instrument air pressure supplied by their T-ASCO (Automatic Switch Company) scram pilot solenoid valve (SPSV). There are 185 SPSVs installed (one per control rod drive). The SPSVs are energized by the reactor protection system (RPS). Upon receipt of a scram signal from the RPS, the SPSVs deenergize which rapidly vents the air pressure from the scram inlet and outlet valves, allowing them to open and the rod to scram.

Opening the scram inlet valve permits high pressure water to the area below the drive piston. Opening the scram outlet valve vents the area over the drive piston to the scram discharge volume. The large differential pressure across the piston produces a large upper force on the control rod, giving it a high acceleration and providing a high margin of force to overcome possible friction within the control rod drive.

For surveillance testing purposes, test switches are provided which permit each control rod to be scrammed individually, rather than all rods scramming upon receipt of a scram signal from the RPS. The test switches permit control rod testing, as required periodically by the technical specifications, without shutting the plant down.

On October 6, 1984, with Unit 1 at 60% power, quarterly individual rod scram testing began on ten percent of the rods (19) as required by technical specifications. Control rod 42-23 failed to insert; the test was repeated three times and each time the rod failed to scram. Instrument and Control technicians investigated the problem and found that when the rod's SPSV was physically struck, the rod scrammed. The rod was then fully withdrawn and retested; this time the rod scrammed satisfactorily. When rod testing continued, rod 42-39 also failed to scram. Similar to rod 42-23, when the SPSV for rod 42-39 was struck, the rod scrammed. The licensee then decided to individually scram the rest of the 185 rods. Two additional rods (i.e., 58-31 and 38-39) failed to scram; again, they did scram when their SPSVs were struck. Both were individually fully withdrawn, and on retest, scrammed satisfactorily. Nine other rods hesitated initially when tested, but did meet the required maximum insertion time of seven seconds.

On October 7, the SPSVs were replaced on the four rods which failed to scram. The licensee set up a task force to investigate the SPSV failures. One of the failed SPSVs was sent to GE, San Jose, California, and another was sent to Franklin Research Center for analysis of the failure mechanism.

On October 12, 1984, GE informed PP&L that the SPSV failed due to the disc holder subassembly disc sticking to the seat on the valve body. The sticking was due to a degradation of the polyurethane disc material. GE, as a product upgrade, had changed the disc material in new SPSVs to Viton-A a few years ag. The Viton-A material was subsequently incorporated into ASCO spare part kits for those valves, beginning in 1982.

Based on this information and the determination that most if not all of the SPSVs on both units were affected, the licensee decided to shut down both Units 1 and 2. Shutdown began on October 12; both units were in hot shutdown on October 13. Unit 2 subsequently went to cold shutdown the same day to conduct unrelated maintenance. The NRC headquarters operations center was notified of these shutdowns by the Emergency Notification System (ENS).

ASCO spare part kits containing the Viton-A disc were obtained by the licensee and the disc holder subasemblies were extracted from the spare part kits and installed in all 185 SPSVs on Unit 1 during Octber 13 through October 15, 1984. These valves were functionally tested by observing the scram inlet outlet valves stroking when the individual rod test switches

were actuated. Additionally, individual rod testing was performed while shut down. On Unit 2, the licensee determined that 93 of the SPSVS had been previously rebuilt in April 1983 using ASCO spare part kits containing the Viton-A disc. The licensee installed the new disc subassembly in the remaining 92 SPSVs and also inspected the ones that were previously rebuilt to ensure that they contained the Viton-A disc.

For added reliability to the reactor scram process, the CRD instrument air system has two DC solenoid operated, three-way air valves (called backup scram valves) installed on the supply header. These valves operate, similar to the SPSVs, upon receipt of a signal from the RPS. Upon energization either of the two backup scram valves can vent the entire CRD instrument air system. The air supplied to the hydraulic control units of the CRDs, and the scram discharged volume (SDV) vent and drain pilot valves, passes through these two backup scram valves. Therefore, these two valves provide backup scram capability to the individual SPSVs and the SDV vent and drain valves.

The backup scram valves and the SDV vent and drain T–ASCO pilot valves on Unit 1 were also rebuilt with new Viton-A discs. Subsequently, on October 17, Unit 1 returned to power and individual rod testing on all rods was conducted at approximately 50 percent power.

On Unit 2, new disc holder subassemblies were also installed in the backup scram valves. The Unit 2 SDV vent and drain pilot valves, manufactured by Valcor, were not affected.

On October 18, 1984, while continuing individual rod scram testing on Unit 1 at about 55% power, the licensee discovered that due to an administrative error, operability testing of the SDV vent and drain valves, required each 18 months by technical specifications, was overdue by about 15 months. Per technical specifications, these valves must close within 30 seconds after receipt of a signal to scram from the RPS. The licensee immediately declared the SDV system inoperable and notified the NRC Operations Center by the ENS. When the licensee could find no documentation from previous reactor scrams that the vent and drain valves had operated properly, the plant was manually scrammed on October 18, 1984. During the scram, the SDV vent valve closed in 32.4 seconds and the drain valve in 26.9 seconds. Since the vent valve did not meet the acceptance criteria of 30 seconds, the SDV remained inoperable while the licensee investigated the cause. To correct the problem, the licensee replaced the apparently undersized T–ASCO pilot valve with the larger Valcor valve, similar to that used on Unit 2. This larger valve vents the air header significantly faster than the smaller T–ASCO valve. Shutdown testing of the Valcor valve following its installation indicated a vent valve closure time of about six seconds; this is similar to the time obtained on Unit 2 during the unit's preoperational testing. Subsequent testing on October 21, 1984, by manually scramming Unit 1 from 7% power, showed a vent value closure time of 5.2 seconds.

As discussed later, NRC Resident Inspectors performed a special inspection from October 13–22, 1984. One finding noted that six control rods in Unit 1 had experienced hesitation at the initiation of a scram one or more times during full core scrams as far back as March 22, 1983. One of the rods (58–31), which failed to scram during its individual scram test on October 6, 1984, had hesitated on full core scrams on March 22, 1983, June 13, 1984, and July 3, 1984. Control rod 54–47, which hesitated (but did scram) on October 6, 1984, had also hesitated on June 13, 1984, July 3, 1984, and July 15, 1984. The other three rods (i.e., 42–23, 42–39, and 38–39) which failed to scram on October 6, 1984, had also hesitated during the full core scram on June 13, 1984.

A more significant finding of the NRC inspection was that during the June 13, 1984, full core scram, the four rod array containing control rods 38–39, 38–43, 42–39, and 42–43, exceeded the technical specification allowable average scram insertion time from the fully withdrawn position (notch 48) to notch 45. The two slowest rods (i.e., 38–39 and 42–39) of the four rod array were two of the four which failed to insert on October 6, 1984; this is a precursor to the October 6, 1984, event. Even though the computer printouts of the June 13, 1984 scram data had specifically indicated that this rod array exceeded technical specification average scram insertion time, the licensee failed to note this when the printouts were reviewed during control rod surveillance scram testing on June 25, 1984. This discrepancy was missed both by the individual performing the surveillance and by the supervisor who reviewed the completed surveillance.

The safety significance of the October 6, 1984 event was the reduction in the required "extremely high probability" of shutting down the reactor in the event of an anticipated operational occurrence. This is evidenced by the following:

1. During single rod scram testing, four control rods failed to insert, and nine others hesitated before scramming, due to a common mode failure of the SPSVs. There was a potential that the common mode failure aspect could have caused a significant number of control rods to be inoperable. The mechanism that could have possibly identified the problem earlier, the surveillance procedure, was not properly reviewed, and therefore the precursor event on June 13 was not recognized and investigated.

2. Even though the plant has backup scram valves, at the time of the event the condition of the valves was not known since they had not been tested since before the plant originally started up. During the preoperational testing of Unit 1, the time to depressurize the air header for each backup scram valve was 43.3 seconds and 28.21 seconds, respectively. The backup scram valves are not included in technical specification required surveillance testing. In response to an unrelated issue, however, the licensee intends to test these valves on a refueling interval basis although they have not yet been retested since the preoperational test program.

Cause or Causes—The SPSVs failed due to the disc holder subassembly disc sticking to the seat of the T–ASCO valve bodies. The cause of the failure was initially determined to be due to contamination of the polyurethane seat material by oil and/or water which had been introduced into the CRD instrument air system. PP&L is continuing its investigation to determine the exact nature and source/origin of the contaminants found in the instrument air system. The Viton-A replacement material is resistant to all oils which could be introduced into the instrument air system as well as to water and other chemical contaminants.

A contributing cause was the licensee's inadequate review of the data associated with the June 13, 1984, full core scram during the surveillance conducted on June 25, 1984. The data provided information by which the deficiency may have been identified, before some rods actually failed to insert.

Actions Taken To Prevent Recurrence

Licensee—The licensee conformed to the actions contained in the NRC Region I Confirmatory Action Letter, dated October 17, 1984, discussed below.

The licensee is continuing its investigation to determine the exact nature and source/origin of the contaminants found in the CRD instrument air system. Surveillances and shutdowns, conducted since the various plant modifications were made, have

shown the reactor scram systems have performed satisfactorily on both Units 1 and 2. The licensee's responses to the NRC Region I Confirmatory Action Letter were contained in letters dated November 19, 1984 and January 9, 1985.

After the licensee discovered the administrative error which resulted in the SDV vent and drain valve 18-month operability test being overdue by about 15 months, the licensee conducted a 100 percent documentation review to ensure that no other similar administrative errors were present in their surveillance tracking system. No other deficiencies were found. The licensee also modified the surveillance documentation forms to emphasize the date on which the surveillance was performed rather than the date of the form and created a full time surveillance documentation auditor position. These actions are intended to reduce the potential for incorrect data entries in the surveillance tracking computer system.

NRC—As previously mentioned, NRC headquarters was notified by the licensee, via an ENS call on October 12, 1984, of the defective SPSVs and the licensee's decision to shut down Units 1 and 2. On October 15, 1984, at the request of the NRC Region I, the licensee committed to remain below 5% power pending the results of a meeting in Bethesda, Maryland on the following day to discuss the SPSV problem. At the meeting, the licensee committed to the following actions:

a. Scram-time test all 185 rods, on each unit, when a 50–60% power level is reached.

b. Develop a surveillance procedure to unambiguously assess scram pilot valve operability, to be submitted to and approved by NRC prior to implementation, and performed every four to six weeks.

c. Trend and report immediately to NRC, via the ENS network, any failures or anomalies found during scram solenoid valve operability tests, or individual control rod scram time testing (normally performed for a 10% rod sample every four months), and

d. Provide the failure analysis results from Franklin Research Center and General Electric testing on the original valves which failed.

On October 17, 1984, NRC Region I issued a Confirmatory Action Letter confirming the above commitments.

From October 13 to 22, 1984, a special safety inspection was performed by the NRC Resident Inspectors of the circumstances involved with the failure of the four SPSVs during individual rod scram testing on Unit 1 on October 6, 1984. The inspection consisted of a review and evaluation of: SPSV function, licensee actions following identification of the SPSV failures, scram time surveillance testing, SPSV maintenance history and Unit 1 SDV vent and drain pilot valve inoperability. Some of the findings have been discussed above under "Nature and Probable Consequences." The inspection results were forwarded to the licensee in a letter dated November 15, 1984.

An enforcement conference was held at NRC Region I on November 30, 1984, between NRC and licensee personnel to discuss the results of the NRC special safety inspection, and the status of the licensee's actions associated with the NRC Region I Confirmatory Action Letter. Conference details were forwarded to the licensee in an NRC Region I letter dated January 10, 1985. NRC Region I forwarded a Notice of Violation to the licensee on January 4, 1985. The violation involved the failure of the licensee to recognize, during a control rod scramming surveillance test on June 25, 1984, that technical specification requirements were violated for average scram insertion time to notch position 45 by one, four rod 2 x 2 array; since the licensee failed to discover the violation the reactor was allowed to operate without either repairing these rods or declaring them inoperable and performing required analyses.

The NRC will continue to follow the licensee's actions, as necessary, to assure that they are satisfactory.

Editor's Note.—On April 3, 1985, the NRC forwarded Inspection and Enforcement Information Notice No. 85–27 ("Notifications to the NRC Opertions Center and Reporting Events in Licensee Event Reports") to all nuclear power reactor facilities holding an operating license or a construction permit. The notice was issued to clarify the requirements for licensees to report to the NRC, by the Emergency Notification System (ENS) and by a Licensee Event Report (LER), an event or condition that results in or could result in multiple failures in safety systems. This clarification was considered necessary since PP&L did not believe it necessary to report the October 6, 1984, failures at Susquehanna Unit 1 to the NRC either by the ENS or by an LER.

. . . . . .

Degraded Upper Head Injection System Accumulator Isolation Valves

Example II.B.1 of the abnormal occurrence criteria notes that discovery of a major condition not specifically considered in the safety analysis report (SAR) or technical specifications that requires immediate remedial action can be considered an abnormal occurrence.

Date and Place—On November 1, 1984, the upper head injection (UHI) system accumulator isolation valves were discovered to have been incapable of required automatic closure for Duke Power Company's McGuire Nuclear Station, Unit 1, a pressurized water reactor plant, located in Mecklenburg County, North Carolina.

Nature and Probable Consequence—At McGuire Unit 1, the UHI system is an engineered safety feature, designed to provide cooling (borated water) of the core during the blowdown portion of the postulated loss of coolant accident (LOCA) transient for a large rupture in the cold leg of the reactor coolant system (RCS). The system (see Figure 1) consists primarily of two pressure vessels (accumulators), one filled with borated water and the other with pressurized nitrogen gas. Pressure is maintained to the borated water in the first accumulator by the nitrogen gas in the other accumulator. During normal operations, the contents of the two accumulators are separated by a membrane in the 12" diameter line connecting the accumulators, and pressure is maintained at equilibrium through a surge tank.

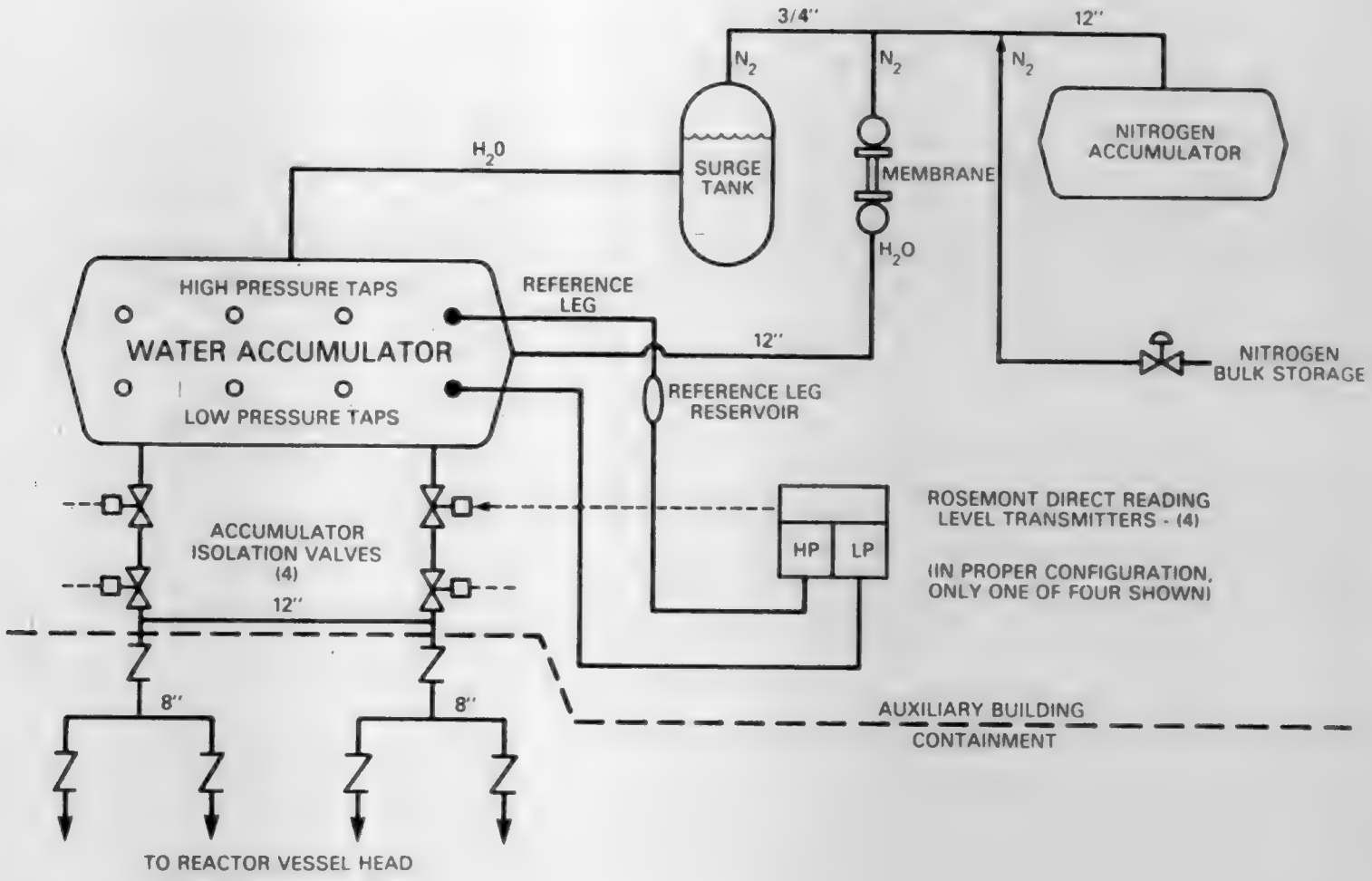


Figure 1 Simplified Piping and Instrumentation Diagram (McGuire Upper Head Injection System)

Two separate water lines are connected near the bottom of the water accumulator. In each line, there are two accumulator isolation valves and a swing disc check valve in series. The accumulator isolation valves are motor operated and are normally open. Downstream of the check valve, each water line feeds two injection lines. Each injection line contains a swing disc check valve and is connected to the upper head of the reactor vessel. During normal operation, the check valves isolated the UHI system from the RCS.

In the unlikely event of a LOCA large enough to depressurize the RCS below about 1250 psig, the RCS pressure falls below the water accumulator pressure and the borated water if forces through the check valves into the reactor vessel head by the nitrogen gas. When the water level falls to a predetermined level in the accumulator, differential pressure transmitters (which sense accumulator water level) provide an initiating signal for the four isolation valves to close; this is to prevent injection of the nitrogen gas into the RCS.

On October 31, 1984, while Unit 1 was operating at 100% power, the licensee found that nitrogen in excess of technical specifications was entrained in the water accumulator. A plant shutdown was intitiated. On November 1, 1984, while the licensee was draining the tank, it was discovered that the four isolation valves failed to close on accumulator water low level. Investigation showed that the valves had been incapable of required automatic closure since April 25, 1984. From this date until the condition was discovered on November 1, 1984, the plant had been operated for about five months. During this period, had a large LOCA occurred, a considerable amount of nitrogen could have been injected into the reactor vessel upper head.

Although the effects of injecting the non-condensable gas has not been analyzed in detail, it could interfere with cooling the reactor core during such an accident. This condition is beyond the design bases for the plant and is not specifically analyzed in the safety analysis report.

Cause or Causes—Investigations revealed that the water accumulator differential pressure transmitters, which sense accumulator water level and provide the intitiating signal for isolation valve closure, had been improperly installed on Unit 1. The impluse lines were not connected to the appropriate transmitter ports. This resulted in a loss of function of the transmitters and, consequently, in the inability for automatic closure of the accumulator isolation valves. Further investigation revealed that the transmitters had been incorrectly installed during a plant modification in April 1984, which replaced the Barton differential pressure instrument by Rosemont instruments. The cause of this incorrect installation is attributed to inadequate instructions which did not

provide sufficient direction for proper connection of the transmitters. The installation errors were similar to those previously addressed in NRC Inspection and Enforcement Information Notice No. 84–45 ("Reversed Differential Pressure Instrument Sensing Lines"), which was issued on June 11, 1984.

In addition, the functional testing of the sytem following completion of this modification was limited to a dry calibration of the differential pressure transmitters. This dry calibration was not an adequate method of functional testing because it was unable to detect improper installation of the differential pressure transmitters and did not demonstrate that the transmitters would function properly with respect to water level in the accumulator.

Actions Taken To Prevent Recurrence

Licensee—A new installation procedure has been issued which now requires verification of proper tubing connections for differential pressure transmitters, and the licensee has committed to strengthening the post modification testing program. Additionally, the licensee reviewed other safety-related differential pressure applications for similar problems. No other problems were identified. Prior to startup of Unit 1, the UHI differential pressure transmitters were properly connected and the system functionally tested using an adequate method. Unit 2 was inspected and found to have the UHI differential pressure transmitters properly connected.

NRC—A inspector from NRC Region II was sent to the site on November 2, 1984, to participate in the investigation of the event. All plants which have UHI systems were determined to be located within NRC Region II, and were notified of this problem. Each licensee reported that the configuration of UHI differential pressure transmitters had been inspected and confirmed to be correct. Inspection and Enforcement Information Notice No. 85–02 ("Improper Installation and Testing of Differential Pressure Transmitters") was sent on January 11, 1985, to all reactor facilities with operating licenses or construction permits to alert them of possible problems associated with improper installation of differential pressure transmitters and inadequate post-modification functional testing.

As a result of the NRC Region II inspection on November 2–3, 1984, failures to comply with NRC regulatory requirements were identified. An enforcement conference to discuss these matters was held with the licensee at the NRC Region II Office on November 14, 1984. On February 20, 1985, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000. The forwarding letter also included NRC Inspection Report Nos. 50–369/84–34 and 50–370/84–31.

The NRC Office of Nuclear Reactor Regulation (NRR) is currently attempting to assess the effects of the accumulator isolation valves failing to close during a large LOCA in a plant with a UHI system. NRR is also considering initiation of additional studies regarding the net safety benefit of the UHI system and changes in the technical specification requirements. It is also noted that the licensee is investigating the efficacy of removal of the UHI system.

Editor's Note.—The licensee has experienced other problems with the UHI system. For example, during corrective actions associated with the degraded accumulator isolation valves, the licensee discovered that the Unit 1 accumulator differential pressure instrument trip set points had been set incorrectly since March 1983. This condition could have resulted in charging over 3000 gallons less than the prescribed quantity of borated water for UHI injection under accident conditions. This deficiency would not have had an effective on UHI actuation following the April 25, 1984 modification described above because automatic closure of the accumulator isolation valves could not longer occur.

The licensee checked Unit 2 and found that the set points also were erroneously set (since February 1983). The cause of the incorrect set points for both Units was due to an engineering error in the calibration procedures which established the set points. The licensee set the set points correctly and revised the appropriate procedure to prevent recurrence.

This violation of plant technical specifications was included in the NRC enforcement action described above.

On March 22, 1985, the NRC forwarded Inspection and Enforcement Information Notice No. 85–23 ("Inadequate Surveillance and Postmaintenance and Postmodification System Testing") to all nuclear power reactor facilities holding an operating license or a construction permit to alert them of various problems experiences at the McGuire nuclear power facility in regard to inadequate surveillance and post-maintenance and post-modification system testing.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

Buildup of Uranium in a Ventilation System

Example I.D.2 of the abnormal occurrence criteria notes that a major deficiency in design, construction or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and Place—On October 5, 1984, Nuclear Fuel Services, Inc. (the licensee) notified the NRC that an excessive buildup of uranium has been discovered in the new ventilation system (including a scrubber) of the scrap recovery facility at their plant located near the town of Erwin, Tennessee.

Nature and Probable Consequences—Operation of the new ventilation system for the scrap recovery facility began in March 1983. This system was designed to reduce the level of radioactive effluents and projected offsite doses. Within three months of startup, however, the licensee noted higher than expected levels of uranium-235 being accumulated in the ventilation system venturi scrubber and established action limits for the accumulation. In July 1983, a heat exchanger was removed which was later found to contain several hundred grams of uranium-235.

In May 1984, action limits were established in the license which required investigation and corrective actions when the action limits were exceeded. Between May 1984 and October 1984, these action limits were exceeded several times.

On October 3 and 4, 1984, the licensee again detected uranium concentrations in the venturi scrubber solution, which exceeded the license action limit for the liquid. On October 4, 1984, nondestructive assay (NDA) measurements of the venturi scrubber and its blowdown tank showed a buildup of solids containing uranium-235 exceeding the 50-gram action limit. Repeated flushing of the system with water did not reduce the concentration below the action limit. Consequently, the system was shut down, the solution was drained from the scrubber, and the inspection port cover plate was removed for a visual inspection of the scrubber internals.

A buildup of solids on the inner walls of the scrubber and the venturi above the water level was observed. Also, solids were observed to have accumulated in the bottom elbow of the duct where the air enters the scrubber. NDA measurements of the system revealed approximately 1000 grams of uranium-235 in the venturi scrubber and

1000 grams of uranium-235 in the duct leading to the scrubber.

Cleaning of the ventilation system was conducted on October 6 and 7, 1984, after preparation of a procedure and further discussions with the NRC. The NRC resident inspector observed and monitored the licensee's activities.

After reassembly of the scrubber, the removed materials, which had been placed in safety geometry bottles, were measured as containing 1610 grams of uranium-235. An additional 598 grams of uranium-235 were removed from the scrubber in the solution batches of October 3, 4, and 5, 1984. In conjunction with the restarting of the ventilation system, an investigation was initiated by the licensee to determine the causes of the accumulation of uranium-235, and a confirmatory evaluation of the health and safety significance of the observed accumulation was performed.

Even though it was determined that a criticality event could not have occurred, the event was significant in that the accumulation of uranium-235, in the scrubber and ducting, was considerably greater than one safe wet mass.

Additional concerns identified were, (1) the special nuclear material was not maintained within a material balance area as required by license conditions, (2) the special nuclear material was not measured during physical inventories as required by license conditions, and (3) the special nuclear material in the duct work was not stored as specified by the Physical Security Plan. (Although the material was not stored as required, it was not vulnerable.)

Cause or Causes—The primary cause of the uranium buildup was equipment design. The licensee had attempted to design the ventilation system so that all solid materials entering the ventilation ducting would be carried through and into the scrubber where it would be routinely removed. However, the existence of acid and moisture in the air caused the solid material to deposit in the ducting and above the waterline in the scrubber. A contributing cause was the licensee's failure to take appropriate corrective actions when action limits were exceeded.

Preliminary findings from the licensee's investigation indicated that the material removed from the system was from essentially all processes in the scrap recovery operation. The most significant sources were the scrap furnace and the scrap recovery operation. the most significant sources were the scrap furnace and the scrap dissolvers. Also, the licensee determined that HEPA filters on other process equipment may have leaked, and a potential existed for liquid to enter the ventilation ducting because of inadequate siphon beaks.

The warning signals, which included the uranium concentrations in the scrubber water and some detected presence of solids during the period May 1984 to October 1984, as well as the accumulation of material in the heat exchanger, were not recognized by the licensee. In two cases when the license action limits were exceeded, no investigation was performed by the licensee. In the other cases, the licensee's investigation consistent of a form filled out by the production foreman with inadequate followup by site management to determine the cause of the condition; in addition, no development of corrective actions to prevent recurrence was made.

Actions Taken To Prevent Recurrence

Licensees—The licensee implemented a prgram for routinely monitoring material accumulation in the ventilation systems througout the plant. The NRC approved a license amendment incorporating this monitoring program. The licensee is conducting a design review to identify engineering improvements which will prevent uranium from entering the ventilation system. Status reports on these engineering improvements are provided to the NRC on a routine basis. In addition, the licensee will respond to the NRC enforcement action described below.

NRC—A special inspection was conducted at the licensee's Erwin, Tennessee facility by the NRC Region II Office during the period of October 5–18, 1984. Significant failures to comply with NRC regulatory requirements were identified, i.e., failure to perform adequate investigations and take appropriate corrective actions, as required by the license, for violations of criticality safety action limits placed on the accumulation of uranium in the ventilation system. The conditions of degraded safety and safeguards had existed for a significant period of time.

An Enforcement Conference to discuss these matters was held with the licensee at the NRC Region II Office on October 29, 1984. On February 21, 1985, the NRC Region II Office on October 29, 1984. On February 21, 1985, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $20,000. In addition to the civil penalty, the NRC believed that further remedial action was needed to ensure that the licensee improves management oversight of operations and initiates appropriate investigatins when action limits are exceeded. Therefore, the February 21, 1985, NRC letter also enclosed an Order Modifying License. The Order amends the license to require the licensee to expand the duties and responsibilities of its Internally Authorized Change Council.

The NRC Resident Inspector is monitoring the licensee's on-site actions. Both the Resident Inspector and the NRC Region II Office are following the licensee's corrective actions to assure that they are satifactory.

Dated in Washington, D.C., this 31st day of May 1985.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–13629 Filed 6–5–85; 8:45 am]

BILLING CODE 7590–01–M

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amendend, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 7, No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that event involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the fourth calendar quarter of 1984. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were two abnormal occurrences at the nuclear power plants licensed to operate. One involved four control rods failing to insert during testing and the other involved degraded upper head injection system accumulator isolation valves. There was one abnormal occurrence at a fuel cycle facility; the event involved buildup of barriers. There were four abnormal occurrences at the other NRC licensees. One involved contaminated radiopharmaceuticals used in several diagnostic administrators. Two involved

therapeutic medical misadministrators. The other involved significant internal exposure to iodine-125 to a hospital employee. There was one abnormal occurrence reported by an Agreement State; the event involved contaminated radiopharmaceuticals used in several diagnostic administrations.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of microfiche of NUREG–0090, Vol. 7, No. 3 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7982. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 31st day of May 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–13628 Filed 6–5–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–13785]

Application and Opportunity for Hearing; Armco, Inc.

May 31, 1985.

Notice is hereby given that Armco, Inc. (the "Applicant") has filed an application under Clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the proposed assumption of the trusteeships by United States Trust Company of New York ("U.S. Trust") as successor trustee under seven existing qualified indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify U.S. Trust from acting as trustee under any of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such Section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The applicant alleges that:

(1) The Applicant proposes to appoint U.S. Trust as the successor trustee under seven indentures in which Applicant is the olbigor. Each of the indentures is listed on Exhibit A to this Notice. Said seven indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Securities."

(2) U.S. Trust is willing to accept appointment as successor Trustee under each of the Indentures.

(3) The Applicant is not in default in any respect under the Indentures.

(4) All of the Indentures are qualified under the Trust Indenture Act of 1939.

(5) The obligations of Applicant under the Indentures are wholly unsecured, are unsubordinated and rank *Pari passu*. Any differences that exist between the provisions of the Indentures are unlikely to cause any conflict of interest among the trusteeships of U.S. Trust under the Indentures.

(6) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than June 25, 1985, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, 450–5th Street, NW., Judiciary Plaza, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

1. Indenture dated June 1, 1961 (the "1961 Indenture") between Armco Steel Corporation (now Armco Inc.) ("Armco") and ("Chemical"), as trustee, under which Twenty-Five Year 4½% Sinking Fund Debentures Due 1986 were issued and are now outstanding. The 1961 Indenture was filed as Exhibit 2.02 to Armco's Registration Statement on Form S–9, File No. 2–18063 under the Securities Act of 1933 (the "Act") and has been qualified under the Trust Indenture Act of 1939 (the "TIA").

2. Indenture dated July 15, 1967 (the "1967 Indenture") between Armco and The Chase Manhattan Bank (National Association) ("Chase"), as trustee, under which Twenty-Five Year 5.90% Sinking Fund Debentures Due 1992 were issued and are now outstanding. The 1967 Indenture was filed as Exhibit 202 to Armco's Registration Statement on Form S–9, File No. 2–26799 under the Act and has been qualified under the TIA.

3. Indenture dated as of October 1, 1970 (the "1970 Indenture") between Armco and Manufacturers Hanover Trust Company, as trustee, under which Twenty-Five Year 8.70% Sinking Fund Debentures Due 1995 were issued and are now outstanding. The 1970 Indenture was filed as Exhibit 4.01 to Armco's Registration Statement on Form S–1, File No. 2–38312 under the Act and has been qualified under the TIA.

4. Indenture dated as of July 15, 1975 (the "1975 Indenture") between Armco and Chemical, as trustee, under which 9.20% Debentures Due 2000 were issued and are now outstanding. The 1975

Indenture was filed as Exhibit 2 to Armco's Registration Statement on Form S–7, File No. 2–54091 under the Act and has been qualified under the TIA.

5. Indenture dated as of September 1, 1976 (the "1973 Indenture") between Armco and Chase, as trustee, under which 8½% Debentures Due 2001 were issued and are now outstanding. The 1976 Indenture was filed as Exhibit 2 to Armco's Registration Statement on Form S–7, File No. 2–56988 under the Act and has been qualified under the TIA.

6. Indenture dated as of December 1, 1981 (the "1981 Indenture") between Armco and Bankers Trust Company, as trustee, under which 14.65% Notes Due 1986 were issued and are now outstanding. The 1981 Indenture was filed as Exhibit 4 to Armco's Registration Statement on Form S–16, File No. 2–74884 under the Act and has been qualified under the TIA.

7. Indenture dated as of March 15, 1982 (the "1982 Indenture") between Armco and Chemical, as trustee, under the 15¼% Notes Due March 15, 1989 were issued and are now outstanding. The 1982 Indenture was filed as Exhibit 4 to Armco's Registration Statement on Form S–16, File No. 2–76365 under the Act and has been qualified under the TIA.

[FR Doc. 85–13675 Filed 6–5–85; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–14551; File No. 812–6077]

Prudential-Bache Global Fund, Inc., et al.; Application for Exemptive Order Relating to Contingent Deferred Sales Charge

May 31, 1985.

Notice is hereby given that Prudential-Bache Global Fund, Inc. ("Global Fund"), Prudential-Bache Government Plus Fund Inc. (the "Funds"), both open-end, diversified, management investment companies registered under the Investment Company Act of 1940 ("Act") and Prudential-Bache Inc. ("Prudential-Bache" collectively, "Applicants"), a broker-dealer registered under the Securities Exchange Act of 1934, filed an application on March 20, 1985, and an amendment thereto on May 14, 1985, for an order, pursuant to section 6(c) of the Act, exempting the Funds, and any other existing or future registered mutual fund for which Prudential-Bache serves as manager or administrator, and distributor, and which is sold substantially on the same basis as the Funds (collectively, "Exempted Funds"), from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the assessment (and waiver and reduction in certain cases) of a contingent deferred sales charge ("CDSL") on certain redemptions of their shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the relevant statutory provisions.

Applicants state that the Global Fund currently assesses a contingent deferred sales load on redemptions of its shares in reliance upon advice of its counsel that such assessment is permissible without an exemptive order of the Commission. The Global Fund acknowledges that, if granted, the exempted order would be applicable only as of the date of such order, and that, by granting such an order, the Commission is not passing upon the merits of Global Fund's reliance upon its counsel's opinion regarding the applicability of the Act to such contingent deferred sales load.

Applicants state that the Exempted Funds propose to offer their shares without the imposition of a front-end sales load and propose to impose a CDSL upon redemption of their shares by purchasers, with certain exceptions noted below. Applicants represent that the CDSL imposed upon redemption would not, in the aggregate, exceed five percent of the total cost of the shares redeemed. No CDSL will be imposed to the extent that the net asset value of the shares redeemed does not exceed (1) the current net asset value of shares purchased more than five years prior to the redemption, plus (2) the current net asset value of shares purchased through reinvestment of dividends or capital gains distributions, plus (3) increases in the net asset value of the investor's shares above the total amounts of payments for the purchase of an Exempted Fund's shares made during the preceding five years. The Exempted Funds propose to waive the CDSL on redemptions: (1) Following the death or disability of a shreholder, and (2) in connection with certain distributions from Individual Retirement Accounts or other qualified retirement plans.

Applicants state that, when a CDSL is imposed, the amount of the charge will depend on the number of years elapsed since tender of the purchase payment comprising the source of the redemption. It is expected that during the first year after purchase, the charge would be five percent of the amount redeemed. Thereafter, the charge would decrease one percent annually until the expiration of five years, at which time no charge would be imposed.

Applicants state that the amount of the CDSL (if any) is calculated by determining the date on which the relevant purchase payment was made and applying the appropriate percentage to the amount of the redemption subject to the charge. In determining the rate of a CDSL, it will be assumed that a redemption is made of shares held for the longest period within the five years preceding the redemption.

It is stated that each Exempted Fund will finance its own distribution expenses according to a plan adopted pursuant to Rule 12b–1 under the Act (the "Plan"). Each Exempted Fund's Plan will provide for the payment to Prudential-Bache of an annual distribution fee not to exceed 1% of the lesser of (1) aggregate gross sales of the fund's shares since inception of the Plan (not including reinvestments of dividends or capital gains distributions), less the aggregate net asset value of the fund's shares redeemed since inception of the Plan upon which a CDSL charge has been imposed or waived, or (2) the Exempted Fund's average daily net assets. Applicants represent that Prudential-Bache will also receive the proceeds of all unwaived CDSL charges imposed upon share redemptions.

The Exempted Funds also propose to reduce the CDSL in the case of a redemption by a shareholder who has pruchased more than a stated minimum in shares of that Exempted Fund. Applicants assert that such a reduction is both fair and equitable and in the best interests of the stockholders of the Exempted Funds. Applicants represent that the per share sales costs for large purchases of Fund shares is less than such costs for smaller purchases because large purchases do not entail significantly greater selling effort and expense than smaller purchases. Applicants further represent that the existence of relatively large stockholder accounts will aid the stockholders of Exempted Funds in realizing economics of scale through reduced per share stockholder servicing costs. Applicants represent that an Exempted Fund offering such a waiver or reduction of the CDSL will comply with the provisions of paragraphs (a) through (d) of Rule 22d–1 under the Act.

Applicants request exemption from section 2(a)(32) of the Act which defines "redeemable security", to continue to be classified as an open-end company (an issuer of redeemable securities) as defined in section 5(a)(1) of the Act. Applicants also request exemption from sections 2(a)(35) and 22(c) and 22(d) of

the Act and Rule 22c-1 thereunder to permit the proposed CDSL and the proposed waiver and reduction thereof.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 25, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13673 Filed 6-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14552; File No. 812-6112]

Postipankki et al.; Application and Opportunity for Hearing

June 3, 1985.

Notice is hereby given that Postipankki and Postipankki U.S. Inc. (collectively, "Applicants"), c/o H. Rodgin Cohen, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, filed an application on May 21, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, Postipankki, a Finnish bank, is constituted and chartered under terms of a 1969 Act of the Parliament of Finland, as a "financial institution which operates on the responsibility of the Republic of Finland." By order dated October 4, 1979 (Investment Company Act Rel. No. 10893), the Commission, acting pursuant to section 6(c) of the Act, exempting Postipankki from all provisions of the Act, to permit Postipankki to issue and sell prime quality commercial paper in the United States.

Applicants represent that Postipankki is under the control of the Finnish Ministry of Finance and is supervised by the supervisory Board of Postipankki. According to the application, as of December 31, 1984, total deposits (other than funds of the Investment Fund of Finland) were $2,943 million, of which $1,684 million or 57% of the total, represented term deposits. Applicants represent that loans and advances (other than those made out of the Investment Fund of Finland) aggregated $2,856 million and constituted 59% of Postipankki's total assets. Finally, Applicants represent that 85% of Postipankki's revenues is interest income.

Applicants state that Postipankki U.S. Inc. was organized solely for the purposes of issuing debt obligations and providing the proceeds thereof to Postipankki or a subsidiary thereof. Applicants state that substantially all of Postipankki U.S. Inc.'s assets will consist of amounts receivable from Postipankki or a subsidiary thereof. Applicants represent that all the outstanding capital stock of Postipankki U.S. Inc. is owned by Postipankki.

Applicants propose that Postipankki will issue and sell, or cause Postipankki U.S. Inc. to issue and sell, in the United States unsecured prime quality commercial paper notes (the "Notes") in bearer form and denominated in United States dollars. Applicants state that Postipankki will be jointly and severally liable for payment of the principal, interest and premium, if any, on notes issued and sold by Postipankki U.S. Inc. Applicant further states that the proceeds of the sale of Postipankki U.S. Inc.'s Notes (to the extent not applied to the repayment of maturing notes or to the payment of minimal current expenses) will be loaned to Postipankki or a subsidiary thereof.

Applicants undertake to ensure that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicants also undertake to ensure that the dealer will provide each offeree of the Notes prior to purchase with a memorandum which briefly describes the business of Postipankki, including its most recent publicly available fiscal year-end balance sheet and income statement of Postipankki by audited in such manner as is customarily done for Postipankki Finnish Auditors. Applicants undertake that such memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States. Applicants do not intend to include in such memorandum a presentation of Postipankki's financial position prepared in accordance with U.S. generally accepted accounting principles, which principles have only limited applicability to government instrumentalities. Applicants state that the application of such accounting principles to Postipankki's financial statements could not accurately be done. Finally, Applicants state that this memorandum will be updated annually, as well as periodically, to reflect material change in Postipankki's financial position.

Applicants represent that the terms of the Notes and the manner of offering them, will be such as to qualify them for the exemption from registration under section 3(a)(3) of the Securities Act of 1933, as amended (the "1933 Act"). Applicants further represent that the presently proposed issue of Notes and all future issues of debt securities in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that their United States counsel shall have certified that such rating has been received.

Applicants represent that they will appoint a bank or other financial institution in the United States as their authorized agent to issue the Notes from time to time. Applicants further represent that Postipankki will appoint either such bank or financial institution, Postipankki U.S. Inc. or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on a Note, whether issued as a direct liability of Postipankki or as joint and several liabilities of Postipankki and Postipankki U.S. Inc., and instituted in any State of Federal court by the holder of such Note. Applicants state that Postipankki will expressly accept the jurisidiction of any State or Federal court in the City and State of New York in respect of any such action. Applicants state that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Postipankki or Postipankki U.S. Inc. Applicants represent that they will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner

of the offering of the Notes or otherwise. Applicants consents to any order granting this application being expressly conditioned on their compliance with the undertaking set forth above and the undertakings described below.

Postipankki may, from time to time, offer other securities for sale in the United States, such as debt securities, but not including shares of capital stock. Postipankki U.S. Inc. may also, from time to time, offer other securities for sale in the United States which are joint and several obligations of or unconditionally guaranteed by Postipankki. Applicants represent that Postipankki U.S. Inc. does not intend to offer any equity securities i0n the United States. Applicants undertake that any future offering of Postipankki's or Postipankki U.S. Inc.'s securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Postipankki, its business and its financial condition as the dealer's memorandum and financial statements referred to above and as those customarily used in U.S. offerings of such securities. Applicants undertake to ensure that each offeree of such securities will be provided with such disclosure documents. Applicants represent that any such future offering will be made with due regard to the provisions of Regulation D and the doctrine of "integration" referred to in Securities Act Release Nos. 4434, 4552, 4708 and 6489 and various "no action" letters made public by the Commission.

Postipankki also undertakes, in connection with any future offering in the United States of Postipankki U.S. Inc.'s securities, to appoint an agent to accept any process which may be served in any action based on any such securities and instituted in any State or Federal court by any holder of any such security. Postipankki further undertakes that it will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an agent to accept service of process and consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such securities have been paid. Postipankki and Postipankki U.S. Inc. will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise in connection with the securities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 24, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with request. After said data an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 85–13672 Filed 6–5–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22094; SR–Amex–83–33 and 85–12]

Self-Regulatory Organizations; American Stock Exchange Inc.; Filing of and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto; Order Approving Proposed Rule Change

On December 12, 1983, the American Stock Exchange, Inc. ("Amex") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to permit the trading on Amex of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act[3] but are designated as National Market System Securities ("Tier I NMS stocks") pursuant to Rule 11Aa2–1(b)(1) under the Act.[4] The Amex also proposes to adopt a policy that would require the Amex to phase out options trading for any Tier I NMS stock that decides to list on the Amex.[5]

At a public Commission meeting held on April 16, 1985, the Commission decided that Amex's proposal would be consistent with the Act if Amex eliminated its barriers to the multiple trading of options of Tier I NMS stocks.[6] The Commission also decided that Amex (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the Amex proposes to amend Amex Rule 900 to state that Amex Rule 5[7] will not apply to any transaction through the facilities of NASDAQ in any option admitted to trading both on the Amex and on NASDAQ on a stock that was traded through the facilities of NASDAQ at the time that option was admitted to trading on Amex.[8] Amex also states in a letter accompanying Amendment No. 1 to the filing that should Amex seek to trade an option on an index of OTC stocks, it would promptly file an amendment to remove its restrictions on the multiple trading of such an option.[9] The Amex states that it interprets the "Options Allocation Agreement"[10] not to apply to options on Tier I NMS stocks, including any Tier I NMS stock that lists on an exchange after option trading commences on that stock.[11]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2–1(b)(1) (1984). The proposed rule change (File No. SR–Amex–83–33) was noticed in Securities Exchange Act Release No. 20498, December 16, 1983, 48 FR 56875.

[5] The Amex has indicated that under this policy it will phase out trading in the option prior to listing and trading the stock. Telephone conversation between Alden Adkins, Attorney, Division of Market Regulation, and Fred M. Stone, Vice President and General Counsel, Amex, May 29, 1985.

[6] The Commission made the same finding with respect to proposals by the Boston, New York, Pacific and Philadelphia Stock Exchange, Inc., and the Chicago Board Options Exchange, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985 ("OTC Options Release"), 50 FR 20310. In that release, the Commission also made clear that once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n.214.

[7] Amex Rule 5, in general, prohibits Amex members from effecting over-the-counter ("OTC") transactions in securities listed on Amex.

[8] Amex's original filing, submitted on April 29, 1985, would have covered only options on stocks traded through NASDAQ. Amendment No. 1, submitted on May 13, 1985, amended the proposal to read as described in the text above to take account of the possibility that the stock may subsequently list.

[9] Letter from Howard A. Baker, Vice President, Amex, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 28, 1985.

[10] The Allocation Agreement consists of a uniform set of rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[11] Letter from Fred M. Stone, Vice President and General Counsel, Amex, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 24, 1985.

Amex's proposals to amend its Rule 900 has not been noticed previously. Interested persons are invited to submit comments on this proposal by June 27, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–Amex–85–12. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. 552, are available at the Commission's Public Reference Room and at the Amex.

The Commission finds that the Amex's proposal to amend Amex Rule 900 (File No. SR–Amex–85–12), as well as Amex's interpretation of the Allocation Agreement, effectively eliminate Amex's barriers to the multiple trading of options on Tier I NMS stocks listed on Amex. The Commission finds that this proposal eliminates restraints on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, sections 6 and 11A of the Act. With this amendment to Amex's rules, and Amex's interpretation of the Allocations Agreement,[12] for the reasons stated in the OTC Options Release, the Commission finds the Amex proposal to trade options on NMS stocks (File No. SR–Amex–83–33) is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. Amex–85–12 prior to the thirtieth day after publication of notice thereof in the Federal Register in that: (1) The Commission previously has solicited comment on amending exchange barriers to the multiple trading of options on Tier I NMS stocks,[13] and the proposed rule change is designed to implement the Commission's decision to allow the multiple trading of these options; (2) the proposed rule change relieves a restriction and is essentially exemptive in nature;[14] and (3) Amex desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission also finds that Amex has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[15] The Amex also has agreed not to commence trading any option on an NMS stock earlier than June 3, 1985, after the date of this order and the announcement on May 22, 1985, of the exchange's intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR–Amex–83–33 and 85–12 are approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13679 Filed 6–5–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22096; File No. SR–CBOE–85–20]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness Relating to a Requirement for a Deposit Concerning Leased Memberships

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange files as a rule change the following new requirement for a deposit to be put into effect on or about June 1, 1985. Any Exchange member who is a lessee, who is a nominee using a membership that is leased, or who is a Chicago Board of Trade (CBT) exerciser who is a delegate (that is, a CBT "lessee") shall be required to deposit with the Exchange $500.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Procedures of the Self-Regulatory Organization

Lessees, nominees using a membership that is leased, and CBT exercisers who are delegates are the only Exchange members who do not own (or in the case of nominees, whose firms do not own) either an Exchange or a CBT membership. When such members teminate their Exchange memberships, they have been more likely than other members to owe less than $500 to the Exchange in connection with, for example, dues, transaction fees, and charges for keys and badges not returned. The deposit would be used to cover such debts.

The deposits would be returned without interest after completion of the Exchange's termination process. If a debt is less than $500, the remaining amount will be returned upon completion of the Exchange's termination process. The Exchange will begin requiring these $500 deposits from applicants for membership on or about June 1, 1985; deposits must be received before an applicant can become an effective member. Current members will be billed for the $500 deposit on or about June 1, 1985.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change creates any burden on competition not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Formal comments on the rule-change filing were neither solicited nor received.

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[12] Although the Commission believes that the Amex's interpretation of the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes the Amex should undertake, in coordination with the other Agreement participants, to prepare formal rule changes as soon as practicable.

[13] *See* Securities Exchange Act Release No. 20653, April 12, 1984, 49 FR 15291. *See* OTC options release, *supra* note 6, 50 FR 28210, text accompanying notes 176–231, for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[14] *Cf.* 5 U.S.C. 553(d) (1982).

[15] Amex has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until the plan is operational.

[16] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiple trading options on Tier I NMS stock with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Division of Market Regulation to Fred M. Stone, Vice President and General Counsel, Amex, dated May 20, 1985.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13677 Filed 6–5–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22097; Filed No. SR–CBOE–85–07]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Position and Exercise Limit Procedures

On March 15, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted to the Commission a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 [2] thereunder, to amend CBOE's position and exercise limit exemption procedure regarding instant exemptions, and the position and exercise limit exemption policy regarding exemptive action in the S&P 100 Index ("OEX"). The Commission solicited comments on the proposed rule change, but received none.[3]

The proposed rule change amends CBOE's exemptive procedures and policies concerning position and exercise limits.[4] With respect to the procedures for obtaining an instant exemption, the proposed rule change requires market-makers to contact two members of the Exemption Committee named in the revised memorandum, who will review immediately the request for an exemption and either grant or deny the request.[5] The joint decision of the two Committee members must be made in accordance with the criteria established by the Exemption Committee. Following the joint Committee members' decision, the CBOE staff will be notified of the instant exemption request and its disposition. At the next committee meeting, those instant exemptions which were granted will be reviewed.[6] The Commission understands that the Exemption Committee has the authority to reverse the joint decision of the two Committee members and to compel the market-maker to unwind his position, to the extent of the exemption.[7] As amended, the proposed rule change provides that, ordinarily, Committee meetings will be held on Tuesday, Wednesday and Thursday of each week.[8]

In its filing, CBOE states that the modification of the instant exemption process should ensure that it is immediately responsive to the needs of the marketplace. CBOE further states that, by requiring the concurrence of two members of the Exemption Committee in deciding whether to grant an instant exemption and by subjecting the instant exemption decision to a prompt review by the CBOE staff and Exemption Committee, the proposed rule change provides adequate safeguards while it also allows for immediate attention to the handling of large orders in the marketplace. Moreover, CBOE notes that instant exemptions are granted sparingly.

As indicated, the proposed rule change also modifies CBOE policy with regard to the granting of instant exemptions from the position and exercise limits in OEX. In this connection, the proposed rule change provides that applicants for position and exercise limit exemptions in OEX should be within 20% of the applicable position or exercise limit established by the Exchange. Currently, CBOE's exemptive policies require that all positions be within 10% of the applicable limits. The proposed rule change would maintain this same threshold for all securities positions except those in OEX. In its filing, CBOE explains that 20% has become a realistic guidepost in respect to OEX as trading activity has soared during the past year. By way of explanation, CBOE further notes that the large size of some customer orders in OEX necessitates an immediate response by those market-makers who are capable of making quite large markets. In this connection, CBOE's experience has been that, given the size of the large OEX orders, public interest requires position limit exemptions to be granted at those times where a market-maker exceeds a position limit by 10 to 20%, rather than by 10% or less.

CBOE believes that both modifications to the exemption policies and procedures are consistent with section 6(b)(5) of the Act, in that they will help protect investors and promote just and equitable principles of trade.

The Commission believes that, by requiring a joint decision of two Committee members in order to grant an instant exemption and a subsequent review of this decision by the Exemption Committee, the proposed rule change will afford market-makers the opportunity to respond promptly to the demands of the marketplace without circumventing the purposes of the

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] The proposed rule change was noticed for comment in Securities Exchange Act Release No. 21942 (April 12, 1985), 50 FR 15518 (April 18, 1985).

[4] These procedures originally were set forth in a memorandum by CBOE to its membership in 1984. *See* Securities Exchange Act Release No. 21358 (September 27, 1984), 49 FR 39137 (October 3, 1984) (File No. SR–CBOE–84–20).

[5] In its filing, CBOE indicated that instant exemption requests will be considered only in extraordinary situations.

[6] At present, CBOE posts a list of the current exemptions in a generally accessible area and updates this list after every Exemption Committee meeting. This list includes in pertinent part, the following information: the exemption recipient's name, and the class, size and duration of each exemption. CBOE will continue to post and update this list.

[7] Telephone conversation between Frederick Krieger, Assistant General Counsel, CBOE, and Heidi Coppola, Attorney, SEC, on May 17, 1985.

[8] Currently, Committee meetings ordinarily are held only on Tuesdays and Thursdays.

position and exercise limit provisions.[9] In this connection, the Commission notes that the Exemption Committee has established criteria which limit the circumstances under which instant exemptions may be granted, and that the Committee has the ability to unwind any positions it determines to have been inappropriately granted under the instant exemption procedure.

With respect to the 20% exemptive limit for OEX, the Commission recognizes that, in view of the limited number of market-makers which may have the financial capability to respond immediately to the needs of the OEX market, which generally is very active, the execution of very large OEX orders may require immediate and substantial assistance by a market-maker, which, in turn, may require some adjustments of the market maker's position limits. In this connection, the Commission believes that use of this exemption should be reserved only for those circumstances where the fair and orderly nature of the OEX marketplace would appear to be jeopardized in its absence.

For the reasons stated above, the Commission believes the proposed rule change is consistent with the requirements of the Act applicable to national securities exchanges and, in particular, Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13676 Filed 6-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22099; File Nos. SR-CBOE-85-03, SR-PSE-85-09, SR-Amex-85-16, SR-Phlx-85-12, and SR-NYSE-85-20]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., et al., Approval of Amended Proposed Rule Changes; Filing of Amendment and Order Granting Accelerated Approval to Amended Proposed Rule Changes; Order Granting Accelerated Approval to Proposed Rule Change; Filing and Order Granting Accelerated Approval of Proposed Rule Changes

The Chicago Broad Options Exchange, Incorporated ("CBOE") and the Pacific ("PSE"), American ("Amex"), Philadelphia ("Phlx"), and New York ("NYSE") Stock Exchanges (collectively, the "Exchanges") submitted substantially similar proposed rule changes pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to amend the Exchanges' expiration cycles for equity options to institute a one year pilot program using monthly expiration cycles instead of quarterly expiration cycles.[3] In addition, the NYSE proposes to amend its rules regarding new option series.[4] With regard to monthly expiration cycles, the Commission solicited comment on the CBOE and PSE proposed rule changes, but received none.[5]

I. Description of the Proposals, Their Purpose and Statutory Basis

A. Monthly Expiration Cycles

The Exchanges are proposing substantially similar rule changes, which authorize implementation of a one year pilot program to permit the listing of individual equity options with two near-term expiring series available at all times. In addition, the amended expiration cycle would allow a maximum of four expiration month to trade at any given time. This would be accomplished by maintaining the traditional three and six months expiration series and changing the traditional nine month expiration series to eight months.[6] For example, in the January, April, July, October cycle, the proposals would allow the introduction of an option series with a February expiration, so that during this cycle there would be four expiration months open simultaneously: January, February, April and July. Upon expiration of the January series, the proposals would allow intrduction of a March expiration series, which would result in two open near-term expiring series (February and March) and a maximum of four expiring series (February, March, April, and July).

Furthermore, the Exchanges propose to retain the discretion to choose how many, and which, equity options would be included in the one year pilot program.[7] The number of option classes which will be included in each exchange's pilot program is expected to vary.[8] In addition, all of the Exchanges have devised their pilot programs to have at least the potential to include options on over-the-counter stocks, as well as options on listed equities.

In their respective filings, the Exchanges state that, in view of their experience with monthly expiration cycles for index options, such cycles can attract substantial investor interest. The Exchanges believe that the addition equity option series in the second near-term month similarly should provide investors with greater flexibility in their short term investment opportunities. In addition, the Exchanges believe that the long-term investment abilities of equity options investors will not be affected adversely by changing the traditional nine month expiratation series to eight

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[9] *See* Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440 (April 4, 1985).

[1] 15 U.S.C. 78s(b)(1982).

[2] 17 CFR 240.19b-4(1985).

[3] Amex and CBOE amended their filings to reflect approval of their proposed rule changes by their respective Boards of Directors. *See* Amendment No. 1, dated May 10, 1985, to File No. SR-AMEX-85-16; and Amendment No. 1, dated February 20, 1985, to File No. SR-COBE-85-3.

As originally filed, the CBOE proposal provided for the introduction of a two-month option where none exists, while maintaining the traditional expiration cycles of three, six and nine months. In addition, the proposal would have limited the one year pilot program to options classes on six equity securities. On April 22, 1985, however, CBOE submitted Amendment No. 2 to the filing, which would mofify the traditional expiration cycles by authorizing three, six and eight month expirations rather than three, six and nine month expirations. In addition, amendment No. 2 provides CBOE with the flexibility to choose the number of options classes which may participate in the pilot program, and which options classes they would be.

[4] This part of the NYSE proposal is substantially similar to a CBOE proposal which was noticed for comment in Securities Exchange Act Release No. 21794 (February 28, 1985), 50 FR 8691 (March 4, 1985)(File No. SR-CBOE-85-01).

[5] The CBOE prposal, as amended, and the PSE proposal were noticed, respectively in Securities Exchange Act Release Nos. 21707 (February 4, 1985), and 21985; (April 25, 1985); 50 FR 5459 (February 8, 1985) and 50 FR 18595 (May 1, 1985).

[6] As indicated previously, CBOE's original proposal would have maintained the traditional three, six and nine month expiration series. Use of the nine month expiration series in conjunction with a two month expiration series , however, would have resulted in a varying number of expiration months being open simultaneously, *i.e.*, sometimes four and sometimes five.

[7] In its original filing, Amex proposed to limit its pilot program to up to 10 Amex stock options that trade on the January cycle. Subsequently, however, Amex amended its filing to provide it with the discretion to choose the number of classes of options it deems appropriate for the successful implementation of the pilot. *See* Amendment No. 2 (May 17, 1985) to File No. SR-Amex-85-16.

[8] Amex anticipates commencing the pilot with 10 stock options, CBOE with up to 20, Phlx with 12, PSE with 12, and NYSE with up to 10. *See* letter from Paul G. Stevens, Executive Vice President, Operations, Amex, to Eneida Rosa, Branch Chief, SEC, Branch of Options Regulation, Division of Market Regulation, dated May 23, 1985; letter from Frederic Kreiger, Assistant General Counsel, CBOE, to Eneida Rosa, dated May 24, 1985; letter from Michael A. Finnegan, Senior Vice President, Phlx, to Heidi Coppola, Attorney, Division of Market Regulation, dated May 17, 1985; letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, dated May 10, 1985; letter from Steven Wolf, Attorney, PSE, and Heidi Coppola, Attorney, Market Regulation, dated May 30, 1985.

months. In this connection, the Exchanges have noted that use of an eight month rather than a nine month expiration series will ensure that a constant number (four) of monthly expiration cycles will remain open simultaneously, which should help minimize investor confusion. Nevertheless, because the industry has no experience in the use of near-term consecutive expiration months of equity options, the Exchanges have requested implementation of this program on a pilot basis for a period of one year.

Because the proposed rule change is intended to facilitate transactions in securities, and will provide the Exchanges with greater flexibility to list a more complete range of equity option series for investors, the Exchanges state, in their filings, that their proposals are consistent with section 6(b)(5) of the Act.

B. New Option Series for Individual Stock Options

As indicated, this part of the NYSE's proposed rule change is substantially similar to the rules previously adopted by the other Exchanges.[9] In this connection, the NYSE proposes to add supplementary material .30(d) to NYSE Rule 703, which would allow strike price intervals for individual stock options of: $2.50 when the strike price is $25.00 or less; $5.00 when the strike price is greater than $25.00 but less than or equal to $200.00; and $10.00 when the strike price is greater than $200.00. In addition, new subparagraph (e) of the Rule would allow strike prices as low as $5.00, except when the individual stock option meets NYSE delisting criteria.[10]

Furthermore, the NYSE would amend NYSE Rule 703, Supplementary material .30(a), to allow the addition of series of individual stock options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration in "unusual market conditions." This is consistent with the procedures for introducing new index option series followed by the NYSE and the other Exchanges.

[9] In particular, the Commission approved substantially similar proposals of the Amex, CBOE, PSE and Phlx which amended their respective rules with regard to strike price intervals and the introduction of new stock option series. *See* Securities Exchange Act Release Nos. 21929 (April 10, 1985), (Amex and CBOE), and 21985 (PSE and Phlx) (April 25, 1985), 50 FR 15258 (April 17, 1985) and 50 FR 18595 (May 1, 1985), respectively.

[10] The delisting standards are codified in NYSE Rule 716. A new provision to that Rule, Supplementary material .40, codifies the exception stated above. In particular, this provision would prohibit the opening of any new series of an options class which has a strike price of less than $10.00.

II. Solicitation of Comments

The Commission is publishing this Release to solicit comment on the Amex, Phlx, and NYSE proposed rule changes described in sections I.A and B., above. Persons interested in commenting on these proposals should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule changes, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings also are available at the CBOE, Amex, PSE, Phlx and NYSE.

III. Approval of Proposed Rule Change

As indicated, with respect to the Exchanges' monthly expiration cycle pilot program [11] and the NYSE's new option series proposal,[12] the Commission has published for comment similar proposed rule changes submitted by one or more of the Exchanges. In this connection, the Commission has received no comments on either proposal. Accordingly, for the reasons stated above, the Commission believes that the proposed rule changes of the CBOE, AMEX, PSE, Phlx and NYSE are consistent with the requirements of the Act applicable to national securities exchanges and, in particular, Section 6 and the rules and regulations thereunder. In addition, the Commission finds good cause for approving the Amex, Phlx and NYSE proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in that substantially similar proposed rule changes by the CBOE (regarding the monthly expiration cycle pilot program and the addition of new option series) and the PSE (regarding the monthly expiration cycle pilot program) were published for comment over 30 days ago, and no comments were received in response to those separate publications.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes by the CBOE, Amex, PSE, Phlx and NYSE are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[11] *See* note 5 *supra*.

[12] *See* note 4 *supra*.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13674 Filed 6-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22095; Filed No. SR-NYSE-85-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Position and Exercise Limits

The New York Stock Exchange, Inc., ("NYSE") submitted a proposed rule change on May 16, 1985, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] which would amend NYSE Rules 704 and 705 relating to position and exercise limits, to conform to the rules of the other options exchanges.[3]

The proposed rule change establishes a three-tiered system of position and exercise limits of 3,000, 5,000 or 8,000 contracts. The limit applicable to a particular option contract would depend on certain criteria relating to the trading volume of the underlying stock or a combination of both the trading volume and the number of shares outstanding of the underlying stock. This system is described more fully in the Commission's order approving substantially similar proposals of the other options exchanges.[4] For the reasons stated in that order, the Commission believes that the NYSE proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6 and the rules and regulations thereunder.

In addition, the Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the other exchanges' proposed rule changes, which are substantially similar, were published for comment over 30 days ago, and not comments were received in response to that publication.[5]

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] *See* Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440.

[4] *See* note 3, *supra*.

[5] As indicted in note 3, *supra*, the Commission approved these amended proposed rule changes in Securities Exchange Act Release No. 21907.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the NYSE proposal described above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13678 Filed 6-5-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-85-14]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 17, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 24288-1, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 31, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24288-1	Caribbean Air Cargo Co	14 CFR 91.303	To allow petitioner to operate two Stage 1 Boeing 707 aircraft in the U.S. until hush kits are installed.

[FR Doc. 85-13549 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-85-13]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 26, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on May 31, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
24571	Trans International Airlines	14 CFR 121.407(c)(1)	To permit maneuvers and procedures allowable under the non-visual simulator classification of applicable appendices of Part 121 to be approved for accomplishment in petitioner's Lockheed Electra L 188 training device.
24606	Oakland Police Dept	14 CFR 45.29	To allow petitioner to operate two Enstrom F 28C helicopters that display the word "POLICE" and 3-inch-high nationality and registration marks in place of the 12-inch-high N-numbers now required by the regulations.

PETITIONS FOR EXEMPTION—Continued

Docket No	Petitioner	Regulations affected	Description of relief sought
24591	California Aeromedica Rescue and Evacuation Inc.	14 CFR 135.261	To allow petitioner to operate its helicopter in hospital emergency medical evacuation service without meeting the flight and duty time limitations of that section.
24638	American Standard, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24628	Sun Banks, Inc	14 CFR 21.181	Do.
24632	American Continental Aviation	14 CFR 21.181	Do.
24602	Pfizer, Inc	14 CFR 21.181	Do.
24652			
24627	American Hospital Supply Corporation	14 CFR 21.181	Do.
24618	Kalair USA Corporation	14 CFR 21.181	Do.
24620	AirAtlantic Airlines	14 CFR 21.181	Do
24604	Whirlpool Corp	14 CFR 21.181	Do
24610	Gannett	14 CFR 21.181	Do
24622	Advanced Control Systems	14 CFR 21.181	Do.
20090	Sierra Academy of Aeronautics	14 CFR 61.63(d)(2) and (3) and 61.157(d)(1)	To permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, to substitute the practical test requirements of § 61.63(d)(2) and (3), and to complete a portion of that practical test in a simulator as authorized by § 61.157(d)
24631	Gulfstream Aerospace Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list
24360			
24643	Allegheny International, Inc	14 CFR 21.181	Do
24654	Amax Inc	14 CFR 21.181	Do

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought—disposition
24164	Royale Airlines	14 CFR 135.157(b)(2)	To allow petitioner to operate Grumman Gulfstream G-159 airplanes up to 25,000 feet mean sea level with an oxygen system providing oxygen to both pilots plus 10 percent of the passengers. *Partial grant 5/9/85*
24446	Air Transport Assoc. of America	14 CFR 121.485	To allow member carriers to conduct flag operations on the understanding that § 121.485 only applies to an operation which requires three or more pilots and an additional flight crewmember. *Granted 5/10/85*
24430	General Electric	14 CFR 61.58(c) and 91.211(b)	To allow certain pilots to operate a B-707-321 aircraft without completing that portion of the proficiency check required to be conducted in an aircraft. *Granted 5/8/85*
24471	Pilgrim Airlines	14 CFR 121.371(a) and 121.378	To allow petitioner to return to service airframe components, powerplants appliances and their spare parts of F-20 aircraft which have been maintained altered, or inspected by persons employed outside the United States who do not hold U.S. airman certificate. *Granted 5/7/85*
24441	Northern Pacific Transport	14 CFR 91.31(a)	To allow petitioner to operate three DC-6A aircraft under the provisions of § 121.198. *Granted 5/7/85*
24481	Fast Air Carrier LTDA	14 CFR 91.303	To allow petitioner to operate a Stage 1 Boeing 707 airplane to Stewart International Airport in New York until hush kits are installed. *Granted 5/14/85*
24614	Airplanes Inc	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: BAC 1-11: N68WB. *Granted 5/17/85.*
24656	Concord Aviation	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: BAC 1-11: N770S. *Granted 5/21/85*
24442	Southern Air Transport	14 CFR 91.303	To permit petitioner to operate noncomplying Stage 1 aircraft on or after January 1, 1985. *Partial grant 5/21/85*
24578	Skystar International Airways	14 CFR 91.303	To allow petitioner to operate four Stage 1 Boeing 707 aircraft obtained after January 1, 1985 in noncompliance with the operating noise limits until hush kits are installed. *Denied 5/24/85.*
23225	Hughes Helicopters, Inc.	14 CFR 93.113	To allow special VFR operations in the Los Angeles, CA, control zone. *Granted 4/25/85.*
24352-1	Aer Turas Teoranta	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-63F at U.S. airports until hush kits are installed. *Granted 5/24/85.*
24384-1	Pan Aviation, Inc	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 cargo aircraft at U.S. airports until hush kits are installed. *Denied 5/24/85*

[FR Doc. 85-13548 Filed 6-5-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 16-85]

Notes; Interest Rates

May 30, 1985.

The Secretary announced on May 29, 1985, that the interest rate on the notes designated Series K-1990, described in Department Circular—Public Debt Series—No. 16-85 dated May 22, 1985, will be 9⅞ percent. Interest on the notes will be payable at the rate of 9⅞ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-13567 Filed 6-5-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series—No. 17-85]

Notes; Interest Rates

The Secretary announced on May 29, 1985, that the interest rate on the notes designated Series L-1990, described in Department Circular—Public Debt Series—No. 17-85 dated May 21, 1985, will be 9⅞ percent. Interest on the notes will be payable at the rate of 9⅞ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-13568 Filed 6-5-85; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name; "Unitek Corporation"

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Unitek Corporation" used by Unitek Corporation, a corporation organized under the laws of the State of California, located at 2724 South Peck Road, Monrovia, California 91016.

The application states that the trade name is used in connection with the developing and marketing of products for orthodontists, endodontists and other dental specialists, as well as for general dentists and dental laboratories, manufactured in the United States.

Before final action is taken on the application, consideration will be given to any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before August 5, 1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: June 3, 1985.

Edward T. Rossi,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-13652 Filed 6-5-85; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Advisory Panel On International Educational Exchange; Meeting

The Advisory Panel on International Educational Exchange will hold its seventh meeting on Friday, June 14, 1985, at 405 Park Avenue, New York City.

This meeting, which will be closed to the public, will have as its business the drafting of a report to the Director of the U.S. Information Agency identifying issues of major concern in international educational exchange. Discussions at the meeting will center on the national interest in international educational exchange programs in both the public and private sectors. Premature disclosure of this information is likely to frustrate significantly implementation of Advisory Panel recommendations because they will involve a discussion of future Agency policies and programs (5 U.S.C. 552b(c)(9)(B)).

The agenda for this meeting follows:

Friday, June 14, 1985

9:00 a.m.-10:00 a.m.—Work on draft of Specific Gravity Question
10:15 a.m.-11:15 a.m.—Work on draft of Balance Question
11:30 a.m.-12:30 p.m.—Work on draft of Management Question
12:30 p.m.-1:30 p.m.—Luncheon
1:30 p.m.-2:30 p.m.—Work on draft of Quality Question
2:45 p.m.-3:45 p.m.—Work on draft of Funding Question
4:00 p.m.-5:00 p.m.—Work on draft of Locus Question

Adjournment

Dated: June 3, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-13681 Filed 6-5-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notice Additional Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of records entitled "Veterans Assistance Discharge System (VADS)-VA" (45VA23) as set forth on page 370 of the **Federal Register** of January 5, 1982.

OSGLI (Office of Servicemen's Group Life Insurance), a branch of the Prudential Insurance Company of Newark, New Jersey, administers the VGLI (Veterans' Group Life Insurance) program through a contractual arrangement with the VA. Recently, the contract between the VA and OSGLI was amended to allow OSGLI to perform the solicitation function. It is believed that this change in procedure will enhance efforts to increase participation in the VGLI program; a program which the VA believes is beneficial to recently discharged veterans since it affords low cost term insurance during a transitional period in most veterans' lives.

In response to the contractual change, OSGLI has developed new outreach efforts which they believe will more effectively educate veterans on the benefits of VGLI, and hence, improve participation. In order to implement these new outreach efforts, OSGLI will require the following information from VADS: Name, mailing address, service discharge date, social security number, date of birth, service branch, gender, disability status, pay grade, educational level, date of enlistment and the amount of Servicemen's Group Life Insurance coverage carried at the time of discharge.

To provide the information required by OSGLI to contact recently discharged veterans, the VA is proposing to add a new routine use statement. The proposed new routine use will permit the disclosure of identifying information including name, mailing address, service discharge date, social security number, date of birth, service branch, gender, disability status, pay grade, educational level, date of enlistment and the amount of Servicemen's Group Life Insurance coverage carried at the time of discharge to OSGLI for the purpose of soliciting applications for life insurance coverage under the VGLI program.

Because of OSGLI's contractual relationship with the VA, the provisions of Subsection (m) of the Privacy Act (Title 5, U.S.C., section 552a(m)) protect the confidentiality of information in this system of records. In addition, the use of this information by OSGLI will be allowed only for the VGLI solicitation function and the individual information on each veteran will be destroyed after the end of the one year and 120-day statutory eligibility period for VGLI.

The VA had determined that release of information for this purpose is a necessary and proper use of information

in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new routine use to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before July 8, 1985 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 22, 1985. Any person visiting Central Office for the purpose of inspecting any such comments will be received by Central Office Veterans Service Unit in room 132. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective July 8, 1985.

Approved: May 29, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.

Deputy Administrator.

Notice of System of Records

In the system identified as 45VA23, "Veterans Assistance Discharge System (VADS)–VA" as set forth on page 370 of the **Federal Register** of January 5, 1982, the following routine use statement is added to read as follows:

45VA23

SYSTEM NAME:

Veterans Assistance Discharge System (VADS)–VA.

* * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * *

14. Identifying information from this system of records, including name, mailing address, service discharge date, social security number, date of birth, service branch, gender, disability status, pay grade, educational level, date of enlistment and the amount of Servicemen's Group Life Insurance coverage carried at the time of discharge may be disclosed to the Office of Servicemen's Group Life Insurance for the purposes of soliciting applications for life insurance coverage under the Veterans' Group Life Insurance program.

[FR Doc. 85–13608 Filed 6–5–85; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Report of Matching Program

AGENCY: Veterans Administration.

ACTION: Notice of Matching Program-Veterans Indebtedness Records with Office of Personnel Management Central Personnel Data File.

SUMMARY: The Veterans Administration is providing notice that the Department of Veterans Benefits will conduct a series of recurring computer matches of VA compensation, pension, education, rehabilitation and home loan default indebtedness records with Office of Personnel Management Central Personnel Data File.

The goal of these matches is to identify active federal employees and retired federal annuitants, who are indebted to the Veterans Administration under the compensation, pension, education and rehabilitation benefit programs or resulting from home loan defaults. The purpose of the match is to initiate salary offset in the collection of unpaid obligations to the VA.

DATES: It is anticipated that the matches will commence in approximately June 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Correne Crawford, Department of Veterans Benefits (201E), Veterans Administration, 810 Vermont Avenue NW, Washington, D.C., 20420, area code 202–389–5213.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 5.f. (1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: May 24, 1985.

Harry N. Walters,

Administrator.

Report of Matching Program: Veterans Administration Compensation, Pension, Education, Rehabilitation and Home Loan Default Indebtedness Records and Office of Personnel Management Central Personnel Data File

a. *Authority:* The Debt Collection Act of 1982, Pub. L. 97–365.

b. *Program Description*:

(1) *Purpose:* The Veterans Adminstration, Department of Veterans Benefits, plans to match indebtedness records for veterans and their dependents with the Central Personnel Data File of the Office of Personnel Management, to identify active and retired federal employees, who are indebted to the Veterans Administration. The purpose of the match is to initiate salary offset when all other collection actions have been unsatisfactory.

(2) *Procedures:* A match will be made of VA debt records with the OPM Central Personnel Data File. The match will be performed by the VA, Department of Veterans Benefits. In order to conduct a match, the VA will request that OPM provide computerized extracts of the Central Personnel Data File containing names, identifying data and record descriptions. When necessary to resolve the identity of debtors who may be listed in OPM records, the VA will conduct appropriate, independent inquires. This match will be repeated periodically.

In the event of a "hit", i.e., the determination through the matching program that a debtor appears on OPM files as a federal employee/retiree, the identity of the debtor will be verified by the VA. If confirmed, the information will be referred by the VA for action to recover the outstanding debt(s) by salary offset, when all other collection actions have been pursued and have been unsatisfactory.

c. *Records to be Matched:* A computer extract list from the following systems of records will be matched with OPM Central Personnel Data File:

Compensation, Pension, Education and Rehabilitation Record-VA (58VA21/22/28) (47 FR 372–375, January 5, 1982; 47 FR 16132, April 14, 1982). The disclosure of information from this system of records, for the purpose of the matching program, is pemitted by a published routine usage.

Loan Guaranty Home, Condominium and Manufactured Home Loan Application Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26) (48 FR 49965–49969 October 28, 1983). The disclosure of information from this system of records, for the purpose of the matching program, is permitted by a published routine usage.

d. *Period of Match:* Intermittently from approximately June 1985.

e. *Safeguards:* Records used in the matches and data generated as a result, will be safeguarded from authorized disclosure. Access will be limited to those persons who have a need for the

information in order to conduct the matches or follow-up actions. All of the material will be stored in locked containers when not is use. The matching files to be used in this project will remain under the control of the Department of Veterans Benefits. The matching file will be used and accessed only to match files in accordance with this notice. I will not be used to extract information concerning "non-hit" individuals for any purpose. It will not be disseminated outside the Department of Veterans Benefits unless authorized by the Chief Benefits Director.

f. *Retention and Disposition:* Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within two months of the completion of the individual matches. Records resulting in "hits" will be retained by the Department of Veterans Benefits until the completion of any necessary administrative, collection or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 85-13607 Filed 6-5-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 109
Thursday, June 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, June 10, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Notice of acquisition of control:

Name of acquiring person and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Memorandum regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note. Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish one branch:

Indian Head Bank-North, Littleton, New Hampshire, an insured State nonmember bank, for consent to merge, under its charter and title, with The Whitefield Saving Bank & Trust Company, Whitefield, New Hampshire, and to establish the sole office of The Whitefield Saving Bank & Trust Company as a branch of the resultant bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17 Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive SEcretary.

[FR Doc. 85–13761 Filed 6–4–85; 3:34 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, June 10, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Peoples Savings Bank, an operating noninsured bank located at 314 High Street, Holyoke, Massachusetts.

Request for approval of a core deposit intangible as a part of equity capital:

The Hibernia Bank, San Francisco, California.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–13762 Filed 6–4–85; 3:34 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 11, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, June 13, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Proposed alternative statements of reasons—final repayment determination—friends of George McGovern
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–13754 Filed 6–4–85; 2:58 pm]

BILLING CODE 6715–01–M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 50.

DATE PUBLISHED: Friday, May 31, 1985, Page No. 23238.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679)

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Thursday, June 6, 1985 at 10:30 a.m., has been changed to Monday, June 10, 1985, at 10:00 a.m.

Jeff Sconyers,

Secretary.

No. 10, June 4, 1985.

[FR Doc. 85–13739 Filed 6–4–85; 8:45 am]

BILLING CODE 6720–01–M

5

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 31, 1985, 50 FR 23238.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., June 5, 1985.

CHANGE IN THE MEETING: Addition of the following items to the closed session.

3. Administrative Matters Requiring Commission Authorization.

4. Court Reporting Services: Consideration of Determination of the Small Business Administration.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–13752 Filed 6–4–85; 2:58 pm]

BILLING CODE 6730–01–M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Implementation of the Board's Program Improvement Project.

2. Personnel actions (appointments, promotions, assignments, reassignment, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3207, beginning approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–13770 Filed 6–4–85; 4:02 p.m.]

BILLING CODE 6210–01–M

Federal Register

Thursday
June 6, 1985

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitat for Three Beach Mice; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitat for Three Beach Mice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and critical habitat for the Alabama beach mouse, Choctawhatchee beach mouse, and Perdido Key beach mouse. The three beach mice are endemic to the Gulf Coast of southern Alabama and northwestern Florida. They are restricted to sand dune habitat, which is being destroyed by residential and commercial development, recreational activity, and tropical storms. This rule will provide the three beach mice with the protection of the Endangered Species Act of 1973, as amended. The Service will initiate recovery actions for the three beach mice.

EFFECTIVE DATE: June 6, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 AM–4:30 PM) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The species *Peromyscus polionotus*, often known as the old field mouse, occurs in northeastern Mississippi, Alabama, Georgia, South Carolina, and Florida; 16 subspecies are currently recognized (Hall, 1981). Certain of the subspecies are endemic to the beaches and sandy fields of southern Alabama and northwestern Florida. Prior to a detailed study by Bowen (1968), involving genetics, morphology, historical geology, and habitat, only 3 subspecies were recognized in the latter region. Bowen determined that variation was much more extensive than previously thought, and he described 5 new subspecies, including the 3 that are the subjects of this final rule: the Alabama beach mouse (*P. p. ammobates*), originally found on coastal dunes from Fort Morgan to Alabama Point, and on Ono Island, Baldwin County, Alabama; the Peridido Key beach mouse (*P. p. trissyllepsis*), originally found on much of Perdido Key, which extends along the Gulf Coast of Baldwin Conty, Alabama, and Escambia County, Florida; and the Choctawhatchee beach mouse (*P. p. allophrys*), originally found on the Gulf Coast of Florida from the East Pass of Choctawhatchee Bay, Okaloosa County, eastward to Shell Island, Bay County.

Beach mice have small bodies, haired tails, relatively large ears, protuberant eyes, and coloration that blends well with the sandy soils and dune vegetation of their habitat. In the Alabama beach mouse, also called the Alabama Gulf Coast beach mouse or white-fronted mouse, head and body length is 68 to 88 millimeters (mm) (2.7 to 3.4 inches (in.)), tail length is 42 to 60 mm (1.6 to 2.3 in.), the upper parts are pale gray with an indistinct middorsal stripe, the sides and underparts are white, and the tail is white with an incomplete dorsal stripe. In the Perdido Key beach mouse, also called the Perdido Bay beach mouse or Florala beach mouse, head and body length is 70 to 85 mm (2.7 to 3.3 in.), tail length is 45 to 54 mm (1.8 to 2.1 in.), the upper parts are grayish fawn to wood brown with a very pale yellow hue and an indistinct middorsal stripe, the white of the underparts reaches to the lower border of the eyes and ears, and the tail is white to pale grayish brown with no dorsal stripe. In the Choctawhatchee beach mouse, head and body length is 70 to 89 mm (2.7 to 3.5 in.), tail length is 43 to 64 mm (1.7 to 2.5 in.), the upper parts are orange-brown to yellow-brown, the underparts are white, and the tail has a variable dorsal stripe (Bowen, 1968; Ehrhart, 1978; Howell, 1929; Linzey, 1978).

The sand dune habitat of the beach mouse is not uniform. The depth of the habitat, from the beach inland, may vary depending upon the configuration of the sand dune system and the vegetation. There are commonly several rows of dunes, paralleling the shoreline and occasionally ranging up to 14 meters (46 feet) in height. The frontal dunes are sparsely vegetated with widely scattered grasses including sea oats (*Uniola paniculata*), bunch-grass (*Andropogon maritimus*), and beach grass (*Panicum amarum* and *P. repens*), and with seaside rosemary (*Ceratiola ericoides*), beach morning glory (*Ipomoea stolonifera*), and railroad vine (*I. pes-caprae*). The interdunal areas contain cordgrass (*Spartina patens*), sedges (*Cyperus* sp.), rushes (*Juncus scirpoides*), pennywort (*Hydrocotyle bonariensis*), and salt-grass (*Distichlis spicata*). The dunes farther inland from the Gulf support growths of saw palmetto (*Serenoa repens*), slash pine (*Pinus elliotti*), sand pine (*P. clausa*), and scrubby shrubs and oaks including yaupon (*Ilex vomitoria*), marsh-elder (*Iva* sp.), scrub oak (*Quercus myrtifolia*), and sand-live oak (*Q. virginiana* var. *maritima*). Seaside goldenrod (*Solidago pauciflosculosa*), aster (*Heterotheca subaxillaris*), and *Paronychia* sp. may also be present.

Human and natural alteration of coastal ecosystems has resulted in severe declines of beach mice. Most suitable habitat has been lost because of residential and commercial development, recreational activity, beach erosion, and vegetational succession. Competition from introduced house mice (*Mus musculus*) and predation by domestic cats (*Felis catus*) also seem to be problems. Tropical storms are a constant threat to the remnant, fragmented populations of beach mice. Hurricane Eloise in 1975 and Hurricane Frederick in 1979 were especially bad, destroying large areas of habitat for all three subspecies. Bowen (1968) observed that more than two-thirds of the habitat of *P. p. allophrys* had been lost since 1950, as a result of the coastal real estate boom.

Several recent status surveys and habitat analyses have indicated that the situation continues to worsen. Holliman (1983) found *P. p. ammobates* to still survive on disjunct tracts of the sand dune system from Fort Morgan State Park to the Romar Beach area, but to have apparently disappeared from most of its original range, including all of Ono Island. Working in various parts of the habitat of the subspecies, with a total length of 20.6 kilometers (km) (12.8 miles (mi.)), he live-trapped (and released after marking) an average of 10.7 mice per 100 trap-nights of effort. He estimated *P. p. ammobates* to contain a total of 875 individuals on 134.6 hectares (ha) (332.6 acres (A)), a relatively low population size for a small mammal. A few months later, Meyers (1983), working in the same areas, live-trapped an average of only 3.6 *P. p. ammobates* per 100-trap-nights. Additional record of *P. p. ammobates* have been obtained recently by Dawson (1983) and Meyers (pers. comm.).

Humphrey and Barbour (1981) made a study of *P. p. trissyllepsis* in 1979, prior to Hurricane Frederick. They estimated that only 78 individuals of the subspecies survived, there being 52 at the Gulf Islands National Seashore on the eastern part of Perdido Key and 26 at the Gulf State Park on the western

part of the Key. Holliman (1983), working at the Gulf State Park after Hurricane Frederick, caught only a single specimen of *P. p. trissyllepsis*. Subsequently, Meyers (1983) captured 13 idividual *P. p. trissyllepsis* at the Gulf State Park, but none at the Gulf Islands National Seashore. He considered the subspecies to have been extirpated from the latter area by Hurricane Frederick in 1979. Holliman (1984), trapping on the north side of State Road 182 at the west end of Perdido Key, captured only a single *P. p. trissyllepsis* in June 1984 in low dunes isolated by poor quality habitat. This drastic reduction to one population, with only a few animals occupying a restricted habitat that is highly vulnerable to destruction, probably makes the Perdido Key beach mouse one of the most critically endangered mammals in the United States.

As late as 1950, *P. p. allophrys* was widespread and abundant along the barrier beach between the Choctawhatchee and St. Andrew Bays. In 1979, however, Humphrey and Barbour (1981) found that the subspecies had been extirpated from 7 of the 9 localities from which it has previously been known. They also discovered it on Shell Island, a former peninsula that had been isolated by the dredging of the St. Andrew Bay entrance channel.The subspecies was estimated to contain at least 515 individuals. Meyers (1983) confirmed the survival of *P. p. allophrys* on Shell Island.

On June 7, 1979, the Alabama Department of Conservation and Natural Resources, Game and Fish Division, responded to a Service inquiry regarding priority ratings for candidate species that might merit addition to the U.S. List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Department stated that the Alabama and Perdido Key beach mice should have the highest listing priority for mammals in Alabama.

On June 9, 1982, Dr. Stephen R. Humphrey, Associate Curator in Ecology, Florida State Museum, Gainesville, Florida, petitioned the Service to add the Perdido Key beach mouse and the Choctawhatchee beach mouse to the List. The petition included a status report prepared under contract to the Florida Game and Fresh Water Fish Commission. Portions of the report were subsequently published (Humphrey and Barbour, 1981). On June 21, 1982, the Commission gave its full support to Dr. Humphrey's petition and requested that listing be expedited. In the **Federal Register** of October 6, 1982 (47 FR 44125), the Service published a notice of petition acceptance and status review, and announced its intention to propose listing the two subspecies with critical habitat.

On October 26, 1982, Dr. Dan C. Holliman, Division of Science and Mathematics, Birmingham-Southern College, Birmingham, Alabama, petitioned the Service to add the Alabama beach mouse and the Perdido Key beach mouse to the List. In the **Federal Register** of February 15, 1983 (48 FR 6752–6753), the Service published a notice of findings that accepted this petition.

In the **Federal Register** of December 30, 1982 (47 FR 58454–58460), all three mice were included in the Service's Review of Vertebrate Wildlife. The Perdido Key and Choctawhatchee beach mice were placed in Category 1 of the Review, meaning that there was substantial information on hand to support the biological appropriateness of a listing proposal. The Alabama beach mouse was placed in Category 2, meaning that proposing to list was possibly appropriate, but substantial supporting data were not available. Such data were subsequently received, specifically the reports by Holliman (1983) and Meyers (1983).

On October 13, 1983, the petition finding was made that listing of all three beach mice was warranted but precluded by other pending listing measures, in accordance with Section 4(b)(3)(B)(iii) of the Act. Such findings require a recycling of the petitions pursuant to Section 4(b)(3)(C)(i) of the Act. When other pending measures had been processed, a new finding was made and set forth in the **Federal Register** of June 7, 1984 (49 FR 23794–23804), in conjunction with a proposed determination of endangered status and critical habitat for the three subspecies of beach mice. On July 5, 1984, the Service was requested to hold a public hearing on the proposal; in the **Federal Register** of August 13, 1984 (49 FR 32321), the Service announced a public hearing and an extension of the comment period through September 7, 1984. The hearing was held on August 28, 1984, at the Gulf State Park Resort, State Road 182, Gulf Shores, Baldwin County, Alabama. During the public comment period, June 7 through September 7, 1984, the Service received numerous comments. In the **Federal Register** of October 4, 1984 (49 FR 39179), the Service published a notice reopening the public comment period through November 5, 1984, to allow for a review of two papers received during the public comment period. In the **Federal Register** of October 15, 1984 (49 FR 40196), a typographical error in the October 4, 1984, notice, was corrected.

Summary of Comments and Recommendations

In the proposed rule of June 7, 1984, and associated notifications, all interested parties were requested to submit relevant data and comments that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, biologists, and other interested parties were contacted and requested to comment. Newspaper notices, inviting general public comment, were published in the *Mobile Press Register* on June 30, July 29, and October 20, 1984; *Playground Daily News* on June 27 and July 28, 1984; *Montgomery Advertiser* on June 30, July 28, and October 20, 1984; *Panama City News Herald* on June 30, August 1, and October 27, 1984; *Pensacola News Journal* on July 1 and 29, and October 20, 1984; *Independent* on June 27 and July 25, 1984; *Birmingham News/Post Herald* on July 1, August 1, and October 20, 1984; *Destin Log* on June 30 and October 24, 1984; *Onlooker* on June 28 and July 29, 1984; and *Islander* on July 5, 1984.

During both comment periods, totalling 4 months, 183 comments were received and are discussed below. The public hearing was attended by 180 individuals, 27 of whom made oral statements. Numerous written comments and oral statements either supported or opposed listing the beach mice, but provided no substantive data. Support for the listing proposal was voiced by 16 environmental organizations, as well as Federal and State agencies, landowners, members of the academic community, and interested citizens.

Several Federal agencies reacted favorably to the Service's proposal. These agencies indicated that they would experience no economic or other significant impacts, that their activities would not impact beach mice or critical habitat, that they had no objection to the listing with critical habitat, that they supported the protection of the beach mice and their sand dune habitat, and/or that they would assure protection of beach mice and critical habitat pursuant to Section 7 of the Act (see "Available Conservation Measures," below). These Federal agencies were the Army Corps of Engineers; Coast Guard, Department of Transportation; Environmental Protection Agency; Bureau of Land Management, Department of the Interior; Veterans Administration; Office of Ocean and Coastal Resource

Management, National Oceanic and Atmospheric Administration; Gulf Islands National Seashore, National Park Service; and Tyndall Air Force Base, Department of the Air Force. The Service will consult with any of these or other Federal agencies on actions that might jeopardize the continued existence of the beach mice and/or adversely modify or destroy critical habitat.

Several State agencies reacted favorably to the Service's proposal to list the beach mice with critical habitat. These agencies indicated that they would be pleased to work with the Service to protect beach mice and their habitat, they would consider the beach mice and their fragile sand dune habitat, in the planning of future projects, they concur with the proposal, and/or they support recovery efforts and would provide additional protection for beach mice. These State agencies were the Alabama Historical Commission (Fort Morgan State Park); Alabama Highway Department; Alabama Division of Game and Fish; Florida Department of Environmental Regulation; Florida Game and Fresh Water Fish Commission; and Division of Recreation and Parks, Florida Department of Natural Resources. The Florida State Clearinghouse has stated that the determination of endangered status with critical habitat for the beach mice is in accord with State plans, programs, procedures, and objectives.

Opposition was generally received from developers, landowners, attorneys representing developers, and two consultants retained by development interests. The opposing comments received can be placed in a number of different categories depending on content. The comments and the Service response to each, are listed below.

Comment 1. The beach mouse population surveys used by the Service were superficial. Trapping data summarized by Griswold (undated) show that beach mouse populations have remained stable throughout this century. In addition, Dawson (1983) concluded it was premature for the Service to list the Alabama beach mouse.

Service response. The Service disagrees that its listing action is based on superficial data. The Service has based its findings on documents, including published scientific literature and status surveys, which contain data from more than 9000 trap-nights at about 50 trap sites along approximately 100 miles of Gulf Coast sand dunes. These sources document significant habitat loss that has occurred throughout the range of the three subspecies, as well as other threats to beach mice including tropical storms, and possible competition from house mice and predation by house cats.

The conclusion drawn from Griswold's (undated) paper, that beach mouse populations have actually remained stable, is in error. The trapping data he summarized show that in some areas where beach mice occur at present, their relative abundance (number of animals trapped per 100 trap-nights) may have remained unchanged, but Griswold's analysis fails to take into account that occupied beach mouse range has been reduced to approximately one-fifth of its historic size, that habitat loss continues to be a threat, and that other threats, cited above, exist as well. The Service disagrees with Dawson's conclusion, which was based on data from 64 trap-nights at one trap site. Dawson's data are inadequate for drawing any conclusions on the overall status of the Alabama beach mouse.

Comment 2. Since experts do not know how many beach mice there are, it is unreasonable to conclude that mice are endangered.

Service response. It is not necessary to have precise population numbers to determine that the beach mice are endangered; indeed, it would probably be impossible to obtain such numbers. The Service has, however, carefully reviewed the relative population data of Holliman (1983), Humphrey and Barbour (1981), and Meyers (1983), as well as other data documenting habitat loss. Based on these data the Service has drawn its conclusion that the three beach mice are facing extinction (see "Background," above, and "Summary of Factors Affecting the Species," below).

Comment 3. Beach mice should be translocated to federally owned property, sanctuaries, or wildife refuges to determine beach mouse adaptability to new sand dune habitat.

Service response. The Service generally agrees with this comment, and will address translocation as one type of a recovery measure in the beach mouse recovery plan. However, the potential effects of translocation are not relevant to a decision on whether to list a species. Under Section 4 of the Act, if data warrant listing, the Service must proceed to list the species. Moreover, one of the central purposes of the Act is to protect the natural habitat of listed species. Therefore, while translocation in a given setting may constitute an acceptable conservation measure, it would be inappropriate under the Act to make it the exclusive conservation mechanism for the species.

Comment 4. A translocation project should be initiated to introduce beach mice to the west end of Dauphin Island, Alabama, where no beach mice now occur. The habitat is similar (to Alabama beach mouse habitat). Translocation to Dauphin Island could be considered as mitigation for critical habitat loss due to development.

Service response. While translocation may be a means of helping a species to survive and recover, the Service must act to preserve the ability of a species to survive in its current range. One of the primary purposes of the Endangered Species Act, as stated in Section 2(b), is to provide a means whereby the ecosystems upon which endangered species depend may be conserved. Thus, the Service's policy is to attempt to conserve and recover endangered and threatened species within their known historic ranges. Dauphin Island is not known to be within the historic range of the Alabama beach mouse.

Comment 5. Variations in relative abundance data (number of animals trapped per 100 trap-nights) for beach mice could be explained by migration of beach mice inland from sand dune habitat, thus indicating beach mouse ability to occupy other habitat types. Research should be conducted to determine if beach mice migrate to inland areas, before the Service considers listing action. The Governor of Alabama was among those parties making the latter point.

Service response. There are no data to indicate that the three subspecies of beach mice in question migrate between sand dune habitat and adjacent inland habitat types. These beach mice have been documented only in sand dune habitat. Other subsepecies of *P. polionotus*, and other species of *Peromyscus*, such as *P. gossypinus* (Humphrey and Barbour, 1981), inhabit adjacent habitat types. Within a beach mouse population, it is expected that there will be movement or dispersal of animals within the sand dune habitat attributed in part to young animal's efforts to establish individual territories, and to search for food, but there is no evidence that they disperse inland. The Service considers that research on beach mouse migration to inland areas, prior to any listing action, is unwarranted.

Comment 6. The Service did not use the best and most recent scientific data available, as required by Section 4 of the Act, when it proposed listing the beach mice as endangered. According to this view, the best scientific data available on the taxonomy of these mice demonstrate that *Peromyscus polionotus*

ammobates, P. p. trissyllepsis, and *P. p. allophrys* are not valid taxonomic entities. In support of this opinion, two unpublished papers (Dawson, 1984, Griswold, undated) were submitted, which, according to the commenter, contain data that were available to the Service but were not utilized in the preparation of the proposal. These two papers attempt to cast doubt on the taxonomic validity of the three beach mice through the use of statistical and biochemical techniques, and chromosomal analyses. The conclusion reached by both authors is that the subspecific names *ammobates, trissyllepsis,* and *allophrys* have been applied to beach populations of *Peromyscus polionotus* that in reality do not differ sufficiently from adjacent inland populations to warrant their recognition as valid subspecies. The commenter maintained that since the Service did not use the scientific data contained in the Dawson and Griswold papers, the statutory requirements of the Act has not been met, and the proposal therefore should be withdrawn. The commenter further requested the Service to submit the Dawson and Griswold papers to a "peer review," and recommended the names of five biologists qualified to conduct the review.

Service response. The Service rejects the argument that it failed to use the best scientific data available. The taxonomic treatment used in the proposed rule was based on the last comprehensive review of beach mice (Bowen, 1968). This review was published in a recognized scientific journal, and was accepted by Hall (1981). Neither the Dawson nor the Griswold paper has been published, and both appear to be interim reports, rather than completed studies; Dawson specifically points out that additional work needs to be done. It should be noted also that neither paper was available to the Service during the preparation of the proposed rule. Both appear to have been expressly prepared in response to publication of the proposed rule itself.

Service biologists have reviewed the Dawson and Griswold papers, and consider the data presented to form an insufficient basis for nonrecognition of the subspecific distinction of the three beach mice. Indeed, to some extent these data seem to support such distinction. In addition, the Service submitted review copies of the two papers to not only the 5 biologists recommended by the commenter, but to 13 others considered possibly knowledgeable on the subject. These 18 biologists were asked their opinion on the validity of the three subspecies in question and on whether Dawson and Griswold had demonstrated that these subspecies were not valid. Of these biologists, 8 responded, and, as anticipated, there was substantial disagreement both with regard to the taxonomic status of the beach mice and to the use of the subspecific category in general. Several of the biologists thought the three subspecies to be valid and several thought them not or probably not valid, but there was considerable uncertainty. There also was disagreement relative to the usefulness of the Dawson and Griswold papers, with half of the commenting biologists thinking the papers did not support nonrecognition of subspecific status for the beach mice, and half thinking that one or both papers did support (though did not necessarily demonstrate) such nonrecognition. The one point on which there was the most agreement, as suggested by the comments of 7 of the biologists, is that beach mouse populations in question may warrant protection and/or endangered status, whether treated as three separate subspecies, as components of a single subspecies, or as discrete and unique populations. Section 3(16) of the Act does indicate that a vertebrate population may be added to the List of Endangered and Threatened Wildlife, even if it is not a biological species or subspecies.

Comment 7. There are conflicting statements in the Service's files regarding ability of beach mice to survive hurricanes. The commenter stated that one observer had noted how beach mice can survive several hours of inundation from storm tides, but no one knows how they survive; that another observer had noted evidence of beach mouse activity the night after storm waters subsided; and that Holliman (1983) has stated that higher dunes probably served as a refuge for beach mice during Hurricane Frederick, but that Holliman added (pers. comm.) that the beach mouse population cannot take another storm. In summary, the commenter stated these data contradict the statement in the listing proposal that beach mice are destroyed by hurricanes.

Service response. The Service considers there to be no contradiction in these statements. Further, there is clearly a relationship between tropical storms and habitat loss, and beach mouse population decline and extirpation. The data cited in the "Background" and "Summary of Factors Affecting the Species" clearly explain the impacts of Hurricanes Eloise and Frederick on beach mouse populations; some populations have been extirpated. No studies have been conducted to determine how some beach mice are able to survive tropical storm inundation. Some may seek refuge in nearby dunes with elevations above flood level.

Tropical storms are a threat to beach mice, and their habitat, alone and in association with other threats such as loss of habitat due to development. Holliman's personal communication actually stated that there have been tropical storms throughout recorded history, but Hurricane Frederick, coupled with increased development, has had a major impact on the Alabama beach mouse population. Holliman stated that given these circumstances, he did not believe the Alabama beach mouse population could survive another storm.

Comment 8. The Perdido Key beach mouse population level appears to have been quite small in recent years. It is possible that the lack of reproduction in the subspecies is a result of inbreeding depression, rather than poor environmental quality. A year-long study should be done before any determination of the cause for the low population level is made.

Service response. Inbreeding depression could be a factor responsible for the low population level of the Perdido Key beach mouse; this in itself could be a major threat to the survival of this mouse that justifies listing. The fact remains that the population is facing extinction and listing action is warranted.

Comment 9. The scientists who have described beach mouse habitat disagree among themselves as to the type of dunes in which beach mice live. Despite this disagreement, the Service has proceeded to determine critical habitat. In addition, the delineation of critical habitat in the proposal is unclear.

Service response. The Service thinks that the descriptions of beach mouse habitat by Humphrey and Barbour (1981), Holliman (1983), and Meyers (1983) are not in disagreement, and that the delineations of critical habitat in the proposal are accurate and clear. The Service recognizes (see above "Background") that there are significant topographical and ecological variations within the dune systems, which may be caused by numerous factors. It is obvious that the sand dune systems are not uniform. Thus, beach mouse habitat is best characterized using broad terms. The major factor is that beach mice are restricted to the undisturbed dune systems. The Service considers that its

verbal descriptions and maps of these areas in the proposal clearly delineate the critical habitat for these mice.

Comment 10. There are conflicting statements in the literature regarding the relationship between beach mice and house mice. Holliman concluded that beach mice succumb to competition from house mice that accompany human settlement. However, Holliman trapped no house mice. Meyers (1983) stated that his data did not support Humphrey and Barbour's (1981) suggestion that beach mice succumb to competition from house mice associated with human dwellings.

Service response. Refer to factor "E" in the "Summary of Factors Affecting the Species." The Service thinks that house mice may compete with beach mice for food and cover. Humphrey and Barbour (1981) speculated that one of the reasons for the disappearance of beach mice in some areas could be that beach mice succumb to competition from house mice that accompany human settlement. Their study provided possible evidence of competitive exclusion. Holliman (1983) also found that house mice and beach mice do not occur together in the same habitat, and noted Humphrey and Barbour's hypothesis as a possible explanation. On the other hand, Meyers (1983) believed that the absence of house mice in beach mouse habitat could be due to the inability of the beach/dune ecosystem to support house mouse populations. Despite these differing views, there remain sufficient grounds for the belief that house mice and beach mice do compete to the detriment of the beach mouse populations.

Comment 11. There are contradictory statements regarding the impacts of house cats on beach mice. No one has produced data showing that such predation actually occurs.

Service response. As stated in the "Background," above, and "Summary of Factors Affecting the Species," below, the Service considers that house cats may prey upon beach mice. Bowen (1968) indicated that predation by feral house cats was becoming an increasingly important factor in the reduction of beach mouse populations. During his field work (1950–1961), the impact of cats on beach mice became so apparent to him that in later years he avoided trapping wherever he found cat tracks. Bowen (1968) photographically documented an instance where beach mouse tracks and cat tracks converged on the entrance to a hole in a rotten log on the sand. Similar observations of house cat tracks following beach mouse trails have been made by Service personnel.

Humphrey and Barbour (1981) indicated that their data are consistent with the hypothesis that beach mouse populations may be extirpated by predation from house cats. Holliman (1983) stated that predator data from Ono Island suggest that house cats may be responsible for the absence of beach mice from that island. Service personnel and others have observed house cat tracks in other areas of beach mouse habitat as well. Meyers (1983) stated that the majority of the predators at Gulf Shores, Alabama, sites were dogs and cats. Cat presence was limited to Romar Beach, Alabama, where 25 percent of his trapping stations were visited by at least two cats. Humphrey (pers. comm.) pointed out, however, that no one has actually produced concrete data showing that predation by house cats occurs. The Service acknowledges that no studies have been conducted on predation of beach mice by house cats. However, the Service thinks that the data presented by Bowen (1968), Humphrey and Barbour (1981), Holliman (1983), and Meyers (1983) strongly indicate that predation by house cats may be a threat to beach mice.

Comment 12. Beach mice are vermin associated with human dwellings. Beach mice are a menace to public health, carrying parasites and diseases, such as rabies.

Service response. Beach mice do not normally occur in human dwellings, nor are they a menace to human health. According to Florida Public Health Office records, there has never been an incidence of human plague in rodents in Florida, and there are no documented cases of rabies ever occurring in mice in Florida. Likewise, according to the Alabama State Health Office there have been no reported cases of plague, and rabies in rodents is virtually unheard of, in Alabama.

Comment 13. Beach mice, feeding on sea oats and their root systems, may be a threat to sand dune stability. A reduction in beach mice might enhance sand dune development.

Service response. Beach mice evolved with sea oats in a sand dune environment. Beach mice and sea oats (*Uniola paniculata*) have coexisted for thousands of years on sand dunes. Such a condition usually indicates that the species are in some way mutually beneficial. It is almost certain that if one of these species were detrimental to the survival of the other, the weaker would have been extirpated from the shared environment long ago. At present, with beach mouse populations significantly reduced in range and numbers, they could not pose any sort of threat to the well-being of sea oats. Further, it is thought that beach mice actually may enhance sea distribution by dispersing sea oat seeds throughout a sand dune system.

Comment 14. It is possible for beach mice to thrive in areas adjacent to high density development, and there are no valid data to support the conclusion that development adversely affects beach mice.

Service response. Available data clearly show the impact of development. In most of the historic range of beach mice, where sand dunes occupied by beach mice once existed and where beach mice were actually trapped, the dunes have been replaced or seriously degraded by development and associated impacts. Beach mice have been extirpated from these areas.

Comment 15. If proper provisions are made to preserve front dunes and corridors for repopulation of areas by beach mice after hurricanes, commerical real estate development can be made compatible with survival of beach mice.

Service response. The Service basically agrees with this observation, but considers it an oversimplification of a complex situation. The Service does agree that residential and commercial development can be designed, situated, constructed, and managed in such a manner so as to be compatible with beach mouse protection and recovery. Development must be situated inland from beach mouse habitat in order to protect the dunes and interdunal areas and associated grasses and shrubs that provide food and cover for beach mice. Pedestrian access across sand dunes must be limited to elevated boardwalks in order to preserve the sand dunes and associated vegetation. Vehicles must be strictly prohibited from the dunes. Development should be managed to discourage the presence of house cats and house mice, which may prey upon or compete with beach mice; this can be achieved by using scavenger-proof trash receptacles and maintaining them on a schedule to avoid overflow that might attract house cats and house mice.

The wise management of sand dunes to preserve their natural stormwater barrier and esthetic qualities will also serve to protect their value as beach mouse habitat. Beach mouse corridors generally are not clearly delineated strips of land, but rather are natural ill-defined pathways, probably changing seasonally, used by beach mice to provide access to different parts of their range. This general protection of habitat from destruction or adverse modification will protect the network of corridors.

Comment 16. The intent of Congress, in passing the Endangered Species Act of 1973, was not to protect subspecies. By doing so, the Department of the Interior would go beyond the intent of Congress.

Service response. This statement is incorrect. The term "species" as defined by the Act in Section 3(16), "includes any subspecies of fish or wildlife or plants."

Comment 17. The Service has failed to meet its statutory obligation by having no economic data as a prerequisite for determining critical habitat. Further, the Service has failed to demonstrate the environmental impact of the designation of critical habitat.

Service response. The Service has met its statutory obligations in the designation of critical habitat. The Endangered Species Act states that the determination of the status of a species must be based solely on the best scientific and commercial data available. Critical habitat is also proposed based on the best scientific data available. When critical habitat is reviewed for final determination the Service analyzes the scientific data, the economic impacts, and any other relevant impacts (Section 4(b)(2) of the Act). In accordance with these guidelines, the Service has completed an economic analysis and determination of effects (see "Regulatory Flexibility Act and Executive Order 12291," below). Further, the Service has determined that an environmental assessment is not required (see "National Environmental Policy Act," below).

Comment 18. The Service proposes to protect beach mice from natural forces such as hurricanes and predators; this far exceeds the scope of the Endangered Species Act. The Endangered Species Act was intended to protect species from unnatural extinction.

Service response. Section 2(a) of the Act states that various species have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation, and that the United States has pledged itself to conserve various species facing extinction. The Act further specifically states in Section (4)(a)(1)(E) that both natural and manmade factors affecting a species' continued survival shall be considered whenever a species is listed as endangered or threatened. In the case of beach mice, both natural and manmade factors apply. Before development destroyed vast expanses of dunes, tropical storms probably periodically wiped out sand dune communities and associated beach mice. As the dunes recovered, beach mice surviving in adjacent areas could repopulate the recovering area. Today, so much habitat has been lost to development that there are few beach mice remaining to repopulate areas devasted by storms.

Comment 19. During the summer of 1984, additional threats to beach mouse habitat developed when a new ferry service began between Dauphin Island and Fort Morgan, Alabama. During the first 48 days of service, 40,000 people/6,000 vehicles were transported back and forth, increasing human influx and illegal vehicular traffic across the dunes in the Fort Morgan area.

Service response. The Service acknowledges the increased threat to beach mouse habitat. See "Comment 15" and "Service response," above, regarding the need to prohibit vehicular access and to limit pedestrians to boardwalks over sand dunes in order to protect the dunes and associated wildlife, including beach mice.

Comment 20. The Service was requested to investigate the possibility of *P. p. allophrys* being on Crooked Island, Tyndall Air Force Base, Bay County, Florida.

Service response. The Service has reviewed existing data regarding beach mice on Crooked Island. Bowen (1968) showed Crooked Island to be within the range of *P. p. peninsularis.* Hall (1981) indicated that *P. p. peninsularis* is recorded from St. Andrews Point Peninsula on Crooked Island and from Cape San Blas, Gulf County, Florida. Thus, the Service concludes that the southernmost range of *P. p. allophrys* is Shell Island, Bay County.

Comment 21. A local and State chapter of a conservation organization recommended that the Service include the Santa Rosa Island beach mouse (*P. p. leucocephalus*) in the Service's listing action. These organizations maintain that this subspecies is also threatened by beach front development in Santa Rosa and Okaloosa Counties, Florida.

Service response. As the two original beach mouse petitions did not cover *P. p. leucocephalus,* the Service did not collect substantial information on that subspecies, and did not include it in the proposed rule. Upon receipt of substantial data, the Service would consider a separate proposal to list *P. p. leucocephalus.*

Comment 22. One commenter alleged that the U.S. Army Corps of Engineers' channel maintenance program and beach restoration project in the Florida panhandle will face increased costs as a result of the listing of beach mice with critical habitat. The cost of delivering spoil to outlying areas, and the cost of monitoring dredging activities, will be extremely expensive.

Service response. The Service disagrees with the statements referring to significant increased costs, since the Corps has not identified such costs (see "Critical Habitat" section, below).

Comment 23. Some commenters questioned the Service's statements regarding the threat of oil and gas extraction to beach mouse habitat.

Service response. The Service acknowledges the State and Bureau of Land Management positions on State and Federal oil and gas extraction facility planning along the Fort Morgan Peninsula. They stated that the threat is much less critical than was described by the Service. Further, it is unlikely that oil and gas leasing will be affected by the listing (see "Critical Habitat" section, below).

Comment 24. The U.S. Army Corps of Engineers indicated that critical habitat should be more precisely designated so as to exclude existing navigation fairways and channel maintenance disposal areas, and to permit beach nourishment.

Service response. Described below, under "Regulations Promulgation" (§ 17.95), are the major constituent elements of critical habitat that are known to require special management considerations or protection. These elements include the dunes and interdunal areas, and associated grasses and shrubs, that provide food and cover for beach mice, but do not include navigation fairways and existing channel maintenance disposal areas. Further, it would be impossible to describe in words a legal boundary that exactly follows a natural ecological zone or to precisely separate every parcel of suitable habitat from other areas that may be less suitable. Therefore, it has been the general practice of the Service in delineating critical habitat to make critical habitat conform to an easily understood border such as a road, shoreline, or section line.

Comment 25. Some of the areas proposed for critical habitat designation appear unsuitable for optimum habitat and should be excluded from critical habitat designation. The Governor of Alabama and the Alabama Department of Conservation and Natural Resources were among those parties making this point, though both indicated general support for the proposed rule.

Service response. The Service agrees that some areas proposed as critical habitat are no longer suitable beach mouse habitat. The four proposed critical habitat units in the State of Alabama have therefore been substantially reduced in size in this final rule. Approximately 6 km (3.8 mi) of

private land has been deleted from the units. The reductions were warranted primarily by habitat loss or degradation resulting from development activities that have occurred subsequent to the preparation of the June 7, 1984, listing proposal. Two of the six proposed critical habitat areas in the State of Florida have also been reduced in size in this final rule. Approximately 2.4 km (1.5 mi.) of private land has been deleted from these proposed critical habitat units. These reductions were also warranted due to habitat loss or degradation resulting from development activities that have occurred subsequent to the preparation of the listing proposal.

Comment 26. There is already sufficent land in Federal or State ownership to provide protection for beach mice; therefore, there is no need to designate private lands as critical habitat in Alabama and Florida. Each State has been treated differently in the distribution of critical habitat units.

Service response. The Service disagrees with the statement that there is enough beach mouse habitat already in Federal or State ownership and that no additional land need be designated as critical habitat. Residential and commercial development have already isolated the remaining areas of beach mouse habitat, fragmenting populations. Because of the history of devastating tropical storms, often extirpating beach mice, it is necessary to maintain several suitable areas of habitat, irrespective of ownership, if the beach mice are to have a reasonable chance of survival and recovery.

The critical habitat units have been designated based on the needs of each of the subspecies rather than on political boundaries or ownership patterns. Since the coastlines of Alabama and Florida are not identical, it cannot be expected that each State should have critical habitat units of like number, size, or ownership patterns.

Comment 27. The Florida Game and Fresh Water Fish Commission stated that the critical habitat delineations appear prudent and reasonable, but that the Commission would have preferred to have had Choctawhatchee beach mouse critical habitat component 2 extended westward to include the undeveloped coastline west of Grayton Beach, Walton County.

Service response. Subsequent to the comment from the Commission, the State of Florida signed a purchase agreement for most of the undeveloped sand dune habitat west of Grayton Beach, known as Grayton Dunes and Grayton Additions. In the future, should the Service determine that this area should be designated as critical habitat, a proposed rule to make that determination could be initiated as a separate action.

Comment 28. The U.S. Department of Transportation, Federal Highway Administration (FHwA), after coordinating with the Florida Department of Transportation, requested that existing rights-of-way along State, County, and Federal highways not be designated as critical habitat in order to accommodate FHwA future projects.

Service response. The Service has already indicated that habitat loss is one of the primary reasons for the decline in beach mouse populations. The occupied range of beach mice in Florida has been reduced from approximately 109 km (68 mi.) of Gulf Coast sand dunes to only 14.9 km (9.3 mi.). Thus, protection of the remaining habitat is essential for the long-term survival and recovery of the beach mice regardless of the legal description of the land (i.e. right-of-way). Only approximately 2.6 km (1.6 mi.) of critical habitat for the Perdido Key and Choctawhatchee beach mice include highway right-of-way or are in close proximity to it.

Comment 29. Sand dune habitat in Okaloosa County, Florida, should have been designated as critical habitat for the Choctawhatchee beach mouse.

Service response. The Service carefully reviewed the Henderson Beach State Recreation Area, Okaloosa County, Florida, for determination as critical habitat, but concluded that the area was not essential for the conservation and recovery of *P. p. allophrys*. The area, located east of the population center of Destin, Florida, is not suitable beach mouse habitat at present because of the nature of intense pedestrian use, and because of the placement of the State Road 98 roadbed on the top of the dune system.

Comment 30. It has been suggested that, if the beach mice are listed with critical habitat, property owners could suffer a financial loss and the U.S. Government should be required to compensate the property owners for their loss.

Service response. If there is no Federal funding or authorization of the private activities, then the designation of critical habitat under the Endangered Species Act will have no impact on private activities. See "Critical Habitat" and "Available Conservation Measures" sections, below, for a description of the possible effects of the listing on Federal activities. Federal financial involvement in development within units of the Coastal Barrier Resources System, established by the Coastal Barrier Resources Act of 1982, is generally prohibited by that Act. Coastal Barrier Resources System Units in the vicinity of designated critical habitat are described later in this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Alabama beach mouse, Perdido Key beach mouse, and Choctawhatchee beach mouse should be classified as endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (October 1, 1984, 49 FR 38900, to be codified at 50 CFR Part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Alabama beach mouse (*Peromyscus polionotus ammobates*), Perdido Key beach mouse (*P. p. trissyliepsis*), and Choctawhatchee beach mouse (*P. p. allophrys*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Alabama, Perdido Key, and Choctawhatchee beach mice historically ranged along approximately 166.0 km (103.1 mi.) of coastal sand dunes in Baldwin County, Alabama; and Escambia, Okaloosa, Walton, and Bay Counties, Florida. Based on recent status surveys (Dawson, 1983; Holliman, 1983, 1984; Humphrey and Barbour, 1981; Meyers, 1983), and on observations by the primary author between July 1983 and January 1985, the three beach mice are at present found on approximately 35.1 km (21.8 mi.) of Gulf Coast dunes. Thus, their range has been reduced to about one-fifth of the original size.

A substantial decline of beach mouse habitat, through destruction or adverse impact by development, has been noted just since data were collected for the proposed rule of June 7, 1984. Mainly for this reason, the amount of habitat reported to exist in that proposal has now been reduced by approximately 23 percent or 5.1 km (3.2 mi.) for the Alabama beach mouse, approximately 8 percent or 1.8 km (1.1 mi.) for the Choctawhatchee beach mouse, and approximately 9 percent or 1.6 km (1.0 mi.) for the Perdido Key beach mouse. With respect to that portion of the habitat of the Pedido Key beach mouse that was actually known to be occupied when the proposal data were collected, the reduction has been 34 percent or 1 km (0.6 mi.).

The major threat to beach mouse habitat continues to be human destruction of the coastal sand dune ecosystem for commercial and residential development (Bowen, 1968; Ehrhart, 1978; Meyers, 1983). In addition, recreational use of the sand dunes by pedestrians and vehicles can destroy vegetation essential for dune development and maintenance. Such loss of vegetation results in extensive wind and water erosion, reducing the effectiveness of coastal dunes as a protective barrier and ultimately destroying beach mouse habitat.

Intensive commercial and residential development in Florida has restricted public use of beaches. Property owners are not required to provide access to the publicly owned wet sand beaches. This results in an increasing demand on accessible public beaches, causing increased erosion and loss of beach mouse habitat. If properly managed, however, public use of beaches is compatible with maintenance of beach mouse habitat (Meyers, 1983).

Residential and commercial development isolates small areas of beach mouse habitat, thereby fragmenting populations and upsetting gene flow. Low-density residential development does not necessarily create isolation of habitat, but high density multiple housing can act as a barrier to migration between populations. If any such population segment is extirpated, it cannot be replaced by natural immigration (Meyers, 1983).

Another problem might be the routine channel maintenance program conducted by the U.S. Army Corps of Engineers. The program involves the removal of accreted sand from channels and passes, and then disposal of the sand in the vicinity of beach mouse habitat. If measures are not taken to protect beach mouse habitat during the dredging and diposal activities, the habitat could be threatened. Based on the Corps' recent planning and implementation of a maintenance project at the Perdido Pass Channel, Alabama, however, it appears that, with careful consideration of beach mouse requirements in developing and conducting the maintenance projects, habitat should not be threatened.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be applicable.

C. *Disease or predation.* Bowen (1968) suggested that predation by feral house cats posed an imminent threat to beach mouse populations. The absence of a beach mouse population on Ono Island may be attributable to cat predation (Holliman, 1983). The presence of feral house cats and other predators in or near beach mouse habitat may be fostered by the existence of open refuse containers associated with residential and commercial development or recreational use (James N. Layne, Archbold Biological Station, Lake Placid, Florida, personal communication; Meyers, 1983).

D. *The inadequacy of existing regulatory mechanisms.* Current controls affecting development in Gulf Coast sand dunes include subdivision, building department, and coast high hazard construction regulations, including setback lines, in Baldwin County, Alabama; and building codes, subdivision regulations, and coastal construction lines in Escambia, Walton, and Bay Counties, Florida. In addition, vehicular access to the dunes is regulated. None of these controls makes special provisions for beach mouse habitat protection. They do not prevent development in such habitat, or deal with the specific needs of the mice in relation to development, but instead simply establish general requirements for the sitting and construction of buildings, utilities, and access corridors. These regulatory mechanisms have not prevented the substantial loss of beach mouse habitat in the past; despite their existence, degradation and destruction of such habitat continues.

In both Alabama and Florida, State laws protect seas oats from being picked. However, these laws do not prohibit the destruction of seas oats during construction activities.

The Federal Coastal Barrier Resources Act of 1982 (CBRA) generally prohibits Federal expenditures and financial assistance in units of the Coastal Barrier Resources System (CBRS). The CBRA mandated a statutory ban on Federal flood insurance in CBRS units that went into effect on October 1, 1983. Within the range of *P. p. ammobates* is the Mobile Point Unit of the CBRS, which includes approximately 4.0 km (2.4 mi.) of beach mouse habitat. Within the historical range of *P. p. allophrys* are the Moreno Point, Four Mile Village, and St. Andrews Complex Units of the CBRS, which include approximately 12.3 km (7.6 mi.) of beach mouse habitat.

Despite all of these regulatory devices of the county, State, and Federal governments, beach mouse habitat continues to be rapidly destroyed or degraded by construction activities. In the Coastal Barrier Resources System Units, construction is still proceeding rapidly with no Federal involvement. While vehicular access to the dunes is prohibited in most cases, there is evidence that it still occurs intermittently.

In Alabama, *P. p. ammobates* and *P. p. trissyllepsis* have no legal status. The Alabama Nongame Wildlife Committee prepared a list of vertebrate wildlife in Alabama (Auburn University, 1984). The list identifies *P. p. ammobates* and *P. p. trissyllepsis* as endangered. It is anticipated that the list will be used by governmental agencies and others in making decisions that will affect the beach mice. The list, however, affords the beach mice no legal protection. The only protection afforded the mice in Alabama is through the permit system which requires a permit for scientific collecting. The Alabama Coastal Area Management Program (ACAMP) (U.S. Department of Commerce and Alabama Coastal Area Board, 1979) states that it is the policy of the Coastal Area Board (functions assumed by the Alabama Department of Environmental Management) to promote and encourage the preservation of the critical habitat of recognized endangered species. The ACAMP states that limited extent and uniqueness of some habitats, coupled with destructive activities, has resulted in a number of rare and endangered species occurring in the coastal area. The ACAMP list of endangered and threatened species in coastal Alabama as designated by the State of Alabama includes *P. p. ammobates* and *P. p. trissyllepsis* as endangered. Despite the recognition of the threat to these mammals, habitat loss is permitted to continue. The Florida Endangered and Threatened Species Act of 1977 lists *P. p. trissyllepsis* and *P. p. allophrys* as threatened. Title 39–27.02 of the Florida Administrative Code affords them protection from taking, possession, and sale, except by permit, but does not protect their habitat. The Florida Coastal Management Program (FCMP) (U.S. Department of Commerce and State of Florida, 1981) states that it is the policy of the State to conserve its resources, particularly endangered and threatened species. The FCMP cites Title 39–27.02 of the Administrative Code and the Florida Endangered and Threatened Species Act of 1977 discussed above. Despite the recognition of the threat to beach mice, habitat loss has continued.

E. *Other natural or manmade factors affecting its continued existence.* Tropical storms periodically devastate Gulf Coast sand dune communities, dramatically altering or destroying habitat, and either drowning beach mice or forcing them to concentrate on high scrub dunes (Blair, 1951) where they are exposed to predators. The habitat of *P. p. ammobates* includes the Fort Morgan, Alabama area, which was severely

flooded by Hurricane Frederick on September 13, 1979. Washovers completely destroyed the primary dune system at Fort Morgan, Gulf Highlands, Pine Beach, Gulf Shores, the Gulf State Park, and Romar Beach. Only remnants of the secondary and tertiary lines were left; most sand was removed inland beyond the beach dune complex. The habitat of *P. p. trissyllepsis* includes three areas on Perdido Key in Alabama and Florida. The western end of Perdido Key is part of the Gulf State Park and includes Florida Point, Alabama. It was completely covered by sand south of State Road 182 by Hurricane Frederick on September 13, 1979. Beach mouse habitat remained only on the unflooded elevations (Holliman, 1983). In the central part of Perdido Key is the Perdido Key State Preserve, which also contains beach mouse habitat, and which also was overwashed during Hurricane Frederick. The eastern end of Perdido Key is included in the Gulf Islands National Seashore, Escambia County, Florida. Eighty percent of the National Seashore was overwashed during Hurricane Frederick. The habitat of *P. p. allophrys* includes the Topsail Hill area of coastal Walton County and the Grayton Beach State Recreation Area, both of which were heavily damaged by Hurricane Eloise in 1975.

House mice (*Mus musculus*), which are associated with human development, may compete with beach mice for food and cover (Humphrey and Barbour, 1981). The significance of such competition is presently unknown, and some have doubted its significance (Holliman, 1983). Competition has been documented, however, between house mice and the subspecies *Peromyscus polionotus lucubrans* (Briese and Smith, 1973). Over-wintering savannah sparrows may also affect beach mice by competing for food (Holliman, 1983; Humphrey and Barbour, 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Alabama beach mouse, Perdido Key beach mouse, and Choctawhatchee beach mouse as endangered. Due to the low population levels and the threats posed to the species and their habitat, threatened status is inappropriate. Critical habitat, discussed below, is being determined for the protection and recovery of the species. The areas of sand dune habitat used by the beach mice are generally well defined.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Alabama, Perdido Key, and Choctawhatchee beach mice to include 53.2 km (33.0 mi.) of coastline along the Gulf of Mexico in Baldwin County, Alabama, and Escambia, Walton, and Bay Counties, Florida, divided into 10 separate parts. Of the total critical habitat, 35.1 km (21.8 mi.) is actually now inhabited by the beach mice and 18.2 km (11.2 mi.) is not currently occupied. In the case of the Alabama beach mouse, all 17.2 km (10.6 mi.) of the critical habitat is now inhabited. The precise metes and bounds of each critical habitat unit are described in the "Regulations Promulgation" section.

The critical habitat of the Perdido Key beach mouse is 15.8 km (9.8 mi.) in total length, of which 1.9 km (1.2 mi.) is now inhabited and 13.9 km (8.6 mi.) is unoccupied. The occupied portion is in the Gulf State Park at the western end of Perdido Key. The unoccupied portions are in the Perdido Key State Preserve on the central part of the key and in the Gulf Islands National Seashore on the eastern end of the key. The two unoccupied areas were originally within the range of the Perdido Key beach mouse, and the protection of these areas is essential for the conservation of the animal. If populations could not be reestablished in these areas, the beach mouse would survive only in a small stretch of suitable habitat, which would be constantly subject to destruction by tropical storms and other deleterious factors. Prior to Hurricane Frederick in 1979, a population of *P. p. trissyllepsis* did exist in the Gulf Islands National Seashore. It was destroyed by the hurricane, but fortunately the population in Gulf State Park was not completely extirpated. This experience demonstrates the necessity of maintaining several currently occupied or potentially suitable areas of habitat for the beach mouse, if it is to have a reasonable chance for survival and recovery.

The critical habitat of the Choctawhatchee beach mouse is 20.2 km (12.6 mi.) in total length, of which 15.9 km (10.0 mi.) is now inhabited and 4.3 km (2.6 mi.) is not occupied. The occupied portions are in the Topsail Hill area of coastal Walton County and on the Shell Island portion of the St. Andrews State Recreation Area, Bay County. The unoccupied portions are in the Grayton Beach State Recreation Area and adjacent private land, and on the mainland portion of the St. Andrews State Recreation Area. The two unoccupied areas were originally within the range of the Choctawhatchee beach mouse, and their protection is essential for the conservation of the animal. The rationale is basically the same as given above for *P. p. trissyllepsis*. In the case of *P. p. allophrys*, Hurricane Eloise in 1975 had a severe impact. The population of beach mice at the Grayton Beach State Recreation Area may have been extirpated at that time; the Topsail Hill area was also heavily damaged in the same storm.

As indicated above in factor "A" of the "Summary of Factors Affecting the Species," the Service has learned of the loss of a substantial amount of beach mouse habitat, since data were collected for the proposed rule of June 7, 1984. This loss, plus minor adjustments based on reevaluation of constituent elements, are reflected in the reduced size of the critical habitat being designated in this final rule. In area, the total reduction amounts to about 183 ha (452 A). This area consists of portions of each component of the critical habitat of the Alabama beach mouse, a total reduction of 126 ha (313 A); portions of the Alabama component and Florida component 2 of the critical habitat of the Perdido Key beach mouse, a total reduction of 28.4 ha (70 A); and a portion of component 1 of the critical habitat of the Choctawhatchee beach mouse, a reduction of 27.9 ha (69 A).

In considering designation of critical habitat, 50 CFR 424.12 requires focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species involved. With respect to the Alabama, Perdido Key, and Choctawhatchee beach mice, the areas designated as critical habitat currently or potentially satisfy known criteria for the physiological, behavioral, ecological, and evolutionary requirements of the animals. Meyers (1983) found optimal

beach mouse habitat to be characterized by: (1) High maximum elevation of the coastal sand dunes, (2) relatively great differences between maximum dune height and minimum interdunal elevation, (3) close proximity of forest, (4) a sparse cover of ground vegetation with a moderate number (average 3.5) of plant species, and (5) a relatively low cover of sea oats. Such conditions of topography and vegetation provide necessary food and cover for populations of beach mice, and allow attainment of reproductive potential. Meyers also reported that the minimum area needed to maintain a population of beach mice is 50 hectaries (ha) (124 acres (A)), that preferable size is at least 100–200 ha (247–494 A), and that there should be natural corridors for migration between areas. Such requirements were considered in the delineation of the critical habitat. The protection of several separate areas of habitat for each species of beach mouse is essential for the conservation of these animals. Should a species of beach mouse exist in only one small stretch of suitable habitat, it would be much more vulnerable to extinction through the effects of tropical storms and other deleterious factors (see above discussion of Perdido Key beach mouse).

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities most likely to adversely modify the critical habitat of the three beach mice are the continued destruction of sand dunes for residential and commercial development. Indiscriminate pedestrian and vehicular use also adversely impacts the sand dunes.

There are several Federal activities in the coastal parts of Alabama and Florida that may have involvement with the critical habitat designation. One form of involvement is the flood insurance provided by the Federal Emergency Management Agency (FEMA). County regulations in Baldwin County, Alabama, and Escambia, Walton, and Bay Counties, Florida, qualify the coastal strand under the National Flood Insurance Program (NFIP) administered by FEMA. Insurance is provided only for completed structures. FEMA indicated on October 9, 1984, that it has a requirement through the NFIP to "prohibit manmade alteration of sand dunes . . . which would increase potential flood damage." As a result of this requirement, FEMA believes that alteration of the sand dune system should be significantly reduced.

The Department of the Interior, Office of the Solicitor, reviewed the application of Section 7 of the Act to Federal flood insurance. It concluded in an August 21, 1984, opinion that if the determination of eligibility for flood insurance by the FEMA authorizes and/or in effect partially subsidizes construction activity that may affect listed species or their critical habitat, then such construction becomes an action authorized or funded by a Federal agency for purposes of Section 7 and the FEMA would be obligated to request the initiation of formal Section 7 consultation. The consultation will assure that the beach mice and critical habitat are considered in the FEMA's determination of a community's eligibility for Federal flood insurance. Should the flood insurance program be restricted on parts of the Alabama and Florida Gulf Coasts, increased risk or increased insurance costs could result. Due to the unknown or hypothetical nature of the consultations that may occur, however, it is not now known whether any activities or FEMA's management costs will be affected.

Planned activity in the coastal strand includes a variety of commercial and residential developments. The Federal Housing Administration and the Veterans Administration do not expect to receive requests for housing project approval in critical habitat. Therefore, it appears unlikely that Federal loans will be affected by the designation of critical habitat.

The Bureau of Land Management (BLM), U.S. Department of the Interior, and the Alabama Department of Conservation and Natural Resources have stated that oil and gas leasing is not expected to be affected by the listing, and that beach mice habitat is not likely to be destroyed or modified by future oil and gas activity. Thus, the Federal Coastal Energy Impact Program, National Oceanic and Atmospheric Administration, which provides grants and loan assistance for a variety of activities associated with energy-related facility sitings, will not affect critical habitat or be affected by the designation.

The U.S. Army Corps of Engineers' proposed beach restoration project in the area from Phillips Inlet, Bay County, Florida, eastward to, and including, the mainland portion of the St. Andrews State Recreation Area (SRA) has been cancelled because local communities were unable to fund their share of the project's total cost. Thus, there will be no impact of or on the beach restoration project. The Corp's routine maintenance program for the Mobile Bay Main Channel, the Perdido Pass Channel, the Pensacola Bay Channel, and the St. Andrew Bay Entrance Channel may actually enhance beach mice habitat if care is taken in the planning and implementation of the operations. The Corps has stated that the designation of critical habitat should not significantly affect the operation and maintenance of these Corps projects.

The Gulf Islands National Seashore (GINS), administered by the National Park Service, includes the east end of Perdido Key. This area of the Seashore is designated as critical habitat. The Park Service sees no impacts arising from critical habitat designation and will consult with the Service under Section 7 as appropriate.

Fish and Wildlife Service involvement in the critical habitat area would include the acquisition of additional land, and the management and development, at the Bon Secour National Wildlife Refuge (NWR). The proposed acquisition boundary includes approximately 6.0 km (3.7 mi.) of Alabama beach mouse habitat, of which about 4.3 km (2.7 mi.) has been purchased to date by the Service.

The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration, may be affected by the critical habitat designation. When the States of Alabama and Florida propose to revise their approved coastal management programs under the Coastal Zone Management Act, OCRM is required to consult with the Service under Section 7 of the Endangered Species Act to insure that OCRM's action approving a State's coastal management program revision is not likely to jeopardize the continued existence of the beach mice or result in the destruction or adverse modification of their critical habitat. It is not possible to provide a quantitative estimate of the impacts that may result from future revisions of coastal management programs, due to the unknown nature of the consultations that may occur concerning critical habitat areas.

The Rural Electrification Administration (REA), U.S. Department of Agriculture, may be affected by the critical habitat designation when the REA receives loan applications from, or administers loans to, local utility corporations for the operation and/or expansion of electric or telephone services. The REA is required to consult with the Service under Section 7 of the

Act to insure that REA's action in approving loans will not result in actions that would be likely to jeopardize the continued existence of the beach mice or result in the destruction or adverse modification of their critical habitat.

The Department of the Air Force indicated there would be no economic impact on Tyndall Air Force Base from the critical habitat designation. The Air Force already has a wildlife law enforcement officer on its staff to protect the dune habitat and associated wildlife, as well as outdoor recreation participants, on Shell Island.

The Alabama Historical Commission and the Service have entered into a cooperative management agreement regarding lands within the Fort Morgan State Park, including approximately 3.0 km (1.9 mi.) of beach mouse habitat. This cooperative agreement is compatible with the designation of critical habitat. The Service does not expect that its management costs for implementing the agreement will be affected as a result of the critical habitat designation.

At this time, developers are installing individual wastewater treatment facilities in the Gulf Shores area in Alabama because the municipal system cannot accommodate new growth. Therefore, the Environmental Protection Agency (EPA) decided in February, 1985, to prepare an Environmental Impact Statement (EIS) on wastewater facility planning for the Gulf Shores area. Currently, it is not known how EPA will define "Gulf Shores area." If this area is defined within the city limits of Gulf Shores, then EPA's involvement is not expected to affect or be affected by the critical habitat designations. If the area is defined to include development along the Fort Morgan Peninsula, then EPA activities may affect or be affected by the critical habitat designations. It is not possible at this time to evaluate EPA's possible involvement, because of the uncertainties concerning the definition of "Gulf Shores area" and the unknown nature of the consultations that may occur.

A city water line is currently being installed to serve the drinking water needs of the Fort Morgan peninsula in Alabama. EPA is only involved in this project to ensure that the quality of the drinking water from this line conforms to national drinking water quality standards. The project is also located outside critical habitat. For these reasons, this water line project is not expected to affect or be affected by the proposed critical habitat designations.

The critical habitat does contain some road rights-of-way. Currently, there are no known road or bridge construction or maintenance projects involving Federal funds or permits that might affect or be affected by the critical habitat designations. The roads adjacent to critical habitat are not expected to be expanded toward the Gulf of Mexico due to the dynamic nature of the sand dune system that hinders road maintenance and leaves roads vulnerable to destruction by storm damage. At this time, it is not possible to provide a quantitative estimate of the road and bridge cost impacts that might result from the designation of critical habitat, due to the unknown or hypothetical nature of the consultations that may occur.

BLM owns a few small parcels of land within the designated critical habitat. BLM anticipates disposing of these parcels by transferring them to the Bon Secour National Wildlife Refuge and the Gulf Islands National Seashore. BLM's actions will not affect critical habitat designation or be affected by the designation.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. To obtain this information, the Service contacted Federal agencies that might possibly be involved in authorizing or funding projects within the critical habitat as proposed. The Service has considered the critical habitat designation in light of relevant additional information obtained and concluded in its economic analysis document that no adjustments to the areas proposed as critical habitat are warranted based on the economic and other impact information that was obtained. In conducting its economic impact analysis, the Service reviewed the economic consequences of designating critical habitat on 1,037 acres of Federal land, 1,089 acres of State land, and 1,029 acres of private land. The 29 page economic assessment document is incorporated here by reference and copies may be obtained either from the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, or the Service's Jacksonville Endangered Species Field Station (see "**ADDRESSES**" section).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that may be affected in this regard, with respect to the listing of the Alabama, Perdido Key, and Choctawhatchee beach mice, are described above under "Critical Habitat."

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be

suffered if such relief were not available.

Several important State commitments have been made regarding beach mouse conservation measures. The Governor of Alabama indicated that the State will assist in beach mouse translocation research and in critical habitat management in any feasible manner. The Alabama Division of Game and Fish stated that it is committed to coordinating the protection and enhancement of beach mice on State lands. Further, the Alabama State Parks Division has indicated it will seek the Game and Fish Division's input in managing the critical habitat on the Gulf State Park units at Gulf Shores and Perdido Key. The Alabama Historical Commission, which administers the Fort Morgan State Park, signed a Wildlife Resource Management Agreement on June 12, 1984, with the U.S. Fish and Wildlife Service, granting to the Service the wildlife resource management responsibilities for the Fort Morgan State Park, Baldwin County. The agreement is implemented by the staff of the nearby Bon Secour National Wildlife Refuge. Through this agreement, protection and management of Alabama beach mouse habitat should be achieved. The Florida Division of Recreation and Parks, Department of Natural Resources, which manages the Perdido Key State Preserve and the Grayton Beach and St. Andrews State Recreation Areas, including Shell Island, indicated that it may be necessary in the future to provide additional boardwalks in some locations to protect the beach mouse habitat from foot traffic.

This rule is effective immediately upon publication. Any delay could adversely impact the three beach mice by delaying the initiation of Section 7 consultations that would assure the consideration of the mice and their critical habitat with respect to Federal actions in areas where residential and commercial development has destroyed and will continue to destroy sand dune habitat at a very rapid rate. The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedures Act, for these regulations to take effect immediately upon publication.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is not expected that the critical habitat designations will result in any significant changes in management costs for the Federal agencies affected by the designations. No significant economic or other impacts are expected to result from the designations of critical habitat on Federal, State, or private land in Baldwin County, Alabama, or Escambia, Walton, or Bay Counties, Florida. These conclusions are based on the following: (1) The Service's management of the Bon Secour NWR and agreement to manage wildlife resources within Fort Morgan State Park; (2) the National Park Service's management of GINS; (3) Tyndall Air Force Base's management of Shell Island; (4) BLM's planned transfer of scattered oil and gas leasing lots to Bon Secour NWR and GINS; (5) management of CBRS units under CBRA restrictions; (6) management of State-owned critical habitat areas by the States of Florida and Alabama; (7) Army Corps of Engineers maintenance of Mobile Bay Main Channel and adjacent channels and passes; (8) absence of ongoing or planned road and bridge construction or maintenance; (9) FEMA, REA, EPA, NOAA, and Corps awareness of the critical habitat designations and compatible management objectives for these areas; (10) absence of applications for or existing Federal loans for residential or commercial construction projects within or in the vicinity of the proposed critical habitat designations; and (11) the unquantifiable benefits that may result from the designations of critical habitat for the three beach mice. In addition, no significant impact on the economy or present economic status of Baldwin County, Alabama, or Escambia, Walton, or Bay Counties, Florida, is expected as a result of the critical habitat designations. These determinations are based on a Determination of Effects that is available at the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following three entries, in alphabetical order under "Mammals," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
Mouse, Alabama beach	*Peromyscus polionotus ammobates*	U.S.A. (AL)	Entire	E	183	17.95(a)	NA
Mouse, Choctawhatchee beach	*Peromyscus polionotus allophrys*	U.S.A. (FL)	Entire	E	183	17.95(a)	NA
Mouse, Perdido Key beach	*Peromyscus polionotus trissyllepsis*	U.S.A. (AL, FL)	Entire	E	183	17.95(a)	NA

3. Amend § 17.95(a), "Mammals," by adding critical habitat of the Alabama, Choctawhatchee, and Perdido Key beach mice, as follows: The position of these entries under § 17.95(a) will follow the same sequence as the species occur in § 17.11.

§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

Alabama beach mouse

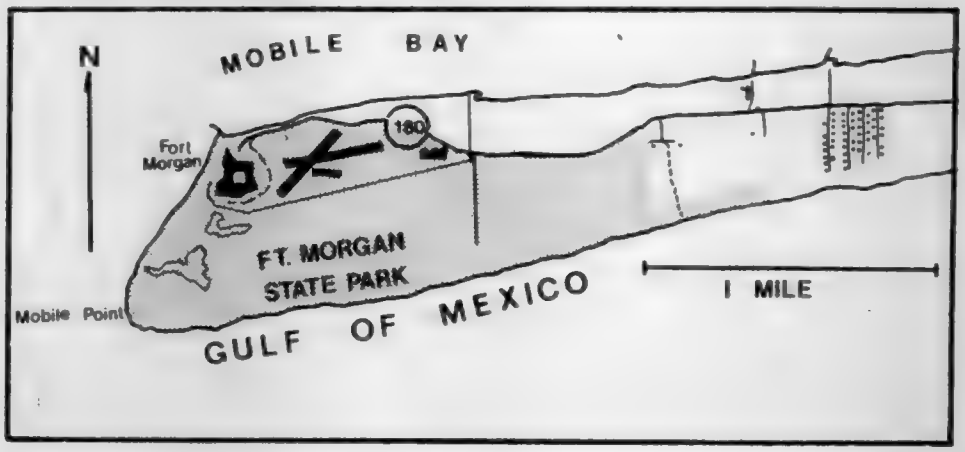
(Peromyscus polionotus ammobates)

Alabama. Areas of land, water and airspace in Baldwin County with the following components (St. Stephens Meridian): (1) That portion of the Fort Morgan Peninsula south of State Road 180 and west of 87°59'35" W, except for that part each of Fort Morgan State Park and more than 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (2) those portions of T9S R3E Sec. 30 and T9S R2E Sec. 25–28 and E15/16 Sec. 29 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (3) that portion of the Gulf Shores unit of the Gulf State Park south of State Road 182 in T9S R4E Sec. 14–15 and Sec. 21–23.

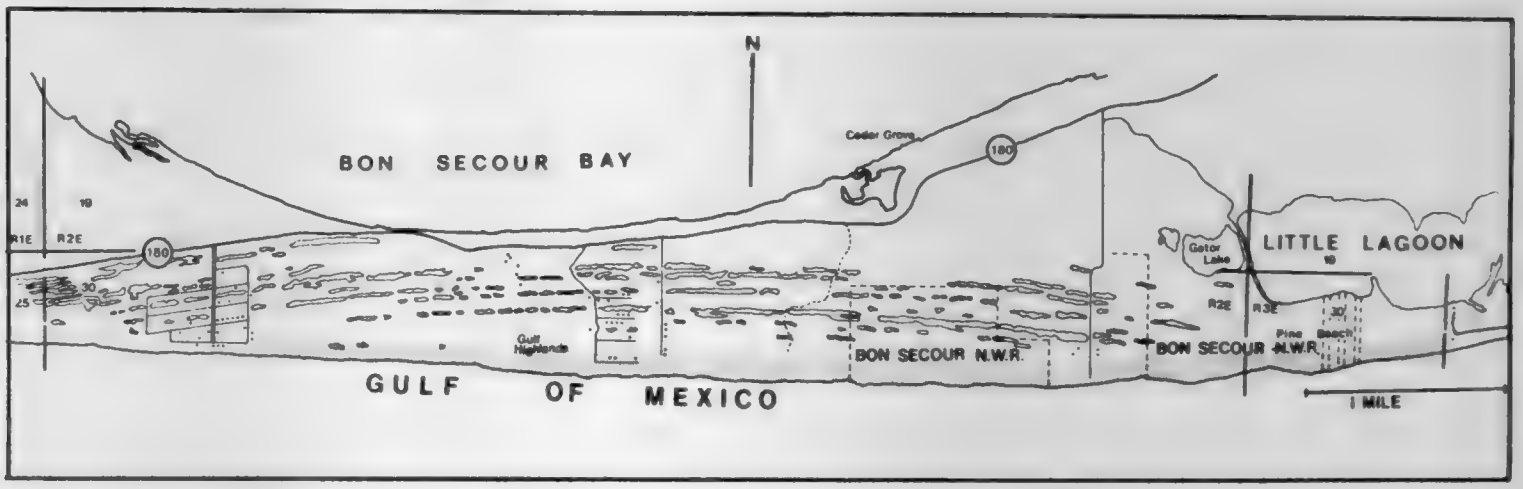
Within these areas the major constituent elements that are known to require special management consideratons or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

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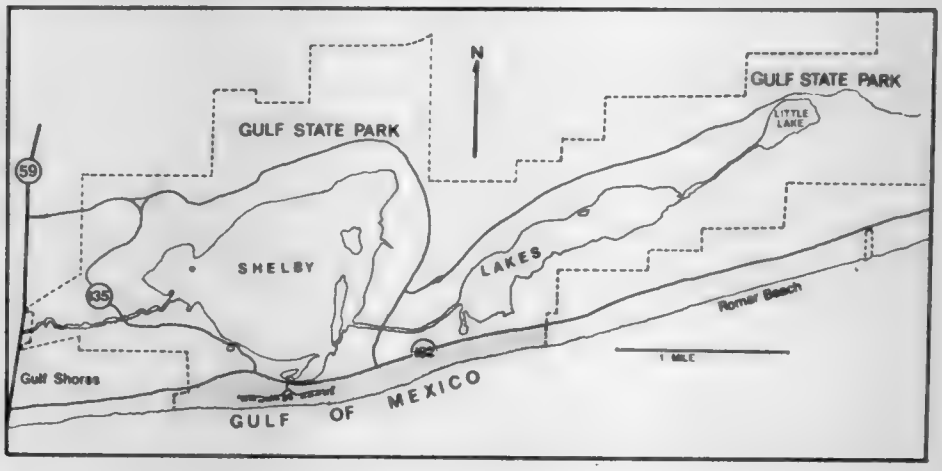
Alabama Beach Mouse Critical Habitat (1)



Alabama Beach Mouse Critical Habitat (2)



Alabama Beach Mouse Critical Habitat (3)



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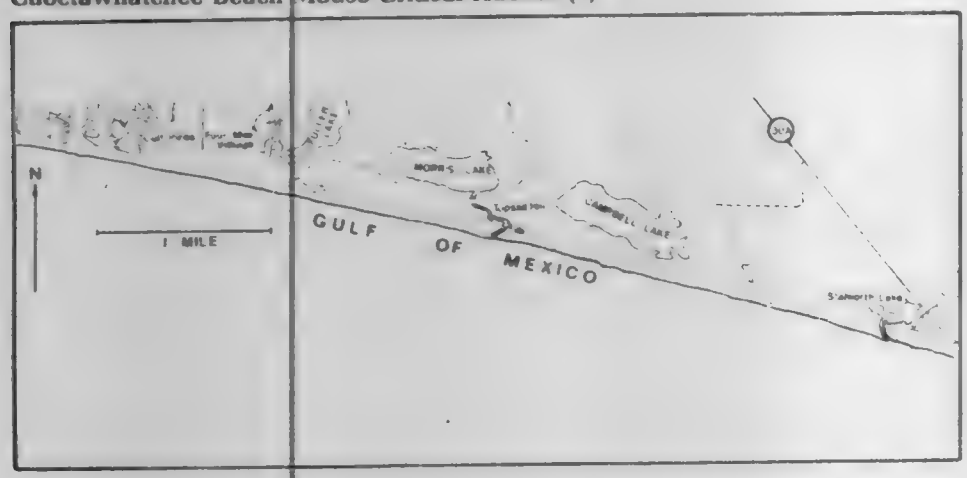
Choctawhatchee beach mouse

(Peromyscus polionotus allophrys)

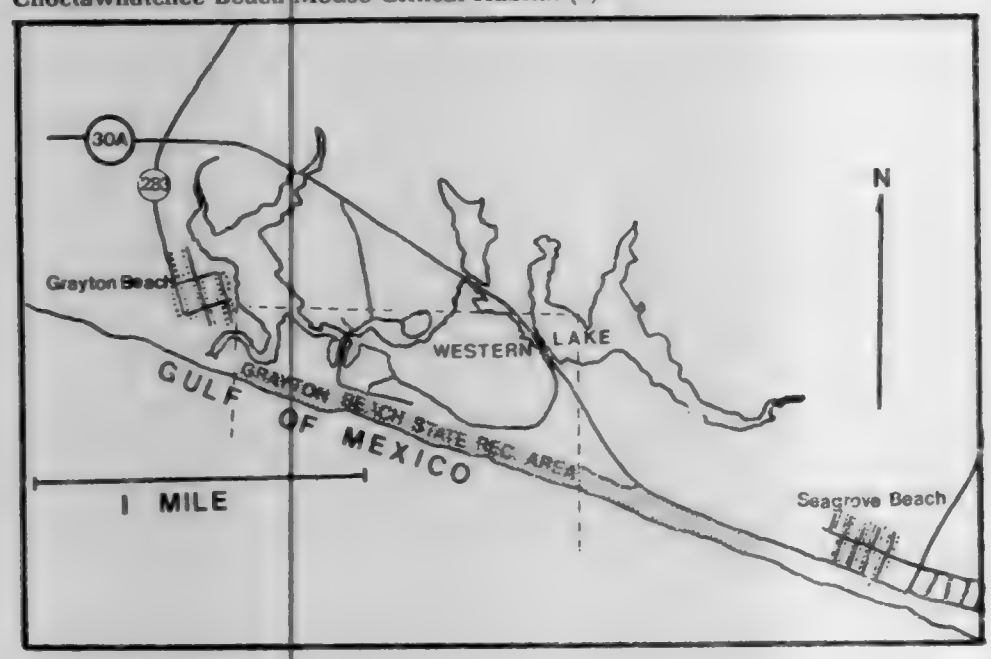
Florida. Areas of land, water, and airspace in Walton and Bay Counties with the following components (Tallahassee Meridian): (1) Those portions of T2S R21W E½ Sec. 35, Sec. 36, T2S R20W S¼ Sec. 31, and T3S R20W W¼ Sec. 4, N½ Sec. 5, and NE¼ Sec. 6 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico. (2) those portions of T3S R19W W½ Sec. 15 and Sec. 16 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (3) those portions of the mainland part of the St. Andrews State Recreation Area in T4S R15W Sec. 21 and Sec. 22 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (4) those portions of Shell Island in T4S R15W Sec. 25–27 and Sec. 36, T4S R14W Sec. 31, and T5S R14W Sec. 4–6 extending 152.5 meters (500 feet) inland from the mean high tide line of Gulf of Mexico.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

Choctawhatchee Beach Mouse Critical Habitat (1)

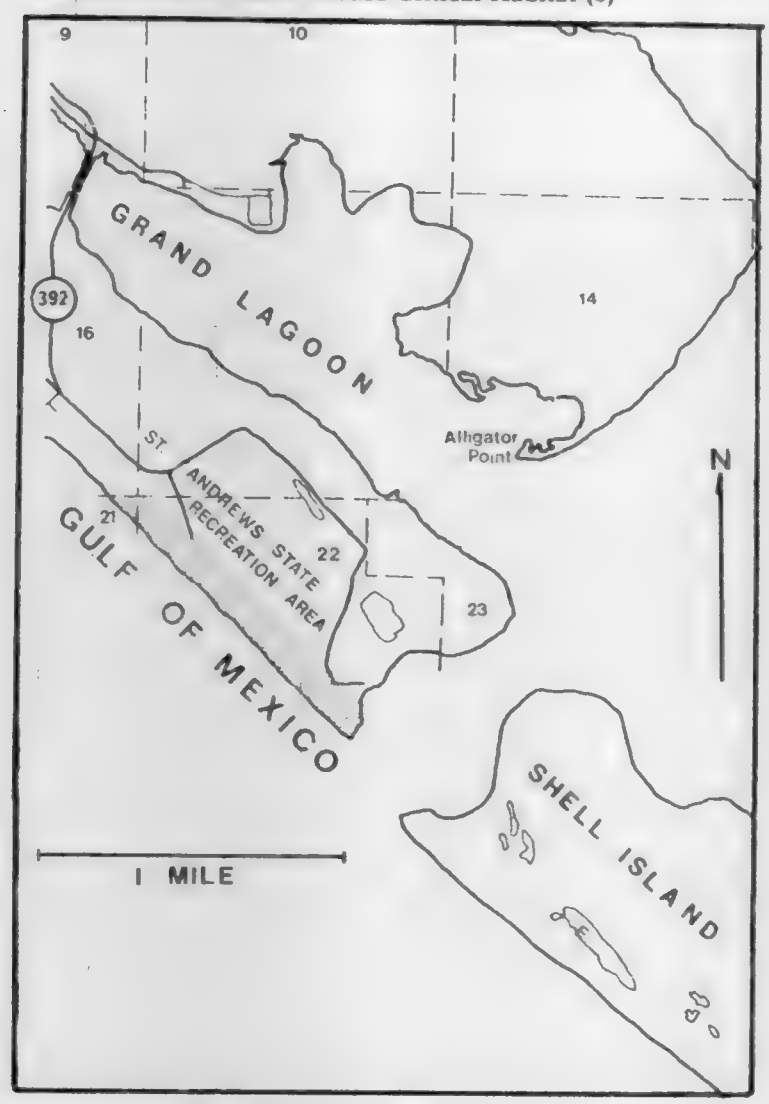


Choctawhatchee Beach Mouse Critical Habitat (2)

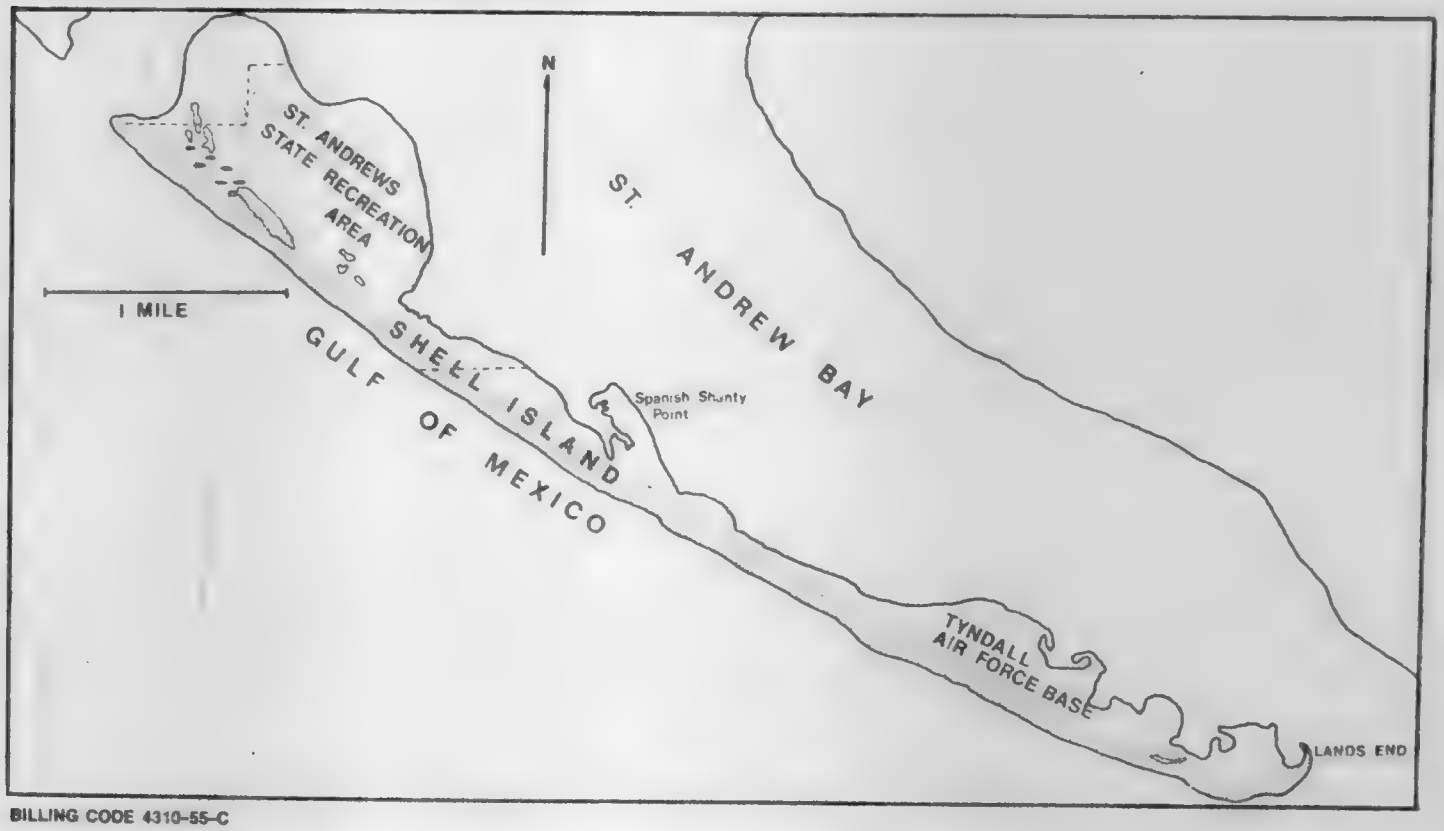


BILLING CODE 4310-55-M

Choctawhatchee Beach Mouse Critical Habitat (3)



Choctawhatchee Beach Mouse Critical Habitat (4)



BILLING CODE 4310-55-C

Perdido Key beach mouse

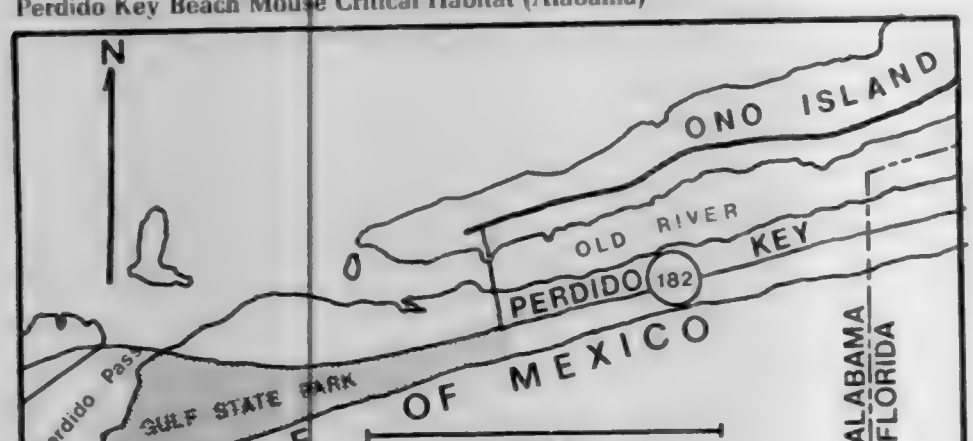
(Peromyscus polionotus trissyllepsis)

Alabama. An area of land, water, and airspace in Baldwin County with the following component (Tallahassee Meridian): That portion of the Perdido Key unit of the Gulf State Park south of State Road 182 in T9S R33W Sec. 2–3.

Florida. Areas of land, water, and airspace in Escambia County with the following components (Tallahassee Meridian): (1) That portion of the Perdido Key State Preserve south of State Road 292 in T3S R32W Sec. 32–33 and T4S R32W Sec. 5; (2) those portions of Perdido Key in T3S R31W Sec. 25–26 and Sec. 28–34, and in T3S R32W E½ Sec. 36, and W½ Sec. 36 south of the entrance road, parking lot, and Johnson Beach recreational facilities at the Gulf Islands National Seashore.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

Perdido Key Beach Mouse Critical Habitat (Alabama)

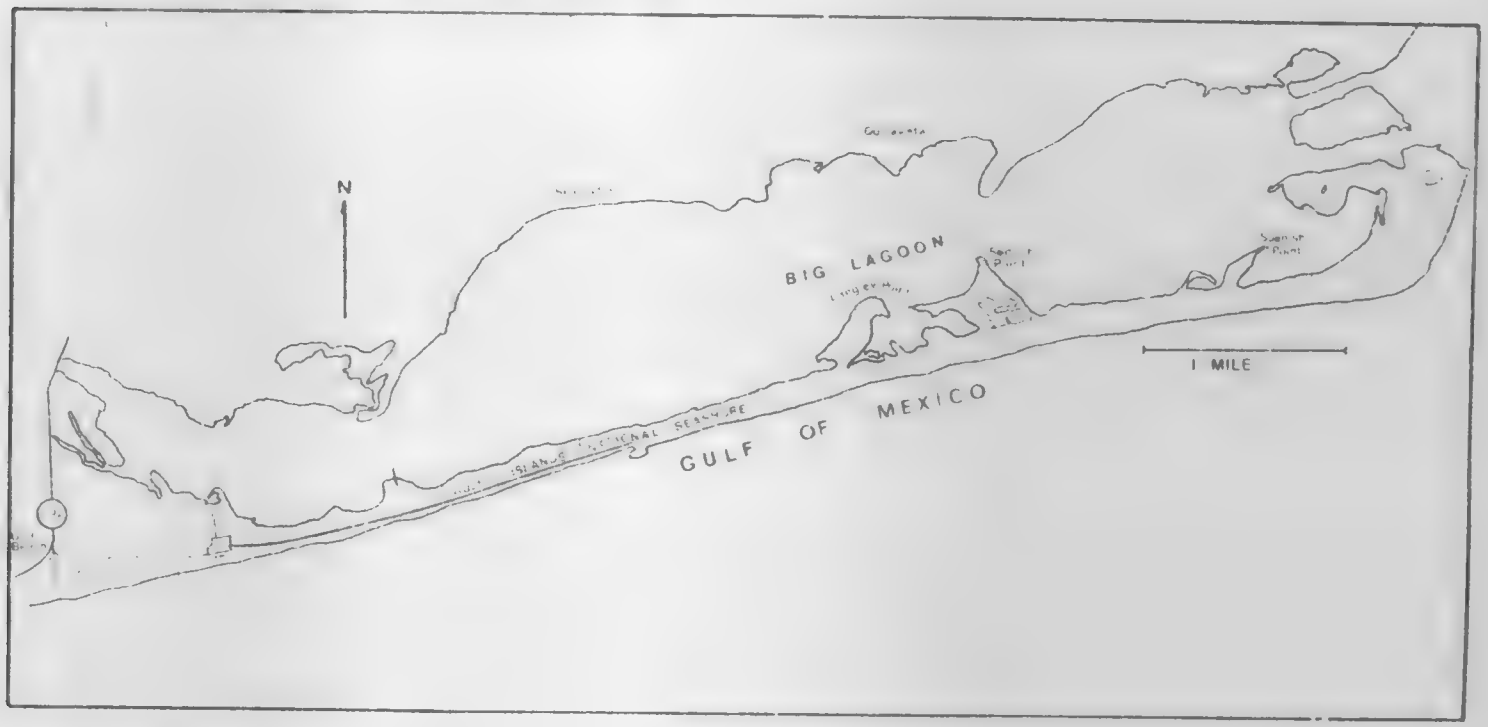


Perdido Key Beach Mouse Critical Habitat (Florida—1)



BILLING CODE 4310-55-M

Perdido Key Beach Mouse Critical Habitat (Florida—2)



Dated: May 22, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–13500 Filed 6–5–85; 8:45 am]

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Friday
June 7, 1985

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Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, D.C., see announcement on the inside cover of this issue.

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Food and Drug Administration

Loan Programs—Agriculture
Farmers Home Administration

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Quarantine
Animal and Plant Health Inspection Service

Radioactive Materials
Nuclear Regulatory Commission

Seals and Insignia
Census Bureau

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Water Pollution Control
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 am (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 am (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

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Presidential Documents

Title 3—

The President

Proclamation 5349 of June 4, 1985

Youth Suicide Prevention Month, 1985

By the President of the United States of America

A Proclamation

During the past 20 years, the suicide rate has tripled among young people aged 15–24. In fact, suicide has become the third leading cause of death in this age group. Last year alone, over 5,000 young Americans took their own lives, and many more attempted to do so.

When a young person commits suicide, it is a personal tragedy as well as a source of deep anguish for family, friends, and neighbors. But it is also a tragedy for society, which must cope not only with the loss of human potential that is the result of the death of any individual, but also with its responsibility to identify the causes of suicide and develop strategies to reduce its incidence. Although the issues involved in each case are complex and unique, we can draw encouragement from the fact that suicide is no longer a silent subject but a recognized public health problem that can and must be addressed.

Because the root causes of suicide involve so many different psychological, physical, social, and spiritual dimensions, successful preventive action requires the combined efforts of individuals, families, communities, organizations, and governments at all levels. Young people and families who have a member who may be contemplating suicide need to know that there are indeed places to turn for advice and assistance. People who come into contact with youth—educators, counselors, coaches, ministers, health care providers—can play a key role in helping a despondent young person by identifying the existence of a problem or contributing factors like drug abuse and family break-up. Government can assist through research and policies which strengthen the family unit and foster a sense of individual self-worth. In short, all of us have the opportunity and responsibility to help deal with this growing problem.

In recognition of the increase in suicide among America's youth and its consequences for our society, the Congress, by Senate Joint Resolution 53, has designated the month of June 1985 as "Youth Suicide Prevention Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of June 1985 as Youth Suicide Prevention Month. I call upon the Governors of the several States, the chief officials of local governments, all health care providers, educators, the media, public and private organizations, and the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-13828
Filed 6-5-85; 10:59 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 110
Friday, June 7, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-334]

Subpart—Citrus Canker—Affirmation of Interim Rules

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on September 19, 1984, as subsequently amended by interim rules published in the **Federal Register** on October 29, 1984, and March 7, 1985. The interim rule published in the **Federal Register** on September 19, 1984, added new "Subpart—Citrus Canker" to the Domestic Quarantine Notices. The interim rule published in the **Federal Register** on October 29, 1984, amended "Subpart—Citrus Canker" by prohibiting the interstate movement of regulated articles originating in a quarantined area from an area not designated as a quarantined area into certain States and territories. Finally, the interim rule published in the **Federal Register** on March 7, 1985, amended "Subpart—Citrus Canker" by adding certain extraordinary emergency provisions relating to Departmental activities conducted within the State of Florida because of citrus canker, including provisions allowing the payment of compensation for plants ordered destroyed because of citrus canker. These actions were necessary in order to implement an effective eradication program, and in order to prevent the artificial spread of citrus canker into noninfested areas of the United States.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director, Survey and Emergency Response Staff, National Program Planning Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on September 19, 1984, (49 FR 36623–36626) amended the Domestic Quarantine Notices (7 CFR Part 301) by adding new "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*, and referred to below as the regulations). The regulations quarantined the State of Florida for Citrus Canker, *Xanthomonas compestris pv. citri* (Hasse) Dawson, a devastating bacterial disease, and designated the entire State of Florida as a "quarantined area", designated certain articles as "regulated articles", and established regulations governing the interstate movement from anywhere in Florida of articles designated as regulated articles except under certain conditions. Subsequently, on October 29, 1984, a document was published in the **Federal Register** (49 FR 43448–43449) amending "Subpart—Citrus Canker" by prohibiting the interstate movement of fruit designated as a regulated article from an area not designated as a quarantined area into American Samoa, Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, or Texas when such fruit originated in a quarantine area. Further, on March 17, 1985, a document was published in the **Federal Register** (50 FR 9261–9263) amending "Subpart—Citrus Canker" by adding extraordinary emergency provisions relating to Departmental activities within the State of Florida because of citrus canker. The document of March 7, 1985, included provisions allowing the payment of compensation for plants ordered destroyed because of citrus canker.

Comments were solicited for 60 days after the publication of each amendment. One comment was received from the California Farm Bureau Federation in response to the interim rule of September 19, 1984. This comment was in support of the interim rule but requested additional provisions to ensure that regulated articles transhipped through citrus producing States will not cause the spread of citrus canker to this area. No changes to the regulations have been made in response to this comment since the regulations, especially the provisions in § 301.75–4, are adequate to allow the imposition of any conditions considered necessary to prevent the spread of citrus canker to noninfested areas during shipment. Two comments were received in response to the document of March 7, 1985. These comments were in support of the amendment of March 7, 1985.

Further, the factual situations set forth in the documents of September 19, 1984, October 29, 1984, and March 7, 1985, still provide a basis for these amendments. Accordingly, it has been determined that the interim rule published in the **Federal Register** on September 19, 1984, should remain effective as revised by the interim rules published in the **Federal Register** on October 29, 1984, and March 7, 1985.

Executive Order and Regulatory Flexibility Act

These amendments have been issued in conformance with Executive Order 12291 and have been determined to be not "major rules." Based on information compiled by the Department, it has been determined that the amendments of September 19, 1984, and October 29, 1984, and March 7, 1985, will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that the amendments of September 19, 1984, and October 29, 1984, and March 7, 1985, will not have a significant economic impact on a substantial number of small entities. These actions primarily affected the interstate movement of regulated

articles from Florida to other areas in the United States.

Specifically, with regard to nursery stock designated as regulated articles, about 1.8 percent of all nurseries in Florida, and 3.1 percent of all wholesale and wholesale/retail nurseries in Florida are certified to produce nursery stock designated as regulated articles for commercial groves in Florida. In addition to these wholesale and wholesale/retail nurseries, other nurseries produce nursery stock for ornamental plantings. However, although many of the wholesale and wholesale/retail nurseries are small entities, the primary market for all nursery stock designated as regulated articles is in Florida. Only very small amounts of Florida nursery stock designated as regulated articles were sold for use in citrus groves in Louisiana, Texas, Hawaii, Puerto Rico, and American Samoa prior to the effective date of these regulations. Also, only an insignificant number of nurseries in Florida that produced nursery stock for ornamental plantings moved such nursery stock interstate prior to the effective date of these regulations.

With regard to fruit designated as regulated articles (primarily citrus fruit), only fresh fruit is designated as a regulated article, and less than 20 percent of Florida citrus fruit is sold fresh. Further, fresh fruit is permitted to be shipped interstate if certain conditions are met, including the requirement that the fresh fruit not be shipped directly or indirectly to other citrus producing States. Shipments of fresh fruit from Florida to other citrus producing States have historically only involved about 1 percent of the total Florida citrus production. Therefore, it has been determined that the amendments of September 19, 1984, October 29, 1984, and March 7, 1985, do not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in "Subpart—Citrus Canker" (7 CFR 301.75 *et seq.*) have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0579–0083.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 36623–36626 on September 19, 1984, as amended by the interim rules published at 49 FR 43448–43449 on October 29, 1984, and at 50 FR 9261–9263 on March 7, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, and 162; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 4th day of June 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–13766 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 6, Amdt. 36]

Oranges, Grapefruit, Tangerines and Tangelos Grown In Florida; Amendment of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action lowers the minimum grade requirements for domestic and export shipments of Florida seedless grapefruit and for imports of seedless grapefruit from Improved No. 2, external to U.S. No. 2, Russet, external. This action also lowers the minimum grade requirements for domestic and export shipments of Florida Valencia oranges from U.S. No. 1 to U.S. No. 1, Golden through June 16, 1985, then lowers the minimum grade to U.S. No. 2, Russet, external. The minimum internal grade for Valencia oranges remains at U.S. No. 1. The change in minimum grade of such fruit recognizes the grade composition of the available fruit supply, and current and prospective demand conditions for these fruits.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This action is based upon recommendations and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida seedless grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act. It is further found that regulation of Valencia oranges as hereinafter provided, will tend to avoid a disruption of the orderly marketing of those commodities and be in the public interest. This action was unanimously recommended by the Citrus Administrative Committee.

Florida Citrus Regulation 6 was issued on a continuing basis subject to modification, suspension or termination upon recommendation by the committee and approval by the Secretary. The committee meets prior to and during each season to consider recommendation for modification, suspension or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the act.

The minimum grade requirements, specified herein, reflect the committee's and the Department's appraisal of the need to revise the grade requirements applicable to fresh shipments of Florida white seedless grapefruit, pink seedless grapefruit, and Valencia oranges in recognition of the current and prospective supply and demand for such fruit. This action is necessary to permit shipment of the remaining supply of marketable fruit to meet demand.

This action lowers the minimum grade requirements for domestic and export shipments of Florida seedless grapefruit and for imports of seedless grapefruit from Improved No. 2, external to U.S. No. 2, Russet, external during the period June 3, 1985, through August 18, 1985. This action also lowers the minimum grade requirements for domestic and

export shipments of Florida Valencia oranges from U.S. No. 1 to U.S. No. 1, Golden during the period June 3, 1985 through June 16, 1985, then lowers the minimum grade to U.S. No. 2, Russet, external during the period June 17, 1985 through September 29, 1985. The minimum internal grade for Valencia oranges remains at U.S. No. 1. The change in minimum grade of such fruit recognizes the grade composition of the available fruit supply, and current and prospective demand conditions for these fruits.

Under section 8e of the act (7 U.S.C. 608e–1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, the grade requirement for imported seedless grapefruit will also change to conform to the grade requirement for domestic shipments of Florida seedless grapefruit.

It is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. This amendment relieves restrictions on shipments of white seedless grapefruit, pink seedless grapefruit and Valencia oranges. Handlers have been apprised of such provisions and the effective date and require no additional time to comply herewith.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. The provisions of § 905.306 are amended by revising the following entry in Table I, paragraph (a), applicable to domestic shipments, and Table II, paragraph (b), applicable to export shipments. to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum [illegible] (in.)
(1)	(2)	(3)	(4)
White seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external)	3 5/16
		U.S. No. 1 (internal)	
	On and after Aug. 19, 1985	Improved No. 2 (external)	3 9/16
		U.S. No. 1 (internal)	
Pink seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external)	3 5/16
		U.S. No. 1 (internal)	
	On and after Aug. 19, 1985	Improved No. 2 (external)	3 9/16
		U.S. No. 1 (internal)	
Valencia other late type oranges.	June 3, 1985 to June 16, 1985	U.S. No. 1, Golden	2 8/16
	June 17, 1985 to Sept. 29, 1985	U.S. No. 2, Russet (external)	2 8/16
		U.S. No. 1 (internal)	
	On and after Sept. 30, 1985	U.S. No. 1	2 8/16

(b) * * *

TABLE II

Variety	Regulation Period	Minimum Grade	Minimum Diameter (in.)
(1)	(2)	(3)	(4)
White seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external)	3 5/16
		U.S. No. 1 (internal)	
	On and after Aug. 19, 1985	Improved No. 2 (external)	3 9/16
		U.S. No,. 1 (internal)	
Pink seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external)	3 5/16
		U.S. No. 1 (internal)	
	On and after Aug. 19, 1985	Improved No. 2 (external)	3 9/16
		U.S. No. 1 (internal)	
Valencia and other late type oranges.	June 3, 1985 to June 16, 1985	U.S. No. 1, Golden	2 8/16
	June 17, 1985 to Sept. 29, 1985	U.S. No. 2, Russet (external)	2 8/16
		U.S. No. 1 (internal)	
	On and after Sept. 30, 1985	U.S. No. 1	2 8/16

* * * * *

Dated: June 3, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–13728 Filed 6–6–85; 8: 45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Modification of the Procedural and Operational Details of the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on modifications of the procedural and operational details of the Raisin Diversion Program (RDP). The amendments would (1) add a final date of June 1 for diversion; (2) add a liquidated damages provision; and (3) allow producers 10 days to agree with program changes or withdraw from the RDP. These refinements were recommended by the Raisin Administrative Committee (Committee) which works with the USDA in administering the order. This action is being issued on an interim final basis because of lateness of the season and the need for these refinements for 1985.

DATES:

Effective date: June 3, 1985.

Comments due: July 8, 1985.

ADDRESS: Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruits and Vegetables Division, Agricultural

Marketing Service USDA, Washington, D.C. 20250, telephone (202) 447–5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The Raisin Administrative Committee approved a raisin diversion program for the 1985 crop to foster production cut-backs and assist growers with their current financial difficulties. The raisin industry desires to utilize these procedures for the 1985 program as well as future programs to improve efficiency of administration, program flexibility, and program compliance. There are approximately 1000 producers participating in the program representing over 30,000 acres that must be verified by Committee staff members. The Committee has an enormous task to complete with a limited staff and resources. In addition, the verification process must be completed in time to allow the Committee to prepare the diversion certificates which must be issued on or before October 5.

These refinements have been discussed extensively by the industry and no useful purpose would be served by providing a period for public input for the 1985 program, especially in view of the need for prompt implementation. However, the changes are permanent regulations which may be utilized in future crop years. Therefore, it is appropriate to request comments before determining whether to finalize the modifications on a permanent basis for future crop years.

This action would amend Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176; 50 FR 3879) by revising paragraph (h) of § 989.156 and adding new paragraphs (q) and (r) to that section. This subpart is operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

On January 23, 1985, the procedural and operational details of the RDP were established pursuant to § 989.56. The authority for the diversion program was added to the order when it was amended on January 8, 1985. The program gives the industry a means of correcting its serious over-supply situation by decreasing the quantity of raisin grapes grown for drying into raisins. Since implementation of the RDP, the raisin industry has been working to assure the success of this program to cutback production. As a result, several refinements designed to improve efficiency in administration, program flexibility, and program compliance were recommended by the Committee.

One refinement establishes June 1 as the final date that approved applicants can divert their acreage, thus qualifying for a diversion certificate. This refinement is included in § 989.156(h) and is necessary to give the Committee adequate time to verify diverted acreage.

A second refinement is in § 989.156(q) and would allow the Committee to collect liquidated damage from producers who fail to divert and deny them the opportunity to participate in future diversion programs. The intent of this refinement is to encourage successful applicants to take the necessary measures to preclude grapes from being produced and harvested. Failure by large numbers of raisin producers to carry out their commitment to divert would cause serious and substantial damage to the diversion program, and impair the achievement of program goals in 1985 and future years. Hence, measures to foster compliance are necessary and incidental to effectively carry out the diversion program. Moreover, without such measures, producers who intend to participate may be denied the opportunity in years when a lottery is held.

By applying to participate in a raisin diversion program, an applicant would execute an agreement with the Committee acknowledging that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will agree to pay liquidated damages and interest to the Committee, in the event of such failure to remove vines or grapes. Because it would be difficult, if not impossible, to determine a fair measure of damages not considered a penalty, the amount of such liquidated damages would be computed by multiplying the tonnage on the approved diversion application by a harvest cost determined by the Committee. Interest would be applied to liquidated damages not paid by July 1, and would be equal to the prime rate of the bank where the Committee has its reserve pool funds deposited, plus two percent. The interest charge is warranted because producers' income would be affected by producers failing to comply with the program.

There is ample precedent for a provision specifying liquidated damages in the event producers fail to follow through on their agreements with the Committee. Section 989.159(g)(2) of the administrative rules and regulations provides for liquidated damages in the event of the improper disposition of off-grade raisins, other failing raisins, and raisin residual material. Moreover, liquidated damages are included in other provisions to assure compliance with other programs administered by the Secretary.

A third refinement is in § 989.156(r) and allows applicants 10 days to withdraw from the program if any change is made in the terms and conditions of the program. If the producer fails to take action to withdraw from the program, the producer would automatically agree to the changes under this action.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.156(h) is revised and subparagraph (q) and (r) are added to read as follows:

Subpart—Administrative Rules and Regulations

§ 989.156 Raisin diversion program.

* * * * *

(h) *Methods of diversion.* An approved applicant shall be required to take the necessary measures to preclude grapes from being produced and harvested on the production unit involved in the program. These measures may include spur pruning the vines, chemically removing the crop before maturity, hand removing and destroying the bunches of grapes before

maturity, removing the vines, or any other method which prevents the grapes from maturing and being harvested. An approved applicant must remove the grapes within the production unit designated in its application not later than June 1 of the crop year when a raisin diversion program is implemented. Grafting vines to another varietal type does not constitute removal of the vines under the program. Any raisin producer who does not take the necessary measures to remove the vines or grapes on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the act, and may be denied the opportunity to participate in future diversion programs.

* * * * *

(q) *Liquidated damages and interest charges.* By applying to participate in a raisin diversion program, an applicant agrees that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will pay liquidated damages and interest to the Committee, in the event of such failure to timely remove vines or grapes. Since it would be difficult, if not impossible, to determine the amount of such liquidated damages, the following amount, which is a fair measure of damages and not a penalty, shall apply:

(1) The amount of the liquidated damages shall be computed by multiplying the tonnage on the approved diversion application (Form RAC–1000) by the harvest cost determined and announced by the Committee.

(2) Each approved applicant shall, with the respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid.

(3) Liquidated damages and interest collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool.

(r) *Notification.* If any changes are made in the terms and conditions of the diversion program after a producer's application has been approved, the Committee will notify the producer of such changes and the producer will be given 10 calendar days to agree to the revised terms, or to withdraw from the program. Failure of the producer to notify the Committee in writing of its intention to withdraw from the program within 10 calendar days from the date of the Committee's notice will consitute agreement to the revised terms and conditions.

* * * * *

Dated: June 3, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–13729 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1872, 1900, 1901, 1944, 1951, 1955, and 1962

Property Management

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations regarding property management. This action is necessary because the existing regulations have been in effect for several years and have been determined to be inconsistent with the present Agency need for effective property management. The intended effect of this action is to eliminate known deficiencies and to update and expand authorities and procedures. Terminology is made uniform and conforms to other published regulations; monetary authority for program decisions and approvals reflect price and mortgage escalations which have occurred since the previous regulations were published; and material in the subparts is organized and clarified to provide concise guidelines to field personnel in handling the acquisition, management and disposal of property.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: For Part 1955, Subparts A and B, and changes to other parts, Frances B. Calhoun, Chief, Property Management Branch; For Part 1955, Subpart C, Edward W. Nidever, Senior Realty Specialist; Single Family Housing Servicing and Property Management Division, Farmers Home Administration, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, Telephone: (202) 382–1452.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Some of the FmHA programs and projects affected by these regulations are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities." These programs include Multiple Family Housing and Community and Business programs.

Subpart A of Part 1955 contains policies and procedures for liquidating loans secured by real estate by voluntary conveyance and foreclosure. It has been reorganized to place the required actions in chronological sequence. The majority of these liquidations result in Government acquisition of the property. Reporting and record keeping procedures have been revised and clarified.

Primary changes made in Subpart A of Part 1955 are:

(a) Sets monetary guidelines for settling junior liens in voluntary conveyance cases.

(b) Sets a monetary limit on a fee to a Trustee in Bankruptcy for a deed to security property.

(c) Provides guidance on acquisition of property by exercise of the Government's redemption rights.

(d) Authorizes the District Director to approve foreclosures and accelerate

accounts of Farmer Programs and Single Family Housing borrowers.

(e) Provides that foreclosure proceedings will be held in abeyance until appeals are concluded or the time for appeal or review has elapsed.

(f) Provides guidance on cases where the borrower files a petition in bankruptcy after acceleration of the account.

(g) Clarifies calculation of the Government's bid and bidding procedures.

(h) Provides that inventory accounts will be established at the lesser of the Government's investment or the market value of the property as of the date acquired.

(i) Establishes new policy for satisfying Single-Family Housing accounts after foreclosure unless a judgment will be pursued against the borrower in cases where the property value is less than the indebtedness.

(j) Establishes authority for the Administrator, FmHA, to make exception to any provision of this Subpart which is not inconsistent with the authorizing statute.

Subpart B of Part 1955 prescribes policies and procedures for management of inventory property as well as security property of which FmHA has taken custody after abandonment by the borrower.

Primary changes made in Subpart B of Part 1955 are:

(a) Clarifies responsibilities and actions necessary in taking into custody security real property which is abandoned by the borrower; allows the servicing official to take possession of abandoned real property securing loans to individuals after properly documenting the facts without the State Director's authorization.

(b) Clarifies policy on limitations on repairs to custodial property.

(c) Provides that eviction of persons from inventory property may be accomplished through State courts where State laws permit and authorization is obtained from the Regional Attorney of the Office of the General Counsel, USDA.

(d) Provides guidance and sets forth authority of various employees in determining suitability of property for program purposes.

(e) Establishes program authority for the County Supervisor and District Director in an aggregate amount of $15,000 per property for expenditures necessary to secure, maintain and repair inventory property.

(f) Expands on methods of management which may be used in connection with custodial and inventory property and outlines authority of various employees for entering into management contracts.

(g) Provides that inventory property may be leased with the option to purchase given.

(h) Clarifies policy on security deposits and provides guidance on handling and return.

(i) Permits the Administrator, FmHA, to make exception to any provision of this Subpart which is not inconsistent with the authorizing statute.

Subpart C of Part 1955 covers disposal of inventory property. The revisions clarify and reorganize existing procedures as well as provide for increased use of private-sector assistance. The revisions should substantially reduce the time inventory property is held by expanding the disposal authorities.

Primary changes made in Subpart C of Part 1955 are:

(a) Specifically defines responsibilities.

(b) Requires the repair of suitable single family housing property prior to marketing except under special circumstances.

(c) Provides program authority to dispose of all categories of property by sealed bid or auction.

(d) Provides time guidelines for the disposal of both real and chattel inventory property.

(e) Provides a longer retention period for sale of suitable single-family dwellings to purchasers on eligible terms *only*.

(f) Provides authority for use of balloon-type loans to purchasers on ineligible terms if required by economic conditions.

(g) Authorizes payment of discount points to facilitate sale of single-family inventory housing property.

(h) Provides alternate sales methods for chattel property.

(i) Authorizes use of private sector (contractor) specification writers, inspectors, appraisers, business brokers, exclusive real estate brokers, and auctioneers to expedite the sale of all categories of inventory property.

(j) Redefines circumstances requiring use of an Affirmative Fair Housing Marketing Plan.

(k) Addresses use of Environmental Assessments (EA) and Environmental Impact Statements (EIS) when disposing of property having controversial environmental implications or being located in areas having special characteristics.

(l) Requires the Government to provide certain certifications upon sale of inventory real property consistent with private sector practice.

(m) Provides for land acquisition necessary to effect a real property sale.

(n) Emphasizes and provides authority for advertising.

(o) Provides for administrative price reductions for certain real property in order to conform to changing market conditions and to expedite sales.

On June 6, 1984, a proposed rule was published in the **Federal Register** (49 FR 23359) for a 60-day review and comment period. Comments were received from six entities in the private sector, two Government agencies other than FmHA, and numerous employees in FmHA field offices throughout the country and in the National Office. The summary of the comments received from the private sector and other agencies are presented here, with discussion of the action taken or changes made or not made to the regulations in considering the comments.

Comments and suggestions concerning Subpart A of Part 1955 were:

Section 1955.10(d)(2). The requirement that borrowers give a warranty deed when the Government conveys property by quitclaim deed was questioned. The applicable laws prohibit the Government from obligating future appropriations which is what a warranty deed would do. It is customary in the private sector for property to be conveyed by warranty deed. Since to the agency's knowledge this has never presented a problem, either to the Government or to a borrower, we saw no reason to change this provision.

Section 1955.10(e). It was suggested that borrowers be advised of the FmHA appraisal prior to executing a voluntary conveyance offer. FmHA agrees there is a need for the borrower to be advised if there is apparent equity in the property. Knowing there is apparent equity in the property is most valuable to a borrower *before* servicing of the case has come to consideration of conveyance to FmHA. Therefore, we have incorporated into the proposed revision of Subpart G of Part 1951 of 7 CFR (now in clearance for publication as a proposed rule) the requirement for single-family housing borrowers to be advised of the approximate equity, if any, and be encouraged by FmHA to sell the property to realize that equity Section 1955.10 is also slightly reworded to emphasize this point.

Section 1955.10(f) (1) and (2). It was suggested that explicit guidelines are needed for consistent implementation of the "good faith" determination. The wording used is almost verbatim from the Housing Act and the Consolidated Farm and Rural Development Act (CONACT), and the agency believes this

is clear enough for application of consistent judgments. Since individual borrower's circumstances are vastly different, the agency sees a need for judgment latitude rather than rigid guidelines which could never cover all borrowers' situations. The language was not changed.

Section 1955.10(f)(3)(i)(A). The requirement for the County Committee recommendation on release of liability for Multiple-Family Housing (MEH) borrowers was questioned. Since the Housing Act does not speak to release of liability for MFH borrowers, the provisions of Section 331(d)(2) of the CONACT apply, which requires a favorable recommendation of the County Committee when the property value is less than the debt, if the borrower is to be released from liability.

Section 1955.10(h)(5) [Also § 1955.10(d)(7).] Two entities suggested that Rental Assistance (RA) be retained during the Government's ownership so that tenants would not be adversely affected. Since RA is paid to the borrower rather than the tenants, it is not appropriate to be paid during this time. The term "cancelled" is changed to "suspended" and a provision is added that tenants will continue to pay in accordance with their leases (basic rent or 25 percent of their income).

Section 1955.12. One commentor pointed out that the Urban Recovery Act of 1983 deleted Sec. 414(a) of the Housing Act. Accordingly, § 1955.12 of the proposed rule was deleted.

Section 1955.15. One commentor urged FmHA forbearance to the greatest extent possible before initiating foreclosure; FmHA believes the lead paragraph of this section sets that policy.

Section 1955.15(a). Another commentor felt that giving the District Director authority to approve foreclosure "streamlines" the foreclosure process. The intent of this change was to have the line of authority proceed *upward* through the authority levels. That is, having the State Director as Hearing Officer at a level above the official who approves foreclosure rather than the opposite as it has previously been. As for "streamlining," this change has no impact on the time required to complete a foreclosure action.

Section 1955.15(d)(2). It was suggested the formats for acceleration notices should be published in the CFR. Since these are merely guides (as opposed to mandatory forms) there is substantial variation in the acceleration notices used throughout the country due to differences in State laws. The agency has adhered to the decision not to publish these Exhibits.

Section 1955.15(d)(3). One commenter believed this section generally prohibits acceptance of offers of less than payment in full after acceleration. This language is substantially similar to that which has been in the regulation for a number of years, and experience has shown it does not prohibit acceptance of offers other than payment in full. The paragraph has been slightly reworded in an effort to make clear that all offers will be fully considered. Another commentor stated that if a borrower makes a "good faith attempt," FmHA is statutorily obligated to reinstate the loan. Historically, reasonable offers for curing the default(s) in a foreclosure case have been favorably considered. Many foreclosures are withdrawn after acceleration based on borrower's offers to cure the default(s) in full at the time or over a reasonable period of time.

Section 1955.21. This was renumbered from § 1955.17 in the proposed rule. One commenter felt the Administrator's authority should be broadened to allow for exceptions where it will assist borrowers in achieving program objectives. We believe the provisions of § 1955.15(d)(3) as now written, as well as the provisions of the various program servicing regulations, provide sufficient flexibility for the agency to assist borrowers to be successful and that it is not necessary for the Administrator to be involved in individual decisions.

Comments and suggestions pertaining to Subpart B are:

Section 1955.52. Two commentors suggested language to expand on the policy statements to make clear that property was to be maintained for the benefit of low- or moderate-income persons. While this was not incorporated into this section § 1955.64 was reworded to speak more specifically to maintaining and repairing suitable property for retention in the Single Family Housing (SFH) program, and in § 1955.114(a) of Subpart C of Part 1955 provisions for a longer retention of suitable property for eligible applicants only indicates agency desire to retain suitable inventory homes for program-eligible people whenever practical.

Section 1955.61. Two commenters wrote concerning this section. One believed evictions should be carried out through Federal courts rather than state courts because state courts are "inadequate forums." In order for FmHA to use state courts, the permission of the U.S. Attorney in the particular jurisdiction must be obtained. FmHA believes state courts do provide due process. The other commentor suggested insertion of an FmHA policy to keep MFH projects in operation. Rather than place that policy in this section, a sentence to that effect was inserted in § 1955.52.

Section 1955.64. One commentor wrote to applaud FmHA's policy statement on repair and maintenance.

Section 1955.65. An objection was raised to the expanded authority to contract with professional farm management companies because of the fear that the goals of selling to farmers who are eligible for FmHA's farmer programs assistance would not be met. The authority in question has been retained due to the lack of sufficient FmHA staff to adequately perform these management functions and protect the Government's interests. However, in § 1955.66 concerning selection of lessees and § 1955.106 of Subpart C of Part 1955 concerning sale of property, FmHA's policy is expressed by giving preference to persons eligible for FmHA farmer programs loans. Another commenter felt that expanded authority to utilize private-sector expertise was good and urged retention of these provisions in the final rule. The authority has been retained.

Section 1955.66. The preference for cash rent was criticized. However, this provision was retained because FmHA field staffs do not have adequate time to supervise nonborrowers on crop-share leases. It is expected a lessee can project returns and obtain assistance from other lenders for cash rent where necessary. As stated in § 1955.66(b), a policy for assisting family farmers is expressed.

Section 1955.66(g)(1). There was a suggestion that when MFH inventory is managed by a contractor there was no need to send tenants' security deposits to the FmHA Finance Office. No change was made at this time, as the new accounting system for MFH will provide for ready return of security deposits.

Section 1955.71. The Office of Inspector General (OIG), USDA, pointed out a Departmental Regulation requiring notification of OIG in cases of vandalism and/or theft of inventory property. Language similar to that in the previous regulation was placed in the final rule.

Section 1955.72. One commentor suggested that a new paragraph be added to this section to authorize State Directors to make inventory property available to house homeless individuals. This concept is being tried at present in several states as a pilot program, and FmHA has decided to defer placing specific language in the regulation until the results of the pilot are known.

Comments and suggestions pertaining to Subpart C are:

Section 1955.103(e). One commentor said the definition of "eligible applicant" should not exclude income. We have changed this terminology altogether (though not due to the comment received) and that of "ineligible applicant" as well, and have instead referred to credit on eligible or ineligible *terms.* The definition now also requires that to get credit on eligible terms one must meet the eligibility requirements set forth in the respective program regulations.

Section 1955.106(b). One commentor was concerned that use of real estate brokers to market farm property would result in abrogation of the responsibility of Agency officials and County Committees to determine eligibility of buyers. Although real estate brokers who are engaged to list farm properties will be given guidelines for eligibility, the determination of eligibility will rest as always with the FmHA County Supervisor and County Committee. Another commentor felt that the expressed preference for sale of suitable farm property by FmHA employees should be liberalized and that real estate brokers should not be utilized as a last resort. After considerable deliberation, it was determined the section allows sufficient flexibility for the State Director to decide when use of brokers is in the best interest of the Government, and no change was made.

Section 1955.107. One commentor believed sale of surplus farm property through real estate brokers should be considered equally with other sales techniques. No change was made to this section because the CONACT specifically requires that surplus property be offered for public sale. Thus, the regulation requires the public sale offering (by auction or sealed bid) first, then permits the State Director to use brokers if no sale has resulted. Another commentor felt more specific guidelines should be given to Agency employees in the determination of whether or not farm property is suitable or surplus. Due to the extreme variations in considerations nationwide, it would be impossible to set forth meaningful and workable guidelines in a regulation. Rather, the local field staffs are knowledgeable of the farms, the farming enterprises in the area, and economic conditions and are thus better able to make the suitability determination. The National Office staff does monitor the sale of inventory property through its program assessments and other program visits and contacts on a continuing basis.

Section 1955.112(b). One commentor suggested that the threshold for mandatory listing of property with brokers was too low, and believed FmHA staffs should make a greater effort to market single-family homes to eligible applicants. Listing with brokers actually provides an expanded exposure of the property to potential buyers, and since the time suitable properties are retained for buyers on eligible terms only was lengthened, eligible buyer opportunity is actually strengthened.

Section 1955.113. It was suggested that this section be amended to include the provision for additional price reductions when made administratively or just prior to consideration of sale by auction or sealed bid. This section was amended to include provision for administrative price reductions, but does not include a reference to sale by auction or sealed bid. Normally, sales by the latter two methods will be limited to unsuitable property which would not be considered for conversion to a rental project.

Section 1955.114. A commentor suggested that § 1955.112 of the regulation should be expanded to allow for sale of single-family dwellings to persons proposing to use it for multiple-family housing. Instead, a paragraph has been added to this section to include this provision.

Section 1955.114(a). One commentor suggested extending the time of retention for eligible sales only to 120 days. Another suggested 45 days. The concept of these suggestions was favorably considered, but the 120 days was considered excessive. As a result, the period of retention for eligible sales was lengthened to 30 days.

Section 1955.116. One commentor pointed out that the restrictions on occupancy of housing which does not meet decent, safe and sanitary standards applies equally to MFH. The language of this section was clarified.

Section 1955.118. One comment was received to the effect that the current Sec. 515 interest rate plus ½ percent appeared too high to be attractive to potential buyers on ineligible terms. Ineligible terms may never be more favorable than eligible terms, and the ½ percent higher rate is felt to be reasonable. The volume of MFH property sold on ineligible terms is expected to be minute.

Section 1955.128. One commentor suggested FmHA should not be so restrictive in allowing for fee appraisals. The authorization to obtain appraisals by contract is retained as in the proposed rule until FmHA has accumulated more experience in this area. We do not believe inclusion of appraisals as a basis for appeals is appropriate. Present regulations provide for review of appraisals by the State Director when questioned, and we believe that is sufficient. Appraisal is not an exact science, but is rather an estimate supported by verifiable data; therefore, there is no real basis for appeal.

Section 1955.133. It was suggested that if a broker is signatory to a HUD/NAR Voluntary Affirmative Marketing Agreement, there would be no need for an Affirmative Fair Housing Marketing Plan. The voluntary agreement simply provides for nondiscrimination in marketing, whereas a marketing plan provides for positive steps to be taken to reach socio-economic groups who might not normally apply for the housing being offered. No change was made in this section.

Section 1955.137(a)(3)(ii). One commentor felt the wording of this paragraph concerning credit sales in coastal barrier areas should be clarified. This has been done.

Several comments were received simply expressing positive reaction to policies proposed, among these: § 1955.114 and § 1955.140. Numerous comments were received from FmHA personnel, some of which resulted in changes and some of which were not adopted because it was deemed they did not fit within the scope of these regulations or were otherwise not appropriate.

Since publication of the proposed rule, FmHA has reconsidered some of the requirements contained in that proposal, specifically: (1) That all purchasers of inventory property (including those obtaining credit on eligible terms under one of FmHA's loan programs) must pay closing costs from their own resources; and (2) that earnest money in the estimated amount of closing costs would be required at the time of execution of a sales contract, whether the contract was originating through a real estate broker or with FmHA personnel. The regulation has now been changed to provide that: (1) Earnest money will be required only in connection with contracts originated with a real estate broker; (2) Earnest money will be $50 for single-family and two- and four-family dwellings and the greater of the estimated closing costs or ½ of 1 percent of the sale price for other types of property; and (3) When necessary, FmHA may make a loan to a qualified purchaser of a single-family dwelling to pay closing costs not to exceed 1 percent of the sale price.

The changes in Subpart A of Part 1955 require conforming changes in other FmHA regulations to reflect the authority being given to District Directors to approve foreclosure and

accelerate accounts for Farmer Programs and Single Family Housing loans. The other FmHA regulations requiring conforming changes are: Subpart A of Part 1872, Subparts A and B of Part 1900, Subpart E of Part 1901, Subpart A of Part 1944, Subparts F and G of Part 1951, and Subpart A of Part 1962 of this chapter. Authorities for sale or disposition of government inventory property outlined in Subpart C of Part 1955 also require amendment to Subpart A of Part 1900 of this chapter.

Catalog of Federal Domestic Assistance Titles and Numbers

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—agriculture, Rural areas.

7 CFR Part 1900

Appeals, Credit, Loan programs—agriculture, Loan programs—housing and community development.

7 CFR Part 1901

Civil Rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1944

Loan programs—housing and community development, Low and moderate income housing—mortgages, Rural housing, Subsidies.

7 CFR Part 1951

Account servicing, Loan programs—agriculture, Low and moderate income housing loans—servicing, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural Areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

§ 1872.1 [Amended]

1. Section 1872.1 (e)(1) is amended in the first sentence by changing "§ 1955.6" to "§ 1955.5 (a) of Subpart A of Part 1955 of this chapter."

§ 1872.2 [Amended]

2. Section 1872.2 (c)(1) is amended in the first sentence by inserting "the applicable portions of" before "§ 1955.15" and by changing "(d) (8) and (9)" after "§ 1955.15" to read "of Subpart A of Part 1955 of this chapter."

3. Section 1872.2 (c)(1)(iv)(A) is amended by inserting "the applicable portion of" before "§ 1955.15" and by changing "(d)(1)" after "§ 1955.15" to read "of Subpart A of Part 1955 of this chapter."

4. Section 1872.2 (e) is amended in the last sentence by changing "465–7" to read "1955–2" and by changing the last phrase "submitted through the District Director to the State Director for his consideration" to read "distributed according to the FMI."

§ 1872.15 [Amended]

5. Section 1872.15 (a) is amended in the last sentence by changing "§ 1955.15 (d)(8) and (9)" to "§ 1955.15 (f)(5) and (6) of Subpart A of Part 1955 of this chapter."

6. Section 1872.17 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1872.17 Liquidation action.

* * * * *

(b) *Problem case report.* If the borrower is unwilling to take any of the actions specified in § 1872.17(a) or fails to carry out any such actions within 60 days, the County Supervisor will complete Form FmHA 1955–2 and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(c) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

(d) *Voluntary liquidation after acceleration.* If after the notice of acceleration has been sent to the borrower as outlined in § 1955.15 of Subpart A of Part 1955 of this chapter, arrangements are made to have the account voluntarily liquidated, the official who approved the foreclosure may give the borrower time beyond the date listed in the notice of acceleration to accomplish voluntary liquidation. The official who approved the foreclosure will inform the borrower of this decision in a separate letter, which will also place a time limit on the borrower which should not exceed 3 months from the date of the letter agreeing to allow the borrower to voluntarily liquidate. The original period established plus any extensions determined necessary by the approval official should in no case exceed 1 year. Prior to granting any extension after the original period established, the approval official will request a report from the servicing official concerning the actions taken by the borrower to liquidate. If a sale is involved, the servicing official's report should indicate whether the borrower's asking price is reasonable and whether the asking price is delaying the sale unreasonably. Acceleration or granting time for voluntary liquidation as provided for in this paragraph will not preclude exercise of the authority in paragraph (g) of this section. However, the authority outlined herein should not be used for the purpose of extending the correction period under paragraph (f) of this section. If the borrower has not voluntarily liquidated within the time period (including any extensions) granted, foreclosure should proceed according to § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

PART 1900—GENERAL

Subpart A—Delegations of Authority

8. Section 1900.2 is amended by revising paragraphs (e)–(k) to read as follows:

§ 1900.2 National office staff and State Directors.

* * * * *

(e) Consent to sale or assignment of, or sell or assign, direct or insured loans and security instruments, endorsements, reinsurance agreements, or other instruments in connection therewith; and execute agreements to insure and reinsure, and to purchase and repurchase insured loans and security instruments.

(f) Compromise, adjust, cancel or charge off indebtedness.

(g) Modify contracts and other instruments and compromise claims owed to the Farmers Home Administration and covered by the Federal Claims Collection Act of 1966 and the joint regulations issued under it by the Attorney General and the Comptroller General as provided for in applicable program regulations.

(h) Perform all actions pertaining to the sale (or other disposal) of real or chattel property or interests therein and to execute and deliver bills of sale or other insturments to effect such sale (or disposition), which includes but is not limited to offering property for sale; advertising; receiving and accepting offers or bids; and closing sale transactions, including the collection of sale proceeds, and delivery of quitclaim deeds, easements, and right-of-way conveyances after those documents have been executed. The authority to execute any deeds of conveyance of inventory real property, including quitclaim deeds, easements, rights-of-way, or sale of any use rights is reserved to the State Director, and this authority may not be redelegated.

(i) Approve and consent to transfers of security property to other parties with or without assumption of debts; and approve and accept transfers of security property or interests therein to the United States of America, and execute release from liability after determination is made in accordance with applicable program regulations.

(j) Execute and deliver, or approve in writing, suspensions, releases or terminations of assignments, of income, renewals, extensions, partial and full releases and satisfactions of security, and personal or indemnity liability for indebtedness, waivers, subordination agreements, severance agreements, affidavits, acknowlegements, certificates of residence, evidence of consent, and other instruments or documents.

(k) Accelerate and declare entire real estate or chattel indebtedness due and payable, foreclose or request foreclosure of real estate security instruments by exercise of power of sale or otherwise, and bid for and purchase at any foreclosure or other sale or otherwise acquire real property pledged, mortgaged, conveyed, attached, or levied upon to collect indebtedness, and accept title to any property so purchased or acquired.

* * * * *

9. Section 1900.3 is revised to read as follows:

§ 1900.3 State, District, and County Office employees.

The following officials and employees of the Farmers Home Administration, in accordance with applicable laws, and the regulations implementing these laws, for and on behalf of, and in the name of the United States of America or the Farmers Home Administration, are also severally authorized within the area of their respective jurisdictions to perform the acts specified in paragraphs (g) through (r) of § 1900.2; and within their loan approval authority to sell or otherwise dispose of real or chattel property or interests therein and to execute and deliver bills of sale or other instruments to effect such sale or disposition: Chief, Farmer Programs/Specialist; Chief, Rural Housing/Specialist; Chief, Community Programs/Specialist; Chief, Business and Industry/Specialist; Chief, Community and Business Programs/Specialist; each District Director, Assistant District Director, Loan Specialist General, County (including Parish) Supervisor, Emergency Loan Supervisor, Assistant Emergency Loan Supervisor, or other supervisor or assistant supervisor; and in the absence or disability of any such official or employee, the person acting in the position.

Subpart B—Farmers Home Administration Appeal Procedure

10 Section 1900.56 is amended by revising paragraphs (a)((3) and (a)(4) to read as follows:

§ 1900.56 Appeal from an initial FmHA decision.

(a) * * *

(3) In acceleration notices, the letter will read substantially as found in Exhibit B or C, "Notice of Acceleration . . .," Subpart A, Part 1955 of this Chapter or Form FmHA 455–21, "Notice of Acceleration and Demand for Payment," with attachment Exhibit B–4 or B–5 as appropriate. The following language or other similar language mandated by FmHA instructions, must be included in the acceleration notice: "The request for this hearing must be made within 30 calendar days from the date of this notice."

(4) Any offer by the borrower for partial payment of (or curing) the default after acceleration of a loan secured by real estate will be referred to the official who approved foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

11. The table in Exhibit D is revised to read as follows:

EXHIBIT D TO SUBPART B—HEARING/REVIEW OFFICER DESIGNATIONS

Decision maker or decision	Hearing officer	Review officer
County Supervisor	District Director or person designated by State Director.	State Director or designee (who has not been significantly involved with the case).
County Committee	State Director or designee	Deputy Administrator, Program Operations or designee.
District Director	State Director or designee	Deputy Administrator, Program Operations or designee.
State Director	Deputy Administrator, Program Operations or designee.	(No review.)
Division Director or Assistant Administrator	Deputy Administrator, Program Operations or designee.	(No review.)
Deputy or Associate Administrator	Administrator or designee	(No review.)
Decision to foreclose chattels	District Director	State Director or designee.
Decision to foreclose real estate (for accounts other than single-family housing serviced in the county office.	District Director from another district or other person not involved in the initial decision-designated by the State Director.	Deputy Administrator, Program Operations or designee.
Decision to foreclose real estate:		
For single-family housing accounts	State Director or designee [1]	Deputy Administrator, Operations or designee
For accounts serviced in the district office.	Deputy Administrator, Program Operations or designee.	(No review.)

[1] The individual designated as Hearing Officer may not be an employee who is supervised by the person who approved the foreclosure and accelerated the account, nor can the designee have been involved in the decision to foreclose.

Notes.—1. District Director also means Assistant District Director or District Loan Specialist.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. Designee is the person designated by the Hearing/Review Officer to conduct a hearing or review. The designee signs the decision letter to the appellant without the concurrence of the original Hearing/Review Officer except:

a. For hearings on County Committee decisions. For these hearings the State Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing; however, the State director or Acting State Director must sign the hearing decision letter.

b. When the Hearing/Review Officer, designated by the Deputy Administrator, Program Operations, is not a member of the National Office staff, the complete case file,

hearing notes, tape recordings, and a recommended decision will be sent to the Deputy Administrator, for review and a final decision.

c. When the Hearing/Review Officer is a member of the National Office Staff, after the decision is written, but prior to notification of the applicant, in all cases requiring corrective actions or training (e.g., reversals or other problems which may become evident) the Hearing/Review Officer will brief the Deputy Administrator, Program Operations, concerning the decision and will notify the State Director involved that the decision will be reversed or modified, and will advise the State Director of what corrective action will have to be taken.

4. For decisions not directly covered above, the Hearing/Review Officer is the person in the next higher level of FmHA authority.

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart A—Loan and Grant Approval Authorities

§ 1901.2 [Amended]

12. Section 1901.2 is amended by changing the reference in the last sentence from "Exhibits A, B, C, and D" to "Exhibits A, B, C, D, and E."

§ 1901.5 [Amended]

13. Section 1901.5 is amended by changing the reference from "Exhibits A, B, C, and D" to "Exhibits A, B, C, D, and E."

Subpart E—Civil Rights Compliance Requirements

14. Section 1901.203 is amended by revising paragraphs (c)(2)(ii), (c)(4)(iv), (c)(5)(iv), and by removing paragraph (c)(4)(v) to read as follows:

§ 1901.203 Title VIII of the Civil Rights Act of 1968.

* * * * *

(c) * * *

(2) * * *

(ii) An Affirmative Fair Housing Marketing Plan is required to be prepared and submitted to FmHA by the contractor when:

(A) A real estate broker is offering five or more single-family dwellings located in the same subdivision for sale under an exclusive listing contract with FmHA.

(B) An auctioneer under contract with FmHA is offering five or more single-family dwellings located in the same subdivision for sale by public auction.

(C) A contractor under a contract with FmHA is managing a multiple-family housing project of five or more units or five or more single-family dwellings located in the same subdivision.

(3) * * *

(4) * * *

(iv) For real estate brokers listing housing properties on an exclusive basis, at the time of execution of Form FmHA 1955–43, "Exclusive Real Property Master Listing Agreement."

(5) * * *

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing agreement on Form FmHA 1955–43, one year.

* * * * *

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.10 [Amended]

15. Section 1944.10 (g)(3) is amended by changing the reference from "§ 1955.103 (e)" to "§ 1955.103 (q)."

16. Section 1944.17 is amended by adding paragraph (d) to read as follows:

§ 1944.17 Maximum loan amounts.

* * * * *

(d) When a subsequent loan is made simultaneously with a credit sale of a single-family dwelling from FmHA inventory for loan closing costs only as provided in § 1955.117(f) of Subpart C of Part 1955 of this chapter, the total indebtedness may exceed the market value of the security property by no more than 1 percent of the sale price of the property.

PART 1951—SERVICING AND COLLECTIONS

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

17. Section 1951.262 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) * * *

(1) Provide information following receipt of both FmHA Guide Letters No. 1951–1 and 1951–2, or letters of similar format, such borrowers will not be asked to graduate. They are, at that point, in default of their security instruments, which require the borrower to comply with all future FmHA regulations not inconsistent with the security instruments. The servicing official will, based on the borrower's failure to supply information in accordance with § 1951.261(e) of this subpart, prepare the required documents recommending legal action and submit them together with the borrower's case file to the official authorized in § 1955.15 of Subpart A of Part 1955 of this chapter to approve foreclosure of the loan type involved (approval official) with a written report outlining credit sources contacted by FmHA and the borrower, the reasons given by the borrower for failure to graduate, action taken by FmHA to verify the availability of credit, and the borrower's available financial resources along with any data pertinent to the case. The approval official may, with the concurrence of Regional Attorney, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters No. 1951–5 and 1951–6, or letters of similar format, such borrowers will not be given further notice to graduate but at that point are in default under the graduation requirement of their security instruments. The servicing official will prepare the required documents to recommend legal action and submit them to the approval official as outlined in paragraph (a)(1) of this section.

(b) The official authorized to approve foreclosure will review those cases submitted to his/her office and determine what action must be taken on the basis of the FmHA notes, security instruments, and/or loan agreements signed by the borrower and the facts and recommendations provided by the servicing official.

(1) If the approval official determines the borrower is unable to graduate, the graduation request may be withdrawn. The approval official will request the servicing official to notify the borrower and withdraw the graduation request in accordance with § 1955.261(g)(5)(i) of this Subpart.

(2) If the approval official determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter. If the borrower's account(s) are accelerated, the borrower will be given the right to appeal the decision in accordance with Subpart B of Part 1900 of this Chapter. The advice of the Regional Attorney is required before accelerating the account.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

18. Section 1951.312 is amended by revising paragraph (e)(4) to read as follows:

§ 1951.312 Servicing.

* * * * *

(e) * * *

(4) *Borrower fails to keep appointments or defaults on payment agreements.* If the borrower has failed to

keep appointments or make payments according to previous agreements (including the promissory note), the County Supervisor will prepare and send a completed Form FmHA 1955–2, "Report on Real Estate Problem Case," to the District Director with a recommendation for foreclosure of the loan. The District Director will review the file and decide if appropriate action has been taken by the County Supervisor to adequately service the account in an effort to give the borrower an opportunity to become a successful homeowner. If the District Director determines that appropriate action has been taken in servicing the account and that further servicing efforts will not result in the borrower meeting loan obligations, foreclosure action will be initiated. If the District Director determines that additional servicing efforts are appropriate, the County Supervisor will be instructed regarding actions to be taken. (Guide Letter 1951–G–5 may be used if the District Director chooses to write the borrower prior to acceleration.) If the County Supervisor cannot work out an agreement with the borrower, the file will be returned to the District Director for initiation of foreclosure action.

. . . . .

19. Part 1955 is revised to read as follows:

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Sec.

1955.1 Purpose.
1955.2 Policy.
1955.3 Definitions.
1955.4 Redelegation of authority.
1955.5 General actions.
1955.6–1955.9 [Reserved]
1955.10 Voluntary conveyance of real property by the borrower to the Government.
1955.11 Conveyance of property to FmHA by trustee in bankruptcy.
1955.12 Acquisition of property which served as security for a loan guaranteed by FmHA or at sale by another lienholder, bankruptcy trustee, or taxing authority.
1955.13 Acquisition of property by exercise of Government redemption rights.
1955.14 [Reserved]
1955.15 Foreclosure by the Government of loans secured by real estate.
1955.16–1955.17 [Reserved]
1955.18 Actions required after acquisition of property.
1955.19 [Reserved]
1955.20 Acquisition of chattel property.
1955.21 Exception authority.
1955.22 State Supplements.
1955.23–1955.49 [Reserved]
1955.50 OMB control number.

Subpart B—Management of Property

1955.51 Purpose.
1955.52 Policy.
1955.53 Definitions.
1955.54 Redelegation of authority.
1955.55 Taking abandoned real or chattel property into custody and related actions.
1955.56 Real property located in Coastal Barrier Resources System (CBRS).
1955.57–1955.59 [Reserved]
1955.60 Inventory real property subject to redemption by the borrower.
1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.
1955.62 Removal and disposition of nonsecurity personal property from inventory real property.
1955.63 Suitability determination.
1955.64 Securing, maintaining, and repairing inventory property.
1955.65 Management of inventory and/or custodial real property.
1955.66 Lease of real property.
1955.67 Payment of liens.
1955.68 Payment of taxes.
1955.69 Insurance.
1955.70 Inspection of property.
1955.71 Vandalism or theft.
1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).
1955.73–1955.79 [Reserved]
1955.80 Management of inventory chattel property.
1955.81 Exception authority.
1955.82 State Supplements.
1955.83–1955.99 [Reserved]
1955.100 OMB control number.

Subpart C—Disposal of Inventory Property

1955.101 Purpose.
1955.102 Policy.
1955.103 Definitions.
1955.104 Authorities and responsibilities.

Consolidated Farm and Rural Development Act (CONACT) Real Property

1955.105 Real property affected (CONACT).
1955.106 Sale of suitable property (CONACT).
1955.107 Sale of surplus property (CONACT).
1955.108 Processing and closing (CONACT).
1955.109 [Reserved]

Rural Housing (RH) Real Property

1955.110 Sale of real estate that secured RH loans (housing).
1955.111 Property repair (housing).
1955.112 Method of sale (housing).
1955.113 Price (housing).
1955.114 Sales steps for suitable property (housing).
1955.115 Sales steps for unsuitable property (housing).
1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).
1955.117 Processing credit sales on eligible terms (housing).
1955.118 Processing cash sales or credit sales on ineligible terms (housing).
1955.119 Payment of discount points (housing).
1955.120 [Reserved]

Chattel Property

1955.121 Sale of acquired chattels (chattel).
1955.122 Method of sale (chattel).
1955.123 Sale procedures (chattel).
1955.124 Sale with inventory real estate (chattel).
1955.125–1955.26 [Reserved]

Use of Contractors To Dispose of Inventory Property

1955.127 Selection and use of contractors to dispose of inventory property.
1955.128 Appraisers.
1955.129 Business brokers.
1955.130 Real estate brokers.
1955.131 Auctioneers.
1955.132 [Reserved]

General

1955.133 Nondiscrimination.
1955.134 Loss, damage, or existing defects in inventory real property.
1955.135 Taxes on inventory real property.
1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).
1955.137 Real property located in special areas or having special characteristics.
1955.138 Property subject to redemption rights
1955.139 Disposition of real property rights
1955.140 Sale in parcels.
1955.141 Transferring title.
1955.142 Reporting sale.
1955.143 Report on inventory property not sold.
1955.144 Disposal of surplus property to, through, or acquired from other agencies.
1955.145 Land acquisition to effect sale.
1955.146 Advertising.
1955.147 Sealed bid sales.
1955.148 Auction sales.
1955.149 Exception authority.
1955.150 State Supplements.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301, sec. 10; Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23; 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of Farmers Home Administration (FmHA) loans identified in § 1955.3 (d) and (e) of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the

Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan *other than Business and Industrial (B&I)* under the contract of guarantee, the liquidation will be completed according to this subpart. Liquidation of guaranteed B&I loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I actions involving loans secured by other than real or chattel property, the case will be forwarded to the National Office for prior review and guidance.

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or by foreclosure as outlined in this Subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA in accordance with applicable portions of § 1955.10 of this subpart.

§ 1955.3 Definitions.

As used in this subpart, the following definitions apply:

(a) *Closing agent.* A designated attorney or title insurance company which is approved as a loan closing agent in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1).

(b) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

(c) *Government.* The United States of America acting through the Farmers Home Administration (FmHA), U.S. Department of Agriculture; used interchangeably herein with "FmHA."

(d) *Loans to individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Land Conservation and Development (LCD), Economic Opportunity (EO), Operating (OL), Emergency (EM), and Economic Emergency (EE), whether to individuals or entities, herein referred to as Farmer Programs (FP) loans; and Single-family Housing (SFH), including both Section 502 and 504 loans.

(e) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land-Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

(f) *Market value.* The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(g) *Nonrecoverable costs.* Costs incurred after Government acquisition of title to the property and charged to an inventory account.

(h) *OGC.* The Office of the General Counsel, U.S. Department of Agriculture; refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

(i) *Prior lien.* A security instrument (such as a mortgage or deed of trust) or a judgment which was of public record before the FmHA security instrument(s) as well as real estate taxes or assessments which are or will become a lien against the property which is superior to FmHA's security instrument(s).

(j) *Recoverable costs.* Costs charged to a borrower's account paid or incurred prior to Government acquisition of title to the property.

(k) *Servicing official.* For loans to individuals as defined in paragraph (d) of this section, the servicing official is the County Supervisor for all other types of loans except insured B&I, the servicing official is the District Director. For insured B&I Loans, the servicing official is the State Director.

§ 1955.4 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) The State Director is authorized to redelegate, in writing, any authority in this subpart to a Program Chief or Program Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(b) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(1) of this subpart may not be redelegated. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(c) The County Supervisor is authorized to redelegate in writing any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(d) The monetary limitations on acceptance of voluntary conveyance as provided for in § 1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower-level official.

§ 1955.5 General actions.

(a) *Assignment of notes to FmHA.* When liquidation action is approved and the insured note is not held in the County or District Office, the approval official will request the Finance Office to purchase the note and forward it to the appropriate office. Voluntary conveyance may be closed pending receipt of the note(s), and foreclosure may also be processed pending receipt of the note(s), unless the original note is required in connection with the foreclosure action.

(b) *Execution of documents.* (1) After liquidation of loans to individuals has been approved by the appropriate official, the County Supervisor is authorized to execute all necessary forms and documents except notices of acceleration required to complete transactions covered by this subpart.

(2) After liquidation of loans to organizations has been approved by the appropriate official, the District Director

is authorized to execute all forms and documents for completion of the liquidation except:

(i) Notice of acceleration; or

(ii) Other form or document which specifically required State or National Office approval because of monetary limits or policy statement established elsewhere in this subpart.

(c) *Unused loan funds.* (1) Funds remaining in a supervised bank account will be handed in accordance with § 1902.15 of Subpart A of Part 1902 of this chapter before a voluntary conveyance or foreclosure is processed.

(2) Funds remaining in a construction or other account will be applied to the borrower's FmHA accounts.

(d) *Payment of costs.* Costs related to liquidations of a loan or acquisition of property will be paid by preparation of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," Standard Form 1143, "Advertising Order," or Form FmHA 120–10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI) as either a recoverable or nonrecoverable cost as defined in § 1955.3 (g) and (j) of this subpart.

§ 1955.6–1955.9 [Reserved]

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

The servicing official will not attempt to have the borrower voluntarily convey the security property to FmHA until all available servicing actions outlined in the respective program servicing regulations have been used or considered and it is determined the borrower will not be successful. The borrower should also have been encouraged to transfer or sell the property (subject to any prepayment restrictions of the respective loan program). The borrower will be informed by the servicing official of apparent equity in the property, if any.

(a) *Authority.*—(1) *Loans to individuals.* The County Supervisor and District Director are authorized to accept voluntary conveyance if the total indebtedness against the property (including prior and junior liens) does not exceed the respective loan approval authority for the type of loan (or combination of types) involved as outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office). The State Director is authorized to approve voluntary conveyance regardless of amount of indebtedness.

(2) *Loans to organizations.* (i) The State Director is authorized to approve voluntary conveyance of property securing Farmer Programs and EOC loans regardless of amount of indebtedness.

(ii) The State Director is authorized to approve voluntary conveyance of property securing MFH loans if the total indebtedness against the property, including prior and junior liens, does not exceed his/her approval authority for the type loan involved. Loan approval authorities are outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office).

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2) (i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance. In these cases the State Director will forward the voluntary conveyance offer, a statement of essential facts and his/her recommendations to the National Office, Attn: appropriate program division, along with the borrower's case file. An OGC opinion on settling any prior and/or junior liens will be included.

(b) *forms and documents.* All forms and documents in connection with voluntary conveyance will be prepared and distributed in accordance with the respective FMI or applicable OGC instructions. For loans to individuals when the County Supervisor has approval authority, the facts will be documented in the running record of the borrower's case file. For all other loans, the servicing official will submit the voluntary conveyance offer, the case file and a narrative report to the appropriate approval official.

(c) *Liens against the property other than FmHA liens.*—(1) *Prior liens.* (i) The approval official will determine whether or not prior liens will be paid. Normally, the Government will pay prior liens in full prior to acquisition if:

(A) A substantial recovery on the Government's investment plus the amount of the prior lien(s) can be obtained; and

(B) The holder of the prior lien(s) objects to the Government accepting voluntary conveyance subject to the prior lien(s), if consent of the prior lienholder(s) is required.

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) will be made while title to the property is held by the Government in accordance with § 1955.67(a) of Subpart B of Part 1955 of this chapter.

(2) *Junior liens.* The borrower must satisfy junior liens on the property (except FmHA liens) and pay real estate taxes or assessments which are or will become a lien on the property. However, if the borrower is unable or unwilling to do so, settlement of the liens may be made by FmHA if settlement would be in the best interest of the Government, considering all factors such as length of time required to foreclose, vandalism or other deterioration of the property which might occur, and effect on management of a MFH project and its tenants. An FmHA official will contact junior lienholders, negotiate the most favorable settlement possible, and determine whether it is in the Government's best interest to settle the junior liens and accept the voluntary coveyance.

(i) For loans to individuals, the approval official is authorized to settle junior liens in the smallest amount possible, but not to exceed an aggregate amount of $1,000 in each SFH case or $5,000 for other type loans. For junior liens in greater amounts when the approval official is the County Supervisor or District Director, prior authorization must be obtained from the State Director.

(ii) For loans to organizations, the State Director will determine whether or not junior liens will be settled and voluntary conveyance accepted.

(3) *Payment of liens.* A lien to be settled in accordance with paragraphs (c)(1)(i) or (c)(2) of this section will be paid as outlined in § 1955.5(d) of this subpart and charged to the borrower's account as a recoverable cost.

(d) *Offer of voluntary conveyance.* An offer of voluntary conveyance will consist of the following:

(1) Form FmHA 1955–1, "Offer to Convey Security."

(2) Warranty deed, or other deed approved by OGC to comply with State Laws. The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borrowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA 1955–1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance.

(3) A current financial statement containing information similar to that required to complete Form FmHA 410–1, "Application for FmHA Services"; 410–4, "Application for Rural Housing Assistance (Nonfarm Tract); or 1930–1, "Balance Sheet;" and information on

present income and potential earning ability.

(4) For organization borrowers, a duly-adopted Resolution by the governing body authorizing the conveyance and certified by the attesting official with the corporate seal affixed. The Resolution will indicate which officials are authorized to execute the offer to convey and the deed on behalf of the borrower. If shareholder approval is necessary, the Resolution will specifically recite that shareholder approval has been obtained.

(5) If water rights, mineral rights, development rights, or other use rights are not fully covered in the deed, the advice of OGC will be obtained and appropriate documents to transfer rights to the Government will be obtained before the voluntary conveyance is accepted. The documents will be recorded, if necessary, in connection with closing the conveyance.

(6) If property is under lease, an assignment of the lease to the Government will be obtained with the effective date being the date the voluntary conveyance is closed. If an oral lease is in force, it will be reduced to writing and assigned to the Government.

(7) The borrower may be required to provide title insurance when the State Director determines it is necessary to protect the Government's interest.

(8) For MFH loans, assignment of Housing Assistance Payment (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that FmHA has title to the property, but may be suspended while the conveyance is pending according to Exhibit E of Subpart C of Part 1930 of this chapter.

(e) *Appraisal of property.* As soon as practicable after an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the market value of the property in its existing condition if an appraisal reflecting current value is not part of the file. If a qualified FmHA appraiser is not available to appraise property securing a loan other than SFH or MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with Subpart D of Part 1955 of this chapter. For property securing SFH or MFH, prior authorization must be obtained from the Assistance Administrator, Housing, to secure an appraisal from a source outside FmHA.

(f) *Processing offer to convey security and acceptance by FmHA.* If a borrower has both SFH and other type loans, the portion of this paragraph dealing with the loan(s) other than SFH will be followed.

(1) *SFH loans.* The policy is to accept an offer of voluntary conveyance of property securing SFH loans in full satisfaction of the debt regardless of market value of the property if the County Supervisor determines the borrower has cooperated in good faith, satisfactorily maintained the property and otherwise fulfilled the covenants of the loan to the best of the borrower's ability. If the County Supervisor cannot make these determinations affirmatively, the offer for full satisfaction of the debt will not be accepted unless the value of the property is at least equal to the debt. However, the borrower may make a new offer for a credit equal to the value of the property as determined by FmHA. The conveyance will be processed as follows:

(i) Before accepting the offer, the County Supervisor will transmit the deed to a closing agent requesting a title search covering the period of time since the latest title opinion in the case file. The same agent who closed the loan should be used, if possible; otherwise one will be selected from the approved list of closing agents, taking care that cases are distributed fairly among approved agents. The closing agent may be instructed that the County Supervisor considers the voluntary conveyance offer conditionally approved, and the closing agent may record the deed after the title search if there are no liens against the property other than:

(A) The FmHA lien(s);

(B) Prior liens when FmHA has advised the closing agent that title will be taken subject to the prior lien(s) or has told the closing agent that the prior lien(s) will be handled in accordance with § 1955.10(c)(1) of this subpart; and/or

(C) Real estate taxes and/or assessments which must be paid when title to the property is transferred.

(ii) If junior liens are discovered, the closing agent will be requested to provide FmHA with the lienholder's name, amount of lien, date recorded, and the recording information (recording office, book and page), return the unrecorded deed to FmHA, and await further instructions from FmHA. In such cases, the County Supervisor will proceed in accordance with § 1955.10(c)(2) of this subpart. If agreement has been reached with the lienholder(s) for settling the junior lien(s) in order to accept the conveyance, the deed will be returned to the closing agent for a title update and recording.

(iii) The closing agent will be requested to provide a certification of title to FmHA after recordation of the deed. A certification of title in a statement that fee title is vested in the Government subject only to the FmHA lien(s) and prior liens previously approved by FmHA. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with § 1955.10(h) of this subpart.

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* For CONACT loans to individuals as defined in § 1955.3 of this subpart where the FmHA indebtedness plus any prior liens exceeds the market value of the property, the County Committee must make the following certification if it is to recommend that the borrower and any cosigner be released from liability. The certification will be made on Form FmHA 440–2, "County Committee Certification or Recommendation", in the blank space following Item No. 10:

> In our opinion *(Name of Borrower(s) and any cosigner)* does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government.

If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, and the borrower will determine if he/she wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account as outlined in § 1955.18(f) of this subpart. When the FmHA debt less the market value and prior liens exceeds $25,000, release of liability must be approved by the Administrator; otherwise the official who accepts the voluntary conveyance may approve the release of liability.

(i) *Loans which are within the County Supervisor's approval authority.* The same procedure outlined in paragraph (f)(1)(i) through (f)(1)(iii) of this section will be followed. The conveyance will be accepted in full satisfaction of the indebtedness unless:

(A) The market value of the property to be conveyed is less than the total of FmHA indebtedness and prior lien(s), if any, and the County Committee has *not* recommended the borrower be released from liability; or

(B) The borrower has made a new offer agreeing to accept a credit in the amount of the market value of the security property less prior lien(s), if any, in which case the conveyance will be accepted for the market value of the property conveyed to FmHA less prior lien(s), if any.

(ii) *Loans which are NOT within the County Supervisor's approval authority* (A) When an offer to convey is received from the borrower, the County Supervisor will request a closing agent, selected in accordance with paragraph (f)(1)(i) of this section, to make a title search covering the period of time since the latest title opinion in the case file. The case file containing the following will be forwarded to the appropriate approval official:

(*1*) Form FmHA 1955–2, "Report on Real Estate Problem Case;"

(*2*) Report of title search;

(*3*) Borrower's offer of voluntary conveyance consisting of applicable items outlined in paragraphs (d)(1) through (d)(7) of this section;

(*4*) Current appraisal of property;

(*5*) Unpaid balance on FmHA indebtedness and other liens, both prior and junior, if any;

(*6*) Form FmHA 440–2 executed in accordance with the FMI concerning release from liability if property value is less than the debt plus prior liens, if any;

(B) If the approval official determines the conveyance should be accepted, the file will be returned to the County Supervisor with a memorandum of conditional approval. The same conditions for release of liability apply an in Paragraph (f)(2)(i) of this section. If the approval official does not concur in acceptance of the conveyance, the file will be returned with a memorandum stating the reasons for rejecting the offer and giving instructions to the County Supervisor for further servicing of the account.

(C) After the approval official has conditionally approved the conveyance, the County Supervisor will forward the deed to a closing agent with instructions to record it provided no liens have been recorded since the recent title search. The closing agent will be requested to provide a certification of title to FmHA after recordation of the deed. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with paragraph (h) of this section.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, the servicing official will submit the offer and the case file containing the items outlined in paragraphs (f)(3)(ii) or (f)(3)(iii) of this section, as applicable, to the State Director. The State Director will obtain the advice of OGC on all offers of voluntary conveyance from organization borrowers. OGC will be requested to issue instructions for processing and closing the conveyance. When the market value of the property being conveyed (less prior liens, if any) is less than the FmHA debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the FmHA debt. In such a case, the County Committee must make a favorable recommendation if the borrower is to be released from liability; and if the FmHA debt less the market value and prior liens exceeds $25,000, release of liability must be approved by the Administrator.

(i) *Items to be included in the borrower's case file for MFH loans:*

(A) Report on Multiple-Family Housing Problem Case, (Exhibit A to this subpart available in any FmHA office);

(B) Liquidation and management plan with specific recommendations of the District Director;

(C) Form FmHA 1955–1;

(D) Resolution authorizing the conveyance, if applicable;

(E) Report of title search from an approved closing agent covering the period of time since the latest title opinion is the case file;

(F) Form FmHA 1930–7, "Statement of Budget and Cash Flow," (operating budget for first year and typical year);

(G) Form FmHA 1930–8, "Year End Report and Analysis for Fiscal Year Ending ———," (Balance Sheet Portion);

(H) Current appraisal prepared by a MFH designated appraiser;

(I) Balance on FmHA account(s) and other liens, if any;

(J) Assignment of Housing Assistance Payment (HAP) contracts, if applicable, along with evidence of contract with HUD;

(K) Current statement of account from the Finance Office;

(L) Development plan with breakdown of costs, if applicable; and

(M) Form FmHA 440–2, executed in accordance with paragraph (f)(3) of this section and the FMI, when applicable.

(ii) Items to be included in the borrower's case file for loans other than MFH:

(A) Report on Servicing Action (Exhibit A to Subpart E of Part 1951 of this Chapter, available in any FmHA office);

(B) Liquidation and management plan;

(C) Form FmHA 1955–1;

(D) Organization's Resolution authorizing the conveyance;

(E) Report of title search from an approved closing agent covering the period of time since the latest title opinion in the case file;

(F) Form FmHA 442–3, "Balance Sheet";

(G) Current appraisal;

(H) Statement showing income and expenses due but unpaid;

(I) Balance on FmHA account(s) and other liens, if any; and

(J) Form FmHA 440–2, executed in accordance with the FMI concerning release from liability if property value is less than the FmHA indebtedness plus prior liens, if any.

(g) *Closing of conveyance.* (1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly.

(2) When costs incident to the completion of the transaction are to be paid by the Government, the servicing official will prepare and process the necessary documents as outlined in § 1955.5(d) of this subpart and the costs will be charged to the borrower's account as recoverable costs. This includes taxes and assessments, water charges which protect the right to receive water, other liens, closing agent's fee, and any other costs related to the conveyance.

(h) *Actions to be taken after closing conveyance.* (1) When the FmHA account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released From Liability," and the statement must be signed by the FmHA official authorized to approve release of liability in accordance with § 1955.10(f)(1), (2), or (3) of this subpart.

(2) When the FmHA account is not satisfied and the borrower is not released from liability, the note(s) will be retained by FmHA.

(3) The servicing official will release the lien(s) of record, indicating that the debt was satisfied by surrender of security or that the lien is released but the debt not satisfied, whichever is

applicable. If the lien is to be released but the debt not satisfied, OGC will provide the type of instrument required to comply with applicable State laws.

(4) After release of the lien(s), the servicing official will return the following to the borrower:

(i) If borrower is released from liability, the satisfied note(s) and a copy of Form FmHA 1955–1 showing acceptance by the Government; or

(ii) If borrower is not released from liability, a copy of Form FmHA 1955–1 showing acceptance by the Government.

(5) For MFH loans, the State Director will cancel any interest credit and suspend any rental assistance. These actions will be accomplished by notifying the Finance Office unit which handles MFH accounts. In the interm the tenants will continue rental payments in accordance with their lease.

(6) Actions outlined in § 1955.18 of this subpart will be taken, as applicable

§ 1955.11 Conveyance of property to FmHA by trustee in bankruptcy.

(a) *Authority.* With the advice of OGC (and prior approval of the National Office for MFH, Community Programs, and insured B&I loans), the State Director within his/her authority is authorized to accept a conveyance of property to the Government by the Trustee in Bankruptcy, provided:

(1) The Bankruptcy Court has approved the conveyance;

(2) The conveyance will permit a substantial recovery on the FmHA debt; and

(3) FmHA will acquire title free of all liens and encumbrances except FmHA liens.

(b) *Fees and deed.* (1) FmHA may pay any necessary and proper fees in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of $300 for any loan type(s) other than Farmer Programs or $1,000 for Farmer Program loans, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in § 1955.5(d) of this subpart for payment of fees as recoverable costs.

(2) Conveyance may be by Trustee's Deed instead of a warranty deed. If upon advice of OGC it is determined a deed from any other person or entity (including the borrower) is necessary to obtain clear title, a deed from such person or entity will be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA account(s) as set forth in § 1955.18(e)(4) of this subpart.

(d) *Reporting.* Acquisition of property under this section will be reported in accordance with § 1955.18(a) of this subpart.

§ 1955.12 Acquisition of property which served as security for a loan guarantee by FmHA or at sale by another lienholder, bankruptcy trustee, or taxing authority.

When the servicing regulations for the type of loan(s) involved permit FmHA to acquire property by one of these methods, the acquisition will be reported in accordance with § 1955.18(a) of this subpart.

§ 1955.13 Acquisition of property by exercise of Government redemption rights.

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 USC § 2410) may be waived without consideration. If a State law right of redemption exists and may be sold, it will not be disposed of for less than its value.

§ 1955.14 [Reserved]

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; and when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area:

(a) *Authority.*—(1) *Loans to individuals.* The District Director is authorized to approve or disapprove foreclosure and accelerate the account.

(2) *Loans to organizations.* (i) The State Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA secured debt does not exceed the loan approval authority of the State Director; and I&D, Shift-in-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

(ii) For all other organization loans, foreclosure will not be initiated without prior approval of the Administrator. The State Director will obtain OGC's opinion on the steps necessary to foreclose the loan, and forward the appropriate problem case report, a statement of essential facts, his/her recommendation, a copy of the OGC opinion, and the borrower's case file to the Administrator, Attn: Assistant Administrator (appropriate loan division) with a request for authorization to initiate foreclosure.

(b) *Problem case report.* When foreclosure is recommended, the servicing official will prepare Form FmHA 1955–2 for Farmer Programs or SFH loans, Exhibit A of this subpart for MFH loans, or Exhibit A of FmHA Instruction 1951–E (available in any FmHA office) for other organization loans. For loans other than housing, Community Programs, and insured B&I, the recommendation of the County Committee must be included. If chattel security is also involved, Forms FmHA 455–1, "Request for Legal Action"; 455–2, "Evidence of Conversion"; and 455–22, "Information for Litigation"; as applicable to the case, will be prepared in accordance with the respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA loan servicing regulations have been taken and all required notices given to the borrower.

(1) *Appraisal.* The market value of the property may be estimated in completing the problem case report unless there are one or more prior liens other than current-year real estate taxes. Where such prior liens are involved, an appraisal report reflecting market value in existing condition will be included in the case file as a basis for determining the Government's prospects for financial recovery through foreclosure.

(2) *Recommendation for deficiency judgment.* If the debt will not be satisfied by the foreclosure, the borrower's financial situation will be assessed to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the applicable problem case report. For SFH loans

subject to recapture of subsidy, the debt includes total interest credit granted and principal reduction attributed to subsidy in addition to unpaid principal and interest. However, a deficiency judgment will not be recommended in a SFH case to recapture subsidy or where the borrower was granted a moratorium provided the borrower faithfully tried to meet loan obligations. In crediting security value against indebtedness, credit will be given first to interest, principal and recoverable costs and then to recapture of subsidy.

(c) *Submission of problem case.* The servicing official will submit the completed problem case docket to the official authorized to approve the foreclosure (approval official). Before approval of foreclosure and acceleration of the account, the approval official is responsible for review of the problem case report to see that all items are complete and that all required servicing actions have been taken and all required notices given the borrower. The narrative portion of the report should provide complete information on the borrower's financial condition, deficiency judgment in case the debt is not satisfied by the foreclosure, and other pertinent background items. The approval official will approve or disapprove the foreclosure, or make a recommendation and refer the case to the National Office, if not within his/her approval authority. If foreclosure is not approved, the case will be returned to the originating office with instructions for further servicing. Problem case submission is as follows:

(1) *For loans to individuals.* The County Supervisors will submit the case to the District Director.

(2) *For loans to organizations.* The District Director will submit the case to the State Director along with a proposed liquidation and management plan covering the time the foreclosure is in process. The State Director will obtain the advice of OGC if required in connection with the type of loan being liquidated.

(d) *Approval of foreclosure.* When foreclosure is approved, it will be handled as follows:

(1) *Prior lien (s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA loan(s), either settling the prior lien or foreclosing subject to it. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibit B or Exhibit C of this subpart (available in any FmHA office) to be signed by the official who approved the foreclosure. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official, and the hearing officer identified in the notice according to Subpart B of Part 1900 of this chapter. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(i) Where monetary default is involved, the account may be accelerated immediately after approval of foreclosure.

(ii) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(iii) If borrower obtained the loan while a civilian, entered military service after the loan was closed, the FmHA has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(3) *Offers by borrower after acceleration of account.* After the account is accelerated, the servicing official will accept no payment for less than the upaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State Supplement is issued to specify this requirement. If payments are *mistakenly* accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or convenant in the real estate instruments will result and FmHA may proceed as though no such payment had been made. The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). The approval official will decide whether or not the borrower's offer will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer from the borrower is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. In all cases the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be advised when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on a SFH loan. When granting interest credit in such a case:

(i) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(ii) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(iii) For MFH loans with rental assistance, after acceleration and any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim the tenants will continue rental payments in accordance with their lease.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be forwarded to the Finance Office by the approval official requesting a statement of account

including all loans being foreclosed. For SFH loans subject to recapture of subsidy, a request should be placed in the "Remarks" section of Form 450–10 that the total interest credit granted and principal reduction attributed to subsidy be shown. When an official statement of account is not required for foreclosure proceedings, account balances and subsidy information may be obtained through the Inquiry Station of the Finance Office.

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed.

(6) *Petition in bankruptcy filed by borrower after acceleration of account.*

(i) When bankruptcy is filed after an account has been accelerated, the foreclosure action must be suspended until:

(A) The bankruptcy case is *dismissed* or *closed* (a discharge of debtor does not close the case);

(B) An Order lifting the automatic stay is obtained from the Bankruptcy Court; or

(C) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(ii) The State Director will request the assistance of OGC in obtaining the Order(s) described in paragraph (c)(6)(i)(B) of this section.

(e) *Referral of case.* If the borrower fails to satisfy the account during the period of time specified in the acceleration notice, and no appeal is pending, the foreclosure process will continue:

(1) If the District Director is the approval official, he/she will forward the case file with all pertinent documents and information concerning the foreclosure action and appeal, if any, to the State Director for completion of the foreclosure.

(2) If the State Director is the approval official, or in cases referred by the District Director under paragraph (e)(1) of this section, the State Director will forward to OGC the case file and all documents needed by OGC to process the foreclosure. A State Supplement will be issued, with the advice and assistance of OGC, to reflect the make-up of the foreclosure docket. Since foreclosure processing varies widely from State to State, each State Supplement will be explicit in outlining step-by-step procedures. At the time indicated by OGC in the foreclosure instructions, Form FmHA 1951–6, "Borrower Account Description Flag," will be prepared and distributed according to the FMI advising the Finance Office to flag the borrower's account indicating foreclosure action is pending (FAP). After referral to OGC, further actions will be in accordance with OGC's instructions for completion of the foreclosure. If prior approval of the Administrator is obtained, nonjudicial foreclosure for monetary default may be handled as outlined in a State Supplement approved by OGC without referral to OGC before foreclosure.

(f) *Completion of foreclosure.*—(1) *Foreclosure advertisement for organization loans subject to Title VI of the Civil Rights Act of 1964.* The advertisement for foreclosure sale of property subject to Title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other similary that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later. The purchaser will be required to sign Form FmHA 400–4, "Assurance Agreement," if the property will be used for its original or similar purposes.

(2) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in § 1955.5(d) of this Subpart. Costs will be charged to the borrower's account as recoverable costs unless otherwise directed by OCG.

(3) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA 1962–20, "Notice of Judgment," will be completed and distributed according to the FMI. This will enable the Finance Office to establish the judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

(4) *Gross investment.* The gross investment is the sum of the following:

(i) The unpaid balance of one of the following, as applicable:

(A) In States with nonjudicial foreclosure, the borrower's FmHA account balance reflecting secured loan(s) and advances; and where State law permits, unsecured debts; or

(B) In States with judicial foreclosure, the judgment account established as a result of the foreclosure judgment in favor of FmHA.

(ii) All recoverable costs charged (or to be charged) to the borrower's account in connection with the foreclosure action and other costs which OGC advises must be paid from proceeds of the sale before paying the FmHA secured debt, including but not limited to payment of real estate taxes and assessments, prior liens, legal fees including U.S. Attorney's and U.S. Marshal's, and management fees; and

(iii) If a SFH loan subject to recapture of interest credit is involved, the total amount of subsidy granted and principal reduction attributed to subsidy.

(5) *Amount of Government's bid.* Except as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid.

(6) *Bidding.* The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings provide for someone other than an FmHA employee to enter the Government's bid. When the State Director determines attendance of an FmHA employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid made will result in the property being sold for less than the bid authorized in paragraph (f)(5) of this section.

(i) When FmHA is the senior lienholder, only one bid will be entered, and that will be for the amount authorized by the State Director.

(ii) When FmHA is not the senior lienholder *and* OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, the State Director may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, the State Director's

instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

(g) *Reports on sale and finalizing foreclosure.* Immediately after a foreclosure sale at which the State Director has designated a person to bid on behalf of the Government, the servicing official will furnish the State Director a report on the sale. The State Director will forward a copy of this report to OGC and, for MFH loans, to the National Office. Based on OGC's instructions, a State supplement will provide a detailed outline of actions necessary to complete the foreclosure.

§§ 1955.16–1955.17 [Reserved]

§ 1955.18 Actions required after acquisition of property.

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will prepare and distribute Form FmHA 1955–3, "Advice of Property Acquired," or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," according to the FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. The date of acquisition will be the date the deed to the Government is recorded for a voluntary conveyance; the date of the foreclosure sale; or for chattels, the date the bill of sale (and title, if applicable) is executed transferring ownership to FmHA. Form FmHA 1955–3 or Form FmHA 1965–19 will be submitted promptly without waiting for the final report on sale from OGC where required. The State Director will assign an advice number to the property and complete distribution according to the FMI. For MFH loans, the State Director will forward a copy of Form FmHA 1965–19 to the National Office for monitoring purposes. For MFH projects with rental assistance, Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," must be attached to Form 1965–19 indicating the status of the rental assistance while the property is in inventory.

(b) *Existing lease.* If property acquired by FmHA is under an existing written lease, a copy of the lease will be attached to Form FmHA 1955–3 or Form FmHA 1965–19. Any oral lease in effect will be reduced to writing on Form FmHA 1955–20, "Lease of Real Property." The Finance Office will establish a lease account in the lessee's name. If an existing lease if terminated by foreclosure, a new lease may be considered pursuant to § 1955.66 of Subpart B of Part 1955 of this chapter, except for MFH property for which leasing as a project is generally not authorized.

(1) The servicing official will notify the lessee in writing that the Government has acquired the former lessor's rights under the lease and direct the lessee to remit all payments to FmHA. Receipts for collections will read: "Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (lessee's name)." All lease proceeds collected will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(2) Payments under an existing lease which were due and payable *before* the date the property is acquired will be applied to any unsatisfied balance on the FmHA account. If there is a surplus, the Finance Office will forward a refund check payable to the former borrower to the County or District Office for delivery to the former borrower.

(3) Payments under an existing lease which are due and payable *after* the date the property is acquired will be applied to the lease account.

(c) *Existing management agreement.* For MFH, if a property is being managed prior to acquisition on behalf of the borrower, the State Director will request the assistance of the National Office in determining if the agreement should be cancelled or extended. In any event, management services should be obtained as soon as possible in accordance with § 1955.65 of Subpart B of Part 1955 of this chapter.

(d) *Inventory account.* The Finance Office will establish an inventory account under the Advice Number assigned by the State Director. The value of the property entered into the inventory account will be the lesser of market value as of the date acquired (less outstanding liens if the property was acquired subject to any liens) or the gross investment as defined in § 1955.15(f)(4) of this subpart, excluding SFH subsidy granted and principal reduction attributed to subsidy.

(e) *Credit to the borrower's account or foreclosure judgment account.*

(1) *For SFH accounts.* When FmHA acquired the property, the account will be satisfied unless:

(i) In a voluntary conveyance case where the debt exceeds the market value of the property and the borrower is *not* released from liability, in which case the account credit will be the market value (less outstanding liens if any); or

(ii) In a foreclosure where the bid is less than the account balance and a deficiency judgment will be sought for the difference, in which case the account credit will be the amount of FmHA's bid.

(2) *For all types of accounts other than SFH.* When FmHA acquired the property, the account credit will be as follows:

(i) In a voluntary conveyance case:

(A) Where the market value of the property equals or exceeds the debt or where the borrower is released from liability for any difference, the account will be satisfied.

(B) Where the debt exceeds the market value of the property and the borrower is *not* released from liability, the account credit will be the market value (less outstanding liens, if any).

(ii) In a foreclosure, the account credit will be the amount of FmHA's bid *except* when incremental bidding as provided for in § 1955.15(f)(6)(ii) of this subpart was used, in which case the account credit will be the maximum bid that was authorized by the State Director.

(3) *For all types of accounts when FmHA did not acquire the property.* The sale proceeds will be handled in accordance with applicable State laws with the advice and assistance of OGC, including remittance of funds, application of the borrower's account credit, and disbursement of any funds in excess of the amount due FmHA.

(4) *In cases where FmHA acquired security property by means other than voluntary conveyance or foreclosure.* In these cases, such as conveyance by a bankruptcy trustee or by Court Order, the account credit will be as follows:

(i) If the market value of the acquired property equals or exceeds the debt, the account will be satisfied.

(ii) If the debt exceeds the market value of the acquired property, the account credit will be the market value.

(f) *Unsatisfied account.* Unsatisfied account balances will be settled in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) or the account will be reclassified to collection-only by submitting Form FmHA 404–1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," or for MFH, Form FmHA 1944–54, "Multiple Family Housing Change of Borrower Name/Case Number/Project Number/Loan Number," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this chapter.

(g) *Deficiency judgment.* When a deficiency judgment is to be sought, the

State Director will initiate action pursuant to § 1962.49 of Subpart A of Part 1962 of this chapter. When a judgment is obtained, the State Director will prepare and distribute Form FmHA 1962–20 which will establish a judgment account to be serviced pursuant to § 1962.49(e) of Subpart A of Part 1962 of this chapter. For MFH cases, the State Director should contact the MFH Unit in the Finance Office for instructions on altering Form 1962–20 to the requirements of the Automated Multiple Family Housing Account System (AMAS). If attempts to obtain a judgment are not successful, the remaining debt will be settled or serviced pursuant to § 1951.7 of Subpart A of Part 1951 of this chapter.

§ 1955.19 [Reserved]

§ 1955.20 Acquisition of chattel property.

Every effort will be made to avoid acquiring chattel property by having the borrower or FmHA liquidate the property according to Subpart A of Part 1962 of this chapter and apply the proceeds to the borrower's account(s). Methods of acquisition authorized are:

(a) *Purchase at the following types of sale:*

(1) Execution sale conducted by the U.S. Marshal, sheriff or other party acting under Court order to satisfy judgment liens.

(2) FmHA foreclosure sale conducted by the U.S. Marshal or sheriff in States where a State Supplement provides for sales to be conducted by them.

(3) Sale by trustee in bankruptcy.

(4) Public sale by prior lienholder.

(5) Public sale conducted under the terms of Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security," the power of sale in security agreements or crop and chattel mortgage, or similar instrument, if authorized by State Supplement.

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens *and* the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA in order to accept voluntary conveyance of chattels is not authorized.

(1) *Offer.* The borrower's offer of voluntary conveyance will be made on Form FmHA 1955–1. If it is determined the conveyance offer can be accepted, the borrower will execute a bill of sale itemizing each item of chattel property being conveyed and will provide titles to vehicles or other equipment, where applicable.

(2) *Acceptance of offer and release from liability.* Before accepting an offer to convey chattels to FmHA, the concurrence of the State Director must be obtained. When chattel security is voluntarily conveyed to the Government and the borrower and cosigner(s), if any, are to be released from liability, the servicing official will stamp the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability". The servicing official is authorized to sign the release of liability statement except when the FmHA debt secured by the chattels less their market value exceeds $25,000, the release of liability statement must be signed by the Administrator. Form FmHA 1955–1 will be executed by the servicing official showing acceptance by the Government, and the satisfied note(s) and a copy of Form FmHA 1955–1 will be furnished to the borrower.

(3) *Release of lien(s).* When an offer has been accepted as outlined in paragraph (b)(2) of this section, the servicing official will release any liens of record which secured the satisfied indebtedness.

(4) *Rejection of offer.* If it is determined an offer of voluntary conveyance will not be accepted, the servicing official will indicate on Form FmHA 1955–1 that the offer is rejected, execute the form, and furnish a copy to the borrower.

(c) *Attending sales.* The servicing official will:

(1) Attend all sales described in paragraph (a)(5) of this section unless an exception is authorized by the State Director because of physical danger to the FmHA employee or adverse publicity would be likely.

(2) Attend public sales by prior lienholders when the market value of the chattel property is significantly more than the amount of the prior lien(s).

(3) Obtain the advice of the State Director on attending sales described in paragraphs (a) (1), (2), and (3) of this section.

(d) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA 440–21, "Appraisal of Chattel Property."

(e) *Abandonment of security interest.* The State Director may authorize abandonment of the Government's security interest when chattel property, considering costs of moving or rehabilitation, has no market value and obtaining title would not be in the best interest of the Government.

(f) *Bidding at sale.*

(1) The servicing official is authorized to bid at sales described in paragraph (a) of this section. Ordinarily, only one bid will be made on items of chattel security unless the State Director authorizes incremental bidding. Bids will be made only when no other party bids or when it appears bidding will stop and the property will be sold for less than the amount of the Government's authorized bid. When the State Director determines attendance of an FmHA employee might pose physical danger, a written bid may be submitted to the party holding the sale. The bid(s) will be the lesser of:

(i) The market value of the item(s) less the estimated costs involved in the acquisition, care, and sale of the item(s) of security; or

(ii) The unpaid balance of the borrower's secured FmHA debt plus prior liens, if any.

(2) Bids will not be made in the following situations unless authorized by the State Director:

(i) When chattel property under prior lien has a market value which is not significantly more than the amount owed the prior lienholder. If FmHA holds a junior lien on several items of chattel property, advice should be obtained from the State Director on bidding.

(ii) After sufficient chattel property has been bid in by FmHA to satisfy the FmHA debt; prior liens, and cost of the sale.

(iii) When the sale is being conducted by a lienholder junior to FmHA.

(iv) At a private sale.

(v) When the sale is being conducted under the terms of Form FmHA 455–3, "Agreement for Public Sale by Borrower."

(g) *Payment of costs.* Costs to be paid by FmHA in connection with acquisition of chattel property will be paid as outlined in § 1955.5(d) of this subpart as recoverable costs.

Note.—Payment of other lienholders' debts in connection with voluntary conveyance of chattels is not authorized.

(h) *Reporting acquisition of chattel property.* Acquisition of chattel property will be reported by use of Form FmHA 1955–3 prepared and distributed in accordance with the FMI.

§ 1955.21 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the

community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.22 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

§§ 1955.23–1955.49 [Reserved]

§ 1955.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0109.

Subpart B—Management of Property

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by the Farmers Home Administration (FmHA) after abandonment by the borrower.

(b) Management of real and chattel property which is in FmHA's inventory.

(c) Management of real and chattel property which was security for a guaranteed loan liquidated by FmHA (or which FmHA is in the process of liquidating).

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

(a) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

(b) *Contracting officer (CO).* CO means an FmHA employee designated to enter into or administer contracts and make related determinations and findings. Only the CO and his/her designated representative are authorized to conduct official business with the contractor in administration of a contract.

(c) *Custodial property.* Borrower-owned real property and improvements which serve as security for an FmHA loan, having been abandoned by the borrowers, and of which FmHA has taken possession.

(d) *Government.* The United States of America, acting through the FmHA, U.S. Department of Agriculture.

(e) *Inventory property.* Real and chattel property and related rights to which the Government has acquired title.

(f) *Loans to Individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Land Conversation and Development (LCD), Economic Opportunity (EO), Operation (OL), Emergency (EM), and Economic Emergency (EE) whether to individuals or entities, herein referred to as Farmer Programs (FP) loans and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

(g) *Loans to organizations.* Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use) Grazing Associations); Business and Industrial (B&I) to both individuals and groups, Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individual and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

(h) *Nonrecoverable costs.* Costs incurred after Government acquisition of title to the property and charged to an inventory account.

(i) *Office of the General Counsel (OGC).* The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

(j) *Recoverable costs.* Costs charged to a borrower's account paid or incurred prior to Government acquisition of the property.

(k) *Servicing official.* For loans to individuals as defined in paragraph (f) of this section, the servicing official is the County Supervisor; for all other types of loans except insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

(l) *Suitable property.* Property that can be used to carry out the objectives of an FmHA loan programs with financing provided through that program. Inventory housing property located in an area whose designation has been changed from rural to nonrural and which is otherwise suitable property will be considered as if it were still in a rural area.

(m) *Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in paragraph (a) of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

(n) *Unsuitable property.* Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this chapter. It may be an otherwise-suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) The State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program

Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(b) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(c) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

§ 1955.55. Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State Supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for it care or sale, it will not be considered abandoned so long as it is adequately secured and maintained, and the case will be handled in accordance with § 1872.17 of Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1, paragraph XVII), or § 1965.75 of Subpart B of Part 1965 of this chapter. If the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1995.10 of Subpart A of Part 1955 of this chapter.

(b) *Taking security property into FmHA custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals, if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1995.15 of Subpart A of Part 1955 of this chapter, unless the borrower can be located and voluntary liquidation accomplished.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this Chapter.

(ii) If the unpaid loan balance plus recoverable costs exceed the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services and obtaining audits of the borrower's accounts will be handled in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that that foreclosure be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody. Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the State Director.

(d) *Costs and income.* Expenditures will be charged to the borrower's account as recoverable costs. Income from the property will be remitted according to FmHA Instructions 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Payment for advances made by FmHA while the property is

owned by the borrower will be made by preparation of SF–1034, "Public Voucher for Purchases and Services Other than Personal," for taxes, assessments, utilities, other similar costs, or Form FmHA 120–10, "Solicitation, Quotation, Purchase Order, Inspection, and Invoice," for securing the property, maintenance, essential repairs, and management services obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office). In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be prepared and distributed according to the Forms Manual Insert (FMI) for payment according to FmHA Instruction 2024–P (available in any FmHA office).

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed action does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§§ 1955.57–1955.59 [Reserved]

§ 1955.60 Inventory real property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of Part 1955 of this chapter.

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

Advice and assistance will be obtained from OGC when eviction from realty or dispossession of chattel property action is necessary. Where State laws permit and *OGC has given authorization,* eviction may be effected through State courts rather than Federal courts. In those cases, a State Supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this Chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State Supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list of the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted

according to FmHA Instruction 1951–B (available in any FmHA office) and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA loan account, if any.

(iii) To the borrower, if whereabouts is known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs; or, if necessary, payment may be made by use of Form FmHA 120–10 to contract for its removal.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State Supplement outlining the method to be followed which will comply with applicable State laws.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitable for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as "suitable" or "surplus." Properties acquired under the CONACT which are originally classified as suitable may be reclassified as surplus because of physical damage which occurs or change in economic conditions which affect its suitability for program purposes; and, if not sold within 3 years after acquisition, it must be declared surplus. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Housing property.* Property which secured housing loans will be classified as "suitable" or "unsuitable" except for MFH property acquired by voluntary conveyance when the value was less than the debt and the borrower was *not* released from liability, which must be classified and disposed of under the CONACT provisions. Location, size, design, possible health and safety risks to occupants, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise suitable dwelling as unsuitable simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made suitable, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as suitable may be reclassified as unsuitable if physical damage occurs which is not economically feasible to repair. Where a SFH property is situated on land in excess of a minimum adequate site as defined in §1944.11 of Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum adequate site for another dwelling. It is not intended to classify an otherwise-suitable dwelling as unsuitable solely because if is situated on more than a minimum adequate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum adequate site for another dwelling, the property may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(c) *Authority for determining suitability.*— (1) *County Supervisor.* The County Supervisor will determine suitability of SFH and farm property, with the advice of the District Director or State Director if the County Supervisor is uncertain of the proper classification.

(2) *District Director.* The District Director will assist the County Supervisor in determining suitability of SFH and farm property as provided in paragraph (c)(1) of this section.

(3) *State Director.* The State Director will determine suitability of all types of property other than farm or SFH with the recommendations of the District Director and will make the determination on farm or SFH property when requested to do so.

§ 1955.64 Securing, maintaining, and repairing inventory property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. Substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in Exhibit C, Paragraph 3(b) (1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policies.* Repair policies for various property types are:

(1) *SFH.* SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s), landscaping, driveways, walks, and other site development in order to have a desirable property. Exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale, or when the property is likely to be vandalized before it can be sold. Unsuitable property which does not meet the "decent, safe, and sanitary" (DSS) standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter will be repaired to meet those standards when economically feasible; otherwise, the restrictions on occupancy as set forth in § 1955.116 of Subpart C of Part 1955 of this chapter will apply. To be economically feasible, repairs should increase the expected "as is" price by at least the cost of the repairs.

(2) *MFH.* MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in "as is" condition. Property which does not meet the DSS standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter is subject to the occupancy restrictions set

forth in § 1955.116 of Subpart C of Part 1955 of this chapter.

(3) *Farm property.* Only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place in saleable condition. Conservation of soil, water, and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS). Chattel property will be managed as outlined in § 1955.80 of this subpart.

(4) *Property other than housing and farms.* Each property will be evaluated individually to determine whether repairs should be made or the property offered for sale "as is." The State Director will obtain advice from the appropriate division in the National Office as necessary in making these determinations.

(b) *Program authority.* (1) The County Supervisor and District Director have program authority to approve expenditures for securing, maintaining, and repairing inventory properties in an aggregate amount not to exceed $15,000 per property. If expenditures in excess of $15,000 per property are necessary and are economically feasible, the servicing official may request additional program authority from the State Director, outlining the purpose(s) for which the additional monies will be spent.

(2) The State Director or any member of State Office staff duly designated by the State Director, has unlimited program authority to approve expenditures in connection with inventory property.

(c) *Contracting authority.* All contracts for securing, maintaining, and repairing inventory property will be handled in compliance with FmHA Instruction 1955–D (available in any FmHA office), subject to the limitations assigned to each position in FmHA Instruction 2024–A (available in any FmHA office). Costs incurred under this section will be charged to the inventory account as nonrecoverable costs.

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority.*—(1) County Supervisor. The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure an individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection or repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties, and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66(d) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of a MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," Subject to FmHA's approval.

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024–A (available in any FmHA office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for a MFH project within the contracting authority outlined in FmHA Instruction 2024–A (available in any FmHA office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for

management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitations for State Office staff outlined in FmHA Instruction 2024–A (available in any FmHA office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specifications of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparor or his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA Instruction 1955–D (available in any FmHA office).

(4) *Costs.* Costs incurred in management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form FmHA 120–10 or SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property, costs will be charged to the inventory account as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of Form FmHA 120–10 and Form FmHA 2024–1 prepared and distributed according to the FMIs.

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

§ 1955.66 Lease of real property.

When inventory real property, other than MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee of FmHA on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart.

(a) *Authority to approve lease of property.*— (1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of FmHA.

(2) *Inventory property.*—(i) *SFH.* The County Supervisor may approve the lease of single-family dwellings.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this Chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* The County Supervisor may approve the lease of farm property. Special Stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops. Rental payment will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property. Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to the impact on the environment, preservation of land for agricultural purposes as required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property. The Administrator may issue directives (available in any affected FmHA office) restricting the leasing of property which could be used to produce agricultural products determined to be in surplus supply. Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as an eligible applicant for purchase of the property (if property is suitable for program purposes) and ability to preserve the property. Every effort will be made to lease farm property to family-size farmers. When family-size farmers are not available or interested in leasing the farm, larger-than-family-size farmers may be considered. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necesary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is

the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Special Stipulations in to the lease in accordance with the FMI for Form FmHA 1955–20, "Lease of Real Property." The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly accounted for and collecting the lease money.

(2) *SFH property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus 1/12 of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will be leased for market rent for that type property in the area.

(4) *Mineral leases.* The consideration for mineral leases will be what is typical in the area for the type activity proposed. Before approval of a lease for minerals with bonus rentals, the servicing official will make a survey of similar leases and contact the State Director for guidance, subject to the provisions set forth in paragraph (a)(2)(iii) of this section.

(d) *Property in flood or mudslide hazard area.* Inventory property located in an area identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(e) *Lease with option to purchase.* For inventory property *only*, a lessee may be given the option to purchase. Terms of the option will be set forth as part of the lease in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value. A lease with option to purchase suitable farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price.

(f) *Costs.* The cost of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this subpart will be charged to the borrower's account as recoverable costs; and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(g) *Security deposit.* A security deposit in at least the amount of 1 month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposits will be required and the amount of the deposit with advice from the State Office staff if requested. Security deposit will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and held by the Finance Office until the leasing official determines to return or otherwise to dispose of the security deposit. The Finance Office Property Accounting Unit will be requested by memorandum to return the deposit to the servicing office for delivery to the lessee; or, if the deposit is to be retained by FmHA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate. For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," prepared according to the FMI must be forwarded to the Finance Office for every tenant from whom a deposit is required. A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. ____, formerly owned by _____.

(2) If security deposits are no longer to be required and there are outstanding deposits which should be refunded, requests will be handled as they would have been prior to acquisition of the property.

(h) *Lease form.* Form FmHA 1955–20, prepared according to the FMI, or other form approved by OGC, will be used by FmHA to lease property. The lease will be prepared, executed, and distributed according to the FMI depending on whether it is custodial of inventory property. On receipt of a lease of inventory property, the Finance Office will establish a lease account in the lessee's name.

(i) *Lease income.* Lease proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(1) *Custodial property.* The proceeds from lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC will be consulted as to the procedure to be followed in each State and instructions will be given in a State Supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

(j) *Termination of lease of inventory property.* When a lease is terminated; or when the property is sold before expiration of the term shown on the lease submitted to the Finance Office, the servicing official will notify the Finance Office of the termination and the effective date of termination according to the FMI for Form FmHA 1955–20.

§ 1955.67 Payment of liens.

(a) If real estate was acquired subject to a lien, the FmHA official who approved the acquisition will authorize the payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024–P (available in any FmHA office) by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and process SF–1034 and Form FmHA 2024–1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

§ 1955.68 Payment of taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A State Supplement may be issued with the advice of OGC to cover individual State laws. The servicing official shall notify the appropriate taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advise that claims for taxes, if applicable, during the Government's ownership should be billed to FmHA at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable property.* When property is classified as suitable for program purposes, the servicing official will prepare SF–1034 and submit Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienhoder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified as surplus, taxes will be paid as outlined in paragraph (a) of this section.

(c) *Unsuitable housing property.* When property is classified as unsuitable for program purposes and the value is limited to the extent that taxes which accure before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 Insurance.

Insurance in force at the time property is acquired will not be cancelled; however, no additional premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area *and* operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparation of SF–1034 and submission of Form FmHA 2024–1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of acquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as provided in paragraph (a) of this section. If, however, the prior lienholder's mortgage requires the borrower to carry insurance, FmHA may provide the required insurance if necessary to prevent foreclosure by the prior lienholder.

§ 1955.70 Inspection of property.

The servicing official shall inspect property as necessary to protect the Government's interest. Farm property will be inspected at least annually to determine if adequate measures are in effect to conserve the soil, maintain its fertility, and control erosion. Inspection will be made in connection with travel for other purposes, wherever possible, and documented in the inventory file.

§ 1955.71 Vandalism or theft.

(a) *Reporting.* Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director with a copy to the Regional Office of the USDA Office of Inspector General (OIG).

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC in coordination with OIG. The State Director after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this subpart. Repairs of damage to custodial property will be limited as outlined in § 1955.55(c) of this subpart and obtained as outlined in § 1955.55(d) of this subpart.

§ 1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

§§ 1955.73–1955.79 [Reserved]

§ 1955.80 Management of inventory chattel property.

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 60 days must be approved in writing by the State Director. Normally, chattel property will not be leased, except as provided in paragraph (c) of this section.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955–D (available in any FmHA office).

(b) *Contracting for services.* Services such as transportation, care, storage, and harvest of crops will be obtained by use of Form FmHA 120–10 in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(c) *Lease of chattel property.* Chattels which are essential to the operation of a farm, such as bulk milk tanks, pumps, and center-point sprinkler may be leased with the real property when a farm is to be leased. The lessee will be responsible for maintenance and repairs during the lease term. Costs of repairs will be limited to those essential to place the equipment in operational condition to effect lease of the farm. When a lessee cannot or will not make needed repairs, the servicing official will contact the State Director for guidance on economic feasibility.

(d) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Losses of inventory chattel property will be

recorded on Form FmHA 462–1, "Record of the Disposition of Security Property," and maintained in the case file. Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955–50, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part. Sales will also be recorded on Forms FmHA 462–1 in the inventory file.

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.82 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State Supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83–1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0110.

Subpart C—Disposal of Inventory Property

Introduction

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property.

§ 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When the property is of a nature that it is suitable to enable an eligible applicant for one of Farmers Home Administration's (FmHA) loan programs to meet the objectives of that program, preference will be given to eligible applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type of loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: a dwelling which secured an Emergency loan may be sold as a Single Family Housing (SFH) unit if suitable for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rental Rural Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

§ 1955.103 Definitions.

As used in this subpart, the following apply:

(a) *Auction sale.* A public sale in which property is sold to the highest bidder in open verbal competition.

(b) *Approval official.* The FmHA official having loan and grant approval authority auhorized under Subpart A of Part 1901 of this Chapter.

(c) *Closing agent.* An attorney or title insurance company designated to close loans according to Part 1807 of this chapter (FmHA Instruction 427.1, available in any FmHA office.)

(d) *CONACT or CONACT PROPERTY.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

(e) *Credit sale.* A sale in which financing is provided to an applicant for the purchase of inventory property.

(f) *Decent, safe, and sanitary housing (DSS).* Standards required for the sale of Government acquired SFH, MFH, and LH structures acquired pursuant to the Housing Act of 1949. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements.

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical, and sewage disposal systems, and

(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this Chapter.

(g) *Eligible terms.* Terms prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting the eligibility requirements set forth for the respective programs.

(h) *Ineligible terms.* Credit terms offered the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is determined unsuitable (housing) or surplus (other than housing) for program purposes. Loans made on ineligible terms are classified as "Other Real Estate (ORE)" and are serviced accordingly.

(i) *Inventory property.* Property for which title is vested in the Government and which secured an FmHA loan or which was acquired from another Agency for program purposes.

(j) *Market value.* The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(k) *Negotiated sale.* A sale in which there is a bargaining of price and/or terms.

(l) *Organization property.* Property for which the following loans were made is considered organization

property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-in-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

(m) *Participating broker.* A duly licensed real estate broker who has executed a listing agreement with FmHA.

(n) *Regular FmHA sale.* Sale made by other than sealed bid auction or negotiation by FmHA employees or real estate brokers. Regular FmHA sales are made at market value unless the price is administratively reduced.

(o) *Safe.* No hazard exists on property which would likely endanger the health or safety of occupants or users.

(p) *Sealed bid sale.* A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

(q) *Suitable property.* Property that can be used to carry out the objectives of an FmHA loan program with financing provided through that program. Inventory housing property located in an area whose designation has been changed from rural to nonrural and which is otherwise suitable property will be considered as if it were still in a rural area.

(r) *Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in paragraph (d) of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

(s) *Unsuitable property.* Property acquired to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this chapter. It may be an otherwise suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program requirements and available resources.

(1) The State Director may redelegate, in writing, any authority delegated to him/her in this subpart, unless it is specifically excluded. These redelegation are authorized to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff, and to District Directors and County Supervisors.

(2) The District Director may redelegate in writing any authority delegated to him/her in this subpart to an Assistant District Director or District Loan Specialist.

(3) The County Supervisor may redelegate in writing any authority delegated to him/her in this subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified.

(b) *Responsibility.* (1) National Office Program Directors are responsible for reviewing and providing guidance to State, District, and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and for insuring compliance with FmHA regulations. For organization property, the State Office is responsible for approval of inventory property sales.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The approval official has the authority to accept or reject bids or offers for inventory property, with the final sale price to coincide with loan approval limitations.

Consolidated Farm and Rural Development Act (CONACT) Real Property

§ 1955.105 Real property affected (CONACT).

Sections 1955.106–1955.108 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership FO; Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); CF; WWD; RC&D; WS; Association Recreation; EOC; Rural Renewal; Water Facility; B&I; Irrigation and Drainage; Shift-in-land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations.

§ 1955.106 Sale of suitable property (CONACT).

CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to eligible applicants in accordance with FmHA regulations that apply to the appropriate loan program.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," as posted is the date the property is offered for sale. If an eligible applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be in accordance with § 1955.130 of this subpart.

(c) *Price.* Property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale.

(d) *Credit sale procedure.* A credit sale to eligible applicants will be processed as follows:

(1) Form FmHA 1955–45, "Standard Sales Contract-Sale of Real Property By the United States," will be used to document the offer and acceptance for regular FmHA sales. When more than one acceptable offer is received during business hours on the same day, the order in which they will be considered will be decided by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval

of credit. "Back-up" offers will be retained in case the first offer processed cannot be closed.

(2) The interest rate will be the interest rate for the type loan being made which is in effect on the date of approval shown on Form FmHA 1940–1, "Request for Obligation of Funds."

(3) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(4) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously *must be* the same as for an initial loan except that:

(i) Form FmHA 1955–49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of the General Counsel (OCG) will be used.

(ii) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(5) When the transaction is closed, the responsible FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," according to the FMI.

§ 1955.107 Sale of surplus property (CONACT).

Surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for 3 years must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible terms. The basis for this redetermination must be documented in the running record.

(a) *Rates and terms.* Surplus property will be offered for cash or on ineligible terms of not less than a ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for all other surplus property will be the current Farmer Program ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a down payment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as ORE loans.

(b) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. The State Director will determine the method of sale, the minimum acceptable sale price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for the current percentage.]

Equally acceptable sealed bid offers will be decided by lot.

(c) *Negotiated sale.* If no acceptable bid is received either from a sealed bid sale or at a public auction, the State Director may sell the property at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. The rates and terms offered through negotiation will be within the limitations of paragraph (a) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955–46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less than ten percent (10%) of the negotiated price in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to FmHA plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for the current percentage.]

Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval official may accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other party except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising will be ordered by means of Standard Form 1143, "Advertising Order," in accordance with FmHA Instruction 2024–F (available in any FmHA office). Standard Form 1034 "Public Voucher for Purchases And Services Other Than Personal" will be used to obtain other purchases and services. In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be submitted for payment in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(d) *Sale through real estate brokers.* The State Director may authorize the use of real estate brokers to sell surplus CONACT real property at the market value in accordance with § 1955.130 of this Subpart only after the conditions outlined in this paragraph have been met. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees;

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and

(3) Any negotiations have been terminated.

§ 1955.108 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Forms FmHA 431–2, "Farm and Home Plan," or FmHA 1930–1, "Balance Sheet" FmHA 1930–2, "Cash Flow Statement", and FmHA 1930–3, known as the "Coordinated Financial

Statement" (CFS)," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application including financial information required for the respective loan program.

(b) *Form of payment.* Payments at closing will be made in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA.

(c) *Farm real property.* Upon acceptance by the approval official, the County Supervisor or District Director will provide the closing agent with the necessary information to close the sale.

(d) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Forms FmHA 1955–45 or FmHA 1955–46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(e) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's down payment.

(f) *Closing and reporting sales.* Title clearance, loan closing, and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955–49, in accordance with § 1955.141(a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955–50 in accordance with the FMI.

(g) *Classification.* Credit sales on ineligible terms will be classified as ORE loans and serviced accordingly.

(h) *State Supplements.* A State Supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the advice and approval of OGC.

§ 1955.109 [Reserved]

Rural Housing (RH) Real Property

§ 1955.110 Sales of real estate that secured RH loans (housing).

Sections 1955.111—1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under Section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

§ 1955.111 Property repair (housing).

(a) *Suitable property.* Suitable property will be secured, maintained, and repaired in accordance with § 1955.64 of Subpart B of Part 1955 of this chapter.

(b) *Unsuitable property.* Sufficient maintenance to retain or enhance the visual appeal of the property will be performed provided it is economically justified. When economically feasible, repairs will be made prior to offering the property for sale unless a prospective purchaser has indicated an interest in buying the property "as is" or the County Supervisor or District Director documents that the property would likely be vandalized prior to sale. If the property is not repaired to meet DSS standards, the advertising requirements and deed restriction provisions outlined in § 1955.116 of this subpart apply; and it will immediately be offered for sale "as is." If the property is not sold within 120 days, or if the State Director determines a regular sale is not feasible, the structure may be offered for sale by sealed bid or auction or as chattel, to be removed from the site, in accordance with § 1955.122 of this subpart. If no offer is received, the structure(s) may be removed by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office) and the site offered for sale.

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with § 1955.114 and § 1955.115 of this Subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method of sale is used. For MFH, this method will *always* be used unless another method is authorized by the Assistant Administrator for Housing.

(b) *Real estate brokers.* The services of real estate brokers for regular sales will be used as provided for in § 1955.130 of this subpart in any County Office with 5 or more SFH properties in inventory at any one time during the calendar year. The use of real estate brokers by County Offices having less than 5 SFH properties in inventory at any one time during the calendar year is optional by the State Director if staffing and workload permit sales directly by FmHA. When broker services for SFH are used, the FmHA office will not conduct direct sales for the listed property but will refer inquiries to the broker or list of participating brokers unless an acceptable written offer has been received on a property prior to the time it has been determined available for sale and listed with brokers. Brokers may only be used for MFH with authorization of the Assistant Administrator for Housing.

(c) *Sealed bid or auction.* If the State Director determines that *unsuitable* SFH properties have been given adequate market exposure and that diligent sales efforts, including use of real estate brokers, have not produced buyers, he/she may authorize sale by sealed bid or public auction. *Suitable* SFH property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorizes the use of the sealed bid or auction method. These authorities may not be redelegated. Indiscriminate use of these methods of sale could adversely affect other properties located in a subdivision. Therefore, the decision to use sealed bid or auction sale methods to dispose of SFH units located in a subdivision must address the number of dwellings to be sold by these methods, the suitability of the entire subdivision for further FmHA financing, and the effect of such sales on the surrounding borrowers. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

§ 1955.113 Price (housing).

Real property will be offered or listed for its market value, as adjusted by any administrative price reductions provided for in this section. That market value will be based on the condition of the property at time it is made available for sale. However, when a Section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or the market value, less administrative price reductions, if any

(a) *SFH price reduction.* If SFH property has not sold after being actively marketed for at least 120 days, the County Supervisor or District Director may administratively reduce the price by an amount not to exceed five percent (5%) if deemed to be in the best interest of the Government or reappraise the property if additional market data indicates this action is warranted. Subsequent price reductions not to exceed 5% per reduction may be made in periods of not less than 120 days each. Administrative price reductions may be made without changing the SFH appraised value. Reduction(s) will be documented in the running record. Active written offers, otherwise acceptable except for price, will be retained and accepted in order of highest price if equal to or greater than the reduced price.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions of price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

§ 1955.114 Sales steps for suitable property (housing).

After repairs, if any, are completed, suitable property will be offered for sale as outlined in this section. The appraisal should be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40, for SFH property, or other appropriate notice for MFH property, will be prepared. Suitable property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorizes another method. If the State Director determines that suitable properties have been given adequate market exposure and that diligent sales efforts including the use of real estate brokers have not produced purchasers, he/she may request the Assistant Administrator for Housing to authorize sale by sealed bid of public auction.

(a) *Single family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property for regular sale or list it with real estate brokers for sale under the provisions of § 1955.112 of this subpart. Properties will be offered or listed by use of Form FmHA 1955–40, unless FmHA has on hand a signed offer to purchase a specific property. The date the form is posted or listed with participating brokers is the effective date that the offer for sale has begun and the date it is mailed to participating brokers is the effective date of listing. Offers and listings will provide for sales on both eligible or ineligible terms. However, all suitable SFH property will be available for purchase by eligible SFH applicants *only* for the first 30 days from the date of the initial offering or listing, and for the first 30 days from the date of any reduction in price. During this 30-day period, offers will be accepted from others and held until the beginning of the business day following the 30-day period when they will be considered along with all other offers received that business day. If not sold during the 30-day period, the property may then be purchased by either eligible or ineligible buyers on a first-come first-served basis. However, for written offers received during business hours on the same day, eligibles will be given first priority, then cash offers will take precedence over offers requiring credit. Among cash offers or offers requiring credit on ineligible terms, an offer higher than the listed price will be given preference. Preference will be given to a cash offer which is at least ——*

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

(For offers requiring credit on eligible terms, no preferences will be given for an offer higher than the listed price. An offer from an eligible applicant which is higher than the listed price will be treated as equally acceptable with other offers from eligibles and sold for the listed price.) Selection of equally acceptable offers in any category (eligible or ineligible) received the same business day will be made by lot. Credit sales to eligible applicants will be in accordance with the provisions of Subpart A of Part 1944 of this chapter. Sales to ineligibles will be for cash or as credit sales on ineligible terms as outlined in § 1955.118 of this subpart. Offers for less than the listed price may be held until the price has been reduced administratively to the offer price or the property is reappraised, whichever occurs first. The lesser offers will be considered as received on the date of the price reduction.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include the sale price and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director. The sale date will be set to allow adequate time for advertising and review of applications. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type of loan being offered will be considered. Offers will be place in a receptacle and one offer drawn. Award will be made to the offeror drawn. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, the selection of the successful offeror was by lot and therefore is not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator for Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible applicant meeting the respective program requirements. Any other method of sale must receive the prior written authorization of the Assistant Administrator for Housing.

(c) *Single family inventory converted to MFH.* Written offers by non-profit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD–622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A–6 of Subpart E of Part 1944 of this chapter, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant

Administrator for Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suitable for the SFH program, it may be offered for sale as a SFH unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to an eligible RH borrower on *eligible terms only*—not for cash or on ineligible terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

§ 1955.115 Sales steps for unsuitable property (housing).

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40 for SFH property, or other appropriate notice for MFH property, will be prepared.

(a) *Single family housing.* Sales steps will be the same as for suitable SFH property, as provided in § 1955.114(a) of this subpart, except that sales must be for cash or credit on ineligible terms as provided in § 1955.118 of this subpart. If an unsuitable SFH property has not sold after 120 days from being offered for sale or listed with brokers, consideration should be given to using a sealed bid or auction sale method. Use of the sealed bid or auction method without attempting a regular sale may be considered in special circumstances; e.g., where structures have been substantially destroyed by fire with the remaining value being only in the land. Special circumstances may also indicate that the structures should be sold as chattel (salvage) when authorized by the State Director. Sealed bid sales of unsuitable SFH property should be completed and closed within 90-days of the State Director's authorization to use this method. Auction sales should be completed and closed within 120 days of the State Director's authorization to use this method. The advertising requirements and deed restrictions of § 1955.116 of this subpart apply to unsuitable properties which do not meet FmHA DSS standards.

(b) *Multiple-family housing.* Sales steps will be the same as for suitable MFH property as provided in § 1955.114(b) of this subpart except that sale must be for cash or credit on ineligible terms as set forth § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell unsuitable MFH property, authority to use that method of sale must be requested from the Assistant Administrator for Housing. Inventory files including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review.

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

(a) *Notices and advertising.* If the inventory housing property has a single-family dwelling or a MFH unit which does not meet DSS standards as defined in § 1955.103(f) of this subpart, any "Notice of Real Property For Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

The structure presently on this property does not meet the "Decent, Safe, and Sanitary Housing" standards as defined by the Farmers Home Administration. Prior to being used for residential purposes, the structure must be restored or repaired to:

(1) Be structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and

(4) Meet the Thermal Performance Standards for existing construction as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations.

(b) *Sales agreements.* If a housing structure in inventory does not meet DSS standards, the Forms FmHA 1955–45 or Form FmHA 1955–46 used in conjunction with the sale must indicate the type of deficiencies that exist and must contain the following clause:

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed to the purchaser will contain a covenant binding the purchasers and the property which will restrict the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards as outlined in Exhibit D, of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. § 1480(e).

(c) *Quitclaim deed.* The following or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the quitclaim deed for properties with dwellings which do not meet the definition of decent, safe, and sanitary:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. § 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems and meets the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as an equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect.

(d) *Release of restrictive clause.* A State Supplement outlining the procedure for releasing the DSS covenant will be issued with the advice and approval of OGC.

§ 1955.117 Processing credit sales on eligible terms (housing).

The following provisions apply to all credit sales on eligible terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales.

Contract acceptance is normally made prior to processing form FmHA 410–4 "Application for Rural Housing Assistance (Non Farm Tract)," for SFH property with the provisions that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being extended will be followed in making credit sales on eligible terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 5 percent of the purchase price as a cash down payment unless otherwise waived by the Administrator under § 1955.149 of this subpart. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restriction specified by the respective program requirements.

(c) *Approval.* Form FmHA 1940–1 will be used to approve a credit sale even though no obligation of funds is involved.

(d) *Down payment.* When a down payment is made, it will be collected at closing, identified by advice number, purchaser's name and case number, and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* The interest rate will be the interest rate for the type credit being extended that is in effect on the date the asssistance is approved on Form FmHA 1940–1.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed by in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on ineligible terms:

(a) *General.* The provisions of § 1955.117(a) and (c) of this subpart also apply to sales on ineligible terms. However, the following modification on instruments, if applicable, will be made and initiated by both the applicant and the approval official:

(1) On the promissory note, any covenants relating to graduation to other credit, personal occupancy, and restrictions on leasing will be deleted by lining through and will be initiated by the obligor(s).

(2) On the security instrument (mortgage or deed of trust) the covenants relating to graduation to other credit, personal occupancy, and restrictions on lease will be deleted by lining through and will be initialed by the mortgagor(s).

(b) *Down payment.* Down payment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office).

(c) *Interest rate.* The ineligible SFH interest rate will be charged on all credit sales of SFH property on ineligible terms. The Section 515 RRH interest rate plus ½ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for interest rates.

(d) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(i) *SFH.* (A) When a purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(B) For purchasers who do not meet the criteria in paragraph (d)(i)(A) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(ii) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(f) *Reporting:* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(g) *Classification.* Credit sales on ineligible terms will be classified as ORE loans and serviced accordingly.

§ 1955.119 Payment of discount points (housing).

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a nonFmHA loan, the State Director may authorize the payment by FmHA of not more than three discount points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will not be paid to reduce the interest rate to

be paid by the purchaser. The payment will be deducted from the funds to be received by FmHA at closing.

§ 1955.120 [Reserved]

Chattel Property

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122–1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days after acquisition, assistance will be requested as outlined in § 1955.143 of this subpart.

(a) *Regular sale.* Chattels may be sold by FmHA employees at market value to eligible applicants. Form FmHA 440–21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(b) *Auctions.* Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction conducted at a facility that is widely advertised and that is held on a regularly scheduled basis. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(c) *Sealed bid sales.* Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[* Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

(d) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[* Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955–47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on neotiated sales and to insure compliance with State laws.

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this Chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[* Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed five years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440–1 (available in any FmHA office). Forms FmHA 431–2 or CFS, Form FmHA 440–32, "Request for Statement of Debts and Collateral," or any other financial statement considered appropriate may be used to show financial capability.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer will be documented by Form FmHA 1955–46, or by Form FmHA 1955–45 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title.* Title will be transferred to a purchaser in accordance with § 1955.141(b) of this subpart.

(d) *Reporting sale.* Sales will be reported in accordance with § 1955.142 of this subpart.

(e) *Reporting and disposal of inventory property not sold.* Refer to §§ 1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form FmHA 440–21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale of Form FmHA 1955–45 or Form FmHA 1955–46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§§ 1955.125–1955–.126 [Reserved]

Use of Contractors To Dispose of Inventory Property

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128—1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instructions 1955–D and 2024–A (available in any FmHA office) are applicable for procurement of the nonpersonal services.

§ 1955.128 Appraisers.

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the

Assistant Administrator for Housing when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision will be based on availability of comparables, capability and availability of personnel and the number and type properties (such as large farms and business property) requiring valuation. Contract appraisers should be "designated" (i.e., an appraiser designated by major appraisal organizations, such as Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers). Appraisers may not purchase property they have appraised.

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed by Exhibit C of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they are doing business.

(a) *Type of listings.* The State Director may elect to authorize use of open listings, exclusive listings, or combinations thereof during any calendar year as follows:

(1) *Exclusive listing contract.* An exclusive listing contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for a specified property or type property. Since the commission rate is pre-established, additional criteria will be specified in the solicitation together with the numerical weighting system to be used (usually 1–100). Responses will be calculated on the basis of criteria such as personal qualifications, membership in Multiple Listing Services, previous dealings with FmHA, advertising plans, innovative promotion methods proposed, and financial capability. The responsibilities of the broker under the exclusive listing contract exceed those of the open listing agreement.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed consistent with the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially in accordance with the example given in Exhibit B of this subpart (available in any FmHA office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property.

(b) *Listing notices.* Form FmHA 1955–40 will be used to provide brokers with notice of initial listing, withdrawals, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* Offers will be given priority in the order received; however, all offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Suitable SFH.* See § 1955.114(a) of this subpart.

(2) *Suitable MFH.* Offers will be considered from eligible applicants only.

(3) *Unsuitable SFH.* See § 1955.115(a) of this subpart.

(4) *Unsuitable MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.106 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale. However, other offers will be held by FmHA pending any administrative price reduction, prior sale, withdrawal, or expiration of offer.

(e) *Earnest money.* Earnest money in the amount specified in paragraph (e)(1) of this section will be collected when a sales contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single-family residence or multiple-family residence of 2 to 4 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

(f) *Commission.* The broker's commission is contingent on the closing of the sale and will not be paid until the sale is closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, the broker's salesperson(s), to persons living in his/her or salesperson's immediate household or to legal entities in which the broker or salesperson(s) have an interest. Commission will be paid at closing only if sufficient cash to cover the commission is paid by the purchaser. Otherwise the commission will be paid by the appropriate FmHA official completing a Standard Form 1034 and submitting Form FmHA 2024–1, for payment to be charged as a nonrecoverable cost to the inventory account. A uniform fee or commission schedule, by property type, will be established by the State Director within a given sales area and will not exceed commissions paid for similar types of services provided by the broker to other sellers of similar real property. (The percentage normally decreases as the value of the property increases over $100,000.) The State Director, without authority to redelegate, may authorize fixed amount bonuses for special-effort property, such as property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period where it is believed an added bonus will create additional efforts by the broker to sell the property.

Commissions for sealed bids procured through brokers may be authorized by the appropriate Program Assistant Administrator upon written request by the State Director.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Forms FmHA 1955–42 and FmHA 1955–43 (available in any FmHA office). In addition, all brokers participating in the sale of the property shall sign the nondiscrimination certification on Form FmHA 1955–45.

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA Instruction 2024–A (available in any FmHA office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* The commission to be paid is normally the customary auctioneer's fee for the area for the type of property being sold. Payment will be made in the same manner as provided for brokers in § 1955.130(f) of this subpart.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

§ 1955.132 [Reserved]

General

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA 400–4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to FmHA an acceptable Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All FmHA and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA, FmHA will reappraise the property. The reappraised value of the property will serve as the amount FmHA will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA is less than $500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made to eligible purchasers to correct defects.

§ 1955.135 Taxes on inventory real property.

Where FmHA owned property is subject to taxation, taxes will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Form FmHA 1955–45 or Form FmHA 1955–46. The purchaser will be responsible for paying all taxes due and payable after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessments for property improvements (water, sewer, curb and gutter, etc.) due and payable as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, taxes and assessments due to be paid by FmHA will be paid by voucher, if the local taxing authority will accept payment at that time, or will be deducted from the selling price. However, for eligible borrowers other than MFH who lack payment ability, FmHA may pay the prorated taxes and assessments by use of Standard Form 1034 and Form 2024–1, when later due and payable, in lieu of deduction from the selling price at closing.

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an enviornmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500–3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland, or Coastal Barrier Resources System (CBRS).*—(1)

Use restrictions. Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property in floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law, as determined by the FmHA official responsible for the conveyance. Applicable restrictions will be incorporated into quitclaim deeds in format similar to that contained in § 1955.116(c) of this subpart with the advice and approval of OCC. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA servicing official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released by the State Director. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will not be sold for residential purposes unless determined by the County Supervisor or District Director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants). Prior written notice of the specific hazard must be given to prospective purchasers. The notice will be prepared in accordance with the following:

(i) *Property offered for sale by FmHA.* The County Supervisor or District Director will inform prospective purchasers at the time of the first inquiry and in any notice of public sale that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location. The County Supervisor or District Director will also prepare and deliver a written notice to the prospective purchaser at the time the bid or offer to purchase is signed by the purchaser. The prospective purchaser will acknowledge the receipt of the notice. Exhibit A of this subpart (available in any FmHA office) may be used as a guide for preparing the notice and the acknowledgment. The acknowledgment will be placed in the County or District Office inventory file.

(ii) *Property offered for sale through real estate brokers or auctioneers.* If real estate brokers or auctioneers are engaged to sell inventory property, they must notify prospective purchasers in writing that the property is located in a special flood, mudslide hazard, or wetland area and specify any use restrictions resulting from this location.

(A) When sending Form FmHA 1955–40 or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

(B) After the prospective purchaser signs the acknowledgment, the broker or auctioneer will forward it to the County Supervisor or District Director, as appropriate, with Form FmHA 1955–45 of Form FmHA 1955–46.

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on eligible and ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in Exhibit C, Paragraph 3b (1) and (2) of Subpart G of Part 1940 of this chapter.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, *no* credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan of any other type of federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purposes of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA.

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (a)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (a)(3)(ii) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the FmHA official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See Subpart F of Part 1901 of this chapter for additional guidance.) To determine the former, the current listing of the Register is reviewed. To determine the latter, the State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historic/archeological importance or has apparent significant architectural features or is similar to other FmHA properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) When consultation is not required based upon the above criteria, the responsible FmHA official shall note in the inventory file the basic reason why no consultation was necessary. For example, the running record may indicate the property to be conveyed may be a standard, 10-year old, single family house, a check may have been made with a local historical society on a less obvious property or the property may have been previously cleared.

(3) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior. The State Office should be contacted for assistance in obtaining this

determination. The National Office Program Support Staff is also available to assist the State Office.

(4) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the FmHA official responsible for the conveyance must consult with the SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests. The Advisory Council on Historic Preservation must be consulted by the State Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(5) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidders or purchasers through a notice procedure similar to that in § 1955.137(a)(2) of this subpart.

§ 1955.138 Property subject to redemption rights.

Routine care and maintenance will be provided according to §1955.64 of Subpart B of this part to preserve and protect the property; however, repairs are limited to those essential to prevent further deterioration of the property and protect the Government's interest. Repairs and rehabilitation needed to return the property to program standards, either under contract by FmHA of financed with an FmHA loan, must be deferred until expiration of the redemption period. If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) Since property sold subject to redemption rights will be sold "as is," credit sale to eligible applicants is precluded unless the property fully meets FmHA standards for the applicable loan program "as is."

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provisions of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

§ 1955.139 Disposition of real property rights.

(a) *Easements or rights-of-way.* The State Director is authorized to convey easements or rights-of-way for roads, utilities and other appurtenances as follows:

(1) Easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, development rights, and agricultural and other lease interests will be sold with the surface land and will not be sold separately, except as provided in § 1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessee or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the property is appraised.

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property guidance will be requested from the National Office for all properties other than RHS projects. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of the property must not change its character from suitable to unsuitable or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110% of the portion of the outstanding loan prorated to the property released.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block of it is determined this will facilitate the sale.

§ 1955.141 Transferring title.

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director. This authority may not be redelegated. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where the funds are being disbursed by the closing agent the closing.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the County Supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH suitable real property sold to eligible applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and sewage systems are functional and adequate for property not being served by public water and sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to eligible applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter, respectively.

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

§ 1955.143 Report on inventory property not sold.

For any unsuitable or surplus real or chattel property not sold within 18 months (6 months for chattel) after acquisition the County Supervisor or District Director will send the inventory file, advertisments, and a summary of the facts covering the efforts to sell the property to the State Director for further guidance. If the property is not sold within an additional 6 months (3 months for chattel), the State Director will send the package to the appropriate Assistant Administrator for advice.

§ 1955.144 Disposal of surplus property to, through, or acquired from other Agencies.

(a) *Property which cannot be sold.* If unsuitable or surplus real or chattel property cannot be sold (or only token bids are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B, "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule B), " with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office.

(b) Urban Homesteading Program (UH). Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA single family residential properties sold through the HUD–UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration and the Secretary of Housing and Urban Development" dated October 2, 1981. (See Exhibit C of this subpart.)

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation or to make suitable property more suitable. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be unsuitable for program purposes due to location and where it is economically feasible to relocate the structure thereby making it suitable, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining unsuitable parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined unsuitable for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make otherwise unsuitable property suitable, if economically feasible.

§ 1955.146 Advertising.

(a) *General.* The success of any sales effort is highly dependent on vigorous advertising which covers the potential market. The primary means of advertisement available to the County Supervisor, District Director, or State Director are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notices using Form FmHA 1955–41, "Notice of Sale," "synopsis" advertising in accordance with § 1955.157 of FmHA Instruction 1955–D (available in any FmHA office), and notification of known interested parties. Other innovative means are encouraged, such use of a display board in the FmHA office with photographs and Form FmHA 1955–40 posted together to solicit applicant and broker interest; posting of Form FmHA 1955–41 at employment center; door-to-door distribution of the notice to apartment dwellers and advertisements in magazines or other periodical publications. An example of newspaper advertising is provided in Exhibit B of this subpart (available in any FmHA office). Advertisement costs

will be paid by using Standard Form 1143 and Form FmHA 2024–1. Appropriate FmHA officials will make sure that, where contractually required, brokers and auctioneers provide adequate, timely advertising. When property is being sold by FmHA or by use of open listings with brokers, it is the servicing official's responsibility to insure the adequate advertising of each property. A statement must be included in any advertising stating the amount of FmHA's preference for cash offers in conformity with the applicable sections of this subpart, depending on the type property being advertised.

(b) *Large-value and complex properties.* Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *Racial and socio-economic considerations.* In accordance with the policies set forth in § 1901.203(c) of Subpart E of Part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of existing racial or socio-economic patterns are reached.

(d) *Rejected application for SFH loan.* If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

§ 1955.147 Sealed bid sales.

Before the sealed bid sale, the appropriate FmHA official will determine and document the minimum sale price, if any, and whether or not credit will be offered. Credit may be offered to facilitate the sale; however, the term will *never* be longer than the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with an accompanying deposit of not less than ten percent (10%) of the bid in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. The bid will be considered delivered when actually received at the FmHA office in a sealed envelope marked as follows:

"SEALED BID OFFER

Date of Bid opening _____
FmHA Advice No. _____
Property Address or Location _____

(a) *Opening bids.* Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other FmHA employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

Otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955–46. The approval official will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the down payment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

(c) *Unsuccessful bids.* Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids.* Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA official approving the sale.

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted according to Form FmHA 1951–B (available in any FmHA office) for application to the General Fund. However, if a credit sale complying with the FmHA notice is an element of the offer and FmHA disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale of direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.107(c) of this subpart except that the established minimum sale price shall remain unchanged.

§ 1955.148 Auction sales.

Before an auction, the State Director, with advice of the National Office for organizational property, will determine and document the minimum acceptable price, if any, whether or not a credit sale will be offered and the minimum down payment; and whether an FmHA employee or contract auctioneer will conduct the auction sale. The State Director may authorize the use of a professional auctioneer if the value of the property or the complexity of the sale make it advisable, if no qualified FmHA employee will be available or if otherwise considered in the best interest of the Government. This will be handled by contract in accordance with FmHA Instructions 1955–D and 2024–A (available in any FmHA office). Chattel property may be sold at a public auction that is widely advertised and held on a regularly scheduled basis without solicitation. At the auction, successful bidders will be required to make a deposit of not less than ten percent of their bid in the form of cashier's check, certified check, postal money order or bank draft payable to FmHA or to the contracting auctioneer, if applicable. Cash and personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. The high bid will be reduced to writing on Form FmHA 1955–46. Where credit sales are to be allowed, all notices and publicity should provide for a method of prior approval of credit and the credit limit for

potential bidders. This may include submission of letters of credit of financial statements prior to the auction. When the highest bid is lower than the minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or, in turn, next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951–B. The bid deposit will be remitted *only* when the bidder defaults; otherwise, pursuant to agreement between the approval official and the purchaser, it will be applied to the closing costs or down payment, or will be deducted from the selling price in a cash sale. The closing will be conducted in accordance with the procedures prescribed in this subpart for cash sales or credit sales on ineligible terms according to the type property and program involved.

§ 1955.149 Exception authority.

(a) The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for such land.

§ 1955.150 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this Instruction to provide guidance to FmHA officials. State Supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

20. Section 1962.40 is amended by removing paragraph (a)(4), by redesignating paragraphs (a)(5) through (a)(8) as paragraphs (a)(4) through (a)(7) respectively, by removing paragraphs (c)(1)(i) and (c)(1)(ii), and by revising paragraph (c)(1) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(c) * * *

(1) When liquidation has been approved, the County Supervisor will accelerate all unmatured installments by using Form FmHA 455–21, except in cases referred to OGC for civil action. A notice of acceleration is not necessary if the notice has previously been given. However, when security is to be liquidated under the "Power of Sale" in the lien instrument without referral to OGC, the County Supervisor will use Form FmHA 455–21.

* * * * *

21. Section 1962.42 is amended by removing paragraphs (c)(7)(i) and (c)(7)(ii) and by revising paragraphs (a)(2), (b)(1), (b)(2), (b)(3), and (c)(7) to read as follows:

§ 1962.42 Repossession, care and sale of chattel security or EO property by the County Supervisor.

(a) * * *

(2) *Recording.* A list, dated and signed by the County Supervisor, of all security or EO property repossessed, except items on Form FmHA 455–4, will be maintained in the borrower's case file. Whenever the County Supervisor is transferred to another position or leaves FmHA or there is a change in jurisdiction, the District Director will give the succeeding County Supervisor, in writing, the names of such borrowers and a list of the property repossessed in the custody of the County supervisor and caretakers, its location, and the names and addresses of the caretakers.

(b) * * *

(1) *Livestock.* Care and feeding of livestock will be obtained by contract pursuant to FmHA Instruction 1955–D (available in any FmHA office). The value of animal products (such as milk) may constitute all or part of the contractor's quotation, and if this is desired, such a statement should be included in the solicitation. Possession of the livestock will be turned over to the contractor only after the contract is awarded using Form FmHA 120–10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice." If a contractor's services are needed for a longer period than is authorized in subparagraph (c)(4)(i) of this section, the State Director may authorize the County Supervisor to continue obtaining the necessary services for the time needed.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.* Property will be stored and cared for pending sale. Storage and necessary services may be obtained by contract using Form FmHA 120–10. Use of property by the contractor is not authorized.

(3) *Crops.* Form FmHA 120–10 will be used for obtaining services for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. Where a landlord is involved, written consent of the landlord should be obtained. If landlord consent cannot be obtained, where applicable, the circumstances should be reported to the State Director for advice.

(c) * * *

(7) *Payment of costs and prior lienholders.* If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this Subpart or to pay prior lienholders, such costs or prior liens will be paid by use of Form FmHA 120–10, Standard Form 1034, or Standard Form 1143, "Advertising Order," and Standard Form 1143a, "Memorandum Copy," for newspaper or publisher's invoice for newspaper advertising and Form FmHA 2024–1, "Miscellaneous Payment System," in accordance with FmHA Instructions 2024–F and 2024–P (available in any FmHA office). The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are not legally chargeable to the borrower, they may be paid as provided in this subpart, and charged to an account set up for the officials or other persons found responsible for them.

* * * * *

22. Section 1962.45 is revised to read as follows:

§ 1962.45 Reporting sales.

Form FmHA 1955–3, "Advice of Property Acquired," will be prepared and distributed according to the FMI when property is acquired by FmHA.

(Authorities: (7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942, 5 U.S.C. 301, Sec. 10, Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23; 7 CFR 2.70, 29 FR 14764, 33 FR 9850)

Dated: April 30, 1985.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 85–13576 Filed 6–6–85; 8:45 am]

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Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85–052]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, Sublette County and a portion of Lincoln County in Wyoming were designated as Class A, and the remainder of Wyoming was designated as Class Free. This document amends the regulations to designate the entire State of Wyoming as Class Free. This rule is necessary because it has been determined that the entire State of Wyoming meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the area in Wyoming redesignated as Class Free.

DATES: Effective Date: June 3, 1985. Written comments must be received on or before August 6, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movement from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Wyoming was divided into a Class Free Area and a Class A Area. Sublette County and a portion of Lincoln County were designated as Class A, and the remainder of Wyoming was designated as Class Free. The State of Wyoming has requested that the entire State be designated as Class Free.

To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). Sublette County and a portion of Lincoln County were designated as Class A rather than as Class Free because of the herd infection rate. A review of brucellosis program records establishes that the entire State of Wyoming meets the criteria for classification as Class Free. Therefore, it is necessary to designate all of Wyoming as Class Free.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Wyoming reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from an area in Wyoming.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 is revised to read as set forth below and the authority citations following all the sections in Part 78 are removed:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. In paragraph (a) § 78.20 "(Counties of Albany, Big Horn, Campbell, Carbon, Converse, Crook, Goshen, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sweetwater, Teton, Uinta, Weston, Fremont, Hot Springs, and Washakie, and that portion of Lincoln County south of a line beginning at the northwest quadrant of Sec. 1, T. 28 N., R. 121 W. extending east to the northeast quadrant of Sec. 1, T. 28 N., R. 116 W.)" is removed.

3. In paragraph (b) of § 78.20 "and Wyoming (Sublette County and that portion of Lincoln County not included as Class Free)" is removed and "and" is inserted before "West Virginia."

Done at Washington, D.C., this 3rd day of June 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–13764 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 78

[Docket No. 85–053]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, Flathead County in Montana was designated as Class A, and the remainder of Montana was designated as Class Free. This document amends the regulations to designate the entire State of Montana as Class Free. This rule is necessary because it has been determined that the entire State of Montana meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the area in Montana redesignated as Class Free.

DATES: Effective Date: June 3, 1985. Written comments must be received on or before August 6, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas I. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States of Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Montana was divided into a Class Free Area and a Class A Area. Flathead County was designated as Class A, and the remainder of Montana was designated as Class Free. The State of Montana has requested that the entire State be designated as Class Free.

To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the proceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). Flathead County, Montana, was designated as Class A rather than as Class Free because of the herd infection rate. A review of brucellosis program records establishes that the entire State of Montana meets the criteria for classification as Class Free.

Therefore, it is necessary to designate all of Montana as Class Free.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Montana reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from an area in Montana.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accodingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. In paragraph (a) of § 78.20 "(All counties except Flathead County)" is removed.

3. In paragraph (b) of § 78.20 "Montana, (Flathead County)," is removed.

Done at Washington, D.C., this 3rd day of June 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–13765 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–105–AD; Amdt. 39–5078]

Airworthiness Directives: British Aerospace (BAe) Viscount Model 700 Series and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection, replacement, and modification, as necessary, of certain components on British Aerospace, Aircraft Group, Viscount airplanes, to detect and prevent certain unsafe conditions. These conditions relate to components of the main undercarriage, and wing trailing edge member spar and liner assemblies. This action is taken to preclude failure of these components.

EFFECTIVE DATE: July 15, 1985.

ADDRESSES: The applicable service information specified in this AD may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. H.N. Wantiez, Standardization Branch, ARM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of inspections, replacements, and modifications which they have imposed on Viscount Model 700 and 800 series airplanes operated under registry of the United Kingdom to correct certain unsafe conditions which may exist.

The requirements presented in this AD are based on the notifications from the CAA in accordance with the bilateral agreement and are related to the following unsafe conditions:

A. Loss of braking or locking of the associated wheel during takeoff, landing, or taxiing. (Reference Preliminary Technical Leaflet (PTL) No. 90, BAe Pre-Mod Standard F.1323, BAe Modification F.1794 for all Model 800 Series).

B. Cracking of inner plane (wing) trailing edge member top boom (spar) assemblies on all Model 700 and Model 800 series airplanes. (Reference PTL 309 for all Model 700 Series and PTL 178 for all Model 800 Series Airplanes).

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive which requires the actions mentioned above was published in the **Federal Register** on January 17, 1985 (50 FR 3918). The comment period closed March 18, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

Currently, no U.S. registered airplanes will be affected by Paragraph A. of this AD; however, it is deemed necessary to ensure that this modification is incorporated on any applicable airplanes that may be imported.

It is estimated that 34 U.S. registered airplanes will be affected by Paragraph

B. of this AD, that it will take approximately 250 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $340,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Viscount Model 700 and 800 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace Viscount: Applies to Model 700 and 800 series airplanes, certificated in all categories, as indicated in each paragraph below. To prevent failure of certain components in the main undercarriage, and wing trailing edge member spar and liner assemblies, accomplish the following within the compliance time specified in each paragraph below, unless previously accomplished:

A. For all Model 800 series, pre-Modification F.1323 Standard, which are equipped with Dunlop AH.50961/2 Main Wheel Brake Units: Inspect, modify, and replace in accordance with Preliminary Technical Leaflet (PTL) No. 90 and Modification F.1794, both dated May 18, 1960, prior to the accumulation of 3,000 total landings. On those assemblies which have already achieved 2,750 landings, the requirements of PTL 90 and Modification F.1794 must be accomplished within 250 landings or 2 months, whichever occurs later, after the effective date of this AD.

B. For all Model 700 and 800 series, inspect the top boom/liner assemblies for cracks between station 132.85 and station 138 on all Model 700 series in accordance with PTL 309, Issue 2 dated December 10, 1979, and all Model 800 series in accordance with PTL 178, Issue 2 dated December 10, 1979, prior to the accumulation of 27,500 total landings. On those assemblies which have already achieved 27,250 or more total landings, initial inspections must be accomplished within 250 landings or 2 months, whichever occurs later, after the effective date of this AD. Repeat inspections at intervals not exceeding 2,000 landings or 12 months, whichever is sooner.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and modifications required by this AD.

This amendment becomes effective July 15, 1985.

Issued in Seattle, Washington, on May 31, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-13703 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ACE-02]

Alteration of Transition Area, O'Neill, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at O'Neill, Nebraska, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the O'Neill Municipal Airport, O'Neill, Nebraska, utilizing the O'Neill VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the O'Neill Municipal Airport, O'Neill, Nebraska, is being established utilizing the O'Neill VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at O'Neill, Nebraska, at and above 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 12313 of the **Federal Register** dated March 28, 1985, the Federal Aviation Administration published a notice of proposed rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at O'Neill, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

O'Neill, Nebraska

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the O'Neill Municipal Airport (latitude 42°28'15"N, longitude 98°41'15" W); within 3.5 miles each side of the O'Neill VORTAC 315° radial, extending from the 5.5 mile radius to 12 miles northwest of the VORTAC and within 3.25 miles each side of the O'Neill VORTAC 129° radial, extending from the 5.5 mile radius to 8.5 miles southeast of the VORTAC.

This amendment becomes effective at 0901 G.m.t. August 1, 1985.

Issued in Kansas City, Missouri, on May 29, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85–13707 Filed 6–6–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–ANE–05]

Amend the Chester, CT, 700 Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for aircraft executing a new RNAV Standard Instrument Approach Procedure (SIAP) to Runway 17 at the Chester Airport, Chester, Connecticut.

EFFECTIVE DATE: 0901 G.m.t., August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE–530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273–7139

SUPPLEMENTARY INFORMATION:

History

On February 26, 1985, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for Instrument Flight Rules aircraft executing a new RNAV Runway 17 Standard Instrument Approach Procedures (SIAP) to the Chester Airport, Chester, Connecticut (50 FR 7795).

Interested parties were invited to participate in this Rulemaking Proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in this Notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for Instrument Flight Rules aircraft executing a new RNAV Standard Instrument Approach Procedure (SIAP) to Runway 17 at the Chester Airport, Chester, Connecticut.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510 Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69, 49 CFR 1.47.

2. By amending § 71.181 as follows:

Chester, Connecticut Transition Area—[Amended]

After "VOR" line five insert:

"; and within that airspace bounded by a line to the northwest beginning at Lat. 43°25'30"N, Long. 72°35'10"W; to Lat. 43°27'20"N, Long. 72°38'30"W; and a line to the northeast beginning at Lat. 43°26'25"N, Long. 72°26'35"W; to Lat. 43°32'50"N, Long. 72°26'45" W."

Issued in Burlington, Massachusetts, on May 28, 1985.

Robert E. Whittington,

Director, New England Region

[FR Doc. 85–13708 Filed 6–6–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510]

Special Federal Aviation Regulation No. 38–2; Certification and Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments: (1) Specify and clarify the type of certificate and operations specifications an operator may be issued consistent with the scope and type of its operations; (2) specify and clarify the certification requirements the operator must meet with respect to each type of operation in order to be eligible to have a specified type of operation authorized in its operations specifications; (3) clarify the regulations with which an operator must comply in the conduct of the operations specified; (4) include provisions regarding Part 125 and other regulations which have been promulgated since the adoption of Special Federal Aviation Regulations (SFAR) No. 38 and eliminate provisions that relate to Part 123 and other regulations that are no longer applicable; (5) authorize certain operators of transport category airplanes having a maximum passenger seating configuration, excluding any required crewmember seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less to operate under the provisions of Part 121 rather than Part 135 when a specific authorization is obtained from the Administrator (the related "pass-through" provision of SFAR 39 is deleted); (6) require rotorcraft operations that may currently be subject to Parts 121 and 127 to be conducted under Part 135; and (7) include the substance of present Part 129

applicability in order to provide a comprehensive listing of certification and operations specifications requirements.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Bedore, Project Development Branch, Air Transportation Divisions, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 472-4621.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1985, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 85-3 (50 FR 4472). This notice proposed to revise SFAR 38 primarily to specify and clarify FAA requirements for operating certificates and for operations specifications for persons who operate under Federal Aviation Regulations Parts 121 and 135. The notice was issued to bring SFAR 38 up to date in view of changes in the regulations and in the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's continuing response to the sunset of the Civil Aeronautics Board.

This amendment updates SFAR 38 in light of changes since 1978 and clarifies those provisions in SFAR 38 that states which FAA regulations apply to a particular air carrier for the type of operation the air carrier is conducting in the areas summarized below. A fuller discussion of each area is contained in the preamble to NPRM 85-3.

One of the purposes of this amendment is to clearly define, for each type of operation (e.g., scheduled common carriage within the United States, all-cargo operations, scheduled common carriage outside the United States, etc.): (1) The type of certificate, (2) the certification requirements, (3) the operations specifications, and (4) the regulations within the applicable Parts of the FAR with which an operator must comply when conducting each type of operation.

As amended, SFAR 38-2 makes it clear that wherever the term "commuter air carrier" appears in Part 135 of the FAR, it shall be deemed to mean a holder of an "Air Carrier Operating Certificate" that is conducting scheduled passenger carrying operations with a frequency of operations of at least five round trips per week on at least one route between two or more points according to published flight schedules. This frequency of operations is a standard currently accepted by the industry and the FAA for air carrier certification and operation rules. However, this definition would not apply to Part 93 of the FAR. Further, a regulation that applies to a commuter air carrier will be deemed to mean a regulation that applies to scheduled passenger-carrying operations conducted under Part 135.

SFAR 38-2 allows the Administrator to authorize an air carrier who would otherwise be subject to Part 135 to elect to conduct its operations with transport category airplanes under Part 121. However, an air carrier is not allowed to operate airplanes subject to Part 121 under Part 135.

SFAR 38-2 does not reference § 135.2, and any air carrier conducting its operations under the "pass-through" provision is required to conduct its operations under Part 135, unless it receives authorization from the Administrator to conduct its operations under Part 121.

SFAR 38 is updated by adding provisions which reference Part 125 which became effective February 3, 1981, and deletes the provisions relating to Part 123 which was revoked effective January 1, 1983.

SFAR 38-2 requires rotorcraft operations that are now conducted under Part 121 or Part 127 to be conducted under Part 135. The amendment, in effect, suspends Part 127 and §§ 121.13 and 121.157(e), and requires all rotorcraft operations to be conducted under Part 135.

As amended, SFAR 38-2 includes the substance of the applicability of present Part 129 in order to provide for a comprehensive listing of certification and operations specifications requirements.

SFAR 38 as revised by this amendment will be effective until May 1, 1986, unless sooner superseded or revoked.

Comments on Proposed SFAR 38-2

During the comment period, the FAA received 15 comments. The limited number of comments received and the tone of the comments indicate overall substantial agreement with proposed SFAR 38-2. A few commenters recommended minor changes or raised questions about certain provisions of SFAR 38-2.

One commenter questioned whether the opening sentence of SFAR 38-2 which reads "Contrary provisions of Parts 121, 125, 127, 129, and 135 of the Federal Aviation Regulations notwithstanding," may create confusion. The "notwithstanding" clause is a carryover from original SFAR 38 and it does not appear to have caused the kind of confusion the commenter suggests.

Four commenters request that the phrase "passenger seating capacity" in proposed paragraphs 4(a) and 4(b) be changed to "passenger seating configuration" as it is in current SFAR 38 paragraphs 2 (a) and (b) and 3 (a) and (b). The reason is that the proposed wording would mean that if an aircraft has been certificated for a certain maximum seating capacity, that figure would be the compliance factor, rather than the number of installed passenger seats in the aircraft. The FAA did not intend to change the criteria for compliance and has, therefore, changed the language back to passenger seating configuration" as it appears in the provisions of present SFAR 38 cited above.

For consistency of langauge within SFAR 38-2 and also for consistency of application of the FAR, the term "passenger seating capacity" in paragraph 5(a), which relates to Part 125 has also been changed to passenger seating configuration" even though Part 125 (section 125.1(a)) presently uses "seating capacity." The FAA does not consider this a substantive change since Part 125 has been applied on the basis of seating "configuration" rather than seating "capacity."

One commenter objected to the phrase "certain procedures" used in Section 3 as being unclear. The commenter suggested changing "certain procedures" to "appropriate regulations." The FAA does not agree. The term "certain procedures" refers to procedures that may be included in operations specifications to reflect requirements imposed on a specific operator in addition to the Federal Aviation Regulations. Examples would include specific procedures that might be tied in with a deviation or an exemption approved for that carrier. The commenter also objected to the phrase "size of aircraft" in Section 3 as not being sufficiently specific. The commenter suggested changing "size of aircraft" to "seating and payload capacity." The commenter's point is valid and has been adopted by inclusion of a definition of "size of aircraft" in Section 6(c). Also, in Section 1(a) and in Section 3, the word "type" in reference to type of aircraft, has been changed to "class" to make it clear that the distinction intended is not between types of aircraft (e.g. B-727, DC-8, etc.) but rather between classes of aircraft (e.g. airplanes, rotorcraft, etc.).

One commenter suggests that the preamble statements regarding CAB sunset be updated to show that a finding of fitness is a continuing requirement under the sunset legislation and that the

Department of Transportation now has this function formerly handled by the CAB. The FAA agrees. The NPRM preamble was written before the 1984 amendments to the Airline Deregulation Act of 1978, (Pub. L. 98–443, October 4, 1984) which stipulated that DOT will continue the CAB function of determining fitness.

One commenter objects to the explanation in the preamble concerning confusion as to applicable regulations resulting from the sunset of the CAB. This commenter states that a FAA policy change, rather than confusion, was responsible for the FAA's requiring 21 carriers to shift from the supplemental rules of Part 121 to the domestic or flag rules of Part 121, as appropriate. This point was addressed in the preamble to the proposed revision of SFAR 38 as follows:

"It is the FAA's position that an air carrier certificated under current SFAR 38 in accordance with the rules of Part 121 must, if it is engaged in scheduled passenger operations, operate in accordance with the rules applicable to domestic or flag air carriers as required by § 121.3(a) or § 121.3(c) and be issued domestic and flag operations specifications. Furthermore, it is the FAA's position that an air carrier engaged in nonscheduled passenger-carrying operations must operate in accordance with the rules applicable to supplemental air carriers in accordance with § 121.3(e) and be issued supplemental operations specifications. The FAA has issued interpretive material to explain the correct application of these rules, but believes that the regulations should be clarified."

These 21 operators now have the appropriate operations specifications and have been brought in compliance with the applicable regulations in Part 121 so that this revision of SFAR 38 imposes no burden.

This commenter also thought that elimination of the "pass-through" provision in paragraph 2(d) of SFAR 38 would impose a similar burden. However, the inclusion of paragraph 4(b) as proposed allows persons operating transport category airplanes to obtain approval from the Administrator to conduct those operations under the apropriate provisions of Part 121. This provision is less limited than the original pass-through provision (which applied only to operations existing on December 1, 1978) and applies only when requested by the operator and approved by the Administrator.

Two commenters object to the definition of "commuter air carrier." One of the commenters seems to object to applying the term "commuter" to air carriers who are operating under Part 121 domestic rules, but who are operating propeller driven aircraft of less than 60 seats. Such operators consider themselves to be "regional" air carriers who compete equally with other types of air carriers. However, the definition of commuter air carriers does not apply to operations under Part 121 because it applies only to operations under Part 135 with aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

A second commenter objects to provisions in the definition of "commuter air carriers" that state that frequency of operations is "at least five round trips per week on at least one route between two or more points * * *" The commenter objects on the basis that the definition constitutes a public convenience and necessity requirement and that the authority domestically to issue a Certificate of Public Convenience and Necessity for domestic operations was terminated by Congress on January 1, 1982. In response, the FAA does not intend by this definition to create a public convenience and necessity requirement in the "commuter air carrier" definition. The definition has been used historically in Part 135 to refer to scheduled operations as opposed to non-scheduled. To preclude a change in the operations requirements prescribed in SFAR 38, the commuter air carrier route and frequency stipulation is needed in the SFAR 38–2 definition in order to continue to exclude those operators who may fly fewer than five round trips per week from certain commuter air carrier requirements prescribed in Part 135.

A commenter objected to the definition of "scheduled operations." According to the commenter, the definition would require charter operators to be issued domestic air carrier operations specifications if they were to contract for a series of public charters. The FAA does not agree that this definition includes legitimate charter operations. Scheduled operations by definition depart at a stated time and place and are readily available to the general public. While, on occasion, "charter" flights are "announced" in advance, the charter operator normally does not commit to having the flight operate unless a minimum load of passengers is booked in advance. Thus, the general public cannot depend upon a chartered flight maintaining a schedule (for example, there may be a last minute flight cancellation because not enough passengers signed up for the flight) as they can on a scheduled flight. An operator who attempts to hold itself out as a charter operator but who, in fact, announces regularly scheduled flights to the public would be considered a scheduled operator and would have to comply with the regulations for scheduled operations under Part 121 or Part 135, as appropriate.

Two commenters expressed concern that the definition of "air carriers" in section 6(c)(1) would require all indirect "air carriers" to have operating certificates and operations specifications under section 1(c) which states that "no person may operate without, or in violation of, a certificate and operations specifications issued under this SFAR."

While it is true, as these commenters point out, that the Federal Aviation Act of 1958 defines "air carrier" to include one who acts "indirectly" the FAA has never extended its air carrier regulations to persons who are legitimately engaged in indirect operations such as a bona fide freight forwarder. SFAR 38–2 does not treat indirect operators any differently than current SFAR 38 and so there is no substantive change. However, this does not mean that an indirect air carrier can avoid air carrier certification requirements if, in fact, that carrier is engaged in the operation of aircraft or exercises its authority over initiating, conducting, or terminating a flight or flights.

One commenter states that the application of Part 135 is somewhat open-ended with respect to rotorcraft having a passenger seating configuration of more than 30 seats or a maximum payload capacity of more than 7,500 pounds. The commenter states that in their responses to other rulemaking proposals concerning rotorcraft, such as Notice No. 85–8 (50 FR 10144, March 13, 1985), industry groups must now consider future operations of larger helicopters under Part 135. In response, the FAA notes that the proposal to require all sizes of rotorcraft to be operated under Part 135 is based on the recognition that there are significant deficiencies in Parts 121 and 127 that must be addressed before authorizing any rotorcraft operations under those rules. The issuance of special operations specifications is identified in the preamble of the proposal as an option to permit the operation of larger rotorcraft under Part 135. In the meantime, Exemptions Nos. 4109 and 4297 have been issued to two operators to permit the operation of BV–234 helicopters under Part 135. The FAA recognizes that additional rulemaking is needed to

adequately cover the operation of rotorcraft having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7 500 pounds. In the interim, since Part 135 does not presently address that size rotorcraft, operators of these rotorcraft will be issued special operation specifications which will provide for the appropriate level of safety required for that size aircraft. New paragraphs 4(d) and 5(d) are added to this SFAR to clarify this point, and to spell out what was intended in the NPRM.

Three commenters suggest changes which are beyond the scope of this notice of proposed rulemaking. As stated earlier in this notice and in the NPRM, this rulemaking updates and clarifies SFAR–38; it does not substantively revise the basic applicability of the affected parts. Therefore, these recommendations for substantive change beyond the scope of Notice 85–3 have not been considered in this rulemaking.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 38 as extended by SFAR 38–1 is June 1, 1985. There are numerous operating certificates issued under the provisions of SFAR 38, as amended. In order to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements, it is necessary that this amendment be effective as soon as possible. Therefore, I find that good cause exists for making this amendment effective in less than 30 days.

Economic Impact

The FAA evaluated the economic impact of this amendment. This amendment is not expected to cause an adverse economic impact on the regulated parties because it is essentially clarifying in nature. The findings of FAA's evaluation are summarized below and a copy of the regulatory evaluation is contained in the docket.

The rule: (1) Specifies and clarifies certification requirements and regulations operators must comply with in conducting specific operations, (2) includes regulations that have been promulgated and deletes references to regulations that have been withdrawn since the adoption of SFAR 38, and (3) suspends regulations that are no longer applicable.

As previously pointed out, it is the FAA's position that the current regulations require scheduled operations in airplanes with more than 30 passenger seats to be conducted under the domestic or flag air carrier rules. Therefore, as the result of this rule, there should be minimal economic impact on the approximately 21 carriers previously discussed. Accordingly, a full economic evaluation is not required. Notwithstanding the above position, an economic evaluation was performed. This evaluation reveals that a small net benefit will accrue to the affected carriers because costs that may result from having to comply with the domestic and flag rules would be more than offset by cost savings associated with relaxation of reserve fuel requirements.

SFAR 38–2 suspends Part 127 and requires all rotorcraft carriers currently operating under Parts 121 and 127 to conduct their operations under Part 135. Such a change is expected to enhance safety because Part 135 contains safety related requirements for rotorcraft not specified in either Part 121 or 127. This rule will not generate any additional costs to regulated parties. At present, only two carriers, under exemption authority, operate rotorcraft with a capacity in excess of 30 seats or a 7,500-pound payload under Part 135. These rotorcraft would normally be subject to the provisions of Part 121 or 127. Moreover, commuter operations with large rotorcraft currently do not appear feasible at locations where the geographical distribution of service points make rotorcraft operations viable.

Trade Impact Statement

The FAA finds that the amendment will have no impact on international trade.

Regulatory Flexibility Determination

The FAA finds that the amendment will have no consequential economic impact on small entities. Accordingly, the FAA finds that an initial regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Conclusion

For the reasons stated under the heading "Economic Impact," the FAA has determined that this document involves a rule which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Also, for the reasons stated under the heading "Trade Impact Statement and Regulatory Flexibility Determination," I certify that the rule will not have a substantial economic impact on a substantial number of small entities. The total projected impact of the amendment may be found in a copy of the regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Parts 121, 125, 127, 129, and 135

Air carriers, Aircraft, Airmen, Aviation safety, Air taxis, Air transportation, Certification requirements, Common carriers, Operations specifications.

The Amendment

In consideration of the above, SFAR 38 (14 CFR Parts 121, 125, 127, 129, and 135) is revised to read as follows:

1. The authority citation for SFAR 38–2 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

2. By revising SFAR 38 to read as follows:

Special Federal Aviation Regulation Number 38–2—Certification and Operating Requirements

Index

Section

1. Applicability.
(a)(1) Certificates.
(a)(2) Certification requirements
(a)(3) Operating requirements.
(b) Operations conducted under more than one paragraph.
(c) Prohibition against operating without certificate or in violation of operations specifications.
2. Certificates and foreign air carrier operations specifications.
(a) Air Carrier Operating Certificate
(b) Operating Certificate.
(c) Foreign air carrier operations specifications.
3. Operations specifications.
4. Air carriers and those commercial operators engaged in scheduled intrastate common carriage.
(a)(1) Airplanes, more than 30 seats/7,500 pounds payload, scheduled within 48 States
(a)(2) Airplanes, more than 30 seats/7,500 pounds payload, scheduled outside 48 States
(a)(3) Airplanes, more than 30 seats/7,500 pounds payload, not scheduled and all cargo.
(b) Airplanes, 30 seats or less/7,500 or less pounds payload.
(c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
(d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.
5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.

(a) Airplanes, 20 or more seats/6,000 or more pounds payload.
(b) Airplanes, less than 20 seats/Less than 6,000 pounds payload.
(c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
(d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.
6. Definitions.
(a) Terms in FAR.
(1) Domestic/flag/supplemental/commuter.
(2) ATCO.
(b) FAR references to:
(1) Domestic air carriers.
(2) Flag air carriers.
(3) Supplemental air carriers
(4) Commuter air carriers.
(c) SFAR terms.
(1) Air carrier.
(2) Commercial operator.
(3) Foreign air carrier.
(4) Scheduled operations.
(5) Size of aircraft.
(6) Maximum payload capacity.
(7) Empty weight.
(8) Maximum zero fuel weight.
(9) Justifiable aircraft equipment.

Special Federal Aviation Regulation Number 38–2

Contrary provisions of Parts 121, 125, 127, 129, and 135 of the Federal Aviation Regulations notwithstanding—

1. *Applicability.*

(a) This Special Federal Aviation Regulation applies to persons conducting commercial passenger operations, cargo operations, or both, and prescribes—

(1) The types of operating certificates issued by the Federal Aviation Administration;

(2) The certification requirements an operator must meet in order to obtain and hold operations specifications for each type of operation conducted and each class and size of aircraft operated; and

(3) The operating requirements an operator must meet in conducting each type of operation and in operating each class and size of aircraft authorized in its operations specifications. A person shall be issued only one certificate and all operations shall be conducted under that certificate, regardless of the type of operation or the class or size of aircraft operated. A person holding an air carrier operating certificate may not conduct any operations under the rules of Part 125.

(b) Persons conducting operations under more than one paragraph of this SFAR shall meet the certification requirements specified in each paragraph and shall conduct operations in compliance with the requirements of the Federal Aviation Regulations specified in each paragraph for the operation conducted under that paragraph.

(c) Except as provided under this SFAR, no person may operate as an air carrier or as a commercial operator without, or in violation of, a certificate and operations specifications issued under this SFAR.

2. *Certificates and foreign air carrier operations specifications.*

(a) Persons authorized to conduct operations as an air carrier will be issued an Air Carrier Operating Certificate.

(b) Persons who are not authorized to conduct air carrier operations, but who are authorized to conduct passenger, cargo, or both, operations as a commercial operator will be issued an Operating Certificate.

(c) FAA certificates are not issued to foreign air carriers. Persons authorized to conduct operations in the United States as a foreign air carrier who hold a permit issued under Section 402 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1372), or other appropriate economic or exemption authority issued by the appropriate agency of the United States of America will be issued operations specifications in accordance with the requirements of Part 129 and shall conduct their operations within the United States in accordance with those requirements.

3. *Operations specifications.*

The operations specifications associated with a certificate issued under paragraph 2 (a) or (b) and the operations specifications issued under paragraph 2 (c) of this SFAR will prescribe the authorizations, limitations and certain procedures under which each type of operation shall be conducted and each class and size of aircraft shall be operated.

4. *Air carriers, and those commercial operators engaged in scheduled intrastate common carriage.*

Each person who conducts operations as an air carrier or as a commercial operator engaged in scheduled intrastate common carriage of persons or property for compensation or hire in air commerce with—

(a) Airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds, shall comply with the certification requirements in Part 121, and conduct its—

(1) Scheduled operations within the 48 contiguous states of the United States and the District of Columbia, including routes that extend outside the United States that are specifically authorized by the Administrator, with those airplanes in accordance with the requirements of Part 121 applicable to domestic air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(2) Scheduled operations to points outside the 48 contiguous states of the United States and the District of Columbia with those airplanes in accordance with the requirements of Part 121 applicable to flag air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) All-cargo operations and operations that are not scheduled with those airplanes in accordance with the requirements of Part 121 applicable to supplemental air carriers, and shall be issued operations specifications for those operations in accordance with those requirements; except the Administrator may authorize those operations to be conducted under paragraph (4)(a) (1) or (2) of this paragraph.

(b) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in Part 135, and conduct its operations with those airplanes in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements; except that the Administrator may authorize a person conducting operations in transport category airplanes to conduct those operations in accordance with the requirements of paragraph 4(a) of this paragraph.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

5. *Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger*

operations, cargo operations, or both as a commercial operator.

Each person, other than a person conducting operations under paragraph 2(c) or 4 of this SFAR, who conducts operations with—

(a) Airplanes having a passenger seating configuration of 20 or more, excluding any required crewmember seat, or a maximum payload capacity of 6,000 pounds or more, shall comply with the certification requirements in Part 125, and conduct its operations with those airplanes in accordance with the requirements of Part 125, and shall be issued operations specifications in accordance with those requirements, or shall comply with an appropriate deviation authority.

(b) Airplanes having a maximum passenger seating configuration of less than 20 seats, excluding any required crewmember seat, and a maximum payload capacity of less than 6,000 pounds shall comply with the certification requirements in Part 135, and conduct its operations in those airplanes in accordance with the requirements of Part 135, and shall be issued operations specifications in accordance with those requirements.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in Part 135, and conduct its operations in those aircraft in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

6. *Definitions.*

(a) Wherever in the Federal Aviation Regulations the terms—

(1) "Domestic air carrier operating certificate," "flag air carrier operating certificate," "supplemental air carrier operating certificate," or "commuter air carrier" (in the context of Air Carrier Operating Certificate) appears, it shall be deemed to mean an "Air Carrier Operating Certificate" issued and maintained under this SFAR.

(2) "ATCO operating certificate" appears, it shall be deemed to mean either an "Air Carrier Operating Certificate" or "Operating Certificate," as is appropriate to the context of the regulation. All other references to an operating certificate shall be deemed to mean an "Operating Certificate" issued under this SFAR unless the context indicates the reference is to an Air Carrier Operating Certificate.

(b) Wherever in the Federal Aviation Regulations a regulation applies to—

(1) "Domestic air carriers," it will be deemed to mean a regulation that applies to scheduled operations solely within the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(1) of this SFAR.

(2) "Flag air carriers," it will be deemed to mean a regulation that applies to scheduled operations to any point outside the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(2) of this SFAR.

(3) "Supplemental air carriers," it will be deemed to mean a regulation that applies to charter and all-cargo operations conducted by persons described in paragraph 4(a)(3) of this SFAR.

(4) "Commuter air carriers," it will be deemed to mean a regulation that applies to scheduled passenger carrying operations, with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules, conducted by persons described in paragraph 4 (b) or (c) of this SFAR. This definition does not apply to Part 93 of this chapter.

(c) For the purpose of this SFAR, the term—

(1) "Air carrier" means a person who meets the definition of an air carrier as defined in the Federal Aviation Act of 1958, as amended.

(2) "Commercial operator" means a person, other than an air carrier, who conducts operations in air commerce carrying persons or property for compensation or hire.

(3) "Foreign air carrier" means any person other than a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(4) "Schedule operations" means operations that are conducted in accordance with a published schedule for passenger operations which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

(5) "Size of aircraft" means an aircraft's size as determined by its seating configuration or payload capacity, or both.

(6) "Maximum payload capacity" means:

(i) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(ii) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(A) Crew—200 pounds for each crewmember required by the Federal Aviation Regulations.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(7) "Empty weight" means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(8) "Maximum zero fuel weight" means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, or the approved Aircraft Flight Manual, or both.

(9) "Justifiable aircraft equipment" means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

This Special Federal Aviation Regulation No. 38–2 terminates May 1, 1986, unless sooner superseded or revoked.

Issued in Washington, D.C., on May 28, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-13735 Filed 6-4-85; 2:12 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Parts 20 and 100

[Docket No. 50580-5080]

Bureau Seal; Redesignation of CFR Part

AGENCY: Bureau of the Census, DOC.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is hereby redesignating Title 15, Code of Federal Regulations, Part 20, Seal of the Bureau of the Census, as Title 15, Code of Federal Regulations, Part 100. This change is being made to provide the Office of the Secretary of Commerce additional parts in Subtitle A of Title 15, Code of Federal Regulations, Parts 20–29.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Michael S. McKay, Chief, Organization and Management Systems Division, Bureau of the Census, (301) 763-7452.

SUPPLEMENTARY INFORMATION: Since this rule is related to agency management, it is not a rule within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that order. Accordingly, no preliminary or final Regulatory Impact Analysis has or will be prepared.

The Regulatory Flexibility Act does not apply to this rule because the rule is not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

Because this rule relates to agency management, it is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)). Therefore, it is being issued in final and is being made immediately effective upon publication.

The legal authority is Title 13, Section 3, United States Code.

List of Subjects in 15 CFR Part 100

Seals and Insignia.

15 CFR Part 20, in Subtitle B relating to the Seal of the Bureau of the Census is redesignated as Part 100.

Dated: May 23, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-13621 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM83-56-000]

Application for License Permit and Exemption From Licensing for Water Power Projects; Correction

June 4, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule that amends 18 CFR Part 4 that appeared at page 11,658 in the **Federal Register** of Monday, March 25, 1985 (50 FR 11,658). This action is necessary to correct typographical errors in designating paragraphs and cross references.

DATES: The final rule will become effective June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph H. Long, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-5555.

The following corrections are made in FR Doc. 85-6842, appearing on page 11,658 in the issue of March 25, 1935:

1. On page 11,681, in column three, "(d) *Notices of intent.*" is corrected to read" (c) *Notices of intent.*" and "(e) *Requirements for completing applications.*" is corrected to read "(d) *Requirements for completing applications.*"

2. On page 11,682, in column one, the reference to "paragraph (c)(2)(i)", which appears in the second and third full paragraphs is corrected to read "paragraph (d)(2)(i)".

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13788 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public that the current rate of interest to be charged or paid by Customs on applicable overpayments or underpayments of Customs duties is 13 percent. This rate is set by the Internal Revenue Service and is subject to change twice a year. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Accounting Division, Office of the Comptroller, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2596).

SUPPLEMENTARY INFORMATION:

Background

By T.D. 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), Customs advised the public, that, in order to implement two provisions of Pub. L. 98-573, the Trade and Tariff Act of 1984, interest on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established in 26 U.S.C. 6621 and 6622. This determination covers antidumping and countervailing duty payments, and increased or additional Customs duties determined to be due on a liquidation or reliquidation of an entry. In addition, T.D. 85-93 also stated that it has been determined that a uniform interest payment system should be established and that refunds pursuant to a court determination and payable under 28 U.S.C. 2644, and interest on overpayments and underpayments of estimated excise taxes determined at liquidation, shall be assessed at the rate prescribed under 26 U.S.C. 6621 and 6622.

Although T.D. 85-93 stated that the current semiannual interest rate may be obtained from the IRS or any Regional Customs Financial Management Office at any time, Customs received a suggestion that it regulary publish the current interest rate in the *Customs Bulletin* and **Federal Register** for the convenience of the importing public and

Customs personnel. Customs agrees that this would be beneficial. Accordingly, we are publishing this notice and will continue to publish future notices on a semiannual basis.

Action

The rate of interest for the period of January 1, 1985–June 30, 1985, is 13 percent. This rate will remain in effect until July 1, 1985, when it is subject to change.

Dated: May 31, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85–13753 Filed 6–6–85; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C–0113]

Chlorophyllin-Copper, Oil Soluble; Listing as a Color Additive for Use in Polymethylmethacrylate Bone Cement; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 23, 1984, for a regulation that provides for the safe use of chlorophyllin-copper complex, oil soluble, as a color additive for use in polymethylmethacrylate bone cement. This action responds to a petition filed by E.M. Industries, Inc.

DATE: Effective date confirmed: January 23, 1984.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of December 21, 1983 (48 FR 56368), FDA amended the color additive regulations to provide for the safe use of chlorophyllin-copper complex, oil soluble, as a color additive for coloring polymethylmethacrylate bone cement (21 CFR 73.3110).

In the final rule, FDA gave interested persons until January 20, 1984, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of December 21, 1983, for chlorophyllin-copper complex, oil soluble, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of December 21, 1983. Accordingly, the final rule adding § 73.3110 *Chlorophyllin-copper complex, oil soluble*, became effective January 23, 1984.

Dated: May 30, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–13715 Filed 6–6–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 178

[Docket No. 81F–0182]

Indirect Food Additives; Adjuvants, Production Aids and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of elemental iodine, potassium iodide, and isopropanol as components of a sanitizing solution for use on food-contact surfaces. This action responds to a petition filed by the Diversey Wyandotte Corp.

DATES: Effective June 7, 1985; objections by July 8, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 10, 1981 (46 FR 35790), FDA announced that a petition (FAP OH3484) had been filed by Diversey Wyandotte Division, Diversey Corp., 1532 Biddle Ave., Wyandotte, MI 48192 (now the Diversey Wyandotte Corp.), proposing that the food additive regulations be amended to provide for the safe use of elemental iodine, potassium iodide, and isopropanol as components of a sanitizing solution for use on food-contact surfaces.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP OH3484 (July 10, 1981; 46 FR 35790). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1010 by adding new paragraph (b)(25) and revising paragraph (c)(19) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(25) An aqueous solution containing elemental iodine (CAS Reg. No. 7553–56–2), potassium iodide (CAS Reg. No. 7681–11–0), and isopropanol (CAS Reg. No. 67–63–0). In addition to use on food processing equipment and utensils, this solution may be used on beverage containers, including milk containers and equipment and on food-contact surfaces in public eating places.

* * * * *

(c) * * *

(19) Solutions identified in paragraphs (b)(24) and (b)(25) of this section shall provide at least 12.5 parts per million and not more than 25 parts per million of titratable iodine. The adjuvants used with the iodine shall not be in excess of the minimum amounts required to accomplish the intended technical effect.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 8, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state: failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 7, 1985.

Dated: May 28, 1985.

John Taylor,

Acting Director, Office of Compliance, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–13717 Filed 6–6–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

Correction

In FR Doc. 85–11799 appearing on page 20408 in the issue of Thursday, May 16, 1985, make the following corrections:

1. On page 20408, second column, *NADA and Sponsoring Firm*, number 2., second line, "Hazeline" should read "Hazeltine".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[T.D. ATF–198; correction]

Implementing the Distilled Spirits Tax Revision Act and Portion of Crude Oil Windfall Profit Tax Act

Correction

In FR Doc. 85–13216 appearing on page 23410 in the issue of Tuesday, June 4, 1985, make the following correction: In the middle column, in Paragraph 13, second line, "§ 19.525(b)(3)" should read "§ 19.524(b)(3)".

BILLING CODE 1505–01–M

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27 CFR Parts 19, 170, 194, 197, 250, 251, and 252

[T.D. ATF–206]

Repeal of Stamp Requirement for Containers of Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision (final rule).

SUMMARY: This final rule amends ATF regulations to implement section 454 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), which was signed on July 18, 1984. This section repeals the stamp requirement for containers of distilled spirits, effective July 1, 1985. Containers having a capacity of one wine gallon or less will be required to bear tamper-evident closures or other devices which are designed to require breaking in order to gain access to the contents of the containers. This document also eliminates the requirement that closures on bottles of distilled spirits to be exported be marked with the word "Export".

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Susan McCarron or Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202)–566–7531).

SUPPLEMENTARY INFORMATION:

Background

Historically, stamps on containers of distilled spirits have served as evidence that the packager, bottler, or importer of the spirits had fully complied with the provisions of Chapter 51 of the Internal Revenue Code of 1954 (as amended) and, when applicable, had paid all excise taxes due on the spirits. With the enactment of the Distilled Spirits Tax Revision Act of 1979, Pub. L. 96–39, effective January 1, 1980, prescribing an all-in-bond system for domestic distilled spirits plants, the regulations and supervision of plant operations have been liberalized. This has caused the stamps to have only negligible value in evidencing compliance with the law and payment of excise taxes.

Under current law, the Secretary of the Treasury is provided the authority to prescribe regulations governing the procuring and use of the stamps, and is required to furnish the stamps used on containers of distilled spirits. This has cost the U.S. government approximately $1.7 million annually in printing costs.

Changes Due to Pub. L. 98–369

On July 18, 1984, President Reagan signed the Deficit Reduction Act of 1984 (Pub. L. 98–369). Section 454 of this Act repeals the stamp requirement for containers of distilled spirits, and amends the penalty provisions accordingly. An amendment is made to 26 U.S.C. 5301 to require that containers having the capacity of one wine gallon or less must bear anti-tampering closures or other devices which are designed to require breaking to gain access to the contents of the containers.

Conforming amendments to the law resulting from section 454 include alowing the return of bottled distilled spirits to the bonded premises of a plant for reclosing, and the marking of cases rather than the individual bottles with the word "Export" when spirits are removed for export.

The intent of the anti-tampering closure requirement for bottles of spirits was to ensure product integrity for the consumer. That is, the unbroken closure or other device is evidence that the

bottle contains taxpaid spirits that are in the same condition as such spirits were when removed from the distilled spirits plant, or as entered into the U.S. Therefore, ATF has adopted the standards for alternative closures as the new closure requirement. The anti-tampering closure or other device must be securely affixed and leave a portion of the closure or device on the container after opening. The closure or other device must also be broken when the container is opened.

Regulatory Changes

The repeal of the stamp requirement for containers of distilled spirits necessitates many regulatory changes. Proprietors of distilled spirits plants and importers will no longer be required to maintain records of strip stamps/alternative devices. The reporting requirements for strip stamps/alternative devices are also deleted from the regulations.

Proprietors will still be required to account for any spirits returned to their bonded premises for reclosing. They must also continue to mark containers in excess of one gallon and cases of spirits withdrawn for export with the word "Export".

In general, the repeal of the stamp requirement lessens the recordkeeping and physical burdens to the distilled spirits industry by eliminating the requirement to affix and account for these stamps.

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because no notice of proposed rulemaking is required.

Paperwork Reduction Act

The requirements to collect information imposed by this final rule have been approved by the Office of Management and Budget under Sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Drafting Information

The principal authors of this document are Susan McCarron and Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

The effective date of section 454 of Pub. L. 98–369 is mandated by section 456 as July 1, 1985. Consequently, it is found that it would be impracticable and unnecessary to issue this final regulation with prior notice and public procedure under 5 U.S.C. 553(b). Accordingly, these final regulations shall become effective on July 1, 1985.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Drugs, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs, Excise taxes, Foods, Liquors, Reporting and recordkeeping requirements, Spices and Flavorings, Surety bonds.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Island, Warehouses, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

PART 19—[AMENDED]

27 CFR Part 19 *Distilled Spirits Plants* is amended as follows:

Paragraph 1. The authority citation for Part 19 reads as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

Par. 1a. The table of contents is amended as follows:

Sec

* * * * *

Subpart M—Processing Operations Other Than Denaturation and Manufacture of Articles

* * * * *

19.393 Reclosing and Relabeling.

* * * * *

Subpart R—Containers and Marks

* * * * *

19.610 Obliteration of marks.
19.611 Relabeling and reclosing off bonded premises.

* * * * *

Subpart T—Closures.

19.661 General.
19.662 Affixing closures.
19.663 Reclosing.
19.664 [Removed]
19.665 [Removed]
19.666 [Removed]
19.667 [Removed]
19.668 [Removed]
19.669 [Removed]
19.670 [Removed]
19.671 [Removed]
19.672 [Removed]
19.673 [Removed]

* * * * *

Subpart W—Records and Reports

19.772 [Removed]

* * * * *

Par. 2. Section 19.11 is amended by revising the definition of spirits or distilled spirits to remove reference to strip stamps, to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not denatured spirts unless specifically stated. For the puprose of the requirements of this part relating to liquor bottles and labels, the term "spirits" or "distilled spirits" shall not include mixtures containing wine, bottled at 48 degrees of proof or less, it the mixture contains more than 50 percent wine on a proof gallon basis. However, distilled spirits products containing wine bottled at 48 degrees of proof or less, if such mixture contains more than 50 percent wine on a proof gallon basis, shall be subject to the formula requirements of this part and 27 CFR Part 5 and the labeling, advertising, and standards of fill requirements in 27 CFR Part 4.

* * * * *

Par. 3. Section 19.211 is revised to remove reference to strip stamps to read as follows:

§ 19.211 Notice of permanent discontinuance.

When the proprietor permanently discontinues any or all of the operations listed in the notice of registration, he shall file a Form 5110.41 to show the discontinuance. Form 5110.41 shall be accompanied (a) by all permits issued to the proprietor under this subpart covering the discontinued operations, and by the proprietor's request that such permits be canceled; (b) by the proprietor's written statement disclosing, as applicable, whether (1) all spirits, denatured spirits, articles, wines, liquor bottles, and other pertinent items have been lawfully disposed of, (2) any spirits, denatured spirits, wines, or liquor bottles are in transit to the premises, (3) all approved applications for transfer of spirits and denatured spirits to the premises have been secured and returned to the regional director (compliance) for cancellation; and (c) by pertinent reports covering the discontinued operations (each report shall be marked "Final Report").

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

Par. 4. Subpart M is amended to remove references to strip stamps alternative devices, and distilled spirits stamps by revising §§ 19.388 (a)(1) and (b)(2), 19.389, 19.391, 19.393, 19.394, 19.397, and 19.398(b) to read as follows:

Subpart M—Processing Operations Other Than Denaturation and Manufacture of Articles

* * * * *

§ 19.388 Cases.

(a) *General.* (1) On completion of bottling, the filled bottles with labels and properly affixed closures or other devices shall be placed in cases, and the cases shall be sealed.

* * * * *

(b) * * *

(2) Unsealed cases containing bottles without labels shall be marked in accordance with Subpart R of this part, and segregated from other cases on bonded premises pending affixing of the labels, State stamps, or seals.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.389 Remnants.

Where incident to bottling there remain bottles less than the number necessary to fill a case, the bottles, after being affixed with closures or other devices and labeled, may be marked as a remnant case as provided in Subpart R of this part or kept uncased on the bonded premises until spirits of the same kind are again bottled. Appropriate notation shall be made on the bottling and packaging record to cover the bottling and disposition of the remnant. If the remnant is subsequently used to complete the filling of a case, an accounting shall be made on the subsequent bottling and packaging record showing the use of the remnant by adding the remnant gallonage to the quantity to be accounted for together with appropriate notation explaining the transactions.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

* * * * *

§ 19.391 Removals by bulk conveyances or pipelines.

When the spirits in the processing accounts are to be removed in bulk conveyances or by pipeline, the proprietor shall record the filling of the conveyance or the transfer by pipeline on the bottling and packaging record. The spirits shall be removed from bonded premises in accordance with Subpart P of this part. The cosignor shall forward to the consignee a statement of composition or a copy of any formula under which such spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product. Bulk conveyances shall be marked as provided in Subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

* * * * *

§ 19.393 Reclosing and relabeling.

The proprietor may reclose or relabel distilled spirits, either before removal from bonded premises or after return thereto. The reclosing or relabeling of spirits returned to bonded premises shall be done immediately, and the spirits promptly removed. When spirits were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling. When spirits are relabeled, the proprietor shall have a certificate of label approval or certificate of exemption from label approval issued under 27 CFR Part 5 for labels used on relabeled spirits. The proprietor shall prepare a separate record according to § 19.747 to cover the relabeling or reclosing. For spirits returned to bond under 26 U.S.C. 5215(c), the proprietor shall annotate such information on the record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5205); Sec. 807, Pub. L. 96–39, 93 Stat. 280 (26 U.S.C. 5215))

§ 19.394 Bottled-in-bond spirits.

Spirits which are labeled as bottled-in-bond for domestic consumption shall meet the requirements in 27 CFR Part 5 and shall bear a closure or other device as required by Subpart T of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

(Approved by the Office of Management and Budget under control number 1512–0189)

* * * * *

§ 19.397 Spirits not originally intended for export.

Spirits manufactured, produced, bottled in bottles, packed in containers, or which are packaged in casks or other bulk containers in the United States, originally intended for domestic use may be exported with benefit of drawback or without payment of tax if the cases or bulk containers are marked as required by 27 CFR Part 252. The proprietor may relabel the spirits to show any of the

information provided for in § 19.395. When the proprietor desires to file a claim for drawback on spirits prepared for export under this section, the provisions of 27 CFR 252.195b shall be followed. When the proprietor desires to withdraw spirits without payment of tax, he shall file a notice in accordance with 27 CFR 252.92.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1358, as amended, 1362, as amended (26 U.S.C. 5062, 5206, 5214))

(Approved by the Office of Management and Budget under control number 1512–0189)

§ 19.398 Alcohol.

* * * * *

(b) *Closures.* Closures or other devices shall be affixed to containers of alcohol as provided in Subpart T of this part.

* * * * *

Par. 5. Subpart R of Part 19 is amended to remove all references to strip stamps and distilled spirits stamps, by revising §§ 19.583(b), 19.588(a)(5), 19.592, 19.610 and 19.611 to read as follows:

Subpart R—Containers and Marks

* * * * *

§ 19.583 Spirits for industrial use.

* * * * *

(b) *Encased containers.* Unlabeled containers holding from 1 to 10 gallons of denatured spirits and spirits of 190 degree proof or more for industrial use may be encased in wood, fiberboard, or similar material if:

(1) The cases are constructed so that the surface, including the opening, of the container is not exposed;

(2) Required marks are applied to an exterior surface of the case;

(3) The case is constructed so that the portion containing marks will remain attached to the inner container until all the contents have been removed; and

(4) A statement reading "Do not remove inner container until emptied" or of similar meaning is placed on the portion of the case bearing the marks.

* * * * *

§ 19.588 Construction of bulk conveyances.

(a) * * *

(5) A route board, or other suitable device, for carrying required marks or brands shall be provided on each bulk conveyance.

* * * * *

§ 19.592 General.

Proprietors shall mark, identify, and label all containers of spirits or denatured spirits as provided by this part. Containers of wine shall be marked in accordance with 27 CFR Part 240. Containers of articles shall be marked in accordance with 27 CFR Part 211.

(Sec. 201 Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended (26 U.S.C. 5204 5206))

* * * * *

§ 19.610 Obliteration of marks.

Except as provided in § 19.597(b), the marks required by this part to be placed on any container or case shall not be destroyed or altered before the container or case is emptied.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5206))

§ 19.611 Relabeling and reclosing off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, or reclose bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the plant, if such wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant. If products which are relabeled under this section were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, (26 U.S.C. 5201))

* * * * *

Par. 6. Section 19.635 is revised to read as follows:

§ 19.635 Bottles to be used for display purposes.

Liquor bottles may be furnished to liquor dealers for display purposes, provided that each bottle is marked to show that it is to be used for such purpose. The disposition of such bottles, showing names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles, shall be included in the records required under § 19.747.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

(Approved by the Office of Management and Budget under control number 1512–0198)

Par. 7. The Subpart T heading and §§ 19.661, 19.662, and 19.663 are revised to read as follows:

Subpart T—Closures

§ 19.661 General.

Each bottle or other container of spirits having a capacity of one gallon (3.785 liters) or less shall bear a closure or other device affixed in accordance with § 19.662. The closure or other device shall be affixed to the container prior to withdrawal from bond or customs custody.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

(Approved by the Office of Management and Budget under control number 1512–0461)

§ 19.662 Affixing closures.

Closures or other devices on containers having a capacity of one gallon (3.785 liters) or less shall be securely affixed to the containers so as to leave a portion remaining on the container when the container is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 19.663 Reclosing.

Bottles of distilled spirits filled on bonded premises may be reclosed under the provisions of Subpart M of this part. Bottles of distilled spirits to which closures or other devices have been affixed may also be reclosed under the provisions of § 19.611.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5215))

§§ 19.664 through 19.673 [Removed]

Par. 8. Sections 19.664 through 19.673 are removed.

§ 19.681 [Amended]

Par. 9. Section 19.681 is amended by removing the word "restamping" in paragraphs (a) and (d), and inserting in its place the word "reclosing".

Par. 10. Section 19.686 is amended by revising paragraph (d) to read as follows:

§ 19.686 Return of spirits withdrawn without payment of tax.

* * * * *

(d) *Procedure.* When spirits are received, they shall be gauged by the proprietor. When spirits which were removed for exportation are returned to bonded premises pending subsequent removal for a purpose other than exportation, all export marks on the containers in which the spirits are returned shall be obliterated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5214, 5223, 5373); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.704 [Amended]

Par. 11. Section 19.704 is amended to remove paragraph (c).

Par. 12. Section 19.747 is amended by revising paragraph (f) to read as follows:

§ 19.747 Records of manufacturing.

* * * * *

(f) The rebottling, relabeling, and reclosing of bottled products as required by §§ 19.392 and 19.393.

* * * * *

Par. 13. Paragraph (e)(10) of § 19.769 is removed and paragraph (e)(11) is redesignated as (e)(10). As amended. § 19.769(e)(10) reads as follows:

§ 19.769 Package gauge record.

* * * * *

(e) * * *

(10) Receiving weights, when a material difference appears on receipt after transfer in bond of weighed packages.

(Sec. 807, Pub. L. 93–39, 93 Stat. 284 (26 U.S.C. 5207))

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 19.772 [Removed]

Par. 14. Section 19.772 is removed.

Par. 15. Section 19.773 is amended to change the restamping requirements to reclosing requirements, by revising the introductory text, (c)(3) and (4) to read as follows:

§ 19.773 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with his plant, conducts wholesale liquor dealer operations, or operates a taxpaid storeroom, on, contiguous to, adjacent to, or in the immediate vicinity of general plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, he shall maintain daily records of the receipt and disposition of all distilled spirits and wines at such premises, and of all reclosing and relabeling operations. The provisions of this section shall also apply to products returned to a wholesale liquor dealer or taxpaid storeroom from the market. A separate record shall be kept for each such premises. The records in respect of the receipt and disposition of distilled spirits and wines shall contain all data necessary (consisting of or supported by records including bills of lading and invoices) to enable ATF officers to identify and trace such receipt and dispositions and to ascertain whether there has been compliance with all laws and regulations relating thereto. In addition to any other information shown therein, such records shall include:

* * * * *

(c) *For reclosing or relabeling operations* * * *

(3) The total number of bottles; and

(4) The name of the bottler.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

(Approved by the Office of Management and Budget under control number 1512–0198)

Par. 16. Section 19.792 is amended by removing paragraph (b)(4) and revising paragraph (c) to read as follows:

§ 19.792 Reports.

* * * * *

(c) All reports required by this part shall be prepared and submitted to the regional director (compliance) not later than the 15th day of the month following the close of the reporting period.

(Sec. 807, Pub. L. 96–39, 98 Stat. 284 (26 U.S.C. 5207))

(Approved by the Office of Management and Budget under control number 1512–0198)

PART 170—[AMENDED]

27 CFR Part 170—*Miscellaneous Regulations Relating to Liquor*, is amended to read as folllows:

Paragraph 1. The authority citation for Part 170 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 170 is amended by removing Subpart A, consisting of §§ 170.1 through 170.7, as follows:

Subpart A—[Removed]

Subpart B—Returns of Substances, Articles, or Containers

* * * * *

Subpart A—[Removed]

Par. 2. Subpart A of Part 170 consisting of §§ 170.1 through 170.7 is removed.

§ 170.616 [Amended]

Par. 3. Section 170.616 is amended by removing the word "stamped,".

PART 194—[AMENDED]

27 CFR Part 194, *Liquor Dealers*, is amended as follows:

Paragraph 1. The authority citation for Part 194 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 194 is amended to remove Subpart P consisting of §§ 194.251 through 194.256 as follows:

* * * * *

Subpart P—[Removed]

* * * * *

Subpart P—[Removed]

Par. 2. Subpart P consisting of §§ 194.251 through 194.256 of Part 194 is removed.

§ 194.261 [Amended]

Par. 3. Section 194.261 is amended by removing the word "stamping" wherever it appears, and inserting in its place the word "closing".

Par. 4. Section 194.271 is amended by revising paragraphs (b) and (c) to read as follows:

§ 194.271 Requirements and procedure.

* * * * *

(b) *Operations.* Repackaging operations shall be conducted in accordance with the bottling and packaging requirements of Part 19 of this chapter. Packaging and labeling operations may be carried on without supervision of an ATF officer unless the regional director (compliance) requires supervision.

(c) *Records.* The dealer shall keep records, daily, showing the bulk alcohol received, dumped for packaging, packaged, and disposed of, including the name and address of each consignor and consignee. The dealer shall prepare a monthly report on Form 5110.28 of bulk alcohol received, packaged, and disposed of. Reports on Form 5110.28 shall be submitted to the regional director (compliance) not later than the 15th day of the month succeeding the period for which rendered. Records, documents, or copies of documents supporting the records, and copies of reports submitted to the regional director (compliance) shall be filed and retained as prescribed in §§ 194.236 and 194.237.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1343, as amended, 1358, as amended, 1360, as amended (26 U.S.C. 5116, 5205, 5206))

Par. 5. Section 194.281, is revised to read as follows:

§ 194.281 General.

A state, or political subdivision thereof, or a person holding a wholesale liquor dealer's basic permit issued under Part 1 of this chapter, may export bottled taxpaid distilled spirits with benefit of drawback to the extent provided in § 252.171 of this chapter. The marking of cases, preparation of notice of shipment on Form 5110.30, the removal and exportation of the distilled spirits, and the filing of claims by the processor of the spirits shall be in accordance with the applicable provisions of Parts 19 and 252 of this chapter.

PART 197—[AMENDED]

27 CFR Part 197, *Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products*, is amended to read as follows:

Paragraph 1. The authority citation for Part 197 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. Sections 197.112 and 197.113 are revised to read as follows:

§ 197.112 Distilled spirits received in tank cars or tank trucks.

Each claim covering distilled spirits received in tank cars or tank trucks shall be accompanied by a statement showing in respect of each shipment received: the date of receipt; the name and address of the vendor; the number or other identification mark of the tank car or tank truck; the name of the producer or warehouseman; and the kind, quantity, and proof of the spirits.

(Approved by the Office of Management and Budget under control number 1512–0378)

§ 197.113 Distilled spirits received in barrels, drums, or other portable containers.

Each claim covering distilled spirits received in barrels, drums, or other portable containers shall be accompanied by a statement showing: the date of receipt; the name and address of the vendor; the serial number, if any, of the container; the name of the producer or warehouseman as shown on the commercial invoice provided for in § 197.130(b) and the kind, quantity, and proof of the spirits.

PART 250—[AMENDED]

27 CFR Part 250, *Liquors and Articles From Puerto Rico and the Virgin Islands*, is amended as follows:

Paragraph 1. The authority citation for Part 250 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805), unless otherwise noted.

Par. 1a. The table of contents for Part 250 is amended as follows:

* * * * *

Sec.
250.42 [Removed]
* * * * *
250.64 [Removed]
* * * * *
250.88 [Removed]
250.89 [Removed]
250.90 [Removed]
250.91 [Removed]
250.91a [Removed]
* * * * *
250.127 [Removed]
* * * * *

Subpart G—Closures for Distilled Spirits From Puerto Rico

250.135 Containers of distilled spirits to bear closures.
250.136 Affixing closures.
250.137 [Removed]
250.138 [Removed]
250.141 [Removed]
250.142 [Removed]
250.143 [Removed]
250.144 [Removed]
250.146 [Removed]
* * * * *
250.208 [Removed]
* * * * *

Subpart L—Closures for Distilled Spirits From the Virgin Islands

250.230 Containers of distilled spirits to bear closures.
250.231 Affixing Closures.
250.232 [Removed]
250.233 [Removed]
250.234 [Removed]
250.235 [Removed]
250.236 [Removed]
250.237 [Removed]
250.240 [Removed]
250.240a [Removed]
250.243 [Removed]
250.245 [Removed]
250.252 [Removed]
250.252a [Removed]
250.252b [Removed]
250.255 [Removed]
250.256 [Removed]
250.258 [Removed]
250.259 [Removed]
* * * * *

Subpart N—* * *

250.270 [Removed]
250.271 [Removed]
* * * * *

Par. 2. Section 250.11 is amended to remove the definition of "red strip stamps".

§ 250.37 [Amended]

Par. 3. Section 250.37 is amended by removing the words "to issue internal revenue stamps and".

§ 250.42 [Removed]

Par. 4. Section 250.42 is removed.

§ 250.84 [Removed]

Par. 5. Section 250.84 is removed.

§§ 250.88 through 250.91a [Removed]

Par. 6. Sections 250.88 through 250.91a are removed.

Par. 7. Section 250.98 is revised to read as follows:

§ 250.98 Liqueurs, cordials, and similar distilled spirits products containing wine.

The entire alcohol content of liqueurs, cordials, and similar distilled spirits products containing wine is taxable at the distilled spirits rate. The procedures for taxpayment, shipment, and release of such products shall be as prescribed in §§ 250.77 through 250.87.

Par. 8. Section 250.126 is revised to read as follows:

§ 250.126 Taxpayment in Puerto Rico.

Liquors upon which all Federal internal revenue taxes have been paid in Puerto Rico may be brought into the United States for personal consumption without payment of additional taxes. When distilled spirits, wines, or beer are purchased by a tourist for consumption in the United States, the internal revenue tax due may be paid to the United States Internal Revenue Service office, and an internal revenue receipt obtained, or the tax may be paid to the U.S. Customs authorities, who will issue a customs receipt. The tax on articles purchased by tourists may be paid in the same manner. The receipt received from the United States Internal Revenue Service office or from the customs officer shall be presented, as required, as evidence that the tax has been paid.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

§ 250.127 [Removed]

Par. 9. Section 250.127 is removed.

Par. 10. Section 250.128 is revised to read as follows:

§ 250.128 Taxpayment at port of arrival.

If the internal revenue tax on liquors and articles is not paid in Puerto Rico, it shall be paid by the tourist at the port of arrival prior to release of the liquors or articles from customs custody. The tax may be paid to the district director of internal revenue, and an internal revenue receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to the district director of internal revenue, the director of customs will notify the district of the amount of tax due. On payment of the tax to the director of customs, or on submission of the internal revenue receipt for the tax, the director of customs will release the liquors or articles.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

Par. 11. Subpart G is revised by changing the title, revising §§ 250.135 and 250.136, and by removing §§ 250.137 through 250.146 as follows:

Subpart G—Closures for Distilled Spirits From Puerto Rico

§ 250.135 Containers of distilled spirits to bear closures.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or deferred in Puerto Rico under provisions of this part, shall have closures or other devices affixed in accordance with the provisions of this part, prior to shipment to the United States.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 250.136 Affixing closures.

Closures or other devices shall be securely affixed to containers having capacity of 1 gallon (3.785 liters) or less so as to leave a portion remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 250.203a [Amended]

Par. 12. Section 250.203a is amended by removing the words "and stamped".

§ 250.208 [Removed]

Par. 13. Section 250.208 is removed.

Par. 14. Subpart L is revised by revising the title, revising §§ 250.230 and 250.231, and by removing §§ 250.232 through 250.259 as follow:

Subpart L—Closures for Distilled Spirits From the Virgin Islands

§ 250.230 Containers of distilled spirits to bear closures.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or determined under provisions of this part, shall have closures or other devices affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 250.231 Affixing closures.

Closures or other devices shall be securely affixed to containers having capacity of 1 gallon (3.785 liters) or less so as to leave a portion remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§§ 250.270 and 250.271 [Removed]

Par. 15. Sections 250.270 and 250.271 in Subpart N are removed.

27 CFR Part 251, *Importation of Distilled Spirits, Wines and Beer*, is amended as follows:

Paragraph 1. The authority citation for Part 251 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805), 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 251 is amended as follows:

Sec.
251.55 * * *

Packaging and Marking of Distilled Spirits

* * * * *

251.60 * * *

Closures for Containers of Distilled Spirits

251.61 Containers of distilled spirits to bear closures.
251.62 Affixing closures.
251.63 [Removed]
251.64 [Removed]
251.64a [Removed]
251.66 [Removed]
251.66a [Removed]
251.67 [Removed]
251.69 [Removed]
251.72 [Removed]
251.73 [Removed]

Exemptions

251.74 Exemption from requirements pertaining to marks, bottles, and labels

* * * * *

Subpart F—[Removed]

Subpart G—[Removed]

* * * * *

251.122 [Removed]

Subpart I—* * *

251.130 [Removed]
251.131 [Removed]

* * * * *

Subpart K—[Removed]

* * * * *

Par. 2. Section 251.1 is revised to read as follows:

§ 251.1 Imported distilled spirits, wines, and beer.

This part, "Importation of Distilled Spirits, Wines, and Beer", contains procedural and substantive requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, closing and labeling of containers and packages, and records and reports.

Note.—Distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands are governed by the provisions of Part 250 of this chapter.

* * * * *

Par. 3. Section 251.11 is amended to remove the definition of "red strip stamps".

Par. 4. Subpart E is amended by revising § 251.56 and the undesignated center heading immediately preceding § 251.56, as well as §§ 251.61, 251.62, 251.74, and the undesignated center heading immediately preceding § 251.61. In addition, § 251.57 is amended to remove the words "and stamped", § 251.75 is amended to remove the words "stamps or alternative devices.", and §§ 251.63 through 251.73 are removed as follows:

Packaging and Marking of Distilled Spirits

§ 251.56 Distilled spirits containers of a capacity of not more than 1 gallon.

Bottled distilled spirits imported into the United States for sale shall be bottled in liquor bottles which conform to the requirements of Subpart N of this part and Part 5 of this chapter. Empty bottles imported for the packaging of distilled spirits shall conform to the requirements of Subpart N of this part. (For Customs requirements as to marking, see 19 CFR Parts 11 and 12.)

* * * * *

Closures for Containers of Distilled Spirits

§ 251.61 Containers of distilled spirits to bear closures.

No person shall transport, buy, possess, or sell, or transfer any imported distilled spirits in containers of 1 gallon (3.785 liters) or less, unless the immediate container thereof has a closure or other device affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 251.62 Affixing closures.

Closures or other devices on containers of imported distilled spirits having a capacity of 1 gallon (3.785 liters) or less shall be affixed so as to leave a portion of the closure or other device remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

Exemptions

§ 251.74 Exemption from requirements pertaining to marks, bottles, and labels.

The provisions of this part relating to the labeling of containers as prescribed by 27 CFR Part 5 are not applicable to imported distilled spirits (a) not for sale or for any other commercial purpose whatever; (b) on which no internal revenue tax is required to be paid or determined on or before withdrawal from customs custody; (c) for use as ship stores; or (d) for personal use. Samples of distilled spirits, other than those provided for in §§ 251.49 and 251.75, imported for any purpose are not exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the labeling requirements of 27 CFR Parts 4 and 7, respectively. Exemptions from the requirements that imported distilled spirits, wines, and beer be marked to indicate the country of origin are set forth in customs regulations (19 CFR Part 11).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1374, as amended (26 U.S.C. 5205, 5301))

Subparts F and G—[Removed]

Par. 5. Subpart F consisting of §§ 251.80 through 251.92 and Subpart G consisting of §§ 251.110 through 251.112 of Part 251 are removed.

§ 251.122 [Removed]

Par. 6. Section 251.122 is removed.

§§ 251.130 and 251.131 [Removed]

Par. 7. Sections 251.130, 251.131, and the undesignated center heading immediately preceding § 251.130 are removed.

Subpart K—[Removed]

Par. 8. Subpart K of Part 251 consisting of § 251.160 is removed.

Par. 9. Section 251.207 is revised to read as follows:

§ 251.207 Bottles to be used for display purposes.

Empty liquor bottles may be imported and furnished to liquor dealers for display purposes, provided each bottle is marked to show that it is to be used for such purpose. The importer shall keep records of the receipt and disposition of such bottles, showing the names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles.

27 CFR Part 252, *Exportation of Liquors*, is amended as follows:

Paragraph 1. The authority citation for Part 252 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805), 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 252 is amended as follows:

* * * * *

252.102 Bottles to have closures affixed.

* * * * *

Par. 2. Section 252.26 is amended by revising paragraph (b) to read as follows:

§ 252.26 Entry of distilled spirits into customs bonded warehouses.

* * * * *

(b) *Bottled distilled spirits eligible for export with benefit of drawback.* Bottled distilled spirits eligible for export with benefit of drawback may, subject to this part, be transferred to customs bonded warehouses in which imported distilled spirits are permitted to be stored, and entered pending withdrawal as provided in § 252.28, as if such spirits were for exportation.

* * * * *

§ 252.94 [Amended]

Par. 3. Section 252.94 is amended by removing the words "stamping or affixing of alternative devices" and inserting in their place the word "closing".

§ 252.101 [Amended]

Par. 4. Section 252.101 is amended by removing the words "stamped with a distilled spirits stamp or".

Para. 5. Section 252.102 is revised to read as follows:

§ 252.102 Bottles to have closures affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a closure or other device affixed in accordance with the provisions of Part 19 of this chapter.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 252.171 [Amended]

Par. 6. Section 252.171 is amended by removing the words "or stamped, including the affixing of alternative devices,".

§ 252.197 [Amended]

Par. 7. Section 252.197 is amended by removing the word "restamping,".

Signed: April 12, 1985.

W.T. Drake,

Acting Director.

Approved: May 14, 1985.

E.T. Stevenson

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–13423 Filed 6–6–85; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW–10–FRL–2843–5]

Idaho Department of Water Resources; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Idaho has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for these classes of injection wells meets the requirements of section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on June 21, 1985. This approval shall become effective on July 22, 1985.

FOR FURTHER INFORMATION CONTACT: Harold Scott, M/S 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, PH: (206) 442–1846 or (FTS) 399–1846.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the

requirements of regulations in effect under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Idaho has listed as needing a UIC program on October 3, 1979 (44 FR 58985). The State submitted an application under section 1422 on November 5, 1984, for a UIC program to regulate Class I, II, III, IV, and V injection wells to be administered by the Idaho Department of Water Resources (IDWR).

On December 10, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the IDWR. A public hearing was offered, and comments were requested on the final application. No hearing requests and only two written comments were received.

After careful review of the application, I have determined that the portion of the Idaho UIC program submitted by the IDWR, applicable on all State lands other than Indian lands, meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby, appove it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for non-Indian lands in the State of Idaho.

This program replaces the existing EPA-administered program for all classes of wells. EPA promulgated the EPA-administered program, published May 11, 1984 (49 FR 20138), in order to comply with the requirement of the SDWA to promulgate a federally-administered program if a state-administered program cannot be approved within a certain time. Now that EPA has determined that the state-administered program meets all applicable federal requirements the Agency is withdrawing the EPA-administered program and establishing the state-administered program as the applicable UIC program in the State, because of the preference in the SDWA for state administration of UIC programs.

This approval will be codified in 40 CFR 147.650. State statutes and regulations that contain standards, requirements, and procedures applicable to owners and operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to Section 1423 of the SDWA.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply, Incorporation by reference.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Idaho Department of Water Resources will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: May 20, 1985.

Lee Thomas,

Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart N—Idaho

1. The authority citation for Part 147 is revised to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

2. Section 147.650 is revised to read as follows:

§ 147.650 State-administrative program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Idaho. This incorporation by reference was approved by the Director of the **Federal Register** effective July 22, 1985.

(1) Public Writings, Title 9, Chapter 3, Idaho Code, sections 9–301 through 9–302 (Bobbs-Merrill 1979);

(2) Crimes and Punishments, Title 18, Chapter 1, Idaho Code, sections 18–113 through 18–114 (Bobbs-Merrill 1979 and Supp. 1984);

(3) Department of Health and Welfare, Title 39, Chapter 1, Idaho Code, Chapter 39–108 (Bobbs-Merrill 1977);

(4) Drainage-Water Rights and Reclamation, Title 42, Chapter 2, Idaho Code sections 42–237(e); section 42–238 (Bobbs-Merrill 1977 and Supp. 1984);

(5) Department of Water Resources-Water Resources Board, Title 42, Chapter 17, Idaho Code, sections 42–1701, 42–1703, 42–1735 (Bobbs-Merrill 1977, § 42–1701A (Supp. 1984);

(6) Director of Department of Water Resources, Title 42, Chapter 18, Idaho Code, sections 42–1801 through 42–1805 (Bobbs-Merrill 1977);

(7) Waste Disposal and Injection Wells, Title 42, Chapter 39, Idaho Code, sections 42–3901 through 42–3914 (Bobbs-Merrill 1977), §§ 42–3915 through 42–3919 (Supp. 1984);

(8) Idaho Trade Secrets Act, Title 48, Chapter 8, Idaho Code, sections 48–801 through 48–807 (Bobbs-Merrill 1977 and Supp. 1984);

(9) Administrative Procedure, Title 67, Chapter 52, Idaho Code, sections 67–5201 through 67–5218 (Bobbs-Merrill 1980 and Supp. 1984);

(10) Idaho Radiation Control Regulations (IRCR section 1–9002.70; sections 1–9100 through 1–9110, Department of Health and Welfare (May 1981);

(11) Rules and Regulations: Construction and Use of Injection Wells, Idaho Department of Water Resources, Rules 1 through 14 (August 1984);

(12) Rules and Regulations: Practice and Procedures, Idaho Department of Water Resources, Rules 1 through 14 (October 1983).

(b) The Memorandum of Agreement between EPA and Region X and the Idaho Department of Water Resources signed by the EPA Regional Administrator on February 11, 1985.

(c) *Statement of Legal Authority.* (1) The Idaho Attorney General's Statement for the Underground Injection Control Program, October 31, 1984.

(2) Letter from David J. Barber, Deputy Attorney General, Idaho Department of Water Resources to Harold Scott, EPA, Region 10, revising the Attorney General's Statement, February 14, 1985.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[FR Doc. 85–12969 Filed 6–6–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6607

[NM 56990]

Withdrawal of Public Land for Reclamation Quarry Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining for 10 years to be used as a quarry site for the construction and maintenance of the Brantley Dam. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, 505–988–6326.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for use of the Bureau of Reclamation for a quarry site.

New Mexico Principal Meridian

T. 21 S., R. 24 E.,
Sec. 25: N½NE¼SE¼, S½SE¼NE¼.

The area described contains 40 acres in Eddy County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 3, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85–13698 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303 and 304

Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984

Correction

In FR Doc. 85–11021 beginning on page 19608 in the issue of Thursday, May 9, 1985, make the following corrections:

§ 301.1 [Corrected]

1. On page 19647, second column, in § 301.1, third paragraph, ninth line, insert the word "an" after the word "due".

§ 302.55 [Corrected]

2. On page 19649, third column, in § 302.55, second line, "§ 305.52" should have read "§ 303.52".

§ 302.56 [Corrected]

3. On page 19649, third column, in § 302.56, first line, "October 1, 1957" should have read "October 1, 1987".

§ 303.52 [Corrected]

4. On page 19651, second column, in § 303.52(c)(5), fourth line, insert the word "of" between "as" and "FY".

5. On the same page, third column, in § 303.52(d)(1), fifth line, "the participate" should have read "that participate".

§ 303.100 [Corrected]

6. On page 19654, first column, in § 303.100(c)(1), second line, "in" should have read "to".

7. On the same page, second column, in § 303.100(d)(1)(i), last line , "1873" should have read "1673".

§ 303.101 [Corrected]

8. On page 19655, second column, in § 303.101(b)(4), fifth line, "to" should have read "the". Also, in the same column, in § 303.101(c)(4), second line, "residing" should have read "presiding".

§ 304.95 [Corrected]

9. On page 19657, first column, in § 304.95(f)(2), second line, "August 1964" should have read "August 1984".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 50, No. 110
Friday, June 7, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: In order to clarify the intent of 8 CFR 245.2(a)(3), the Service is proposing to amend its regulation governing advance parole granted to applicants for adjustment of status.

DATE: Comments must be received on or before August 6, 1985.

ADDRESS: Please submit written comments, in duplicate, to the Director of Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

For Specific Information: Leon C. Jennings, Immigration Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–2362.

SUPPLEMENTARY INFORMATION: Section 245(a) of the Immigration and Nationality Act, 8 U.S.C. 1255(a) authorizes the adjustment of status of an alien "who was inspected and admitted or paroled in the United States." Under the regulations prescribed by the Attorney General, an applicant for adjustment of status who wishes to leave the country and return may apply for advance permission to be paroled into the United States upon return to prosecute his/her application. This procedural device has been referred to as "advance parole". Recently, there have been some questions as to whether an applicant for adjustment, who has been paroled into the United States pursuant to a grant of advance parole, will be subject to exclusion or deportation proceedings if the application is denied.

Advance parole is not specifically mentioned in the Immigration and Nationality Act. The INS has developed this practice in conformity with 8 U.S.C. 1182(d)(5)(A) to be used in public interest or emergent situations. In *Landon* v. *Plasencia*, 103 S.Ct. 321, 326 (1982), the Supreme Court held that "the language and history of the Act * * * clearly reflect a congressional intent that, whether or not the alien is a permanent resident, admissibility shall be determined in an exclusion hearing." An alien who is paroled into the United States does not effect an "entry" and is subject to exclusion proceedings. *Leng May May*, v. *Barber*, 357 U.S. 185 (1957).

This proposed amendment would clarify the intent of the regulation and conform with the weight of judicial authority that all paroled aliens are subject to exclusion proceedings under section 236 of the Act, 8 U.S.C. 1226. It would specifically state that no alien granted advance parole and inspection upon return shall be entitled to a deportation hearing.

This amendment would eliminate the language concerning unintended or innocent and casual departures during the pendency of an application for adjustment to permanent resident alien status. Accordingly, any departure without prior permission (advance parole) would terminate the application.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This order would not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for 8 CFR 245.2 continues to read as follows:

Authority: Sec. 103 and 245 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1255).

2. Section 245.2 would be amended by revising paragraph (a)(3) to read as follows:

§ 245.2 Application.

(a) * * *

(3) *Departure.* The departure of an applicant for permanent resident status under section 245 of the Act or this part shall be deemed an abandonment of the application, constituting grounds for termination thereof, unless the applicant had previously been granted advance parole by the Service for such absence and was thereafter inspected upon return. If the application of such an individual granted advance parole is subsequently denied, the applicant will be subject to the exclusion provisions of section 236 of the Act. No alien granted advance parole and inspected upon return shall be entitled to a deportation hearing. In determining the date of "last arrival" within the meaning of section 1 of the Act of November 2, 1966, in the case of an applicant who was inspected and admitted or paroled into the United States subsequent to January 1, 1959, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall not be included. In determining the date of the alien's "arrival" in the United States within the meaning of section 102 of the Act of October 28, 1977, in the case of an applicant who was physically present in the United States on March 31, 1975, or who was paroled into the United States subsequent to March 31, 1975, but prior to January 1, 1979, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall be disregarded. For the purpose of section

102 of the Act of October 28, 1977, the date of the alien's "arrival" in the United States shall be the date of initial parole subsequent to March 31, 1975, but prior to January 1, 1979, as and Indochinese refugee under section 212(d)(5) of the Immigration and Nationality Act.

. . . . .

Dated: May 7, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-13736 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 61, 70, and 72

Financial Responsibility Requirements Applicable to NRC Licensees for Cleanup of Accidental and Unexpected Releases of Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Nuclear Regulatory Commission is considering whether to amend its regulations to require certain persons licensed to possess nuclear materials to demonstrate that they possess adequate financial means to pay for cleanup of accidental releases of radioactive materials. If licensees lack adequate financial resources and funds are not available for prompt cleanup, the consequences could be potentially significant for the public, the licensee, and the Federal government. This advance notice of proposed rulemaking is being issued to invite advice and recommendations on several questions pertaining to this proposal concerning scope of coverage, as well as the availability and cost to licensees of obtaining the various forms of financial assurance.

DATE: Comment period expires October 7, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H St. NW., Washington, DC between 8:15 a.m. and 5:00 p.m.

Examine copies of comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Jo Seeman, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4647.

SUPPLEMENTARY INFORMATION:

Background

Purpose and Scope

This ANPRM is seeking guidance on requiring certain classes of materials licensees to demonstrate evidence of financial responsibility for cleanup of accidental releases, i.e., an unauthorized release of radioactive materials due to human error, system failure, an act of God, or defective components. Licensees under consideration in this ANPRM include radiopharmaceutical manufacturers, industrial radiographers, users of gauging devices, gas chromatography, well-logging, nuclear medicine diagnosis and radiation therapy. Other NRC licensed operations covered by this ANPRM include fuel cycle activities such as uranium milling, UF_6 production, and fuel processing and fabrication. Regulated waste management activities include commercial low-level waste disposal, independent spent fuel storage facilities, and persons disposing or storing of their own waste under special license conditions.[1] If implemented, such standards would be a matter of compatibility with the Agreement States.

The financial assurance program for cleanup of accidental release being considered by the Commission in this ANPRM is separate and distinct from the compensation program mandated by the Commission regulations pursuant to the Price-Anderson Act, which does not provide funds for cleanup per se. Currently, the Price-Anderson program applies only to nuclear reactors on a mandatory basis and to plutonium processors and fuel fabricators on a discretionary basis.[2] These activities and uses of materials would not be included in the proposed program. The program proposed in this ANPRM is not intended to provide compensation to persons for personal injury or property damage and is, therefore, not a public liability program.

Moreover, it appears that the Comprehensive Environmental Response, Compensation and Liability Act of 1980, "CERCLA" (Pub. L. 96-510) would not provide cleanup funds for releases involving NRC licensees. In a **Federal Register** notice issued on September 8, 1983, (48 FR 40658) EPA made the following policy statement:

> EPA has also chosen not to list releases of source, byproduct, and special nuclear material from any facility with a current license issued by the Nuclear Reglatory Commission (NRC), on the grounds that the NRC has full authority to require cleanup of releases from such facilities.

This ANPRM is soliciting public comments on the advisability of having NRC require financial responsibility for prompt cleanup of radioactive materials both on-site and off-site after accidental or unexpected contamination by fuel cycle and other materials licensees. Any necessary environmental restoration would also be included.[3] Accidental or unexpected contamination refers to an unauthorized release of radioactive materials in excess of NRC regulatory limits regardless of the cause of the release. Examples of causes include human error or negligence, an act of God, licensee misconduct, system failure, or defective components.

This ANPRM focuses on whether to require licensees to demonstrate financial responsibility for cleanup of accidental or unexpected releases of radioactive meterials and not for authorized and predictable activities normally associated with decommissioning. The latter is being addressed in a separate ongoing Commission rulemaking on decommissioning.

Need for Action

Although there is little information available on the financial condition of NRC fuel cycle and materials licensees, the NRC staff believes most of these licensees already have some financial

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[1] The proposed financial responsibility program would exempt the following Department of Energy facilities: High-level waste repositories (licensed under 10 CFR Part 60), independent spent fuel storage facilities, and monitored retrievable storage facilities (both licensed under 10 CFR Part 72). In the event of an accident, DOE has access to public funds to pay for cleanup. Additionally, DOE private contractors working at the repository can be indemnified under section 170(d) of the Atomic Energy Act.

[2] The Commission has authority under section 170 of the Atomic Energy Act to apply Price-Anderson indemnification to any category of licensee whenever the Commission deems it advisable in the exercise of its licensing authority. However, the Commission has not chosen to extend Price-Anderson indemnification to materials licensees with the single exception of those engaged in the use of plutonium in a plutonium processing and fuel fabrication plant.

[3] Environmental restoration following an accidental release into or upon the land or water is intended to provide limited coverage for the damage or destruction of natural resources.

resources or insurance coverage for on-site and off-site cleanup as a prudent business practice.

However, if a licensee did not have adequate financial resources, and an accidental or unexpected contamination did occur, there could be both short and long term adverse public health and safety consequences from the radioactive contamination, as well as loss of use of conaminated property. Moreover, from an equity viewpoint, the Commission believes it appropriate that the licensee, and not the public, should assume financial responsibility for prompt cleanup of accidental releases caused by licensee activities.

The issue of licensee financial responsibility for cleanup of accidental releases of radioactive materials has also been an issue with the States; the Conference of Radiation Control Program Directors has recognized the need for Federal standards since at least 1976. In August of 1984, in order to promote intergovernment consultation at an early stage of a proposed agency action, the Commission sent a draft version of this ANPRM to officials in all fifty States, and also asked for their comments. Commission staff also discussed the issue of the ANPRM with State radiation control program officials in October, 1984. The comments generally supported the development of the rulemaking, and specific comments were incorporated into the ANPRM.

Both NRC and Agreement State licensees have had accidental or unexpected releases of radioactive materials that have been costly to cleanup. State and Federal estimates for cleanup costs have been estimated at up to $2,000,000 for a single event. Examples of some of these cleanup costs that the NRC staff is aware of include:

—In 1983, a cesium-137 sealed source was accidentally ruptured. Workers inadvertently spread the contamination into residences and public buildings. The cost for cleanup of this contamination was estimated to be at least $500,000.

—In 1982, an americium-241 sealed source in use in a well-logging operation was inadvertently ruptured, resulting in contamination of both on-site drilling equipment and off-site homes and commercial residences. Cleanup costs were estimated to be up to at least $1,000,000.

—During 1979 and 1980, a tritium manufacturer's operations in Tucson, Arizona resulted in releases both on and offsite. The company was financially unable to pay for cleanup, and State officials estimated that the State spent approximately $2,000,000 in labor and capital costs for removal and cleanup of the tritium.

Relatively little data on cleanup costs for accidental releases of licensees is available in NRC records, mainly because this type of information is not required to be submitted to the agency. However, a recent review of NRC unusual events reports for radioactive releases by materials and fuel cycle licensees indicates that from 1980 to 1983, accidental or unexpected releases from licensees' operations believed to involve significant cleanup costs (more than a few thousand dollars) involved fewer than one percent annually of the total fuel cycle and materials licensees authorized to possess and use byproduct, source and special materials.

Besides lacking a comprehensive data base for licensee cleanup costs for accidental releases, the Commission also has no available records to determine if licensees lack (or previously lacked) adequate funds to provide for prompt cleanup of accidental releases. Accordingly, the Commission is using this ANPRM to solicit public and industry input on the scope and magnitude of the problem. However, even given this lack of a strong data base, the NRC staff does not believe it is prudent for the Commission to wait until an event occurs which requires expensive cleanup to consider the development of a regulation. Other agencies, such as the U.S. Environmental Protection Agency, have gone forward with financial responsibility requirements in the absence of a large documented data base.

In addition, several NRC-funded studies have presented cost estimates for cleanup of NRC-licensed fuel cycle facilities related to emergency planning issues and the Price-Anderson Act.[4] Since these studies were prepared for different purposes and assumptions, it is difficult to compare the results or to use their conclusions as the basis for estimating cleanup costs for the vast majority of fuel cycle and material licensees. Therefore, the NRC staff is proposing to use the limited, but actual, past cleanup cost experience (discussed previously) as the basis for setting the amount of financial responsibility coverage in this ANPRM. The NRC staff will consider, at a later date, the issue of financial responsibilities for the small number of licensees who have the potential to be involved in the significantly more costly cleanups postulated in the NRC-funded studies.

Regulatory Precedents

A variety of State and Federal agencies have enacted financial responsibility requirements to provide assurance that funds are available for cleanup of accidental releases of various substances. Federal agencies have enacted requirements pursuant to the Motor Carrier Act, (Pub. L. 96–296), the Resource Conservation and Recovery Act, (Pub. L. 94–580), the Federal Water Pollution Control Act of 1972, (Pub. L. 92–500), Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), Outer Continental Shelf Lands Act, (Pub. L. 95–372), the Trans-Alaska Pipeline Authorization Act of 1973 (Pub. L. 93–153), and the Deep-Water Port Act of 1974 (Pub. L. 93–627).

The stipulated dollar requirements vary from $10,000 to over $5,000,000 for these different programs. As an example, the 1984 minimum levels of financial responsibility for motor carriers transporting hazardous substances ranges from between $1,000,000 to $5,000,000 (Motor Carrier Act of 1980). The EPA regulations for financial responsibility for owners and operators of hazardous waste facilities (40 CFR Parts 264 and 265, Subpart H) require coverage of $1,000,000 dollars for each sudden occurrence, with an annual aggregate of at least $2,000,000, and $3,000,000 for each nonsudden occurrence, with an annual aggregate of at least $6,000,000 (Subtitle C—Hazardous Waste Management, Resource Conservation and Recovery Act).

Impacts

The Commission is aware that, if promulgated, the potential rule could impact a variety of parties. Before the Commission would implement the financial responsibility requirement, it would assure itself, on the basis of the information gathered from the public comments as well as additional study by the NRC staff, that the health and safety benefits of such a requirement would outweigh the costs imposed on licensees and the public.

If licensee funds are not promptly available for cleanup, public funds might have to be directly expended by State

[4] See J. P. McBride, "Economic Consequences of Accidental Releases from Fuel Fabrication and Radioisotope Processing Plants," prepared by Oak Ridge National Laboratories for the U.S. Nuclear Regulatory Commission, 1979, (NUREG/CR–0222); the results of the study were discussed in a U.S. Nuclear Regulatory Commission Information Report, "Extension of Indemnity Coverage To Materials Licensees Other Than Those Processing And Using Plutonium," (SECY–80–467), October 10, 1980. See also H. K. Elder, Working Paper, "Technology, Safety and Costs of Decommissioning Reference Nuclear Fuel Cycle and Non-Fuel Cycle Facilities Following Postulated Accidents," Pacific Northwest Laboratory, NURGE/CR–3293, August, 1983.

and Federal agencies. Even without a bankrupt licensee, there could be significant public impacts if cleanup is delayed by ensuing litigation over the responsibility and cost.

As previously mentioned, the NRC staff believes that most materials licensees have adequate financial resources for prompt cleanup of accidental releases as a matter of prudent business practice. This proposed rulemaking would have the most significant impact on those licensees who may not be able to provide adequate financial assurances. Accordingly, the staff is especially interested in hearing from those licensees who feel they cannot demonstrate that they have sufficient resources to assure cleanup of accidental releases.

The cost to NRC licensees for meeting the financial requirements for prompt cleanup would vary, depending on the level of funding and on the type of financial assurance mechanism selected. There are a variety of possible legal instruments and arrangements that could be used to demonstrate that a licensee possesses adequate resources to provide funds for prompt cleanup of accidental releases of radioactive materials. They include insurance, trust funds, surety or performance bonds, escrow accounts, certificates of deposits, deposits of securities, letters of credit, a parent company guarantee, and an analysis of the licensee's financial condition.

The most expensive approach would require that a licensee put aside 100% of the estimated cost of cleanup. Examples of this approach include cash deposits, or deposits of securities. Less expensive approaches involve purchasing an insurance policy or financial instrument from a third party, such as an insurance company, bank, or financial institution with a face amount equal to the estimated costs of cleanup. Specific costs of the various financial mechanisms are not easily obtained from licensees or from the financial and insurance institutions. Accordingly, the NRC is specifically interested in obtaining comments on the costs of these types of financial instruments in this ANPRM.

The proposed regulatory requirement would also impact NRC resources. The logistics and resource costs for amending thousands of materials licensees would be significant. The requirement would also entail an agency administrative effort for recordkeeping, auditing, and enforcement. However, the proposed financial assurance requirement could also avert substantial NRC costs resulting from lengthy enforcement proceedings and/or litigation against licensees unable to assure prompt cleanup.

Summary of Features Being Considered for Proposed Rule

The Commission is seeking comments in this ANPRM on a proposal that would require certain fuel cycle and materials licensees to demonstrate adequate financial resources for cleanup of accidental releases of radioactive materials on-site and off-site. Financial responsibility would cover cleanup for both property and environmental restoration (see footnote 3). For purposes of initial discussion, the Commission is considering a $2,000,000 baseline as the required maximum amount of financial responsibility for materials and fuel cycle facilities. This figure was chosen because it is in the range of known cleanup costs for NRC licensees and of other stated dollar amounts of State and Federal financial responsibility requirements for cleanup of accidental releases (See "Regulatory Precedents"). The amount would be adjusted to reflect changes in inflation and technology.

The Commission will consider, at a later date, the issue of financial responsibility for the small number of licensees who have the potential to be involved in the significantly more costly cleanups postulated in the NRC funded studies referenced in footnote 4.

The proposed rule would have the following features:

1. The transporting of radioactive material by common and contract carriers covered by the financial responsibility requirements of the Motor Carrier Act of 1980 (Pub. L. 96–296) would be excluded.

2. Financial responsibility would cover both sudden and nonsudden accidental releases and would exclude authorized and predictable activities normally associated with decommissioning. Additionally, if a licensee were required to demonstrate financial responsibility for both decommissioning and cleanup of accidental releases, he could not use the same financial assurance to guarantee both commitments. The latter is being covered by the Commission's decontamination and decommissioning rulemaking.

3. Financial responsibility would cover on-site and off-site cleanup for private and public property, as well as environmental restoration of natural resources.

4. Licensed State, Federal government, or other self-insured public authorities would be excluded.

5. Types of possible acceptable financial assurances that the Commission staff is considering include:

a. Standard comprehensive general liability insurance.

b. Environmental impairment liability insurance.

c. Conventional property insurance.

d. Non-Price Anderson nuclear liability and property insurance.

e. Cash or negotiable securities held by a third party, such as a trust, or escrow account.

f. A financial test.

g. A surety or performance bond.

h. A corporate guarantee from a parent company.

Specific Considerations

Advice and recommendations on the Commission's proposed action are invited from all interested persons, and specifically, from licensees, State officials, and representatives of the finance and insurance industry. Comment is also invited on which licensees should be considered for exemption from this proposed requirement, as well as the availability, cost, and applicability of the various financial assurance mechanisms to provide adequate financial assurances for cleanup of accidental releases.

1. Describe the extent and nature of financial responsibility problems, if any, for the cleanup of accidental releases by materials licensees.

2. Assuming the need for the resolution of financial responsibility problems for the cleanup of accidental releases, the Commission is seeking comments and supporting reasons on the following questions:

a. What criteria (such as half-life, physical form, type of encapsulation, and amount of radioactive material) should NRC use for determining the amount of coverage to be required for different classes of licensees?

b. What effect would the cost of this coverage have on licensee operations?

c. How large should the financial responsibility requirement be? Should there be a uniform minimum amount, or a "sliding scale" requirement, to match the financial requirements to the actual risks of various types and quantities of materials possessed, or the financial size of the licensee? If so, what criteria are suggested in this regard?

d. One basis for determining the amount of coverage being considered under the Commission's proposed rulemaking would be the characteristics of the licensed material. Should the Commission exempt licensees with certain types or quantities of radioactive materials, such as those with short half-

lives with low activities? If so, what cutoff criteria should be applied?

e. Should the Commission consider increasing the amount of coverage for licensees whose facilities have poor safety and/or inspection histories?

f. What criteria (such as ensuring that the funds will be promptly available when needed) should NRC use in evaluating financial assurance mechanisms?

g. How should the financial protection be provided to ensure that it will be available if needed?

h. With regard to comprehensive general liability and environmental impairment liability policies, the Commission staff is especially interested in hearing from offerers of these policies regarding the availability of their insurance for specified nuclear risks, as well as the terms and conditions of these types of insurance. What is the availability and premium cost of these types of policies (as well as facility form liability coverage from the nuclear insurance pools) to provide cleanup coverage for off-site sudden and nonsudden accidental or unexpected releases of radioactive materials from licensee operations, including damage to natural resources? Are the terms and conditions of these existing types of policies appropriate for covering the risks of accidental nuclear releases? If not, would the insurance industry provide this type of coverage?

i. What is the cost and availability of property insurance from the conventional insurance market and the nuclear insurance pools to provide cleanup coverage for sudden and nonsudden on-site accidental or unexpected releases of radioactive materials from materials licensees? Are the terms and conditions of these existing types of policies appropriate for covering the risks of accidental nuclear releases? If not, would the insurance industry provide this type of coverage?

j. Are there financial assurance mechanisms and insurance policies currently available to provide coverage for environmental restoration of natural resources?

k. How can the Commission ensure that funds for cleanup are promptly available when an accidental release occurs, while still preserving the rights of guarantors to evaluate whether such claims for cleanup are legitimate?

The Commission is particularly interested in hearing from both regulatory agencies with a history of administering financial responsibility programs, as well as financial and insurance institutions on this issue. Furthermore, if it appears that there is going to be a delay before the guarantor will provide funds for cleanup, and prompt cleanup is necessary for health and safety reasons, are there other avenues for cleanup funds available to the Commission or other responsible State or Federal agency?

l. Should the Commission also consider requiring licensees to provide evidence of financial responsibility for the non-radiological component of cleanup of an accidental release?

m. How should the Commission consider setting up such a program so that it is promptly notified when there is a change in the financial status of the licensee?

n. Should the Commission consider differentiating between intentional and accidental releases?

o. What amount of coverage would be appropriate for those fuel fabrication and radioisotope processing plants which have the potential for accidents resulting in cleanup costs significantly higher than $2 million?

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Security measures, Spent fuel, Reporting and recordkeeping requirements.

The authority citation for this document is:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948 as amended (42 U.S.C. 2201).

Dated at Washington, D.C., this 4th day of June, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–13775 Filed 6–6–85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law; Hearing on Proposed Regulations

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Public Hearing on Proposed Amendment to Agency Regulations.

SUMMARY: This Notice sets forth the time and other particulars concerning a public hearing on proposed amendments of Part 332 (Powers Inconsistent with Purposes of Federal Deposit Insurance Law) of the FDIC regulations. The proposed amendments of Part 332 are set out as a Notice of Proposed Rulemaking elsewhere in today's **Federal Register**.

DATE: Friday, July 12, 1985, 9:00 a.m.–5:00 p.m.

ADDRESS: Written requests to participate must be mailed to Hoyle L. Robinson, Executive Secretary, Room 6108, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

Hearing location: The FDIC's Board of Directors room, 6th floor, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

Copies of the Notice of Proposed Rulemaking can be obtained upon request from the FDIC Corporate Communications Office, (202–389–4221), Room 6061, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202–389–4171), Robert E. Feldman, Attorney, Legal Division, (202–389–4171), or Margaret M. Olsen, Deputy Executive Secretary, (202–389–4446), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On November 26, 1984, the Board of Directors of the FDIC adopted for publication a proposed amendment to Part 332 of the FDIC's regulations (12

CFR Part 332). (*See* 49 FR 48552 (Dec. 13, 1984)). The proposal, which was published for a 60-day comment period ending on February 11, 1985, among other things, would have amended Part 332 of FDIC's regulations to prohibit any insured bank (including insured nonmember banks, state banks that are members of the Federal Reserve System, national banks, insured branches of foreign banks, and federally chartered savings banks insured by the FDIC) from directly engaging in the following activities: underwriting of insurance, reinsurance, underwriting or developing real estate, insuring, guaranteeing, or certifying titles to real estate, guaranteeing or becoming surety upon the obligations of others, insuring the fidelity of others, or engaging in a surety business. These activities would have been permitted, however, through a bona fide subsidiary of the insured bank. In addition, certain restrictions on extensions of credit and other transactions between the insured bank and its subsidiary were proposed. Additionally, the proposal would have placed certain restrictions on the affiliation of an insured bank with any company that conducted any of the prohibited activities. Lastly the proposal would have placed restrictions on proposed banks that provide electronic data processing services to persons or companies other than banks, insured banks that act as agent or broker for the sale of insurance, real estate, or securities, and insured banks that provide travel agency services.

On June 3, 1985 the Board of Directors adopted a revised proposed amendment to Part 332 to be published for an additional 45 days public comment. The basic features of the revised proposal are: (1) A prohibition on any insured bank conducting insurance underwriting, real estate development, or acting as a guarantor or surety upon the obligations of others, (2) a requirement that any subsidiary of an insured bank that conducts such activities must meet the criteria for a bona fide subsidiary set out in the regulation, (3) 60 days advance notice to the FDIC of intent to invest in any such subsidiary or to become affiliated with any company that engages in such activities, (4) certain restrictions on the affiliation of an insured bank with any company that engages in any of the prohibited activities, (5) certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in prohibited activities, (6) with certain exceptions, a one year compliance period for banks that, prior to the date of the publication of the revised proposal in the **Federal Register**, established or acquired a subsidiary, or became affiliated with a company, that engages in the prohibited activities, (7) a one year compliance period for any insured bank that, as of the date of publication of the proposal in the **Federal Register**, is directly engaging in prohibited activities except that any ongoing real estate development may be completed, (8) permissible in-house real estate development up to a certain ceiling, (9) if certain conditions are met, life insurance may be underwritten through a department of the bank, (10) an insured bank's direct investment in a subsidiary that engages in prohibited activities will not be counted toward the bank's consolidated capital, and (11) waiver by the Board of Directors of all or any portion of the regulations when it is deemed necessary and in the public interest to do so. In addition, the provision of the regulation which would have addressed data processing by insured banks, insurance, real estate, and securities agency or brokerage activities, and travel agency activities has been dropped.

The Board of Directors at its June 3, 1985 meeting voted to hold a one day public hearing on the revised proposal at which representatives of the Board of Directors to be appointed by the Director of the Division of Bank Supervision and the General Counsel would receive the oral comments of any interested persons on the proposed amendments to Part 332. Participants are invited to address all or any portion of the revised proposed regulation. In addition, the FDIC specifically invites testimony and written submissions, studies, and analyses with regard to the following:

(1) The safety or soundness implications raised by the participation of insured banks in real estate development and/or insurance underwriting;

(2) The effect and propriety of prohibiting insured banks from conducting insurance underwriting or real estate development (in-house or through a subsidiary) unless the bank has adequate capital as defined in § 325.3 of the FDIC's regulations;

(3) What protections, if any, are appropriate if an insured bank conducts real estate development and/or insurance underwriting in-house or through a subsidiary or is affiliated with a company that engages in such activities;

(4) Analyses of the experience of individual banks that are presently directly or indirectly engaging in real estate development and/or insurance underwriting or have in the past directly or indirectly engaged in real estate development and/or insurance underwriting;

(5) Whether the ceilings imposed on in-house real estate development are too high or too low; and

(6) Whether the definition of real estate development should contain additional exclusions.

Persons wishing to participate in the hearing should send a written request to participate to Hoyle L. Robinson, Executive Secretary, room 6108, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. Requests may be hand delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. All requests will be time- and date-stamped upon receipt and oral presentations will be scheduled in the order in which requests are received. Participants will be limited to a ten minute oral presentation and will be advised in writing of the time scheduled for their presentation. All requests to participate must be received no later than the close of business Monday, July 8, 1985. This requirement is necessary so that the hearing officers may adjust their schedules accordingly and so that alternative arrangements for the hearing may be made if more persons are expected to attend than the Board of Directors room will accommodate. This requirement will also provide sufficient time to acknowledge receipt of the notices and inform participants of scheduling.

By Order of the Board of Directors this 3rd day of June, 1985.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13656 Filed 6-6-85; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend Part 332 of its regulations to: (1) Subject to certain exceptions, prohibit any insured bank (including insured nonmember banks, national banks, state banks that are members of the Federal Reserve System, insured branches of foreign banks, and federally chartered savings banks insured by FDIC) from directly engaging in the following:

underwriting insurance, developing real estate, reinsurence, guaranteeing or becoming surety upon the obligations of others, insuring the fidelity of others, or engaging in a surety business, (2) require any subsidiary of an insured bank that conducts any of the prohibited activities to meet the criteria for a bona fide subsidiary set out in the regulation, (3) require notice to the FDIC of intent to invest in any such subsidiary or become affliated with any company that engages in such activities, (4) place certain restrictions on the affiliation of an insured bank with a company that engages in any of the prohibited activities, (5) place certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in any of the prohibited activities, (6) require all insured banks that prior to the publication of this proposal established or acquired a subsidiary or became affliated with a company that engages in the prohibited activities to conform to the regulation (with certain exceptions) within one year from the effective date of the regulation, (7) require any insured bank that as of the publication date of the proposal is directly engaging in any of the prohibited activities to conform to the regulation within one year of the effective date of the regulation with the exception that ongoing real estate developments may be completed, and (8) exclude a bank's direct investment in a subsidiary that engages in prohibited activities from the banks consolidated capital.

DATE: Comments must be received by July 22, 1985.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. Comments may be hand delivered to and reviewed in Room 6108 between the hours of 8:30 am and 5:00 pm.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 389–4171, Robert E. Feldman, Attorney, Legal Division, (202) 389–4171, or Ken A. Quincy, Examination Specialist, Planning and Program Development Branch, Division of Bank Supervision, (202) 389–4141, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On November 26, 1984 the Board of Directors of the FDIC adopted a Notice of Proposed Rulemaking soliciting comment on a proposed regulation governing the direct and indirect involvement of insured banks in real estate brokerage and underwriting, insurance brokerage and underwriting, data processing for third parties, travel agency activities, and other financially related services (49 FR 48552 December 13, 1984). The notice set forth a proposed amendment to Part 332 of the FDIC's regulations ("Powers Inconsistent with the Purposes of Federal Deposit Insurance Law"). In brief, that proposal would have: (1) Prohibited any insured bank (including insured nonmember banks, national banks, state banks that are members of the Federal Reserve System, insured branches of foreign banks, and federally-chartered savings banks insured by the FDIC) from directly engaging in insurance underwriting, underwriting or developing real estate, reinsurance, insuring, guaranteeing, or certifying title to real estate, guaranteeing or becoming surety upon the obligations of others, insuring the fidelity of others, or engaging in a surety business, (2) required any subsidiary of an insured bank that conducts any of these activities to meet the criteria for a bona fide subsidiary set out in the regulation, (3) required notice to the FDIC of intent to invest in any such subsidiary, (4) placed certain restrictions on the affiliation of an insured bank with a company that engages in any of the prohibited activities, (5) placed certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in any of the prohibited activities, (6) required all insured banks that established or acquired a subsidiary or became affiliated with a company that engages in the prohibited activities prior to the effective date of the regulation to conform thereto within one year, (7) required any insured bank that as of the effective date of the regulation was directly engaging in any of the prohibited activities to conform to the regulation within two years, and (8) placed certain restrictions on insured banks that provided electronic data processing (EDP) services to persons or companies other than banks, or acted as agent or broker for insurance, real estate, securities, or travel services.

In proposing this regulation the FDIC acknowledged that the environment in which insured banks function is rapidly changing and that traditional boundaries separating "banking" from other "financial services" and from "commerce" are beginning to erode. The FDIC specifically noted in the preamble of the prior **Federal Register** notice the ever-increasing number of cross-industry acquisitions; the wide array of commercial enterprises affiliating with banks as a result of the "loophole" in the Bank Holding Company Act which permits the phenomenon of the nonbank bank; the expansion by banks into new product markets; and the changes in state law authorizing banks to engage directly, or indirectly through subsidiaries, in activities heretofore not open to banks. As stated in the prior notice, the FDIC monitors developments in the banking industry and related changes in state law in order to assess the potential impact on bank safety and soundness and on the deposit insurance system.

The proposed regulation was published for a 60-day comment period which closed on February 11, 1985. Five hundred seventeen comments were received over the comment period. An overall summary of comments is set forth below. Upon consideration of the comments, the FDIC has determined to issue a revised proposed regulation for further comment. The FDIC has also determined to hold a one-day public hearing on the proposal the details of which are set forth in a notice of hearing published elsewhere in today's **Federal Register**.

Comments Addressing Insurance Activities (Brokerage and Underwriting)

The FDIC received a total of 81 comments that addressed whether insured banks should be permitted to directly or indirectly engage in insurance activities. The majority of the comments addressing this issue were from insurance agents, insurance trade associations, or insurance companies. The majority of these comments were opposed to any bank entry into any aspect of the insurance industry. The concerns of this group related to: express or implicit tying arrangements; potential conflicts of interest inherent in banks conducting insurance activities; potential slackening of credit standards in reliance on insurance issued by a bank's subsidiary; and banks having an unfair competitive advantage due to their status as grantors of credit.

A significant minority of comments addressing insurance activities (approximately 20%) were from banking organizations. While a few banks expressed concerns similar to the ones noted above, most banks supported bank involvement in insurance activities. These banks indicated that they have engaged in such activities (as permitted by state law) and, in their experience, insurance activities have not created any safety and soundness problems. Supporters of bank insurance activities were nonetheless critical of the proposed regulation for the following reasons: (1) The regulation would

disrupt established activities that have been safely conducted over a number of years; (2) insurance powers have generally not been abused nor have supervisory concerns been raised to warrant a broad, restrictive regulation; and (3) compliance with the regulation would generally increase costs to the consumer.

Comments Addressing Real Estate Activities (Brokerage and Development)

The FDIC received approximately 300 comments addressing bank real estate development activities. These comment letters exhibited a pattern similar to that noted above for insurance activities. That is, realty companies and related trade associations opposed any bank entry into real estate activities. The concerns of this group were: (1) Express or implicit tying arrangements; (2) potential conflicts of interest inherent in banks conducting real estate activities; and (3) banks would have an unfair competitive advantage because they are grantors of credit and have tax advantages not available to independent real estate firms. These comments did, however, support the bona fide subsidiary requirement; placing limitations on the volume of business financed by the parent bank; establishing a prohibition on joint advertising; prohibiting the use of bank customer information for the purpose of soliciting real estate business; and requiring separate accounting and recordkeeping. One national association did generally support the proposed regulation (especially the bona fide subsidiary requirement) as preferable to the patchwork of state laws that currently govern bank real estate investment activities.

The comments received from banks were supportive of bank involvement in real estate activities, but critical of the proposed regulation. Banks that have historically had real estate powers or that recently obtained such powers were particularly critical of the bona fide subsidiary requirement as an expensive form of organization and as actually weakening the bank's control over real estate activities. Many comments felt that the existing limitations in state authorizing statutes were sufficient to control any risk to the institution. These comments cited the historical lack of safety and soundness problems associated with bank real estate activities as an argument against a broad regulation and argued that in any event, the FDIC has adequate enforcement powers to deal with potential problems on a case-by-case basis.

Comments Addressing Travel Agency Activities

The FDIC received 144 comment letters from travel agencies or related organizations opposing any bank involvement in travel agency activities. The concerns of these comments were: (1) Bank travel agencies have a competitive cost advantage due to any funding received from the bank; (2) bank travel agency customers may erroneously assume deposit insurance affords some additional protection in the purchase of tickets; (3) travel agency activities are not incidental to the conduct of a banking business; and (4) travel agency activities may have a potential negative impact on banks.

Comments Addressing Electronic Data Processing Services

The FDIC received one comment letter addressing banks providing electronic data processing services. The comment indicated that although there are no safety and soundness considerations regarding such services, a prohibition on tie-ins would be reasonable. The comment objected to the requirement in proposed § 332.8 concerning the remission of commissions to the bank.

Alternative Approaches

In addition to the comments discussed above, the FDIC received many comments suggesting alternatives to the proposed regulation. Dropping the rule in its entirety was one alternative proposed by those who perceived the rule to encourage banks to enter into unfamiliar areas which would not only jeopardize bank safety but would, in some cases, result in unfair competition. The FDIC cannot emphasize enough that neither the original proposal nor the revised proposal is in any way an authorization for banks to enter into the activities at issue. Nor is the regulation properly characterized as an attempt to encourage banks to do so. The proposal is simply a recognition that the authority granted insured banks by their respective chartering authorities may create a need for the FDIC to establish appropriate safety and soundness limitations to govern the exercise of those powers.

Several comments suggested that the FDIC calculate insurance assessments on a risk-related basis in lieu of adopting the proposal. The FDIC has for some time favored implementation of an insurance assessment system based on risk. However, the current system for assessing all insured banks equally on a straight percentage basis was established by Congress and can only be changed by legislation. (It should be noted that the FDIC has sought legislation which will permit risk-related assessment, *see S. 760 and H.R. 1833.)*

Other comments requested that the FDIC not act on the proposal but let Congress resolve the issues involved. Congress can, of course, adopt the course it deems best for the nations' banks. Until such time as Congress directs otherwise, however, the FDIC is bound to enforce the provisions of the Federal Deposit Insurance Act relating to safety and soundness and those provisions relating to the protection of the deposit insurance fund in the way it deems best through its accumulated expertise.

Still other comments urged the FDIC to rely on its cease-and-desist authority to address problem situations on a case-by-case basis rather than adopting a regulation that would be generally applicable to all banks. The FDIC fully intends to utilize its section 8 authority whenever appropriate on an individual enforcement basis. As discussed more fully below, however, in view of among other things, the nature of the activities involved and the related risks to the functioning of the deposit insurance system, the FDIC has determined that it is appropriate to establish standards by way of regulation designed to prevent problem situations before they occur.

Some comments while agreeing that there is a need for the FDIC to address the risks presented by the activities covered by the regulation, urged the FDIC to adopt guidelines rather than a formal regulation. The FDIC has rejected that suggestion as well; the abuses that the FDIC is seeking to have banks avoid and the related safety and soundness and deposit insurance concerns are of sufficient magnitude that a binding regulation establishing enforceable standards is appropriate. Additional comments suggested that the FDIC follow the approach adopted by the Federal Home Loan Bank Board ("FHLBB") in its recently issued regulation governing the direct investment powers of institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). If authorized by applicable law, FHLBB-regulated institutions are permitted thereunder to exercise certain investment powers to a threshold amount which may be exceeded with FSLIC's prior approval. Presumably these comments favor such an approach as it seems to be more flexible than the FDIC's original proposal. As described below, the FDIC's revised proposal permits insured banks, where authorized under applicable law, to (1) engage directly in real estate development up to

the limits contained in § 332.3(b)(2)(i), (2) underwrite life insurance and annuities pursuant to the conditions contained in § 332.3(c)(2)(i), and (3) issue guarantees and act as surety pursuant to § 332.3(a)(2)(i). By permitting FDIC-insured banks to conduct these activities in-house, the FDIC is proposing an approach analogous in some respects to that recently adopted by the FHLBB.

Statutory Authority

Many of the comments asserted that the application of the proposed regulation to all insured banks exceeded the FDIC's statutory authority. Generally, the comments fell into two groups: (1) Those contemplating that the application of the proposed rule to state-chartered institutions is an undue infringement on the regulatory power of the states under the dual banking system, and (2) those contemplating the application of certain aspects of the proposal to insured banks other than insured state nonmember banks is an infringement upon the regulation of national banks by the Comptroller of the Currency, state member banks and bank holding companies by the Board of Governors of the Federal Reserve System, and federal savings banks by the Federal Home Loan Bank Board.

The FDIC has reviewed and considered all of these comments and after doing so continues to believe that the proposed rule is within the FDIC's authority. The FDIC has broad general authority to issue regulations "as it may deem necessary to carry out the provisions of the [Federal Deposit Insurance Act] or of any other law which it has the responsibility of administering or enforcing * * *" 12 U.S.C. 1819 Tenth. It is settled that binding legislative-type rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purposes of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969)).

Despite criticism to the contrary, the proposed regulation does not strain to further a purpose of the Federal Deposit Insurance Act ("FDI Act"). On the contrary, one need look no further than the preamble of the legislation placing federal deposit insurance on a permanent basis to discover the nexus between the proposed rule and the FDI Act. The preamble states that the Banking Act of 1935 was "[t]o provide for the sound, effective, and uninterrupted operation of the banking system* * *" Pub. L. No. 74–305, 49 Stat. 684 (1935). The clear goal of the FDI Act as demonstrated by the express language of the statute and its legislative history is to protect the safety and soundness of insured banks. The ability of a federal bank regulatory agency to make, based on general rulemaking authority, regulations in harmony with safety and soundness concerns was judicially recognized long ago. *Continental Bank and Trust Company* v. *Woodall*, 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S. 909 (1957). Inextricably connected therewith is the safety and soundness of the deposit insurance fund, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n.6 (8th Cir. 1942), and the FDIC's authority to protect the fund. Section 11(f) of the FDI Act is a Congressional mandate that FDIC pay insured deposits whenever a bank is closed "on account of inability to meet the demands of its depositors." 12 U.S.C. 1821(f). The FDIC, therefore, must preserve the solvency of the insurance fund in order to fulfill its mandate when called upon.

Even more importantly, the FDIC "protects the medium of payment from disruption caused by bank failure." H.R. Rep. No. 1792, 88th Cong., 2d Sess. 3 (1964). The recent failure of a state deposit guarantee fund to preserve public confidence in itself clearly demonstrates that financial havoc can result from the loss of public confidence. In order to preserve public confidence in the banking system on a national scale, it is clear that the FDIC must protect the insurance fund. The Senate Committee on Banking and Currency has recognized that the FDIC's supervisory responsibilities do in fact relate to actions having "a direct bearing on its role as insurer." S. Rep. No. 1821, 86th Cong., 2d Sess. 3 (1960). The Board of Directors has determined that this proposed regulation relates directly to the FDIC's role as insurer, and that it will help preserve public confidence in the banking system. Furthermore, the FDIC's interpretation of its own statute is entitled to great weight. *Jones* v. *FDIC*, 748 F.2d 1400, 1404 (10th Cir. 1984) (citing *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 557 (1980)); *see also FDIC* v. *European American Bank & Trust Co.*, 576 F. Supp. 950 (S.D.N.Y. 1983). This deference is particularly appropriate in defining unsafe and unsound banking practices since the courts have recognized that "[o]ne of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies." *Groos National Bank* v. *Comptroller of the Currency*, 573 F.2d 889, 897 (5th Cir. 1978); *First National Bank of LaMarque* v. *Smith*, 610 F.2d 1258, 1265 (5th Cir. 1980).

In addition to the FDIC's general rulemaking authority, the FDIC in taking this action is relying upon sections 8(a) and 6 of the FDI Act. Section 8(a) of the FDI Act provides that the FDIC may involuntarily terminate the deposit insurance of any insured bank which has engaged or is engaging in unsafe or unsound practices or is in an unsafe or unsound condition. 12 U.S.C. 1818(a).

Section 6 sets forth six safety and soundness concerns [1] which must be satisfied in order for deposit insurance to be granted.[2] (12 U.S.C. 1816). Specifically, section 6 *requires* the FDIC to consider "whether or not [the bank's] corporate powers are consistent with the purposes of this Act." Therefore, while it may be clear that a bank's powers are conferred by its chartering authority, there can be no doubt that the FDIC is required by the FDI Act to consider fully whether or not those powers are consistent with the FDI Act and that it is the role of the FDIC to define those purposes.

The FDIC has the authority to promulgate regulations pursuant to sections 8(a) and 6 that are reasonably connected to furthering bank safety and soundness and preserving the insurance fund. *See Mourning, supra.* The fact that section 8(a) literally deals with a particular type of processing is no bar to relying on that provision of the FDI Act as authority for the proposed regulation.

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[1] Those concerns are as following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnigns prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of the Act.

[2] Sevéral comments noted that deposit insurance is automatic for national banks (when commencing business) and state member banks (when becoming a member of the Federal Reserve System) upon certification by the Comptroller and the FRB, respectively, of satisfaction with the factors enumerated in section 6, 12 U.S.C. 1814(b). These comments argued that, therefore, any concerns FDIC might have about the factors in section 6 are limited to insured state nonmember banks. The certifications made by the Comptroller and the FRB, however, must comport with the standards of analysis adopted for the six factor by the FDIC. The former two agencies cannot establish the standards to be followed in section 6 but, rather, must adhere to those established by the FDIC. That this could not be otherwise is clear because the FDIC bears the insurance risk. Additionally, under section 8(a), the FDIC can terminate the deposit insurance of any insured bank in an unsafe and unsound condition. It would be self-defeating for the Comptroller and the FRB to apply standards to the certification process unacceptable to the FDIC as the FDIC would merely step in and terminate insurance.

Any analysis of authority rests only on the reasonableness with which the regulation furthers the purposes of sections 8(a) and 6. The regulation accomplishes this by decreasing the need for involuntary termination proceedings against banks engaged in the activities prohibited thereunder, *i.e.*, activities that would violate the standards of section 6 and jeopardize the deposit insurance fund. This preventive approach to ensuring safety and soundness and preserving the fund has a reasonable nexus with FDIC's general rulemaking authority and the stated purposes of the FDI Act.

The FDIC cannot be expected to proceed solely on a case by case basis. *Cf. Independent Bankers Association* v. *Heimann*, 613 F.2d 1164, 1169 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980) (Comptroller entitled to accomplish his regulatory responsibilities over unsafe and unsound practices by rules as well by cease-and-desist proceedings). The FDIC must have the ability "to forewarn by specifying and clarifying the nature and scope of [its] concerns" in order to "minimize the necessity for recurrent and costly investigation into the conduct" of insured banks. *Id.* The FDIC has the right to choose between rulemaking and adjudication in eradicating unsafe and unsound banking practices that threaten the viability of the deposit insurance fund. Although several coments asserted that the FDIC could not promulgate regulations based on section 8(a), no comment has mentioned any compelling evidence—nor is there anything compelling in the FDI Act or its legislative history—that would limit the FDIC's power to its enforcement function or prevent the FDIC from making that function more effective through rulemaking. The FDI Act establishes the FDIC as an administrative agency, not solely as an administrative court passing on whether to terminate insurance. Congress gave the FDIC extensive powers of inquiry and investigation (*see* 12 U.S.C. 1820(b), (c) and the power to publish reports of insured bank noncompliance with FDIC recommendations, *id.* 1828(f), as well as the power to terminate insurance). It is therefore plain that Congress did not wish to limit the FDIC to a judicial method of legal administration by precluding preventive measures other than enforcement proceedings.

The FDIC's authority is also supported by considerations of fairness and practicality. *See National Petroleum Refiners Association* v. *Federal Trade Commission*, 482 F.2d 672, 683 (D.C. Cir. 1973), *cert denied*, 415 U.S. 951 (1974). This seminal case held that the Federal Trade Commission could police "unfair and deceptive" practices through rulemaking or through enforcement proceedings. The FTC's authority to implement its mandate over "unfair and deceptive" acts or practices is "closely analogous" to a federal banking agency's role with respect to unsafe and unsound banking practices. *Heimann*, 613 F.2d at 1169. Rulemaking, according to the *National Petroleum Refiners* decision, engenders fairness by putting an entire segment of society on notice of how the agency will act in the future. 482 F.2d at 682. It permits the public to participate in the process of establishing the rule, unlike the adjudicatory process. Rulemaking also is practical in that it can prevent increased numbers of termination proceedings against banks encountering difficulties. (The FDIC's "heavy and profound regulatory responsibilities" cannot be disrupted by an entirely preventable increase in its enforcement caseload. *See Investment Company Institute* v. *FDIC*, 728 F.2d 518, 526 (D.C. Cir. 1984).)

Some comments argued that the exception clause of section 9 "Tenth" of the FDI Act which limits the Board of Directors' authority to issue regulations "to the extent that authority has been expressly and exclusively granted to any other regulatory agency," 12 U.S.C. 1819 Tenth, removes the authority from the FDIC to adopt these regulations. The exception clause does not remove the FDIC's authority to adopt regulations with respect to state-chartered banks even if those regulations conflict with state laws. Validly promulgated FDIC regulations clearly preempt any state law to the contrary. *See Fidelity Federal savings Bank* v. *de la Cuesta*, 458 U.S. 141 (1982); *Conference of State Bank Supervisors* v. *Conover*, 710 F.2d 878 (D.C. Cir 1983). In fact, the FDIC has long prohibited insured state nonmember banks from doing a surety business, insuring the fidelity of others, insuring, guaranteeing or certifying titles to real estate, and guaranteeing or becoming surety upon the obligations of others. 12 CFR Part 332. with respect to real estate and insurance activities, the FDIC cannot be accused of overriding state laws in the many states that do not permit such activities. Even in those states where such activities are permitted, the FDIC is simply prescribing procedures for their safe and sound conduct which procedures may or may not be more restrictive than procedures established by state law. For example, California-chartered commercial banks may have direct real estate investments not to exceed the total shareholders' equity in the bank (Cal. [Fin.] Code § 751.3).

With respect to national banks, state members banks, federal savings banks, and isured branches of foreign banks, the Board of Directors believes that the authority to issue regulations governing the safety and soundness of such entitlies with a mind toward protecting the FDIC's paramount interest in the deposit insurance fund has nowhere been expressly and exclusively delegated to the Comptroller of the Currency, the FRB, or the Federal Home Loan Bank Board. Nonetheless, the proposed regulation does not address areas of activity to which the latter three agencies have already spoken. Currently, national banks and state member banks may not engage in real estate development, insurance underwriting, or reinsurance activities. By the same token, FDIC-insured federal savings banks also may not directly engage in such activities except to the extent that they were authorized to do so under state law prior to their conversion to federal charters. *See* 12 U.S.C. 1464(i)(5). The FDIC's regulation of such grandfathered activities is not inconsistent with federal law as the FDIC has the retained authority, as clearly demonstrated above, to prohibit unsafe and unsound practices. The FDIC's proposed regulation does not conflict with the recently-issued FHLBB regulation governing the regulation of direct investment by FSLIC-insured institutions because that regulation specifically excludes FDIC-insured federal savings banks from its scope. (50 FR 6,912). Although FHLBB is the primary regulator of FDIC-insured federal savings banks, FDIC paramount interest in preserving its insurance fund is again a sufficient nexus to give FDIC the ability to provide for the safety and soundness of such institutions. This is especially the case where FHLBB is silent on the issue of investment powers with respect to Federal savings banks while imposting safety and soundness guidelines on all other FHLBB-regulated, but FSLIC-insured, institutions.

Finally, the proposed regulation's provisions on affiliation and on restrictions on transaction with affiliates do not interfere with the FRB's regulation of bank holding companies and their nonbank subsidiaries. Those provisions of the proposed rule would apply solely to the insured banks in furtherance of safe and sound banking practices. No regulation of the affiliate (*i.e.*, bank holding company or nonbank subisdiary) is involved; only the insured bank is within the abmit of the regulation.

Bases for Concern

Real Estate Development

The FDIC believes there is a strong factual basis for regulating real estate development activities by insured banks. This belief arises from the nature or real estate development activities as well as from more general distinctions that can be made between equity investments and lending activities.

Risk Compariosn of Equity Investment vs. Lending. It is more risky to make equity investments in any given industry than it is to make loans to individuals or business entities engaged in the same types of activities. Traditionally, in our economic system, investors have been risk takers fully aware of the rewards and losses which can accrue as a result of their decision. Lenders, on the other hand, have traditionally made an effort to minimize risk. While loans can be very risky, they are often repaid in full even if a project shows no profit or a negative profit. Returns to equity investments, however, are dependent upon the eventual success of a project. A project that does not show a profit can result in a total loss for the equity holder. Moveover, real estate projects offered to financial institutions for direct investment are likely to be riskier than projects for which straight loans are sought, since developers will be less willing to share the rewards to equity provided by their "best" investments. A recent study based on a sample of Texas-charatered savings and loan institutions lends further support to the view that real estate equity investments by financial institutions generally have greater risk than real estate loans.[3] IN recognition of the fact that equity investments are likely to be riskier than loans, the FDIC traditionally has not permitted banks to make equity investments. To the extent that equity investments in real estate are permitted by state law, the proposal would limit a bank's exposure, in the aggregate, and with respect to any one investment.

Cyclical Nature of Real Estate Markets. Beyond the general distinctions that can be made between loans and equity investments, there is sufficient evidence of riskiness in real estate development itself to warrant concern. One needs only to look at the current vacancy rates for office building (See Chart 1), apartments and commercial buildings in major cities across the country to see the risks inherent in real estate development activities. Downtown Office vacancy rates in Houston, Denver, Dallas and Los Angeles as of year-end 1984 were 20.9, 23.7, 17.2 and 11.8%, respectively, while the suburban vacancy rates in these same metropolitan areas were even higher.[4] Apartment vacancy rates are up to 20% in Houston, 11.2% in Phonex, 9% in Dallas-Ft. Worth, and 24% in Denver. In Oklahama City, apartment owners are offering free trips to Hawaii in an effort to work off inventory.[5] The nationwide mortgage banking firm of Lomas & Nettleton projects that a rental oversupply will arrive in Atlanta, Austin, Orlando and Tampa within a year. The time lag between initial construction and the final completion of real estate development projects may contribute to the cyclical nature of the real estates markets since projects often are initiated when markets are strong, but completed after they have weakened. (See Charts 2 and 3 for evidence of the cyclical nature of real estate markets.)

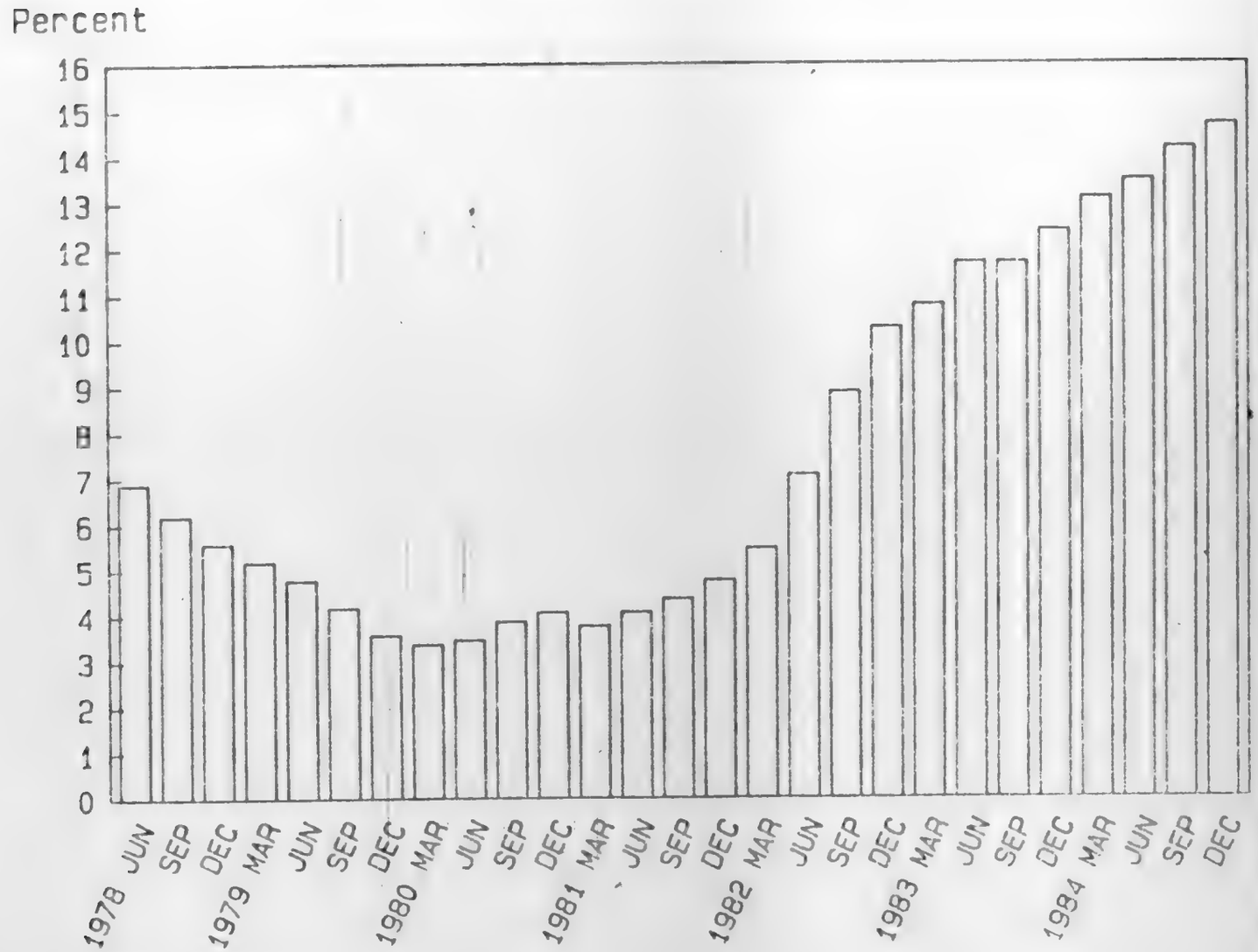
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[3] J. Crockett, C. Fry. & P. Horvitz, *Equity Participation in Real Estate by Savings and Loans: Implications for Pofitability and Risk* (University of Houston 1985).

[4] Coldwell Banker, *Office Building and Real Estate Data* (1985).

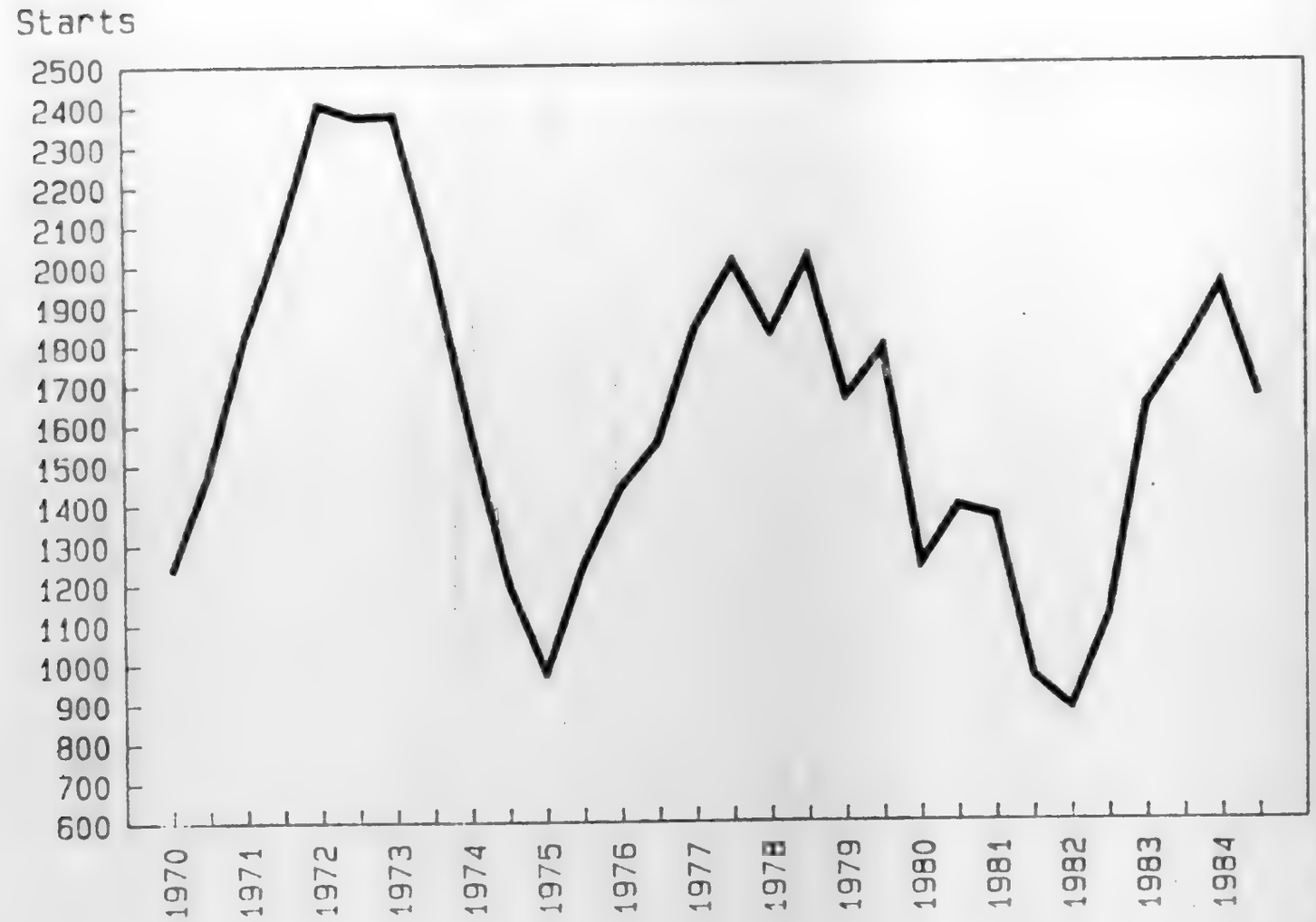
[5] *How Tax Laws Pushed Apartment Builders into Overdrive*, Business Week 124 (May 13, 1985).

Chart 1
Office Vacancy Rates
(Downtown Areas)



Source: Coldwell Banker.

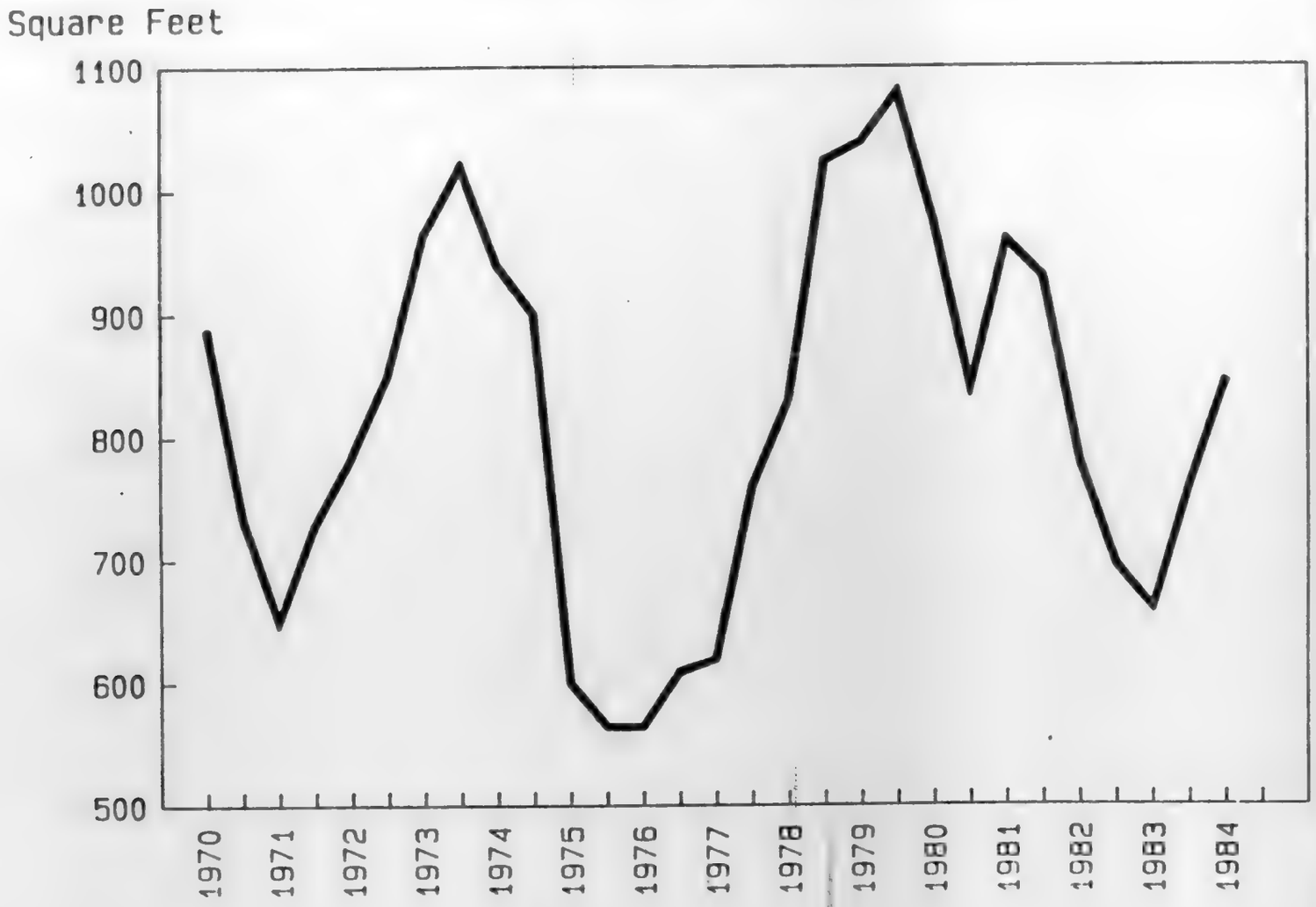
Chart 2
Housing Starts
(thousands of units)



Source: U.S. Department of Commerce.

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Chart 3
Commercial & Industrial Building
(millions of sq. ft.)



Source: F. W. Dodge.

The real estate downturn of the mid-1970s caused serious distress for many financial institutions which were creditors for real estate projects, difficulties which would have been even greater had they had equity positions in the underlying properties. By March 1976, at least 32 savings and loan associations with aggregate assets of $10 billion had service corporations with serious real estate problems. Real estate losses were contributing factors in the failures of five S&Ls with aggregate assets of over $700 million during the mid-1970s.

The virtual collapse of the REIT industry during this period presented similar problems for commercial banks. For the three-year period ending December 31, 1977, the 20 largest banking companies had charge-offs on loans to REITs in excess of $750 million. While there were differences in the overall portfolios of the various REITs in existence at this time, in the aggregate their most important investment category was short-term development/construction loans. Many real estate developers had difficulty prepaying these loans as interest rates rose and construction costs steadily increased during the mid-1970s. For REITs this created cash flow problems and a large number of bankruptcies.

While the financial problems of S&Ls and REITs during the mid-1970s can be partly attributed to the cyclical nature of the real market, there were several others reasons for their problems, which help illustrate some of the reasons why more direct bank participation in real estate-related activities could increase overall bank risk. One major problem, highlighted during Congressional hearings on the REIT issue, was that unrealistic property appraisals were made in numerous cases, which resulted in loan to value ratio that were often greater than 100 percent.[6] While fraud can be involved in inflated property values, inexperience and poor judgement are more often the underlying cause of problems due to inaccurate real estate appraisals. The appraised value of a property should be the present value of the net cash flow stream. To give just one example of how an inaccurate appraisal may arise, if the so-called appraised value was based on the *gross* sellout value, which did not take into account sales expenses, taxes, etc. and did not bring the cash flow back to a present value figure, the appraisal could easily be overvalued by 50% or more. There are a number of other legitimate appraisal methods which may create problems when applied in the wrong situations.[7]

The FDIC has found numerous cases where inapropriate appraisal methods have led to large losses for financial institutions. This illustrates that the inexperienced real estate investor is much more apt to run into financial difficulty than is the experienced investor. Since direct investment in real estate is an area in which many banks would have to be considered inexperienced, pitfalls that arise for the experienced real estate investor (due to the natural riskiness of the activity) would be magnified for banks participating in this area.

Another risk that would be inherent for most banks engaged in direct real estate investment is that it would be difficult for banks to diversify their risks geographically. This was also pointed out during Congressional testimony as a factor contributing to the real estate problems of depository institutions in the mid-1970s.[8] The values of local real estate investments are strongly correlated, since they are dependent upon the same economic factors. Since many banks operate within relatively small geographic markets, they would find it difficult to diversify their risks. Banks that do attempt to diversify these risks by obtaining out-of-territory loans face a different type of risk due to their inexperience in real markets outside their own territory.[9]

There are other potential pitfalls that await depository institutions as relatively new entrants into the equity market for real estate. One aspect of real estate markets which elevates their potential riskiness is the inefficiency created by information gaps. While millions of active traders and frequent transactions keep stock prices near their "true" (realizable values, the thinness of real estate markets makes them more prone to pricing errors. Knowledge about a given property is likely to be highly specialized and costly to obtain because there may be a mere handful of potential buyers having true interest in a property's value at any given time. Further, few transactions involving similar neighboring properties may have transpired in the recent past so that buyers and sellers have little guidance as to what prices are "realistic." Locating those who have the best information may be difficult, especially if the potential buyer (or seller) is not familiar with the local real estate market, and the high cost of obtaining adequate information creates a significant probability that uneconomic purchases and sales will be made. This problem is compounded by the need to diversify real estate investments geographically for safety purposes. Real estate investors must look to markets about which they have little first-hand knowledge, and this exposes them to the information problems just discussed.

Another safety and soundness concern is that real estate investments are not liquid. In periods of economic distress when cash flow considerations are most likely to necessitate selling the asset, it might be particularly difficult to liquidate the asset.

Empirical Evidence. A number of studies offer additional factual evidence of the risks inherent in real estate-related activities. These studies utilize several methods for examining the risks real estate activities pose for banking organizations.[10] One method is to compare an activity's variability of earnings and failure rate with those of banks. A second method is to look at the effect of diversification on a bank organization's cash flow. The second method accounts for the fact that some "risky" activities can actually reduce risk by reducing the variability of the combined organization's cash flow. This would occur if the "risky" activity produced most of its cash flow when bank cash flow is weak but produced little when a bank's cash flow was strong. In such a case the combined cash flow would be less variable than either of their individual flows. One way to examine the diversification effects is to look at the level and variance of earnings of banking and other activities, and then look at the correlation between those earnings. Equity investments in real estate could reduce bank risk if either (1) the earnings from a nonbank activity are less volatile than in banking, or (2) earnings from the nonbanking activity are negatively correlated with

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[6] *Real Estate Investment Trusts and the Effect They Have Had and May Be Expected to Have on the Banking System: Hearings Before the Senate Committe on Banking, Housing and Urban Affairs*, 94th Cong., 2d Sess. 297 (1976) (hereinafter cited as *Hearings*.)

[7] These include: appraisals based on a valuation "when completed and occupied on a fully stabilized basis" when a project is not completed or fully stabilized; valuations based on sales at "typical terms" when such typical terms are not carefully specified; "in use" valuations when a property is out of use; and valuations based on "the highest and best use".

[8] *Hearings*, *supra* note 6, at 297.

[9] *See Banks Warned to Avoid Risky Real Estate Swaps*, American Banker, May 2, 1985, at 1, col. 2, for a view on one type of problem that can arise from the purchase of out-of-territory real estate loans

[10] The discussion of methods that can be used in measuring risk is taken largely from L. Wall & R. Eisenbeis, *Risk Considerations in Deregulating Banking Activities*, Federal Reserve Bank of Atlanta Economic Review 6, 12–13 (May 1984)

those of banking. A bank's risk could increase if its engages in financial activities that have more volatile earnings than banking and whose returns are highly correlated with banking. The studies reviewed in the following paragraphs discuss measures of variability of earnings and correlation in examining the risks equity investments in real estate may pose to banks. While none of the studies alone provides conclusive evidence that a bank's real estate equity investment activity should be placed in a bona fide subsidiary, in the aggregate these studies, along with the additional evidence presented in this section, present a strong case in favor of the FDIC's proposed regulation.

Wall and Eisenbeis (1984) examined annual returns from 1970 to 1980 and found that exposure to real estate could have posed significant risks to banking institutions over this period.[11] Two types of evidence supported this conclusion: comparisons of earnings variability between banking and real estate-related activities, and measures of the correlation between annual real estate earnings and bank returns. The ratio of net income to assets was used to measure earnings for both activities, and data were drawn from the real estate and banking subsidiaries of U.S. bank holding companies. Individual holding company data were aggregated to obtain measures of average industrywide earnings for banking and (each of) several real estate-related functions. The authors used these industrywide averages to calculate statistical measures of relative risk.

TABLE 1.—RISK MEASURES: AGGREGATE BANK HOLDING COMPANY DATA, 1970–1980

Type of activity	Coefficient of variation	Coefficient of determination
Real Estate Operators, Lessors of Buildings	200242	+ 645042
Condominium Management and Co-op Housing Associations	542500	+ 528662
Lessors of Mining, Oil, etc	434163	+ .370005
Subdividers and Developers	306568	+ 560607
Lessors of Railroad Property and Other Property Not Allocable	124316	− .36543
Other Real Estate	184351	+ .310724
All Real Estate	216494	+ 605346
Banking (Banks, Trusts, and Mutual Savings Banks)	173503	+ 1.0

NOTES.—Data are annual, [illegible] from the Corporate Source Book of Income which uses Federal tax returns to compute firms' profits. Coefficient of variation measures the variability of earnings and is thus indicative of the risk of the activity by itself. Coefficient of determination measures the correlation of the activity's earnings with bank earnings and thus measures the degree of [illegible] risk that the activity may bring to banks. A coefficient of determination of +1.0 means that the activity's earnings oscillate exactly as bank returns do, and inclusion of the activity in a bank's portfolio would increase the amplitude of swings in bank returns, *i.e.*, banks receive no diversification benefits from such an investment.

Source: Wall and Eisenbeis 15 (1984)

[11] *Id.* at 6–19

Relevant findings from this study are summarized in Table 1. The measures of earnings variability ("coefficients of variation") show that five of the six real estate activities examined had more variable earnings than banking over the sample period. Moreover, the correlation measures ("coefficients of determination") show that the earnings of all but one real estate function were positively and strongly correlated with bank returns during the 1970s. This suggests that a strong move into real estate investments could have aggravated the volatility already present in a "typical" bank's earnings during this period. The combined earnings of all individual real estate activities ("All Real Estate" in Table 1) were significantly more variable than bank returns in the sample and showed a strongly positive coefficient of determination. Such evidence indicates that, from 1970 to 1980, even a bank whose real estate interests were well-diversified by type of activity may not have been able to avoid a substantial increase in earnings volatility as a result of its exposure to real estate.

Boyd, Hanweck, and Pithyachariyakul (1980) also examined rate-of-return variability in real estate and banking.[12] Two different methods of measuring this variability (*i.e.*, standard deviation) were used for annual data spanning the 1971–77 period. The first method followed that of most other studies and used industrywide average rates of return to compute a standard deviation statistic for each industry (*e.g.*, real estate and banking). A standard deviation thus compiled was called an "industry statistic." The second method initially computed a rate-of-return and its standard deviation for each individual firm. These statistics were then pooled into (unweighted) averages to derive a measure of the industry's rate-of-return variation. Standard deviation statistics computed in this manner were called "individual firm" statistics.

Both methods used data collected from bank holding company subsidiaries. Individual firm statistics reflected intra-industry (inter-firm) variability in rates-of-return while industry statistics did not. The standard deviation of an individual firm's rate-of-return received no weight in industry statistics, because earnings were aggregated before any standard deviation was computed. Individual firm statistics provided a broader measure of risk by incorporating the entire spectrum of individual performances and then weighting them equally to represent the industry's rate-of-return variation.

Both measures employed in this study suggest that real estate returns were vastly more variable than bank earnings over the sample period. Table 2 reveals that the "industry" standard deviation for real estate returns was 182 times as large as the analogous measure of variability for bank earnings. Similarly, the "individual firm" statistic suggests that real estate returns were 62 times more variable than bank returns during this six-year period. In a separate exercise it was shown using "industry" data that the correlation coefficient between real estate returns and bank returns over this period was +.8322. The coefficient constructed from individual firm data appeared weakly negative at −.1383. While the alternative measures disagree as to the diversification benefits available from real estate investment, the weight of the evidence appears to favor a positive correlation of returns. At best, the individual firm data suggest a weak offsetting of bank earnings variability by real estate returns, while the industry data indicate that the diversification benefits available to banks through real estate investment were negligible. When these findings are combined with Table 2's evidence, the summary statistics indicate a strong possibility that real estate investment would raise the risk exposure of commercial banks.

TABLE 2.—RISK MEASURES: "INDUSTRY" AND "INDIVIDUAL FIRM" METHODS (1971-77 ANNUAL DATA)

	Standard deviations for rates of return	
	Industry	Individual firm
Leasing, Land, Real Estate	0728	0802
Commercial Banks	0004	0013

NOTES.—Rates of return are defined as the ratio of after tax profits to total assets.

Source: Boyd, Hanweck and Pithyachanyakul (1980) 118-19.

Eisemann (1976) used monthly rate-of-return data to investigate earnings volatility in many different industries.[13] Rates of return were calculated from indices of stock market performance and thus reflected the investor's point of view. Dividends and capital gains rather than corporate profits *per se* were the primary elements in the rate-of-return

[12] Boyd, G. Hanweck & P. Pithyachariyakul, *Bank Holding Company Diversification*, Proceedings of a Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago 105–121 (1980).

[13] P. Eisemann, *Diversification and the Congeneric Bank Holding Company*, Journal of Bank Research 68–77 (Spring 1976).

calculation. Rates of return for individual firms were aggregated and weighted by the firm's share of the industry's market value in order to obtain an "industry" rate of return. Monthly data from December 1961 to December 1968 were compiled for the analysis and standard deviations were computed on the basis of the aggregate (industry) rates of return.

The results using monthly data corroborate the findings of annual studies. For banking, the deviation of returns was .04578 over the sample period, while three real estate-related industries showed substantially greater earnings variablity: returns to land development, leasing, and property management had standard deviations of .10710, .09060, and .13044, respectively. Hence, the average "risk" associated with real estate investments was more than twice as great as the banking risk reflected in monthly standard deviation.

Sirmans (1984a and 1984b) examined the components of risk in a hypothetical portfolio which included direct investment in real estate.[14] In addition to real estate, the assets comprising the assumed portfolio included commercial loans, fixed and adjustable rate mortgages, and Standard and Poor's 500 Index Fund. Two alternative indices were used to measure quarterly rates of return to real estate. The first index reflected net operating income from apartments, hotels, shopping centers, industrial plants and office buildings *plus* any quarterly changes in the appraised values of such properties. The alternative measure reflected actual market rates of return to a popular real estate investment trust (REIT) index fund. Rates of return were calculated as the ratio of dividends plus capital gains to beginning-of-quarter share prices. Quarterly yields on the portfolio's other assets were also obtained for the sample period, 1978:1 to 1984:2, and these were used to construct a set of "efficient portfolios" for each real estate index. (An "efficient" portfolio contains the unique mix of assets that would have maximized expected returns over the sample period for a given level of risk exposure (standard deviation). The efficient *set* shows one such portfolio for each conceivable level of risk.

This exercise revealed that increases in real estate investment would have entailed major increases in portfolio risk for a wide range of portfolio compositions. For both measures of real estate returns, the standard deviation of portfolio earnings rose steadily as real estate's share of the asset composition was increased. Expected returns also rose with real estate's share of the portfolio, but modern portfolio theory suggests that this effect may have been due precisely to real estate's greater riskiness (as compared to that of displaced assets). Because each of the real estate indices has different deficiencies which could mask the true variability in returns, the broad agreement of these measures on the nature of real estate risk over the sample period suggests that volatility was clearly present in the rate-of-return data of 1978:1 to 1984:2.

Crockett, Fry and Horvitz (1985) interviewed the top management of several large Texas S&L's in order to examine the nature of risk inherent in "typical" real estate ventures which have been conducted by these financial institutions.[15] While expanded powers granted to Texas S&L's have afforded them an opportunity to use direct real estate investment as a diversification tool, the authors did not draw the general conclusion that the risk-reducing benefits of diversification have been fully realized:

> For example, Texas S&L's are mainly interested in taking positions where projects will be sold and profits will be realized in a few years. Over a relatively short horizon, many of these projects, which produce little if any cash flow and lack liquidity, may be unfavorably affected by an increase in interest rates (pp. 17–18).

The inference is that, although recent opportunities for financial institutions to invest directly in real estate have permitted a reduction of risk through greater diversification, such powers also have been used imprudently to elevate risk exposure. This judgment is supported by several recent failures of thrift institutions which regulators have linked to real estate dealings. Even without benefit of these latest experiences, Crockett, Fry and Horvitz were able to detect from interviews that operative diversification strategies at some financial institutions were potentially inadequate to safely accommodate real estate investment:

> If thrifts are to become more involved in equity investment in real estate, an effort should be made to insure that projects are chosen not only on the basis of the riskiness of the individual investment, but on the basis of its contribution to the risk of the portfolio as a whole (p. 18).

On balance, past experience and current practice suggest that financial institutions frequently lack effective internal controls for limiting real estate exposure.

Current Real Estate-Related Problems. All of the above-mentioned studies suggest that real estate-related activities are riskier than a bank's traditional activities and could increase bank risk. It is worth noting that much of this evidence was for a period of time (*i.e.*, the 1970s) that was characterized by generally high inflation. If anything inflation helps to improve the earnings prospects of real estate investments since land values increase with inflation. During the latter part of the 1970s it is almost certain that inflation was responsible for the profitability of many real estate ventures. What this suggests is that, since a noninflationary environment currently prevails, it may not be as easy to obtain profits from real estate ventures as it was in the past.

Indeed the FDIC is currently faced with a number of banks with problems that are primarily due to real estate investments. while these are not equity investments, since the large majority of FDIC-insured institutions are not authorized to engage in direct real estate investments, they indicate the problems the real estate market is experiencing and the greater problems banks may incur should they be permitted to make equity investments in real estate without the protection afforded by a bona fide subsidiary and other restrictions put in place by the rule.

In addition to the problems banks are experiencing with their real estate portfolios, the Federal Home Loan Bank Board has indicated that many of the savings and loan institutions that it insures are experiencing asset-quality problems due to equity investments in real estate. The FHLBB noted in its final rule on regulation of direct investment by institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC) that the recent failures of San Marino Savings and Loan and Empire Savings and Loan were caused primarily by real estate equity investments. 50 FR 6912, 6918. The FHLBB estimates that its losses as a result of these two failures may exceed $400 million.

In an internal memorandum circulated December 10, 1984 and released to the public in connection with its final rule on direct investments, the FHLBB provided examples of numerous other problem institutions that may fail due to their direct investments in real estate activities. The following example presents a typical case.

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[14] G.S. Sirmans, *Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments*, Office of Policy and Economic Research, Federal Home Loan Bank Board (Nov. 29, 1984a) and *Reestimation of a Thrift Institution's Efficient Frontiers*, Office of Policy and Economic Research, Federal Home Loan Bank Board (Dec. 10, 1985b).

[15] Crockett, Fry & Horvitz, *supra* note 3.

Institution A

Problem: Funds were used for speculative real estate development and construction loans and condo conversion loans. These loans were actually direct investments and many were made that exceeded net worth. Loans were often funded at 99% of value as based upon inflated appraisals and in fact far exceeded the actual value of the security property.

Losses: Reappraisals indicate losses of over $30m, well in excess of net worth.

Net worth: At period of greatest growth, it declined from a positive to a substantially negative net worth because of poor asset quality.

There have been more recent examples of savings and loan institutions that are failing or near failing due primarily to poor real estate investments as reported in the press. To illustrate the events of a single week, on Monday, April 22, 1985 the *American Banker* highlighted the real estate-related problems of Shoreline Savings Bank in California; while on the same day another California S&L with problem real estate transactions, Beverly Hills Savings and Loan Association, was taken over by the FHLBB. The April 23 issue of *American Banker* included an article on the real estate loan problems of Coronado Federal Savings and Loan Association in Kansas. On April 26th, the *Wall Street Journal* described the "high-risk real estate development loans" of Sunrise Savings and Loan Association of Florida, while on the same day the *New York Times* brought attention to the real estate losses of Bell Savings and Loan Association in San Mateo, California. As many articles pointed out, real estate losses are expected to spread among other S&Ls because many of these troubled thrifts were active sellers of participations nationwide.

A further indication of the concern federal bank regulators have regarding equity investments in real estate by depository institutions, is that the Federal Reserve Board also has indicated its support for rules limiting direct investment in real estate by depository institutions. The Chairman of the Federal Reserve, Paul Volcker, indicated in a letter to Edwin Gray, Chairman of the Federal Home Loan Bank Board that:

> The Federal Reserve shares your concern about the risks the heavy investments in certain types of assets [including real estate] imply for depository institutions; our own experience supports your evaluation of such risks. In addition, our staff concurs with the assessment of your staff about the conclusions presented by consultants hired by opponents of the proposed rule: neither the facts nor the analysis presented by consultants are sufficient to justify the finding that real estate and equity investment does not increase the risk of loss to thrift institutions.

The Federal Reserve Board shares your view that ultimately the cost of excessive risk taking by these institutions must be borne by the federal insurance agencies and the public. We are currently reviewing steps that might be taken to limit such activity within a bank holding company system, and we support your efforts to impose prudent restraints on investment activity by those state-chartered institutions insured by the FSLIC that have been granted increasingly broad asset powers.

Limits on Direct Investments in Real Estate. Despite these reasons for concern, the risk posed to insured banks from real estate investment can be controlled by ensuring adequate diversification. While geographic diversification can reduce a bank's overall exposure, real estate returns in different markets are subject to many of the same factors. Thus it is appropriate to set a limit on a bank's aggregate real estate investment. Moreover, the FDIC feels that it is more appropriate to determine this limit as a percentage of a bank's capital than as a percentage of total assets, as it is a bank's capital that provides a buffer against losses. The proposed regulation would thus allow banks to engage directly in real estate development provided that the bank's equity investment in any one real estate development does not exceed 10% of primary capital and its total equity investment in real estate does not exceed 50% of capital. While there is some arbitrariness in any specific percentage limit, a limit set at 50% of primary capital is justifiable, since under such a limit a bank's real estate exposure alone could not cause a bank to fail. (The FDIC specifically requests comments on whether these limits are too high or too low.) Under a worst-case scenario a bank may lose 50–60% of its real estate investment, in which case it would not lose more than 25–30% of its capital.

While the benefits of diversification are a well understood principle of financial theory, a study commissioned by the FHLBB gave additional support to this notion as well as to the FDIC's view that limits are more appropriately expressed as a percentage of capital than as a percentage of assets. An outside consulting firm contacted persons knowledgeable in the field of investment risk analysis who were also familiar with the U.S. thrift industry to see whether there was consensus on the effect of the FHLBB's proposed regulation on the risk to the FSLIC. The persons interviewed included representatives of insurance rating companies, investment banks/brokerage houses, lending institutions (banks), academia, accounting firms, and fund management companies. Of the 21 respondents, 19 stated that the proposed limit on aggregate direct investment would reduce risk to FSLIC as compared with no limitations. Moreover, the judgment predominating among the experts was that the aggregate direct investment limit should be tied to net worth rather than total thrift assets.[16]

If a bank wishes to engage in real estate development on a broader scale, the FDIC proposal indicates that (1) it must do so indirectly through a bona fide subsidiary, and (2) any investment in such a subsidiary will not be counted toward the bank's regulatory capital. The exclusion of a bank's investment as part of regulatory capital and the use of a bona fide subsidiary as defined in this proposal ensure that the bank is sufficiently isolated from risks posed by real estate development activities over and above the limit set for direct investment. While there is always room for abuse and thus some possibility of loss to the bank as a result of the actions of a subsidiary, corporate law makes it quite clear that in the absence of fraud or willful deceit banks and their bona fide subsidiaries would be separate legal entities, and one would not be held liable for the actions of the other.[17]

Insurance Underwriting

When looking at the riskiness of bank involvement in insurance activities it is essential to distinguish between different types of insurance (particularly between the life/health and property/casualty sectors) and between underwriting and brokerage activities. Historically banks have had a long involvement in insurance brokerage activities. As early as 1916 national banks were authorized to act as insurance brokers in order to ease the strain on profit margins for banks operating in small towns (with a population of 5,000 or less). Such activity is quite prevalent to this day, generally in Midwestern states, and it has not caused safety and soundness problems for banks. Insurance brokerage activities have been repeatedly authorized for banking organizations at the federal level under the National Banking Act, the Bank Holding Company Act, and reaffirmed

[16] SRI International. *Possible Regulations of the FHLBB to Limit Direct Investment of State Chartered, Federal Insurance Savings Associations*, December 1984.

[17] Samuel Chase & Co., *Corporate Separateness as a Tool of Bank Regulation* (Washington, D.C. 1983).

most recently in the Garn-St Germain Depository Institutions Act of 1982.

Bank participation in insurance underwriting activities has largely been confined to life insurance. National banks generally are restricted to the underwriting and sale of credit life insurance. Savings banks in New York, Connecticut and Massachusetts have engaged in life insurance underwriting activities for the past 50 years (in Massachusetts, for the past 100 years) and there is no evidence that safety and soundness concerns have arisen for these banks due to their insurance activities. With respect to property/casualty insurance, however, banks historically have been largely prohibited from engaging in such activities. Thus, they have no particular expertise in this area.

The limited experience banks have in underwriting insurance (other than life insurance) is an important factor in the FDIC's belief that these other insurance underwriting activities be conducted in a separate bona fide subsidiary apart from the bank's non-insurance activities. It is generally recognized that new activities pose greater risks than activities in which the participants are more experienced. The FDIC has observed this with respect to banking as newly-chartered banks have higher failure rates than do more well-established and hence, more experienced, banks.[18]

Certainly, insurance underwriting must be viewed as an area where banks lack expertise, since the nature of the activity is very different from traditional bank activities. Bankers and insurers essentially have different attitudes toward risk. Insurance underwriting is risk taking and it is assumed that losses will materialize in a certain percentage of transactions. In banking, credit decisions are made with less of an expectation that losses will materialize. This difference between banking and insurance underwriting was noted by the Federal Reserve Board in 1974 when it denied applications submitted by BankAmerica Corporation and First National City Overseas Investment Corporation to engage in general insurance underwriting activities overseas through subsidiary investments. In denying the applications the board noted:

> General insurance underwriting involves the management of risk qualitatively different from those encountered in ordinary banking and familiar to bank management. It is an activity that requires a large amount of capital and specialized managerial resources.

Other factors partly responsible for the high risk banks will face as new entrants to the insurance underwriting business are the high startup costs and the limited opportunity, even for the largest banks, to leverage profitability upon their existing customer base. The latter factor is particularly relevant in the property and casualty field because of the individualized nature of the insurance product and the differing needs of a diversified commercial bank clientele. Many banking organizations would find it difficult to achieve a prudent level of risk diversification if they chose to offer only selected insurance lines to an existing, localized customer base.

Also, the FDIC's concern about the lack of experience banks have in most types of insurance underwriting activities is heightened given current market conditions in the insurance industry. Bank entry into property and casualty underwriting, for example, should logically enhance competition, and benefit insurance customers. In the current insurance environment, however, it would be difficult for a new entrant to build the market share necessary for prudent diversification without engaging in some price cutting. Bank entry would not, in and of itself, generate any significant volume of new property and casualty business and, by competing for an existing insurance customer base, could serve to lower margins for all underwriters. An additional danger is that the competition for high quality insurance clients could become quite intense with the new (bank) entrants attracting a relatively high proportion of marginal risks and subsequently experiencing relatively high underwriting losses.

Presently, the property and casualty sector of the insurance industry is suffering from a number of problems. Net income for property and casualty companies in the aggregate has been declining since 1980, and is likely to show a net loss for 1984. Underwriting losses have been incurred annually since 1979. Currently, there are a number of individual property/casualty companies facing financial difficulties. There are 124 firms on the National Association of Insurance Commissioners' "red flag" list of financially weak insurers and 15 firms failed during 1984. (There are about 3500 property and casualty insurers in the U.S.) Industry analysts project that as many as 200 additional property and casualty insurers may fail, merge with other institutions or drop the majority of their product lines during the waning stages of the present underwriting cycle.[19] The Insurance Information Institute has projected that when the figures are in for 1984, they will show that the property and casualty sector of the insurance industry posted a negative net income of about $3.6 billion.

The early 1984 figures from the giant firms of the industry reflect continuing difficulties in underwriting operations. For example, Cigna Corporation posted a $929 million underwriting loss on revenues of $11 billion through the first nine months of 1984. Aetna Life and Casualty reported a $45 million loss on commercial lines alone over the same period. In short, these figures suggest that underwriting performance continues to suffer from the same malaise that has persisted since 1978.

One of the factors responsible for the industry's poor performance in recent years is the operation of a periodic "underwriting cycle" in property and casualty insurance. Historically, profitable periods of any significant length have led to periods of premium-cutting and relatively lax underwriting standards by property and casualty firms intent on enlarging their market shares. Prior to about 1978, the completion of an entire underwriting cycle took roughly 6 to 8 years: 3 to 4 years of price discounting and falling profitability followed by 3 to 4 years of firmer standards which ultimately would return profitability to underwriting. A.M. Best Co. identifies 6 such underwriting cycles between 1924 and 1976.

The presence of periodic downturns in the financial condition of the insurance industry has adverse implications for banks that wish to participate in the market and lends further support to the FDIC's contention that insurance underwriting activities should be conducted in a bona fide subsidiary rather than in the bank itself. While the current downturn may be nearly completed (although this is not certain), future downturns are inevitable and it is also likely that these downturns will be severe enough to force a number of firms, particularly newly-established insurers, into bankruptcy.

The downturn in the previous underwriting cycle, which ended in 1976, was not as prolonged as the current downturns, but it too was quite severe. For the five-year period between 1972–76, underwriting losses for property and casualty insurers amounted to $8.17 billion. The fifth largest automobile

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[18] J. Bovenzi & L. Nejezchleb, *Bank Failures: Why Are There So Many?* FDIC Economic Outlook 21–22 (Aug. 1984).

[19] *Insurers Are Scrambling to Break Their Losing Streak*, Business Week 145 (Dec. 3, 1984).

insurance firm in the country. Government Employees Insurance Co. (GEICO), was nearly forced into bankruptcy in 1976. Only a bail-out by the nation's other major property and casualty insurers and a transfusion of cash from stockholders saved the company from insolvency. At the time there was widespread concern that should GEICO fail, a domino effect could occur, resulting in failure throughout the industry. The domino effect would have been due to the fact that property and casualty insurers that operated in states where GEICO did business would have had to contribute to the state's insolvency fund, which is used to meet claims against an insolvent company. While the impact on individual companies was unclear, there were a number of other property and casualty insurers experiencing financial difficulties at that time and a number of additional failures may have resulted.[20]

There is no reason why similar problems may not occur in the future. GEICO's financial troubles were largely attributed to its aggressive efforts to increase its market share by cutting its prices. As pointed out, such premium cutting and the tendency to ease underwriting standards when profits are relatively high are the reasons why underwriting cycles exists, since these actions eventually lead to higher losses.

In addition to the existence of underwriting cycles, a second factor which may have contributed to the industry's current problems is the intense competition that has followed in the wake of recent financial deregulation. The potential threat of new entrants to the insurance industry may have prompted a more aggressive attempt at market-share expansion than otherwise would have been undertaken, and this may account for much of the large underwriting losses of the 1980s.

A third factor impacting insurers, which is likely to persist in the years ahead, has been the recent increase in the incidence of litigated liability claims and the huge increase in the average size of awards handed down in such cases. A decidedly greater willingness to sue for damages emerged among liability claimants during the 1970's and has persisted to date. This has been accompanied by an apparently increased acceptance of the "compensatory justice" principles by juries and judges alike. While it is difficult to distinguish causes from effects among these developments, the result for insurers clearly has been an enlarged number and magnitude of liability payments. Highly publicized cases involving claimants' exposure to asbestos, toxic wastes and harmful drugs are representative of the huge claims becoming commonplace to property and casualty insurers, and even a single award can pose persisting financial difficulties for the insuring firm. For example, while Aetna Life and Casualty collected no premiums for liability on the Dalkon Shield after after 1977, it has paid (along with the producer) more than $315 million since that time in settlements of liability claims. With respect to claims filed by workers exposed to asbestos, in 1982 alone, insurers paid an estimated $400 million in legal fees attempting to avoid payment on these claims.[21] Potential liability estimates vary between $5 billion and $38 billion over the next 30 years in compensation costs alone. Litigation costs may exceed total compensation by four times, placing the total cost estimate between $25 and $190 billion.[22] The widespread emergence of similar cases has increased the severity of the present underwriting downturn and extended its duration.[23]

These examples of the large losses an insurer may incur from a single event provide a further indication of the differences between banking and insurance underwriting. In banking, an institution's potential losses are generally limited to the amount it has lent or invested. This is not the case for insurance underwriters. Total insurance coverage is a more appropriate indicator of an insurer's maximum potential loss, and unlike banking, an insurer's risk exposure is far greater than its total assets. In this sense, while a capital-to-assets ratio may provide an indication of a bank's risk exposure, the same measure would seriously understate an insurance underwriter's exposure. For these reasons the FDIC is concerned that, should property and casualty insurance underwriting activities be conducted within the bank itself, the potential losses to the deposit insurance fund would be much greater. In effect the FDIC potentially would be liable for losses from a failed bank's insurance activities, but it would not be collecting additional insurance premiums to offset its greater risk exposure.

Another factor that can partially explain the unprecedented persistence of reported underwriting losses in the present cycle is the extraordinarily large number of catastrophic occurrences. Catastrophe losses for 1979 and 1982 were the largest ever incurred (annually) in the property and casualty industry ($1.6 and $1.5 billion, respectively). These record losses largely were attributable to severe weather. Moreover, it appears that 1983's weather-related losses ultimately may prove to be even greater. Hurricane Alicia will generate payments exceeding $1 billion—the largest single disaster settlement in history. The 1982–83 catastrophe claims also coincided with the depletion of deferred tax credits available to many property and casualty firms and, hence, the subsequent ability to cushion underwriting losses has been undermined.

Additional evidence supporting the proposition that most insurance underwriting activities would increase bank risk can be obtained by looking at failure rates and statistics on the variability of earnings. The average failure rate for property and casualty insurers has been approximately .22 percent per year since 1969. This compares to a .14 percent annual failure rate for commercial banks. Using failure rates as a measure of risk suggests that the underwriting of property and casualty insurance would add to the riskiness of banks. The same measure of risk would also suggest that underwriting life insurance would be a relatively safe activity for banks since, between 1976 and mid-1983 only four life insurers failed. (There are currently about 2100 life and health insurance firms operating in the United States.) Historically, failures of life insurance firms appear to be concentrated among small firms and often these firms appear to have been managed by persons of dubious integrity.

Using the standard deviation of the annual return-on-equity as a measure of relative riskiness it again seems clear that underwriting property and casualty insurance could increase bank risk, while life insurance underwriting could reduce it. From 1970 to 1980 the coefficient of variation for the annual return on assets for property and casualty insurers exceeded .40, compared to 0.17 for commercial banks and 0.10 for life and health insurers.[24]

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[20] *Seeking Money for GEICO*, Business Week 98 (Mar. 29, 1976).

[21] J. Kalcalik et al., *Costs of Asbestos Litigation*, (Santa Monica, California: The Rand Corporation, Institute for Civil Justice).

[22] A. Cornish, *Asbestos Liability: A Problem of the Future Becomes a Current Reality*, Industry Comments (New York: Lehman Brothers Kuhn Loeb Research).

[23] While these examples do not necessarily indicate problems inherent in the property and casualty sector of the insurance industry, they do point to the potential for large losses and the risks inherent for individual firms within the industry.

[24] Wall and Eisenbeis, *supra* note 10.

The relative safety of life insurance underwriting is not surprising given that, unlike most other types of insurance, losses can be actuarially determined in advance with a very high level of precision, and premium rates can be set accordingly.

Aside from the additional risks insurance underwriting activities would present to banking operations, a general requirement that all insurance underwriting activities be separated from an insured bank's other activities is justifiable for accounting and regulatory reasons. Insurance companies, like banks, are highly regulated and overall regulatory costs will be lower if there is separate recordkeeping and accounting. Moreover, since accounting standards are different for the two industries it would be difficult to analyze the condition of the combined entity or each respective part if financial records for insurance and banking activities were not kept separate. For example, compared to banks, insurance firms are heavily capitalized. As of year-end 1983, FDIC-insured banks had an average capital to assets ratio of 6 percent. In the life/health sector capital was 7.1 percent of assets as of year-end 1983, and the analogous figure for property and casualty insurers was 26 percent. The larger capital ratio for property and casualty insurers mainly reflects the greater unpredictability of their earnings and the larger risk of catastrophic loss. The nearly self-funding nature of life insurance policies makes capital and reserves less important to these insurers.

Each provision of the revised regulation is discussed more fully below. Specific comments have been summarized where relevant to the explanation of the proposed regulation.

1. Prohibited Activities

The regulation as originally proposed would have prohibited any insured bank from directly conducting the following activities: (1) Underwriting casualty insurance, property insurance, life insurance (other than credit life), annuity contracts, mortgage guarantee insurance, or any other type of insurance, (2) reinsurance, (3) real estate development, real estate syndication real estate equity participation, or any other form of real estate underwriting, (4) insuring, guaranteeing, or certifying title to real estate, (5) with certain limited exceptions, guaranteeing or becoming surety upon the obligations of others, and (6) conducting a surety business. These activities would not be prohibited, however, to a bona fide subsidiary of the bank. The prohibition did not apply in the case of any such activity if the activity was one that was authorized by statute, regulation, or interpretation to a national bank or an operations subsidiary of a national bank, (*i.e.*, any insured bank could directly conduct that activity).

A significant portion of the total comments on the proposed regulation was directed to the prohibition on the above activities and the requirement that any subsidiary of an insured bank that engaged in the activities be a bona fide subsidiary. Many of those comments addressed these restrictions in terms of the definition of the term "bona fide subsidiary" as proposed by the FDIC. (These comments will be discussed in paragraph #2 below.) After reviewing the comments, the FDIC has determined to revise this portion of the proposal as more fully described below. In addition, the FDIC has deleted the national bank activity exclusion; in that regard several comments argued that it was inappropriate for the FDIC to fail to regulate an activity simply because the Comptroller of the Currency determined that national banks may, consistent with the National Bank Act, engage in a certain activity.

Real Estate Development

The FDIC received a large number of comments critical of the proposed requirement that real estate development, real estate syndication, real estate equity participation, and any other form of real estate underwriting be placed in a bona fide subsidiary of the bank. The major thrust of the objections was that real estate development requires many of the same skills necessary for real estate development financing and that the risk of loss in real estate development is no different than the risk of loss if the bank were to finance a real estate development. Therefore, the comments argued, the FDIC should not bar insured banks from directly conducting real estate development activities. Among the other objections were the following: (1) The bona fide subsidiary requirement will preclude many small, community banks from engaging in real estate development intermittently or on a small scale (this could deprive the communities in which they are located of development opportunities), (2) the proposal could be read to require real estate activities involving DPC property and other "traditional" real estate involvements on the part of banks to be placed in a bona fide subsidiary, (3) the FDIC has not presented any evidence that there is a need for the FDIC to regulate real estate activities on the part of insured banks, (4) the use of the term "underwriting" in connection with real estate is misplaced and confusing, (5) the proposal will override real estate investment powers recently granted to banks in New York, California and elsewhere, (6) the proposal deprives banks of added income sources in that it permits real estate lending but deprives banks of the opportunity to share in greater potential profits as equity participants, (7) forcing real estate activities into a subsidiary will deprive banks of certain tax benefits otherwise available to them, and (8) with proper management and safeguards, real estate development can be conducted safely in-house. Although the FDIC has retained the basis approach of the original proposal, *i.e.*, requiring a bona fide subsidiary for real estate development activities, a number of revisions are being made to the proposal based upon the above comments. In addition, the prior discussion set forth the bases upon which the FDIC has determined that there is a need to regulate the conduct of real estate activities on the part of insured banks.

The major revision to the bona fide subsidiary requirement insofar as it applies to real estate activities is the inclusion in the proposal of a de minimis transaction exemption which permits an insured bank to conduct a certain amount of real estate development in the bank itself, provided of course that the bank's chartering authority authorizes such activities to the bank. The exemption is limited in the following manner: (1) The bank's aggregate investments in real estate developments, including any related extensions of credit, may not exceed 50 percent of the bank's primary capital, and (2) the bank's aggregate investment in any one real estate development may not exceed 10 percent of the bank's primary capital. Additionally, in order for an insured bank to take advantage of the exemption, the bank must meet the recently adopted minimum capital requirements set forth in section 325.3 of the FDIC's regulations (*See* 50 *FR* 11,128). If an insured bank wishes to participate in real estate development activities in excess of these ceilings, the activities must be conducted through a bona fide subsidiary of the bank. Only those activities falling within the definition of "real estate development" as defined in the revised proposal are counted toward the ceiling. (See paragraph #5 below for a discussion of what constitutes a real estate development.)

The de minimis transaction exemption addresses the concerns of comments which argued that real estate lending

and real estate development require many of the same skills and that requiring all real estate development to take place in a bona fide subsidiary of a bank (1) precludes small, community banks from being involved in real estate projects on a limited or intermittent basis and (2) effectively preempts state law in those states which have granted bank real estate development powers. The de minimis transaction exemption should afford banks flexibility in structuring real estate transactions. The exemption also lessens, and may in some cases eliminate, any conflict with state or federal law granting real estate powers to banks. At the same time, the exemption is not inconsistent with the FDIC's safety and soundness concerns recounted above. The exemption should not expose banks to undue risks as a bank is subject to an aggregate limit on real estate development and is forced to diversify its real estate investments by virtue of the limit on investments in any one project.

The FDIC is specifically requesting comment on whether or not the ceilings contained in the de minimis transaction exemption should be set at some other level. For example, should the levels be greater than 50 percent of primary capital for the aggregate ceiling and 10 percent of primary capital for the individual project ceiling, or would some lower ceilings be more appropriate? Additionally, the FDIC specifically invites comment on whether or not this exemption exposes insured banks to any undue risks; whether any additional restriction(s) should be imposed in connection with the exemption if it is adopted by the FDIC; and whether any other conditions in lieu of the ones proposed should be utilized. With respect to each of the above, a full explanation of the basis for the comment should be provided.

Insurance Underwriting

The regulation as originally proposed prohibited insured banks from directly engaging in any insurance underwriting activity (other than credit life underwriting). Such activities could take place, however, in a bona fide subsidiary of the insured bank. Most of the comments concerning insurance activities on the part of insured banks addressed insurance agency activities rather than insurance underwriting. Among the comments which did address the latter were several that described life insurance as not inherently unsafe or unsound and further characterized insurance underwriting as compatible with traditional banking. One comment described a life insurer as, in essence, a company that in a manner similar to banks takes deposits (premiums), invests those deposits, and agrees to repay the deposits at a future date with a stated interest. Other comments pointed out that life insurance is not a risky activity as the insurer can predict losses based upon acturial tables. These comments contrasted life insurance with property and casualty insurance in which the risk of loss is not as capable of prediction. Other comments were opposed to distinguishing between types of insurance underwriting (*i.e.*, all insurance activities should be in a subsidiary of the bank as opposed to in-house), or were opposed to banks entering into insurance underwriting whatsoever. The latter generally objected to bank entry on competitive grounds (banks would have an unfair competitive advantage), argued that such entry would result in express and implicit tying arrangements to the detriment of consumers, and argued that insurance activities would expose banks to increased risks.

Several comments were received from savings banks in New England that underwrite savings banks life insurance ("SBLI"). Comments regarding SBLI were also received from the Commissioner of the Connecticut Department of Banking, the Commissioner for the Massachusetts Department of Banking and Insurance, and the Superintendent of Banking for the State of New York. All three urged the FDIC to exempt SBLI from the prohibition on direct insurance underwriting. These comments requested the exemption for the following reasons: (1) The savings banks in their respective states have underwritten and/or sold life insurance policies and annuities through a separate department of the bank for many years, (2) the life insurance departments of these banks have been profitable, (3) there has been no demonstrated adverse effect on the condition of these banks due to their life insurance underwriting activities, and (4) the state statutory schemes which authorize savings banks to operate life insurance departments effectively separate the insurance department from the bank. These statutes require that: (1) The assets and liabilities of the insurance department be separate from those of the other departments of the bank, (2) the assets of the bank cannot be used to satisfy the obligations, liabilities, or expenses of the insurance department, (3) the insurance department keep separate records and accounts, (4) the insurance department may not make investments of a type not authorized to the bank, and (5) the insurance department is liquidated separately and does not form part of the receivership if the bank fails (usually the policies are transferred to an insurance department of another bank).

The FDIC also received several comments urging that the agency prohibit insured banks from entering the mortgage guarantee insurance industry for the following reasons: (1) Banks will have an unfair competitive advantage, (2) mortgage guarantee insurance requires significant amounts of capital, (3) bank entry into mortgage guarantee insurance is fraught with conflicts of interests that could result in lowered underwriting standards and impact the safety and soundness of banks, and (4) the financial stability of the "captive" mortgage insurer may be jeopardized as its portfolio is more likely to be geographically concentrated. These comments urged the FDIC, at a minimum, to prohibit any insured bank from insuring its mortgage portfolio through its mortgage insurance subsidiary or affiliate. Similar concerns and objections were raised by other comments directed toward bank entry into title insurance.

After reviewing the comments; the FDIC has determined to revise the insurance underwritting provisions of the proposed regulation in one major respect. The revised proposal permits an insured bank to conduct life insurance underwriting through a department of the bank provided that the state or federal statute or regulation which authorizes the bank to operate a life insurance underwriting department establishes certain safeguards as to that department. Those safeguards are: (1) The assets, liabilities, obligations, and expenses of the insurance department are separate and distinct from those of the other departments of the bank, (2) the assets of the other departments of the bank cannot be used to satisfy the obligations, liabilities, or expenses of the insurance department, (3) the insurance department keeps separate accounting and other records, (4) the insurance department may not make investments not permitted to the bank, and (5) the insurance department is liquidated separately from the other departments of the bank and does not form part of the receivership of the bank in the event of the bank's insolvency.

The remainder of the insurance underwriting provision is unchanged from the original proposal with the exception that the credit life exclusion has been broadened to encompass insurance designed to repay the outstanding balance on an extension of credit in the event of disability or

involuntary unemployment. The regulation does not affirmatively prohibit insured banks from becoming affiliated with a mortgage or title insurer or form establishing or acquiring a mortgage or title insurance subsidiary. In the FDIC's opinion the bona fide subsidiary requirement as well as the other restrictions of the proposed regulation adequately address the risks, if any, presented to an insured bank due to the operation of any subsidiary or affiliate that engages in a prohibited activity. It is the FDIC's intent, insofar as any conflicts of interest may arise due to an insured bank indirectly acting as its own mortgage or title insurer through its own subsidiary or affiliate, to address those concerns in a subsequent policy statement.

Even though the separation achieved by the restrictions described above in the case of a life insurance department is not as complete as in the case of a bona fide subsidiary, the restrictions do statutorily separate the insurance department from the remainder of the bank in much the same way. As the bank's assets cannot be used to satisfy the obligations, liabilities or expenses of the insurance department, that department stands as a separate economic entity. If the department suffers extreme losses, the losses should not affect the bank's financial viability. The bank is further protected in that the insurance department may not make investments of a type not otherwise permitted to the bank itself. The FDIC is persuaded by the historical record of the New England savings banks that have underwritten SBLI under type of statutory schemes exempted by the revised proposal for as long as 50 years (and in the case of Massachusetts for nearly 100 years) that its safety and soundness concerns are adequately addressed to the extent that an insurance department operates under such a statutory scheme. (The FDIC has been informed that no savings bank in New England has ever failed due to, or been adversely affected by, its operation of an SBLI department.) The revised proposal does not contain a similar exemption for other types of insurance underwriting as there is no historical record with respect to property and casualty insurance, etc. In the absence of such a record, the FDIC does not feel that it is appropriate at this time to propose a similar exemption for insurance underwriting in general.

It must be stressed that the FDIC cannot, and has not, authorized any insured bank to engage in mortgage guarantee insurance or any other insurance activity by virtue of this proposal. That authority must come from another source.

The FDIC can, however, as it has done here, evaluate the risks posed to an insured bank by the conduct of insurance activities. The FDIC believes that the insurance activities dealt with by this proposal, if conducted in accordance herewith, will not pose a safety and soundness problem for insured banks. The FDIC has not made any policy decisions on the propriety of a bank's chartering authority insurance activities. The FDIC has merely proposed certain prudential restrictions in order to protect bank safety and soundness, and the insurance fund.

Guarantor of Surety

The proposed regulation would have, with certain exceptions, prohibited an insured bank from acting as guarantor or surety upon the obligations of others, insuring the fidelity of others, or conducting a surety business. This provision of the regulation has been retained as originally proposed with two exceptions. The revised proposal expressly indicates that the prohibition does not apply to the issuance of standby letters of credit or other similar arrangements, and the exceptions have been expressly set out in the text of the regulation.

The FDIC received several comments from insured banks objecting to the apparent prohibition under the proposal on a bank entering into standby letter of credit arrangements. Inasmuch as it was not FDIC's intent to prohibit such arrangements to insured banks (insured nonmember banks are not now prohibited from entering such arrangements directly, see § 337.2 of the FDIC's regulations) the proposal has been clarified in this regard.

2. Bona Fide Subsidiary

The basic structure adopted by the proposed regulation prohibited insured banks from conducting certain activities found to present risks. The proposal in turn allowed such activities to be conducted in a bona fide subsidiary of the bank. The FDIC's goal in proposing this regulatory scheme was, and continues to be, to: (1) Insulate insured banks from potential risks, (2) avoid regulatory overlap, and (3) make examination of these activities easier. (The FDIC has the authority under section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) to examine the affairs of any subsidiary or affiliate of an insured bank to disclose fully the relations between the bank and its affiliate and subsidiary and the effect of such relations upon the insured bank.) The proposed definition of the term "bona fide subsidiary" was designed to assure that any subsidiary of an insured bank that engages in activities prohibited to the bank is an independent, well managed, financially viable corporate entity whose operation will not pose a threat to the bank and whose obligations and liabilities, as well as whose products or services offered to the public, will be perceived by the public to be its own and not those of the bank.

The proposed regulation defined the term "bona fide subsidiary" to mean a subsidiary of an insured bank that at a minimum meets the following criteria: (1) The subsidiary is adquately capitalized, (2) the subsidiary is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the subsidiary, access to which is through a separate entrance from that used for the insured bank except that the bank's and subsidiary's offices may be accessed through a common outer lobby or common corridor, (3) the subsidiary does not share a common name or logo with the bank, (4) the subsidiary maintains separate accounting and other corporate records, (5) the subsidiary observes separate formalities such as separate board of directors meetings, (6) the subsidiary maintains separate employees who are compensated by the subsidiary, (7) the subsidiary shares no common officers with the bank, (8) a majority of the subsidiary's board of directors is composed of persons who are neither directors nor officers of the bank, and (9) the subsidiary conducts business pursuant to independent policies and procedures designed to inform customers and prosepctive customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the subsidiary otherwise undertakings or obligations of the bank.

A substantial number of the comments received on the proposed regulation objected to one or another of the criteria used to define bona fide subsidiary. In addition, several comments objected to the bona fide subsidiary approach in and of itself arguing that: (1) Placing so called "risky" activities in a subsidiary will not necessarily insulate a bank from risk, (2) none of the activities required by the proposal to be placed in a subsidiary

need be relegated to a subsidiary as they do not present any more risks to a bank than many "traditional" bank activities, (3) proper management of any activity is the key as opposed to whether the activity takes place in-house or not, (4) the FDIC would have better oversight of the activities if they were conducted by banks in-house, (5) the costs associated with forming a subsidiary outweigh any perceived benefits, (6) because of a Federal Reserve Board interpretation of the Bank Holding Company Act, the subsidiary requirement will preclude most banks in holding company structures from engaging indirectly as well as directly in real estate development, etc., (7) the subsidiary requirement will have a disproportionate adverse impact on small banks due to the costs involved in forming a subsidiary, and (8) the question of what activities are appropriate for insured banks and whether those activities should be conducted in-house or not should be left to the bank's chartering authority.

After considering these comments, the FDIC has retained the bona fide subsidiary approach. The FDIC has determined that real estate development and insurance underwriting activities can present risks to the viability of insured banks and the insurance fund and further that the subsidiary structure is an appropriate regulatory tool to insulate insured banks from those risks. (*See* "Bases for Concern" above.) Even though the FDIC has not found the risks to be so great as to warrant prohibiting the indirect conduct of those activities, the risks are such that it is still appropriate to limit a bank's risk exposure by requiring the activities to be in a separate subsidiary or affiliate of the insured bank. Any costs entailed by such an approach are thus, in the FDIC's opinion, justified. (The de minimis transaction exemption for real estate development activities discussed in paragraph #1 should substantially reduce the number of insured banks that would in fact, in any event, incur such costs.)

One of the criticisms leveled at bank expansion into nonbanking activities has been that a bank will "come to the aid" of its nonbanking subsidiaries or affiliates that are encountering financial difficulties whether or not the bank is legally obligated to do so. There is in fact a basis for concern that this will happen. For example, in 1963 the American Express Company assumed liability for approximately $60 million in claims against its subsidiary American Express Warehousing, Ltd., and, in 1969, United California Bank assumed responsibility for the debts of its Swiss subsidiary United California Bank of Basel, after the Swiss bank suffered large losses. Although this is not always the case (in 1968 Raytheon walked away from its Italian subsidiary which declared bankruptcy), whether or not a bank comes to the aid of its subsidiary or affiliate seems to involve a management decision on the part of the bank. One goal of the FDIC in formulating the proposed definition of bona fide subsidiary is to put insured banks in a position which they are free to make the decision to walk away. Additionally, the proposed regulation establishes lending and other restrictions (see paragraph #7, 8, and 9) in order to counteract the temptation (to the extent that it exists) on the part of the bank to divert resources to the aid of troubled subsidiaries and affiliates.

The proposed definition of bona fide subsidiary has been retained in the revised proposal without amendment. The criteria necessary in order for a subsidiary to be bona fide and the comments received in response thereto are discussed more fully below.

Adequate Capital

The presence of adequate capital is typically viewed as a central issue by a court when assessing whether or not a parent will be held liable for the obligations and acts of its subsidiary. Adequate capital is also very important from a safety and soundness point of view as a parent bank is less likely to be harmed if the subsidiary has adequate capital. Adequate capital will enable the subsidiary to absorb its losses as well as any liabilities arising from its operation without having to look to its parent.

The FDIC has not proposed a definition of adequate capital but will look rather to industry standards. The insurance industry, for example, is highly regulated and has established capital requirements usually set by state statute. Although the real estate industry is for the most part unregulated in comparision with the insurance industry, industry standards should be identifiable. The FDIC still intends, however, to reserve the option of requiring that the subsidiary have capital over and above any such industry standard if the FDIC at any time finds such requirements to be warranted. It is the FDIC's intention to make this determination during the notice period (see § 332.5 of the proposal) and to inform the bank whether, in the FDIC's opinion, the capital position of the subsidiary is adequate. It is the FDIC's belief that such a flexible approach will better serve the FDIC's supervisory interest of insuring the safety and soundness of insured banks and that it will also avoid conflict with existing regulatory and supervisory systems governing the insurance and real estate industries. The adequacy of a subsidiary's capital will thereafter be reviewed on an ongoing basis as a part of the regulatory process.

This aspect of the bona fide subsidiary definition received favorable comment.

Physical Separation

The proposed regulation would permit an insurance underwriting subsidiary or real estate development subsidiary of an insured bank to operate out of an office within a branch of an insured bank so long as the office is clearly demarcated as belonging to the subsidiary and the subsidiary's office has a separate entrance from that used by the insured bank. The bank's and subsidiary's offices may be accessed, however, through a common outer lobby or common corridor. The FDIC will require that insured banks, when formulating plans to establish or acquire a subsidiary that will engage in prohibited activities, to plan to locate the subsidiary's offices so as to allow for separate entrances. Any insured bank that presently has such a subsidiary whose operation is located within a branch of the bank will be required to establish a separate, clearly identified office for the subsidiary and make whatever changes are necessary to allow for a separate entrance from the bank except for a common outer lobby or common corridor. This aspect of the bona fide subsidiary definition received some critical comment on the basis that the requirement for a separate facility would create an added, unnecessary cost. The FDIC is retaining this requirement in the definition, however, as a shared facility is a factor considered by the courts in determining whether or not to pierce the corporate veil between a subsidiary and its parent. Additionally, the FDIC strongly feels that any added costs associated with a separate facility are justified by the reduction in potential confusion on the part of the subsidiary's customers with whom they are dealing.

Common Name or Logo

The regulation as proposed would prohibit an insured bank and its subsidiary from using a common name or logo. The proposed regulation specifically indicates, however, that the ban on the use of a common name or logo does not preclude a bank from

advertising and/or otherwise disclosing the relationship between its subsidiary and itself. For example, bank X may advertise the real estate services of its real estate development subsidiary, Y company, and denote Y company as a subsidiary of bank X. In this way, a bank may still obtain some benefits of name recognition but the public confusion that may arise if the subsidiary uses a common name (especially if that subsidiary operates out of the bank's branch) is lessened.

The FDIC is proposing this restriction as name identification is a factor used by the courts in deciding whether to pierce the corporate veil, is a factor in public identification of the subsidiary's operation with the parent bank, plays a role in public misconception as to the insured status of investments made through the subsidiary, and plays a role in engendering an expectation that the bank is liable for the obligations of the subsidiary. Additionally, an insured bank may be reluctant to allow its subsidiary to fail if that subsidiary carries the bank's name. (See for example the experience in the 1970's with REITs when bank whose only connection with a REIT was a common name and an investment advisory relationship dramatically increased lending to those REITs when the REIT industry took a downturn.)

Although this portion of the bona fide subsidiary requirement did not receive as many comments as the other factors set forth in the proposed definition, several comments critized including a ban on common name or logo in the definition. These comments objected to this factor as: (1) A company's name is an asset upon which it should be permitted to trade, (2) the FDIC has not demonstrated that the presence of a common name or logo can adversely affect the safety and soundness of banks, (3) public confusion arises from misleading sales practices and not from the existence of a common name or logo, and (4) the ban on common name or logo serves no purpose not already addressed by other criteria in the bona fide subsidiary definition.

After reviewing the criticism, the FDIC has retained the prohibition on the use of a common name or logo. The FDIC recognizes that the link between a parent and its subsidiary cannot be totally obliterated. It is for this reason that the regulation contains the exception that permits a bank to advertise or disclose its relationship with its subsidiary. Furthermore, although the FDIC agrees that public confusion can and does arise from misleading sales practices (the last item in the bona fide subsidiary definition is designed to meet that concern), public confusion can arise from other sources such as the presence of a common name of logo. For all of these reasons, and the reasons set forth in connection with the prior proposal, the FDIC is convinced that is is necessary to propose a ban on the use of a common name or logo between a bank and its subsidiary that engages in prohibited activities.

Separate Employee Requirement

The proposed regulation requires that the subsidiary maintain separate employees who are compensated by the subsidiary. The restriction does not, however, extend to the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact, *e.g.*, such as accounting, data processing, and recordkeeping, so long as the bank and the subsidiary contract for such services on an arms-length basis.

The FDIC is continuing to propose the separate employee requirement as it is felt that the use of separate employees in customer contact positions is an extremely important factor in maintaining the separate corporate identity of the subsidiary and the bank and will help avoid public confusion. The requirement is also expected to have the added benefit of encouraging banks to hire experienced personnel to operate the subsidiary. Although the FDIC acknowledges that a separate employee requirement can produce additional costs for insured banks, the FDIC anticipates that the exception contained in the proposed regulation allowing bank employees to perform administrative, non-customer contact activities will reduce any inefficiency and added cost that might otherwise arise. Furthermore, the addition of the de minimis transaction exemption for real estate development in the revised proposal should accommodate many of the banks that objected to the bona fide subsidiary requirement due to the additional costs that such a structure can entail. These banks will be permitted under the exception to conduct a certain amount of real estate development activities in-house and thus need not incur the expenses associated with a bona fide subsidiary (including the expense of separate personnel) unless it is the bank's intention to enter into the real estate development area to a significant degree. Likewise, the exception for a life insurance department provided for by the revised proposed regulation provides insured banks the same option with respect to underwriting life insurance.

Common Officer/Director Restriction

The revised proposed regulation continues to prohibit the bank and subsidiary from sharing common officers and likewise continues to require that a majority of the board of directors of the subsidiary be composed of persons who are neither directors nor officers of the bank. Under the proposal, the CEO president, or some other officer of an insured bank may not at the same time serve as an officer of the bank's subsidiary. That officer, however, as well as other officers and/or directors of the bank, may form all but a majority of the board of directors of the subsidiary.

This aspect of the bona fide subsidiary definition received by far the greatest amount of criticism. The comments objecting to the prohibition on shared management did so for the following reasons: (1) Having to duplicate management is costly, (2) the bank runs the risk of losing control over its subsidiary due to the management prohibition (this could lead to the subsidiary adopting policies incompatible with those of the bank), (3) the subsidiary will not be able to use the existing real estate expertise of bank personnel, (4) the subsidiary's officers and directors will be forced to adopt aggressive policies in order to produce enough business to justify their salary cost, and (5) the presence of shared management in and of itself will not result in a court piercing the corporate veil between the bank and its subsidiary. Most if not all of these comments were raised in the context of a real estate development subsidiary. (Several banks out that they currently operate real estate development subsidiary that share a total identity of managmeent with the bank.)

The FDIC concedes that the proposed management restriction can produce some additional costs but at the same time the FDIC does not feel that the costs will be inordinate nor that the costs are unjustified. In the case of a real estate development subsidiary, the costs only need be incurred if the bank enters into real estate development in excess of the de minimis transaction exemption. Even then the subsidiary is not precluded from taking advantage of the bank's existing real estate expertise as any bank officer responsible for real estate lending can serve as a director of the subsidiary. Thus the FDIC is not persuaded by the comments that the restriction as proposed will cause the bank to lose oversight of the operation of its subsidiary to the detriment of the bank. Lastly while the FDIC agrees that shared management in and of itself will

probably not cause a court to pierce the corporate veil between a bank and its subsidiary, shared management is an important factor in a court deciding to do so. The FDIC has not proposed, as it could, that the subsidiary share no management with the bank. Instead the agency has attempted to strike a fair balance between two competing concerns: the interest, as expressed by insured banks, to expand into additional activities and the interest of the FDIC to protect insured banks and the deposit insurance fund.

Separate Records, Board of Directors' Meetings, and Independent Policies

The revised proposal continues to requires that the subsidiary maintain separate accounting and other corporate records, that the subsidiary observe separate corporate formalities, and that the subsidiary conduct business pursuant to independent policies and procedures designed to adequately apprise customers that: (1) The subsidiary is a separate organization from the bank, (2) any insurance policy or annuity underwritten by the subsidiary, as well as any real estate investment recommended, offered, or sold by the subsidiary, are not insured deposits, and (3) any undertakings or obligations of the subsidiary are not undertakings or obligations of the bank. These requirements received favorable comment.

3. Investment in Subsidiary

The revised proposed regulation provides that no insured bank may establish or acquire a subsidiary that underwrites insurance (excluding credit life insurance), engages in real estate development, or acts as guarantor or surety unless the bank's capital (exclusive of its direct investment in such subsidiary or subsidiaries) meets the minimum level set forth in section 325.3 of the FDIC's regulations. Furthermore, any such subsidiary will not be consolidated with its insured bank parent and any direct investment therein will be deducted from the parent bank's primary capital (as defined in 12 CFR 325.2) and total assets.

The provision provides the FDIC with an enforcement tool to help safeguard the safety and soundness of insured banks that enter into these activities through their subsidiaries. If, for example, the FDIC should determine after receiving notice under proposed § 332.5 that an insured bank's capital is not adequate after making the necessary adjustments previously described, the bank could be subject to enforcement action if it were to proceed with the acquisition. This restriction will serve to prevent institutions with indequate capital from entering into these activities and possibly incurring unwarranted additional risks. Further, it is the FDIC's opinion that the exclusion of a bank's investment in any such subsidiary will provide greater assurance that the bank and the subsidiary are independent, financiallly viable entities.

4. Filing of Notice

The original proposed regulation required that an insured bank that intended to acquire or establish a subsidiary that engages in insurance underwriting or real estate development must file notice of intent with the appropriate FDIC Regional Office at least sixty days prior to the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank was also required to notify the FDIC Regional Office in writing ten days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. These notice requirements were waivable under the original proposal by the FDIC, in its discretion, where such notice was found to be impracticable.

The notice requirements as proposed received favorable comment and therefore are being retained in the revised proposal subject only to the following modifications. As originally proposed, the notice requirements did not apply when an insured bank was to become affiliated with a company that engages in prohibited activities. The revised proposal extends the notice requirement to such situations as the FDIC, upon further reflection, has determined that it will not always have the benefit of prior notice of affiliation of an insured bank with such a company from some other application such as a change in bank control or deposit insurance application. Inasmuch as it is still the FDIC's intent to not duplicate an existing prior notice mechanism, the revised proposed regulation indicates that the notice requirements do not apply in the case of an affiliation that will arise out of a change in bank control or bank merger provided that the bank has filed a change in bank control notice with the FDIC or has filed an application with the FDIC for the agency's prior consent to a merger, consolidation, or purchase and assumption transaction or has filed such a notice or application with another federal or state agency required by statute or regulation to consult with the FDIC with respect to the notice or application. Lastly, the notice requirements have been made to apply to a subsidiary or affiliate that engages in guarantor or surety activities. The original proposal had neglected to extend the notice requirements to such subsidiaries, and the revised proposal corrects this omission. (The omission has been corrected throughout the other provisions of the revised proposed regulation as well.)

Again, the revised proposal does not specify the content of the written notice of intent. By not specifying the content of the notice, The FDIC is permitting a bank to satisfy the notice requirements in any way it finds most convenient. It is the FDIC's intent to use the notice as a point of reference and for the regional office to contact the insured bank seeking further information if the bank's condition or other facts warrant a closer review. The proposal thus requires that the notice be received in the regional office at least sixty days prior to the consummation of the transaction. (Contrary to the reading of the proposal by several comments, an insured bank would not be required to give sixty days prior notice to the FDIC each time it enters into a real estate development project.)

Although the notice requirement is not an approval process, the FDIC would not be precluded from intervening in the intended acquisition or establishment of the subsidiary or the intended affiliation if such intervention was warranted. For example, if the subsidiary would not appear to meet the requirements for a bona fide subsidiary or any details of the planned transaction (such as the source of funding for the establishment or acquisition of the subsidiary) present any supervisory concerns, the FDIC could intercede.

5. Definition of Real Estate Development

Unlike the original proposal, the revised proposed regulation contains a definition of the term "real estate development". As defined therein, real estate development means any form of direct or indirect equity interest in real property. The definition specifically excludes the following: (1) An interest in real property that is primarily used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business, (2) an interest in real property that is acquired in satisfaction of debts previously contracted in good faith provided that the property is not held longer than permitted by any applicable law or regulation, (3) an interest in real property that is acquired at sales under judgments, decrees or mortgages held by the bank provided that the property is not held longer than permitted by any

applicable law or regulation, (4) the right to receive a portion of a borrower's gross or net income earned from the operation of real property or upon the sale or refinancing of the real property when that right is acquired as an addition to, or in lieu of, interest on a loan to the borrower secured by such real property, and (5) interests in real property that are primarily in the nature of charitable contributions to community development.

The exclusion for interests in real property acquired in satisfaction of debts previously contracted for in good faith and interests in real property acquired at sales under judgments, decrees or mortgages held by the bank apply only to the amounts booked at the time of acquisition plus any additional funds necessary to substantially complete the projects. If the real property is not substantially complete, and funds are expended toward the completion of the project, the interest in the real property will be considered real estate development.

Real estate lending activities will not normally be considered to constitute real estate development unless the lending is structured in such as manner that the lending bank has virtually the same risks and potential rewards as an investor in real estate. The following considerations, viewed individually or collectively, will be considered by the FDIC to provide evidence that a transaction is in substance real estate development and thus subject to the restrictions of the proposed regulation: (1) The bank provides all or substantially all of the funds for the real estate venture while the borrower, although legally holding title to the property, has little or no equity in the property, (2) the bank funds the loan commitment or origination fees for the borrower by including them in the amount of the loan, (3) the bank funds accrued interest during the term of the loan by adding interest to the borrower's loan balance, or by debiting an interest reserve account established from a portion of the loan proceeds, (4) the loan is secured only by the real estate and the lender has no recourse to other substantive assets of the borrower and the borrower has not guaranteed the debt, (5) the bank, in addition to receiving interest rates at a fair market rate, participates in over fifty percent of the expected residual profits during the life of the real estate project or upon the sale of the real property, (6) the bank in order to recover its investment must rely on the ability of the borrow to sell the real property or obtain refinancing from another source, and (7) the bank structures the lending arrangement so that foreclosure during the project's development is unlikely as the borrower is not required to fund any payments until the project is completed. If it is determined based upon the presence of one or more of the above considerations that the real estate loan is in fact a real estate development venture on the part of the bank, that portion of the loan which represents the real estate development interest as accounted for in accordance with FASB accounting procedures for acquisition, development, and construction loans shall be included towards the bank's de minimis transaction exclusion ceiling.

The FDIC specifically invites comments on the proposed definition and is particularly interested in receiving comments on whether or not the proposed definition is too restrictive or overly broad, or whether some other definition would better serve the interests of insured banks as well as the FDIC's regulatory interests.

6. Affiliation With a Company That Engages in Any Activity Prohibited to an Insured Bank

The current proposal preserves virtually intact from the original proposal the prohibition against an insured bank becoming affiliated with any company that engages in any activity prohibited under § 332.3 (including, in order to correct an oversight in the original proposal, an affiliate engaging in guarantee or surety activities) unless certain conditions are met. Those conditions, as set out in § 332.6 are: (1) The affiliate is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the affiliate, access to which is through a separate entrance from that used for the bank, except that the bank's and affiliate's offices may be accessed through a common outer lobby or a common corridor; (2) the bank and affiliate share no common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither officers nor directors of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct activities on behalf of the affiliate that involve customer contact; (5) the bank and affiliate do not share a common name or logo, and (6) the affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that any insurance policies or annuities underwritten by the affiliate, as well as any real estate investments recommended, offered, or sold by the affiliate, are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertaking on the part of the affiliate otherwise undertakings or obligations of the bank. A footnote specifically provides that an insured bank is not prohibited from advertising or otherwise disclosing its relationship to the affiliate.

The only differences between the currently proposed § 332.6 and the provision as it originally appeared are: (1) The phrase "investments recommended" has been expanded to include "any insurance policies or annuities underwritten by the affiliate" and (2) a footnote has been added which indicates that the proposed prohibition does not apply in the case of any affiliate that is principally engaged in business outside the United States.

This last change is made in order to avoid the regulation having any extraterritorial effect. (*See* paragraph #14 below.)

The restrictions of this provision are substantially the same as those that pertain to the qualifications for a bona fide subsidiary. Just as an insured bank may be held liable for the acts of a subsidiary (*see* paragraph #2 above), the law provides that a corporation can be held liable for the obligations and acts of its affiliate (either a parent or a sister corporation) when that corporation completely dominates the affairs of the affiliate as well as when other factors relevant to piercing the corporate veil are present. To have an insured bank held liable for the acts and obligations of its affiliates presents an obvious safety and soundness problem. Nonetheless, the FDIC's chief goal with regard to affiliate relationships is, as stated in the original proposal: (1) To protect the safety and soundness of insured banks by requiring that the bank be operated independently and in a manner consistent with safe and sound banking practice, and (2) to protect the deposit insurance fund by avoiding claims against the bank arising from the public's misconception about the entity with which it is dealing.

The FDIC only received three comments addressing the affiliate provision. Those comments were exclusively concerned with the common name or logo prohibition and will be discussed below. Despite the dearth of comments on the affiliation issue, in assessing that provision the FDIC has treated the comments objecting to the criteria used to define "bona fide

subsidiary" as equally applicable to the affiliation criteria due to the substantial similarity of the two provisions. The reasons for retaining the criteria for affiliation in this revised proposal are concomitantly similar to the reasons for retaining the bona fide subsidiary criteria as proposed (*see* paragraph #2 above). The restriction on common officers, directors, and employees is designed to ensure that the bank is run in an independent safe and sound manner as management's concerns will be focused on the bank and not on the affiliate. The remaining restrictions in § 332.6, including paragraph (4) which prohibits an employee of the affiliate who is also an employee of the bank from conducting activities on behalf of the affiliate that involve customer contact, are aimed at preventing the public from perceiving the insured bank and its affiliate to be one and the same entity. The avoidance of this perception will help to protect the deposit insurance fund by preserving confidence in a bank even when its affiliate encounters difficulties.

When a bank has failed due, at least in part, to the activities of its affiliate, compliance with § 332.6 (particularly those provisions aimed at avoiding customer confusion) will help immunize the deposit insurance fund from claims that either the bank or the affiliate, as authorized by the bank, misrepresented the nature of the obligations of the affiliate. In the case of a deposit payoff, compliance with the above provisions should be a defense against claims that the obligations of the affiliate are deposits of the failed bank. In the case of an assumption by a healthy bank of the deposits and other liabilities of a failed bank, in which case the FDIC advances an amount from the insurance fund to the assuming bank equal to the difference between the amount of all liabilities assumed and the amount of assets assumed, compliance with § 332.6 protects the fund by ensuring that the liabilities of the affiliate are not those of the failed bank subject to assumption by the healthy bank. For example, after the failure of the American Bank & Trust Co., New York, N.Y. ("AB&T") in 1976, individuals who thought they had purchased certificates of deposit from the bank but in fact had purchased commercial paper of the similarly named American B & T Corp. (the bank's holding company), were given standing to proceed under the securities laws to state a case that they were in reality holding obligations of American Bank & Trust. *Adato v. Regan*, 599 F.2d 1111 (2d Cir. 1979). Another example of harm to the deposit insurance fund that can result from public confusion over affiliates relationships is the nearly devastating run on a large mid-western bank in the mid-1970s because of the losses incurred by a real estate investment trust owned by the bank's holding company. The REIT and the bank were not even similarly named, yet the losses incurred by the REIT were enough to set off a run on the bank by sophisticated, large-denomination depositors. A common name or logo clearly would have exacerbated the problem. (*See* paragraph #2 above for an explanation of the exception in the regulation permitting a bank to disclose its relationship to its affiliates.) Other problems created for banks by virtue of similarly named affiliated REIT in the 1970s are well known.

As mentioned, FDIC received three comments exclusively devoted to the prohibition against a common name or logo. All three strongly opposed this restriction. One of these comments was from an insured bank owned by a well-known national insurance company, while another was from a national bank owned by a well-known national retailer. The FDIC believes that the *Adato* case cited above, the REIT experience, and the other analyses set forth in connection with this proposal and the prior proposal support retention of the prohibition on a common name or logo. The FDIC rejected the idea of grandfathering existing common names because of the continued possibility of public confusion.

7. Restrictions on Lending

Section 332.7 of the original proposal contained several restrictions on the extent to which, and the manner in which, an insured bank may deal with its subsidiary or affiliate that engages in insurance underwriting (excluding credit life insurance), real estate development, reinsurance, or insures, guarantees, or certifies title to real estate. With several modifications and additions, the restrictions in the current proposal remain the same as the ones set forth in the original proposal. The currently proposed restrictions apply to any insured bank that has a subsidiary that engages in activities prohibited to the bank under §332.3 and to any insured bank that has an affiliate which is subject to the restrictions of section 332.6. (The restrictions of § 332.7 are applicable to banks with subsidiaries or affiliates that engage in insurance underwriting, real estate development, or guarantee or surety activities, thereby correcting an oversight in the first proposal which had only covered insurance underwriting and real estate development.)

As revised, § 332.7 provides that: (1) Any extension of credit by an insured bank to a subsidiary that engages in prohibited activities may not be in excess of 10% of the bank's primary capital, (2) the bank's aggregate extensions of credit to all such subsidiaries may not exceed 20% of the bank's primary capital, (3) any extension of credit by an insured bank where the purpose of the extension of credit is to acquire an interest in any real estate developed by the bank's subsidiary or affiliate must be consistent with safe and sound banking practices and the aggregate of such purpose loans may not exceed 10% of the bank's primary capital, and (4) any extension of credit by an insured bank to any real estate develoment in which the bank's subsidiary or affiliate has an equity interest may not exceed 15% of the bank's primary capital.

The currently proposed restrictions on extensions of credit by an insured bank deletes the reference to section 23A of the Federal Reserve Act contained in the original proposal and removes affiliates from the reach of the prohibition. As section 23A already covers extensions of credit to affiliates, covering affiliates under this provision would merely be superfluous. The current proposal has dropped the reference to section 23A in order to avoid the inadvertent impression that the FDIC was trying to extend section 23A to bank subsidiaries. It had been the FDIC's intent merely to borrow from that regulatory structure in formulating prudential restrictions. The prudential limitations set on extensions of credit by the proposal for safety and soundness reasons track the percentages used in section 23A, but do not contain any collateral requirements such as those used in section 23A. (Several comments objected to imposing collateral requirements.) Several comments suggested imposing restrictions on transactions *between* subsidiaries of an insured bank to avoid circumvention of the limits on loans to any one subsidiary. These comments, however, overlook the aggregate limit on loans to all subsidiaries. The FDIC believes that the aggregate limit is sufficient to safeguard against such circumvention.

The current proposal continues virtually unchanged from the former proposal the restriction against an insured bank making loans for the purpose of acquiring any interest in real estate developed by the bank's subsidiary or affiliate unless the terms and conditions of the extension of credit are consistent with safe and sound bank practice. The aggregate of such "purpose

loans" may not exceed 10% of the bank's primary capital. This restriction is designed to prevent an insured bank from making excessive and/or imprudent loans in order to "move" the subsidiary's or affiliate's real estate. Likewise, the requirement that the extensions of credit by the bank to any real estate development in which the bank's subsidiary or affiliate has an equity interest may not exceed 15% of the bank's primary capital is designed to prevent a bank from making excessive and/or imprudent loans to a real estate venture in which its subsidiary or affiliate has an equity interest in an effort to protect the subsidiary's or affiliate's investment position. (The original proposal had contained a cross reference to 12 U.S.C. 84 which places a limit on loans to one borrower. That cross reference has been dropped for the same reasons the reference to section 23A of the Federal Reserve Act has been dropped.)

Despite several comments arguing that the restrictions overly limit an insured bank's ability to lend to projects of an affiliate or subsidiary, the FDIC reaffirms its statement made in the original proposal that, "taken together, these restrictions are designed to prevent abuses while at the same time allowing purpose lending and other direct and indirect financing of real estate." Additionally, the FDIC has determined that this proposal's allowance of certain in-house real estate activities significantly diminishes the concerns expressed in the comments by permitting increased direct involvement in real estate development.

8. Trust Department Restrictions

Proposed § 332.7(a)(5) prohibits any insured bank that has a subsidiary that engages in activities prohibited to the bank under § 332.3, and any insured bank that has an affiliate that is subject to the restrictions of § 332.6, from purchasing as fiduciary, co-fiduciary or managing agent on behalf of any account for which the bank has sole investment discretion any interest in real estate developed by such subsidiary or affiliate or any insurance policy or annuity underwritten by such subsidiary or affiliate unless: (1) The purchase is expressly authorized by the managing agency agreement, the trust instrument, court order or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure: (2) the purchase, although not expressly authorized under item (1), is otherwise consistent with the bank's common law fiduciary obligation; or (3) the purchase is permissible under applicable state and federal law or regulation. Except for minor wording changes, this provision is as originally proposed.

The FDIC intends by this provisions to ensure against abuses that can arise in the adminstration of trust and other accounts over which the bank has investment discretion. The provision is, for the most part, simply a restatement of a bank's common law fiduciary obligation to refrain from dealing with itself in the adminstration of a trust. The provision has been styled as proposed (in the alternative) in order to take into account, for example, federal law governing employee benefit and pension plans that would permit, in certain instances, transactions involving such funds and affiliates of their trustees. An insured bank would still be subject to any applicable stricter federal or state statutory regulatory requirement. For example, if a particular transaction is specifically prohibited under state law, a bank could not rely on § 332.7(a)(5) as authority to enter into the transaction.

9. Tying

The revised proposal continues, with slight modifications, to prohibit directly or indirectly conditioning any extension of credit on the requirement that a borrower purchase any real estate developed by the bank's subsidiary or affiliate or purchase any insurance poliy or annuity underwritten by the bank's subsidiary or affililate. While some commens argued that this prohibition as unnecessary due to similar restrictions found in section 106(b) of the Bank Holding Company Act, many other comments evidenced extreme concern about tying arangements and urged the FDIC to bar bank entry into nonbanking areas in order to avoid tie-ins. The FDIC has retained this provision, however, inasmuch as not all insured banks are encompassed by the restrictions of section 106(b) of the Bank Holding Company Act (*e.g.*, nonbank banks) and because tying arrangements involving subsidiaries of banks not in a holding company system may not be covered thereby. The provision is not duplicative as to banks that are covered by section 106(b) as § 332.7(a)(4) contains a footnote which provides that compliance with section 106(b) shall deemed to be compliance with the proposal's anti-tying provisions.

10. Restrictions on Operations of Bank Insurance Departments and Permissible Real Estate Activities

Because the current proposal permits insured banks to: (1) Engage directly in real estate development up to certain limits pursuant to § 332.3(b)(2)(i) and (2) underwrite life insurance and annuities through a department of the bank pursuant to § 332.3(c)(2)(i), certain restrictions are necessary to prevent abuses that might arise. Paragraphs (3) and (4) of § 332.7(b) have therefore been added to the proposal. These paragraphs parallel the trust department restrictions and anti-tying provisions explained above that are applicable to insured banks that have subsidiaries or affiliates that engage in real estate or insurance activities.

Paragraphs (1) and (2) of new § 332.7(b) are designed to prevent customer confusion when an insured bank operates a life insurance department. Paragraph (1) prohibits an insured bank from referring to federal deposit insurance in any life insurance department advertisement, solicitation, or promotional material, and paragraph (2) requires any life insurance policy or annuity underwritten by the insurance department or an insured bank to be accompanied by a written disclosure stressing that only the assets of the insurance department are available to pay the liabilities of the insurance department. The FDIC hopes, by adopting these requirements, to avoid situations in which customers of the life insurance department mistakenly believe that they have an insured deposit when, in fact, the customer has purchased an annuity.

The FDIC specifically requests comments on whether any other conditions in lieu of, or in addition to, the ones proposed should be imposed when an insured bank directly engages in real estate development and/or operates a life insurance department. For example, should the FDIC require that the life insurance department be physically separate and distinct within the bank from the other departments? Should the same bank employee be prohibited from selling annuities and setting up money market deposit accounts?

11. Waiver

In response to several comments, a provisions has been added to the revised proposal that provides for a waiver by the FDIC's Board of Directors. The standard for the waiver as set forth in the proposal is that the Board of Directors may, by resolution, waive all or any portion of the regulation when the Board of Directors deems it necessary and in the public interest to do so. In addition to waiving the regulation, the Board of Directors may impose such other conditions as it determines to be appropriate. This provision will allow the FDIC at the request of an insured bank or upon the

agency's own initiative to waive any particular portion of the regulations and tailor make such conditions or restrictions that the Board of Directors feels are appropriate under the individual circumstances.

12. Insurance Sales, Real Estate Brokerage, Travel Services, EDP Services

The regulation as originally proposed contained several restrictions applicable to instances in which an insured bank, its subsidiary, or affilliate were providing certain brokerage services, EDP services and/or travel agency services. The restrictions were primarily designed to address conflicts of interest and anti-tying concerns. Comments received in response to the proposed restrictions were overwhemingly critical. Banks presently involved in these activities objected to the restictions as unnecessary and duplicative. Nonbanking trade groups objected to the "attempt" on the part of the FDIC to "authorize" insured banks to conduct such activities.

Upon reconsideration of the issue, the FDIC has determined to withdraw these proposed requirements. The effect of doing so is not, however, to preclude insured banks from conducting brokerage, EDP, and travel activities nor does it means that the FDIC will not address any problems that may arise due to the involvement of an insured bank in such activities. It is the FDIC's opinion that these activities pose only minimal safety and soundness concerns and that these concerns may be adequately addressed during the examiation process or otherwise where the need arises. If further experience in this area demonstrates the need for a regulation to address conflicts of interest and tying, the FDIC will initiate rulemaking or take other appropriate action.

13. Definition of "Affiliate", "Subsidiary", "Extension of Credit" and "Company"

The original proposed regulation defined the term "affiliate" to mean a company that directly or indirectly controls an insured bank or is under common control with an insured bank. "Control" was defined as the power to directly or indirectly vote twenty-five percent of a bank's or company's stock, the ability to control the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. At a minimum, the original proposed regulation treated as affiliates of an insured bank the bank's parent company, a company that controls twenty-five percent or more of the bank's stock, and any companies by either of the above.

The term "subsidiary" was defined in the original proposal to mean a company directly or indirectly controlled by a bank. As "company" was defined in the proposed regulation to include corporations (other than banks), partnerships, businesses trusts, associations, joint ventures, pools, syndicates or other similar business organizations, the term subsidiary as originally proposed encompassed a business entity operated by several insured banks in a cooperative effort.

The term "extension of credit" as defined in the original proposed regulation had generally the same meaning as found in Federal Reserve Board Regulation O (12 CFR 215.3) which concerns insider transactions. As defined in the original proposal, however, the term covered purchases "whether or not under repurchase agreement" of securities, other assets, or obligations. The "whether or not" language was included in the proposed regulation in an attempt to control the extent to which a bank may indirectly divert funds into a subsidiary by means of purchasing securities and other assets from the subsidiary. The term also differed from that used in Regulation O in that a "draw" upon a line of credit was an extension of credit whereas a "grant" of a line of credit was not.

The revised proposed regulation retains the above definitions as originally proposed without any modifications. (The agency did not receive any comments directed to the definitions.) A footnote has been added to proposed § 332.7 ("Restrictions") in response to comments that including a purchase of securities in the definition of extension of credit raised the question of whether or not a bank's direct investment in its subsidiary through a purchase of securities issued by that subsidiary was subject to the lending restrictions established by § 332.7. That footnote indicates that the lending restriction does not limit such purchases.

14. Scope of Regulation

The revised proposed regulation continues to apply to all FDIC-insured banks, *i.e.*, nonmember banks, state banks that are members of the Federal Reserve System, national banks, federal savings banks insured by the FDIC, and insured branches of foreign banks. Numerous comments challenged the FDIC's authority to adopt a regulation that would apply to insured banks other than insured state nonmember banks. For the reasons set forth at length in the statutory authority discussion above, the FDIC has determined not only that it has the authority to adopt a regulation applicable to all insured banks but also that the adoption of this particular proposed regulation is necessary to the protection of the insurance fund and the safety and soundness of insured banks. As a practical matter, national banks and state banks that are members of the Federal Reserve System, as well as affiliates of insured banks that are nonbank subsidiaries of a bank holding company, are not impacted by the proposed regulation. Such entities are either not presently authorized to engage in insurance underwriting or real estate development or are precluded by some other federal law and/or regulation from engaging in such activities. To the extent that state nonmember banks and federal savings banks insured by the FDIC may be affected by the regulation (those entities may be authorized by state or federal law or regulation to engage in insurance underwriting or real estate development), the FDIC has determined that such impact is both advisable and within the agency's authority. Again, the FDIC feels that the revisions made to the proposed regulation will minimize, if not eliminate, any conflict with state or other federal law. Lastly, insofar as the proscription on acting as guarantor or surety is concerned, it would appear that this prohibition is no broader than similar prohibitions already applicable to national banks, member banks, and federal savings banks insured by the FDIC.

Foreign banks and insured branches of foreign banks—The FDIC received a comment on behalf of the Institute of Foreign Bankers urging the FDIC to clarify that a foreign bank with an insured branch is not an insured bank for the purposes of the regulation. The comment also urged the FDIC to exclude from the reach of the regulation: (1) The non-U.S. affiliates of insured-branches of foreign banks, (2) the non-U.S. affiliates of domestic bank subsidiaries of foreign banks, and (3) the affiliates of domestic bank subsidiaries and insured branches of foreign banks where their U.S. nonbanking activities are either (a) grandfathered under section 8 of the International Banking Act (12 U.S.C. 3106) or (b) are permissible under the Bank Holding Company Act.

Section 332.1 of the revised proposed regulation ("Purpose and Scope") has been amended to indicate that the foreign bank parent of an insured branch is not within the scope of the regulation. It is clear, even without this

indication, however, that the foreign bank parent of an insured branch or of a domestic bank subsidiary is not an affiliate subject to the restrictions of the regulation. This is so as an affiliated company does not include a bank. (*See* § 332.2(a)). Non-U.S. companies that are affiliated with an insured bank (including an insured branch of a foreign bank or a domestic bank subsidiary of a foreign bank) have also been excluded from coverage under § 332.6 of the regulation. These affiliates are also therefore not subject to the restrictions of § 332.7(a) as the preface of that paragraph recites that the restrictions therein apply to any insured bank that has an affiliate that is subject to the restrictions of § 332.6.

The above exclusions are designed to prevent the regulation from having an extraterritorial effect. There is no need to exclude from the regulation the affiliates of insured branches or of domestic bank subsidiaries of foreign banks that engage in activities permissible under the Bank Holding Company Act. The activities covered by the regulation have not been found to be closely related to banking and therefore are not permissible under tht statute U.S. nonbanking activities grandfathered by the International Banking Act on the part of affiliates of insured branches of foreign banks and affiliates of domestic bank subsidiaries of foreign banks have also not been excluded from coverage under the regulation. Although the Federal Reserve Board has the authority to terminate the grandfather status conferred by the International Banking Act, the FDIC is of the opinion that that authority does not preclude the FDIC from regulating insured banks and their relationship to such affiliates nor does it remove the need for the FDIC to do so.

Exemption for certain subsidiaries—The original proposed regulation contained a provision which indicated that the restriction of §§ 332.4, 332.5, and 332.7 did not apply in the case of a subsidiary of an insured bank that exclusively conducted any activity that is specifically authorized by statute, regulation, or interpretation to national banks or their operating subsidiaries. (A companion exclusion in § 332.3(b) provided that no insured bank was required to establish or acquire a bona fide subsidiary in order to conduct any such activity.) Upon reconsideration, the FDIC has determined to delete these exclusions from the revised proposed regulation.

15. Compliance

The revised proposed regulation requires that any insured bank that, prior to the date of publication of the proposal in the **Federal Register**, engaged in any activity prohibited to the bank shall have one year from the effective date of the regulation to move the operation into a bona fide subsidiary. Thus, for example, an insured bank that underwrites property and casualty insurance will have one year to establish a bona fide subsidiary to take over that operation. In the case of real estate development, the bank will be permitted to complete any real estate development project that is ongoing as of the date of publication of the proposal in the **Federal Register** as well as any real estate development project for which it has, as of such date, entered into a binding contractual obligation. The bank will not be permitted, however, to enter into any new real estate development projects after the effective date of the regulation other than in compliance with the regulation. Thus, if an insured bank is involved in one or more real estate development projects that exceed the de minimis real estate transaction exclusion, the bank will be permitted to complete the projects but any additional real estate developments must be entered into through a bona fide subsidiary of the bank until the bank can again comply (for example, because of sales of development interests or growth of primary capital) with the de minimis requirement.

This limited grandfather aspect of the compliance provision is designed to prevent undue disruption to existing real estate operations to the detriment of the bank, *i.e.*, avoid forcing a bank to precipitously divest its interests in ongoing real estate developments. The revised compliance provision should provide more flexibility than the provision as originally proposed which would have given a bank two years to move an existing operation but did not establish a limited grandfather for ongoing real estate development. The provision as revised is thus responsive to comments which urged the FDIC to grandfather existing levels of real estate investment so as to not force a bank to divest assets at a liquidation price. The proposal does not simply grandfather insured banks that are conducting directly or indirectly activities authorized by their state or federal chartering authority as requested by some comments. This approach has not been adopted for all the reasons more fully discussed in the "Bases of Concern" discussion above.

The FDIC is specifically requesting comment on whether the regulation should identify when a real estate project is "completed" and invites comment on how to determine when that has occurred. Additionally, the FDIC invites comment on whether the regulation should establish a specific time period on the limited grandfather and whether the one year compliance period for all other prohibited activities is sufficient.

If an insured bank, prior to the date of publication of the proposal in the **Federal Register**, acquired or established a subsidiary that engages in prohibited activities or, prior to such date, because affiliated with a company that engages in such activities, the bank has one year from the effective date of the regulation to comply therewith with the following exceptions. The subsidiary must meet the definition of a bona fide subsidiary within 180 days and the affiliate provision of the regulation must be in compliance with within 180 days The lending and other restrictions of § 332.7 must be met within 90 days

16. Paperwork Reduction Act

The notice requirements contained in the proposed regulations do not constitute "collections of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(k)(1) of the OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR Part 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on an insured bank to notify the FDIC of its intended action, to confirm whether or not the transaction has been consummated, and to notify the FDIC if the bank has a subsidiary that engages in restricted activities or is affiliated with a company that engages in restricted activities. Any costs associated with these notices would appear, however, to be minimal. The proposed regulation does not specify the content of the written notices nor does it require insured banks to provide the FDIC with any specific information.

17. Regulatory Flexibility Act Analysis

In accordance with the FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FDIC conducted an analysis of the proposed regulation The results of that analysis follow.

The proposed regulation would prohibit, with certain exceptions, an

insured bank from conducting insurance or real estate underwriting activities unless such activities were conducted in a bona fide subsidiary of the bank. There are several benefits to such a restriction. By separating these activities from the bank, there will be less regulatory overlap and it will be easier for the various regulatory agencies to monitor the conditions of the institutions for which they are responsible. Moreover, by providing some insulation between the bank and its real estate and insurance underwriting activities, the safety of the bank is less likely to be threatened should its real estate or insurance subsidiaries encounter financial difficulty.

The provisions which would require independent capitalization, limit intercompany dealing, and prohibit insured banks from becoming affiliated with companies engaging in insurance or real estate underwriting activities unless the affiliate is physically separate from the bank and has a separate name and logo are consistent with the desire to limit the overall exposure of the banking organization by maintaining some separation between an insured institution's banking and nonbanking activities. These restrictions should not impose substantial costs on insured banks and will make it less likely that financial problems encountered by an affiliate will result in problems for the bank itself. The absence of an investment cap in the insured bank's subsidiaries will enable even relatively small insured banks to compete in these markets. The exclusion of bank's investment in its subsidiary does not eliminate any of the potential benefits that will result from increased competition in these markets. It does, however, encourage asset diversification by ensuring that insured banks do not become overexposed to cyclical declines in any of these activities.

As already stated, the FDIC does not believe that this regulation will result in excessive costs for insured banks in general or for small banks in particular. The primary concern, with respect to real estate development (particularly for small banks), would be if banks did not plan to engage in real estate development activities on a large enough scale to warrant the costs associated with forming a bona fide subsidiary. In such cases the regulation might discourage the bank from participating in real estate development activities and some public benefit might be lost. However, this potential concern is alleviated under the revised proposed regulation. Any bank that wished to engage in real estate activities on a limited basis would not have to incur any additional costs as a result of the proposed regulation since real estate investments that did not exceed 50% of primary capital could be conducted in the bank itself. Only those institutions that wish to participate in this market on a large scale would be required to set up a bona fide subsidiary, and in those instances the bank's real estate activities would be on a large scale to justify the costs associated with the formation of a bona fide subsidiary.

With respect to insurance activities by insured banks, it is unlikely that the proposed regulation will create unjustifiable costs or deter market entry. Banks that want to service their customer's insurance needs on a limited basis would be more interested in insurance brokerage than insurance underwriting, and the proposed regulation does not prohibit insurance brokerage activities. There are economies of scale associated with insurance underwriting which suggest that banks should not participate in this market unless they are willing to enter on a large enough scale to make the costs associated with forming a bona fide subsidiary a relatively minor part of their total costs. These economies of scale result from the need to soufficiently diversify underwriting risks.

Based on the above, the Board of Director hereby certified that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 332

Banks, Banking, Foreign banks, banking, State nonmember banks.

In consideration of the foregoing, the FDIC is proposing to revise Part 332 of title 12 *Code of Federal Regulations* as follows:

PART 332—POWERS INCONSISTENT WITH PURPOSES OF FEDERAL DEPOSIT INSURANCE LAW

Sec.

332.1 Purpose and scope.
332.2 Definitions.
332.3 Prohibited activities.
332.4 Investment in subsidiary.
332.5 Notice.
332.6 Affiliation.
332.7 Restrictions
332.8 Waiver.
332.9 Compliance.
332.10 Enforcement.

Authority: Sec. 6, Stat 876, 12 U.S.C. 1816; sec. 8(a), sec. 2[8(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by sec. 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1054), effective October 16, 1966; sec. 6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 618), effective September 17, 1978; and sec. 113(g) of title I of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), sec. 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by sec. 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1046), as amended by sec. 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1506); sec. 11 of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 624); secs. 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3649 and 3653); and secs. 404(c), 425(b), and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1512 and 1524); 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 11(a), sec. 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884), effective September 21, 1950, as amended by sec. 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91–151; 83 Stat. 375), effective December 23, 1969; secs. 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1500 and 1502), effective November 27, 1974; sec. 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3712), effective March 10, 1979; sec. 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96–153; 93 Stat. 1120); sec. 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96–221; 94 Stat. 147), effective March 31, 1980; and sec. 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97–110; 95 Stat. 1514), effective December 26, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by sec. 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

§ 332.1 Purpose and scope.

The provisions of this part apply to all insured banks including state chartered banks that are members of the Federal Reserve System, insured nonmember banks, national banks, insured branches of foreign banks (but not the foreign bank itself), and federal savings banks that are insured by the FDIC. The purpose of this part is to assure the safe and sound operation of insured banks by prohibiting activities that are inconsistent with the purposes of federal deposit insurance.

§ 332.2 Definitions.

For the purposes of this part, the following definitions apply.

(a) "Affiliate" shall mean any company that directly or indirectly controls or is under common control with an insured bank.

(b) "Bona fide subsidiary" shall mean a subsidiary of an insured bank that at a minimum:

(1) Is adequately capitalized;

(2) Is physically separate and distinct in its operations from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the subsidiary, access to which is through a separate entrance from that used for the insured bank, except that the bank's and subsidiary's offices may be accessed through a common outer lobby or common corridor;

(3) Does not share a common name or logo with the bank;[1]

(4) Maintains separate accounting and other corporate records;

(5) Observes separate formalities such as separate board of directors' meetings;

(6) Maintains separate employees who are compensated by the subsidiary; [2]

(7) Shares no common offices with the bank;

(8) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and

(9) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank, that any insurance policies or annuities underwritten by the subsidiary, as well as any real estate investments recommended, offered or sold by the subsidiary, are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank and that any undertakings or obligations of the subsidiary are not undertakings or obligations of the bank.

(c) "Company" shall mean any corporation (other than a bank), partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization.

(d) "Control" shall mean the power to directly or indirectly vote 25 per centum or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

(e) "Extension of credit" shall mean the making or renewal of any loan a draw upon a line of credit, or an extension of credit in any manner whatsoever and includes, but is not limited to:

(1) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item or otherwise;

(3) Issuance of standby letter of credit (or other similar arrangement regardless of name or description);

(4) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(5) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(6) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(7) Any other transaction as a result of which a natural person or company becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(f) "Primary capital" shall have the meaning set forth in §325.2(h) of the FDIC's regulations.

(g) "Real estate development" shall mean any form of direct or indirect equity interest in real property other than the following:

(1) An interest in real property that is primarily used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted in good faith provided that the property is not held longer than permitted by any applicable law or regulation;

(3) An interest in real property that is acquired at sales under judgments, decrees or mortgages held by the bank provided that the property is not held longer than permitted by any applicable law or regulation;

(4) The right to receive a portion of a borrower's gross or net income earned from the operation of real property or upon sale or refinancing of the real property when that right is acquired as an addition to, or in lieu of, interest on a loan to the borrower secured by such real property; and

(5) Interests in real property that are primarily in the nature of charitable contributions to community development.

(h) "Subsidiary" shall mean any company directly or indirectly controlled by an insured bank.

§ 332.3 Prohibited activities.

(a) *Acting as surety or guarantor.* (1) Except as otherwise provided in paragraph (a)(2), no insured bank may directly on indirectly conduct a surety business, insure the fidelity of others, or guarantee the obligations of others.

(2)(i) An insured bank may directly: (A) In the case of an insured branch of a foreign bank, guarantee or become surety upon the obligations of others as provided in § 347.3(c)(1) of the FDIC's regulations, (B) guarantee or become surety upon the obligations of others through an acceptance, endorsement, or letter of credit made or issued in the usual course of the banking business, (C) issue standby letters of credit as that term is defined in § 337.2 of the FDIC's regulations or enter into other similar arrangements, (D) guarantee or become surety upon the obligations of others if the bank has a substantial interest in the performance of the transaction or has a segregated deposit sufficient in amount to cover the bank's total liability, (E) enter into check guaranty card programs, customer-sponsored credit card programs, and similar arrangements on behalf of its retail banking deposit customers provided that the bank establishes the credit-worthiness of the individual before undertaking to guarantee his/her obligations, and (F) endorse or otherwise guarantee notes or other obligations sold by the bank for its own account.

(ii) An insured bank may, through a bona fide subsidiary of the bank, indirectly engage in activities otherwise prohibited to the bank under paragraph (a)(1) of this section.

(b) *Real estate development.* (1) Except as otherwise provided in paragraph (b)(2), no insured bank may directly or indirectly engage in real estate development.

(2)(i) An insured bank may directly engage in real estate development provided that: (A) the bank meets at least the minimum capital requirements set forth in § 325.3 of the FDIC's regulations, (B) the bank's aggregate investments in such real estate development, including any related extensions of credit, do not exceed 50%

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[1] This requirement shall not prohibit the subsidiary from advertising or otherwise disclosing its relationship to the insured bank.

[2] This requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to the those agreed to by independent entities

of the bank's primary capital, and (C) the bank's aggregate investment in any one real estate development (including any related extensions of credit) does not exceed 10% of the bank's primary capital;

(ii) An insured bank may, through a bona fide subsidiary of the bank, indirectly engage in real estate development activities otherwise prohibited to the bank under paragraph (b)(1) of this section.

(c) *Insurance underwriting.* (1) Except as otherwise provided in this paragraph and paragraph (c)(2), no insured bank may directly or indirectly underwrite insurance or engage in reinsurance. This prohibition extends, but is not limited to, casualty insurance, property insurance, life insurance (exclusive of insurance limited to assuring repayment of the outstanding balance due on an extension of credit in the event of death, disability, or involuntary unemployment), annuities, mortgage guarantee insurance, and title insurance.

(2)(i) An insured bank may underwrite life insurance and annuities through a department of the bank provided that the state of federal statutes or regulation which authorizes the bank to do so requires that: (A) The assets, liabilities, obligations, and expenses of the insurance department are separate and distinct from those of the other departments of the bank, (B) the assets of the other departments of the bank cannot be used to satisfy the obligations, liabilities, or expense of the insurance department, (C) the insurance department keeps separate accounting and other records, (D) the insurance department may not make investments not permitted to the bank, and (E) the insurance department is liquidated separately from the other departments of the bank and does not form part of the receivership in the event of the insolvency of the bank;

(ii) An insured bank may, through a bona fide subsidiary of the bank, indirectly engage in insurance underwriting activities otherwise prohibited to the bank under paragraph (c)(1) of this section.

§ 332.4 Investment in subsidiary.

(a) No insured bank may establish or acquire a subsidiary that engages in any activity prohibited to an insured bank under § 332.3 unless the bank meets at least the minimum capital requirements set forth in § 325.3 of the FDIC's regulations.

(b) An insured bank's direct investment in a subsidiary that engages in any activity prohibited to an insured bank under § 332.3 will not be counted toward the bank's consolidated capital.

§ 332.5 Notice.

(a) *Notice of intent.* (1) Any insured bank that intends to (i) establish or acquire a subsidiary that engages in activities prohibited to the bank under § 332.3, or (ii) become affiliated with a company that engages in any such activity, shall file a written notice of intent with the regional director of the FDIC region in which the bank is located. This notice must be received in the regional office at least 60 days prior to consummation of the transaction. Any insured bank that files a notice pursuant to this paragraph must also notify the regional director in writing within 10 days after the consummation of the transaction.[3]

(2) The notices required by paragraph (a)(1) may be waived in the FDIC's discretion where such notices are impracticable or where waiver would be in the public interest.

(b) *Notice of existing relationship.* Any insured bank that as of [insert effective date of the regulation] has a subsidiary that engages in activities prohibited to an insured bank under § 332.3 or, is as of that date affiliated with a company encompassed by § 332.6, must notify in writing the regional director of the FDIC region in which the bank is located of the existence of that relationship. This notice must be received in the regional office no later than [insert a date 30 days from the effective date of the regulation].

§ 332.6 Affiliation.[4]

No insured bank may become affiliated with any company that engages in any activity prohibited to an insured bank under § 332.3 unless:

(a) The affiliate is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the affiliate, access to which is through a separate entrance from that used for the bank, except that the bank's and affiliate's offices may be accessed through a common outer lobby or a common corridor;

(b) The bank and affiliate share no common officers;

(c) A majority of the board of directors of the bank is composed of persons who are neither officers nor directors of the affiliate;

(d) Any employee of the affiliate who is also an employee of the bank does not conduct activities on behalf of the affiliate that involve customer contact;

(e) The bank and affiliate do not share a common name or logo;[5] and

(f) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that any insurance policies or annuities underwritten by the affiliate, as well as any real estate investments recommended, offered, or sold by the affiliate, are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the affiliate otherwise undertakings or obligations of the bank.

§ 332.7 Restrictions.

(a) *Transactions with subsidiary or affiliate.* Any insured bank that has a subsidiary that engages in activities prohibited to the bank under § 332.3 and any insured bank that has an affiliate that is subject to the restrictions of § 332.6 shall not:

(1) Directly or indirectly make any extension of credit to any such subsidiary in excess of 10% of the bank's primary capital;

(2) Directly or indirectly make extensions of credit in the aggregate to all such subsidiaries in excess of 20% of the bank's primary capital;[6]

(3) Make any extension of credit where the proceeds are to be used by the borrower to acquire any interest in real estate developed by such subsidiary or affiliate unless the terms and conditions of the extension of credit are consistent with safe and sound banking practice. The aggregate of such extensions of credit shall not exceed 10% of the banks's primary capital.

(4) Directly or indirectly condition any extension of credit on the requirement that the borrower purchase any real estate developed by such subsidiary or affiliate or purchase any insurance

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[3] In the case of an affiliation that will arise out of a change in bank control or bank merger, the notice requirements of § 332.5(a) shall not apply provided that (1) the bank has filed a change in bank control notice with the FDIC pursuant to § 303.15 of the FDIC's regulations, (2) has filed an application with the FDIC for prior written consent to merge, consolidate, acquire assets, or enter into a purchase and assumption transaction, or (3) has filed such a notice or application with another federal or state agency that is required by statute or regulation to consult with the FDIC with respect to the notice or application.

[4] The restrictions of § 332.6 shall not apply in the case of any affiliate that is principally engaged in business outside the United States.

[5] This requirement shall not be construed to prohibit the bank from advertising or otherwise disclosing its relationship to the affiliate.

[6] Section 332.2(e)(1) notwithstanding, a bank's investment in stock issued by its subsidiary shall not be considered an extension of credit subject to the restrictions of paragraphs (a)(1) or (a)(2) of § 332.7(a).

policy or annuity underwritten by such subsidiary or affiliate.[7]

(5) Purchase as fiduciary, co-fiduciary, or managing agent on behalf of any account for which the bank has sole investment discretion any interest in real estate developed by such subsidiary or affiliate or any insurance policy or annuity underwritten by such subsidiary or affiliates unless: (i) The purchase is expressly authorized by the managing agency agreement, trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (ii) the purchase, although not expressly authorized under (i), is otherwise consistent with the bank's common law fiduciary obligation, or (iii) the purchase is permissible under applicable state and federal law or regulation.

(6) Make any extension of credit in excess of 15% of the bank's primary capital to any real estate development in which the bank's subsidiary or affiliate has an equity interest.

(b) *Operation of insurance department/permissible real estate development.* Any insured bank that operates a life insurance department as permitted by § 332.3(c)(2), and any insured bank that directly engages in real estate development pursuant to § 332.3(b)(2), shall comply with the following:

(1) The bank is prohibited from referring to federal deposit insurance in any life insurance department advertisement, solicitation, or promotional material.

(2) Any life insurance policy or annuity underwritten by the insurance department of the bank must be accompanied by the following, or a similar statement, either on the face of the policy or annuity or in a written disclosure given to the customer: "The only assets of this bank which are liable for and applicable to the payment and satisfaction of the liabilities, obligations, and expenses of the insurance department of this bank are the assets of the insurance department of this bank."

(3) The bank shall not directly or indirectly condition any extension of credit on the requirement that the borrower purchase any interest in real estate developed by the bank, or purchase any life insurance policy or annuity underwritten by the bank.

(4) The bank shall not purchase as fiduciary, co-fiduciary, or managing agent on behalf of any account for which the bank has investment discretion any interest in any real estate developed by the bank, or any annuity underwritten by the bank, unless the requirements of § 332.7(a)(5) are met.

[7] Compliance with section 106(b)(1) of the Bank Holding Company Act (12 U.S.C. 1972) shall be deemed to be compliance herewith

§ 332.8 Waiver.

The Board of Directors, in its discretion, may be resolution waive all or any portion of this part when it deems it necessary and in the public interest to do so. In doing so, the Board of Directors may impose such conditions as it determines to be appropriate.

§ 332.9 Compliance.

(a) *Existing operation moved to subsidiary.* Any insured bank that prior to June 7, 1985 engaged in any activity prohibited to an insured bank by § 332.3 shall comply with that section within one year from [insert the effective date of the regulation]; provided, however, that the bank may complete any real estate development project that is ongoing as of June 7, 1985 as well as any real estate development project for which, as of such date, the bank had entered into a binding contractual obligation. No new real estate development project may be entered into after [insert effective date of the regulation] other than in compliance with this part.

(b) *Existing subsidiary or affiliate.* Any insured bank that prior to June 7, 1985, acquired or established a subsidiary that engages in any activity prohibited to an insured bank under § 332.3, or prior to such date became affiliated with a company encompassed by § 332.6, shall comply with this part within one year from [insert the effective date of the regulation]; provided, however, that such bank shall comply with §§ 332.3 and 332.6 within 180 days of the effective date of the regulation and § 332.7 within 90 days of such date.

§ 332.10 Enforcement.

Any insured bank that is not operating in compliance with this part shall be deemed to be operating in an unsafe and unsound condition and in a manner inconsistent with the purposes of federal deposit insurance and will be subject to termination of deposit insurance in accordance with section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

By Order of the Board of Directors, this 3rd day of June, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13657 Filed 6-6-85; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-18-AD]

Airworthiness Directives; Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B, and AA-1C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C airplanes. This AD would require replacement of the seat belt attachment brackets. It is possible for the seat belt attachment bracket to fail in the event of decelerations experienced in a minor crash, which could result in injury to an occupant. Replacement of the seat belt attachment brackets with increased strength brackets will prevent the possibility of failure during a minor crash.

DATE: Comments must be received on or before July 12, 1985.

ADDRESSES: Gulfstream Service Bulletin No. 173, dated March 11, 1985, which is applicable to this AD, may be obtained from Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402-2206; Telephone (912) 964-3000 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Fridays, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE-120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications

should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–CE–18–AD, Room 1558, 601 East 12th Street, Kansas City Missouri 64106.

Discussion

It has been found that the seat belt attachment brackets used on Gulfstream Models AA–1, AA–1A, AA–1B, and AA–1C airplanes may fail during decelerations occurring in a minor crash. Failure of this bracket could result in injury to an occupant. A strengthened replacement bracket has been developed which exceeds the emergency landing requirements of FAR 23.561. Since the FAA has determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design, and AD is being proposed which would require replacement of the seat belt attachment brackets in accordance with Gulfstream Aerospace Service Bulletin No. 173, dated March 11, 1985.

The FAA has determined there are approximately 1,800 airplanes affected by the proposed AD. The cost of modifying these airplanes as required by the proposed AD is estimated to be $30 per airplane. The total cost is estimated to be $54,000 to the private sector. The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Gulfstream Aerospace: Applies to Models AA–1 (S/Ns AA1–0001 to AA1–0459), AA–1A (S/N AA1A–0001 to AA1A–0470), AA–1B (S/N AA1B–0001 to AA1B–0680) and AA–1C (S/N AA1C–0001 to AA1C–0211) airplanes.

Compliance: Required within 25 hours time-in-service after the effective date of this AD unless already accomplished by installing parts in accordance with Gulfstream Aerospace Service Bulletin No. 173 dated March 11, 1985.

To prevent failure of the seat belt attachment bracket in a minor crash, accomplish the following:

(a) Replace the seat belt attachment bracket, (Part Number (P/N) 60152–2) as follows:

(1) Remove seat belts by removing the AN–3 bolts through the end fittings. Discard the bolts and nuts but retain the bushings and washers.

(2) Remove the P/N 60152–2 belt attach brackets by removing the two nuts holding them to the floor. Discard the brackets and nuts, but retain the washers. Visually inspect the retaining plates under the fuselage for corrosion and replace if necessary

(3) Install P/N 5102391–1 brackets, using the washers retained in paragraph (a)(2) above and new nuts. Torque the nuts to 20 to 25 inch pounds.

(4) Visually inspect the seat belts for fraying or other signs of deterioration and replace any worn or deteriorated belts.

(5) Reinstall the seat belts, using NAS623–3–8 bolts, MS20365–1032 nuts and the bushings and washers retained in paragraph (a)(1) above.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402–2206, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Gulfstream Aerospace Corporation Bulletin No. 173, dated March 11, 1985, covers the subject matter of this AD.

Issued in Kansas City, Missouri, on May 29, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–13706 Filed 6–6–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ASW–55]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369A, D, E, H, HE, HM, and HS Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) which would require a one-time dye penetrant and tap test inspection as well as repetitive pilot preflight checks of certain tail rotor blades for abrasion strip separation on Hughes Helicopter, Inc., Model 369A, D, E, H, HE, HM, and HS series helicopters. The proposed NPRM is prompted by reports of tail rotor blade abrasion strip separation which could result in loss of the tail rotor control and subsequent loss of the helicopter.

DATES: Comments must be received on or before July 19, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: Office of the Regional Counsel Southwest Region, Room 158, Building 3B, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Comments must be marked: Docket No. 84–ASW–55.

Comments may be inspected in Room 158, Building 3B, between 8 a.m. and 4:30 p.m., weekdays, except Federal holidays.

The applicable service information may be obtained from Hughes

Helicopters, Inc., Centinela Avenue and Teale Street, Culver City, California 90230.

A copy of each document supporting the proposed AD is contained in the Rules Docket at the Office of Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT:

Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM–172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, telephone (213) 536–6166.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Regional Counsel, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 84–ASW–55." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that one accident has occurred as a result of separation of a tail rotor blade abrasion strip during helicopter operation. In that case, loss of the abrasion strip on a Model 369A helicopter tall rotor blade caused rotor system imbalance and was the primary cause for subsequent failure of the tail rotor gearbox. An investigation by the manufacturer, Hughes Helicopters, Inc., has determined that the condition which results in debonding of the abrasion strip may exist or develop on certain other tail rotor blades of Mode 369 helicopters. Accordingly, an airworthiness directive is being proposed which requires a one-time dye penetrant and tap test inspection and a repetitive preflight pilot check of the abrasion strip bond.

Since this condition is likely to exist on other helicopters of the same type design, an airworthiness directive is proposed which would require removal from service of tail rotor blades with abrasion strip debonding on certain Hughes Helicopter, Inc., Mode 369 helicopters.

The FAA has determined that this proposed regulation involves only 550 helicopters, and it is estimated that that one-time cost of compliance is less than $50,000. Therefore, I certify that this action (1) in not a "Major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 2106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Hughes Helicopters, Inc. (Hughes Helicopters): Applies to all Model 369A (OH–6A), 369D, 369E, 369HE, 369HM, and 369HS series helicopters, certificated in all categories, equipped with Hughes Helicopters, Inc. tail rotor blades, Part Numbers (P/N) 369D21613–11, 369D21613–41, 369D21615, 369A1613–7, 369A1613–503, and 421–088.

Compliance is required as indicated (unless already accomplished).

To prevent possible loss of tail rotor control, accomplish the following:

(a) Within the next 100 hours' time in service after the effective data of this AD, perform a one-time dye penetrant and tap test inspection on the affected tail rotor blades, with the following serial numbers (S/N), in accordance with procedures detailed in paragraphs a through 1 of the "PROCEDURES" section of Part I of Hughes Service Information Notices (SIN) DN–130, EN–19, and HN–197, dated November 14, 1984, or an FAA-approved equivalent.

Note.—If desired, and alternate tap test tool to the one specified in paragraph h may be used.

Note.—Model 369A (OH–6A) is to comply with Hughes SIN HN–197.

Blade P/N's	Blade S/N's affected
369D21613–11	All S/N's.
369D21613–41	All S/N's
369D21615	0383 and all prior
369A1613–7	5747 and all prior
369A1613–503	5607 and all prior.
421–088	0171 and all prior

(b) Before the first flight of each day after the effective date of this AD, visually check each tail rotor blade abrasion strip for any evidence of bond failure along the entire abrasion strip/airfoil bond line and at the blade tip using the procedure specified in Part II, paragraph a, Hughes SIN's DN–130, EN–19, and HN–197, dated November 14, 1984, or an FAA-approved equivalent.

(c) If, during the check of paragraph (b), debonding along the abrasion strip/bond line or blade tip is suspected, inspect the tail rotor blade prior to further flight in accordance with Part II, paragraph b, Hughes SIN's DN–130, EN–19, and HN–197, dated November 14, 1984, or an FAA-approved equivalent.

(d) Remove from service all tail rotor blades where void indication or bond separation is noted.

Note.—Discrepant tail rotor blades may be returned to service after being repaired in accordance with FAA-approved data.

(e) Alternative inspection, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

(f) The check required by paragraph (b) of this AD may be performed by the pilot and must be recorded in accordance with FAR § 43.9

(f) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order in comply with the requirements of this AD.

Issued in Fort Worth, Texas, on May 22, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-13702 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practice Rules; Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Postponement of Scheduled Public Hearings and Extension of Time Within Which to File Prepared Statements of Testimony by Witnesses and Exhibits.

SUMMARY: The Federal Trade Commission has postponed public hearings in the Ophthalmic Practice Rules Trade Regulation Rule Proceeding, scheduled for San Francisco, California, until July 1, 1985. The time for filing statements of testimony by witnesses and exhibits has been extended to June 7, 1985.

DATE: Public Hearings will commence in Room 12470, San Francisco Regional Office of the Federal Trade Commission at 9:30 a.m., July 1, 1985.

Prepared statements of testimony by witnesses and exhibits must be submitted on or before June 7, 1985.

ADDRESSES: Prepared statements of testimony by witnesses and exhibits should be sent to Presiding Officer James P. Greenan, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John Mooney, Renee Kinscheck or Jack L. Young, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202-523-4697, 202-523-3377 or 202-523-3596.

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice of January 4, 1985 (50 FR 598) the Commission published the proposed rule, announced scheduled hearing dates and set dates for filing statements of testimony by witnesses and exhibits in the Ophthalmic Practice Trade Regulation Rule Proceeding (Public Record 215-63). In addition to scheduled hearings in Washington, D.C., hearings were also scheduled to commence in San Francisco, California, on June 17, 1985. In conjunction with the San Francisco hearings, prepared statements of testimony by witnesses and exhibits were to be filed on or before May 31, 1985.

In granting the motion of one of the participants in the rulemaking for modification of the procedural schedule, the Presiding Officer has postponed the commencement date for hearings in San Francisco, California, until July 1, 1985. In so doing, the Presiding Officer also extended the time within which to file prepared statements of testimony by witnesses and exhibits to June 7, 1985.

Issued: May 21, 1985.

James P. Greenan,

Presiding Officer.

[FR Doc. 85-13712 Filed 6-6-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Public Comment Period on a Proposed Amendment to the Alabama Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed modification establishes requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E).

This notice sets forth the times and locations that the Alabama program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on July 8, 1985 will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for July 2, 1985, at the address listed below under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business June 24, 1985.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Bimingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for public review and copying at the OSM Field Office, the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the amendment by contacting the OSM Birmingham Field Office.

Office of Surface Mining, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Birmingham Field Office, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the date listed under "**DATES.**" If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program, can be found at 47 FR 22020–22058 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

III. Proposed Amendment

On May 22, 1985, Alabama submitted a proposed amendment to its approved regulatory program to establish requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E). These amended rules establish the responsibility of those persons intending to conduct operations under this exemption to apply for a determination of eligibility for the exemption prior to conducting such operations. The proposed rules outline the informational requirements necessary for such applications and criteria to be used by the Alabama Surface Mining Commission (ASMC) to determine the eligibility of the proposed operation for exemption and establish conditions and requirements for maintaining such eligibility during the conduct of such operations.

Section 9–16–99(d) of the Code of Alabama provides that the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of tonnage of minerals removed for commercial sale or use are exempt from the provisions of Act 81–435 and authorizes the regulatory authority to establish regulations for such exemptions. Under existing ASMC rules, the provisions of the Act are repeated along with establishment of record keeping requirements, but guidelines are not presented establishing the means, procedure and criteria for determining eligibility for the exemption.

Current ASMC rules did not specifically require determination of eligibility prior to conducting coal extraction operations. Companies purporting to be exempt under the provisions of the Code of Alabama relating to incidental extraction have initiated operations without a prior determination by ASMC. In these circumstances, significant disturbance related to coal-extraction activities occurs prior to any determination of eligibility for the exemption, which creates a direct threat to public health, safety and welfare which ASMC has found justifies adoption of the rules included in the proposed program revision.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* the Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 31, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining

[FR Doc. 85–13720 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Parts 3430 and 3450

Noncompetitive Leases and Management of Existing Leases; Amendments To Delete Cost Recovery Provisions for Fee Coal Exchanges and To Reinstate a Coal Lease Transfer Approval Requirement

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend two parts of the Coal Management regulations in 43 CFR Group 3400. The first amendment would remove the existing mandatory requirement for cost recovery for fee title exchanges in alluvial valley floors contained in 43 CFR Part 3430. This amendment reflects a change in policy by the Department of the Interior. The second amendment would reinstate a provision in 43 CFR Part 3450 giving the authorized officer authority to disapprove a coal lease transfer if financial data about the transfer are not submitted. The second amendment is required because the provision was inadvertently removed by the final rulemaking published in the **Federal Register** on July 30, 1982 (47 FR 33146).

DATE: Comments by August 6, 1985.

Comments received or postmarked after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to Director (140), Bureau of Land Management, Main Interior Bldg., Room 5555, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 am to 4:15 p.m.), Monday through Friday

FOR FURTHER INFORMATION CONTACT:

Carole Smith, (202) 343-6821

or

Robert C. Bruce, (202) 343-8735

SUPPLEMENTARY INFORMATION: This proposed rulemaking would make two amendments to the existing regulations The first amendment involves the imposition of cost recovery in connection with fee exchanges of coal bearing lands located in alluvial valley floors. Section 510(b) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1260) provides for the exchange of coal bearing lands in alluvial valley floors for other coal bearing lands located elsewhere. The Act requires that an exchange can be made only if, as of January 1, 1977, (1) coal had not been produced in commercial quantities from the lands during the preceding year, and (2) a specific permit to mine had not been granted on those lands, but (3) the operator had made substantial legal and financial commitments in connection with a coal mine operation on those lands

The original regulations of the Department of the Interior implementing the provisions of section 510 of the Act were challenged in *Texaco and NCA* v *Andrus*, Civil No. 79—3448 (D.D.C., August 15, 1980). That suit resulted in the Court requiring that the regulations implementing section 510(b) of the Act be revised. The Court-imposed revisions were published as a final rule-making in the **Federal Register** of July 30, 1982. In addition to making the court-mandated changes, that final rulemaking included a provision that an exchange proponent must bear all administrative costs of the exchange, including the costs of evaluating the coal resources affected. This requirement was imposed as part of the Department's effort to recover costs of services rendered for the benefit of an applicant that received a special benefit from those services.

The Department of the Interior has carefully reconsidered this requirement taking into consideration the ruling in *Texaco and NCA* v. *Andrus* that fee title exchanges of coal bearing lands in alluvial valley floors are mandatory under the Surface Mining Control and Reclamation Act, while lease exchanges are discretionary. Even though the question of administrative fees was not discussed in the ruling, the decision that a fee coal exchange is mandatory leads to the conclusion that the United States should bear the cost of making those exchanges since it is a requirement imposed by a statute of the United States. The collection of an administrative fee would continue as a requirement for exchanges of coal leases, which are encouraged but are of mandatory.

The Department of the Interior's continuing review of its regulations revealed that a provision of 43 CFR 3453.3–1 was inadvertently and unintentionally omitted from the final rulemaking published in the **Federal Register** on July 30, 1982. The provisions at 43 CFR 3453.3–1(a)(7) allowed the authorized officer to disapprove a coal lease transfer if financial data about the transfer are not submitted. This provision appeared in the Federal coal program regulations that were published in the **Federal Register** on July 19, 1979 (44 FR 42628), and was not proposed for removal by the proposed rulemaking that was published in the **Federal Register** on December 16, 1981 (46 FR 61390). The language, which is needed was inadvertently omitted in the final rulemaking and it would be reinstated by this proposed rulemaking.

The principal author of this proposed rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Changes made by this proposed rulemaking are of an adminstrative and financial nature. The amendment that would change the requirement for the collection of an administrative fee in 43 CFR 3436.1–2 and 3436.2–1 is of a financial nature. The amendment that would reinstate a provision in 43 CFR 3453.3–1 is also of a financial nature, but the impacts of it have already been examined in the *Final Environmental Impact Statement, Federal Coal Management Program* (April 1979). Therefore, the change to 43 CFR 3436.1–2 and 3436.2–1 qualifies for categorical exclusion and the environmental impacts of the change to 43 CFR 3453.3–1 have already been addressed. Based on the regulations for the implementation of the National Environmental Policy Act of 1969 (40 CFR 1501.4 and 1508.4) and the Department of the Interior policies for categorical exclusions set forth in Departmental Manual 516 DM6, Appendix 2, 2.4, B., these changes are exempt from the environmental review requirements.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes would reduce the costs of fee exchanges and would reinstate a requirement that had been a requirement of the existing regulations before it was inadvertently omitted. The changes would impact equally anyone who falls under their provision, whether large or small.

The proposed rulemaking contains no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq

List of Subjects

43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources

43 CFR Part 3450

Coal, Mines, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092), the Act of October 30, 1978 (92 Stat. 2073–2075), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), it is proposed to amend Parts 3430 and 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3430—[AMENDED]

1. The authority citation for Part 3430 would be revised to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

§ 3436.1–2 [Amended]

2. Section 3436.1–2(f) is amended by removing the period at the end thereof and adding the phrase ", if the exchange is completed."

§ 3436.2-3 [Amended]

3. Section 3436.2–3 is amended by removing paragraph (f) in its entirety.

PART 3450—[AMENDED]

4. The authority citation for Part 3450 would be revised to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

§ 3453.3–1 [Amended]

5. Section 3453.3–1(a) is amended by amending paragraph (7) by adding immediately after the citation "§ 3453.2–2(e)" where it appears, the phrase "and (f)".

Dated: May 13, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–13697 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 85–141; FCC 85–239]

Amendment of the Rules Regarding Computation of Time

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the rule regarding computation of time in Commission proceedings. This action is necessary to clarify the rule. The proposal would simplify, reorganize and illustrate the basic time computation rule.

DATES: Comments must be received on or before July 8, 1985, and reply comments by July 29, 1985.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Proposed Rule Making

In the matter of amendment of Part 1 of the Rules Regarding Computation of Time; Gen. Docket No. 85–141.

Adopted: May 8, 1985.

Released: May 30, 1985.

By the Commission.

1. *Introduction.* Part 1 of the Rules specifies the method for computing time in Commission proceedings. 47 CFR 1.4. The general rule that emerges from Part 1 is that the first day to be counted when computing a period of time is the day after the day of public notice and the last day of the time period is the one on which action must be taken, unless an exception applies.[1]

2. The Commission, *sua sponte*, has decided to revise § 1.4 with the primary objective of simplifying the rule, reordering it in a more logical fashion and illustrating it with examples. The Commission is taking this action due to the number of questions of interpretation that have been raised by both the general public and practitioners.

3. The scope of this proceeding is limited to the proposed reordering and inclusion of examples in the Rule. It is not our intention to reexamine the underlying general rule of Section 1.4. We have found the underlying rule to be a fair and efficient means of putting parties on an equal footing with regard to the receipt of public notice of Commission action for the purpose of seeking agency reconsideration and judicial review.[2]

4. Comments from the public and the bar are sought on the proposed revisions and examples as set forth in the Appendix. Parties are invited to comment on any additional examples that may be necessary to clarify the rule. Comments on the underlying rule will *not* be entertained.

5. *Conclusion.* Notice is hereby given that the Commission proposes to amend 47 CFR Part 1 in accordance with the proposals outlined above and in the Appendix.

6. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, § 1.1231 of the Commission rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

7. Authority for issuance of this Notice is contained in sections 4(i), (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before July 8, 1985 and reply comments on or before July 29, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554.

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[1] The term "public notice" is a term of art defined in the Rules. 47 CFR 1.4(b)(1)–(4).

[2] *See* 85 FCC 2d 618, 623 (1981).

All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

9. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities, because this proposal would simply clarify the rule regarding computation of time for filing certain documents with the Commission.

10. It is ordered that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this Notice to be published in the Federal Register.

11. For further information on this proceeding, contact Randy W. Thomas, Office of General Counsel, (202) 632-6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

(Secs. 4, 303, 48 stat., as amended, 1086, 1082; 47 U.S.C. 154, 303)

2. Section 1.4 is proposed to be revised to read as follows:

§ 1.4 Time computation.

(a) *General Rule—Computation of Beginning Date when action is initiated by Commission or Staff.* Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, Review Board, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the *day after the day* on which public notice of that action is given. Unless otherwise provided, all Rules measuring time from the date of the issuance of a Commission document entitled "Public Notice" shall be calculated in accordance with this section. Usually, such actions are reflected in a document. *See* § 1.4(e)(5) for definition of "public notice." In computing a period of time, it is immaterial whether the first day is a "holiday."

Example 1: The following illustrates how § 1.4(e)(5) is to be read in conjunction with § 1.4(a). A document in a Commission rule making proceeding is published in the Federal Register on Wednesday, May 1, 1985. Public notice commence at 3 P.M. on May 2, 1985. 47 CFR § 1.4(e)(5)(i). The first day to be counted in computing the beginning date of a period of time for action in response to the document is May 3, 1985.

Example 2: Commission Rule § 22.30 requires competing applicants to file a petition to deny within 30 days after issuance of public notice of the acceptance of a license application for filing. 47 CFR § 22.30(a)(4). A public notice of the acceptance of the license application of Acme Communications Corporation is issued on Friday, August 1, 1986. "Public notice" commences at 3 P.M. on August 2, 1986. The first day to be counted in computing the petition to deny deadline is August 3 (the day after the day of public notice); therefore, the 30th day is September 1, 1986.

(b) *General Rule—Computation of Beginning Date when action is initiated by Act, Event or Default.* Unless otherwise provided, the first day to be counted when a period of time begins with the occurence of an act, event or default is the day after the day on which the act, event or default occurs.

Example: Commission Rule § 21.39(d) requires the filing of an application requesting consent to involuntary assignment or control of the permit or license within thirty days after the occurence of the death or legal disability of the licensee or permitee. If a licensee passes away on March 1, the first day to be counted pursuant to § 1.4(b) is the day after the act or event. Therefore, March 2, is the first day of the thirty day period specified in § 21.39(d).

(c) *General Rule—Computation of Terminal Date.* Unless otherwise provided, when computing a period of time the last day of such period of time is included in the computation and any action require must be taken on or before that day.

Example: Rule 1.4(e)(5)(i) provides the "public notice" in a notice and comment rule making proceeding begins at 3 P.M. Eastern Time on the day after the day of Federal Register publication. Rule 1.4(a) provides that the first day to be counted in computng a terminal date is the "day after the day" on which public notice occurs. Therefore, if the Commission allows or requires an action to be taken 20 days after public notice in the Federal Register, the first day to be counted is the second day after the date of the Federal Register publication. Accordingly, if the Federal Register document is published on July 26, 1984, the first day to be counted in computing a 20 day period is July 28, 1984 (regardless of whether July 28 is a holdiay). The 20th day or terminal date upon which action must be taken is August 17, 1984.

(d) The purpose of this Rule Section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. Commission procedures frequently require the computation of a period of time where the period begins with the occurrence of an act, event or default and terminates a specific number of days thereafter. *See Memorandum Opinion and Order, Gen. Docket No. 80-488,* 85 FCC 2d 618, 627-28 (1981) for further examples of effective date and time computation.

(e) Definitions for purposes of this section:

(1) The term "holiday" means Saturday, Sunday, officially recognized legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 P.M. For example, a regularly scheduled Commission business day may become a "holiday" if its offices are closed prior to 5:30 P.M. due to adverse weather, emergency or other closing.

Note.—At present, officially recognized legal holidays are New Years' Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25. If a legal holiday falls on Saturday or Sunday, the holiday is taken, respectively, on the preceding Friday or the following Monday. In addition, January 20, (Inauguration Day) following a Presidential election year is a legal holiday in the metropolitan Washington, D.C. area. If Inauguration Day falls on Sunday, the next succeeding day is a legal holiday. *See* 5 U.S.C. 6103; Executive Order No. 11582, 36 FR 2957 (Feb. 11, 1971).

(2) The term "business day" means all days, including days when the Commission opens later than the time specified in Rule 0.403 (8:00 A.M.), which are not "holidays" as defined above.

(3) The term "filing period" means the number of days allowed or prescribed by statute, rule, order, notice or other Commission action for filing any document with the Commission. It does not include any additional days allowed for filing any document pursuant to (g), (h) and (j) of this section.

(4) The term "filing date" means the date upon which a document must be filed after all computations of time authorized by this section have been made.

(5) The term "public notice" means the date of the day, commencing at 3 P.M. Eastern Time, *after* any of the following dates:

(i) For documents in notice and comment rule making proceedings, the date of publication in the Federal Register.

Example: A Commission document in a rule making proceeding is published in the **Federal Register** on Wednesday, May 1, 1985. "Public Notice" of that document commences at 3 P.M. Eastern Time on Thursday, May 2, 1985.

(ii) For other documents released by the Commission or staff, whether or not published in the **Federal Register**, the release date. A document is "released" by making the full text available to the press and public in the Commission's Office of Congressional and Public Affairs. The release date appears on the face of the document.

(iii) If the full text of an action document is not to be released by the Commission, but a descriptive document entitled "Public Notice" describing the action is released, the date on which the descriptive "Public Notice" is released.

Example: At a public meeting the Commission considers an uncontested application to transfer control of a broadcast station. The Commission grants the application and does not plan to issue a full text of its decision on the uncontested matter. Five days after the meeting, a descriptive "Public Notice" announcing the action is publicly released. The date of public notice commences at 3 P.M. Eastern Time on the day after the release date, in accordance with § 1.4 (e) (5) (iii).

(iv) If a document is neither published in the **Federal Register** nor released, and if a descriptive document entitled "Public Notice" is not released, the date on which the document is sent (*e.g.*, mailed, telegraphed, etc.) to persons affected by the action.

Example: A Bureau grants a license to an applicant, or issues a waiver for non-conforming operation to an existing licensee, and no "Public Notice" announcing the action is released. The date of public notice commences at 3 P.M. Eastern Time on the day after the day on which the license is mailed to the applicant or the letter granting the waiver is mailed to the licensee.

(f) All petitions, pleadings, tariffs or other documents filed with the Commission must be tendered for filing in complete form before 5:30 P.M. in the Office of the Secretary. The Secretary will determine whether a tendered document is in complete form and whether it meets the pre-5:30 deadline.

(g) If the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

Example: A reply is required to be filed within 5 days after the filing of an opposition in a license application proceeding. The opposition is filed on Wednesday. The first day to be counted in computing the 5 day time period is Thursday. Saturday and Sunday are not counted because they are "holidays." The document must be filed with the Commission on or before the following Wednesday.

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed for filing a response. This subsection (§ 1.4(h)) shall not apply to documents filed pursuant to §§ 1.89, 1.120(d), 1.315(b) or 1.316.

Example: A reply to an opposition for an application for review of an action taken pursuant to delegated authority must be filed within 10 days after the opposition is filed. 47 CFR 1.115(d). The rules require that the opposition be served on the person seeking review. 47 CFR 1.115(f). If the opposition is served on the party seeking review by mail and the opposition is filed with the Commission on November 4, 1985, the first day to be counted is November 5 (the day after the day on which the event occurred, § 1.4(a)), the tenth day is November 14, an additional 3 days (excluding holidays) is then added at the end of the 10 day period, and the reply must be filed no later than November 19, 1985.

(i) If both subsections (g) and (h) of this section are applicable, make the subsection (g) computation before the subsection (h) computation.

(j) If the filing date falls on a holiday, the document shall be filed on the next business day.

Example: The filing date falls on Friday, December 25. The document is required to be filed on the next business day which is Monday, December 28.

(k) Where specific provisions of Part 1 conflict with this section, those specific provisions are controlling. *See, e.g.*, §§ 1.45(d), 1.773(a)(3) and 1.773(b)(2).

[FR Doc. 85-13693 Filed 6-6-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Argyroxiphium Sandwicense var. Sandwicense (Mauna Kea Silversword)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status for *Argyroxiphium sandwicense* var. *sandwicense* (Mauna Kea silversword) and that the comment period on the proposal is reopened. The proposed rule was published in the **Federal Register** of March 6, 1985 (50 FR 9092). This plant is known only from one small population of 35 plants located on the east slope of Mauna Kea on the island of Hawaii, State of Hawaii.

This hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The public hearing will be held from 7:00 to 9:00 p.m., on Monday, June 24, 1985, in Hilo, Hawaii. The comment period, which originally closed on May 6, 1985, now closes July 15, 1985.

ADDRESSES: The public hearing will be held in Conference Room A, State Building, 75 Aupuni Street, Hilo, Hawaii. Written comments and material should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing, contact Mr. Ernest Kosaka, Project Leader, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

SUPPLEMENTARY INFORMATION:

Background

The Mauna Key silversword is found only from one location on the east slope of Mauna Kea on the island of Hawaii. The lone population of this plant is vulnerable to any substantial habitat alteration and faces the present threat of elimination through grazing and trampling by feral animals and the potential threat of damage by insect larvae. A proposal of endangered status for the silversword was published in the **Federal Register** (50 FR 9092) on March 6, 1985.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On April 9, 1985, a request for a public hearing on this proposal was received from Mr. Tom Tagawa, Honolulu, Hawaii. The Service has scheduled this hearing for June 24, 1985, from 7:00 to 9:00 p.m. in Conference Room A of the State

Building, Hilo, Hawaii. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitations. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on May 6, 1985. In order to accommodate the hearing, the Service reopens the public comment period. Written comments may now be submitted until July 15, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Carolyn A. Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority

The authority for this section is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: May 30, 1985.

William F. Shake,

Acting Regional Director.

[FR Doc. 85–13668 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 110
Friday, June 7, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum Agreement; Texas

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice. Programmatic Memorandum of Agreement regarding the identification, evaluation, and treatment of historic properties that will be affected by the U.S. Department of Energy, Strategic Petroleum Reserve's construction and operation of crude oil pipelines from (1) the Strategic Petroleum Reserve Seaway Terminal, Freeport, Texas to Texas City, Texas, and (2) Sun Terminal, Nederland, Texas to an undetermined terminal in Jefferson or Orange County, Texas.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the U.S. Department of Energy, Strategic Petroleum Reserve, and the Texas State Historic Preservation Officer providing for the management of historic properties that may be affected by the construction and operation of the Strategic Petroleum Reserve's pipelines from (1) the Strategic Petroleum Reserve Seaway Terminal, Freeport, Texas to Texas City, Texas and the Sun Terminal, Nederland, Texas to an undetermined terminal in Jefferson or Orange County, Texas. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated and protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this Programmatic Memorandum of Agreement is available from the Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, telephone (303) 236–2682.

Dated: June 4, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–13738 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Citizens' Advisory Committee on Equal Opportunity; Re-Establishment

Notice is hereby given that the Secretary of Agriculture has re-established the Citizens' Advisory Committee on Equal Opportunity.

The purpose of the Committee is to strengthen the Department's efforts in the area of Civil Rights. The Committee will advise the Secretary and other Officials of the Department on all aspects of the Department's policies, practices, and procedures which promote equal opportunity.

The re-establishment of this Committee is in the public interest in connection with the performance of duties and responsibilities of the Department.

John J. Franke, Jr.,

Assistant Secretary for Administration.

June 4, 1985.

[FR Doc. 85–13767 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–95–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Industry Classification Questionnaire (FDIUS)
Form Number: Agency—BE–607; OMB—0608–0030
Type of Request: Extension of a currently approved collection
Burden: 1,600 respondents; 800 reporting hours

Needs and uses: The collected data is needed for classifying by industry, U.S. business enterprises in which a foreign person has an equity interest of 10 percent or more. The data is used to prepare the balance of payments and international investment accounts of the United States.

Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Procurement and Administrative Services
Title: Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs
Form Number: Agency—N/A; OMB—N/A
Type of request: New
Burden: 0 respondents; 1 reporting hours

Needs and uses: The information collected is to record the acquisition and displacement activities that may result from Commerce programs and to ensure that applicants' claims are paid and substantiated.

Affected public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Office of Finance and Federal Assistance
Title: Taxpayers Identification Number (TIN)
Form Number: Agency—N/A; OMB—N/A
Type of request: New collection
Burden: 2,500 respondents; 7 reporting hours

Needs and uses: The TIN will be collected in compliance with Pub. L. 97–365. The TIN will be used to check the taxpayer account status of each applicant for a grant or for financial assistance under an "included Federal loan program" before approving the

grant or loan. Commerce also needs the current address of delinquent debtors to collect its debts.

Affected Public: Individuals or households, businesses or other for-profit institutions, Federal agencies or employees, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 3, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–13730 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Census of Transportation; 1987 Commodity Transportation Survey—Pretest
Form Number: Agency—N/A; OMB—0602–0468
Type of request: Reinstatement of a previously approved collection
Burden: 1,000 respondents; 4,550 reporting hours
Needs and uses: This pretest will provide statistical data about the geographic and mode of transportation characteristics of shipments made by establishments in manufacturing, mining, and selected wholesaling industries. The information collected will be used to investigate improved methods of collecting industrial flow data.
Affected public: Businesses or other for-profit institutions
Frequency: One time
Respondent's obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 3, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–13731 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Export Trade Certificate of Review; Issuance

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to AMATEX Export Trade Association, Inc. (AMATEX). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 85–00006."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

New and used textile machinery and related auxiliary equipment and spare parts.

Export Trade Facilitation Services (as They Relate to the Export of Goods and Services)

(1) Coordination of the establishment of complete or partial textile mill projects; (2) engineering for complete or partial textile mill projects (including plant layout, machinery and manpower requirements, and purchasing services); (3) economic analysis for textile mill customers; (4) consulting services for the sale in the Export Markets of Textile Machinery Products and Related Services (including market and product intelligence, export-oriented information services, foreign customer visitation services, and selling trip and trade show participation services); (5) financing assistance (including credit instruments, credit insurance, and collection services); (6) shipping arrangements (including consolidation and freight forwarding services; (7) export documentation services; (8) services relating to compliance with customs requirements and with foreign and domestic government regulations; and (9) liaison services with U.S. and foreign government agencies and banking institutions. "Related Services" are those listed in items (1), (2), and (3) above, when related to the sale of Products in Export Markets.

Exports Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members

AZTEC Machinery Company, Inc.; The Bahnson Company; Draper Corporation; Gaston County Dyeing Machine Company; Gessner Company; John D. Hollingsworth on Wheels, Inc.; Jenkins Metal Corporation; Marshall and Williams Company; Morrison

Textile Machinery Company; Parks-Cramer Company; Reed-Chatwood, Inc.; Southern Machinery Company; Tubular Textile Machinery Corporation; and West Point Foundry and Machine Company.

Export Trade Activities and Methods of Operation

1. AMATEX may provide its Members or other Suppliers on an individual basis the benefit of any Export Trade Services to facilitate the export of Products and Related Services to Export Markets. This may be accomplished by AMATEX itself, or by agreements with Members or other parties.

2. AMATEX may enter into individual agreements with its Members and other Suppliers to act as an Export Intermediary in the sale of Products and Related Services in the Export Market.

3. AMATEX may enter into and terminate any number of agreements with its Members or other Suppliers of the Products and Related Services to:

(i) Contact the individual Suppliers of the Products and Related Services set forth in the invitation to bid or purchase specification,

(ii) Distribute to each Supplier bid requirements, bidding dates, purchase specifications and any other information provided by the prospective purchaser, and

(iii) Solicit and receive independent quotations for the Products and Related Services for individual Suppliers; provided AMATEX does not reveal to any Member or Supplier the quotation of any other Member or Supplier or the identity of the Member or Supplier that provided the quotation.

4. In response to purchase offers, requests for quotation or bid invitations for Products and Related Services in Export Markets, AMATEX may:

(i) Establish prices and quantities at which Products will be acquired, sold or resold in Export markets, and

(ii) Establish the price and other terms of sale at which Related Services will be acquired, sold or resold in Export Markets.

5. AMATEX may also bring together from time to time groups of Suppliers to plan how to fulfill the technical Product and Related Service requirements of a specific overseas textile mill project.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Dated: June 3, 1985

Douglas A. Riggs,

General Counsel.

[FR Doc. 85-13719 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

[A-351-014]

Hot Rolled Carbon Steel Plate in Coil From Brazil; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil. The review covers the period from October 1, 1984. The petitioner and another domestic interested party to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel plate in coil entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 10692-10693) an antidumping duty order on hot rolled carbon steel plate in coil from Brazil.

In a letter dated March 29, 1985, Bethlehem Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received a similar letter from another domestic interested party to the proceeding, U.S. Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of hot rolled carbon steel plate in coil currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100, and 607.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that Bethlehem Steel Corporation's and U.S. Steel Corporation's affirmative statements of no interest in continuation of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil provide a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on hot rolled carbon steel plate in coil from Brazil effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of hot rolled carbon steel plate in coil from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and § 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 29, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13558 Filed 6-6-85; 8:45 am]

BILLING CODE 3310-DS-M

[A-351-025]

Hot Rolled Carbon Steel Sheet From Brazil; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order

SUMMARY: The Department of Commerce has received information which shows changed circumstanes sufficient to warrant an administrative review, under section order on hot rolled carbon steel sheet from Brazil. The review covers the period from October 1, 1984. The petitioner and another domestic interested party to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel sheet entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35536-35537) an antidumping duty order on hot rolled carbon steel sheet from Brazil.

In a letter dated May 1, 1985, U.S. Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received a similar letter from another domestic interested party to the proceeding, Bethlehem Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of hot rolled carbon steel sheet currently classificable under items 607.8320, 607.6710, 607.6720, 607.6730, 607.6740 and 607.8342 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that U.S. Steel Corporation's and Bethlehem Steel Corporation's affirmative statements of no interst in continuation of the antidumping duty order on hot rolled carbon steel sheet from Brazil provide a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on hot rolled carbon steel sheet from Brazil effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of hot rolled carbon steel sheet from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 30, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13557 Filed 6-6-85; 8:45 am]

BILLING CODE 3310-DS-M

[A-351-012]

Hot Rolled Carbon Steel Plate Cut to Length From Brazil; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information

which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil. The review covers the period from October 1, 1984. The peititioner and another domestic interested party to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the Petitioner's notification, the revocation will apply to all hot rolled carbon steel plate cut to length entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 10692–10693) an antidumping duty order on hot rolled carbon steel plate cut to length from Brazil.

In a letter dated March 29, 1985, Bethlehem Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received a similar letter from another domestic interested party to the proceeding, U.S. Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of hot rolled carbon steel plate cut to length currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100, and 607.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that Bethlehem Steel Corporation's and U.S. Steel Corporation's affirmative statements of no interest in continuation of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil provide a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on hot rolled carbon steel plate cut to length from Brazil effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of hot rolled carbon steel plate cut to length from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 30, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13556 Filed 6–6–85; 8:45 am]

BILLING CODE 3310-DS-M

Transportation and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Test Equipment Technical Advisory Committee will be held June 26, 1985, 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington DC.

The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Industry participation requested in the area of marine and undersea vehicles and technology.
4. Subcommittee formation.
5. Selection of subcommittee chairmen.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matter listed in 5 U.S.C. 552b(c)(1)

and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce. Telephone: (202) 377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: June 4, 1985

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–13750 Filed 6–6–85; 8:45 am]

BILLING CODE 3510–DT–M

[A–351–503]

Certain Iron Construction Castings From Brazil; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–4087.

SUPPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry; Allegheny Foundry Company; Bingham & Taylor; Campbell Foundry Company; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Company; Municipal Castings Inc.; Neenah Foundry Company; Opelika Foundry Co., Inc.; Pinkerton Foundry Company; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc.; filing on behalf of the U.S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on U.S. import statistics, U.S. resale transactions, direct import transactions and bid and price quotations.

Petitioners based foreign market value of heavy castings on price quotations from a Brazilian producer. Petitioners state that they were unable to obtain similar price data for light castings. They therefore used as the foreign market value for light castings a constructed value based upon Brazilian raw material costs and U.S. foundry costs adjusted for differences between U.S. and Brazilian labor costs, variable fabrication expenses, capital costs and general expenses. To the sum of materials, fabrication and general expenses they added the statutory minimum of 8 percent for profit. The amount of general expenses used was higher than the statutory minimum of 10 percent of the sum of the cost of materials and fabrication. Petitioners also provided a constructed value for heavy castings, based upon the same methodology used for light castings, as an alternative foreign market value for those castings.

Based on the comparison of these values, petitioners alleged dumping margins of from 18 to 136 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether castings from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of certain iron construction castings from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85–13804 Filed 6–6–85; 8:45 am]

BILLING CODE 3510–DS–M

[A-122-403]

Egg Filler Flats From Canada; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: We determine that egg filler flats from Canada as described in the "Scope of the Investigation" section of this notice are being sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that egg filler flats from Canada are being sold in the United States at less than fair value, pursuant to section 735(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a))(the Act). One exporter, Cascades, Inc. (Cascades), is excluded from this determination because we found *de minimis* margins on the sales at less than fair value.

We have found that the foreign market value of egg filler flats exceeded the United States price on 88 percent of the sales compared. These margins ranged from 0 percent to 44.16 percent. The overall weighted-average margin on all sales compared is 14.93 percent. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On August 3, 1984, we received a petition filed by Keyes Fibre Company and Packaging Corporation of America, on behalf of the United States industry producing egg filler flats. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of egg filler flats from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury or threaten material injury to a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 23, 1984 (49 FR 34381). On September 17, 1984, the ITC determined that there is a reasonable indication that imports of egg filler flats are threatening material injury to a United States industry (49 FR 37857).

On September 12, 1984, we presented questionnaires to Cascades and to Fripp Fibre Forms, Ltd. (Fripp), two producers of egg filler flats who account for virtually all of the Canadian exports to the United States of the merchandise under investigation. Cascades submitted its response to our questionnaire on October 26, 1984; Fripp submitted its response on October 29, 1984.

On January 10, 1985, we preliminarily determined that egg filler flats from Canada were being sold at less than fair value (50 FR 2320). Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. Since no interested party requested a public hearing, no such hearing was held.

On February 14, 1985, we extended the period for making the final determination until not later than May 31, 1985, at the request of an exporter who accounted for a significant proportion of the exports of this merchandise, in accordance with section 735(a)(2)(A) of the Act (50 F.R. 7206).

We verified Cascades' response during the week of March 4, 1985, and Fripp's response during the week of April 1, 1985. During both verifications, we requested and subsequently received supplemental verification documents.

Scope of Investigation

The merchandise covered by this investigation is molded pulp egg filler flats, as currently provided for in item number 256.7000 in the *Tariff Schedules of the United States, Annotated* (*TSUSA*). Since Cascades and Fripp produced and exported virtually all of the egg filler flats shipped from Canada to the United States during the period of investigation, we limited our investigation to these two companies.

We investigated sales of egg filler flats by these respondents during the period from March 1, 1984 to August 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of egg filler flats to represent the United States price for sales by the Canadian producers because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the c.i.f., or c.i.f. duty paid, packed price. We made deductions, where appropriate, for inland freight, insurance, discounts, United States customs duties and brokerage charges.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we used home market prices to determine foreign market value. The home market prices were based on ex-factory or delivered, packed prices to unrelated home market purchasers. In calculating foreign market value, we made currency conversions from Canadian dollars to United States dollars using the certified quarterly exchange rates, in accordance with § 353.56(a)(1) of the Commerce Regulations. We made deductions, where appropriate, for inland freight, insurance, and discounts. In accordance with § 353.15 of the Commerce Regulations, we made a circumstance of sale adjustment for differences in credit expenses in the two markets. We also made an adjustment, where appropriate, for commissions paid by Cascades in the home market; this adjustment was offset by indirect selling expenses in the United States, in accordance with section 353.15(c) of the Commerce Regulations.

The following claims for adjustment were disallowed. Cascades claimed an adjustment for differences in level of trade, as provided for in § 353.19 of the Commerce Regulations. This claim was disallowed because Cascades was unable to quantify that the differences in the price of the merchandise in the United States and Canadian markets were due to differences in the level of trade. Fripp also claimed a level of trade adjustment. This adjustment was disallowed because the documentation provided by Fripp to support the claim was not sufficient to prove that the differences in prices in the two markets were due to differences in the level of trade. Fripp claimed an adjustment for differences in quantity, as provided for

in § 353.14 of the Commerce Regulations. This claim was disallowed because Fripp was unable to show that differences in price between the United States and Canadian markets were due to savings specifically attributable to production of different quantities.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site examination of accounting records and selected documents containing relevant information.

Petitioners' Comments

Comment 1: Petitioners claim that the Department should reject Cascades' level of trade adjustment, since Cascades sells to distributors in the United States market and cooperatives in the home market and these two classes of customers operate at the same level of trade. Additionally, petitioners claim that the Department should reject Cascades' claimed adjustment because it is based on an estimate of price differentials caused by differences in the level of trade, and is therefore insufficiently documented.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 2: Petitioners claim that the Department should use certified exchange rates in making conversions from Canadian to United States dollars.

Response: In making our conversions from Canadian to United States currency, we used the certified quarterly exchange rates.

Comment 3: Petitioners claim that the Department should reject Fripp's level of trade adjustment because Fripp has failed to demonstrate that an insufficient number of sales were made at comparable levels of trade to permit a fair comparison, because Fripp has not proven that the two classes of purchasers in its claim do in fact constitute different levels of trade, because Fripp has not shown that differences in level of trade correlate directly with differences in price, and because Fripp has not demonstrated that additional costs were actually incurred in selling to one level of trade as compared to another.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 4: Petitioners claim that the amount of the adjustment for differences in credit expense employed by the Department in its preliminary determination is inconsistent with the data contained in Fripp's response, and urge the Department to investigate closely Fripp's credit costs at verification.

Response: The basis for Fripp's adjustment for differences in credit expense was its December 14, 1984, submission. We reviewed this submission and determined that the methodology contained within was a reasonable and accurate method of determining such costs. At the verification, the data upon which the December 14, 1984, submission was based were verified by Department personnel. Therefore, we used Fripp's claimed adjustment for differences in credit expense for the final determination. The only change from the preliminary determination is our use of official, certified exchange rates instead of those provided by Fripp to convert credit costs in the United States market into Canadian dollars.

Comment 5: Petitioners believe that Cascades may have understated its transportation costs by not fully allocating all applicable expenses related to the delivery of its merchandise by company trucks to the molded pulp division of the company. Petitioners therefore urge the Department to confirm at verification that all relevant costs are included in Cascades' calculation of its transportation costs.

Response: Department personnel verified that all expenses related to Cascades' use of its own trucks in the delivery of merchandise were included in the company's calculation of its transportation costs.

Comment 6: Petitioners claim that certain of Cascades' discounts in the home market do not meet the regulatory criteria for a quantity discount, and thus should not be allowed.

Response: We agree that the discounts in question do not meet the regulatory requirements for a quantity discount as outlined in § 353.14(b) (1) and (2) of the Commerce Regulations. However, in accordance with § 353.14(b)(3) of our regulations, we used the discounted price of the sales in question in calculating a weighted-average foreign market value. Thus, the discounts were deducted from the price of the merchandise.

Comment 7: Petitioners claim that the Department should disallow a circumstance of sale adjustment for Cascades' home market sales commissions since these commissions were paid to a related party and the Department has consistently interpreted the statute and regulations to preclude adjustments for intracompany transfers such as payments to related parties.

Response: We recognize that, in general, the Department has not permitted circumstance of sale adjustments for commission payments to related parties. The principle behind denying a circumstance of sale adjustment for payments to related parties is that such payments are merely intracompany transfers of funds; these payments are considered to be part of the general expenses of the company, not costs directly related to particular sales.

However, in this case, although the salesman was an employee of the company, he received no salary; all payments to the salesman were directly related to particular sales, in the form of a percentage of the revenue accruing from those sales. The percentage to be paid was detailed in a contract between the salesman and the company. Additionally, the salesman paid for all of his sales-related expenses, with the exception of certain medical and other non-salary benefits. The cost of these benefits to the company was not included in the claim for the commission adjustment. Thus, the claimed adjustment for the commissions paid to the salesman cannot be considered to be part of the general costs to Cascades, since it is directly related to specific sales, and included no expenses which could not be tied to those sales.

While we continue to hold that circumstance of sale adjustments for commission payments to related parties are not generally allowable, we determined in this case that the salesman in question operated as an urelated party, and an adjustment for commission payments to him was allowed.

Comment 8: Petitioners claim that Fripp's transportation costs for certain sales appear to be abnormally high, and urge the Department to review carefully the data supporting these claimed costs.

Response: We reviewed Fripp's methodology of calculating the transportation costs involved, and determined that this methodology was a reasonable and accurate way to arrive at these costs. We also determined, however, that those elements involved in the calculation of these costs which were not sufficiently documented by Fripp should not be allowed. We therefore excluded such unsubstantiated expenses from the calculation of transportation costs.

Comment 9: Petitioners claim that a certain deduction from Fripp's foreign market value should be treated as a commission, and not a customer category discount, and that this deduction should therefore be offset by

indirect selling expenses in the United States in accordance with § 353.15(c) of the Commerce Regulations.

Response: Though the deduction involved was in fact listed as a commission in Fripp's questionnaire response, we found at verification that it had been erroneously labeled so. From the documents presented to us, we were able to determine that his was in fact a discount to a distributor. We therefore allowed the deduction as a discount on the price of the sale, and did not offset the adjustment with United States indirect selling expenses.

Comment 10: Petitioners state that the Department should reject Fripp's claim for an adjustment for differences in quantity because Fripp has not demonstrated that differences in costs are specifically attributable to the production of different quantities of egg filler flats.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Cascades' Comments

Comment 1: Cascades claims that the Department should allow an adjustment for a commission paid on some of its home market sales as the commission is a directly-related selling expense and therefore meets the criteria for a circumstance of sale adjustment set out by the statute and regulations. Since the salesman in question received no salary from the company and was paid solely on the basis of his sales, any commissions paid to him were directly related to specific sales and cannot be considered to have been general expenses to the company.

Response: For our response to this comment, see our response to Petitioners' Comment 7.

Comment 2: Cascades claims that the Department should allow a level of trade adjustment, since it is improper to compare prices to end-users with prices to distributors. The amount of the adjustment should be the estimate provided by the petitioners in their petition. If this adjustment is rejected, then the Department should alternatively consider the additional cost incurred by Cascades to pay commissions in the home market as the basis for a level of trade adjustment.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 3: Cascades claims that the transportation costs on its United States sales should be adjusted downward, since in the questionnaire response the company had allocated these costs based upon an arbitrary historical formula that overstated the actual expenses incurred.

Response: We reviewed Cascades' accounting and transportation records during our verification, and found that the transportation costs on United States sales listed in Cascades' response were overstated. We therefore adjusted these costs so as to reflect Cascades' actual experience.

Fripp's Comments

Comment 1: Fripp claims that the Department should allow a level of trade adjustment to account for the fact that the company sold to a level of trade in the United States which it did not sell to in the home market. Fripp claims that an adequate comparison between United States and Canadian sales cannot be made without adjusting foreign market value to reflect the effects that the difference in level of trade had on prices in the two markets. Fripp further states that it has demonstrated the actual differences in costs of production and sales between the different levels of trade, and that these costs differences should form the basis of the Department's adjustment.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 2: Fripp claims that the Department should allow a quantity adjustment to account for the lower per-unit costs for Fripp's sales to certain United States customers as compared to Canadian customers. Fripp claims that the lower costs were due to the greater quantities purchased by these United States customers.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that egg filler flats from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the Act.

Continuation of Suspension of Liquidation

Liquidation will continue to be suspended on all entries of egg filler flats from Canada that are entered into the United States, or withdrawn from warehouse, for consumption. The United States Customs Service will continue to require the posting of a cash deposit, bond or other security in amounts based on the following weighted-average margins. Imports of egg filler flats sold by Cascades are excluded from this suspension of liquidation, since the weighted-average margin is 0.08 percent, which is *de minimis*. The security amounts established in our preliminary determination published in the **Federal Register** on January 16, 1985 will no longer be in effect.

Manufacturers	Weighted-average margins (percent)
Cascades, Inc.	[1] 00.08
Fripp Fibre Forms, Ltd.	14.93
All Other Manufacturers/Producers/Exporters	14.93

[1] De Minimis excluded

ITC Notification

In accordance with section 734(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all cash deposits, securities or bonds posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess an antidumping duty on egg filler flats entered, for consumption, on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Assistant Secretary for Trade Administration.

[FR Doc. 85-13806 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-401]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 23, 1985, Lone Star Steel Company and CF&I Steel Corporation withdrew their antidumping petition, filed on June 13, 1984, on oil country tubular goods from Korea. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3963.

SUPPLEMENTARY INFORMATION:

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Company filed on behalf of the U.S. industry producing oil country tubular goods.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on July 21, 1984 (49 FR 28088). On August 8, 1984, the ITC found that there was a reasonable indication that imports of OCTG from Korea materially injure, or threaten material injury to, a United States industry. On August 3, 1984, LTV Steel Company became an additional petitioner. On Janaury 9, 1985, we made a preliminary determination that OCTG from Korea were not being, nor were likely to be, sold in the United States at less than fair value (50 FR 2312).

Scope of Investigation

The products under investigation are oil country tubular goods (OCTG). OCTG are extension hollow steel products of circular cross section intended for use in the drilling of oil or gas. OCTG includes oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Withdrawal of Petition

On May 23, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Act, as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Korea to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 30, 1985.

[FR Doc. 85-13805 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-408]

Termination of Countervailing Duty Investigation; Converted Paper-Related School and Office Supplies From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 17, 1985, the petitioner representing the U.S. producers of converted paper-related school and office supplies withdrew its countervailing duty petition, filed on November 16, 1984, on converted paper-related school and office supplies from Mexico. Based on the withdrawal, we are terminating the countervailing duty investigation.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1785.

Case History

On November 16, 1984, we received a petition in proper form from the Stationery International Trade Committee filed on behalf of the U.S. industry producing converted paper-related school and office supplies. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26) the petition alleges that manufacturers, producers or exporters in Mexico of converted paper-related school and office supplies receive bounties or grants.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation and, on December 6, 1984, we initiated this investigation (49 FR 48347). In our notice of initiation, we stated that we expected to issue a preliminary determination on or before July 24, 1985. On April 23, 1985, the Office of the United States Trade Representative announced that Mexico was a "country under the Agreement," as set out in section 701(b) of the Tariff Act of 1930, as amended (the Act). As a result, Title VII of the Act became applicable to the pending countervailing duty investigation.

According to section 102 of the Trade and Tariff Act of 1979, once Title VII becomes applicable, any pending investigation under section 303 of the Act must be terminated. Where an initiation, but not a preliminary determination, has been made under section 303, the case is to be treated as if it were initiated under section 702 on the day Title VII first applied to that country. Therefore, on May 14, 1985, we terminated our investigation under section 303 and initiated an investigation under Title VII (50 FR 20117). Then on May 17, 1985, the petitioner notified us that it was withdrawing the countervailing petition on converted paper-related school and office supplies from Mexico.

Scope of Terminated Investigation

The products covered by this investigation are converted paper-related school and office supplies, which comprise:

- Typing and filler paper.
- Wirebound notebooks and composition books.
- Pads.

These products are currently classified under item numbers 256.9080, 256.5600, 256.5800, and 256.9040 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Withdrawal of Petition

On May 17, 1985, petitioner notified us that it was withdrawing its petition, and requested that this investigation be terminated. Under section 704(a) of the Act (19 U.S.C. 1671c(a)), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation of petitioner's withdrawal and our intention to terminate. We have notified the parties of petitioner's withdrawal of the petition and of our intention to terminate. Pursuant to § 355.30(a) of the regulations (19 CFR 355.30(a)), we have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of converted paper-related school and office supplies from Mexico.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 1, 1985.

[FR Doc. 85-13799 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-405]

Barbed Wire and Barbless Fencing Wire From Argentina; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from Acindar Industria Argentina de Aceros (Acindar), the respondent in this investigation, that the final determination be postponed, as provided for in section 735(a)(2)(A), and, that we have determined to postpone our final determination as to whether sales of barbed wire and barbless fencing wire have occurred at less than fair value, until not later than September 16, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION: The Department of Commerce published on December 18, 1984, a notice in the **Federal Register** (49 FR 49126) that it was initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Argentina were being, or were likely to be, sold at less than fair value. On May 3, 1985, we published a preliminary determination sales are at less than fair value with respect to this merchandise (50 FR 18906). The notice stated that if this investigation proceeded normally we would make our final determination by July 12, 1985.

On May 6, 1985, the respondent, Acindar, requested that we extend the period of the final determination until September 16, 1985, 135 days after the date of publication of the preliminary determination and in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. Acindar is qualified to make such a request since it accounts for all of the exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than September 16, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 24, 1985.

[FR Doc. 85-13800 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-251-407]

Barbed Wire and Barbless Fencing Wire From Brazil; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from Belgo-Mineira and COSIGUA, the respondents in this investigation, that the final determination be postponed, as provided for in section 735(a)(2)(A), and, that we have determined to postpone our final determination as to whether sales of barbed wire and barbless fencing wire have occurred at less than fair value, until not later than September 16, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Adminsitration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION: The Department of Commerce published on December 18, 1984, a notice in the **Federal Register** (49 FR 49126) that it was initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Brazil were being, or were likely to be, sold at less than fair value. On May 3, 1985, we published a preliminary determination sales are at less than fair value with respect to this merchandise (50 FR 18903). The notice stated that if this investigation proceeded normally we would make our final determination by July 12, 1985.

On April 22, 1985, the respondents, Belgo-Mineira and COSIGUA, requested that we extend the period of the final determination until September 16, 1985, 135 days after the date of publication of the preliminary determination and in accordance with section 735(a)(2)(A) of theAct. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. These respondents are qualified to make such a request since they account for all of

the exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons ot the contrary, to grant the request.

Accordingly, the Department will issue a final determinatinn in this case not later than September 16, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 24, 1985.

[FR Doc. 85-13801 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From India; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from India are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washinton, D.C. 20230; telephone: (202) 377-2836.

SUPPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc., filing on behalf of the U.S. producers of certain iron construction castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of § 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based United States price on quota and sales invoices from Indian castings producers and importers for sales in the U.S. market.

The petitioners based foreign market value on the constructed value of Indian castings because they allege that due to the nature of the product and the home market, and precedent from the 1981 antidumping investigation, the most appropriate means to determine foreign market value is by using the constructed value. Petitioners derived the constructed value through use of a computer model of Indian foundries' production costs and sales. The source of information was primarily the 1981 antidumping investigation and the data were updated to reflect current costs and exchange rates.

Based on the comparison of these estimated values, petitioners' alleged dumping margins range from 37.0 percent for a 442-pound catch basin assembly (heavy construction castings) to 82.2 percent for a 68-pound valve box (light construction casting).

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating and antidumping duty investigation to determine whether castings from India are being, or are likely or be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandies covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of castings from India are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85-13802 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2830.

SUPPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc.; filing on behalf of the U.S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based United States price on quotes and sales invoices from U.S. purchasers of castings.

Petitioners claim that the PRC is a state-controlled-economy country (within the meaning of the Act) and, therefore, a "surrogate" non-state-controlled-economy country's prices should be used as the basis for determining the foreign market value of the merchandise under investigation. Petitioners chose India as a surrogate country, and based foreign market value on a constructed value of castings because they allege that India lacks both home market and third country sales of castings.

Based on a comparison of the above values, petitioners alleged dumping margins range from 23.5 percent for a 442-pound catch basin assembly (heavy construction casting) to 51.0 percent for a 35-pound service box (light construction casting).

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether castings from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of castings from the PRC are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85–13803 Filed 6–6–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Ocean Action, Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Ocean Action, Inc. (P238B).

b. Address: P.O. Box 3637, South Padre Island, Texas 78597.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*) 6.

4. Type of Take: Capture/Maintain.

5. Location of Activity: Matagorda Bay or Rockport, Texas.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of

such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 4, 1985

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-13810 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Controls on Certain Man-Made Fiber Textile Products Produced or Manfactured in the Republic of Korea

June 3, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 7, 1985. For further information contact Ross Arnold International Trade Specialist (202) 377-4212.

Background

The Governments of the United States and the Republic of Korea have exchanged letters further amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1972, as amended, to establish specific limits for the duration of the agreement for parts of Category 614, produced or manufactured in Korea. The T.S.U.S.A. numbers for these specific limits for 1985 are as follows:

Category 614pt.-W (man-made fiber fabrics blended with wool in T.S.U.S.A. numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572).

Category 614pt.-O (man-made fiber fabrics, other than those blended with wool, in all other T.S.U.S.A. numbers in the category except those listed immediately above).

The specific limit for Category 614pt W is 8,770,893 square yards, for Category 614pt-O, it is 11,787,500 square yards for goods exported during 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements

June 3, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea and exported during the period January 1, 1985 to December 31, 1985.

Effective on June 7, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include restraint limits for man-made fiber textile products in parts of Category 614, as follows:

Category	12-mo restraint limit (square yards)
614pt.[1]	8,770,893
614pt.[2]	11,787,500

[1] In Category 614 only TSUSA number 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572)

[2] In Category 614, all TSUSA numbers in the category except those listed in footnote 1

In carrying out this directive, entries of man-made fiber textile products in Category 614, produced or manufactured in Korea, which have been exported to the United States during 1984, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during 1984. In the event the limit established for 1984 has been exhausted by previous entries, such goods shall be subject to this directive. Inasmuch as Category 614 was controlled in 1984 as an entire category and not in the parts being established in this directive, the necessary charges will be provided.

Textile products in Category 614 which have been released from this custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreement has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13733 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With Korea to Review Trade in Categories 605pt. and 611

June 3, 1985

On May 7, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to man-made fiber yarns, other than cordage, in Category 605-O (all TSUSA numbers in the Category except 316.5500 and 316.5800) and man-made fiber woven fabrics in Category 611, produced or manufactured in Korea. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Republic of Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 605-O and 611, produced or manufactured in Korea and exported in the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of these categories from Korea under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain,

comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13722 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Product Produced or Manufactured in Malaysia

June 4, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1982, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 10, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Malaysia have exchanged notes extending their Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981 for six months beginning on January 1, 1985 and extending through June 30, 1985. The agreement, as amended and extended, provides specifics limits for Categories 331, 333/334/335, 341, 345, 338/339, 340, 347/348, 445/446, 604 and 638/639, among others, exported during the six-month period which began on January 1, 1985 and extends through June 30, 1985. The agreement, as extended, also contains a consultation mechanism for categories not subject to specific limits and for which levels may be established during the agreement period. The letter published below establishes the six-month limits for the foregoing categories. The limits have not been adjusted to account for any imports exported after December 31, 1984. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreeemnt, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 4, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, as extended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 10, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the six-month period which began on January 1, 1985 and extends through June 30, 1985, in excess of the indicated restraint limits:

Category	6-mo restraint limit [1]
331	306,940 dozen pairs.
333/334/335	40,115 dozen of which not more than 20,058 dozen shall be in Cat. 333; not more than 20,058 dozen shall be in Cat. 334 and not more than 20,058 dozen shall be Cat. 335.
338/339	234,512 dozen of which not more than 93,616 dozen shall be in Cat. 339.
340	163,475 dozen.
341	115,797 dozen
345	33,489 dozen
347/348	92,408 dozen of which not more than 48,318 dozen shall be in Cat. 348
445/446	12,656 dozen
604	662,899 pounds
638/639	96,636 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984

In carrying out this directive, entries of cotton, wool, and man-made fiber textiles and textile products in the foregoing categories, except Categories 341, 345, and 638/639, produced or manufactured in Malaysia, which have been exported to the United States during the period which began on January 1, 1984 and extended through December 31, 1984, (in the case of Category 341, exported to the United States during the period which began on April 27, 1984 and extended through December 31, 1984; in the case of Category 345, exported to the United States during the period which began on February 29, 1984 and extended through December 31, 1984; and in the case of Category 638/639, exported to the United States during the period which began on January 1, 1984 and extended through December 31, 1984), shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits so established have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 341, 345, and 638/639 which have been exported prior to the first day of the restraint periods noted shall not be subject to this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 6, 1980 and February 27, 1981, as extended, between the Governments of the United States and Malaysia which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than five percent, if a corresponding reduction is made in one or more other specific limits in the same group during the same agreement year; (2) specific limits may be adjusted for carryover; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13734 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a commodity and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: June 7, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 1 and February 15, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 4726 and 50 FR 6375) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1985:

Commodity

Holder, Card-Label: 9905-00-866-0334

Service

Commissary Shelf Stocking and Custodial, Elmendorf Air Force Base, Alaska

C.W. Fletcher,

Executive Director.

[FR Doc. 85-13740 Filed 6-6-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions and Deletion to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: July 10, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Serverely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Belt, Aircraft Safety: 1680-00-407-5335

Fitting Kit: 4730-00-470-6625

Stay, Fence: 5660-00-943-9927, 5660-00-904-8023, 5660-00-607-0286, 5660-00-607-0287

Towel, Paper: 7920-00-823-9772

(Requirements for GSA National Capital Region (NCR) only)

Wood Container: 8115-LI-599-7220, 16" x 16" x 12"; 8115-LI-599-7320, 19" x 19" x 24"; 8115-LI-599-7820, 43" x 38" x 18"; 8115-LI-599-8020, 43" x 38" x 37"; 8115-LI-599-8120 43" x 39" x 54"; 8115-LI-599-7920, 57" x 43" x 18"; 8115-LI-465-0920, 48" x 38" x 30"; 8115-LI-465-1020, 50" x 26" x 26"; 8115-LI-466-4120, 80" x 40" x 40";

(Requirements for Robbins Air Force Base, Georgia only)

Services

Commissary Shelf Stocking and Custodial, Altus Air Force Base, Oklahoma

Janitorial/Custodial, Army Materials and Mechanics Research Center, Buildings 36, 37, 39, 43, 97, 131, 292, 311, 312, 313 only, Watertown, Massachusetts

Janitorial/Custodial, National Institute for Occupational Safety & Health, 5555 Ridge Avenue, Cincinnati, Ohio

Janitorial/Custodial, Building 1293, Hill Air Force Base, Utah

Deletions

It is proposed to delete the following commodity from Procurement List 1985, October 19, 1984 (49 FR 41195):

Bag, Lunch: 8105-00-664-3715

C. W. Fletcher,

Executive Director.

[FR Doc. 85-13741 Filed 6-6-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Advisory Panel on ROTC Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following panel meeting:

Name of panel: Army Advisory Panel on ROTC Affairs.

Date of meeting: July 9-11, 1985.

Place: Fort Bragg, North Carolina.

Time: 0900-1600, July 9, 1985, 0900-1600, July 10, 1985, 0900-1200, July 11, 1985.

Proposed agenda: The meeting will consist of briefings, discussion periods and visits to training sites of the ROTC Advanced Camp and Fort Bragg. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time and in the manner permitted by the Panel. First day of the meeting will consist of administrative matters to include introduction and swearing-in of new members and briefing on the standards of conduct required of members. A briefing is scheduled during the morning of July 9 on the Nursing and ROTC Curricula Study. Purpose of this study is to examine and compare general nursing curriculum with ROTC course curriculum in an effort to eliminate redundancies. Afternoon of

July 9 will be devoted to a visit to the ROTC Advanced Camp to observe training of ROTC cadets. Major business of the Panel will be transacted on July 10. There will be a briefing on the Army Academic Discipline Requirements, i.e., how many engineers, scientists, business or liberal arts commissionees the Army must have to meet its needs. Additionally, there will be a briefing on Viability Issues, i.e., factors demonstrating the success or failure of the ROTC detachments and adjustments made to the system to encourage success. The Panel will be updated on the status of recommendations stemming from previous meetings. During the final General Session, new Panel recommendations will be developed, a Chairman for 1985 will be elected, and initial plans made for the Autumn meeting of the Panel. Morning of July 11 will be devoted to visits to training sites at the ROTC Advanced Camp and Fort Bragg.

John P. Prillaman,

Major General, GS, Deputy Chief of Staff for ROTC.

[FR Doc. 85-13768 Filed 6-6-85; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of Membership of the Defense Logistics Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, Virginia 22304-6100 (202) 274-6049 or 274-6035.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names of the executives who have been appointed to serve as members of the Performance Review Board. Each will serve a one-year renewable term effective upon publication of this notice.

Mr. William J. Cassell
Mr. Thomas J. Knapp
Mr. Raymond W. Dellas

Anthony W. Hudson,

Staff Director, Civilian Personnel.

[FR Doc. 85-13695 Filed 6-6-85; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Office of Management

Federal Education Data Acquisition Council

AGENCY: Department of Education.

ACTION: Notice of data acquisition activities approved prior to February 15, 1985.

SUMMARY: Under section 400A of the General Education Provisions Act (the Act), the Secretary publishes education-related data acquisition activities approved before February 15, 1985 that Federal agencies will use to collect data during school year 1985-86.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret B. Webster, Division of Education Information Management, Room 4074, Switzer Building, 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone: (202) 426-7304.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activities of Federal Agencies—.

(a) Whenever the repondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

Under section 400A the Secretary also publicly announces the data acquisition activities that were approved prior to February 15, 1985. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. The title of each information collection request approved before February 15, 1985 is published in this document with the Office of Management and Budget approval number for the request. These information collection requests are approved for use during school year 1985-86.

Dated: June 4, 1985.

William J. Bennett,

Secretary of Education.

OMB control No.	Title of information collection
	U.S. International Development Cooperation Agency
0412-0522	Historically black colleges and universities—Individual profile.
	Department of Agriculture
	Office of Grants and Program Systems
0525-0001	Research grant application kit.
0525-0002	Financial report, Morrill-Nelson funds for food and agricultural higher education.
	Food and Nutrition Service
0584-0005	7 CFR Part 215—Special milk program for children reporting.
0584-0006	7 CFR Part 210—National School Lunch Program
0584-0012	7 CFR Part 220—School Breakfast Program.
0584-0026	7 CFR Part 245—Determining eligibility for free and reduced price meals and free milk in schools—Reporting.
0584-0046	Cash in lieu of donated foods.
0584-0062	Nutrition Education and Training Program regulations (7 CFR 227) (reporting).
0584-0067	7 CFR Part 235—State administrative expenses—reporting.
0584-0282	Nutrition Education and Training Program regulations (7 CFR-227) (recordkeeping).
0584-0319	7 CFR Part 235—State administrative expenses recordkeeping.
0584-0335	7 CFR Part 230—Food Service Equipment Assistance Program—Recordkeeping.
	Department of Commerce
	Bureau of the Census
0607-0	Survey of local government finances (school system).
0607-0459	School enrollment report.
	Department of Commerce
	National Oceanic and Atmospheric Administration
0648-0019	Sea grant project summary.
0648-0034	Sea grant budget.
0648-0147	Application for designation as a sea grant college of regional consortia.
	Department of Defense
	Department of the Air Force
0701-0063	Air Force Academy candidate activities record
0701-0066	Air Force Academy request of secondary school transcript.
0701-0090	AFROTC preapplicant questionnaire.
	Department of the Army
0702-0013	Application for establishment of an Army senior reserve officers' training corps unit.
0702-0015	Information on application for U.S. Army Nurse Corps.
	Department of the Navy
0703-0011	Academic certification form for Marine Corps officers.
0703-0012	Personal information questionnaire.
0703-0016	Individual MCJROTC instructor evaluation summary
0703-0024	Drug statement for NROTC application
0703-0026	Reference questionnaire—Reserve officers training corps.
0703-0028	NROTC Navy-Marine Corps scholarship application.

OMB control No	Title of information collection
	Department and others
0704–0035	Professional evaluation
0704–0052	Supplemental application for employment with DOD overseas dependents schools.
0704–0054	Application form, ROTC 4 year scholarship
0704–0200	Annual report on uniform commutation fund.
	Department of Health and Human Services
	Health Services Administration
0915–0028	Application-scholarship program for first-year students of exceptional financial need.
0915–0033	Heal borrower status form.
0915–0034	Lender's manifest for Heal Program.
0915–0035	Health Education Assistance Loan Program loan transfer statement.
0915–0036	Lender's application for insurance claim on a health education assistance (HEAL) loan
0915–0037	Lender's application for contract of Federal loan insurance (HEAL)
[illegible]	HEAL student loan application
0915–0043	Repayment schedule and truth-in-lending disclosures for the Health Education Assistance Loan Program.
[illegible]	Quarterly debt management report
0915–0047	Financial aid transcript.
0915–0054	Health education assistance loan (HEAL) program school recordkeeping requirements.
[illegible]	Annual space utilization and enrollment report for nursing and health professions.
0915–0073	Nursing student loan (NSL) program promissory note
0915–0074	Health professions student loan (HPSL) program promissory note
[illegible]	Indian health service scholarship application and progress reports.
[illegible]	HEAL call report—lender's annual report on HEAL student loans outstanding
0915–0092	Assessment of training in genatrics in health professions schools.
	National Institutes of Health.
0925–0008	Biomedical research support grant application and annual progress report
0925–0022	National research service award research training, competing and noncompeting applications.
0925–0137	Protection of human subjects—certification and recordkeeping requirements.
	Social Security Administration
0960–0084	Report of individual with childhood impairment
0960–0089	Report of student beneficiary at end of school year
0960–0322	Report of black lung student beneficiary at end of school year
	Department of the Interior
	United States Fish and Wildlife Service
1018–0036	Environmental education evaluations.
	Bureau of Mines
1032–0116	Mining and materials resources and research institutes program (MMRRI)
	Bureau of Indian Affairs
1076–0018	Subchapter E Education, 25 CFR parts 31–34 45 CFR, Part 121—Information collections
	Department of Justice
	Immigration and Naturalization Service
1115–0119	Student status form.
	Department of Labor
	Employment Standards Administration
1215–0080	Application for authority for an institution of higher education to employ its full-time students at subminimum wages
1215–0121	Work experience and career exploration program
	Department of State
	Administration of Foreign Affairs
1405–0031	Approval of funding to support special education progress.
1405–0032	Overseas schools progress and evaluation report
1405–0033	Overseas schools financial report.
	Department of the Treasury
	Internal Revenue Service
1545–0213	Annual certification of racial nondiscrimination for a private school exempt from Federal income tax
1545–0244	Certification of youth participting in a qualified cooperative education program.
1545–0471	Student tax clinic pattern letter (application package)
1545–0779	Understanding taxes (teacher evaluation guide).
	Department of Education
	Office of Elementary and Secondary Education
1810–0003	Application for continuations for the follow through program.
1810–0020	Indian fellowship application (new and continuation)
1810–0021	Application for grants under Indian Education Act Program
1810–0026	Nominations for the National Advisory Council on Indian Education.
1810–0027	Application for disaster assistance (Pub. L. 81–874 Sec 7).
1810–0028	Application for grants under section 143: The Migrant Education Interstate and Intrastate Coordination Program
1810–0030	Application for Civil Rights Technical Assistance and Training State Educational Agency Program
1810–0031	Certification: Indian student enrollment.
1810–0036	School assistance in areas affected by Federal activity application
1810–0037	State performance report (ECIA, Chapter 1)
1810–0051	High school equivalency and college assistance migrant programs, financial status and performance reports
1810–0053	State application, chapter 2 of the Education Consolidation and Improvement Act of 1981
1810–0060	Annual survey of children in institutions for neglected or delinquent children or in adult correctional institutions.
1810–0062	Application package: Women's Educational Equity Act (WEEA) Program.
1810–0502	Preapplication for Federal assistance (construction) Pub. L. 85–815 and application for Federal assistance.
1810–0503	Financial status and grant performance report—Indian Education Programs
1810–0504	Recordkeeping requirement for LEA's and SEA's operating chapter 1, ECIA projects (34 CFR 200.56)
1810–0507	Law-related education grant application package
1810–0510	Law-related education grant financial and performance reports
1810–0511	Migrant education interstate and intrastate coordination program financial status and performance report
1810–0512	State assessment of need, title II of the Education for Economic Security Act
1810–0513	Performance/financial reports, postsecondary education programs, title II of the Education for Economic Security Act
1810–0514	Performance/financial reports, elementary and secondary education, title II of the Education for Economic Security Act.
1810–0515	State application, title II of the Education for Economic Security Act
1810–0516	Application for the Magnet Schools Assistance Program.
1810–0517	Application for civil rights technical assistance and training desegregation assistance center program
1810–0518	Form for nomination of successful chapter I projects
	Office of Special Education and Rehabilitative Services
1820–0002	Performance report for special education program discretionary grant programs
1820–0014	Annual report on Post-Employment Services and case reviews for the Rehabilitation Services Administration
1820–0017	Annual Vocational Rehabilitation Program/cost report
1820–0018	RSA discretionary grant program
1820–0027	Application for grants under Rehabilitation Research and Demonstration Program
1820–0028	Grant applications under Education for the Handicapped Programs.
1820–0041	Performance report for Pub. L. 94–142 and Pub L. 89–313
1820–0043	Report of handicapped children and youth receiving special education.
1820–0506	Program impact reporting system (PIRS)
1820–0509	List of hearing officers recordkeeping
1820–0512	Local educational agency (LEA) project information recordkeeping.
1820–0513	Report of children transferring to local agency programs recordkeeping.
1820–0514	Captioned films for the deaf: Application for loan service, user response forms (2).
1820–0517	Implementation of least restrictive environment requirements.
1820–0518	Number of personnel employed to provide special education and related services to handicapped children and youth
1820–0520	Client Assistance Program request for assistance.
1820–0521	Report of handicapped children and youth exiting the educational system
1820–0522	Report of special education/related services in need of improvement.
1820–0523	Number of additional personnel needed to provide special education and related services to handicapped children and youth.
1820–0524	Report of Federal, State, and local funds expended for special education and related services
1820–0526	Report of handicapped children and youth receiving related services
	Office of Vocational and Adult Education
1830–0011	State-Administered Vocational Education Program improvement contracts. Abstracts
1830–0013	Application for Vocational and Adult Education Direct Grant Programs.
1830–0501	Financial status and performance report for direct grants-OVAE
1830–0503	Financial status reports for State administered vocational education.
	Office of Postsecondary Education
1840–0002	Guarantee agency quarterly/annual report
1840–0005	Application for Fulbright-Hays training grants Faculty research and doctoral dissertation research abroad programs
1840–0008	Request for payment of Pell Grant award notice of termination/leave of absence and Ads student report.
1840–0013	Pell Grant Program student validation roster
1840–0017	Application for noncompleting continuation grants under the Special Services for Disadvantaged Students Program
1840–0029	Physician's certification of borrower's total and permanent disability for student loan program
1840–0034	Lender's request for interest and special allowance-GSL and plus programs
1840–0041	Application for grants under the Law School Clinical Experience Program.
1840–0042	Financial status and Performance reports for Veteran's Cost-of-Instruction Payments Program
1840–0053	Performance/Financial status Report Forms for the Cooperative Education Program
1840–0054	Application for grants and contracts under the Veteran's Cost-of-Instruction Payments Program (VCIP)
1840–0055	Pell Grant Program progress report

OMB control No	Title of information collection
1840-0056	Application for certification for participation in programs under title IV of the Higher Education Act of 1965, as Amend
1840-0065	Application for the Educational Opportunity Centers Program
1840-0068	Application for foreign language and area studies.
1840-0073	Fiscal operations report/application to participate in the Campus-Based Student Aid Programs
1840-0077	Student confirmation report for guaranteed Student Loan Program Pub. L. 89-329
1840-0079	Call report—Lender's annual report on guaranteed student loan and parent loans for undergraduate students outstanding
1840-0082	Loan transfer statement Guaranteed Student Loan Program
1840-0091	National direct (defense) student loan assignment form
1840-0093	Lenders manifest for federally insured student loans
1840-0095	Application for assistance under the College Housing Program
1840-0096	Request for institutional eligibility for programs under the Higher Education Act of 1965, as amended
1840-0099	Application for State Student Incentive Grant Program
1840-0103	Request for designation as an eligible institution, title III, Higher Education Act of 1965, as amended
1840-0108	Guarantee agency request for reimbursement for claims paid, agreements under reinsurance and on death/disability
1840-0109	Application (program announcement) for grants and contracts under the Minority Institutions Science Improvement Program
1840-0110	Application for Federal student aid
1840-0111	Special condition application for Federal student aid.
1840-0112	Evaluation of training activities on the title IV Student Financial Assistance Programs.
1840-0114	Application for Strengthening Special Needs and Challenge Grant Programs
1840-0125	Application for the training program for special programs staff and leadership personnel
1840-0126	Cooperative Education Program application form.
1840-0128	LEEP-6, statement of LEEP account LEEP-6A participants certification statement Law Enforcement Education Program (LEEP)
1840-0129	Report of defaulted loans as of December 31
1840-0130	Summary data sheet/listing form (national direct student loan
1840-0132	Student aid report.
1840-0133	Request for collections assistance under Federally Insured Student Loan Program.
1840-0500	Federal loan transaction statement Federally Insured Student Loan Program
1840-0501	Fulbright Seminars Abroad program application for seminar position abroad
1840-0503	Performance/financial reports for the supplemental funds program for cooperative education
1840-0504	Application for the supplemental funds program for cooperative education
1840-0505	State student incentive grant performance report and financial status report.
1840-0508	Application for grants under the graduate and professional study fellowships program.
1840-0509	Application for grants under the Education for Public Service Fellowships Program
1840-0514	Program announcement comprehensive program new awards and continuations.
1840-0515	Application for Myra Shaughnessy Scholars Program
1840-0517	Lender's application for payment of insurance claim under the Federal Insured Student Loan Program.
1840-0528	Certification of project costs for college facilities
1840-0529	Foreign language and area studies fellowship information reports.
1840-0530	Lender's request for interest and special allowance for loans made from tax exempt funds and related forms.
1840-0531	Application form for the Endowment Grant Program
1840-0535	Recordkeeping requirement for the Campus-Based Student Aid Programs
1840-0536	Deregulation of the Pell Grant Administration and technical regulations recordkeeping requirement
1840-0537	Student assistance general provisions recordkeeping requirement
1840-0538	Guaranteed Student Loan Program recordkeeping requirement
1840-0540	Institutional payment summary (IPS) and IPS Batch report for Pell Grants
1840-0544	State Student Incentive Grant Program recordkeeping requirement
1840-0549	Application for grants under the Talent Search Program
1840-0550	Continuation application for grants under Upward Bound Program
1840-0551	Fiscal operations report and application to participate in the Campus-Based Student Aid Programs (electronic).
1840-0553	Certification form for the Endowment Grant Program
1840-0555	Performance report under the Minority Institutions Science Improvement Program (MISIP)
	Office of Educational Research and Improvement
1850-0003	Salaries, tenure, and fringe benefits of full-time instructional faculty, 1984-85 and 1985-86
1850-0035	Fall enrollment and compliance report, 1984 and recordkeeping requirements.
1850-0038	State-level personnel exchange (elementary-secondary).
1850-0053	Degrees and other formal awards conferred between July 1, 1983 and June 30, 1984.
1850-0054	Application for grants under the Strengthening Research Library Resources Program
1850-0067	Common core of data (CCD).
1850-0072	Final financial status and performance report for College Library Resources Program
1850-0086	Application for grants under the national diffusion network.
1850-0095	State-level personnel exchange (postsecondary).
1850-0502	Financial statistics of institutions of higher education, 1984 and 1985.
1850-0526	Institutional characteristics of colleges and universities, 1984-85.
1850-0527	Library Services and Construction Act (Pub. L. 84-597, as amended) financial status and performance reports—Title III
1850-0535	Residence and migration of college students, fall 1984
1850-0536	Public school survey
1850-0537	Library Services and Construction Act (Pub. L. 84-597, as amended) financial status and performance report, title III.
1850-0547	Verification of the universe of postsecondary education providers (VUPEP) survey
1850-0552	Application for planning and institutional grants for research and development centers
1850-0555	National assessment of educational progress field test for 1985-86.
1850-0557	High school and beyond third follow-up and national longitudinal study of the class of 1972 fifth follow-up field test
1850-0562	National assessment of educational progress-1985 Young adult literacy assessment
	Office of Intergovernmental and Intergency Affairs
1860-0500	Application for waiver of the 2-year Foreign Residence Requirement of the Exchange Visitor Program.
1860-0501	Presidential Academic Fitness Award (PAFA) school participation order form
	Office of Planning and Budget and Evaluation
1875-0005	Application for the Secretary's initiative to improve chapter 1 projects under Education Consolidation and Improvement Act.
1875-0006	National longitudinal evaluation of services to language minority and limited English proficient students.
1875-0007	Longitudinal study of immersion programs for language minority children
1875-0008	National study of local operations under chapter 2 of the Education Consolidation and Improvement Act
	Departmental Management
1880-0173	Computer generated "recipient cash advance request
1880-0505	Application for the Secretary's Discretionary Program
1880-0507	Student rights in research, experimental activities and testing information collections
1880-0508	Recordkeeping requirement under the Family Educational Rights and Privacy Act
1880-0509	Information collection requirements for cost principles for non-profit organizations
	Office of Bilingual Education and Minority Languages Affairs
1885-0001	Application for New and Non-Competing Participation in Bilingual Education Fellowship Program
1885-0002	Application for Grants Under Bilingual Vocational Training and Instructor Training Programs.
1885-0003	Application for grant under bilingual education
1885-0004	Application for continuation grants under bilingual education.
1885-0005	Demonstration of Compliance with Terms and Conditions of the Bilingual Education Fellowship Program Contract
1885-0503	Application for Grants Under Transition Program for Refugee Children
1885-0504	Final Financial Status and Performance Report for Bilingual Vocational Training and Instructor Training Programs.
1885-0505	National Clearinghouse for Bilingual Education
1885-0506	Recordkeeping under bilingual education.
	Office of Inspector General
1892-0002	Property system survey.
	Environmental Protection Agency
	Pesticides and Toxic Substances
2070-0062	Application for Loan/Grant under the Asbestos School Hazard Abatement Act of 1984
	Department of Transportation
	U.S. Coast Guard
2115-0012	Application for appointment as cadet, U.S. Coast Guard.
2115-0111	Course approvals for merchant marine training schools
	Veterans Administration
2900-0014	Authorization and certification of entrance or reentrance into rehabilitation and certification of status
2900-0034	Trainee request for leave—Chapter 31, title 38, U.S. Code
2900-0057	School attendance report
2900-0073	Enrollment certification (under chapter 32, 34, or 35 title 38, U.S.C.)
2900-0099	Request for change of program or place of training survivors' and dependents' educa- [illegible]
2900-0156	Notice of change in student status
2900-0180	Compliance report of propriety institutions
2900-0189	Trainee interview sheet
2900-0209	Veterans application for work-study allowance
2900-0236	Application for education loan
2900-0262	Designation of certifying official(s)
2900-0263	Application for Educational Assistance Under the Veterans Education Assistance Program
2900-0352	Application for Participation in the Veterans Administration Health Professional Scholarship Program
2900-0353	Certification of lessons completed
2900-0354	Certification of attendance for courses not leading to a standard college degree and farm cooperative courses
2900-0355	Verification of pursuit of course leading to a standard college degree
2900-0358	Supplemental information for change of program or reenrollment after unsatisfactory progress or conduct
2900-0368	Monthly statement of wages paid to trainee
2900-0394	Certification of school enrollment

OMB control No	Title of information collection
2900-0414	Nondiscrimination on the basis of handicap in programs and activities, as required by 38 CFR 18.422(B)
	Commission on Civil Rights
3035-0019	Elementary and secondary school desegregation study
	Equal Employment Opportunity Commission
3046-0003	Elementary-secondary staff information (EEO-5)
3046-0009	Higher education staff information (EEO-6)
	United States Information Agency
3116-0011	Update of Information on Exchange Visitor Program Sponsor
3116-0168	President's International Youth Exchange Initiative Program Report
3116-0170	Exchange Visitor Programs
3116-0173	Bureau of Educational and Cultural Affairs Grant Application Cover Sheet
3116-0179	University Affiliated Program
	National Endowment for the Humanities
3136-0032	Reference works guidelines and applications instructions
3136-0057	Summary report for institute participants
3136-0058	Summary report on institute participants
3136-0059	Application Instructions National Endowment for the Humanities Division of Education Programs.
3136-0060	Guidelines and application materials high school humanities institutes for historically black colleges and universities
3136-0062	NEH challenge grant guidelines and application instructions
3136-0063	NEH challenge grants administrative regulations
3136-0067	Humanities, science and technology guidelines
3136-0069	NEH performance reporting requirements (enclosure 2)
3136-0077	Division of state programs interim progress report format
3136-0080	Division of State programs. Criteria for review and proposal format
3136-0081	NEH planning and assessment studies program grant application review process
3136-0093	Guidelines and application form for directors in summer seminars for college teachers
3136-0095	Guidelines and application forms for directors in the summer seminars for secondary school teachers program
3136-0096	Applicationfor participants in NEH summer seminars for college teachers
3136-0097	Application for participants in summer seminars for secondary school teachers
3136-0100	NEH planning and assessment studies program grant application review process
3136-0101	NEH financial status report
3136-0103	Nondiscrimination on the basis of handicap in federally assisted programs and activities
3136-0108	Guidelines and application for faculty graduate study program for historically black colleges and universities.
	National Science Foundation
3145-0009	Higher education statistical survey panel
3145-0015	Survey of scientific and engineering expenditures at universities and colleges Fiscal year 1984, 1985 and 1986
3145-0019	Survey of earned doctorates in United States
3145-0034	Conservation of Antarctic animals and plants
3145-0035	National Science Foundation science awards
3145-0062	Survey of graduate science students and postdoctorates, fall 1982 and fall 1983
3145-0067	National survey of academic research instruments and instrumentation needs
3145-0074	Survey of scientific and engineering personnel employed at universities and colleges, January 1984, 1985 1986
3145-0084	Patents
3145-0087	Compliance information under 45 CFR part 611
3145-0090	Survey of academic R&D facilities for science, engineering and medicine

[FR Doc. 85-13760 Filed 6-6-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Refinery Capability Task Group; Meeting

Notice is hereby given that the Refinery Capability Task Group will meet in June 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Capability Task Group will hold its seventhy meeting on Thursday, June 27, 1985, starting at 9:00 a.m., in the Board Room of the Mark Hopkins Intercontinental Hotel, One Nobhill, San Francisco, California.

The tentative agenda for the Refinery Capability Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review the work of the Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mrs. Carolyn Klym, Office of Fossil Energy, Department of Energy (DOE), 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 29, 1985

William A. Vaughan,

Assistant Secretary Fossil Energy.,

[FR Doc. 85-13774 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-01; OFP Case Number 55118-9270-01-12]

Acceptance of Petition for Exemption by General Electric Company; Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption by General Electric Company and Availability of Certification.

SUMMARY: On March 25, 1985, General Electric Company (GE) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent site limitation exemption for a proposed major fuel burning installation (MFBI) to be located in Fitchburg, Massachusetts, from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBIs. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are published in the **Federal Register** at 46 FR 59872 (December 7, 1981). The site limitation exemption criteria is contained in 10 CFR 503.33 of the final rules.

GE requests a permanent site limitation exemption in order to burn natural gas or No. 6 low sulphur fuel oil in a Hitachi Zosen boiler to be operated at GE's engineering and manufacturing facility located in the town of Fitchburg, Worcester County, Massachusetts. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31(a) and 501.33(a), interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing the petition as well as other documents and supporting materials on this proceeding

is available at the Department of Energy Freedom of Informatin Reading Room, 1000 Independence Avenue, S.W., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period of public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments or a request for public hearing on the acceptance of GE's petition for exemption are due on or before July 22, 1985.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Coal & Electricity Division, Case Control Unit, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW. Washington, D.C. 20585.

Docket Number ERA–FC–85–011 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, D.C. 20585, Phone (202) 252–8233

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION: The General Electric Plant at Fitchburg is an engineering and manufacturing facility for mechanical drive turbines and compressors.

The facility is located in the town of Fitchburg, Worchester County, Massachusetts. the plant is bounded on the north by the city of Fitchburg, on the east, south and west by the Nashua River. The southern boundary of the plant is adjacent to railroad lines of Conrail.

The main products of the plant are mechanical drive turbines and compressors. A large function in the production of these items is the final test of the turbine generator sets or compressor. These tests are required prior to delivery of the items to a customer. For these tests a source of steam is needed. Steam is currently supplied to the plant testing facility by gas/oil fired boilers. Plant heating is by steam, supplied by a gas/oil fired boiler.

GE has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned new boiler were furnished.

The proposed plant upgrade would install an Hitachi Zosen HC type boiler with a rated output of 100,000 1b/hr steam at 850 psig/950 °F. This would become the primary boiler with an existing Erie City Boiler as back up. The existing Combustion Engineering boiler would be retired. The additional generating capacity at 850 pisg 950 °F, based on long range needs, would be deferred until the Hitachi Zosen boiler is installed and total department implementation costs are determined.

The physical limitations addressed by the petitioner are, coal fired boiler along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse. Coal fired boilers are larger than oil/gas fired boilers. Space in the boiler house is very limited. The oil/gas fired, Hitachi Zosen boiler, fits snugly between all existing piping and building supports. A coal fired boiler of the same capacity would be much taller and could not be fully enclosed by the building. Additional area would also be required to stockpile coal.

GE Certified That

1. The site limitation criteria contained in 10 CFR 503.33(a) are satisfied by the boiler for which exemption is sought and the plant where it will be installed;

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the boiler for which exemption is sought and the plant where it will be installed.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

Pursuant to 10 CFR 501.3, ERA hereby accepts GE's petition for a permanent site limitation exemption for the proposed boiler. The acceptance of the petition by ERA does not constitute a determination that GE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on May 28, 1985.

Robert L. Davies,

Director, Coal and Electricity Divison, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–13684 Filed 6–6–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–85–04; FC Case No. 66017–9266–01–23]

Acceptance of Petition for Exemption and Availability of Certification by Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Power Developers, Inc.

SUMMARY: On February 20., 1985, Power Developers, Inc. (PDI), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting its proposed facility, the Alta Project (Alta), a new powerplant, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new MFBI's. The criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503 (46 FR 59872, December 7, 1981).

PDI is seeking a permanent exemption to burn natural gas and a mixture of refuse derived fuel (RDF) from municipal solid wastes (MSW) in an electric power production facility to be located near and east of Scottsdale, Arizona. The company has petitioned for a permanent exemption from the

prohibitions of Title II of FUA under 10 CRF 503.38(d) based upon the projected use in the unit of a fuels mixture containing the alternate (RDF) fuel and not more than 25 percent gas as the primary fuel source. ERA's decision in this proceeding will determine whether PDI will be granted the requested permanent exemption. The eligibility and evidentiary requirements governing the fuels mixtures exemption are set forth in 10 CFR 503.38.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before July 22, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. "Docket No. ERA–FC–85–04" should be printed on the outside of the envelop and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, D.C. 20585, Telephone (202) 252–4523

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: It is expected that PDI's proposed Alta electric power production facility near and east of Scottsdale, Arizona, will include as its principal components RDF fueled boilers and a steam turbine generating set (CT) with a heat recovery unit. An adjacent facility also being constructed by the applicant, will handle and classify approximately 6,000 tons per week of MSW in order to produce the RDF that will be used in the powerplant and to separate recoverable metals for sale. The RDF produced will provide a gross heat input to the Alta facility of about 360 million Btus per hour. Based on this level of RDF heat input, the natural gas input to the Alta facility, which will not be greater than 25 percent of facility's total Btu input, is expected to be approximately 120 million Btus per hour. Depending upon refinement of the final process calculations, it is expected that the Alta facility will produce approximately 39 MW, gross.

Section 212(d) of FUA and 10 CFR 503.38 provide for a permanent exemption from the prohibitions of Title II of the Act for units in which certain fuel mixtures containing natural gas or petroleum will be used as the primary energy source.

In accordance with the requirements of 10 CFR 503.38(a) PDI has certified to ERA that:

1. It proposes to use a mixture of natural gas and a fuel derived from municipal solid wastes as a primary energy source.

2. The Alta facility will use an amount of natural gas in its fuel mixture that will not exceed the minimum percentage of the total annual Btu heat input of the primary energy sources needed to maintain operational reliability of the Alta facility consistent with maintaining a reasonable level of fuel efficiency.

3. As required by § 503.8 of the regulations, "no alternative power supply exists" as that term is applied to applicant's small power production facility.

Section 503.38(d) provides an expedited certification alternative for petitioning for an exemption to permit the use of a mixture that will contain less than 25 percent of the nonalternate fuels.

In accordance with the requirements of 10 CFR 503.38(d), PDI has certified to ERA that:

1. The amount of natural gas proposed to be used as a primary energy source in the mixture, after deduction of the minimum amount for unit ignition, startup, testing flame stabilization, and control, will not exceed 25 percent of the total annual Btu heat input to the Alta facility.

2. PDI will secure all applicable environmental permits and approvals prior to operating the Alta facility.

The latter certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, PDI submitted, certified as accurate, the information required by the environmental checklist in section 503.13(b)(2).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act (NEPA). Pursuant to the amended guidelines, the grant or denial of FUA permanent exemptions, including the permanent exemption for new electric powerplants using certain fuel use mixtures containing natural gas or petroleum, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. PDI Alta has certified that it will secure all aplplicable permits and approvals prior to commencement of operation of the new unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by PDI Alta pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on PDI's Alta exemption that the grant or denial will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), acceptance of this petition by ERA does not constitute a determination that except for the petitioners, PDI Alta is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on May 28, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Commission.

[FR Doc. 85-13683 Filed 6-6-85; 8:45 am]

BILLING BODE 6450-01-M

Office of Energy Research

Special Research Grants Program; Program Notice 85-1

AGENCY: Office of Energy Research, Energy.

ACTION: Notice Inviting Grant Applications.

SUMMARY: The Office of Energy Research of the Department of Energy hereby announces its interest in receiving applications for Special Research Grants supporting the Toroidal Support Experimental Program. The Catalog of Federal Domestic Assistance number is 81.049. Information about submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in the **Federal Register** at 10 CFR Part 605 (50 FR 14856, April 15, 1985).

DATES: Selection will be made in early FY 86; therefore, submission of an application prior to September 1, 1985, is encouraged.

ADDRESSES: Applications should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, Room G-226, Washington, D.C. 20545; Program Notice 85-1.

FOR FURTHER INFORMATION CONTACT: Dr. Charles R. Finfgeld, U.S. Department of Energy, Office of Fusion Energy, ER-542, Washington, D.C. 20545, (301) 353-3421.

SUPPLEMENTARY INFORMATION: The objective of this Toroidal Support Experimental Program Initiative is to test concepts for the improvement of the Tokamak or similar toroidal approaches as plasma confinement devices for reactor applications. In order to assist DOE in carrying out the Program, applicants should propose a project that includes: Steady state operation, small size, improved heating efficiency, improved confinement (particularly during heating), increased beta, elimination or control or disruptions, or reduction of magnetic field requirements. New ideas that are innovative and creative, and are suitable for exploration and verification in small scale experiments, are especially desirable. A limited number of awards will be funded from an anticipated $2,000,000 that is expected to be available in FY 86. DOE reserves the right to support or not support any or all applications in whole or in part. Application kits and copies of 10 CFR Part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above for address). Instructions for the preparation of the application are included in the kit.

Issued in Washington, D.C., on June 3, 1985.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 85-13769 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-10-20-000, 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 31, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonguin Gas") on May 24, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fifth Revised Sheet No. 211
Fourteenth Revised Sheet No. 213
Third Revised Sheet No. 405
Third Revised Sheet No. 425

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules STB and S-IS the effect of changes in Texas Eastern Transmission Corporation's ("Texas Eastern") underlying Rate Schedules SS-II and ISS-III.

Algonquin Gas requests that the Commission accept the revised tariff sheets filed herein to be effective June 3, 1985, to coincide with the proposed effective date of Texas Eastern's changes.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before June 10, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13789 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS76-448-001 et al.]

Roy G. Barton, Jr., and Norma J. Chanley, et al.; Applications for "Small Producer" Certificates [1]

June 3, 1985.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before June 17, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS76-448-001	[1] 3/18/85	Roy G. Barton, Jr., Norma J. Chanley, Oil and Gas Producer, P.O. Box 978, Hobbs, New Mexico 88240.
CS76-926-001	[2] 4/15/85	Kirby Exploration Company of Texas (KECT).

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No	Date Filed	Applicant
CS77-210-001	[1]4/15/85	Harriet J. Cabron.
CS85-52-000	4/1/85	SMACKCO, Ltd., Coastal States Exploration, Inc., P.O. Drawer 649, Brewton, AL 36427
CS85-65-000	4/15/85	Egret Energy Corporation, 3223 Smith Street, Suite 303, Houston, Texas 77006.
CS85-66-000	4/22/85	Tessco Energy Company, 1400 Post Oak Boulevard, Suite 710, Houston, Texas 77056.
CS85-67-000	4/22/85	Oilfield Salvage & Service Co., 910—15th Street, Suite [illegible], Denver, Colorado [illegible]
CS85-68-000	4/24/85	GKM, Inc., P.O. Box 35583, Tulsa, Oklahoma 74153.
CS85-69-000	5/10/85	Dazet Oil & Gas Co., Inc., Ste. 1404 Pere Marquette Bldg., New Orleans, Louisiana 70112
CS85-70-000	5/13/85	Trafalgar House Oil and Gas, Inc., 8584 Katy Freeway, Suite 222, Houston, Texas 77024
CS85-71-000	5/13/85	Carroll L. Brewer, Box 54381, Oklahoma City, Oklahoma 73154
CS85-72-000	5/13/85	Carl Reimers, III Agency, P.O. Box 2546, Fort Worth, Texas 76113
CS85-74-000	5/15/85	[illegible] Louisiana Oil Venture, 7700 San Felipe, Suite 240, Houston, Texas 77063.
CS85-75-000	5/22/85	Oil Search Corporation, Suite 201, Bldg. 2, 7801 Academy Blvd., Albuquerque, New Mexico 87109.

[1] Letter dated March 14, 1985 requesting to include Norma J. Charley as small producer certificate co-holder.
[2] Letter requesting the inclusion of additional parties as certificate co-holders to Applicant's small producer certificate.
[3] Letter requesting redesignation of the small producer certificate.

[FR Doc. 85-13797 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-412-000]

Central and South West Services, Inc.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion for Issuance of Deficiency Letter, Granting Waiver, Denying Motion for Consolidation, and Establishing Hearing Procedures

Issued: May 31, 1985.

On October 14, 1983, in Docket No. ER84-31-000, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) filed an initial operating agreement for the interconnected operation of their systems. The operating agreement, which became effective on December 14, 1984, was accepted for filing, suspended, and set for hearing by Commission order dated December 13, 1983, 25 FERC ¶ 61,381. The operating agreement provides that transmission losses occasioned by the transfer of power and energy among and between the companies shall be determined and accounted for in accordance with procedures to be developed.

On April 2, 1985, Central and Power West Services, Inc., (CSWS), on behalf of CPL, PSO, SWEPCO, and WTU, tendered for filing, under the abbreviated filing requirements provided for in § 35.13(a)(2) of the Commission's regulations, a proposed Interim Loss Compensation Procedure for the Central and South West System.[1] The procedure establishes a method for handling transmission losses resulting from energy transfers among the four operating companies. CSWS requests that its filing be made effective as of December 14, 1984, to coincide with the effective date of the operating agreement; accordingly, the company requests waiver of the notice requirements. CSWS further requests that the Commission waive the requirements of § 35.13 of the regulations to the extent that its submittal does not comply.

Notice of the filing was published in the **Federal Register**,[2] with comments due on or before April 23, 1985. On April 23, 1985, Brazos Electric Power Cooperative, Inc., Mid-Tex Electric Cooperative, Inc., and the Mid-Tex member systems (Cooperatives) filed a motion to intervene. They request that the filing be suspended for one day and set for hearing. In support, the Cooperatives contend that the proposed filing lacks certain explanations, including: (1) Whether transfers by WTU to CPL are to be accomplished by displacement or wheeling; and (2) whether the losses for WTU transfers to CPL include the effect of transmission over non-CSW companies. The Cooperatives contend that the proposed loss procedures should be consistent with the loss compensation under the CSW tariffs for transmission services using the DC tie (at issue in *Public Service Co. of Oklahoma*, Docket Nos. ER82-545-000, *et al.*). Lastly, the Cooperatives note that the proposed procedures are interim and are to be reviewed near the end of 1985. They therefore request that the companies be directed to file, prior to the hearing herein, whatever permanent procedures they expect to implement so that both interim and permanent procedures can be reviewed together.

On April 24, 1985 the Public Utilities Board of the City of Brownsville, Texas (Brownsville) filed an untimely motion to intervene [3] in which it requests a one day suspension and a hearing. Brownsville alleges that the proposed procedure is unduly discriminatory since it allows for a sharing of losses between the CSW companies while third party purchasers, such as itself, must pay full losses in their transactions with CSW. Brownsville objects to the proposed loss procedure in various respects, including: (1) Lack of definitive standards for the ERCOT loss matrix approach or ERCOT practices; (2) no definition of transaction path; (3) quarterly update of WTU's loss factor without a filing; and (4) no specification as to how long the interim procedure will be in effect. Additionally, Brownsville requests: (1) That the filing be made deficient since data showing all transactions and revenues among the CSW companies since December 14, 1984, were not provided; (2) denial of the request for waiver of the § 35.13 filing requirements: and (3) consolidation of this proceeding with Docket Nos. ER82-545-000, *et al.*, or alternatively with Docket No. ER84-31-000.

On May 13, 1985, CSWS filed an answer to the Cooperatives' and Brownsville's pleadings. While not opposing either motion to intervene, CSWS opposes suspension of its submittal. In each instance, CSWS asserts that the intervenors' objections to the filing are without merit.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make the Cooperatives parties to this proceeding. Furthermore, we find that good cause exists to grant Brownsville's untimely intervention, given its stated interests, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

Notwithstanding the intervenors' challenge to the sufficiency of the supporting data supplied by the company, we find that the filing is appropriate for submittal under and substantially complies with the Commission's abbreviated filing requirements. Therefore, we shall deny Brownsville's motion for issuance of a deficiency letter.[4]

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[1] *See* Attachment for rate schedule designations. CPL, PSO, SWEPCO, and WTU are wholly-owned operating subsidiaries of Central and South West Corporation (CSW). CSWS, another subsidiary, acts as agent for the operating companies.

[2] 50 FR 14747 (1985).

[3] Brownsville states that its counsel were involved in other proceedings prior to the April 23, 1985 due date for interventions in this proceeding. Brownsville also contends that no party has been prejudiced by the delay in filing and that counsel for CSWS does not oppose Brownsville's motion to intervene out of time.

[4] CSWS' request for waiver of the § 35.13 requirements is unnecessary.

With respect to the Cooperatives' request that the CSW companies be directed to file, prior to hearing, their anticipated permanent procedures, we consider this request to be premature. The companies have stated that the interim procedures will be reviewed only at such time as they have implemented their "Energy Management System" toward the end of 1985. Further, any revisions to the procedures will have to be timely filed with the Commission, at which time specific comments may be addressed. Accordingly, we shall deny the Cooperatives' request.

Concerning Brownsville's allegations as to WTU's quarterly updates, we note that loss adjustments are a common component of the energy charges billed in interchange transactions. These charges represent formula rates which mirror the incremental costs of the seller and do not require a Part 35 filing. We shall, therefore, deny the request to require that the particular loss factor be filed as it is periodically revised.

Our preliminary review of CSWS' filing and the pleadings indicates that the proposed loss procedures have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept CSWS' submittal for filing and suspend its operation as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed loss procedures may not produce substantially excessive revenues. Further, the intervenors have requested only a one day suspension. We shall therefore suspend the submittal for one day. In addition, since the loss procedures apply to the operating agreement which has already been placed into effect subject to refund and which anticipates that a transmission loss mechanism would be established, we find that good cause exists to grant CSWS' request for waiver of the notice requirements. Accordingly, we shall suspend the filing to become effective on December 15, 1984, subject to refund.

In view of the relationship between the present filing and the CSW operating companies' interconnected operations agreement at issue in Docket No. ER84–31–000, we would normally consider it appropriate to consolidate the two proceedings. However, the hearings in Docket No. ER84–31–000 have concluded, and the parties are now awaiting the presiding judge's decision. With respect to Brownsville's alternative request to consolidate this docket with Docket Nos. ER82–545–000, *et al.*, that proceeding is also at an advanced stage and we do not find good cause for consolidation.[5]

The Commission orders:

(A) Brownsville's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Brownsville's motion for issuance of a deficiency letter is hereby denied.

(C) CSWS' request for waiver of the notice requirements is hereby granted.

(D) The Cooperatives' request that CSWS be directed to file, prior to the hearing ordered herein, permanent transmission loss procedures is hereby denied.

(E) CSWS' submittal is hereby accepted for filing and suspended for one day, to become effective, subject to refund, on December 15, 1984.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of CSWS' submittal.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates, including the filing of the companies' case-in-chief, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Brownsville's motion to consolidate is hereby denied.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

[5] We also note that the Commission has denied a previous request by Brownsville to consolidate Docket Nos. ER84–31–000 and ER82–545–000, *et al.* *See* 25 FERC at 61,835.

By the Commission.

Kenneth F. Plumb,

Secretary.

Rate Schedule Designations, Docket No. ER85–412–000

Central Power and Light Company

(1) Supplement No. 9 to Rate Schedule No. 68.

Public Service Company of Oklahoma

(2) Supplement No. 9 to Rate Schedule No. 228.

Southwestern Electric Power Company

(3) Supplement No. 9 to Rate Schedule No. 89.

West Texas Utilities Company

(4) Supplement No. 9 to Rate Schedule No. 47.

[FR Doc. 85–13790 Filed 6–6–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8821–000]

City of New York, Department of Environmental Protection; Notice Suspending 90-Day Period for Action on Small Hydro Exemption

June 3, 1985.

The City of New York, Department of Environmental Protection, filed an application for a conduit exemption for the West Delaware Tunnel Project No. 8821, to be located at Rondout Reservoir in Sullivan County, New York. The application was filed pursuant to section 30 of the Federal Power Act, 16 U.S.C. 823(a) (1982), and 18 CFR 4.90 *et seq.* (1984).

Additional time is necessary for action on the application in order to ensure full consideration of all filings and issues in this proceeding. The 90-day period for action is suspended pursuant to 18 CFR 4.93(e)(4).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13794 Filed 6–6–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–472–000]

Columbia Natural Resources, Inc.; Application

June 3, 1985.

Take notice that on May 24, 1985, Columbia Natural Resources, Inc. (CNR), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CI85–472–000, an application pursuant to section 7 of the Natural Gas

Act and Subpart B of Part 157 of the Commission's Regulations for the sale of natural gas from certain properties to be acquired from its affiliate Columbia Gas Transmission Corporation ("Columbia Transmission"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNR states that the Columbia Gas System, which is comprised of The Columbia Gas System, Inc. and its subsidiaries, including Columbia Transmission, is realigning the Appalachian area production properties of its subsidiaries into CNR. As part of this restructuring, all of Columbia Transmission's oil and gas production properties will be assigned to CNR and all of the exploration, development, and production activities of the Columbia Gas System in the Appalachian and adjacent areas will be carried on by CNR.

CNR requests certificate authorization for the sale by CNR to Columbia Transmission of gas which is not removed from the Commission's Natural Gas Act jurisdiction by virtue of section 601(a)(1) of the Natural Gas Policy Act of 1978 (NGPA) and which is produced from the properties to be assigned to CNR by Columbia Transmission which were committed or dedicated to interstate commerce as of the day before the date of the enactment of the NGPA. CNR states that the contracts governing the sale of such gas by CNR to Columbia Transmission afford the same flexibility with respect to price and obligation to take as Columbia Transmission currently enjoys in producing the gas itself. Specifically, Columbia Transmission will retain the right to adjust the price for such gas at virtually any time in response to downstream price signals and will not be obligated to take any particular quantity of gas or to pay for gas not taken.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNR to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13795 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-473-000]

Columbia Natural Resources, Inc.; Application

June 3, 1985.

Take notice that on May 24, 1985, Columbia Natural Resources, Inc. (CNR), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CI85-473-000, an application pursuant to section 7 of the Natural Gas Act and Subpart B of Part 157 of the Commission's Regulations for the sale of natural gas from certain properties to be acquired from its affiliate The Inland Gas Company, Inc. (Inland), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNR states that the Columbia Gas System, which is comprised of The Columbia Gas System, Inc. and its subsidiaries, including Inland, is realigning the Appalachian area production properties of its subsidiaries into CNR. As part of this restructuring, all of Inland's oil and gas production properties will be assigned to CNR and all of the exploration, development, and production activities of the Columbia Gas System in the Appalachian and adjacent areas will be carried on by CNR.

CNR requests certificate authorization for the sale by CNR to Inland of gas which is not removed from the Commission's Natural Gas Act jurisdiction by virtue of section 601(a)(1) of the Natural Gas Policy Act of 1978 (NGPA) and which is produced from the properties to be assigned to CNR by Inland which were committed or dedicated to interstate commerce as of the day before the date of the enactment of the NGPA. CNR states that the contract governing the sale of such gas by CNR to Inland afford the same flexibility with respect to price and obligation to take as Inland currently enjoys in producing the gas itself. Specifically, Inland will retain the right to adjust the price for such gas at virtually any time in response to downstream price signals and will not be obligated to take any particular quantity of gas or to pay for gas not taken.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13796 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-406-000]

Sierra Pacific Power Co.; Order Accepting for Filing and Suspending Rates, Granting Interventions, Directing Summary Disposition, and Establishing Hearing Procedures

Issued: May 31, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On April 1, 1985, Sierra Pacific Power Company (Sierra) tendered for filing a two-phased increase in rates applicable to five wholesale customers.[1] Based upon the test year ending June 30, 1986, the Phase I rates would increase jurisdictional revenues by approximately $1.8 million (25%). The Phase II rates would increase revenues by an additional $190,000. The company proposes a June 1, 1985 effective date for both phases. However, in the event that the Commission accepts the Phase II rates or suspends them for only one day, Sierra requests that the Phase I rates be deemed withdrawn.

Notice of Sierra's filing was published in the **Federal Register**,[2] with responses

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[1] See Attachment for rate schedule designations.

[2] 50 FR 14422 (1985).

due on or before April 23, 1985. Untimely motions to intervene were filed by the Secretary of the Army (Army) and, jointly, by Truckee-Donner Public Utility District (Truckee-Donner) and the City fo Fallon, Nevada (Fallon).

The Army, Truckee-Donner, and Fallon request that the Commission suspend Sierra's rates for five months. In support, various cost of service issues are raised.[3]

On May 8, 1985, Sierra filed an answer. While the company does not oppose intervention by the Army, Truckee-Donner, or Fallon, it does oppose their requests for a five month suspension. Sierra contends that a five month suspension is not supported by the allegations contained in the motions to intervene.

Discussion

We find that good cause exists to grant the late-filed motions to intervene of the Army, Truckee-Donner, and Fallon, in light of the interest of these parties as directly affected customers, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

We note that Sierra has included in its filing a purchased power adjustment clause (PPAC) like one that was accepted by the Commission as part of a settlement agreement in Docket No. ER82–105–000, a prior Sierra rate case. However, that settlement specified that the PPAC "shall terminate at such time as a general rate revision is filed under section 205(d) of the Federal Power Act and part 35 of the Commission's regulations after May 1, 1984." Because the present PPAC was adopted as part of this settlement package and because the contract specifically calls for its termination at this time, the proposed PPAC must now be evaluated anew under the Commission's general standards.

The Commission has traditionally disallowed automatic cost adjustment clauses which track only one cost component.[4] The Commission's practice has been to permit automatic clauses in only a few instances: fuel adjustment clauses, research and development cost adjustments, full cost of service formula tariffs, and interchange rates based on incremental costs. Automatic adjustment clauses are exceptions to the notice and review provisions of the Federal Power Act, and approval of such clauses as the rate is a departure from the traditional regulatory scheme.

Sierra states that purchased power constitutes 60% of its generation resources. However, the Commission has disallowed PPAC's on several occasions where the utility relied on similar amounts of purchased power. Sierra also supports its PPAC by comparing it to the experimental adjustment clause which was adopted as part of the bulk power market experiment in *Public Service Co. of New Mexico*, Opinion No. 203, 25 FERC ¶ 61,469 (1983). We find this comparison to be wholly inappropriate. The experimental adjustment clause represents only one component of a novel and limited experimental program. The company also advances arguments concerning its ability, by retention of the PPAC, to reduce the number of its rate filings and thereby its administrative costs. Again, we are unpersuaded that Sierra has presented a reason to provide exceptional treatment in its case. We shall, therefore, summarily reject Sierra's PPAC and direct the company to file revised rates reflecting the exclusion of this provision.

Our preliminary review of Sierra's filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we noted that rate filings would generally be suspended for the maximum period where preliminary review indicates that the proposed rates may be unjust and unreasonable, and may generate substantially excessive revenues, as defined in *West Texas*. Here, our examination indicates that both the Phase I and Phase II rates may yield substantially excessive revenues. Since Sierra requested the same effective date for Phase I and Phase II, each would, following suspension, become effective on November 1, 1985. We shall therefore deem the Phase I rates withdrawn, and suspend the Phase II rates, as modified, for five months, to become effective on November 1, 1985, subject to refund.[5]

The Commission orders:

(A) The untimely motions to intervene filed by the Army, Truckee-Donner, and Fallon are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Sierra's proposed purchased power adjustment clause is hereby rejected. Within thirty (30) days of the date of this order, Sierra shall refile its rates to reflect the exclusion of the clause.

(C) Sierra's Phase I rates are deemed withdrawn; the proposed Phase II rates, as modified by summary disposition, are hereby accepted for filing, and are suspended for five months, to become effective on November 1, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Sierra's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

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[3] These issues include: (1) Allocation of transmission, administrative, and general expenses; (2) income tax calculations; (3) fuel inventories and cash working capital; and (4) return on common equity.

[4] *See Montaup Electric Co.*, 26 FERC ¶ 61,021 (1984); *Central Power & Light Co.*, 11 FERC ¶ 61,102 (1080); *Lockhart Power Co.*, Opinion No. 29, 4 FERC ¶ 61,337 (1978).

[5] This treatment is consistent with *West Texas Utilities Co.*, 25 FERC ¶ 61,114 (1983), and consistent with the treatment requested by Sierra for the rates under slightly different circumstances. Sierra indicated that if the Phase I and II rates were both accepted without suspension or suspended for a nominal period, then the Phase II rates should be put into effect, and the Phase I rates should be deemed withdrawn.

SIERRA PACIFIC POWER COMPANY—DOCKET NO. ER85-406-000 RATE SCHEDULE DESIGNATIONS

Designation	Description
(1) 22nd Revised Sheet No. 4 to FPC Electric Tariff, Original Volume No. 1 (Supersedes 21st Revised Sheet No. 4 and 11th Revised Sheet No. 6)	Tariff Customers
(2) Supplement No. 9 to Supplement No. 9 to rate Schedule FPC No. 1 (Supersedes Supplement No. 8 to Supplement No. 9)	Mount Wheeler Power, Inc

[FR Doc. 85-13791 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-2-8-000, 001]

South Georgia Natural Gas Co.; Proposed Changes FERC Gas Tariff

May 31, 1985.

Take notice that on May 24, 1985, South Georgia Natural Gas Company (South Georgia) tendered for filing Thirty-First Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1, and Thirty-Second Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. These tariff sheets and supporting information are being filed with a proposed effective date of May 1, 1985 and July 1, 1985, pursuant to the Purchased Gas Cost Adjustments provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Thirty-First Revised Sheet No. 4 reflects a decrease of 31.93¢ per MMBtu in the Current Adjustment, and Thirty-Second Revised Sheet No. 4 reflects a decrease of 2.53¢ per MMBtu in the Surcharge Adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before June 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-13792 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP78-490-006]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

May 31, 1985

Take notice that on May 22, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following sheets to Sixth Revised Volume No. 2 of its FERC Gas Tariff:

First Revised Sheet No. 299E-299E7
Substitute Third Revised Sheet No. 299E8-299E9
Second Revised Sheet No. 299E10-299E21

Tennessee states that the primary purpose of this filing is to change the amount by which gas purchase entitlements in a related sales agreement may be affected by the transportation agreement underlying Tennessee's Rate Schedule T-82.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C 20425, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 7, 1985 Protests will be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene, provided, however, that any person who has previously filed a motion to intervene in this proceeding is not required to file a further pleading. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-13793 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[6450-01]

Office of Hearings and Appeals

Cases Filed; Week of April 26 Through May 3, 1985

During the Week of April 26 through May 3, 1985, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,
Director, Office of Hearings and Appeals.
May 24, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 26 through May 3, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 26, 1985	Theodore M. Ragsdale, Gardenia, CA	HRZ-0244	Interlocutory order. If granted: The Proposed Remedial Order issued to Theodore M. Ragsdale d.b.a. Salem Ventures, Inc. (Case No. HRO-0270) would be dismissed
Apr. 26, 1985	E.B. Brooks, Jr., Dallas, TX	HRA-0009	Appeal of a modified remedial order. If granted: The April 10, 1985 Modified Remedial Order issued to E.B. Brooks, Jr. (Brooks) by the Economic Regulatory Administration would be rescinded and Brooks would not be required to take further action to comply with the July 10, 1978 Remedial Order issued to it (Case No. FRA-1416)
Apr. 30, 1985	Busch Distributors, Pullman, WA	HEE-0147	Exception to the reporting requirements. If granted: Busch Distributors would not be required to file Form EIA-782B "Resellers/Retailers Monthly Petroleum Product Sales Report"
Do.	Cooper Petroleum, Inc., Laurinburg, NC	HEE-0146	Exception to the reporting requirements. If granted: Cooper Petroleum, Inc. would not be required to file Form EIA-782B the "Resellers/Retailers Monthly Petroleum Product Sales Report"

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 26 through May 3, 1985]

Date	Name and location of applicant	Case No.	Type of submission
May 1, 1985	Ball Marketing, Inc., Washington, DC	HRD-0279, HRH-0279	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Ball Marketing, Inc. in response to a Proposed Remedial Order issued to it (Case No. HRO-0268).
May 3, 1985	United Independent Oil Company, Washington, DC	HRD-0280, HRH-0280	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened regarding the Statement of Objections submitted by United Independent Oil Company in response to a Proposed Remedial Order issued to it (Case No. HRO-0247).

REFUND APPLICATIONS RECEIVED

[Week of April 26 through May 3, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
04/29/85	Amoco/Jax Kar Wash, Inc	RF21-12393
04/29/85	Hertz/Air Products & Chemicals, Inc.	RF76-142
04/29/85	Hertz/TRW, Inc	RF76-143
04/29/85	Larco/Rogers Ford	RF112-10
04/29/85	Gulf Oil/Bennett's Service Station.	RF40-3020
04/30/85	Waller/Wooten Oil Company	RF78-9
04/30/85	Hertz/Chevron Corporation	RF76-144
04/30/85	Hertz/Lear Siegler	RF76-145
04/30/85	Hertz/National Intergroup	RF76-146
04/30/85	Amoco/Deluxe Service Station	RF21-12392
04/30/85	McCarty/Minster Farmers Cooperative Exchange, Inc.	RF143-1
04/30/85	Hertz/Exxon Corp	RF76-147
04/30/85	Hertz/Standard Oil Co. (Indiana)	RF76-148
04/30/85	Hertz/Ford Motor Company	RF76-149
04/30/85	Hertz/American Bar Association	RF76-150
04/30/85	Hertz/Hexcel Corporation	RF76-151
05/01/85	McCarty/Slattery Oil Company, Inc.	RF143-2
05/01/85	Kiesel/General Services Administration.	RF126-7
05/01/85	Hendel's/Lou's Enterprise, Inc	RF79-16
05/01/85	Nielsen Oil/Shortstop East	RF141-5
05/01/85	Hertz/Atlantic Richfield Company	RF76-152
05/01/85	Hertz/Northrup Corporation	RF76-153
05/01/85	Hertz/Warner Communications	RF76-154
05/01/85	Hertz/KVB, Inc	RF76-155
05/01/85	Hertz/Celanese Corporation	RF76-156
05/01/85	R.V. Whitmer/Pike-Delta-York Local Schools.	RF144-1
05/01/85	Gulf Oil/Freeway Gulf	RF40-3021
05/01/85	Gulf Oil/Palmer Gulf	RF40-3022
05/02/85	Gulf Oil/Lake City Gulf	RF40-3023
05/02/85	Union Texas Petroleum/American Propane Corp.	RF140-3
05/02/85	Consolidated Gas/American Propane Corp.	RF77-5
05/02/85	National Helium/District of Columbia.	RQ3-196
05/02/85	Bayou/Ida Gasoline/Howard Industries.	RF117-3
05/02/85	Union Texas Petroleum/Petroleum Supply.	RF140-4
05/02/85	Union Texas Petroleum/Consumers Supply.	RF140-5
05/02/85	Union Texas Petroleum/Moffitt Oil Co.	RF140-6
05/02/85	Union Texas Petroleum/Hubbard Oil Corp.	RF140-7
05/02/85	Union Texas Petroleum/Campbell Oil Company.	RF140-8
05/02/85	Union Texas Petroleum/Advance Petroleum Distributing Company.	RF140-9
05/02/85	Union Texas Petroleum/Hi-Lo Corporation.	RF140-10
05/02/85	Union Texas Petroleum/Nu Way Oil Company.	RF140-11
05/02/85	Union Texas Petroleum/Thrift Oil Company.	RF140-12
05/02/85	McCarty/Mays Oil, Inc	RF143-3
05/02/85	Union Texas Petroleum/Campbell Oil Company.	RF104-2
05/02/85	Union Texas Petroleum/Fuller Oil Co., Inc.	RF140-3

REFUND APPLICATIONS RECEIVED—Continued

[Week of April 26 through May 3, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
05/03/85	Union Texas Petroleum/Hillman Oil Company.	RF104-4
05/03/85	Union Texas Petroleum/Arrow Enterprises, Inc.	RF104-5
05/03/85	Union Texas Petroleum/Fuller Oil Company.	RF140-13
05/03/85	Union Texas Petroleum/Hillman Oil Company.	RF140-14
05/03/85	Union Texas Petroleum/Arrow Enterprises, Inc.	RF140-15
05/02/85	APCO Refund Applications	RF83-21 through RF83-127

[FR Doc. 85-13689 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of April 29 Through May 3, 1985

During the week of April 29 through May 3, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 21, 1985.

Spradling's Texaco Petroleum Products, Buhl, Idaho, HEE-0133 reporting requirements.

Spradling's Texaco Petroleum Products filed an Application for Exception from the provisions of the EIA reporting requirement. The exception request, if granted, would relieve Spradling's of its obligation to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Sales Report of Fuel Oil and Kerosene." On May 1, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-13688 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of May 3 Through May 10, 1985

During the Week of May 3 through May 10, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in

these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 3 through 10, 1985]

Date	Name and location of applicant	Case No	Type of submission
May 6, 1985	Northeast Petroleum Industries, Washington, DC	HEF-0580	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the August 15, 1983, Consent Order entered into with Northeast Petroleum Industries.
Do	Sigmor Corporation, Washington, DC	HEF-0581	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into with Sigmor Corporation.
May 7, 1985	Palo Pinto, Belridge & Amoco/West Virginia, Charleston, WV	RM5-3, RM8-4, RM21-5	Request for modification/rescission. If granted: The July 13, 1984 and March 15, 1985, Decisions and Orders (Case Nos. RQ21-92, RQ8-93 and RQ5-175) issued to West Virginia would be modified regarding the State's application for refund submitted in the Palo Pinto, Belridge and Amoco second stage refund proceedings.
May 8, 1985	Cranston Oil Service Co., Inc., Providence, RI	HRX-0121	Supplemental order. If granted: The trustee of the Cranston Oil Service Co., Inc. escrow account would be directed to remit the money in the account to the Department of Energy for distribution in a Subpart V proceeding.
May 9, 1985	Gerald Lawrence d/b/a Lawrence LP Gas, Oldsmar, FL	HRA-0010	Appeal of a modified remedial order. If granted: The April 10, 1985, Modified Remedial Order issued to Gerald Lawrence by the Economic Regulatory Administration would be modified regarding petroleum pricing violations.
Do	Government Sales Consultants, Annandale, VA	HFA-0286	Appeal of an information request denial. If granted: The April 17, 1985, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and the Government Sales Consultants would receive access to documents regarding Project Software Development, Inc.
Do	Southland Royalty Company, Washington, DC	HEF-0582	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the December 5, 1984 Court Order issued to Southland Royalty Company.

REFUND APPLICATIONS RECEIVED

[Week of May 3 through May 10, 1985]

Date	Name of refund Proceeding/ name of refund applicant	Case No
04/22/85	Foster Oil Co./Norm Adams Arrow Service	RF146-1
04/26/85	C.C. Dillon Co./Crystal Clean Car Wash & Gas	RF148-1
04/29/85	Cross Oil Co./Joseph J. Manfred	RF147-1
04/29/85	Point Landing/Peavey Grain Cos	RF122-6
05/02/85	Eddy Refining/Key Oil Co./Texas Gulf Gas Corp	RF145-1
05/02/85	Eddy Refining/Key Oil Co./Springer Oil Co	RF145-2
05/06/85	APCO/Nebraskaland Petroleum, Inc	RF83-126
05/06/85	Bayou State Oil/Ida Gasoline/Ray Irby	RF117-4
05/06/85	Bayou State Oil/Ida Gasoline/Leon E. Mills	RF117-5
05/06/85	Tenneco/Minute Man Fuels, Inc	RF7-127
05/06/85	Union Texas Pet. Corp./Moore Oil Corp	RF140-16
05/06/85	Union Texas Pet. Corp./Commercial Propane Corp	RF140-17
05/06/85	Union Texas Petroleum Corp./Empire, Inc	RF104-6
05/07/85	Nielsen Oil & Propane, Inc./Sole Oil Co	RF141-6
05/07/85	Gulf Oil/Almeda Gulf Service	RF40-3024
05/07/85	McCarty Oil/Mercer Landmark Inc	RF143-4
05/07/85	Seminole Refining/National Linen Service	RF111-8
05/07/85	Kiesel Co./ACF Industries	RF126-8
05/08/85	Union Texas Pet. Corp./Chevron USA	RF140-18
05/08/85	Waller/Defense Logistics Agency	RF78-10
05/08/85	Bayou State Oil/Ida Gasoline/Jack Chadick	RF117-6
05/08/85	Kiesel Co./Turley Martin Co	RF126-9
05/08/85	McCarty Oil/G&L Oil co	RF143-5
05/09/85	Amnol, USA/Hank's LP Gas & Midstate Propane	RF139-4
05/09/85	Little America Refining Co./Wiles Oil Co.	RF112-11
05/09/85	Ropet, Inc./Duquesne Light Co	RF149-1
05/10/85	Kiesel Co./St. Lucas Cemetery	RF125-10

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 3 through May 10, 1985]

Date	Name of refund Proceeding/ name of refund applicant	Case No
05/10/85	Little America Refining Co./Metro Oil Products, Inc	RF112-12
05/10/85	Union Texas Petroleum Corp./Moss LP-Gas Co., Inc	RF140-19

NOTICE OF OBJECTION RECEIVED

[Week of May 3-10, 1985]

Date	Name and Location of applicant	Case No
05/09/85	U.S. Department of Interior, Washington, DC	HEE-0083

[FR Doc. 85-13690 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $21,200 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Harris Enterprises, Inc. of Portland, Oregon (Case No. HEF-0087).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to Harris Enterprises Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case No. HEF-0087.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Harris Enterprises, Inc. (Harris) of Portland, Oregon and the DOE which settled possible regulatory violations in the firm's sales of refined petroleum products during the consent order period, November 1, 1973 through August 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE

has tentatively formulated to distribute the escrow amount funded by Harris pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Harris refined petroleum products during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E–234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: May 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 23, 1985.

Name of Firm: Harris Enterprises, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF–0087.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged or adjudicated overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 83,553 at 85,284 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Harris Enterprises, Inc. (Harris) of Portland, Oregon.[1]

Harris sells refined petroleum products in the states of Oregon and Washington to other petroleum marketers (resellers) and to end-users in bulk sales and through 16 company-operated retail stations. Harris is therefore a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR 212.31. An ERA audit of Harris' operations during the period November 1, 1973 through August 31, 1974 revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputs between Harris and the DOE regarding the firm's compliance with the DOE price and allocation regulations during the audit period, the firm entered into a consent order with the DOE on June 11, 1979. The consent order covers Harris' sales of motor gasoline, No. 1 stove (heating) oil, and No. 2 fuel oil during the ten-month audit period (hereinafter the consent order period). The consent order refers to the ERA's allegations of overcharges, but notes that no findings of violations were made. Additionally, the consent order states that Harris does not admit that it committed any such violations. In executing the consent order, Harris agreed to refund $39,685 directly to the customers of its retail outlets through price rollbacks and $118,239 directly to its wholesale customers. *See* Consent Order ¶ 7. An Appendix to the consent order sets forth the names and addresses of the wholesale customers who were allegedly overcharged by Harris, along with the designated refund amounts.

Harris implemented a price rollback at its retail outlets and began making direct payments to wholesale customers pursuant to the consent order. However, in March 1980, Harris notified the DOE that, due to the fact that a number of its customers had changed addresses or gone out of business, it was impossible for it to complete its direct refund obligations to wholesale customers. Harris proposed that it sastisfy the $55,741 balance of its refund obligation by donating heating oil to various charities. The ERA rejected this proposal and, after further negotiations, on July 17, 1981, Harris and the ERA amended the June 11, 1979 consent order and agreed that Harris' obligations under the consent order would be satisfied if the firm remitted $21,200 to the DOE for deposit in an interest-bearing escrow account for later disbursement. In modifying the original consent order, the DOE and Harris agreed that the refund to Harris retail station customers had been completed and that only refunds to Harris' wholesale customers were outstanding. This Proposed Decision and Order concerns the distribution of the $21,200 that Harris remitted to the DOE, plus the interest which has accrued on that money.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Harris consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

As indicated above, an Appendix to the Harris consent order identifies the wholesale customers who were allegedly overcharged by Harris. These customers are listed in Appendices A and B of this Proposed Decision and Order. We believe that these were the parties who were most likely injured by the Harris pricing practices that were alleged to be in violation of the price regulations. These firms include both resellers (wholesalers and retailers) and end-users of the products purchased from Harris. In prior refund proceedings, we have required resellers of refined petroleum products purchased from a consent order firm to demonstrate that they did not pass on to their customers the price increases implemented by the firm. *See, e.g., Vickers*. In other words, resellers of a consent order firm's products are generally required to demonstrate that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller

[1] Harris Enterprises, Inc. includes the following affiliated companies: Premium Oil Company, Harris Distributing Company, Harris Oil Company, Tiger Oil Company, and two Thrifty Rent-a-Car outlets. During the audit, the ERA did not have sufficient sales price data from Tiger and the Thrifty outlets to evaluate their compliance with the DOE regulations. Accordingly, their operations were not included in the Harris audit and are not covered by the consent order.

should generally demonstrate that at the time it purchased the product from the consent order firm market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. In addition, the reseller is generally required to show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank does not, however, automatically establish injury. *See, Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

In this case, however, as in many other refund proceedings, we propose to adopt a presumption of injury with respect to small claims filed by resellers. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent praticable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we propose to adopt in this case is used in an effort to permit reseller claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limitted resources available.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Harris consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in prior refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants purchased covered products from Harris and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we propose to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order was quite distant, we find that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[3] *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumption we are proposing to adopt with respect to small claims, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject ot price controls during th econsent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 8,209 and cases cited therein. Therefore, end-users of Harris petroleum products will not be required to document the extent of injury incurred from the alleged overcharges.

IV. Distribution of Consent Order Funds

In many cases the ERA audit files may not provide conclusive evidence as to the eidentity of all eligible parties or the amount of money they should recieve in a Subpart V proceeding. However, we believe it is appropriate in the present case to use these files to determine eligibility for refunds. In relying on the information in the ERA files, we note that the ERA audit of Harris had been substantially completed, a Notice of Probable Violation (NOPV) had been issued, and the allegedly overcharged parties were well defined, as evidenced by the Appendix attached to the Harris consent order. Accordingly, we propose to limit eligibility for refunds in this proceeding to those firms identified in the Appendix to the Harris consent order. We further propose to use the

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[2] We propose that resellers who made only spot purchases from Harris be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise discretion as to where and when it made the purchase(s) on which its refund claim is based.

[3] All of the potential refunds to resellers calculated in accordance with the methodology proposed in Part IV of this Proposed Decision fall below the $5,000 threshold amount (*see* Appendix A). Therefore, if the proposed methodology is implemented, no applicants will be required to submit detailed evidence of injury in order to qualify for a refund in the amount proposed.

informaiton provided in that Appendix in conjunction with the information in the March 13, 1980 report which Harris prepared showing the refunds it had already made to wholesale customers as of that date, to fashion a refund plan which will correspond closely to the injuries experienced. *Cf. Marion Corp.*, 12 DOE ¶ 85,014 (1984) (refunds to customers identified in NOPV).

According to the information we have in the ERA audit files concerning Harris' compliance with the June 11, 1979 consent order, Harris made direct refunds to its wholesale customers in unequal amounts. For example, the March 13, 1980 record indicates that Harris had refunded as much as 97 percent of one customer's total refund and none of another customer's designated refund. In the absence of any later documentation of additional payments from Harris to its customers, we are presuming that the information in the ERA audit file dated March 13, 1980, is a reliable measure of the amount of refunds disbursed by Harris.

In order to allocate the consent order fund of $21,200 plus interest equitably among Harris' wholesale customers, we have devised a plan which will allow every customer to receive approximately the same proportion of the amount designated for it in the consent order appendix. Specifically, we have allocated the principal of the escrowed consent order fund so that each of Harris' wholesale customers would be able to receive at least 81.24 percent of the amount which it was originally going to receive pursuant to the consent order.[4] We recognize that some purchasers have already received from Harris more than 81.24 percent of the refund amount specified for them in the consent order. While we do not believe that it is appropriate to make those firms relinquish a portion of their refunds, we do believe that equitable factors require that they not receive any additional refunds from the Harris consent order fund. The wholesale customers who will receive a refund under our proposal, along with the share of the settlement amount allotted to each to raise the refund to 81.24 percent of the original amount, are listed in Appendix A to this Decision and Order. Those Harris customers who received 81.24 percent or more of the original consent order amount attributable to them, and are thus considered ineligible for additional refunds based on Harris' alleged violations, are listed in Appendix B.

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.; see also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process in the **Federal Register** and to notify all of the firms listed in Appendices A and B of this proceeding. In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Harris Enterprises, Inc., pursuant to the consent order executed on June 11, 1979 and modified on July 17, 1981, will be distributed in accordance with the foregoing decision.

Appendix A

HARRIS ENTERPRISES, INC.—CUSTOMERS DUE REFUNDS

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 81.24 pct of consent order refund amount
Applegate Dairy, 6909 N. Lombard, Portland, OR 97304	$1,191	$1,374
Kenneth Bolton, 6100 NE Union, Portland, OR 97211	1,074	1,290
Joe Reese, 1 N. Fremont, Portland, OR 97227	250	1,272
Maurice Brooks, 3331 Franklin Blvd., Eugene, OR 97403	492	556
Ron Sigler, 18777 SE McLoughlin, Milwaukee, OR 97222	838	972

HARRIS ENTERPRISES, INC.—CUSTOMERS DUE REFUNDS—Continued

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 81.24 pct of consent order refund amount
Ed Erskine, Frank Harding & Son, 4569 NE 81st St., Portland, OR 97218	3,910	1,711
Bill Audrain, Central Oregon Oil, 15th & Highland, P.O. Box 188, Redmond, OR 97756	1,111	3,430
Hillcrest Oil Company, 5214 SW Beaverton, Hillsdale Hwy., Portland, OR 97221	3,767	2,133

Firm	Refund received as of June 30, 1975	Amount due to make refund equal to 81.24 pct
Donald Mendenhall, P.O. Box 293, Sisters, OR 97759	174	[1] 5
Gray's Crane & Rigging, 3445 NW Front, Portland, OR 97210	205	245
Fill Up, 205 Columbia NE, Salem, OR 97303	[illegible]	[illegible]
A.L. Morris & Son, 6014 NE Garfield, Portland, OR 97211	4,058	2,654
Haley's Heating Oils, 1122 SW Grant, Tigard, OR 97223	791	129
Jack Maguire, 2644 Gales Way, Forest Grove, OR 97116	455	334
Paul Priest Heating Oils, 1140 SE 199th, Portland, OR 97233	2,185	[illegible]
Bazer, Inc., 4401 SW 110th, Beaverton, OR 97005	1,809	1,011
F.E. Stein, 485 River Road, Gladstone, OR 97027	[illegible]	353
Reinhard Oil, 5322 Dallas Hwy., Salem, OR 97304	31	[1] 3
McCall Oil, 2313 Lloyd Center, Portland, OR 97232	[illegible]	[illegible]
Widing Transportation, 10145 N. Portland Rd., Portland, OR 97217	[illegible]	[illegible]
Mac's Super Service, 4003 McKinley Ave., Tacoma, WA 98404	1,106	86
R.L. Barrett, 3317 Auburn Way North, Auburn, WA 98002	[illegible]	226
Thermco, Inc., P.O. Box 976, Tacoma, WA 98401	1,141	[illegible]
Earl Moore, 2107 NE 82nd, Portland, OR	473	[illegible]
Defiance Oil Co., Rt. 1, Box 147, Monmouth, OR	119	53
Ralph Lockrem, 1680 SW 3rd, Corvallis, OR 97330	2,519	176
Grace Oil Co., 5822 SE Santiam Hwy., Albany, OR	187	102
Total refunds due (exclusive of interest)		21,201

[1] Below $15 minimum.

Appendix B

Harris Enterprises, Inc., Wholesale Customers Who Recieved at Least 81.24% of Refund Due Under Consent Order

Firm

J. R. Bales, 1133 SW Oak Street, Hillsborough, OR 97123

Len Remington, 595 N. Pacific Hwy., Woodburn, OR 97071

Max Kleman, 4774 Franklin Blvd., Eugene, OR 97403

[4] The amounts set forth in Appendix A provide only an approximation of the refund each successful claimant would receive, exclusive of interest. Since the ERA audit files indicate that some of the firms in Appendix A may be out of business or difficult to locate, it is possible that some of those firms will not apply for refunds. If we do not receive applications from some of those firms, we propose to use the funds allocated to them to raise the minimum level of refunds above 81.24 percent to a level not in the excess of 100 percent of the amount which it was scheduled to receive pursuant to the consent order. We will not be in a position to calculate an exact refund allocation until after the close of the refund application period.

Powell Distributing Co., P.O. Box 17194, Kenton Station, Portland, OR 97200
Champion Oil Co., 9125 N. Burrage, Portland, OR 97217
Jack Gross, 3305 N. Hgwy 97, Bend, OR 97701
John Jersey & Son, 6845 NE 42nd Ave. Portland, OR 97218
Harold Cash, 9080 SE 82nd Portland, OR 97266
Gov-Mart, Inc., 705 Rainier Ave. South, Renton, WA 98055
Mike Heidt, 2070 Cascade Drive, Woodburn, OR
L&M Transportation, Box 519, Winston, OR
Fletcher Oil Company, 606 Alexander Street, Tacoma, WA 98421
Gull Oil, 3404 Fourth Avenue South, Seattle, WA 98124

[FR Doc 85-13685 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedure for disbursement of $5,577.96 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Crystal Petroleum of Corpus Christi, Texas. The funds will be available to customers who purchased motor gasoline or No. 2 diesel fuel from Crystal during the period June 13, 1973 through March 31, 1980.

DATE AND ADDRESS: Applications for refund of a portion of the Crystal consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Crystal Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0059.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Crystal Petroleum of Corpus Christi, Texas, which settled possible pricing and allocation violations with respect to the firm's sales of motor gasoline and No. 2 diesel fuel during the period June 13, 1973 through March 31, 1980. Under the terms of the Consent Order, $5,577.96 has been remitted by Crystal and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Crystal consent order funds. The Proposed Decision and Order discussing the distribution of the Crystal consent order funds was issued on March 28, 1985. 50 FR 13964 (April 8, 1985).

As the Crystal Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased motor gasoline or No. 2 diesel fuel from Crystal during the period June 13, 1973 through March 31, 1980. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: May 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 23, 1985.

Name of Firm: Crystal Petroleum.

Date of Filing: October 13, 1983.

Case Number: HEF-0059.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Crystal Petroleum (Crystal) of Corpus Christi, Texas.

I. Background

Crystal is a "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. An ERA audit of Crystal's operations during the period June 13, 1973 through March 31, 1980 (the audit period) revealed possible violations of the price regulations promulgated under the Economic Stabilization Act of 1970 and of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Crystal and the DOE regarding sales of motor gasoline and No. 2 diesel fuel during the audit period, the firm entered into a Consent Order with the DOE on September 29, 1981. Under the terms of the Consent Order, the firm agreed to refund $98,603.33 directly to its end-user customers by cash payments or credit memoranda and $4,998.01 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Crystal does not admit that it committed any such violations.

On March 28, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Crystal consent order fund. 50 FR 13864 (April 8, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any overcharges made by Crystal during the consent order period.[1] In the PD&O, we noted that all of the potential claimants in the present proceeding are likely to be petroleum product resellers, i.e., retailers and wholesalers, because the end-user customers who were injured by Crystal's alleged overcharges were to have received direct refunds from Crystal under the terms of the Consent Order.

A copy of the PD&O was published in the Federal Register on April 8, 1985, and comments were solicited regarding the proposed refund procedures. While none of Crystal's customers filed comments on the proposed procedures,

[1] In the present case, the consent order period is coterminous with the audit period (June 13, 1973 through March 31, 1980).

comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments, however, discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of motor gasoline or No. 2 diesel fuel from Crystal should submit in an Application for Refund in order to establish eligibiluty for a portion of the Crystal consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for use to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[2] Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Crystal consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

[2] Furthermore, it is not clear that any of the commenting States have a direct interest in the present proceeding, since all of the sales involved were made in Texas.

III. Determination of Injury and Refund Amounts

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges on which the consent order fund is based were dispersed equally in all of Crystal's sales of motor gasoline and No. 2 diesel fuel to resellers during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[3]

In the present case, the ERA's audit records do not identify all of Crystal's reseller customers. Moreover, the audit records do not list any alleged overcharge amounts by customer. Consequently, the available information in this case is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. We will therefore adopt our proposal to use the volumetric method to allocate the consent order fund. We have determined the volumetric refund factor by dividing the escrowed consent order fund ($5,577.96) by the estimated total volume of motor gasoline and No. 2 diesel fuel sold by Crystal to resellers during the audit period (6,955,444 gallons), resulting in a per gallon refund amount of $0.0008020.[4] The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As we stated in the PD&O, the second presumption we will establish involves small claims made by resellers. In general, resellers who file refund claims in Subpart V proceedings are required to demonstrate that they absorbed the alleged overcharges. *See, e.g., Vickers.* While there are a variety of ways to make this showing, they must generally demonstrate that at the time they purchased petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. *See Vickers Energy Corp./ Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./ Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). However, in this case, as in prior refund proceedings, we will adopt a presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Order. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount.

[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Crystal's pricing practices during the audit period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

[4] Although the Consent Order required Crystal to pay $4,998.01 to the DOE, Crystal paid a total of $5,477.96 to the DOE escrow account as a result of interest which had accrued on that amount prior to payment. The volumetric factor has been calculated based on this figure. In addition, since the ERA audit files do not list the volumes of motor gasoline and No. 2 diesel fuel sold by Crystal to resellers during the entire consent order period, we have calculated that total sales volume figure by extrapolating sales figures from the available audit data.

Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered petroleum products from Crystal and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below $5,000.[8] *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). In the PD&O, we noted that the entire consent order amount to be distributed in the present proceeding is only slightly more than $5,000. Accordingly, we believe that all reseller claimants are likely to fall within the threshold level.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Crystal consent order fund. Accordingly, we shall now accept applications for refund from customers who purchased motor gasoline or No. 2 diesel fuel from Crystal during the consent order period.

[8] Resellers who made only spot purchases from Crystal will be presumed to have suffered no injury. They will therefore be ineligible for any refund, even a refund below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and twhen to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase totheir own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise considerable discretion as to where and when it made the purchase(s) on which its refund claim is based.

In order to receive a refund, each applicant will be required to report the monthly volume of motor gasoline and No. 2 diesel fuel purchased from Crystal for which it is claiming a refund. The applicant must also state how it used the motor gasoline and No. 2 diesel fuel, i.e., whether it was a reseller or an ultimate consumer. If the applicant is an ultimate consumer, it must demonstrate that it did not receive a direct refund from Crystal under the terms of the Consent Order. Any reseller who requests a refund in excess of the $5,000 threshold amount must submit evidence to establish that it did not pass on the alleged overcharges to its customers. In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Applicants should also report any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Crystal Consent Order Fund, Case No. HEF–0050. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional informaiton concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from funds remitted to the Department of Energy by Crystal Petroleum pursuant to the Consent Order entered into on September 29, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: May 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–13686 Filed 6–6–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $1,800,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Oneok, Inc., formerly Oklahoma Natural Gas, Inc., an Oklahoma-based company that owned interests in five gas plants through its subsidiary Oneok Exploration (formerly ONG Exploration).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All

comments should conspicuously display a reference to case number HEF–0571.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearing, and Appeals, 1000 Independence Avenue, SW. Washington, D.C. 20585 (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Oneok, Inc., which settled possible violations of DOE price controls in the firm's sales of covered natural gas liquids and natural gas liquid products to its customers during the August 1973 through January 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Oneok pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 28, 1985.

Name of Firm: Oneok, Inc.

Date of Filing: March 11, 1985.

Case Number: HEF–0571.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Oneok, Inc. (hereinafter referred to as Oneok), formerly known as Oklahoma Natural Gas, through its wholly owned subsidiary Oneok Exploration Company (formerly ONG Exploration), owned controlling interests in five gas processing plants in the state of Oklahoma.[1] A DOE audit of Oneok's records revealed possible regulatory violations with respect to the firm's pricing of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) during the period August 19, 1973 through January 27, 1981 (hereinafter referred to as the consent order period). In order to settle all claims and disputes between Oneok and the DOE regarding the firm's pricing of NGL's during the consent order period, Oneok and DOE entered into a consent order on May 31, 1984. Under the terms of the consent order, Oneok remitted $1,800,000 to the DOE on October 4, 1984. That sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of April 30, 1985, the Oneok escrow account had earned $96,714 in interest. This Proposed Decision concerns the distribution of the $1,800,000 that was deposited into the escrow account, plus the accrued interest.

II. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Saber consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund money to identifiable purchasers of petroleum products who may have been injured by Oneok's pricing practices during the period August 1973 through January 1981. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

We propose that the Oneok consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Oneok's alleged pricing violations. The information available to us at this time regarding Oneok's operations during the audit period does not provide names and addresses of the firm's customers. However, from our experience we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers of NGLs or NGLPs, (2) petroleum refiners that used NGLs or NGLPs as a fuel source or a raw material in refining crude oil, and (3) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from Oneok or from other firms in a chain of distribution leading back to Oneok. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Oneok NGLs for the period August 1973 through January 1981. If the products were not purchased directly from Oneok, the claimant must include a statement setting forth its reasons for believing the product originated with Oneok. In addition, a reseller or retailer that files a claim will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its

[1] The five plants were located in Cimarron, El Reno, Garvin, Watonga, and Woodward, Oklahoma. Oneok also owned interests in, but did not operate or control, five other gas plants in Oklahoma. Sales from those plants are not subject to this refund proceeding. Oneok also sold large quantities of natural gas during the consent order period. Because natural gas was not subject to regulation by the DOE or its predecessors, these sales are also not subject to this proceeding.

prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) [hereinafter cited as *ADA*]. A reseller or refiner can establish that it was injured by showing that it experienced a competitive disadvantage because Oneok's prices were higher than the prevailing price for the same products in the market area. *National Helium Corp./Atlantic Richfield Corporation*, 12 DOE ¶ 85,257 (1984).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Oneok during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Oneok consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Oneok and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[2] *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Oneok petroleum products need only document their purchase volumes from Oneok to make a sufficient showing that they were injured by the alleged overcharges.

However, crude oil refiners that purchased NGLs or NGLPs that were consumed as fuel or as raw material in a refining process will not be considered as "consumers" for this purpose. Rather, the exception from the requirement of a separate, detailed showing of injury for end-users or ultimate consumers will be limited to those whose business operations were unrelated to the petroleum industry and whose prices were therefore not subject to the DOE regulatory scheme. A refund applicant that was subject to the DOE regulatory program will be required to provide a detained demonstration of injury with respect to the purchase of NGL and NGLPs of which it was an end-user. *People's Energy Corporation*, 12 DOE ¶ 85,129 (1984).

We believe that if a reseller or retailer made only spot purchases from Oneok,

[2] Resellers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Oneok petroleum products. See Amoco at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.006863 per gallon,[3] exclusive of interest. As of April 30, 1985, accumulated interest increased the volumetric refund amount to $.007132.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweights the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided to the National LP Gas Association and the National Council of Farmer Cooperatives. These organizations should be helpful in advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Oneok's alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Oneok, Inc. pursuant to the consent order executed on May 31, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85–13687 Filed 6–6–85; 8:45 am]

BILLING CODE 6450–01–M

[3] According to information available to us, during the consent order period, Oneok sold 262,272,842 gallons of regulated NGL's. The volumetric refund amount is obtained by dividing the money remitted by Oneok by this volume amount $1,800,000 divided by 262,272,842 gallons = $.006863 per gallon).

ENVIRONMENTAL PROTECTION AGENCY

[PF-410; FRL-2829-6]

Pesticide Tolerance Petitions; Certain Companies

Correction

In FR Doc. 85–10798 beginning on page 19444 in the issue of Wednesday, May 8, 1985, make the following correrction:

On page 19445, the last four lines of the last paragraph in the first column should have read:

"fungicide beta-([1,1'-biphenyl]-4-ylox)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the following commodities:"

BILLING CODE 1505–01–M

[OPTS—51570; FRL—2833-3]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–11263 beginning on page 19798 in the issue of Friday, May 10, 1985, make the following corrections:

1. On page 19800, in the second column, under **P 85–881**, in the second line, "(gG)" should read "(G)".

2. On page 19801, in the second column, under **P 85–896**, in the eighth line, "(SP-3)-" should read "(SP-4-3)-".

3. On page 19801, in the third column (**P 85–897**), in the second line, "OXO-. ethyl" should read "OXO-, ethyl".

BILLING CODE 1505–01–M

[OPTS–000061; FRL–2831–3]

Health Effects Testing Guidelines

Correction

In FR Doc 85–10914 beginning on page 19087 in the issue of Monday, May 6, 1985, make the following correction: On page 19087, in the third column, in **SUPPLEMENTARY INFORMATION,** in the eighteenth line, "1705" should read "1750".

BILLING CODE 1505–01–M

[OPP–50632; PH–FRL 2834–8]

Issuance of an Experimental Use Permit to U.S. Department of the Interior

Correction

In FR Doc. 85–11594 beginning on page 20286 in the issue of Wednesday, May 15, 1985, make the following correction: On page 20286, in the second column, in the eighth line, "231,300" should read "291,300".

BILLING CODE 1505–01–M

[OPTS–51571; FRL–2837–3]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–11837 beginning on page 20596 in the issue of Friday, May 17, 1985, make the following corrections:

1. On page 20597, in the first column, under **P 85–901**, the second line of the **Exposure** paragraph, "4 hrs./da" should read "2 hrs./da".

2. On the same page, in the third column, in the next to last line of **P 85–913**, "1.5000 kg/yr" should read "1,500 kg/yr".

3. On page 20598, in the first column, under **P 85–916**, in the next to last line of the *Toxicity Data* paragraph, ">" should read ">".

BILLING CODE 1505–01–M

[OPP-240050; PH-FRL 2829-2]

Special Local Need Registrations; Voluntary Cancellations

Correction

In FR Doc. 85-10659 beginning on page 19445 in the issue of Wednesday, May 8, 1985, make the following corrections:

1. On page 19446, in the second column, in paragraph number 10, the zip code should read "97218".

2. On page 19448, in the column entitled "Product name" in the last entry, "10" should read "15".

3. On page 19449, in the first column, under Maryland, in the third entry, "77" should read "78"; and in the fourth entry, "77" should read "80".

4. On page 19450, in the first column, under New Jersey, in the first entry, "NV" should read "NJ".

5. On page 19451, in the first column, under Pennsylvania, in the fifth entry, "0004" should read "0044".

6. On page 19452, under West Virginia, the entire first line should be removed and inserted as the last entry under Washington.

BILLING CODE 1505-01-M

[OPP-240063; PH-FRL 2834-9]

State Registration of Pesticides; Arkansas et al.

Correction

In FR Doc. 85-11593 beginning on page 20284 in the issue of Wednesday, May 15, 1985, make the following corrections:

1. On page 20284, in the second and third columns, in the first, second, third and fourth entries under **California**, "*SPA*" should read "*EPA*"; also in the first entry under **California**, in the fifth line, "onion must" should read "onion smut".

2. On page 20285, in the first column, in the first entry under **South Carolina**, in the seventh line, the date should read "March 18, 1985."

3. On page 20285, in the first column, in the first entry under **Texas**, in the third line, "applies" should read "apples".

BILLING CODE 1505-01-M

[ER-FRL-2847-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed May 28, 1985 through May 31, 1985, pursuant to 40 CFR 1506.9

EIS No. 850218, Draft, COE, NY, Limestone Creek Flood Damage Reduction Plan, Manlius Onondaga County, Due: July 22, 1985, Contact: Tod Smith, (716) 876-5454.

EIS No. 850219, Draft, BLM, ID, WA, MT, OR, WY, Northwest Area Noxious Weed Control Program, Due: July 31, 1985, Contact: Gregg Simmons, (503) 231-6272.

EIS No. 850220, Draft, COE, NY, Saw Mill River Basin Flood Control Project, Construction, Westchester County, Due: July 22, 1985, Contact: Peter Doukas, (212) 264-4662.

EIS No. 850221, FSuppl, BLM, OR, Josephine and Jackson-Klamath Sustained Yield Units, Ten Year Timber Management Plan, Due: July 8, 1985, Contact: Mike Walker, (503) 776-4604.

EIS No. 850222, DSuppl, COE, WI, State Road and Edner Coulees Flood Control Project, Modifications, La Crosse County, Due: July 22, 1985, Contact: Wayne Knott, (612) 725-7745.

EIS No. 850223, Final, FHW, PA, Exton Bypass Linkage, Coatesville-Downingtown Bypass and US 202, Construction, Chester County, Due: July 8, 1985, Contact: Louis Papet, (717) 782-2222.

EIS No. 850224, Final, BLM, WY, Buffalo Resource Area, Resource Management Plan, Campbell, Johnson, and Sheridan Counties, Due: July 8, 1985, Contact: Glenn Bessinger, (307) 684-5586.

EIS No. 850225, Final, FHW, HI, Huleia Bridge Replacement and Approaches Kaumualii Highway (FAP 50) Construction, Lihue County, Due: July 8, 1985, Contact: H. Kusumoto, (808) 546-5150.

EIS No. 850226, Draft, FHW, TX, US 59/ Southwest Freeway Improvement and Widening, Beltway 8 to TX-288, Harris County, Due: July 22, 1985, Contact: Sam Herrera, (817) 334-3836

EIS No. 850227, Draft, FWS, NY, Honeoye Creek Wetland Expansion and Enhancement Project, Funding, Ontario County, Due: August 15, 1985, Contact: Howard Larsen, (617) 965-5100.

EIS No. 850229, Draft, COE, MI, Great Lakes Connecting Channels and Harbors Study, Due: July 22, 1985, Contact: P. McCallister, (313) 226-6768.

Amended Notices

EIS No. 850090, Draft, AFS, FL, Florida National Forests, Land and Resource Management Plan, Due: July 15, 1985, Published FR 3-15-85 Review extended.

EIS No. 850186, Final, AFS, SC, Francis Marion National Forest, Land and Resource Management Plan, Berkeley and Charleston Counties, Due: June 6, 1985, Published FR 5-10-85—Incorrect review period.

Dated: June 4, 1985.

Allan Hirsch,

Director, Office of Federal Activities

[FR Doc. 85-13811 Filed 6-6-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2847-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 20, 1985 through May 24, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BIA-K64012-CA, Rating LO, Hoopa Valley Indian Reservation Fishing Regulations Modifications, Klamath River Drainage, CA. **SUMMARY:** EPA has no objection to the regulations as proposed.

ERP No. D-COE-K61084-HT, Rating 3, Waikoloa Beach Resort Anchialine Ponds, Construction and Development, Permit, HI. **SUMMARY:** EPA's concerns regarding this project include: (1) Inadequate assessment of potentially significant environmental impacts to anchialine ponds, including the possibility that some of the organisms in the ponds may qualify as rare or endangered species; (2) potential destruction of one-third of anchialine pond habitat on the island; (3) inadequate assessment of proposed project alternatives and practicable alternatives; (4) potential violation of section 404 of the Clean Water Act based on interpretation of section 404(b)(1) Guidelines; and (5) inadequate disclosure of all development proposals and ensuing environmental impacts for Waikoloa Beach Resort properties.

ERP No. D-MMS-A02197-AK, Rating EO2, 1986 Norton Basin, OCS Oil and Gas Sale No. 100 Lease Offering, Bering Sea, AK. **SUMMARY:** EPA is concerned with the scope and potential environmental impacts of the proposed action. Alternative 1, to offer for lease

1755 blocks in the Norton Basin Planning Area. Three deferral alternatives for tracts in the Northern and Western portions of the Planning Area and offshore of the Yukon Delta deserve special consideration. EPA believes effective implementation of mitigation measures as well as deferring the above 3 areas is required to resolve its environmental objections regarding the lease sale. EPA believes that the significance of impacts from the action are understated as a result of averaging impacts from various factors and across over species, directly linking the probability of an impact's occurrence with the significance level, and not fully accounting for ecosystem dynamics. EPA has suggested how the impacts assessment can be improved.

ERP No. D–SCS–G36128–LA, Rating LO, Bayou Mallet Watershed Flood Prevention Project, Mermentau River Basin, LA. **SUMMARY:** EPA has not identified any potential environmental impacts requiring changes to the proposal. EPA has requested additional information in the areas of alternative screening and impact assessment of section 404 jurisdictional wetlands.

Final EISs

ERP No. F–AFS–G82003–NM, Western Spruce Budworm Mgmt. Program, Carson Nat'l Forest, NM. **SUMMARY:** EPA has no objections to implementation of the program as proposed with the mitigation measures as described.

ERP No. FA–COE–F36006–MN, Chaska Flood Control Plan, Minnesota R., MN. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FS–COE–F36149–MN, East Grand Forks Flood Control Plan, Red and Red Lake Rivers, MN. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F–FHW–G40104–TX, Farm to Market Highway 734/Parmer Lane Highway Extension, Construction, Farm to Market Highway 1325 to Ranch to Market Highway 620, TX. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS. EPA has not identified any new issues of concern with regard to the proposed action.

Dated: June 4, 1985.

Allan Hirsch,

Director, Office of Federal Activities

[FR Doc. 85–13812 Filed 6–6–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing, Catherine Juanita Henry et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No	MM Docket No
A Catherine Juanita Henry, San Diego, CA	BPH-831118AP	85-140
B Ann P. Butler San Diego, CA	BPH-831202AQ	(Dismissed)
C Radio Representatives Inc., San Diego CA	BPH-831216AE	
D Robert Owen Royster San Diego, CA	BPH-840723IE	
E Harbor Communications, a California limited partnership, San Diego, CA	BPH-840725IB	
F Kimberly Ann Sniffen, San Diego, CA	BPH-840725ID	
G Arden Lawrence Sniffen, Jr., San Diego, CA	BPH-840725IE	
H California Women in Radio, A California limited partnership, San Diego, CA	BPH-840725IF	
I Michael J Koleszar, San Diego, CA	BPH-840725IG	
J Juan Jose Escribano Miro, San Diego, CA	BPH-840727IA	
K FM Women Inc., San Diego, CA	BPH-840727IB	
L Earnel Durden and June Durden d.b.a. Durden Broadcasting Company, San Diego, CA	BPH-840727ID	
M Roger Agnew and Jacqueline Sachs d.b.a. Agnew-Sachs Broadcasting (San Diego), San Diego CA	BPH-840727IE	
N Minority Broadcasters of San Diego, San Diego, CA	BPH-840727IF	(Dismissed)
O Simpson Communications LTD., a limited partnership, San Diego, CA	BPH-840727IG	
P National University, San Diego, CA	BPH-840727IH	
Q Evelyn Jackson, et al. d b a Kaliedescope Communications Committee, San Diego, CA	BPH-840727II	
R Echeverria Broadcasting Corporation, San Diego, CA	BPH-840727IJ	
S Esmeralda Broadcasting, Inc., San Diego, CA	BPH-840727IK	
T KLOK Radio, a limited partnership San Diego CA	BPH-840727IL	(Dismissed)
U Amigos de San Diego, a California limited partnership, San Diego, CA	BPH-840727IM	
V M Earlene Stebbins and Paul Stebbins d b.a Stebbins Communications a partnership, San Diego, CA	BPH-840727IN	
W Catherine Flynn and Edward J Flynn d.b.a C&E Partners, San Diego, CA	BPH-840727IO	
X Representative Media, limited partnership, San Diego, CA	BPH-840727IP	
Y Radio Onda Frontenza Inc., San Diego, CA	BPH-840727IQ	
Z Jeannie P. Rivkin et al., d.b.a Seacoast Broadcasting Co., San Diego, CA	BPH-840727IR	
AA Triple Bogey Broadcasting, a California limited partnership, San Diego, CA	BPH-840727IT	
BB New Sounds of San Diego, Inc San Diego, CA	BPH-840727IU	
CC San Diego Broadcasting, a California limited partnership, San Diego, CA	BPH-840727IV	
DD American Media Group, limited partnership, San Diego, CA	BPH-840727IW	
EE Cheryle Ann Hangartner d.b.a Axis Broadcasting Co., San Diego, CA	BPH-840727IX	
FF San Ysidro Communications, a limited partnership, San Diego, CA	BPH-840727IY	
GG HG Communications a limited partnership, San Diego, CA	BPH-840727IZ	
HH Colom Communications Corporation, San Diego, CA	BPH-840727JA	
II Doris S.M Yee, San Diego, CA	BPH-840727JB	
JJ Tri-Com Productions, Inc San Diego, CA	BPH-840727JC	
KK San Diego ComTrends, Inc San Diego CA	BPH-840727JD	
LL Kenmax LTD of California a limited partnership, San Diego, CA	BPH-840727JG	
MM Warren Broadcasting LTD., a limited partnership, San Diego, CA	BPH-840727JH	
NN Vista Grande Broadcasting, a California limited partnership, San Diego CA	BPH-840727JI	
OO Diane Osequera, San Diego, CA	BPH-840727JJ	
PP Soledad Broadcasting Company San Diego, CA	BPH-840727JK	

Applicant, city and State	File No	MM Docket No
CQ Maria Elena Laso Bradley San Diego, CA	BPH-840727JL	
RR Mission Valley Radio, a limited partnership, San Diego, CA	BPH-840727JM	
SS Louise Herletz San Diego, CA	BPH-840727JN	
TT Steve Vinssmo and Cynthia Vinssmo, San Diego, CA	BPH-840727JO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 F.R. 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. See Appendix, I, Q, BB, EE
2. See Appendix, C
3. See Appendix, C
4. Air Hazard, MM, NN
5. Comparative, All Applicants
6. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 247, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,[1] the applicant(s) is financially qualified: (I) Koleszar, (Q) KCC, (BB) New Sounds, (EE) Axis.

2. To determine whether (C)RRI has failed to comply with the provisions of §§ 1.65 and 73.3514 of the Commission's Rules, requiring complete, up-to-date information in all applications and, if so, the effect of such noncompliance on the applicant's comparative qualifications.

3. To determine the facts and circumstances surrounding the conviction of Norwood J. Patterson for violation of Federal laws pertaining to the withholding of employees' income taxes, and the effect, if any, on the comparative or absolute qualifications of RRI to be a Commission licensee.

[FR Doc. 85-13700 Filed 6-6-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Paragraph 8 reads as follows:

[CC Docket No. 85-139 et al.]

Lett Electronics, Inc. and United Telespectrum, Inc.; Memorandum Opinion and Order Designating Applications for Hearing

Adopted May 2, 1985.

Released May 20, 1985.

By the Common Carrier Bureau.

In re Applications of Lett Electronics, Inc., for a construction permit for an additional facility for Station KTS250 to operate on frequency 158.10 MHz in the Public Land Mobile Service near Hutchinson, Kansas, CC Docket No. 85-139, File No. 24422-CD-P/L-84; and United Telespectrum, Inc., for a construction permit for new facilities to operate on frequency 158.10 MHz in the Public Land Mobile Service near Hutchinson and Newton, Kansas, File No. 24794-CD-P-(B)-84.

1. Before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned, mutually exclusive applications of Lett Electronics, Inc. (Lett) and United Telespectrum, Inc. (United). Lett's application was filed on July 25, 1984 and was accepted by Public Notice of August 15, 1984. United's application was filed on August 17, 1984 and was accepted by Public Notice of September 5, 1984. United filed a Petition to Deny Lett's application and Lett filed a reply. The applications of Lett and United were found to be mutually exclusive and were scheduled for disposition by lottery to be held February 22, 1985.[1] On February 18, 1985, United filed a letter requesting that its application be withdrawn from the scheduled lottery and be set for comparative consideration with Lett's application pursuant to § 22. 33(c) of the Commission's Rules.[2] The applications were withdrawn from the scheduled lottery. Lett filed its letter reply on March 8, 1985.

2. In support of its request, United argues that the applications should be scheduled for comparative hearing because it proposes to operate a wide area paging system and its proposed location at Newton, Kansas is located within 40 miles of its existing transmitter location in Wichita, Kansas that also operates on the proposed frequency 158.10 MHz. Accordingly, United has demonstrated that its proposal qualifies for a comparative consideration request under § 22.33(c)(2). We further find that the public interest would be served by designating the applications of United and Lett for comparative hearing. Accordingly, United's request for comparative hearing will be granted.

3. United's Petition to Deny challenges the legality of the Interim Procedures established by the Commission for applicants requesting waivers of the separate frequency allocation during the pendency of the "fence" rulemaking.[3] United also argues that Lett, a non-wireline carrier, has not established entitlement to a waiver of § 22.501 to operate on a frequency reserved for wireline carriers. United's first argument was disposed of by the Commission in its *Report and Order on Reconsideration* in CC Dockets 83-1146 and 80-57[4] where reconsideration of the Interim Procedures was denied. The Commission also there dropped the separate allocation structure for wireline and non-wireline carriers effective January 17, 1985. United's argument respecting the sufficiency of Lett's waiver request is, therefore, moot since a waiver is no longer required. *See: Lawrence Paging and Mobilphone*, Mimeo 2380, released February 5, 1985. Accordingly, United's Petition will be denied.

4. After careful examination of the applications, we find that both United and Lett are legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that Lett's application (File No. 24422-CD-P/L-84) and United's application (File No. 24794-CD-P-(B)-84) are electrically mutually exclusive and should be designated for

[1] Lottery Notice, Mimeo 2032, January 18, 1985. The Lottery Notice included United's application for a third facility at Emporia, Kansas. It was subsequently determined that United's Emporia application was not mutually exclusive with Lett's application. Accordingly, United's application was split with only the (B) portion respecting Hutchinson and Newton, Kansas involved herein.

[2] Section 22. 33(c) permits a mutually exclusive applicant proposing to expand an authorized station in certain described circumstances to request designation for a comparative hearing.

[3] *Report and Order*, CC Docket 80-57, *Revision of Part 22*, 95 FCC 2d 769, 825 (1983).

[4] FCC 84-485, mimeo 35146 (released December 11, 1984).

comparative hearing to determine which applicant would best serve the public interest.

5. Accordingly, it is ordered, that the Petition to Deny filed by United Telespectrum, Inc. is denied.

6. It is further ordered, that the request for comparative consideration filed by United Telespectrum, Inc. is granted.

7. It is further ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the application of Lett Electronics, Inc., File No. 24422-CD-P/L-84, and the application of United Telespectrum, Inc., File No. 24794-CD-P-(B)-84, to operate on frequency 158.10 MHz, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[5] based upon the standards set forth in § 22.504(a) of the Commission's Rules [6] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

8. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

9. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

10. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

11. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

12. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-13701 Filed 6-6-85; 8:45 am]

BILLING CODE 6712-01-M

[5] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[6] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

FEDERAL RESERVE SYSTEM

Hamptons Bancshares Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hamptons Bancshares Inc.*, East Hampton, New York; to engage *de novo* through its subsidiary, Hamptons Mortgage Corp., Riverhead, New York, in the activities of originating and servicing real estate mortgage loans.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Belmont Bancorp.*, Bridgeport, Ohio; to engage *de novo* through its subsidiary, Belmont Financial Network, Inc., St. Clairsville, Ohio, in the activities of leasing personal or real property, and management consulting to depository institutions.

Board of Governors of the Federal Reserve System, June 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13711 Filed 6-6-85; 8:45 am]

BILLING CODE 6210-01-M

Madison Bank Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 1, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Madison Bank Corp.*, Madison, Georgia; to become a bank holding company by acquiring 96.35 percent of the voting shares of Bank of Madison, Madison, Georgia.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Citizens Bancorporation of New Ulm, Inc.*, New Ulm, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens Bank of New Ulm, New Ulm, Minnesota.

2. *Citizens State Bank at Mohall Employee Stock Ownership Plan*, Mohall, North Dakota; to acquire an additional 21.25 percent of the voting shares of CSB Bancshares, Inc., Mohall, North Dakota, thereby indirectly acquiring Citizens State Bank at Mohall, Mohall, North Dakota.

Board of Governors of the Federal Reserve System, June 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13709 Filed 6-6-85; 8:45 am]

BILLING CODE 6210-01-M

The Marine Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, The Marine Trust Company, N.A., Milwaukee, Wisconsin, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means.

Board of Governors of the Federal Reserve System, June 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13710 Filed 6-6-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 31, 1985.

Health Care Financing Administration

Subject: Request for Termination of Premium Hospital and/or Supplementary Medical Insurance—HCFA-1763—Extension (0938-0025)
Respondents: Individuals or households
Subject: State Medicaid Quality Control Sampling Plans—HCFA-317—Revision (0938-0146)
Respondents: State/local governments
Subject: Applications for Federal Assistance-Research and Demonstration Grants—HCFA-P6-10 and 11—Extension (0938-0078)
Respondents: State/local governments, non-profit institutions
Subject: Nationwide Evaluation of Medicaid Competition Demonstrations-Medicaid Consumer Survey—New
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Program Inspection of Head Start Administrative Costs—New
Respondents: Head Start grantees
Subject: National Diagnosis Related Group (DRG) Validation Study—New
Respondents: Hospitals
OMB Desk Officer: Judy A. McIntosh

Social Security Administration

Subject: 1985 Supplemental Security Income Survey on Continuing Medicaid Eligibility for Selected Groups of Recipients—NEW
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: May 31, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-13604 Filed 6-6-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85F-0092]

Squirt & Co.: Filing of Food Additive

Correction

In the issue of Thursday, May 16, 1985, on page 20502 in the second column a correction to FR Doc. 85-7765 appeared. The correction was inaccurrate and is corrected as follows:

On page 20502, second column, the formula should read

"(1-methyl *N*-L-a-aspartyl-L-".

BILLING CODE 1505-01-M

[Docket No. 84V-0380]

Availability of Approved Variance for FluoroScan/TM Fluoroscopic Equipment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for fluoroscopic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the model FluoroScan/TM fluoroscopic equipment manufactured by Health Mate, Inc. The product is a small-format, low-intensity fluoroscopic system for real-time x-ray imaging in miniature C-arm configuration.

DATES: The variance became effective March 21, 1985, and ends March 21, 1990.

ADDRESS: Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Health Mate, Inc., 3175 MacArthur Blvd., Northbrook, IL 60062, a variance from § 1020.32(f) (21 CFR 1020.32(f)) of the performance standard for fluoroscopic equipment for the model FluoroScan/TM fluoroscopic equipment.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.32(f) that requires that the product be provided with a means to limit the source-to-skin distance to not less than 30 centimeters for mobile fluoroscopes and to not less than 20 centimeters for image-intensified fluoroscopes intended for specific surgical applications. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1020.32(f) is not appropriate for the product, and (2) suitable means of radiation safety and protection will be provided by (a) constraints on the existing equipment design, (b) conditions imposed by the terms of the variance, and (c) supplemental information provided to users. Therefore, on March 21, 1985, CDRH approved the requested variance by a letter from the Deputy Director of CDRH to the manufacturer.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-13716 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85V-0047]

Availability of Approved Variance for GYROSCAN Magnetic Resonance System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the GYROSCAN Magnetic Resonance System manufactured by Philips Medical Systems, Inc. The laser product, which incorporates a Class II helium-neon (HeNe) laser system, is used for patient alignment.

DATES: The variance became effective March 20, 1985, and ends March 20, 1990.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Philips Medical Systems, Inc., 710 Bridgeport Ave., Shelton, CT 06484, a variance from § 1040.10(f)(6) (21 CFR 1040.10(f)(6)) of the performance standard for laser products for the GYROSCAN Magnetic Resonance System.

The specific requirements of the standard for which a variance has been granted pertain to the provisions of § 1010.10(f)(6) that otherwise would require that the laser product be provided with one or more permanently attached means, other than laser energy source switches, electrical supply main connectors, or the key-actuated master control, capable of preventing access by any part of the human body to all laser and collateral radiation in excess of the accessible emission limits of Class I and Table III of § 1040.10. All other provisions of the performance standard remain applicable to the laser product.

CDRH has determined that (1) the requirement of § 1040.10(f)(6) is not appropriate for the product, and (2) suitable means of radiation safety and protection are provided by the existing equipment design and by conditions imposed by the terms of the variance. Therefore, on March 20, 1985, CDRH approved the requested variance by a

letter from the Deputy Director of CDRH to the manufacturer.

So that the product may show evidence of the variance approved for the manufacturer, the GYROSCAN Magnetic Resonance System shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–13718 Filed 6–6–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84V–0401]

Availability of Approved Variance for LOrad Mammographic System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for radiographic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the LOrad Mammographic System utilizing the Micronix microfocus x-ray tube. The system is manufactured by LOrad Medical Systems, Inc.

DATES: The variance became effective March 25, 1985, and ends March 25, 1990.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted LOrad Medical Systems, Inc., 98 Mill Plain Rd., Danbury, CN 06811, a variance from § 1020.31(h) (21 CFR 1020.31(h)) of the performance standard for radiographic equipment for the LOrad Mammographic System utilizing the Micronix microfocus x-ray tube.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.31(h)(2) requiring that a mobile or portable x-ray system other than dental be provided with a means to limit the source-to-skin distance to not less than 30 centimeters. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1020.31(h)(2) is not appropriate for the product, and (2) suitable means of radiation safety and protection will be provided by (a) constraint on the existing equipment design, (b) conditions imposed by the terms of the variance, and (c) supplemental information provided to the users. Therefore, on March 25, 1985, CDRH approved the requested variance by a letter from the Duputy Director of CDRH to the manufacturer.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–13714 Filed 6–6–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket Nos. 84V–0074, et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for certain specified sunlamps and sunlamp products manufactured or imported by six organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below.

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted each of the six organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted to allow the listed products to vary from that portion of § 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for nominally ultraviolet-A (UVA) sumlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at

wavelengths shorter than 320 nanometers. CDRH's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturers of UVA sunlamp products does not result in severe, acute skin burns or corneal injury. Therefore, the time interval requirement of § 1040.20(c)(2)(ii) is not appropriate for these UVA products. However, CDRH notes that, even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unecessary risk to chemically sensitized lenses, of cornea damage, or of long-term development of lens opacities.

CDRH has determined that suitable or alternate means of radiation protection are provided by (1) constraints on the physical and optical design of the products and (2) warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, CDRH approved the requested variances by a letter from the Deputy Director of CDRH to each manufacturer or importer.

So that the product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance both of which are specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/termination date
84V-0074 (Amendment)	Eurotan International, 3701 Montrose Blvd., Houston, Texas 77006	UVA sunlamp products manufactured or imported by Eurotan International.	Apr. 15, 1985–May 7, 1989
85V-0005	SolTech USA, Inc., 1850 South Main, South Jacksonville, Illinois 62650	UVA sunlamp products manufactured or imported by EHVAK Maschinen, GmbH.	Mar. 18, 1985–Mar. 18,1990
85V-0027	Topsolo Ltd., Unit 33, Comet Road, Leyland, Lancs, United Kingdom.	UVA sunlamp products manufactured or imported by Topsolo, Ltd.	Feb. 21, 1985–Feb. 21, 1990
85V-0069	Sun Health Systems Int., 7357-59 Washington Avenue, South Minneapolis, Minnesota 55435.	UVA sunlamp products manufactured or imported by Sun Health Systems Int	Mar. 7, 1985–Mar. 7, 1990
85V-0105	Sunmaker Tanning Systems, Ltd., Route 146 & Moe Road, P.O Box 2219, Clifton Park, New York 12065.	UVA sunlamp products manufactured or imported by Sunmaker Tanning Systems Ltd.	Mar. 28, 1985–Mar 28, 1990
85V-0130	NovaSun USA, Inc., 310 Madison Avenue, Suite 2022, New York, New York 10017.	UVA sunlamp products manufactured or imported by NovaSun USA, Inc.	Apr 10, 1985–Apr. 10, 1990

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-13713 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and date:

June 24, 1985, 5:00 P.M.–7:00 P.M.
June 25, 1985, 9:00 A.M.–5:00 P.M.
June 26, 1985, 9:00 A.M.–5:00 P.M.

Place: Capitol Holiday Inn, 550 C Street, SW, Washington, D.C. 20024.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: Reports by the Steering Committee of the President's Committee on Mental Retardation (PCMR) will be given. The PCMR plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact person for more information: Jim F. Young, 330 Independence Ave., SW, Room 4061—North, Washington, D.C. 20201, (202) 245–7634.

Dated: June 4, 1985.

Jim F. Young,

Acting Executive Director, PCMR.

[FR Doc. 85-13787 Filed 6-6-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[5-00262-GP5-073]

Alaska Native Claims Selection; Sealaska Corp.

Correction

In FR Doc. 85-11855, appearing on page 20505 in the issue of Thursday, May 16, 1985, make the following correction: In the second line of the first paragraph, "32 CFR" should have read "43 CFR."

BILLING CODE 1505-01-M

Rosewell District, NM; Intent To Prepare a Management Framework Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Management Framework Plan Amendment.

SUMMARY: The Bureau of Land Management, Roswell Resource Area, New Mexico will begin preparation of an Environmental Assessment (EA) to amend the Fort Stanton Management Framework Plan (MFP). The EA will address a proposal to modify an existing MFP decision which limits uses on the Fort Stanton Reservation to research and recreational purpose only. Expanding regional, economic and population demands have created the

need to open the area for the consideration of other land use authorizations.

DATE: The public is invited to express their comments on the proposal to amend the MFP. Written comments must be received by July 12, 1985. An additional public comment period will be provided at the time the EA is completed.

ADDRESS: Send comments to: BLM, Roswell Resource Area, P.O. Drawer 1857, Roswell, NM 88201.

SUPPLEMENTARY INFORMATION: The Fort Stanton Reservation encompasses 26,381 acres located approximately 70 miles west of Roswell adjacent to the Lincoln National Forest in Lincoln County. Fort Stanton was withdrawn by Executive Order in 1899 for use as a military hospital. It was used for that purpose until 1953 when the hospital was closed. In 1956, administrative jurisdiction of the area was transferred to the Bureau of Land Management. New Mexico State University, under an agreement with the BLM, has utilized the reservation for range and wildlife research purposes since 1963. The area is also used extensively for recreational purposes including caving, hiking and hunting.

FOR FURTHER INFORMATION CONTACT: Phil Kirk, Resource Area Manager, P.O. Drawer 1857, Roswell, NM 88201 (505) 624–1790.

Dated: May 30, 1985.

Monte G. Jordan,

Acting State Director.

[FR Doc. 85–13665 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–FB–M

[AA–6661–A]

Alaska Native Claims Selection; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Eklutna, Inc. for approximately 560 acres. The lands involved are:

Sward Meridian, Alaska

T. 16 N., R. 1 E. (Surveyed).
Sec. 29. S2NE4. W2. SE4.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 8, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–13755 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–84711]

Realty Action; Fairbanks District, Alaska

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Leasing of Public Lands near Coldfoot, Alaska.

SUMMARY: The Bureau of Land Management is proposing an application program for the competitive leasing of approximately 20 acres of public land near Coldfoot, Alaska, under authority of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732). This land would be used for commercially operated facilities to support organized, small-group tours within the Utility Corridor, north of the Yukon River.

ADDRESS: Additional information may be obtained by calling William Clithero at (907) 356–5134 or by writing to him at the Yukon Resource Area, Bureau of Land Management, 1541 Gaffnery Road, Fairbanks, Alaska 99703. An information packet for interested applicants is available at the Yukon Resource Area office, which is located on Fort Wainwright.

SUPPLEMENTARY INFORMATION: 1. Interested applicants may select a site of approximately 20 acres within the following described federal lands:

T. 28 N., R. 12 W., Fairbanks Meridan (protracted)
All of Sections 3, 10, 15, 21, and 22 and
Those portions of Sections 4, 9, 16, and 20 lying to the east of the Middle Fork Koyukuk.
T. 29 N., R. 12 W., Fairbanks Meridan (protracted)
All of Sections 23, 24, and 26 and
Those portions of Sections 27, 34, and 35 lying to the east of the Middle Fork Koyukuk.

2. Interested parties may submit comments to the Yukon Resource Area, Area Manager, 1541 Gaffney Road, Fairbanks, Alaska 99703, for a period of 45 days from the publication of this Notice in the **Federal Register.** Comments will be reviewed by the Fairbanks District Manager, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

3. Applications for the proposed lease may be submittited to the Area Manager, at the above address, after the 45-day period.

4. If it is determined that a lease will be issued, all applicants will required to reimburse the BLM for the cost of processing the applications.

5. The successful applicant will be required to pay fair market value rental for the use of the land.

Donald E. Runberg,

Acting District Manager.

[FR Doc. 85–13620 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

National Outer Continental Shelf Advisory Board, Pacific States Regional Technical Working Group Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Pacific OCS Region, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463.

The Pacific Regional Technical Working Group Committee of the National OCS Advisory Board is scheduled to meet July 9, 1985 from 8:00 a.m. to 4:00 p.m., at the Biltmore Hotel, Roman Room, 515 South Olive Street, Los Angeles, California.

The Agenda for the meeting covers the following topics:

Update: Draft Proposed 5-Year Oil & Gas Leasing Program/Lease sale 95
Joint Interagency Modeling Study
South Central Coastal Cooperative Air Modeling Project
Draft Fiscal Year 1987 Pacific OCS Regional Environmental Studies Plan
Update: Strategic & International Minerals Program

Probabilistic Resource Estimates—OCS Status/Issues for Exploration/
Development on the Pacific OCS:
Santa Ynez
Point Arguello
Point Pedernales
San Miguel
Drilling Operations and Safety Inspections on the Pacific OCS

Minutes of the meeting will be available for public inspection and copying at the following locations:

Pacific OCS Region, 1340 West Sixth Street, Room 275, Los Angeles, CA 90017
Office of Offshore Information Service, Minerals Management Service, Department of the Interior, Washington, DC 20240

Dated: May 30, 1985.

Cyril V. Bird,

Acting Director, Pacific OCS Region.

[FR Doc. 85-13669 Filed 6-6-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-250X)]

Burlington Northern Railroad Co.; Abandonment in Clatsop County, OR; Exemption

Burlington Nothern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.67-mile line of railroad between milepost 101.92 near Astoria and milepost 108.59 near Camp Clatsop, in Clatsop County, OR.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State of local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period preceding this notice. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on July 7, 1985, (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by July 17, 1985, and petition for reconsideration, including environmental, energy and public use concerns, must be filed by July 27, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to Applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 3, 1985.

By the Commission, Richard Lewis, Associate Director, Office of Proceedings

James H. Bayne,

Secretary.

[FR Doc. 85-13808 Filed 6-6-85; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide an updated notice as required by 49 U.S.C. 10524(b) (1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b)

1. Parent Corporation and address of principal office: Dawn Food Products, Inc., 2021 Micor Drive, Jackson, MI. 49203

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Dawn/Baker Boy, Inc.—Indiana.
(ii) Dawn/Baker Boy, Inc.—(Denver,) *Colorado.*
(iii) Dawn/Baker Boy, Inc.—(Kansas City), *Missouri.*
(iiii) Dawn/Baker Boy, Inc.—(Glendale,) *Arizona.*
(iiiii) Dawn/Baker Boy, Inc.—(Albuquerque,), *New Mexico.*
(iiiiii) Daybreak Distributors, Ltd.—(Des Moines,) *Iowa.*

1. Parent corporation and address of principal office: LADD Furniture, Inc., #1 Plaza Center, P.O. Box HP3, High Point, North Carolina 27261.

2. Wholly-owned subsidiaries which will participate in the operation and states of incorporation:

	State of incorporation
LADD Transportation, Inc., #1 Plaza Center, P.O. Box HP3, High Point, North Carolina 27261	North Carolina
Clayton-Marcus Company, Inc., Route 5, Hwy 127-N, Hickory, North Carolina 28601	North Carolina
Barclay Furniture Co., P.O. Box 208 6th Avenue, Sherman, Mississippi 38869	Mississippi

3. Wholly-owned divisions which will participate in the operation:

Lea Industries, #1 Plaza Center, P.O. Box HP3, High Point, North Carolona 27261
Daystrom Furniture, P.O. Box 130, South Boston, Virginia 24592
Lea Lumber & Plywood Co., Route #3, Box 57, Windsor, North Carolina 27983
American Drew, #1 Plaza Center, P.O. Box HP3, High Point, NC 27261

James H. Bayne,

Secretary.

[FR Doc. 85-13807 Filed 6-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30664]

Colorado and Eastern Railroad Company—Purchase (Portion)—Chicago, Milwaukee, St. Paul and Pacific Railorad Company, Debtor at Ottumwa, IA

AGENCY: Interstate Commerce Commission.

ACTION: Purchase proposal accepted for consideration.

SUMMARY: The Commission accepts for consideration the proposal by the Colorado and Eastern Railroad Company (C&E) to purchase approximately 2.82 miles of main line and 1.82 miles of side track in Ottumwa, IA from Richard B. Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul Railroad Company, (Debtor).

DATES: An original and 10 copies of verified statements supporting or opposing the proposal must be filed by June 15, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30664 to:

(1) Office of the Secretary, CCase Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.
(2) Applicant's representative: Gary W. Flanders, Colorado and Eastern Railroad Company, 76 South Sierre Madre, Suite 230, Colorado Springs, CO 80903.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: This proceeding is governed by section 5(b) of the Milwaukee Railroad Restructuring Act (MRR), 45 U.S.C. 904(b) and the procedures in 49 CFR Part 1180, Subpart B. In Order No. 808, Debtor's

Recorganization Court directed us to act on C&E's application by June 27, 1985.

C&S petitioned for waiver of the information requirements of 49 CFR Part 1180, Subpart B. It contends that the proposed purchase is a minor transaction involkving terminal track that would be exempt from Commission jurisdiction under 49 U.S.C. 10907. However, the exemption is not available because the transaction is governed by the MRR. C&E requests that we treat its proposal as if it were an exemption request and waive the information requirements of our regulations.

I will grant the waiver petition. C&E's petition contains the information required by our regulations.

A copy of verified statements must be served on the Attorney General of the United States and the United States Secretary of Transportation.

It is ordered:

1. C&E's petition for waiver is grnated, and the proposal is accepted for consideration.

1. C&E's petition for waiver is granted, and the proposl is accepted for consideration.

2. Parties must comply with all provisions stated above.

3. This decision will be effective on date it is served.

Decided:June 5, 1985.

By the Commission. Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–13982 Filed 6–6–85; 10:37 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Attorney General's Guidelines on Seized and Forfeited Property

AGENCY: Office of the Attorney General, Justice.

ACTION: Notice of Department of Procedures for Seized and Forfeited Property.

SUMMARY: This document sets forth the Department's policy under 21 U.S.C. 881(e) regarding the handling of seized and forfeited property. It is exempt from the notice and comment requirements of the Administration Procedure Act, 5 U.S.C. 553(b) by virtue of 5 U.S.C. 553(a)(2). The Department of Justice has determined that it is not a "major rule" within the meaning of Executive Order No. 12291 or a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(1).

FOR FURTHER INFORMATION CONTACT: Director, Asset Forfeiture Office, Criminal Division, Room 916, Federal Triangle Building, 315 9th Street, NW., Washington, D.C. 20530. (202) 272–6420.

ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY

I. Statement of Policy

The following guidelines are designed to implement certain asset forfeiture provisions of the Comprehensive Crime Control Act of 1984 pertaining to the disposition of forfeited property, the management and use of the Department of Justice Assets Forfeiture Fund, and the discontinuance of federal forfeiture actions to permit forfeiture by State or local procedures.

The statute directs, "The Attorney General shall ensure the equitable transfer . . . of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property."

This authority is consistent with the Department of Justice's purpose of promoting cooperative law enforcement efforts in drug trafficking and other investigations. The Department intends to manage its asset forfeiture program in a manner designed to enhance this Federal, State and local cooperation.

Title 21, United States Code (U.S.C.), section 881(e), authorizes the Attorney General to dispose of forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any Federal, State or local agency pursuant to the Tariff Act of 1930, Title 19, USC, Section 1616; or (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation called the Department of Justice Assets Forfeiture Fund (hereinafter "the Fund"). A decision of the Attorney General regarding placing the forfeited property into official use or transferred the property to another agency is not subject to judicial review.

The Law Enforcement Coordinating Committee program will inform State and local law enforcement agencies as to the procedures for requesting an equitable transfer of forfeited property, help facilities the application for transfer of such property, and see that the spirit and letter of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 are implemented in each Federal district.

II. Definitions

A. "Department of Justice investigative bureau" refers to the investigative unit within the Department of Justice that participated in the investigation and seizure of property and is responsible for the precessing of the forfeiture arising from the seizure.

B. "Head of the Department of Justice investigative bureau" means the head of that bureau or his headquarters-level designee.

C. "Placing property into official use" means use of forfeited property by a Department of Justice bureau for any official purpose.

D. "Property" means tangible property and cash.

E. "Cash" means currency, negotiable instruments and securities.

F. "State and local agencies" means State and local law enforcement agencies.

G. "Appraised value" means fair market value.

III. Use and Transfer of Forfeited Property

A. Retention of Property for Official Use

a. The Attorney General has the authority to retain any civilly or criminally forfeited tangible property for official use by any Department of Justice bureau.

2. No forfeited cash, nor any proceeds from sales of forfeited property may be transferred to, or retained by, federal law enforcement agencies under the provisions of 21 U.S.C. 881(e) for disposition of forfeited property.

3. Payment of liens and mortgages pursuant to an authorization to place property into official use.

a. Liens and mortgages cumulatively amounting to less than one third of the appraised value of the asset and totalling less than $50,000 will be paid from the Fund at the request of the head of the Department investigative bureau.

b. Payments of liens or mortgages that, in the aggregate, total $50,000 or greater or exceed one third of the appraised value of the asset, will be paid from the Fund at the request of the Department of Justice investigative bureau subject to the concurrence of the Deputy Attorney General.

B. Official Use by Department of Justice Investigative Bureau

1. The Attorney General's authority to place tangible property into official use is delegated to the head of the Department of Justice investigative bureau.

a. In making a decision concerning placing forfeited property into official

use, the head of the Department investigative bureau must consider the financial status of the Department of Justice Assets Forfeiture Fund.

b. Exercise of this delegation of authority is subject to concurrence by the Deputy Attorney General for all property appraised at $750,000 or more.

C. Official Use by Other Department of Justice Bureaus

1. If the Department investigative bureau does not choose to place the forfeited property into official use, the Director, United States Marshals Service will determine appropriate disposal, including screening any remaining property suitable for official use by other Department of Justice bureaus.

a. A decision to place such property into official use is subject to concurrence by the Deputy Attorney General for all property appraised at $750,000 or more.

2. If more than one Department of Justice component wants to retain for official use the same piece of seized and forfeited property, the Deputy Attorney General will determine which component may place such property in official use.

D. Transfer of Property to State or Local Law Enforcement Agencies

1. Attorney General's Authority for Equitable Transfer of Seized Property

a. The Act authorizes the Attorney General to transfer forfeited property to state or local law enforcement agencies that directly participated in the acts which led to the seizure or forfeiture.

b. Tangible property not retained for official use by the Department of Justice investigative bureau is eligible for equitable transfer.

c. Where a participating law enforcement agency petitions for a share in the forfeited property, the Attorney General shall determine an equitable transfer of the property that generally reflects the relative contribution of the participating agencies.

2. Procedure for Determining Equitable Transfer

a. Any state or local law enforcement agency that participates in the acts leading to a Department of Justice seizure for forfeiture may file a request for an equitable transfer of the property.

b. The criteria for determining the equitable transfer of the property will be the same for all requests.

c. In all cases the final decision-making authority rests with the Attorney General or his designee.

3. Requests from Participating Law Enforcement Agencies

a. Within thirty days following the seizure for forfeiture, a state or local agency should submit a written request for an equitable transfer of the property subject to forfeiture.

b. This request must be filed with the local or regional office of the Department investigative bureau responsible for processing the forfeiture.

c. The request must include the following information:

(1) Identification of the property against which the claim is made;

(2) Details regarding the requesting agency's participation, including the amount of money and manpower expended by the state or local agency in pursuing the case;

(3) A statement of the intended use for the property;

(4) A designation of the proper fiscal officer to whom cash or check disbursements can be made;

(5) A designation of the proper official to whom transfer documents should be delivered by the United States;

(6) A designation of the proper party to whom possession should be delivered;

(7) A statement indicating that the transfer is not prohibited under the applicable state or local law;

(8) In instances of a joint application by several state or local agencies, the relative share of each state or local agency; and

(9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer.

d. The requesting agency must certify that the information contained in 3(c)(4–7) above is true and correct.

e. Property will be transferred only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific state or local agency.

f. An information copy of any request will be forwarded to the United States Attorney in the district where the transfer request originated.

4. Procedure for Processing Requests for Equitable Transfer

a. In all cases, the Department investigative bureau field unit receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying investigation.

b. The equitable share for a participating state or local agency should generally reflect the contribution of the agency participating directly in any of the acts which led to the seizure or forfeiture of the property, including, but not limited to, the following factors:

(1) Which agency initiated the case;

(2) Which agency identified the asset;

(3) The amount of money and manpower expended by the state or local agency in pursuing the case;

(4) Whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and

(5) Whether or not the state or local agency could have achieved forfeiture under state law, with favorable consideration given to a state or local agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

c. The head of the Department investigative bureau may place tangible property forfeited administratively or judicially into official use in cases in which a state or local agency has filed a request for an equitable share of that property.

(1) In making this decision, the head of the Department investigative bureau must consider the following factors:

(a) The relative needs of both the requesting law enforcement agency and the Department investigative bureau for the particular asset;

(b) The uniqueness of the asset and the likely ability to secure such an asset by other seizures in the near future;

(c) The relative significance of the requesting law enforcement agency's participation in the case, as well as all the other factors pertinent to the determination of equitable distribution as set forth in Part III.B.4.c. above;

(d) The potential of, or likelihood that, the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from other seizures in the near future; and

(e) The impact that a decision to place the property into official use might have on Federal, state and local relations in that District.

5. Decision-Making Authority for Determining Equitable Transfer

a. The equitable distribution of an asset forfeited administratively with an appraised value of $100,000 or less will be determined by the head of the Department investigative bureau.

(1) The Department investigative bureau's field unit shall forward its report and recommendation to the bureau head for decision.

(2) In making this decision, the head of the Department investigative bureau will consider the report and recommendation forwarded by the field

unit and issue to the requesting agency a written ruling on the request.

(3) A copy of the decision document will be forwarded to the United States Attorney, or to the Criminal Division section chief in a Criminal Division case, and to the Director, United States Marshals Service.

(4) A copy of the decision document will be made available upon request to the Director, Asset Forfeiture Office.

b. In the case of all administratively forfeited property with an appraised value greater than $100,000 and with all judicially forfeited property, the evaluation and recommendation will be forwarded to the appropriate United States Attorney or to the Criminal Division section chief in a Criminal Division case.

(1) The equitable distribution of an asset forfeited judicially with an appraised value of $100,000 or less will be determined by the United States Attorney or the Criminal Division section chief.

(2) In making this decision, the United States Attorney or section chief will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and will consult with the United States Marshals Service.

(3) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the Director, United States Marshals Service and the Director, Asset Forfeiture Office.

c. In the case of all property with an appraised value greater than $100,000, the United States Attorney or section chief will forward the evaluation and recommendation of the Department investigative bureau, along with his own recommendation, to the Director, Asset Forfeiture Office, who will determine the equitable distribution of those assets.

(1) In making this decision, the Director will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and the United States Attorney or section chief and will consult with the United States Marshals Service.

(2) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the United States Marshals Service and the United States Attorney or section chief.

d. The Deputy Attorney General will make the final determination of equitable distribution of any asset with an appraised value of $750,000 or greater.

(1) The request will be processed as in 5 c. above.

(2) A copy of the decision document will be forwarded to the Director, Asset Forfeiture Office, the Director, United States Marshals Service, the United States Attorney or section chief and the Department of Justice investigative bureau.

e. In all cases in which judicially forfeited property is located in a judicial district other than where the judicial proceedings are taking place, the party determining the equitable distribution must consult with the respective United States Attorney prior to determining equitable distribution.

6. Proceeds Placed in the Department of Justice Assets Forfeiture Fund

a. If the federal forfeiture action is not deferred, and the property is not placed into official use or transferred to a state or local agency, it will be sold and the net proceeds of sale will be placed in the Assets Forfeiture Fund.

b. Forfeited cash will be placed in the Assets Forfeiture Fund.

c. All Department of Justice bureaus will promptly notify the United States Marshals Service of any facts affecting seized property. Some relevant facts would include bills, invoices, orders of mitigation and remission, orders of sharing with state or local agencies, orders of designation for official use by Department of Justice components, and appraisals. Based upon these and other factors, the United States Marshals Service should appropriately dispose of the property.

7. Disposition of Forfeited Property

a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash.

b. Any property that cannot be used for law enforcement purposes must be liquidated.

c. Where tangible property is transferred to qualifying state or local agencies, monies from the Assets Forfeiture Fund will not be used to pay liens or mortgages on the property, to equip the property for law enforcement purposes, or to pay salaries.

d. The recipient state or local agency must pay the valid liens and mortgages on the forfeited tangible property prior to the transfer of such property.

e. The recipient state or local agency may be required to pay direct expenses pertaining to the seizure prior to the transfer of tangible property.

f. In the event of an interlocutory sale of property pending forfeiture, the Director, United States Marshals Service first must consult with the United States Attorney, Criminal Division section chief or the Director of the Asset Forfeiture Office in the case of judicially forfeited property, or the head of the pertinent Department investigative bureau in the case of administrative forfeitures, to determine the status of any state or local law enforcement agency requests for equitable sharing.

IV. Department of Justice Assets Forfeiture Fund

A. Administration of the Fund

1. The Attorney General delegates the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service. It will operate under guidelines developed by the Subcommittee on Asset Forfeiture of the Department's Forum for Cooperative Strategy and in accordance with Department of Justice financial management policy.

2. The United States Marshals Service will submit to the Deputy Attorney General on a quarterly basis a financial statement as to the current status of the fund.

3. Copies of the quarterly United States Marshals Service statement will be provided to the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service and the Asset Forfeiture Office to assist the recipients in making decisions as to the use and transfer of forfeited property.

B. Payments Allowable Under Department of Justice Assets Forfeiture Fund

1. Forfeiture cash and proceeds from the sale of forfeited property are to be deposited in the Department of Justice Assets Forfeiture Fund.

2. Money from the Fund may be used for the following:

a. Payment of liens and mortgages pursuant to an order of remission or mitigation;

b. Payment of liens and mortgages pursuant to an order to place into official use.

c. Payment of liens and mortgages pursuant to court order.

d. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration, and the Immigration and Naturalization Service.

e. Payment of awards;

f. Purchase of evidence; and

g. Reversion to the United States Treasury at the end of the fiscal year of all amounts in excess of $5,000,000.

C. The Following, in Order of Priority, Will Be the Uses of the Forfeited Cash and the Proceeds of Sale of Forfeited Property

1. Payment of expenses incurred by the Department of Justice for the care,

custody and disposal of the seized and forfeited property;

2. Payment of expenses incurred by the Department of Justice in the seizure and forfeiture of the property;

3. Payment of expenses relative to the detention, inventory, safeguarding, maintenance, or disposal of the seized and forfeited property incurred by state and local agencies which assist in the seizure and forfeiture of the property;

4. Payments of orders of mitigation or remission;

5. Payments for orders of equitable sharing with state or local law enforcement agencies;

6. Payments for liens on vehicles placed into official use;

7. Payment of awards;

8. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration Immigration and Naturalization Service; and

9. Purchase of evidence.

D. Limitation on Use of the Fund

1. The Department of Justice Assets Forfeiture Fund cannot be used to pay any of the following:

a. Salaries; and

b. Where property is transferred to state or local law enforcement agencies,

(1) Liens or mortgages on the property; and

(2) Payments to equip the property for law enforcement purposes.

2. Liens and mortgages shall be paid from the Fund only pursuant to an order of remission or mitigation, an order of the court, or an order to place the property into official use.

V. Discontinuance of Federal Forfeiture Actions

A. Deferral of Federal Judicial Forfeiture Proceedings

1. A decision to forego an federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the concerned investigative bureau.

2. In making this decision, the United States Attorney must consider the status of the Department of Justice Assets Forfeiture Fund.

3. Judicial forfeitures foregone in favor of state or local proceedings are to be reported by the United States Attorney in writing, within five days, to the Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, D.C. 20530.

B. Deferral of Federal Administrative Forfeiture Proceedings

1. A decision to forego a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the Department investigative bureau.

2. In making this decision, the head of the Department investigative bureau must consider the status of the Assets Forfeiture Fund and, where appropriate, consult with the United States Marshals Service.

3. Department of Justice investigative bureaus must develop procedures for recording these decisions and providing reports as required.

VI. United States Customs Service Forfeitures

A. Pursuant to Title 28 United States Code, section 524(c), all proceeds from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after payment of expenses for forfeiture and sale authorized by law are to be deposited in the Department of Justice Assets Forfeiture Fund, except to the extent that the seizure was effected by a United States Customs Service officer or that custody was maintaned by the Customs Service, in which case the provisions of 19 U.S.C. 1613a (Customs Forfeiture Fund) shall apply.

B. To the extent that the United States Marshals Service may have the capacity to do so, it may store and maintain seized property for the Customs Service.

1. Where the United States Marshals Service maintains custody of property seized by a Customs officer, the Customs Service will reimburse the Marshals Service for the expenses of such custody prior to the deposit of the net proceeds into the Customs Forfeiture Fund.

2. In instances where proceeds are to be deposited in the Department of Justice Assets Forfeiture Fund and the Customs Service, as a substitute custodian, has maintaned custody of property seized by the Department of Justice, the Department of Justice will reimburse the Customs Service for the expenses of such custody.

C. Requests for transfers of forfeited property by participating state and local law enforcement agencies in forfeitures where the seizure was effected by a Customs officer of custody was maintained by the Customs Service should be directed pursuant to 19 U.S.C. 1616 to the Customs Service for evaluation and forwarding to the Assistant Secretary of Treasury for Enforcement and Operations with an information copy to the United States Attorney in the district of seizure.

D. In the event of an unresolved dispute concerning whether a given forfeiture constitutes a Customs or Department of Justice forfeiture for purposes of cash or proceeds disposition, or for state and local transfers, the Deputy Attorney General and the Assistant Secretary of Treasury for Enforcement and Operations shall resolve the issue. Where appropriate, they may submit the issue to the Organized Crime Drug Enforcement Task Force Working Group for recommendation.

Dated: May 24, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-13641 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1095-85]

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces four forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the four meetings, together with an explanation of why the first meeting will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATES:

June 24, 25, and 26, 1985, 10:00 a.m. to 12:00 noon; 1:00 p.m. to 3:00 p.m. (public hearing).

June 23, 1985, 4:00 p.m. to 6:00 p.m. (closed meeting).

ADDRESS:

Appellate Courtroom, U.S. Court of International Trade, Second Floor, 1 Federal Plaza, New York, New York 10007 (public hearing);

Empire Room B, New York Penta Hotel, 401 Seventh Avenue, New York, New York 10007 (closed meeting).

FOR FURTHER INFORMATION CONTACT:

James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, NW., Suite 700, Washington, D.C. 20005; (202) 786-3500.

SUPPLEMENTARY INFORMATION: The closed meeting on June 23 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized

criminal groups whose illegal activities are to be described at the public hearings. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearing. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(5) and (7)(C), (D), and (F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

The public hearings on June 24, 25, and 26 are to be open to both the public and press, and are for the purpose of receiving testimony concerning organized criminal groups in the United States involved in illegal gambling activities. The Commission will solicit testimony concerning the scope of activities of such groups, the manner in which their operation are conducted, and the effectiveness of Federal and state statutes and agencies in dealing with such groups. In particular, the Commission will solicit testimony from persons believed to be involved in gambling activities, and law enforcement and other public officials with knowledge of and experience in gambling investigations. Members of the public who wish to present written statements to the Commission are invited to send such statements to the President's Commission on Organized Crime, 1425 K Street NW., Suite 700, Washington, D.C. 20005.

Dated: June 3, 1985.

Edwin Meese III,

Attorney General.

Determination on Closed Meeting

President's Commission on Organized Crime

The President's Commission on Organized Crime will hold a meeting at Empire Room-B, New York Penta Hotel, 401 Seventh Avenue, New York, New York 10007 on June 23, 1985, at 4:00 p.m.

Pursuant to the authority vested in me by section 8 of Pub. L. 98–368, I hereby determime that t..is meeting may be closed to the public, on the ground that each portion of the meeting is exempt from the disclosure requirements of the Federal Advisory Committee Act.

The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described at the public hearings of the Commission scheduled for June 24, 25, and 26, 1985. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearings. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. The discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552(c)(5) and (7)(C), (D), and (F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. This discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

Dated: May 21, 1985.

Irving R. Kaufman,

Chairman of the Commission.

[FR Doc. 85–13640 Filed 6–5–85; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment; Radio Corp. of America

Notice is hereby given that RCA Corporation ("RCA") has filed with the United States District Court for the Southern District of New York a motion to modify the consent decree in *United States* v. *Radio Corporation of America*, Civil No. 97–38; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to modification of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case, filed on November 19, 1954, charged RCA with a conspiracy to restrain trade in the manufacture, distribution, and sale of radio and television products and monopolization of radio-television patent licensing, as well as other anticompetitive patent licensing practices.

The decree, entered October 28, 1958, applies to equipment used in the radio and television industries, together with other transmitting or receiving equipment, and parts, systems, or circuits used in the equipment. It prohibits, among other things, agreements dividing markets or limiting production and agreements not to compete. It also bars RCA from engaging in certain patent licensing practices, including package licensing, grant backs of patent licenses, and price, quantity, or customer restrictions. RCA may not acquire any exclusive patent license or sublicensing rights without court approval. Finally, the decree mandates licenses of a specific group of domestic patents and establishes the terms of those licenses. The proposed modification of the decree would terminate all but the compulsory licensing provisions.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that modification of the decree would serve the public interest. Copies of the complaint, consent decree, RCA's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in

connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Tenth Street and Pennyslvania Avenue NW., Washington, D.C. 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Room 18, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Department. Such comments must be received within sixty days and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 724–7966).

Dated: May 22, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–13726 Filed 6–6–85; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Radio Corporation of America

Notice is hereby given that RCA Corporation ("RCA") has filed with the United States District Court for the District of Delaware a motion to terminate the consent decree in *United States* v. *Radio Corporation of America*, In Equity No. 793; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The petition in this case (filed on May 13, 1930) alleged that RCA, General Electric Company, and Westinghouse Electric Company, together with two other firms later dismissed from the suit, violated sections 1 and 2 of the Sherman Act. The petition alleged that these five firms conspired to restrain trade in and monopolize the radio communication and radio apparatus fields through patent pooling, market division agreements and restrictive licensing practices. The Government amended the petition in 1931 to challenge RCA's foreign radio traffic agreements.

The consent decree, entered on November 21, 1932 and amended July 2, 1935, required General Electric and Westinghouse to sell all RCA stockholdings and to obtain court approval for further purchases. In addition, the decree prohibits RCA from preventing other firms from establishing radio circuits to or from the United States. The decree also prohibits market division agreements and agreements that would limit a defendant's freedom to license its radio patents. Finally, the decree prohibits agreements that would restrict any party from using radio technology in any field.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the petition and consent decree, RCA's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the District of Delaware, U.S. Courthouse, 844 King Street, Wilmington, Delaware 19801. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 724–7966).

Dated: May 23, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–13724 Filed 6–6–85; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Victor Talking Machine Co.

Notice is hereby given that RCA Corporation ("RCA") has filed with the United States District Court for the Southern District of New York a motion to terminate the consent decree in *United States* v. *Victor Talking Machine Co.*, In Equity No. 15–110; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The petition in this case (filed on May 3, 1918) alleged that Victor Talking Machine Co. (later acquired by RCA) had violated Section 1 of the Sherman Act by restricting the prices at which, the persons to whom, and the territories in which Victor's wholesalers and dealers could sell its "talking machines", records, and other products used with the "talking machines."

The decree, entered on the same day the petition was filed, enjoins RCA in perpetuity from imposing any resale restrictions on customers, territories, or prices of "talking machines," records, or other products used with "talking machines." In addition, the decree prohibits RCA from requiring that its dealers sell only such products produced by RCA.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the Petition, consent decree, RCA's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection in the legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Room 18, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days and will be filed with the Court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 724–7966).

Dated: May 22, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–13725 Filed 6–6–85; 8:45 am]

BILLING CODE 4410–01–M

United States v. Rocky Mountain Motor Tariff Bureau, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that the proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the District of Colorado in Civ. No. 84–F–1737, *United States* v. *Rocky Mountain Motor Tariff Bureau, Inc.* The Complaint in this cae alleges that the defendant engaged in a combination and conspiracy to fix, raise, and maintain, in violation of section 1 of the Sherman Act (15 U.S.C. 1), motor carrier rates for the transportation between points in the United States of certain commodities that are exempt from Interstate Commerce Commission jurisdiction.

The proposed Final Judgment prohibits the defendant from submitting to, or allowing any of its rate committees or subcommittees to vote on or consider, any proposal for the transportation of exempt commodities. The defendant is required by the proposed Final Judgment to take certain affirmative steps to assure compliance with the Sherman Act and the terms of the Final Judgment, including purging its tariffs of all rates for the transportation of exempt commodities and sending copies of the Final Judgment to its officers, directors, certain employees, agents, and members. The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant to examine such records for compliance or noncompliance with the Final Judgment.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone 415–556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Colorado

[Civil Action No. 84–F–1737]

United States of America, plaintiff, v. Rocky Mountain Motor Tariff Bureau, Inc., defendant. Filed: May 10, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures & Penalties Act (15 U.S.C. § 16), and without further notice to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. Defendant waives any claims under 28 U.S.C. 2412(d) for attorney fees or expenses in this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to either party in this or any other proceeding.

Dated:

For the Plaintiff: Charles F. Rule, *Acting Assistant Attorney General.* Mark Leddy, and Gary R. Spratling, *Attorneys, U.S. Department of Justice.* Robert N. Miller, *United States Attorney, District of Colorado.*

For the Defendant: William E. Kenworthy, Rocky Mountain Motor Tariff Bureau, Inc., P.O. Box 5746, 4045 Pecos Street, Denver, Colorado 80217, (303) 433–6731: Richard B. Cohen, Bernard H. Meyers; and Barbara J. Nelson, *Attorneys.* U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, CA. 94102, (415) 556–6300.

In the United States District Court for the District of Colorado

[Civil Action No. 84–F–1737]

United States of America, plaintiff, v. Rocky Mountain Motor Tariff Bureau, Inc., defendant.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint herein on August 28, 1984, and plaintiff and defendant, by their respective attorneys, having each consented to the entry of this Final Judgment without trial adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence against, an admission by, or an estoppel against either party with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of both of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "Carrier" means any person authorized pursuant to 49 U.S.C. 10922(b)(1) to provide transportation subject to the jurisdiction of the I.C.C. as a motor carrier of property;

(B) "Commodity group" means specific commodities listed together under a single heading in a tariff;

(C) "Docket bulletin" means a RMB publication which includes public notice of proposed tariff changes to be considered by one or more RMB rate committees or subcommittees;

(D) "Exempt commodity" means any commodity specified in 49 U.S.C. 10526, as amended, as more specifically identified in Appendix A hereto, the transportation of which is not subject to I.C.C. jurisdiction;

(E) "I.C.C." means the Interstate Commerce Commission;

(F) "Person" means any individual, firm, partnership, association, corporation, or any other business or legal entity;

(G) "Proposal" means any request submitted to the RMB to establish a rate, or to change, modify, or revise provisions in an existing rate;

(H) "Rate or rates" means specific rates or rate levels; allowances or charges; rules which solely affect or apply to rates for the transportation of exempt commodities; and the formulation, development, establishment, implementation, application, or maintenance of specific rates, rate levels, allowances, or charges, and procedures or policies pertaining thereto;

(I) "RMB" means the defendant, Rocky Mountain Motor Tariff Bureau, Inc. and any successor thereof;

(J) "RMB rate committee or subcommittee" means any group of persons that includes at least two or more motor carriers that considers rates under procedures authorized by 49 U.S.C. 10706, Agreement No. 60;

(K) "Tariff" means rates, fares, and charges filed with the I.C.C. for the

transportation and handling of commodities; and

(L) "To serve a copy upon the plaintiff" means to mail one copy to Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice, Room 7416, Main Justice Building, Washington, D.C. 20530 and to mail a second copy to Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102.

III

This Final Judgment applies to the defendant, its successors and assigns, and to its subsidiaries, officers, directors, agents, employees, and members, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from:

(A) Allowing any of its rate committees or subcommittees to vote on or consider any proposal for the establishment or changes of rates for the transportation of exempt commodities;

(B) Processing any proposal, for consideration by a rate committee or subcommittee, that includes rates for the transportation of exempt commodities;

(C) Publishing in its docket bulletin any proposal for the establishment or changes of rates for the transportation of exempt commodities;

(D) Publishing rates for the transportation of exempt commodities in any of its tariffs, except rates submitted by a single carrier or joint-line rates submitted by carriers who can participate in the joint route, and that have requested that such rates be published for informational purposes only pursuant to 49 CFR 1312.1(e);

(E) Setting, fixing, maintaining or establishing rates for the transportation of exempt commodities in any of its tariffs;

(F) Taking any other action which has the purpose or effect of setting, fixing, maintaining, or establishing rates for the transportation of exempt commodities between or among competing carriers; and

(G) Recommending to any carrier a rate for the transportation of exempt commodities.

Provided, however, that nothing in paragraphs IV (A), (B), or (C) shall prohibit defendant from complying with paragraph V (A).

Provided further that nothing in this Final Judgment shall prohibit RMB from engaging in action on intrastate rates which is immune from the operations of the antitrust laws under the state action doctrine as set forth in the holding of the United States Supreme Court in *Southern Motor Carriers Rate Conference, Inc.* v. *United States* (March 27, 1985).

V

Defendant is ordered and directed:

(A) To purge from each of its tariffs within ninety (90) days after the entry of this Final Judgment all rates for the transportation of exempt commodities, including but not limited to rates for the transportation of (1) specific exempt commodities, and (2) exempt commodities included within commodity groups; but excluding any rates submitted by a single carrier or joint-line rates submitted by carriers who can participate in the joint route, published in defendant's tariffs pursuant to 49 CFR 1312.1(e) and which are clearly marked as rates which are being published only for informational purposes;

(B) To mail or otherwise furnish, within sixty (60) days after the entry of this Final Judgment, a copy of this Final Judgment to each of (1) its officers and directors; (2) its agents and employees with supervisory or management responsibility, or with responsibility for dockets, docket bulletins, or rates; and (3) its member carriers that participate in one or more of defendant's tariffs; and

(C) To file with the Clerk of the Court and to serve a copy upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit setting forth the fact and manner of compliance with paragraphs V (A) and (B).

VI

Defendant is further ordered and directed:

(A) To establish a reasonable program for dissemination of, education as to, and compliance with this Final Judgment, involving each employee, officer, director, agent, and every rate committee or subcommittee member having responsibility in connection with or authority over dockets, docket bulletins, or rates, and advising them of their obligations under this Final Judgment. This program shall include, but is not limited to, the inclusion, in an appropriate RMB manual or internal document, of a copy of this Final Judgment, in whole or in part or an explanation thereof, and a statement of RMB compliance policy thereunder;

(B) To designate by name, title, and address an individual whom the plaintiff may contact regarding any aspect of compliance by the defendant with any of the obligations imposed by this Final Judgment or regarding any rights of visitation granted by Section VIII of this Final Judgment;

(C) To file with the Clerk of the Court and to serve a copy upon the plaintiff within one-hundred and twenty (120) days after the entry of this Final Judgment, an affidavit setting forth the fact and manner of compliance with paragraphs VI (A) and (B); and

(D) On or about the first year anniversary of the entry of this Final Judgment and annually thereafter for a period of five (5) consecutive years from the date of entry of this Final Judgment, to file with the Clerk of the Court and to serve a copy upon the plaintiff an affidavit setting forth the following information:

(1) The fact and manner of compliance with paragraph VI (A) during the preceding year, and

(2) Any changes in defendant's name, ownership, location, attorney of record or individual designated pursuant to paragraph VI (B) during the preceding year.

VII

Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve on the plaintiff its consent to be bound by this Final Judgment.

VIII

(A) For the purpose of determining or securing compliance with this Final Judgment, upon receipt of a written request from the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall, within sixty (60) days afer receiving the request, subject to any legally recognized privilege:

(1) Permit any duly authorized representative of the Department of Justice access, during the office hours of defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, records, and documents in the possession or in the control of the defendant relating to any of the matters covered by this Final Judgment.

(2) Provide to the Department of Justice copies of any books, ledgers, accounts, correspondence, memoranda, and other documents or records in the possession or under the control of the defendant relating to any of the matters covered by this Final Judgment.

(3) Submit written reports, under oath if requested, with respect to its compliance with this Final Judgment as may, from time to time, be requested, and

(4) Permit any duly authorized representative of the Department of Justice, subject to the reasonable convenience of the defendent and without restraint or interference from it, to interview officers, employees and agents of defendent, who have counsel present, regarding any subject covered by this Final Judgment.

(B) No information or document obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law, provided however, that any representative of the Department of Justice may divulge to the Office of Compliance and Consumer Assistance of the I.C.C. the existence of any practice which is discovered by the means described in this Section VIII and which is believed to violate any of the provisions of the Interstate Commerce Act.

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

X

This Final Judgment shall expire ten (10) years from the date of entry or, with respect to any particular provision, on any earlier date specified.

XI

This Court finds that the entry of this Final Judgment is in the public interest.

So Ordered this _____ day of _____, 1985.

_____

United States District Judge

In the United States District Court for The District of Colorado

[Civil Case No. 84–F–1737]

United States of America, plaintiff, v. Rocky Mountain Motor Tariff Bureau, Inc., defendant.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On August 28, 1984, the United States filed a civil antitrust complaint alleging that the Rocky Mountain Motor Tariff Bureau, Inc. ("RMB") conspired with member carriers to restrain trade in the transportation of commodities specified in 49 U.S.C. 10526 as being exempt from Interstate Commerce Commission (I.C.C.) jurisdiction (hereinafter "exempt commodities") in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint requests the Court to find that the RMB has violated Section 1 of the Sherman Act and further requests the Court to enjoin the continuance of the conspiracy.

II

Practices Giving Rise to the Alleged Violation

The Reed-Bulwinkle Act, which was passed in 1948, authorizes two or more motor carriers to apply to the I.C.C. for approval of an agreement to establish a rate bureau to set certain rates collectively (49 U.S.C. 5b, currently codified at 49 U.S.C. 10706(b)(2)). Upon I.C.C. approval of a rate bureau agreement, a rate bureau may set rates for transportation of commodities subject to the jurisdiction of the I.C.C. Such rate setting activities are not subject to the operation of the antitrust laws, provided that the rate bureau's actions conform to the procedural requirements set forth in the approved agreement. Every rate bureau agreement must reserve to each of the rate bureau's members the right to take a rate action independent of the rates set collectively by the rate bureau (49 U.S.C. 5b(6), currently codified at 49 U.S.C. 10706(b)(2)(B)(ii)). Once a rate is published in a tariff, motor carriers who participate in the tariff are required to charge the rates specified in that tariff (49 U.S.C. 10762).

On July 1, 1980, the Motor Carrier Act of 1980 went into effect. Under the Act, after July 1, 1984, no rate bureau agreement approved pursuant to 49 U.S.C. 10706(b) may provide for discussion of or voting upon single-line rates. (49 U.S.C. 10706(b)(3)(D)). A single-line rate is a rate, charge or allowance proposed by a single motor common carrier of property that is applicable only over its line and for which the transportation can be provided by that carrier. Agreements between competing motor carriers on single-line rates therefore constitute price fixing; a *per se* violation of section 1 of the Sherman Act (15 U.S.C. 1).

Also under the Motor Carrier Act, as of July 1, 1980, the I.C.C. has had no jurisdiction over, and has not been empowered to authorize, collective rate action for the transportation of exempt commodities, whether carried in loads comprised exclusively of exempt commodities or carried in mixed loads, *i.e.*, loads comprised in part of exempt commodities and in part of regulated commodities (49 U.S.C. 10526, 10528). Agreements between competing motor carriers on rates for the transportation of exempt commodities therefore constitute price fixing, a *per se* violation of Section 1 of the Sherman Act (15 U.S.C. 1).

The RMB, which was incorporated in Denver, Colorado, in 1939, had its original operating agreement approved by the I.C.C. in 1958. That agreement was recently amended pursuant to requirements of the Motor Carrier Act of 1980. During all or part of the time covered by the Complaint, RMB's Rules of Procedure Governing Additions, Changes and Eliminations in Tariffs Published by Rocky Mountain Motor Tariff Bureau, Inc. ("Rules") governed the procedure for modification of RMB tariffs. The Rules require, with some exceptions, that all proposals for modification of rates in RMB tariffs be submitted to one of various RMB rate committees for consideration. The RMB By-Laws require that the membership of each rate committee be derived from RMB member motor carriers participating in tariffs under the jurisdiction of each such committee. Committee members, who are competitors of each other, consider each

rate proposal and vote to approve, disapprove, or defer action on the proposal.

The Government contends and was prepared to show at trial that, on numerous occasions following July 1, 1980, RMB rate committees, organized and funded by the RMB and assisted by RMB employees, approved proposals to raise, establish, or extend rates for transportation of exempt commodities. RMB then published all such rates in its tariffs. A representative sample of such collective action wss attached as Exhibit A to the Government's Opposition to Defendant's Motion to Dismiss filed March 7, 1985. Exhibit A was based on minutes of only one of the ten RMB rate committees that were in existence during the period 1980 to 1984.

The Government contends that this conspiracy between Defendant RMB and member carriers fixed, raised, or maintained at artificial and noncompetitive levels, rates for the transportation by motor carriers of various exempt commodities between points in the United States. As a result, competition between and among the co-conspirators engaged in the motor carrier transportation of various exempt commodities between points in the United States has been restrained.

Explanation of the Proposed Final Judgment

The United States and RMB have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute and evidence against, admission by, or an estoppel against either party with respect to any issue of fact or law.

Under the provisions of 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final judgment may not be entered unless the Court finds that entry is in the public interest. Section XI of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the RMB and its members discontinue all unauthorized practices which have the purpose or effect of restraining competition among motor carriers for the transportation of exempt commodities.

A. *Prohibitions and Obligations.* Under Section IV of the proposed Final Judgment, RMB is enjoined and restrained from allowing any of its rate committees or subcommittees to vote on or consider proposals, defined as requests to establish a rate, or to change, modify or revise provisions in an existing rate, for the transportation of exempt commodities. Rates include specific rates or rate levels, allowances or charges, rules which solely affect or apply to rates for the transportation of exempt commodities, and procedures or policies pertaining thereto. The RMB may not submit a proposal for consideration by a rate committee or subcommittee that includes rates for the transportation of exempt commodities. Section IV also enjoins the RMB from publishing in its docket bulletins proposals for the transportation of exempt commodities. The RMB is further enjoined from publishing rates for the transportation of exempt commodities in any of its tariffs, except rates submitted by individual carriers pursuant to 49 CFR 1312.1(e), that is, rates submitted and published for informational purposes only. In addition, the RMB is enjoined from setting, fixing, maintaining, or establishing rates for transportation of exempt commodities in any of its tariffs and from taking any other action which has the purpose or effect of setting, fixing, maintaining, or establishing rates for the transportation of exempt commodities between or among competing carriers. Finally, the RMB is enjoined from recommending to any of its member carriers any rate for the transportation of exempt commodities.

Section IV permits the RMB and its members to take action on intrastate rates for the transportation of exempt commodities, as long as such action is immune from the operation of the antitrust laws under the state action doctrine as set forth in the holding of the United States Supreme Court in *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, ___ U.S. ___ (1985).

Section V of the proposed Final Judgment requires the RMB to purge from each of its tarriffs within 90 days after the entry of the proposed Final Judgment all rates for the transportation of exempt commodities including, but not limited to, rates for the transportation of (1) specific exempt commodities and (2) exempt commodities included within a commodity group, unless the exempt commodity rate is being published pursuant to 49 CFR 1312.1(e) and the RMB has clearly marked in its tariff that such rate is being published for informational purposes only. The RMB is obligated to mail or otherwise furnish within 60 days after entry of the Final Judgment a copy of the Final Judgment to each of (1) its officers and directors, (2) its agents and employees with supervisory or management responsibility, or with responsibility for dockets, docket bulletins, or rates and (3) member motor carriers that participate in one or more of the RMB tariffs. Under this section, the RMB is obligated to file with the Clerk of the Court and to serve a copy upon the United States within 90 days after the date of entry of the Final Judgment an affidavit setting forth the fact and manner of compliance with this Section.

To ensure understanding of the Final Judgment, Section VI of the proposed Final Judgment directs the RMB to establish a reasonable program for dissemination of, education as to, and compliance with the Final Judgment, involving each corporate employee, officer, director, agent, and every rate committee or subcommittee member having responsibility in connection with or authority over dockets, docket bulletins, or rates, and advising them of their obligation under the Final Judgment. The program shall include, but is not limited to, the inclusion in an appropriate RMB manual or internal document of a copy of the Final Judgment, in whole or in part, or an explanation thereof, and a statement of RMB compliance policy thereunder.

B. *Scope of the Proposed Final Judgment.* Section X of the proposed Final Judgment provides that the Final Judgment shall remain in effect for ten (10) years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to the RMB and to the RMB's officers, directors, agents, employees, or members and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

Section VII of the proposed Final Judgment requires that the RMB shall require any purchaser or successor of all, or substantially all, of its assets to agree to be bound by the provisions of the Final Judgment.

Section VI (B) of the proposed Final Judgment requires the RMB to maintain for the effective period of the Final Judgment an agent for service of process in connection with any proceedings relating to the construction , modification, or enforcement of the Final Judgment.

C. *Effect of the Proposed Final Judgment on Competition.* The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment provisions are intended to ensure that neither the RMB nor any of its members take any collective action with respect to rates

for the transportation of exempt commodities.

IV

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages it has suffered as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgement has no *Prima Facie* effect in any lawsuit which may be brought against the RMB.

VI

Procedures Available for Comment on the Proposed Final Judgement

As provided by the Antitrust Procedures and Penalties Act, any person may submit written comments on the proposed Final Judgment to Gary R. Spratling, Chief, San Francisco Field Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, within the sixty day period provided by the Act. The comments and the government's responses to them will be filed with the Court and published in the Federal Register. All comments will be given consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Final Judgment.

VII

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) were considered in formulating this proposal Final Judgment. Consequently, none are filed herewith.

Dated: _____

Gary R. Spratling, Richard B. Cohen, Bernard H. Meyers, Barbara J. Nelson, *Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, (415) 556-6300.*

[FR Doc. 85-13727 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15,665 et al.]

Globe Refractories, Inc., et al.; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Globe Refractories, Inc., Newell, West Virginia; LTV Steel Corporation, Greenwich, Connecticut; Anamax Mining Company, Sahiarita, Arizona; Fairfield Garment Company, Fairfield, Illinois and Harris Graphics Corporation, Newspaper Press Division, Cleveland, Ohio. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-15,665: Globe Refractories, Inc., Newell, West Virginia (May 24, 1985)

TA-W-15,715: LTV Steel Corporation, Greenwich, Connecticut (May 21, 1985)

TA-W-15,626: Anamax Mining Company, Sahuarita, Arizona (May 7, 1985)

TA-W-15,528: Fairfield Garment Company, Fairfield, Illinois (May 1, 1985)

TA-W-15,540: Harris Graphics Corporation, Newspaper Press Division, Cleveland, Ohio (March 15, 1985)

Signed at Washington, D.C. this 31st day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-13773 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Tubular Corporation of America, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 31st day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Tubular Corporation of Amenca, Inc. (company)	Muskogee, OK	5/29/85	5/21/85	TA-W-16,050	Oil country tubular goods.
Thomson Company (company)	Parsons, TN	5/30/85	5/25/85	TA-W-16,051	Men's slacks.
Thomson Company (workers)	Lexington, TN	5/29/85	5/20/85	TA-W-16,052	Men's slacks.
Thomson Company (company)	Eloy, AZ	5/30/85	5/25/85	TA-W-16,053	Men's slacks.
Ingersoll Rand Co., Foundry Div. (IUE)	Painted Post, NY	5/28/85	5/20/85	TA-W-16,054	Compressors.
Transport, Inc. (workers)	Grand Forks, ND	5/29/85	5/20/85	TA-W-16,055	Petroleum carriers.
Western Nuclear, Inc., Jeffrey City Operation (wkrs)	Jeffrey City, WY	5/29/85	5/24/85	TA-W-16,056	Mine and mill uranium.
D B Industries, Inc., (workers)	Lisbon, ME	5/29/85	5/16/85	TA-W-16,057	Shoe sole compound.
DAL Specialties, Inc. (workers)	Ransomville, NY	5/29/85	5/22/85	TA-W-16,058	Hydroxrs aluminum chlonde.
Warner & Swasey—Wiedermann Div. (United Electrical)	King of Prussia, PA	5/30/85	5/23/85	TA-W-16,059	C & c punch press.
Centralab, Inc. (workers)	El Paso, Texas	5/28/85	5/15/85	TA-W-16,060	Electronic components.
Great Western Sugar (Teamsters)	Loveland, CO	5/28/85	5/21/85	TA-W-16,061	Process raw suger beets.
Great Western Sugar (Teamsters)	Denver, CO	5/28/85	5/21/85	TA-W-16,062	Process raw sugar beets.
Modulus Corporation (IUSWA)	Mt Pleasant, PA	5/23/85	5/22/85	TA-W-16,063	Nuts, bolts, industrial fasteners.
Automation Components, Inc. (workers)	Peckville, PA	5/29/85	5/14/85	TA-W-16,064	Fixed ceramic capacitors.
Corona Shirt Mfg Co. (ACTWU)	Corona, NY	4/29/85	4/24/85	TA-W-16,065	Blouses.

[FR Doc. 85-13772 Filed 6-6-85; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision. The Plan provides for the adoption of Federal Standards as State Standards by:

1. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

2. Commission order adopting and designating an effective date.

OSHA regulations (29 CFR 1953.22 and .23) require that states respond to the adoption of new or revised permanent federal standards by state promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted state standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated July 20, 1984, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the state submitted rules and regulations in response to federal OSHA's Occupational Noise Exposure; Hearing Conservation Amendment Provisions of General Industry Standards (29 CFR 1910.95 Occupational Noise Exposure; Hearing Conservation Amendment, 48 FR 9738, March 8, 1983).

The above adoptions of federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, section 27-11-105(a)(viii). In addition, the standards were published in newspapers of general/major circulation throughout the State pursuant to the Wyoming Administrative Procedures Act 1977, section 16-3-103(a).

State standards for 29 CFR Part 1910: Occupational Noise Exposure; Hearing Conservation Amendment was adopted by the Health and Safety Commission of Wyoming on June 24, 1983 (effective July 15, 1983) pursuant to Wyoming statute 1977, section 27-11-105. The state standard on Occupational Noise Exposure; Hearing Conservation Amendment is identical to the federal standard action, with the only exception being omission of non-mandatory provisions of the federal standards.

2. Decision

The above state standard has been reviewed and compared with the relevant federal standard and OSHA has determined that the state standard is identical to the federal standard and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building; 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of state law which permitted public comments, and further public participation would be repetitious.

This decision is effective June 7, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed in Denver, Colorado, this 1st day of May, 1985.

Byron R. Chadwick,
Regional Administrator.

[FR Doc. 85-13771 Filed 6-6-85; 8:45 am]
BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85–102; Exemption Application No. D–3509 et. al.]

Grant of Individual Exemptions; Peoples Bank & Trust, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The Notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Peoples Bank and Trust (Peoples) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 85–102; Exemption Application No. D–3509]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective March 19, 1976, to the commitment and subsequent acquisition by Alaska Electrical Pension Fund (the Electrical Fund) of a participation interest (the NOWESCO Participation) in a commercial loan from Peoples provided that: (1) The sale or exchange of the NOWESCO Participation was expressly approved by a fiduciary independent of Peoples who had authority to manage or control the Electrical Fund assets committed to and invested in the NOWESCO Participation; (2) the terms of the NOWESCO Participation were no less favorable to the Electrical Fund than the terms generally available in arm's-length transactions between unrelated parties; (3) no investment management, advisory, underwriting fee or sales commission or similar compensation was paid to Peoples with regard to such sale or exchange; (4) the decision to invest in the NOWESCO Participation was not part of an arrangement under which a fiduciary of the Electrical Fund, acting with the knowledge of Peoples, caused the transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Electrical Fund; and (5) Peoples will maintain for the duration of the NOWESCO Participation records necessary to determine whether the conditions of this exemption have been met. The records referred to must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Electrical Fund, during normal business hours by: any trustee, investment manager, employer of plan participants, employee organization whose employees are covered by such plan, participant or beneficiary of the Electrical Fund.

EFFECTIVE DATE: This exemption is effective March 19, 1976.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 20, 1985 at 50 FR 11269.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, Telephone (202) 523–8753. (This is not a toll-free number)

The Prudential Property Investment Separate Account (PRISA) Located in Newark, New Jersey

[Prohibited Transaction Exemption 85–103; Exemption Application No. D–5400]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to, effective August 31, 1981, (1) the continuation of a mortgage loan with respect to property owned by 745 Property Investments (the Trust), a real estate investment trust owned by PRISA, where the general account of the Prudential Insurance Company of America (Prudential) is the mortgagee; and (2) the continuation of a wraparound mortgage loan where the Trust is the mortgagee on the wraparound mortgage loan and Prudential's general account is the lender on the underlying or "wrapped" mortgage as described in the notice of pendency; provided that the terms and conditions of the transactions are not less favorable to the Trust than those available in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1985 at 50 FR 13095.

Effective Date: This exemption is effective August 31, 1981.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Contractors' Equipment Company Employees Profit Sharing Plan (the Plan), Located in El Paso, Texas

[Prohibited Transaction Exemption 85–104; Exemption Application No. D–5686]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan to Contractor's Equipment Company of certain real property (the Real Property) for the cash consideration of $19,000, provided the price paid for the Real Property is not

less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 9, 1985 at 50 FR 14046.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408 (a) of the Act and/or section 4975 (c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404 (a) (1) (B) of the Act; nor does it affect the requirement of section 401 (a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of June, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–13749 Filed 6–6–85; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–5229 et al.]

Proposed Exemptions; Peter W. Burk Employee Pension Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the Proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1979) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Peter W. Burk Employee Pension Benefit Plan for Sole Proprietorship (the Plan) Located in Waterloo, Iowa

[Application No. D–5229]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1985). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan by the Plan to Peter W. Burk (Mr. Burk) of $22,000, under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a Keogh plan established by the Peter W. Burk Law Firm (the Employer). Mr. Burk is the owner and sole proprietor of the Employer, and the administrator of the Plan. The Plan's trustee is the National Bank of Waterloo (the Bank). One other employee of the Employer, Eula S. Martin, participates in the Plan, but her funds are kept separate and maintained separately by the Bank. Therefore Mr. Burk is the only Plan participant to be affected by the subject transaction. As of April 8, 1985, the Plan had total assets credited to Mr. Burk's segregated

account having a market value of approximately $99,825.

2. Mr. Burk plans on purchasing for the Employer an IBM XT Personal Computer and supporting hardware and software, and a teleconnect phone system. The total cost for the equipment and software will be $22,000. Mr. Burk wishes to borrow that amount from his account in the Plan. The proposed loan calls for interest at a rate of 12 percent per annum. The loan would be repaid over a 5 year period of time. Equal monthly payments of principal and interest will be made to the Plan by Mr. Burk.

3. The subject loan will be collateralized by a first security interest in the equipment and software to be purchased. Mr. Burk has represented that he will file a Uniform Commercial Code financing statement at the time of the loan evidencing the Plan's security interest in the equipment and software. In addition, the Plan will hold as security a second mortgage on Mr. Burk's residence (the Property). The second mortgage will be recorded with the county recorder for Black Hawk County, Iowa. The Property has been appraised by Ms. Alice Rutland of Winninger Realtors, Waterloo, Iowa, an independent realtor, as having a fair market value of approximately $70,000 as of March 29, 1985. The Property has an outstanding first mortgage with a principal balance of $8,979 as of December 31, 1984. Regular payments have been made since that date, further reducing the principal balance. The first mortgage is held by the First Federal Savings Bank of Walterloo, Iowa.

4. The Bank which is the Plan's independent trustee, has reviewed the terms of the proposed loan and determined that they are appropriate for the Plan and in the Plan's best interest. The Bank represents that, as of April 10, 1985, its commercial department would make the loan to Mr. Burk at an interest rate of 11¼ percent per annum. The Bank also represents that the proposal to secure the loan with a security interest in the equipment to be purchased and with a second mortgage on Mr. Burk's home will result in oversecuring the loan to the Plan's benefit. The Bank will monitor the loan and take whatever action is necessary to enforce the Plan's rights under the loan.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (1) The interest rate is more favorable to the Plan than that required by a third party lender; (2) the loan will be collateralized by a first security interest in the equipment to be purchased and by a second mortgage on Mr. Burk's residence, which has been appraised as having a fair market value more than $60,000 greater than the principal amount outstanding on the first mortgage; (3) Mr. Burk is the only participant in the Plan to be affected by the transaction, and he desires that it be consummated; and (4) the Bank has determined that the transaction is in the Plan's best interest, and it will monitor the loan and take whatever action is necessary to enforce the Plan's rights under the loan.

Notice to Interested Persons: Because Mr. Burk is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute this notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.]

Atkinson Trading Co., Inc. Pension Plan (the Plan) Located in Gallup, New Mexico

[Application No. D–5805]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease beyond June 30, 1984 of certain real property by the Plan to Atkinson Trading Co., Inc., (the Employer) provided the terms and conditions of such lease are as favorable to the Plan as those obtainable in a similar transaction with an unrelated party.

Effective Date: July 26, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit retirement plan with 60 participants. The Plan Administrator is the Pension Committee, which is composed of Joe Atkinson, Joyce Atkinson, and Leroy Atkinson. The Trustee of the Plan is Joe Atkinson. Mr. Atkinson is the trustee for all of the assets of the Plan, except for certain real property which is the subject of the proposed transaction. The Plan had total assets of $1,789,527 as of September 30, 1984. The Employer is an Indian arts and jewelry manufacturer, wholesaler, and retailer operating principally in Gallup, New Mexico.

2. The Plan owns certain real property known as Lot 1, Block F, Burke George Heights Addition to the City of Gallup, New Mexico (the Property). The Property was acquired by the Plan on November 30, 1973 from an unrelated party. The Property represents approximately 10 percent of the total assets of the Plan. The Property was leased to the Employer pursuant to a lease which became effective on September 1, 1974. The Old Lease was for a ten-year period at a rental rate of $1,500 per month.[1]

3. The applicant proposes that the Plan lease the Property to the Employer pursuant to a lease which will have an effective date of July 26, 1984 (the New Lease). The terms of the New Lease are as follows: The New Lease will be for a 10 year period, with two options to renew for additional periods of five years each. The initial monthly rental will be $1,900. This rental amount exceeds the fair market rental value of the Property as determined by an independent appraisal. An independent appraisal (the Appraisal) performed by Kauzlaric-High Realtors, Inc. determined the fair market value of the Property at $188,000 and the fair market rental value of the Property at $1,566 per month as of August 31, 1984.

4. The New Lease provides for a review of the monthly rental every five years on the anniversary date of the commencement of the New Lease to provide for increases in annual rental

[1] The Applicant previously sought exemptive relief from the Department for a proposed transaction which involved the Old Lease, see Exemption Application No. D–2066. By letter of December 4, 1981, the Department closed Exemption Application No. D–2066, indicating that the Old Lease did not meet the requirements of Section 414 of the Act. In that letter, the Department noted that the specific details of the rights and obligations of the parties to the Old Lease were not agreed upon until after July 1, 1974. The Department also noted that the applicant had not complied with the provision of the Old Lease regarding rental increases beginning in 1979.

By letter of February 6, 1985, the Internal Revenue Service, Dallas Appeals Office, informed the applicant that no further action need be taken regarding excise tax liability for the period September 30, 1974 through September 30, 1980. Therefore, the applicant represents that any excise tax which may be due as a result of the Old Lease from October 1, 1983 through June 30, 1984 will be paid within 60 days of the granting of this proposed exemption or the assessment of such tax, which ever is later. With respect to any excise tax which may be due from the period beginning July 1, 1984 through the granting of this exemption, the applicant represents that any such excise taxes will be paid within 60 days of the grant of this exemption

commensurate with any increases in the fair market rental value of the Property. Such review will be conducted by the Appraiser or another independent real estate appraiser selected by an independent trustee.

5. The New Lease requires the Employer to pay all repair and maintenance costs of the Property, to pay all real estate taxes on the Property, and to carry fire insurance, extended coverage and public liability insurance on the Property to the full extent of the insurable value of the Property, with the Plan as a named insured to the extent of its interest.

6. Mr. W. Wesley Green has been appointed independent fiduciary for the Property (the Independent Fiduciary). The Independent Fiduciary is currently the President of the Western Bank in Gallup, New Mexico. By affidavit of July 26, 1984, he represents that he is experienced in the administration of qualified plans under the Act and in the administration of real property leases. The Independent Fiduciary is unrelated to the Employer and any Plan participant.

7. The Independent Fiduciary represents that the New Lease fits within the general investment scheme of Plan assets. He also states that, in his opinion, were the Property not leased to the Plan Sponsor, it could not be leased to an unrelated party for a rent rate approaching that which the Plan Sponsor will pay.

8. The Independent Fiduciary will review any renewals of the New Lease and will approve such renewals only if they are in the best interests of the Plan. The Independent Fiduciary will also exercise his independent judgment in selecting an appraiser to determine the fair market value of the Property and adjusting the rental rate.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408 of the Act because:

(1) The Independent Fiduciary has determined that the terms of the New Lease are arm's-length terms;

(2) The Independent Fiduciary will monitor all of the terms of the New Lease;

(3) The rental rate received by the Plan for the Property will be adjusted every five years to assure that the Plan receives fair market rental value; and

(4) The Independent Fiduciary has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Watkins Master Trust (the Trust) Located in Atlanta, Georgia

[Application No. D–5838]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code shall not apply to (1) the leasing of certain improved real property (the Property) by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans particpating in the Trust; and (2) the possible cash purchase of the Trust's interest in the Property by Watkins, provided that the terms and conditions of the lease and any subsequent purchase are not less favorable to the Trust than those obtainable in like transactions between unrelated parties.

Effective Date: If granted, the exemption will be effective March 29, 1985.

Summary of Facts of Representations

1. The Trust was established on October 3, 1984, to hold all investments for the profit sharing plans of corporations related to Watkins. As of October 23, 1983, the Trust had net assets of approximately $5,300,000 and the participating plans had, in the aggregate, approximately 1,595 participants. The assets of all the plans in the Trust are commingled for investment purposes. The trustee (the Trustee) of the Trust is the Citizens and Southern National Bank, a national bank which has its principal place of business in Atlanta, Georgia. While the Trustee has some commercial relationships with Watkins, these involve loans and deposits accounting for less than one-half of one percent of its total loans and deposits. Investment decisions for the Trust are generally made by an investment committee appointed by Watkins (the Committee), in conjunction with the Trustee. On December 11, 1984, however, the Committee confirmed in writing that the Trustee will have full discretionary authority to act on the Trust's behalf with respect to the Property which is the subject of this exemption request.

2. The Trust is the owner of a ground lease (the Ground Lease) in the Property, which is located at 1958 Monroe Drive, Atlanta, Georgia.[2] The fee simple owner of the Property is unrelated to the Plans and the Trust. The Ground Lease was originally acquired by the McDonough Construction Company and Affiliated Companies Profit Sharing Plan (the McDonough Plan) in 1958. At the time of the acquisition of the Ground Lease by the McDonough Plan, the Property had been improved with an office building and was being leased to McDonough Construction Company (McDonough), the sponsor of the McDonough Plan. McDonough was subsequently purchased by the Atlantic States Construction Company (Atlantic States), a corporation wholly owned by Watkins. On January 1, 1971, McDonough assigned its interest as the tenant of the McDonough Plan to Watkins. On December 31, 1981, the McDonough Plan was merged into the Atlantic States Profit Sharing Plan (the Atlantic States Plan), which subsequently became one of the Plans participating in the Trust.

As a result of these transactions, the Trust, which is now the owner of the Ground Lease and the improvements, has been leasing the Property to Watkins. The applicants represent that the leasing of the Property to Watkins by the McDonough Plan and later, by the Atlantic States Plan was statutorily exempt from the prohibitions of sections 406 and 407 of the Act and section 4975 of the Code, until June 30, 1984, by virtue of section 414(c)(2) of the Act.[3]

On July 1, 1984, Watkins increased its rental payments to $69,000 per annum, which is the fair market rental value of the Property as of March 15, 1984, as determined by a qualified, independent appraiser (see below). The applicants acknowledge however, that the leasing of the Property to Watkins by the Atlantic States Plan, and later, by the Trust, constituted a prohibited transaction after June 30, 1984, and represent that they will pay any excise taxes if due under section 4975 of the

[2] The Trust is also the owner of a ground lease on improved real property located at 1940 Monroe Drive, Atlanta, Georgia. In Prohibited Transaction Exemption 83–27 (48 FR 8613), the Department granted exemptive relief to the Atlantic States Profit Sharing Plan, a plan now participating in the Trust, to permit the leasing of that property to certain susidiaries of Watkins. The applicants state that the leases of 1940 and 1958 Monroe Drive to Watkins and its subsidiaries are not covered by the statutory exemption of section 408(e) of the Act because of the geographic proximity of the properties.

[3] The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act to these leasing arrangements.

Code within sixty days of a grant of this exemption.

3. The Ground Lease expires on December 31, 1988, with the Trust having options to extend the lease for two ten-year periods, through December 31, 2008, at which time the Trust has the right to purchase the Property for $16,000. The Trust pays rental under the Ground Lease as follows:

Period	Annual rent
Through Dec. 31, 1993	$3,600
Jan. 1, 1994 through Dec. 31, 2003	4,000
Jan. 1, 2004 through Dec. 31, 2008	4,400

The Ground Lease, as unencumbered by the lease to Watkins, was appraised by John W. Booth, M.A.I. of Atlanta, Georgia, as having a fair market value of $797,000 as of March 15, 1984. Mr. Booth also determined the fair market rental value of the Property, as of the same date and on a net basis, to be $69,000 per annum. Mr. Booth is completely independent of both Watkins and Atlantic States. The fair market value of the Ground Lease as appraised by Mr. Booth represents approximately fifteen percent of the trust's net assets.

4. The applicants request an exemption for the leasing of the Property, including all improvements thereon, by the Trust to Watkins pursuant to a revised lease (the New Lease), executed on March 29, 1985. If an exemption for the New Lease is granted, approximately 19.5% of the trust's portfolio will be invested in interests in properties which are leased to Watkins or its affiliates. The New Lease, like the Ground Lease, terminates on December 31, 1988, with Watkins having options to extend the lease for two ten-year periods, subject to the approval of the trustee, as landlord on behalf of the Trust. Watkins, as the lessee, is responsible for all taxes, insurance, utilities and other expenses with respect to the Property. The initial annual rental under the New Lease is $79,700, payable in monthly installments of $6,641.67. On January 1, 1987, and every three years thereafter, the monthly rental will be adjusted to reflect the then-current fair market rental value of the Property as determined by a qualified and independent appraiser selected by the Trustee. In no event, however, will the rental rate be less than $79,700 per annum. Upon termination of the New Lease, all improvements on the Property will belong to the Trust, provided that the Trust exercises its purchase option under the Ground Lease. The New Lease gives Watkins an option to purchase the Trust's leasehold estate and all improvements thereon at the end of the initial lease term and each renewal term. The option to purchase specifies that Watkins must pay the fair market value of the leasehold estate and improvements as determined by a qualified and independent appraiser selected by the Trustee. The option to purchase is subject to the approval of the Trustee and the purchase price must be paid in cash.

5. The Trustee, as an independent fiduciary for the Trust, states that it has reviewed the needs and investment strategies of the trust, the appraisals made by Mr. Booth, the terms and conditions of the New Lease, including the purchase option and the condition and marketability of the Property and has determiend that the New Lease is protective of, appropriate for, and in the best interest of the Trust and of the participants and beneficiaries of the Plans participating in the Trust. The Trustee states that it made this review and determination prior to the execution of the New Lease on March 29, 1985. The Trustee concluded that the portfolio of the Trust is sufficiently liquid and diversified, that it would not be in the trust's best interest to attempt to sell its interest in the Property at this time, and that the terms and conditions of the New Lease, which is triple net, are favorable to the trust. The Trustee states that it will monitor Watkin's compliance with the terms and conditions of the New Lease, make a physical inspection of the Property at least annually, determine whether any renewal or purchase option may be exercised, select appraisers as required under the New Lease, and take any steps necessary to enforce and protect the rights of the Trust with respect to the Property.

6. In summary, the applicants represent that the subject transactions satisfy the criteria of section 408(a) of the Act because (a) the current rental under the New Lease is not less than the fair market rental value of the Property as determined by a qualified and independent appraiser; (b) the rental rate will be adjusted to an amount not less than the fair market rental value of the Property as determined every three years over the term of the New Lease by a qualified and independent appraiser selected by the Trustee; (c) any exercise of the purchase option is subject to the approval of the Trustee, and must be for cash in an amount not less than the fair market value of the trust's leasehold interest in the Property, including all improvements on the Property, as determined by a qualified, independent appraiser selected by the Trustee; (d) the Trustee has reviewed the terms and conditions of the New Lease, including the purchase option, and has determined that the New Lease is appropriate for, protective of, and in the best interest of the participants and beneficiaries of the Plans participating in the trust; and (e) the Trustee will monitor all terms and conditions of the New Lease and will take any steps necessary to protect and enforce the rights of the trust with respect to the Property.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

The Citizens and Southern Corporation Pension Plan (the Plan) Located in Columbia, South Carolina

[Application No. D–6093]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of several parcels of real property (the Property) to a joint venture comprised of Edens & Avant (E&A) and third parties, for $2,075,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately 2,500 participants. As of February 5, 1985, the Plan had approximately $22,000,000 in assets. The Citizens and Southern Corporation (the Employer), the Plan's sponsor, is the parent corporation of the Citizens and Southern National Bank of South Carolina (C&S Bank).

2. E&A, a real estate firm based in Columbia, South Carolina, has from time to time functioned in the role of real estate agent for the Plan. In this role, E&A has primarily performed the function of obtaining leases for the Plan on various parcels of the Property. Other than filling the role of a servicing agent on this real estate, E&A has provided no other services to the Plan. The applicants represent that E&A is not a fiduciary with respect to the Plan.

3. The Property consists of 3.18 acres of land. It is composed of several separate parcels, which are rented to a variety of tenants. The Plan has acquired the parcels composing the Property from various parties over a period ranging from 1971 to 1981. Some of the parcels are improved, and some are not. None of the tenants who are leasing any of the parcels are parties in interest with respect to the Plan.

4. The applicants have requested an exemption to permit the sale of the Property by the Plan to a joint venture comprised of E&A and third parties. The sale will be for $2,075,000 in cash, and no real estate commission will be paid in connection with the sale. Mr. O. Marshall Dodds, M.A.I., an independent real estate appraiser in Columbia, South Carolina, has appraised the Property as having a fair market value of $2,075,000 as of September 7, 1984. It is contemplated that the Employer and its wholly-owned subsidiary, C&S Bank, will be major tenants in an office complex to be developed on the Property. However, C&S Bank will not finance the acquisition of the Property nor the subsequent construction of the proposed office and hotel complex.

5. NCNB National Bank of North Carolina (NCNB), located in Charlotte, N.C., has been retained to serve as an independent fiduciary for the Plan for purposes of the subject transaction. NCNB in its fiduciary capacity currently serves as trustee, co-trustee and/or investment manager for over $5 billion in discretionary assets held by employee benefit, institutional, charitable and personal trusts. NCNB currently manages over $400 million in real estate assets for employee benefit and institutional clients. Therefore, NCNB has considerable experience in the management of employee benefit funds and real estate investments for such funds. Neither NCNB nor any of its affiliates has any present or contemplated interest in the proposed transaction. NCNB and C&S Bank do not have any common officers or directors.

6. NCNB has reviewed the proposed transaction and determined that it is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. NCNB states that there are apparently no other offers to purchase the Property at a net price equal to or greater than the proposal, or on terms more favorable to the Plan. Although the Property may continue to appreciate in the future, NCNB believes there are considerable risks involved in the Plan's continued investment in the Property, and that the timing of the proposed sale may be opportune. NCNB represents that there is no certainty that another developer capable of executing such a large project will appear in the foreseeable future. The Property is located five blocks away from the center of the area which experienced the majority of the office, hotel and retail development in downtown Columbia in the last few years. NCNB believes that only a limited number of major projects will be undertaken in downtown Columbia over the next 10 to 15 years, and given the location of the Property, it may be less attractive than alternate sites for this type of use. Competing developments closer to the center of town will almost certainly affect the value of the Property. NCNB also represents that the Property currently produces minimal current income when compared with the amount of income which could be earned by investing the proposed sales proceeds in substantially less risky short-term investments. Finally, NCNB states that the proposed transaction affords the Plan the immediate opportunity to dispose of an illiquid investment which now represents almost 10% of the total Plan assets at market value.

7. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash, and no commission will be paid in connection with the transaction; (2) the sales price was determined by an appraisal performed by a qualified, independent appraiser; and (3) NCNB, the Plan's independent fiduciary, has reviewed the proposed transaction and determined that it is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of June, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–13748 Filed 6–6–85; 8:45 am]

BILLING CODE 4510–29–M

LEGAL SERVICES CORPORATION

Voucher Project; Grant Award to San Antonio Bar Association

AGENCY: Legal Services Corporation.

ACTION: Announcement of Intention to Award A Grant.

SUMMARY: The Legal Services Corporation (LSC) announces it's intention to award a grant for the provision of civil legal services under the Legal Services Corporation's Voucher Project. The grant will be awarded pursuant to LSC's Voucher Project to the San Antonio Bar Association. Grant funds will be used to locally administer the Voucher Project whereby LSC-eligible clients will receive vouchers for particular legal

services redeemable at the offices of participating private law firms. The legal services to be provided in San Antonio, Texas include the following case types: (1) Uncontested divorces; (2) contested divorces involving no domestic violence; and (3) contested divorces involving some domestic violence. Some cases in case types (2) and (3) may present additional contested or disputed issues, however, in no event shall any of these cases involve a child custody issue either separate from, or in conjunction with, the divorce action.

The grant award of $102,500 will be for a project term of one year beginning on July 1, 1985. As a research project, the grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B), 1006(a)(3)(A) and 1007(g) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

SUPPLEMENTARY INFORMATION: The purpose of this research project is to determine the ability of private law firms and the local bar association to augment existing direct service delivery provided by current LSC grantees. The research involves testing the workability, cost-effectiveness, and quality of service of vouchers in providing civil legal services to poor individuals. It is also anticipated that this project will encourage lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts. The project may also serve to increase the cooperation between established bar associations, local LSC-funded programs and all segments of the legal community.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development & Substantive Support Unit of the Legal Sevices Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Keith Osterhage, Legal Services Corporation, Office of Field Services, Program Development & Substantive Support Unit, 733 Fifeenth Street, NW., Washington, D.C. 20005, (202) 272–4356.

Thomas J. Opsut,

Interim President.

[FR Doc. 85–13809 Filed 6–6–85; 8:45 am]

BILLING CODE [illegible]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Section) to the National Council on the Arts will be held on June 24–27, 1985, from 9:00 a.m.–9:00 p.m.; and on June 28, 1985, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

If time permits, a portion of this meeting will be open to the public on June 28, from 4:00–5:00 p.m. to discuss policy issues.

The remaining sessions of this meeting on June 24–27, 1985, from 9:00 a.m.–9:00 p.m. and on June 28, from 9:00 a.m.–4:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552d of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: June 4, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–13737 Filed 6–6–85; 8:45 am]

BILLING CODE 7537–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Subbasins definition
- Methods for estimating production
- Stock selection policy
- Forest Service management plans
- Other
- Public comment.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: June 12, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's hearing rom in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–13691 Filed 6–6–85; 8:45 am]

BILLING CODE 000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–23716; 70–5943]

American Electric Power Company, Inc., Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan and Exception From Competitive Bidding

June 3, 1985.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed with this Commission a post-effective amendment to its declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulated thereunder.

By orders in this proceeding dated February 8, 1977, April 19, 1978, March 29, 1979, August 8, 1979, May 1, 1980, June 30, 1981, June 15, 1982, June 29, 1983, and June 29, 1984 (HCAR Nos. 19879, 20506, 20979, 21180, 21544, 22113, 22539, 22989, and 22353), AEP was authorized to issue and sell, from time to time through June 30, 1985, up to 44,000,000 shares of its authorized but unissued common stock, $6.50 par value, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan").

AEP now proposes that the period during which the shares of common stock previously authorized may be issued and sold pursuant to the Plan be extended from June 30, 1985, to June 30, 1986.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 27, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13785 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23714; 70-7111]

Northeast Utilities et al.; Capital Contributions to Subsidiaries, Short-Term Borrowings and Creation of a Money Pool

June 3, 1985.

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company ("WMECO"), The Quinnehtuk Company ("Quinnehtuk"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), Northeast Nuclear Energy Company ("NNECO"), The Rocky River Realty Company (RRR), Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("HWP"), Canal Street, Holyoke, Massachusetts 01040, wholly owned subsidiaries of NU, ("applicant" or collectively "applicants"), have filed an application-declaration pursuant to sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45 and 50 thereunder.

The proposal includes a request for authorization through December 31, 1986 of short term borrowings in the form of bank notes ("Bank Notes") pursuant to open lines of credit and commercial paper ("Commercial Paper"), capital contributions and open account advances by NU to its subsidiaries, and the establishment of a Money Pool ("Pool").

The aggregate amount of all notes outstanding, whether issued to banks or to a dealer in commercial paper will not exceed $75,000,000 in the case of NU, $400,000,000 in the case of CL&P, $105,000,000 in the case of WMECO, $10,000,000 in the case of HWP, $50,000,000 in the case of NNECO, $5,000,000 in the case of RRR, and $25,000,000 in the case of NUSCO.

Additionally, CL&P and WMECO can borrow up to $200,000,000, and $60,000,000, respectively, up to a maximum of $200,000,000 together, on a short-term, revolving credit basis under the Amended and Restated Credit Agreement dated as of October 1, 1982 (HCAR No. 22689, November 2, 1982), and $150,000,000 and $45,000,000, respectively, up to a maximum of $150,000,000 together, on a short-term, revolving credit basis under the Credit Agreement dated as of December 14, 1984 (HCAR No. 23520, December 5, 1984). CL&P can borrow up to $50,000,000 on a short-term, revolving credit basis under a revolving Euronote issuance facility ("RUF") entered into on April 26, 1985 (HCAR No. 23667, April 19, 1985).

The total amount of short-term borrowings through December 31, 1986, will not exceed $400,000,000 for CL&P and $105,000,000 for WMECO.

Each Bank Note will bear interest at such rate as should be negotiated by the lending bank and the applicant issuing such Bank Note. In issuing Bank Notes, the applicants will negotiate the lowest effective interest cost for short-term borrowings, taking into account the proposed amount and maturity of each borrowing period. Before reaching agreement with lending banks as to the interest rate on borrowing, the applicants will assess then prevailing short-term interest rates, such as prime rate, libor, federal funds rates and certificate of deposit rates. Based on an assumed prime rate of 10% as of May 31, 1985, the effective cost of borrowings under the open-credit lines would be 10.53%. The notes will be issued no later than December 31, 1986 subject to prepayment at any time at the applicant's option. Applicants other than Quinnehtuk, NUSCO and RRR have credit lines with a number of banks, subject to compensating balance requirements.

The applicants propose to establish a Pool to be administered by NUSCO. The Pool will consist solely of surplus funds that may be available from day to day, and loaned on a short-term basis to those applicants which have a need for short-term funds, other than NU.

Those applicants without access to the commercial paper market will have priority as borrowers from the Pool. NU will be a participant not as a borrower but only insofar as it has funds available for lending through the Pool. After satisfaction of the borrowing needs of the applicants, and after any possible prepayments of outstanding indebtedness, NUSCO, as agent of the Pool, will invest excess funds and allocate the earnings among those applicants providing such excess funds.

The proceeds derived from the issuance and sale of Bank Notes and Commercial Paper will be used to make capital contributions of up to $30,000,000 to CL&P and $10,000 to WMECO, to make open account advances to Quinnehtuk, a wholly owned real estate subsidiary of NU, not to exceed in the aggregate, $275,000, to supply funds as needed to other subsidiary companies as hereafter authorized by the Commission and to meet other corporate needs.

The application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 25, 1985, to the Secretary, Security and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13779 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22104; File Nos. SR-CBOE-83-53 and SR-CBOE-85-17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change; Order Approving Proposed Rule Change

On November 30, 1983, Chicago Board Options Exchange, Inc. ("CBOE") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] to permit the trading on CBOE of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act [3] but are designated as Tier I National Market System Securities ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4]

At a public meeting held on April 16, 1985, the Commission decided that CBOE's proposal would be consistent with the Act if CBOE eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that BCOE (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the CBOE proposes to amend CBOE Rule 6.49 (a) [6] to state that the rule will not apply to any transaction in the over-the-counter market in any option listed on CBOE on a stock which was a Tier I NMS stock at the time CBOE commenced trading the option.[7] CBOE also states in a letter accompanying Amendment No. 1 to the filing that should CBOE seek to trade an option on an index of OTC stocks, it would need to file an amendment to remove its restrictions on the multiple trading of such an option. [8] CBOE also has stated that it interprets the "Option Allocation Agreement" [9] not to apply to options on Tier I NMS stocks, including any Tier I NMS stock that lists on an exchange after option trading commences on that stock.[10] CBOE also indicates that it will work with other exchanges to develop appropriate amendatory language to the Allocation Agreement.[11]

CBOE's proposal to amend its Rule 6.49(a) has not been noticed previously. Interested persons are invited to submit comments on this proposal by June 28, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-85-17. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. 552, are available at the Commission's Public Reference Room and at the CBOE.

The Commission finds that the CBOE's proposal to amend CBOE Rule 6.49(a) (File No. SR-CBOE-85-17), as well as CBOE's interpretation of the Allocation Agreement, effectively eliminate CBOE's barriers to the multiple trading of options on Tier I NMS stocks listed on CBOE. The Commission finds that this proposal eliminates a restraint on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, sections 6 and 11A of the Act. With this amendment to CBOE's rules, and CBOE's interpretation of the Allocation Agreement,[12] for the reasons stated in the OTC Options Release, the Commission finds the CBOE proposal to trade options on Tier I NMS stocks (File No. SR-CBOE-83-53) is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. SR-CBOE-85-17 prior to the thirtieth day after publication of notice thereof in the **Federal Register** in that (1) the Commission previously has solicited comment on amending exchange barriers to the multiple trading of options on Tier I NMS stocks,[13] and the proposed rule change is designed to implement the Commission's decision to allow the multiple trading of these options; (2) the proposed rule change relieves a restriction and is essentially exemptive in nature;[14] and (3) CBOE desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission also finds that CBOE has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[15] The CBOE also has agreed not to commence trading any option on any Tier I NMS stock earlier than June 3, 1985, after the date of this order, and the announcement on May 22, 1985, of its intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR-CBOE-83-53 and 85-17 are approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13782 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b) (1) (1982)

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2-1 (b) (1) (1984). The proposed rule change (File No. SR-CBOE-83-53) was noticed in Securities Exchange Act Release No. 20471, December 9, 1983, 48 FR 55939.

[5] The Commission made the same finding with respect to proposals by the American, Boston, New York, Pacific and Philadelphia Stock Exchanges, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310 ("OTC Options Release"). In that release, the Commission also made clear that, once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n. 214.

[6] CBOE Rule 6.49(a), in general, prohibits CBOE members from effecting over-the-counter ("OTC") transactions in options lilsted on CBOE.

[7] File No. SR-CBOE-85-17. CBOE's original filing, submitted on May 3, 1985, would have covered only options on Tier I NMS stocks. Amendment No. 1, submitted on May 6, 1985, amended the proposal to read as described in the text above to take account of the possibility that the stock may subsequently list.

[8] Letter from Frederic M. Krieger, Assistant General Counsel, CBOE, to Brandon Becker, Assistant Director, Division of Market Regulation, dated May 15, 1985.

[9] The Allocation Agreement consists of a uniform set of rules adopted by each options exchange that sets forth the procedures for allocating options on individual listed stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[10] Letter from Frederic M. Krieger, Assistant General Counsel, CBOE, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 17, 1985.

[11] Id.

[12] Although the Commission believes that CBOE's interpretation of the Allocation Agreement is adequate to remove the potential barrier to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes that the CBOE should undertake, in coordination with the other Plan participants, to prepare formal rule changes as soon as practicable. CBOE has indicated that it intends to do so. *See supra*, note 11.

[13] *See* Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291. *See* the OTC Options Release, *supra* note 5, 50 FR 20310, text accompanying notes 176-231, for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[14] *Cf.* 5 U.S.C. 553(d) (1982).

[15] The CBOE has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until the plan is operational.

[16] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiple trading options on Tier I NMS stocks with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Divsion of Market Regulation to Frederic M. Krieger, Assistant General Counsel, CBOE, dated May 20, 1985.

[Release No. 34-22102; File No. SR-CBOE-83-61]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Partial Approval of Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE"), submitted on December 20, 1983, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend CBOE Rule 6.74 ("Rule") which establishes the procedure from a customer facilitation cross transaction. The last sentence of the Rule emphasizes that the customer side of the facilitation order cannot be blocked by revised bids or offers by participants in the trading crowd. That is, the rule currently provides that the public customer side of the facilitation order takes precedence over any other bid or offer in the crowd "at the same price", once the market is established and the bid or offer has been made.[1]

CBOE indicates that, contrary to the intent of the Rule, some traders have interpreted the phrase "at the same pride" as creating a second opportunity for a market quotation which, if better than the customer side of the facilitation order, would prevent the customer's facilitation order from being transacted. Because this interpretation is contrary to the intent of the Rule, CBOE has proposed to eliminate the phrase "at the same price" from the Rule's provisions. This revision, however, would not preclude persons in the trading crowd and orders represented in the trading crowd from accepting the customer's bid or offer or providing the customer with an improved execution price.[2] The Exchange believes that elimination of the phrase will clarify the Rule's intent and codify CBOE's current interpretation.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of Commission release (Securities Exchange Act Release No. 20513, December 23, 1983), and by publication in the **Federal Register** (49 FR 181, January 3, 1984). No comments were received with respect to the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13780 Filed 6–6–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22105; File No. SR-CBOE-85-22]

Self-Regulatory Organizations; The Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change Relating to Use of the Order Support System for Options on Over-the-Counter Stocks

On May 20, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, to amend CBOE's Order Support System ("OSS"), which allows member firms to route electronically to CBOE's limit order book certain public customer limit orders. On May 31, 1985, CBOE submitted Amendment No. 1 to the filing.

I. Description of the Proposals, Their Purpose and Statutory Basis

A. Proposals Being Approved in This Release

As amended, the proposed rule change would not impose size parameters, but would impose narrow price parameters in connection with the use of OSS for classes of options on over-the-counter ("OTC") stocks.[3] CBOE anticipates the commencement of options trading on OTC stocks on June 3, 1985.

Currently, OSS does not impose a contract limit on options classes that are otherwise OSS-eligible.[4] However, OSS does impose price parameters on OSS-eligible orders, based on the option premium.[5] In particular, the premium price parameters provide that an order may not be electronically booked unless it is at a limit price at least as far above or below the current bid or ask in that options series market as the stated level "B" parameter.

CBOE implemented OSS in 1980 as an experimental means by which to expedite the delivery of orders from member firms to their booths or directly to the book. Since 1980, CBOE has proposed and implemented certain variations of the original program. For example, as indicated, CBOE recently eliminated entirely the contract size parameter for all OSS-eligible orders thereby permitting many more options orders to be routed through OSS.[6] As stated in its filing, CBOE continues to believe that the OSS is in an experimental stage. Accordingly, as part of this experiment, CBOE proposes to test the use and effects of OSS in connection with a wide range of orders in options on OTC stocks.[7]

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[1] The CBOE also has proposed to delete the requirement in rule 6.74 which provides that where a related transaction must be effected in another market, that transaction must be executed prior to execution of the options order. This portion of the proposed rule change is not being approved at the current time. The CBOE has informed the Commission that it intends to submit a new rule filing with respect to this aspect of the proposal.

[2] Telephone conversation between Frederic M. Krieger, Assistant General Counsel, CBOE, and Brandon C. Becker, Assistant Director, and Holly H. Smith, Attorney, Division of Market Regulation, SEC, May 29, 1985.

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] As originally filed, the proposed rule change amended OSS to eliminate entirely the price parameters currently in effect. These level "B" premium price parameters are as follows: for an option premium of 1/16 to 1/2, 1/16; for an option premium of 9/16 to 3, 1/8; for an option premium of 3 1/8 to 10, 1/4; and for an option premium of 10 1/8 and above, 3/8. *See* Securities Exchange Act Release No. 20811 (April 2, 1984), 49 FR 13932 (April 9, 1984).

Amendment No. 1, dated May 31, 1985, however, amends the proposed rule change by narrowing, rather than eliminating entirely, the level "B" premium price parameters. In particular, Amendment No. 1 establishes level "C" parameters for the use of OSS in connection with OTC options orders, as follows: for an option premium of 1/16 to 3, 1/16; for an option premium of 3 1/8 to 10, 1/8; and for an option premium of 10 1/8 and above, 1/4.

[4] Recently, CBOE amended the procedures for use of OSS to eliminate the contract size parameter, which had been set at 29, for all eligible orders. *See* Securities Exhcange Act Release No. 21741 (February 11, 1985), 50 FR 10677 (March 18, 1985) (File No. SR–CBOE–84–33).

[5] The Commission previously approved a CBOE proposed rule change which authorized the implementation of a pilot program to eliminate the price parameters in connection with orders for S&P Telecommunications Index options. *See* Securities Exchange Act Release No. 20964 (May 15, 1984), 49 FR 21588 (May 22, 1984). Shortly after approval, however, CBOE delisted this index option.

[6] *See* note 3, *supra.*

[7] Although CBOE is eliminating the size parameters and narrowing the price parameters in connection with the use of OSS for options orders on OTC stocks, CBOE notes in its filing that participating member firms may set their own internal guidelines or parameters for the use of OSS, so long as such parameters do not exceed any limits which are set by the Exchange.

In its filing, CBOE stated that, in order for it to be competitive with the other exchanges and the NASD, some degree of automation is necessary in connection with those classes of options on OTC stocks which will be multiply traded.[9] In this connection, however, CBOE also stated its preference for an automated execution, rather than an automated order routing system. As a result, CBOE believes that the proposal offers the potential for the benefits of automation to be extended to a greater universe of orders, *i.e.*, orders for OTC stock options which are for any number of contracts and/or are near the current market price.

B. Proposals Only Being Noticed in This Release

As amended, the CBOE proposed rule change also would permit the electronic routing of OSS-eligible OTC options orders to a printer at the trading post for direct representation by floor brokers in the trading crowd.[10] In its filing, CBOE states that this should allow for the immediate representation in the trading crowd of member firms' OTC options orders which are at or near the market. CBOE also states in its filing that this proposal is consistent with sections 6(b)(5) and 11A of the Act.

II. Solicitation of Comments

The Commission is publishing this Release to solicit comment on that part of the CBOE proposal described in Section I.B., above. Persons interested in commenting on this part of the proposed rule change should submit six copies of their comments by June 28, 1985. Comments should be sent to the Secretary of the Commission, 450 5th Street NW., Washington, D.C. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule changes, except those that may be withheld for the public pursuant to 5 U.S.C. § 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings also are available at the CBOE.

III. Partial Accelerated Approval of Proposed Rule Changes

As noted in previous orders regarding OSS, the benefits of automation include enhanced accuracy and efficiency in the processing of OSS-eligible orders and, as a result, more timely and cost efficient execution of these orders.[11] By making options on OTC stocks OSS-eligible, not imposing a contract size ceiling on these orders, and narrowing the premium price parameters in this connection, the Commission believes that the proposed rule change will facilitate the ability of member firms to transmit certain away-from-the-market public customer orders for options on OTC stocks to the public limit order book.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

As noted above, the Commission recently approved a similar CBOE proposed rule change, which had been noticed for comment for the prescribed period of time pursuant to the Act. Because of the substantially similar nature of that proposal and the absence of any adverse comments in connection with that proposal, as well as the planned commencement of OTC options trading on June 3, 1985, the Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice of filing of this proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13786 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22100; File No. SR-NASD-85-12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendment to Schedule D of the NASD's By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on May 24, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit the Association to require any market maker whose quotations appear to be no longer reasonably related to the prevailing market in a NASDAQ Security to re-enter its quotation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the proposed rule change will permit the Association to require any market maker whose quotations appear to be no longer reasonably related to the prevailing market in a NASDAQ security to re-enter its quotation. It has been the Association's experience that a market maker's quotations may inadvertently become no longer reasonably related to other quotations as the market in a security changes. With the advent of automatic execution systems which execute transactions at the best bid or offer quotation for the stock displayed in the NASDAQ System, such a quotation could erroneously become the best bid or offer quotation and, therefore, define the "buy" or "sell" price for all participants in all automated systems. This proposed rule change will allow the Association to require the market maker with stale quotations to correct its quotations to cause them to be reasonably related to the prevailing market.

The propose rule change is consistent with the Association's obligations under section 15A(b)(11) of the Act that the

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[9] Recently, the Commission authorized the exchanges and the NASD to trade individual options on certain OTC stocks. Because the Commission authorized the multiple trading of these classes of options, CBOE believes that thee are competitive reasons for its use of the automated order routing system described above for these options classes.

[10] *See* Amendment No. 1, dated May 31, 1985.

[11] *See* note 3, *supra*.

rules of the Association include provisions governing the form and content of quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13783 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22098; SR-NYSE-84-4 and 85-18]

Self-Regulatory Organizations; New York Stock Exchange Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change; Order Approving Proposed Rule Change

On February 8, 1984, the New York Stock Exchange, Inc. ("NYSE") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] to permit the trading on NYSE of standardized options that are not listed and registered on a national securities exchange under section 12(a) of the Act [3] but are designated as Tier I National Market System Stocks ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4]

At a public meeting held on April 16, 1985, the Commission decided that NYSE's proposal would be consistent with the Act if NYSE eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that NYSE (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response, NYSE proposes to amend NYSE Rule 756 [6] to allow NYSE members to trade through the facilities of NASDAQ any standardized options listed on the NYSE that relates either to (1) a NASDAQ stock qualified to underlie NYSE options or (2) a listed stock that was the subject of standardized options trading prior to listing.[7] The NYSE also proposes several technical amendments to its rules to accommodate the NASD's possible entry into the standardized options market. The NYSE also states in a letter accompanying this filing that if the NYSE proposes to trade options on an OTC index, the NYSE will appropriately further amend Rule 756 to likewise except such index options from that rule.[8] Finally, the NYSE states that it interprets the "Options Allocation Agreement" [9] not to apply either to (1) NASDAQ stocks qualified to underlie NYSE options or (2) listed stocks that were the subject of standardized stock options trading prior to listing.[10]

NYSE's proposal to amend its Rule 756 and to make certain other technical amendments to its rules (SR-NYSE-85-18) has not been noticed previously. Interested persons are invited to submit comments on these proposals by June 28, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth STreet, NW., Washington, DC 20549. Reference should be made to File No. SR-NYSE-85-18. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. Section 552, are available at the Commission's Public Reference Room and at the NYSE.

The Commission finds that the NYSE's proposal to amend NYSE Rule 756 (File No. SR-NYSE-85-18), and to make other technical amendments to NYSE's rules, as well as NYSE's interpretation of the Allocation Agreement, effectively eliminate NYSE's barriers to the multiple trading of options on Tier I NMS stocks listed on NYSE. The Commission finds that this proposal eliminates restraints on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, Sections 6 and 11A of the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2-1(b)(1) (1984). The proposed rule change (File No. SR-NYSE-84-4) was noticed in Securities Exchange Act Release No. 20691, February 23, 1984, 49 FR 7682.

[5] The Commission made the same finding with respect to proposals by the American, Boston, Pacific and Philadelphia Stock Exchanges, Inc., and the Chicago Board Options Exchange, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22028, May 8, 1985, 50 FR 20310 ("OTC Options Release"). In this release, the Commission also made clear that, once multiple trading on Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n.214.

[6] Rule 756 generally prohibits NYSE members from effecting over-the-counter ("OTC") transactions in options listed on the NYSE.

[7] File No. SR-NYSE-85-18, submitted on May 16, 1985.

[8] Letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated May 15, 1985.

[9] The Allocation Agreement consists of a set of uniform rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1 1985, 50 FR 19508.

[10] *See* letter cited *supra* note 8.

Act. With these amendments to NYSE's rules, and with NYSE's interpretation of the Allocation Agreement,[11] for the reasons stated in the OTC Options Release the Commission finds the NYSE proposal to trade options on Tier I NMS stocks (File No. SR–NYSE–85–4) is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. SR–NYSE–85–18 prior to the thirtieth day after publication of notice thereof in the **Federal Register** in that (1) the Commission previously has solicited comment on amending exchange barriers to multiple trading of options on Tier I NMS stocks,[12] and the proposed rule change is designed to implement the Commission's decision to allow such multiple trading; (2) the proposed rule change relieves restrictions and is essentially exemptive in nature;[13] (3) the other amendments contained in this filing are technical in nature; and (4) NYSE desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission finds that the NYSE has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[14] The NYSE also has agreed not to commence trading any option on a Tier I NMS stock earlier than June 3, 1985, after the date of this order and the announcement on May 22, 1985, of its intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR–NYSE–85–4 and 85–18 are approved.[15]

[11] Although the Commission believes that the NYSE's interpretation of the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes that the NYSE should undertake, in coordination with the other Agreement participants, to prepare formal rule changes to the Agreement as soon as practicable.

[12] *See* Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291. *See* the OTC options release, *supra* note 5, 50 FR 20310, text accompanying notes 176–231 for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[13] *Cf.* 5 U.S.C. 553(d) (1982).

[14] The NYSE has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until this plan is operational.

[15] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiply trading options on NMS stock with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Division of Market Regulation to James E. Buck, Secretary, NYSE, dated May 17, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13784 Filed 6–6–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22103; SR–PSE–84–2, 85–13]

Self-Regulatory Organizations; Pacific Stock Exchange Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change; Order Approving Proposed Rule Change.

On January 4, 1984, the Pacific Stock Exchange, Inc., ("PSE") submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to permit the trading on PSE of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act[3] but are designed as Tier I National Market System Stocks ("Tier I NMS stocks") pursuant to Rule 11Aa2–1(b)(1) under the Act.[4] At a public meeting held on April 16, 1985, the Commission decided that PSE's proposal would be consistent with the Act if PSE eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that PSE (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the PSE proposes to amend PSE Rule VI, section 53 to state that the rule[6] will not apply to any transaction through the facilities of NASDAQ or on another exchange in any option on a stock that was a Tier I NMS stock at the time that PSE commenced trading the option.[7] PSE also states that should PSE seek to trade an option on an index of OTC stocks, it would promptly file an amendment to remove its restrictions on the multiple trading of such an option.[8] The PSE also has agreed that it will not apply the "Options Allocation Agreement"[9] to options on Tier I NMS stocks, including any Tier I NMS stock that lists on an exchange after option trading commences on that stock.[10] PSE also indicates that it will promptly submit a filing pursuant to Rule 19b–4 to amend this rule.[11]

PSE's proposals to amend its Rule IV, section 53 has not been noticed previously. Interested persons are invited to submit comments on these proposals by June 28, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR–PSE–85–13. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. section 552, are available at the Commission's Public Reference Room and at the PSE.

The Commission finds that the PSE's proposal to amend PSE Rule VI, section 53 (File No. SR–PSE–85–13), as well as PSE's agreement regarding the Allocation Agreement, effectively eliminate PSE's barriers to the multiple trading of options on Tier I NMS stocks listed on PSE. The Commission finds that this proposal eliminates restraints on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, sections 6 and 11A of the Act. With this amendment to PSE's rules, and with PSE's commitment not to apply the Allocation Agreement[12] for the reasons

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2–1(b)(1) (1984). The proposed rule change (File No. SR–PSE–84–4) was noticed in Securities Exchange Act Release No. 20538, January 6, 1984, 49 FR 1808.

[5] The Commission made the same finding with respect to proposals by the American, Boston, New York and Philadelphia Stock Exchanges, Inc., and the Chicago Board Options Exchange, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310 ("OTC Options Release"). In that release, the Commission also made clear that, once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even of the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n.214.

[6] PSE Rule VI, section 53, in general, prohibits PSE members from effecting over-the-counter ("OTC") transactions in securities listed on PSE.

[7] File No. SR–PSE–85–13, submitted on May 20, 1985.

[8] Letter from Steven Wolf, Attorney, PSE, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 21, 1985.

[9] The Options Allocation Agreement consists of a set of uniform rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[10] Letter from Steven Wolf, Attorney, PSE, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 17, 1985.

[11] *Id.*

[12] Although the Commission believes that the PSE's commitment regarding the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement

Continued

stated in the OTC Options Release, the Commission finds the PSE proposal to trade options on Tier I NMS stocks (File No. SR–PSE–84–4) is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. PSE–85–13 prior to the thirtieth day after publication of notice thereof in the **Federal Register** in that (1) the Commission previously has solicited comment on amending exchange barriers to multiple trading of options on Tier I NMS stocks,[13] and the proposed rule change is designed to implement the Commission's decision to allow such multiple trading; (2) the proposed rule change relieves a restriction and is essentially exemptive in nature;[14] and (3) PSE desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission also finds that PSE has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[15] The PSE also has agreed not to commence trading any option on a Tier I NMS stock earlier than June 3, 1985, after the date of this order and the announcement on May 28, 1985 of its intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR–PSE–84–4 and 85–13 are approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13781 filed 6–6–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #6304]

California; Designation of Disaster Loan Area

The area affected is bordered on the north by Beverly Boulevard, on the south by Colgate Avenue, on the east by Gardner Street, and on the west by Fairfax Avenue in the City of Los Angeles, Los Angeles County, California. This constitutes a disaster area because of damage resulting from explosions and fires which occurred on March 24, 1985. Eligible small businesses without credit elsewhere and small agricultural cooperatives without credit elsewhere may file applications for economic injury assistance until the close of business on February 28, 1986, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations. The interest rate for eligible small business applicants without credit elsewhere is 4 percent and 11.125 percent for eligible small agricultural cooperatives without credit elsewhere.

This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–13743 Filed 6–6–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0288]

Wesbanc Ventures, Ltd.; Issuance of a License To Operate as a Small Business Investment Company

On March 28, 1985, a notice was published in the **Federal Register** (50 FR 12680), stating that Wesbanc Ventures, Ltd., located at 2401 Fountainview, Suite 950, Houston, Texas, 77057 had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1985), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on April 28, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06–0288 to Wesbanc Ventures, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 30, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13744 Filed 6–6–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended May 31, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (see 14 CFR 302.1701 et. seq.).

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might present because the Agreement is itself a rule the exchange, the Commission believes that the PSE should undertake, in coordination with the other Agreement participants, to prepare formal rule changes as soon as practicable. The PSE has indicated that it intends to do so. *See supra*, note 11.

[13] *See* Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291. *See* the OTC Options release, *supra* note 5, 50 FR 20310, text accompanying notes 176–231, for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[14] *Cf.* 5 U.S.C. 553(d) (1982).

[15] The PSE has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until this plan is operational

[16] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiple trading options on NMS stock with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Division of Market Regulation, to Steven M. Wolf, Attorney, PSE, dated May 20, 1985.

Dated filed	Docket No.	Description
May 30, 1985	42986	LeasExpress Air, Inc., c/o Joseph R. Haley, 116 West Grand Avenue, El Segundo, California 90245. Revised Application of LeasExpress Air, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in inter-state and overseas charter air transportation of passengers, freight, property and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any possession of the United States. Answers may be filed by June 27, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-13777 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP85-3; Notice 2]

BF Goodrich Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by B.F. Goodrich Co., of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on February 8, 1985, and an opportunity afforded for comment (50 FR 5465).

Paragraph S4.3(e) of FMVSS No. 109 requires that the actual number of plies in a tire be indicated on both sidewalls with the actual number of plies in the sidewall and the actual number of plies in the tread area. Goodrich has manufactured 7071 P195/80R13 Parkway radial ply tires branded "Tread—2 plies polyester, 2 plies steel; Sidewall—2 plies polyester." The correct labeling should be "Tread—1 ply polyester, 2 plies steel; Sidewall—1 ply polyester."

Goodrich argued that the noncompliance is inconsequential because the failure to label properly has no impact on safety, and the tires otherwise comply with FMVSS No. 109. Further Goodrich stated that the incorrect labeling is in letters 0.125-inch high near the bead of the tire, and it would not be practicable to correct the labeling.

No comments were received on the petition.

Goodrich has indicated that the tires meet all performance requirements of Standard No. 109, and NHTSA concurs with petitioner's argument that the noncompliance with labelling requirements does not compromise safety. In the early days of tire design engineering, the actual number of cotton casing plies was a fairly accurate way of identifying a specific tire size with its assigned load capacity. However, with the introduction of synthetic cord materials, such as rayon, nylon, and polyester, which were stronger and possessed other improved performance characteristics over cotton, the actual number of casing plies became less important and accurate as a way of identifying a tire with its maximum load carrying capacity. Rebranding the tire with the missing information could possibly damage the bead area of the tire, and NHTSA concurs that this type of remedy would be impracticable.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 4, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-13776 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Advisory Committee Meeting

The first meeting of the USIA Television Telecommunications Advisory Committee will be held on June 18, 1985, from 9:30 a.m. to 12:00 noon.

Location of the meeting is Room 800 at 301 Fourth Street SW., Washington, D.C. Arrangements should be made in advance for attendance at the meeting, as access to the building is controlled.

For further information contact Ms. Kate Interdonato on (202) 485-8889.

Dated: June 4, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-13899 Filed 6-6-85; 8:45 am]

BILLING CODE 8230-01-M

Meeting of Book and Library Advisory Committee

A meeting of the Book and Library Advisory Committee will be held on June 18, 1985, from 2:00 p.m. to 5:00 p.m.

Location of the meeting is Room 855 at 301 Fourth Street SW., Washington, D.C. Arrangements should be made in advance for attendance at the meeting, as access to the building is controlled.

For further information contact Ms. Louise Wheeler on (202) 485-8889.

Dated: June 4, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-13747 Filed 6-6-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions, and a revision, and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 30, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Extensions

1. Department of Veterans Benefits
2. Report of Automatic Manufactured Home and/or Lot Loan
3. VA Form 26–8149
4. On occasion
5. Businesses or other for profit; small businesses or organization
6. 10,000 responses
7. 5,000 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Status of Loan or Termination
3. VA Form 26–8801
4. On occasion
5. Businesses or other for profit
6. 200,000 responses
7. 16,667 hours
8. Not applicable

* * * * *

Revision

1. Department of Veterans Benefits
2. Verification of VA Benefit-Related Indebtedness
3. VA Form 26–8937
4. On occasion
5. Individuals or households
6. 80,000 responses
7. 6,667 hours
8. Not applicable

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1. Department of Veterans Benefits
2. Notice of Action Taken on Payroll Deduction for Government Life Insurance
3. VA Form 29–800
4. On occasion
5. Individuals or households
6. 5,040 responses
7. 420 hours
8. Not applicable

[FR Doc. 85–13721 Filed 6–6–85; 8:45 am]

BILLING CODE 8320–01–M

Schedule of Productivity Improvement (A–76) Reviews for Fiscal Year 1985

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A–76 and the September 27, 1984, memorandum to the President's Council on Management Improvement, the Veterans Administration will be conducting productivity reviews and A–76 cost comparisons at various field stations and central office to determine the most efficient organization (MEO) and the feasibility of contracting out specific commercial activities to private contractors.

Two schedules of commercial activities are shown: (1) A schedule of productivity (MEO) reviews which will not be cost compared with private industry; and (2) a schedule of A–76 reviews which will undergo cost comparison with private industry. Activities are listed first by Department or Staff Office, second by commercial activity and third by field facility. Specific invitations for bids or requests for proposals will be announced in the Commerce Business Daily (CBD) to ascertain bidder interest in contracting with the Government to perform the commercial activities scheduled for an A–76 cost comparison. No later than the deadline provided in the CBD advertisement two or more responsible business firms must indicate their interest in order for the review to proceed to a full cost comparison. If two or more potential bidders express interest, competitive bids will be solicited. These bids will be based upon VA's specifications called a performance work statement (PWS). Also, government contracting procedures will be followed. Concurrently, using the same PWS, the VA will prepare an in-house cost estimate. Formal bids received from interested firms will be cost compared with the VA bid in accordance with OMB's Cost Comparison Handbook, supplement to OMB Circular A–76 and 38 U.S.C. 5010.

VA employees adversely affected or separated as a result of the conversion to contract must be offered the right of first refusal for employment openings under the contract for which they are qualified.

Should it become necessary to substantially change this schedule, appropriate notice will be posted herein.

FOR FURTHER INFORMATION CONTACT: Questions relating to the schedule of reviews for the Department of Medicine and Surgery may be directed to Mr. John M. Bradley at (202) 389–2706; Department of Memorial Affairs to Charles W. Eyman at (202) 389–5235; Office of Administration to Gary J. Rivelle at (202) 389–2673; and, Office of Data Management and Telecommunications to Larry W. Flagg at (202) 389–2105.

Requests for single copies of the schedule should be made in writing to: Director, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Questions relating to local matters about "contracting out" should be referred to the Director of the VA facility concerned.

Dated: May 31, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

SCHEDULE OF PRODUCTIVITY REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), FISCAL YEAR 1985, DEPARTMENT OF MEMORIAL AFFAIRS, NATIONAL CEMETERIES

(Cemetery Operations)

Field facility	Study start date	Completion date	Implementation date
Barrancas, FL	Aug. 5, 1985	Aug. 30, 1985	Feb. 28, 1986
Calverton, NY	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986.
Culpeper, VA	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985.
Fort Bliss, TX	Apr 1, 1985	June 1, 1985	Dec. 31, 1985
Fort Logan, CO	Sept. 1, 1985	Dec 1, 1985	May 30, 1986.
Fort Rosecrans, CA	July 1, 1985	Oct. 1, 1985	Apr. 30, 1986
Hampton, VA	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985
Jefferson Barracks, MO	June 1, 1985	July 1, 1985	Jan. 31, 1986
Keokuk/Quincy, IA	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986
Long Island, NY	July 1, 1985	Sept. 1, 1985	Mar 31, 1986
Marion, IN	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986.
Mobile, AL	Apr 1, 1985	Sept. 1, 1985	Oct 1, 1985.

SCHEDULE OF PRODUCTIVITY REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), FISCAL YEAR 1985, DEPARTMENT OF MEMORIAL AFFAIRS, NATIONAL CEMETERIES—Continued

[Cemetery Operations]

Field facility	Study start date	Completion date	Implementation date
Mound City, IL	June 1, 1985	Nov. 29, 1985	Jan. 1, 1985.
Riverside, CA	June 1, 1985	Aug. 1, 1985	Feb. 28, 1986.
Winchester, VA	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985.

SCHEDULE OF A-76 COST COMPARISONS—FISCAL YEAR 1985

[Department of Medicine and Surgery—VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Chauffeur Services						
Region No 3: Little Rock, AR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Design/Drafting Services						
Region No 3: Little Rock, AR	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Fire Protection						
Region No 1: Northampton, MA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Region No 2: Butler, PA	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986
Region No 3: Murfreesboro, TN	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986
Region No 4						
Chillicothe, OH	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Cleveland, OH	do	do	do	do	do	Do.
Battle Creek, MI	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986
Marion, IN	Do	do	do	do	do	Do
Tomah, WI	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Hines, IL	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986
Marion, IL	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Region No 5						
Leavenworth, KS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Ft. Meade, SD	do	do	do	do	do	Do
Knoxville, IA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Ft. Harrison, MT	do	do	do	do	do	Do.
Ft. Lyon CO	do	do	do	do	do	Do
Sheridan, WY	do	do	do	do	do	Do.
Region No 6						
Livermore, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
American Lake, WA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986
White City, OR	do	do	do	do	do	Do
Region No 5						
Minneapolis, MN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Dallas, TX	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Houston, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do.
Ft. Lyon, Co	do	do	do	do	do	Do.
Laundry and Drycleaning Services						
Region No. 1						
Bedford, MA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986
Brockton, MA	do	do	do	do	do	Do
Northampton, MA	do	do	do	do	do	Do.
Bath, NY	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Buffalo, NY	do	do	do	do	do	Do.
Canandaigua, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Brooklyn, NY	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Juan, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No 2						
Pittsburgh (UD) PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Martinsburg, WV	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986
Perry Point, MD	do	do	do	do	do	Do.
Hampton, VA	October 1985	March 1986	August 1986	September 1986	January 1986	March 1987
Richmond, VA	do	do	do	do	do	Do.
Salem, VA	do	do	do	do	do	Do
Asheville, NC	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Mountain Home, TN	do	do	do	do	do	Do.
Salisbury, NC	do	do	do	do	do	Do.
Region No 4						
Chillicothe, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Cleveland, OH	do	do	do	do	do	Do.
Dayton, OH	do	do	do	do	do	Do
Battle Creek, MI	do	do	do	do	do	Do
Marion, IN	do	do	do	do	do	Do
St. Louis, MO	do	do	do	do	do	Do.
Region No 5						
Lincoln, NE	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Salt Lake City, UT	do	do	do	do	do	Do.
Region No 6						
Phoenix, AZ	September 1986	February 1986	July 1986	August 1986	December 1986	February 1987
San Diego, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986

SCHEDULE OF A-76 COST COMPARISONS—FISCAL YEAR 1985—Continued

[Department of Medicine and Surgery—VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
American Lake, WA	do	do	do	do	do	Do.
Portland, OR	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986
Switchboard Services						
Region No. 3: Little Rock, AR	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986
Region No. 4:						
Wood, WI	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Hines, IL	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Region No. 5:						
Minneapolis, MN	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Houston, TX	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
West Los Angeles, CA	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Transcription Services						
Region No. 3: Tuskegee, AL	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Region No. 6:						
Palo Alto, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Portland, OR	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Seattle, WA	do	do	do	do	do	Do.
VCS Food Services						
Region No. 1:						
Bedford, MA	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Bedford, MA	do	do	do	do	do	Do.
Brockton, MA	do	do	do	do	do	Do.
Providence, RI	do	do	do	do	do	Do.
Togus, ME	do	do	do	do	do	Do.
Albany, NY	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Buffalo, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Region No. 2:						
Pittsburgh (HD), PA	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Pittsburgh (UD), PA	do	do	do	do	do	Do.
Martinsburg, WV	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Washington, DC	do	do	do	do	do	Do.
Richmond, VA	June 1985	November 1985	May 1986	June 1986	October 1986	December 1986.
Salem, VA	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Asheville, NC	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Fayetteville, NC	do	do	do	do	do	Do.
Mountain Home, TN	do	do	do	do	do	Do.
Region No. 3:						
Augusta, GA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Charleston, SC	do	do	do	do	do	Do.
Columbia, SC	do	do	do	do	do	Do.
Atlanta (Decatur), GA	do	do	do	do	do	Do.
Biloxi, MS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Birmingham, AL	do	do	do	do	do	Do.
Jackson, MI	do	do	do	do	do	Do.
Region No. 4:						
Cincinnati, OH	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Ann Arbor, MI	do	do	do	do	do	Do.
Region No. 5:						
Des Moines, IA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Iowa City, IA	do	do	do	do	do	Do.
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Region No. 6:						
Phoenix, AZ	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Tucson, AZ	do	do	do	do	do	Do.
Loma Linda, CA	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Long Beach, CA	do	do	do	do	do	Do.
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Fresno, CA	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Palo Alto, CA	do	do	do	do	do	Do.
American Lake, WA	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Portland, OR	do	do	do	do	do	Do.
Seattle, WA	do	do	do	do	do	Do.
Warehouse Services						
Region No. 4:						
Cincinnati, OH	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Cleveland, OH	do	do	do	do	do	Do.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Battle Creek, MI	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	Septmber 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Portland, OR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Seattle, WA	do	do	do	do	do	Do

SCHEDULE OF A-76 COST COMPARISONS—FISCAL YEAR 1985—Continued

Facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Office of Data Management and Telecommunications Data Processing Center						
ADP Operations and Programming; Mail and File Operations; Facilities/Grounds Maintenance; Warehouse Services; Motor Vehicles Hines Data Processing Center	July 1985	June 1986	June 1986	October 1986	January 1987	November 1987
Office of Administration, VA Central Office						
Warehouse Services Forms Publication Depot	September 1985	March 1986	March 1986	April 1986	July 1986	December 1986
Office of Personnel and Labor Relations						
Training VA Central Office	April 1985	October 1985	January 1986	March 1986	July 1986	October 1986

[FR Doc. 85-13722 Filed 6-6-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 110
Friday, June 7, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 98 21011.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, June 4, 1985.

CHANGE IN THE MEETING: The following matter was withdrawn and will not be rescheduled.

Draft of "EEOC Staff Guide for the Evaluation of Plans and Reports Developed by Federal Agencies"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634–6748.

Dated: June 5, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat

This Notice Issued June 5, 1985

[FR Doc. 85–13879 Filed 6–6–85; 2:49 pm]

BILLING CODE 6750–06–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 98 21011.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, June 4, 1985.

CHANGE IN THE MEETING: The following matter was postponed and will be rescheduled at a later date.

Amendments to the Commission's Section 4(g) of the ADEA 29 U.S.C. Section 623(g).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: June 5, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat

This Notice Issued June 5, 1985.

[FR Doc. 85–13880 Filed 6–5–85; 2:46 pm]

BILLING CODE 6750–06–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, June 17, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization: GC Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: June 5, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued June 5, 1985.

[FR Doc. 85–13881 Filed 6–5–85; 2:46 pm]

BILLING CODE 6750–06–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:38 p.m. on Sunday, June 2, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Security State Bank, Edgar, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; (2) accept the bid for the transaction submitted by The Guide Rock State Bank, Guide Rock, Nebraska, an insured State nonmember bank; (3) approve the application of The Guide Rock State Bank, Guide Rock, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Security State Bank, Edgar, Nebraska, and for consent to establish the sole office of Security State Bank as a branch of The Guide Rock State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) adopt a resolution making funds available for the payment of insured deposits in Scroggin and Company Bank, Oak, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; and (2) make funds available for an advance payment to uninsured depositors of Scroggin and Company Bank equal to 50 percent of their uninsured claims; and

(C)(1) adopt a resolution making funds available for the payment of insured deposits in The Fairfield State Bank, Fairfield, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; and (2) make funds available for an advance payment to uninsured depositors of The Fairfield State Bank equal to 50 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–13829 Filed 6–5–85; 11:26 am]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Monday, June 3, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Cardinal State Bank, an operating noninsured institution located at 2903 West 22 and Route 3, Maineville, Ohio, for Federal deposit insurance.

Application of The Central Trust Company, National Association, Cincinnati, Ohio, for consent to acquire the assets of and assume the liability to pay deposits made in Molitor Loan and Building Company, Cincinnati, Ohio, a non-federally insured institution.

By the same majority vote, the Board further determined, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13830 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b (e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Monday, June 3, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of The First Bank of Marietta, Marietta, Ohio, an insured State nonmember bank, for consent to acquire certain assets of and assume the liability to pay deposits made in Citizens Building, Loan and Savings Association, Mount Vernon, Ohio, a non-federally insured institution, and to establish the sole office of Citizens Building, Loan and Savings Association as a branch of The First Bank of Marietta.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13831 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:35 p.m. on Friday, May 31, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Taylor, Taylor, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; (2) accept the bid for the transaction submitted by Union Bank and Trust Company, Lincoln, Nebraska, an insured State nonmember bank; (3) approve the application of Union Bank and Trust Company, Lincoln, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Bank of Taylor, Taylor, Nebraska, and for consent to establish the sole office of Bank of Taylor as a branch of Union Bank and Trust Company; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 12:37 p.m., and at 5:28 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A) considered a recommendation concerning the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act;

(B) adopted a resolution providing financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)), to facilitate the acquisition of Bank of Oregon, Woodburn, Oregon, by Alaska Pacific Bancorporation, Anchorage, Alaska;

(C)(1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Lockesburg, Lockesburg, Arkansas, which was closed by the Bank Commissioner for the State of Arkansas on Friday, May 31, 1985; (2) accepted the bid for the transaction submitted by Bank of Lockesburg, Lockesburg, Arkansas, a *de novo* bank; (3) approved the applications of Bank of Lockesburg, Lockesburg, Arkansas (the *de novo* bank), for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Bank of Lockesburg, Lockesburg, Arkansas (the failed bank); and (4) provide such financial assistance, pursuant to section 13(c)(2)) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(D) adopted (1) a resolution (a) making funds available for the payment of insured deposits made in First Trust Bank of Lakefield, Lakefield, Minnesota, which was closed by the Commissioner of Commerce for the State of Minnesota on Friday, May 31, 1985; (b) accepting the bid of Fulda State Bank, Fulda, Minnesota, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (c) designating Fulda State Bank as the agent for the Corporation for the payment of the insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the application of Fulda State Bank, Fulda, Minnesota, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in First Trust Bank of Lakefield, Lakefield, Minnesota, and for consent to establish the sole office of First Trust Bank of Lakefield as a branch of Fulda State Bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the

"Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated June 4, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13832 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

8

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—June 12, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Portions closed to the public:

1. Agreement No. 224-010754: New Orleans Terminal Agreement.
2. Docket No. 84-33: Section 19 Inquiry—United States/Argentina and United States/Brazil Trades—Consideration of the Record.
3. Docket No. 85-3: Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports—Consideration of exceptions and the reply to exceptions and the reply to exceptions relative to the Administrative Law Judge's initial decision.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13886 Filed 6-5-85; 2:37 pm]

BILLING CODE 6730-01-M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: Meeting will commence at 9:00 a.m., Thursday, June 27, 1985 and continue until all official business is completed.

PLACE: The Westin Hotel, Renaissance Center, Kent Room, Detroit, Michigan 48243.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —May 23, 1985
3. Private Attorney Involvement—45 CFR 1614
   —Report from the Office of Field Services
   —Report from the Audit Division
   —Report from the Office of the General Counsel
   —Outside witnesses
   —Public comment
4. Recommendations to full Board on 45 CFR Part 1614 (Private Attorney Involvement)
5. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Tom Bovard, Office of General Counsel, (202) 272-4010.

Date issued: June 5, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-13911 Filed 6-5-85; 3:58 pm]

BILLING CODE 6820-35-M

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NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: Wednesday, June 12, 1985, 3:00 p.m.

PLACE: Parkview Hilton, One Hilton Plaza, Hartford, CT 06103, (203) 249-5611.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Insurance Fund Report.
4. Report to the Board on the Activities of the Justice Department's Bank Working Group and Preliminary Board Approval of Request for Comments: "Safe Harbor" Bank Bribery Rules.
5. Deletion of Part 723, NCUA Rules and Regulations: Operational Systems.
6. Delegation of Authority Concerning CLF Loans to State Credit Union Share Guaranty Corporations.
7. Update on Proposed Credit Union Service Organization Regulation: Section 701.27 of NCUA Rules and Regulations.

TIME AND DATE: Wednesday, June 12, 1985, 10:00 a.m.

PLACE: Parkview Hilton, One Hilton Plaza, Hartford, CT 06103, (203) 249-5611.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Notice of Intent to Terminate Insured Status for State Chartered Credit Union. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Special Assistance to Prevent Liquidation under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board. Telephone: (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-13882 Filed 6-5-85; 2:46 pm]

BILLING CODE 7535-01-M

11

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 10, 1985.

A closed meeting will be held on Tuesday, June 11, 1985, at 2:30 p.m. and on Thursday, June 13, 1985, following the 2:30 p.m. open meeting. An open meeting will be held on Thursday, June 13, 1985, at 10:00 a.m. and at 2:30 p.m., in Room 1C20.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 11, 1985, at 2:30 p.m., will be:

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Litigation matter.
Settlement of injunctive action.

The subject matter of the closed meeting scheduled for Thursday, June 13, 1985, following the 2:30 p.m. open meeting, will be: Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, June 13, 1985, at 10:00 a.m., will be:

1. Consideration of whether to adopt new Forms N-3 and N-4 to provide insurance company separate accounts that offer variable annuity contracts with integrated registration forms that include a simplified prospectus; to adopt related rule amendments; to retain Rule 22d-2 under the Investment Company Act, which permits variable annuity separate accounts to establish variations in their sales loads; and to publish staff guidelines to assist registrants in complying with the requirements of the forms. For further information please contract Jeffrey S. Puretz at (202) 272-3010.
2. Consideration of proposed release requesting comment on the concept of National Market System Securities. For

further information please contact Andrew Feldman at (202) 272–2388.

The subject matter of the open meeting scheduled for Thursday, June 13, 1985, at 2:30 p.m., will be: Oral argument on an appeal by Gary L. Jackson, a certified public accountant, from the decision on an administrative law judge. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Angela Hall at (202) 272–3085.

John Wheeler,

Secretary.

June 3, 1985.

[FR Doc. 85–13778 Filed 6–4–85; 4:20 pm]

BILLING CODE 8010–01–M

federal register

Friday
June 7, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL85-1005	May 31, 1985
District of Columbia: DC84-3009	Apr. 6, 1984
Idaho:	
ID85-5012	Mar. 22, 1985
ID85-5014	Mar. 1, 1985
Illinois: IL84-5042	Dec. 14, 1984
Maryland: MD83-3010	June 3, 1983
Oklahoma: OK85-4011	May 10, 1985
Pennsylvania: PA84-3015	June 1, 1984
Tennessee: TN84-1024	Aug. 31, 1984
Virginia: VA82-3034	Dec. 3, 1982
Washington: WA84-5040	Nov. 16, 1984

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Connecticut: CT84-3016 (CT85-3023)	June 8, 1984
Michigan: MI83-2007 (MI85-5022)	Feb. 11, 1983
Virginia: VA85-3000 (VA85-3028)	Jan. 11, 1985

Signed at Washington, D.C., this 31st day of May 1985.

Nancy M. Flynn,

Deputy Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AL85-1005
Mod # 1
(50 FR - May 31, 1985)
Madison County, Alabama

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS (includes HVAC work)	$9.26	

DECISION NO. [illegible]
MOD. #14
[illegible]
DISTRICT OF COLUMBIA, MARYLAND-[illegible] COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

	Basic Hourly Rates	Fringe Benefits
ADD:		
TILE LAYERS, MOSAIC & TERRAZZO WORKERS	16.05	3.15
CARPENTERS	15.22	2.08
LATHERS	15.22	2.08
MILLWRIGHTS	15.95	2.08
PILE DRIVERMEN	15.57	2.08
MARBLE, TILE, & TERRAZZO FINISHERS	11.475	2.97
POWER EQUIPMENT OPERATORS: Building Construction (Excluding City of Alexandria), Heavy Construction (All Areas), & Highway Construction (Washington, D.C. Only):		
Group I	16.48	2.37+f
Group II	16.12	2.37+f
Group III	15.53	2.37+f
Group IV	14.26	2.37+f
Group V	10.10	2.37+f
Group VI	17.61	2.37+f

DECISION NO. II84-5042 - Mod #2
(49 FR 48881 - Dec. 14, 1984)
Sangamon County, Illinois

	Basic Hourly Rates	Fringe Benefit
OMIT:		
PLUMBERS, PIPEFITTERS & STEAMFITTERS	$17.23	$2.68
ADD:		
PLUMBERS, PIPEFITTERS & STEAMFITTERS:		
Commercial Building	17.23	2.75
Residential up to and including 3 stories	12.22	2.15

DECISION NO. MD83-3010-
MOD. #9
(49 FR 25100-June 3, 1983)
ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY MARYLAND, & FOR THE HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND

	Basic Hourly Rates	Fringe Benefit
CHANGE:		
TILE, MARBLE & TERRAZZO FINISHERS	11.10	1.00

DECISION NO. VA82-3034-
MOD. #9
(47 FR 54746-December 3, 1982)
The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH

	Basic Hourly Rates	Fringe Benefit
CHANGE:		
ELECTRICIANS AND CABLE SPLICERS	12.75	1.00 +9%

DECISION NO. ID85-5012 - Mod. #1
(50 FR 11617 - March 22, 1985)
Benewah, Bonner, Boundary, Clearwater, Idaho (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties, Idaho

OMIT:
FOOTNOTE "a"
ADD:
FOOTNOTE:

a. On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on components with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

PAVING (includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats)	$ 75,000
CRUSHING (including delivery to job site)	200,000
UTILITIES (storm, sanitary sewerage and facilities for the delivery of electricity, gas, communications and domestic water)	Unlimited
BUILDINGS	$2,000,000 exclusive of mechanical & electrical subcontracts

EXCEPTIONS:

PAVING within a 45 mile radius of Spokane or Lewiston shall receive the full rate

DECISION NO. ID85-5014 - Mod #3
(50 FR 8567 - March 1, 1985)
Ada & Canyon Counties, Idaho

OMIT:
FOOTNOTE:
a. On all projects involving one or more of the components listed below where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 85% of the basic hourly rate plus full fringe benefits; any other component in excess of the amounts shown shall be paid the full rate on that component.

Paving	$2,000,000
Crushing	2,000,000
Grading & Clearing	2,000,0000
Bridges & Related Work	2,000,000
Utilities	Unlimited (Pipelines & Dams excluded)
Buildings	2,000,000 (Excluding mechanical & electrical)

DECISION NO. ID85-5010 - Mod. #2
(50 FR 6503 - February 15, 1985)
Statewide Idaho

OMIT:

FOOTNOTE:
a. Buildings — $2,000,000 (Exclusive of mechanical & electrical subcontracts

b. AREA 2: CARPENTERS, CEMENT MASONS, LABORERS, POWER EQUIPMENT OPERATORS, AND TRUCK DRIVERS:
On all projects involving one or more of the components listed below where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 85% of the basic hourly rate plus full fringe benefits; any other component in excess of the amounts shown shall be paid the full rate on that component.

Paving	$2,000,0000
Crushing	2,000,000
Grading & Clearing	2,000,000
Bridges & Related Work	2,000,000
Utilities	Unlimited (Pipelines & Dams excluded)
Buildings	2,000,000 (Excluding mechanical & electrical)

ADD:
FOOTNOTE:
a. (Add to Footnote "a"): Applies to Highway construction only.

DECISION #OK85-4011-Mod.#2 50FR May 10, 1985	Basic Hourly Rates	Fringe Benefits
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods and Woodward Counties, Oklahoma		
CHANGE:		
LATHERS (Area I)	$14.25	$2.04
Sheet Metal Workers	16.15	3.30

OMIT:
DECISION #OK85-4011-Mod.#1
49FR May 10, 1985

ADD:
DECISION #OK85-4011-Mod.#1
50FR May 10, 1985

DECISION NO. FA84-3015 MOD. # 8 (49 FR 22976 - June 1, 1984) Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$15.00	2.67
LABORERS:		
Group 1	10.70	1.68
Group 2	11.17	1.68
Group 3	10.10	1.68
Group 4	11.37	1.71
Lathers	15.00	2.67
Millwrights	17.09	2.67
Painters:		
Brush	12.22	1.30
Plumbers & Steamfitters	17.85	2.82
Sheet metal workers	16.73	4.92
Soft floor layers	12.84	2.65

DECISION NO. TN84-1024 Mod # 2 (49 FR 34645 - August 31, 1984) Anderson, Knox, Monroe & Roane Cos., Tennessee	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS:		
Commercial Construction *(See scope of work):		
Ironworker	$12.29	2.05
Rodman	12.15	2.05
Metal Buildings - Light Steel *(See scope of work):		
Ironworker	10.50	2.05
All Other Building Construction:		
Structural & Ornamental Reinforcing	13.29	2.05
	13.15	2.05

*SCOPE OF WORK:- IRONWORKERS:
Commercial Construction - Includes Schools, Hospitals, Office Bldgs., Banks, Shopping Centers, Warehouses, Department Stores, Telephone Bldgs., Motels, Hotels, & Condominiums, etc., Does not include any site that manufactures a product and/or industrial projects.
Metal Building - Light Steel - Includes all work involved in handling assembly, erection & installation required to construct & erect all mass produced buildings, (pre-engineered &/or prefabricated light steel bldgs. & their component parts).

DECISION NO. WA84-5040 - Mod#8
(49 FR 45532 - Nov. 16, 1984)
Statewide Washington

OMIT:
FOOTNOTE "e"
ADD:
FOOTNOTE:

e. COMMERCIAL BUILDING AND HIGHWAY PROJECTS ONLY: LABORERS (AREA 1), POWER EQUIPMENT OPERATORS (AREA 1), and TRUCK DRIVERS (AREA 1): All Counties and portions of Counties East of the 120th Meridian except DOE Hanford Site in Benton and Franklin Counties.

On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on components with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

PAVING (includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats)	$ 75,000
CRUSHING (including delivery to job site)	200,000
GRADING & CLEARING (HIGHWAY ONLY)	350,000
BRIDGES (including related work such as approaches and landscaping)	500,000
UTILITIES (Storm, sanitary sewerage and facilities for the delivery of electricity, gas, communications and domestic water)	Unlimited
BUILDINGS	$2,000,000 exclusive of mechanical & electrical subcontracts

EXCEPTIONS: Paving within a 45 mile radius of Spokane or Lewiston shall receive the full rate.

LABORERS ONLY: Work on building projects in which the value of the total project exceeds $2,000,000 shall be paid the full rate plus the full fringe benefit rate.

SUPERSEDEAS DECISION

STATE: CONNECTICUT — COUNTIES: STATEWIDE
DECISION NO. CT85-3023 — DATE: Date of Publication
Supersedes Decision No. CT84-3016 dated June 8, 1984 published in 49 FR 23980.
DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories); Residential (in Fairfield and Litchfield Counties only); Heavy (excluding tunnel construction); and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
Area 1	21.34	3.86
Area 2	18.73	4.53
Area 3	17.63	4.13
BOILERMAKERS	18.93	1.875+10%
BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:		
BUILDING CONSTRUCTION:		
Area 1	16.38	4.45
Area 2	18.15	2.68
Area 3	18.03	2.55
Area 4	17.60	3.25+a
HEAVY & HIGHWAY:		
Area 1	14.40	3.15
Area 2	14.57	2.58
Area 3	13.80	3.25
Area 4	14.00	3.15
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; LATHERS; RESILIENT FLOOR LAYERS:		
BUILDING CONSTRUCTION:		
Area 1	15.75	2.25
Area 2	15.47	2.25
Area 3	15.70	3.05
Area 4	15.70	3.15
Area 5	15.80	3.15
Area 6:		
Carpenters	16.35	2.43
Millwrights	16.85	2.43
RESIDENTIAL		
Area 1	14.05	3.05
HEAVY & HIGHWAY CONSTRUCTION		
Area 1 & 2	15.95	1.80+c
Area 3	15.60	2.65+c
Area 4	15.05	2.65+c
Area 5	15.10	3.15+c
Area 6	16.25	3.15+c
ELECTRICIANS		
Area 1	21.00	.02+26%+d
Area 2	16.86	3.05+9.25%
Residential (Single Family housing)	10.40	2.55+9.25%
Area 3	18.15	3.05+3.75%
Area 4	18.70	2.07+3.25%
Area 5	16.80	3.78+3%
Area 6	18.20	5.35+3.5%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	18.81	3.29+e+f
Helpers	13.17	3.29+e+f
Probationary Helpers	9.405	
GLAZIERS:		
Area 1	19.05	6.10
Area 2	18.43	2.64+g
Area 3	13.16	3.84+g
Area 4	15.88	1.53+h
IRONWORKERS	18.50	5.93+i
LABORERS (BUILDING):		
Group 1	13.30	2.80+j
Group 2	13.55	2.80+j
Group 3	14.05	2.80+j
Group 4	13.80	2.80+j
Group 5	13.50	2.80+j
LABORERS (HIGHWAY - In the City of Hartford: Contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing, except state and interstate highways)	13.15	2.80
LABORERS (HIGHWAY-except contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing in the City of Hartford other than state and interstate highways & HEAVY CONSTRUCTION):		
Group 1	13.15	2.80

DECISION NO. CT85-3023

	Basic Hourly Rates	Fringe Benefits
LABORERS (HEAVY CONSTRUCTION) (Continued)		
Group 2	13.40	2.80
Group 3	13.65	2.80
Group 4	13.90	2.80
LINE CONSTRUCTION:		
Area 1:		
Lineman	14.43	.02+d 19.5%
Compressor operator	12.00	.02+d 19.5%
Lamp Changer	11.21	.02+d 19.5%
Area 2		
Lineman, cable splicer, dynamite man	16.77	3.15+ 4.75%
Heavy equipment operator	15.07	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	14.22	3.15+ 4.75%
Driver groundman	12.52	3.15+ 4.75%
Groundman	9.11	3.15+ 4.75%
Area 3:		
Lineman, cable splicer, dynamite man	17.97	3.15+ 4.75%
Heavy equipment operator	16.15	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	15.24	3.15+ 4.75%
Driver groundman	13.42	3.15+ 4.75%
Groundman	9.77	3.15+ 4.75%
Area 4:		
Lineman, cable splicer dynamite man	17.49	3.15+ 4.75%
Heavy equipment operator	15.72	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	14.83	3.15+ 4.75%
Driver groundman	13.06	3.15+ 4.75%
Groundman	9.51	3.15+ 4.75%
Area 5:		
Lineman, cable splicer dynamite man	17.15	3.15+ 4.75%
Heavy equipment Op.	15.41	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	14.54	3.15+ 4.75%
Driver groundman	12.80	3.15+ 4.75%
Groundman	9.32	3.15+ 4.75%
Area 6:		
Lineman, cable splicer dynamite man	19.33	3.15+ 4.75%
Heavy Equipment Op.	17.37	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	16.39	3.15+ 4.75%
Driver groundman	14.44	3.15+ 4.75%
Groundman	10.52	3.15+ 4.75%
Areas 2, 3, 4, 5, & 6: Traffic Control, Illumination & Maintenance:		
Linemen, technicians & cable splicers	16.95	3.15+ 4.75%
Equipment operator	14.37	3.15+ 4.75%
Driver groundman	12.65	3.15+ 4.75%
Groundman	11.79	3.15+ 4.75%
Railroad Construction (including electrical distrubution, transmission lines, substations and signal construction:		
Lineman, cable splicer & dynamite man	17.70	3.15+ 4.75%
Heavy Equipment Op.	15.91	3.15+ 4.75%

DECISION NO. CT85-3023

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Equipment Operator, tractor trailer driver, field mechanic	15.01	3.15+ 4.75%
Driver groundman	13.21	3.15+ 4.75%
Groundman	9.62	3.15+ 4.75%
PAINTERS:		
Bridge (Statewide):		
Structural steel	22.20	
Sandblasting or power tools	23.20	
Spray	25.70	
Area 1:		
Brush	16.65	2.41
Tapers	17.15	2.41
Bosun's chair	17.65	2.41
Spray	20.50	2.41
Area 2:		
Brush, tapers, sandblasters	16.00	2.21+k
Rollers, paperhangers, swing stage	16.50	2.21+k
Structural steel	17.00	2.21+k
Epoxy, polyester	18.00	2.21+k
Spray	20.00	2.21+k
Area 3:		
Brush, roller, tapers	16.60	1.95+l
Vinyl & wall coverings	18.00	1.95+l
Steel	18.40	1.95+l
Epoxy	19.50	1.95+l
Spray	24.90	1.95+l
Residential	14.85	1.95+l
Area 4 & 5:		
Painters, brush, roller, and tapers	17.00	3.05
Paperhangers	17.50	3.05
Riggers	18.10	3.05
Tanks, towers, swing stage, boatswain chair, riding steel and hazardous work of a similar nature	19.10	3.05
Sandblasters & Sprayman	21.10	3.05
Area 6:		
Brush, sandblasting	16.00	1.77
Tapers	16.35	1.77
Paperhangers	16.50	1.77
Spray	19.00	1.77
Structural steel	16.25	1.77
Area 7:		
Brush	14.65	2.41
Rollers	15.16	2.41
Paperhangers, tapers, sign, structural steel, swing stage, swing scaffold, window jacks, bosun chair, steam cleaning, sandblasting	15.65	2.41
Spray	17.81	2.41
Epoxy	16.01	2.41
Spray epoxy	19.64	2.41
Projects of $75,000 or less:		
Brush	13.65	2.41
Rolling	14.15	2.41
Epoxy	14.15	2.41
Spray	14.90	2.41
PLUMBERS & STEAMFITTERS:		
Area 1	17.64	3.57
Area 2	17.60	2.25+ 5%
Area 3	19.12	2.60
Residential	11.76	1.72
Area 4	18.00	3.87+m
Residential	11.76	1.72
Area 5	17.80	2.92
Residential	11.76	1.72
Area 6:		
Jobs where total mechanical work exceeds $200,000	18.00	3.83+n
Jobs where total mechanical work is $200,000 or less	13.50	3.83+n
Area 7	19.67	2.50+o
Area 8	19.45	3.27+p
Area 9	21.81	3.40+q
Area 10:		
Plumbers	18.36	4.39
Steamfitters	18.68	4.51
POWER EQUIPMENT OPERATORS (BUILDING):		
Group I	18.81	3.75+r
Group II	18.65	3.75+r
Crane with boom, including jib, over 150 feet: $0.25 extra		
Crane with boom, including jib, over 200 feet: $0.50 extra		

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (BUILDING) (CONT'D)		
Group III	18.49	3.75+r
Group IV	18.11	3.75+r
Group V	17.67	3.75+r
Group VI	17.57	3.75+r
Group VII	17.51	3.75+r
Group VIII	17.34	3.75+r
Group XI	17.19	3.75+r
Group X	16.93	3.75+r
Group XI	15.93	3.75+r
Group XII	15.61	3.75+r
Group XIII	14.79	3.75+r
(HEAVY & HIGHWAY)		
Class 1	18.86	3.75+r
Class 2	18.61	3.75+r
Crane with 150 foot boom (including jib) - $.25 extra		
Crane with 200 foot boom (including jib) - $.50 extra		
Class 3	18.13	3.75+r
Class [redacted]	17.73	3.75+r
Class [redacted]	17.48	3.75+r
Class [redacted]	17.21	3.75+r
Class 7	16.87	3.75+r
Class 8	16.76	3.75+r
Class [redacted]	17.22	3.75+r
Class 10	16.07	3.75+r
Class 11	15.63	3.75+r
Class 12	15.46	3.75+r
Class 13	14.82	3.75+r
Class 14	10.26	3.75+r

	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Area 1	14.90	1.80
Area 2	15.15	3.875
Composition	15.65	3.875
Slate; Tile	15.65	3.875
SHEET METAL WORKERS:		
Area 1	17.99	5.57
Area 2	17.10	4.08+ 3%
SPRINKLER FITTERS	18.95	4.53
TILE, MARBLE & TERRAZZO FINISHERS	14.20	3.40
TRUCK DRIVERS		
Class 1	12.63	3.37+s
Class 2	12.73	3.37+s
Class 3	12.78	3.37+s
Class 4	12.83	3.37+s
Class 5	12.88	3.37+s
Class 6	12.93	3.37+s

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WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Paid Holidays: ½ day on Christmas Eve and ½ day on New Year's Eve.

b. $100 per year.

c. Paid Holidays: B, C, and D provided the employee works three days during the week of the holiday and the working day before and the working day after the holiday, if scheduled.

d. Employer contributes $10.00 per worker per day to Security Benefit Fund.

e. Paid Holidays: A through F, plus Friday after Thanksgiving.

f. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

g. Paid Holiday: A through F, Washington's Birthday, Good Friday and Columbus Day.

h. Paid Holiday: Labor Day, provided employee works any part of week prior to and any part of week after Labor Day.

i. The last 4 hours on Christmas Eve is a paid half-day, if employee has worked 5 consecutive days prior to Christmas Eve.

j. Paid Holidays: B, C, and D, provided the employee works three days during the week of the holiday and working day after the holiday.

k. Paid Holidays: A through F and Good Friday, provided employee works the day before and the day after the holiday.

l. Paid Holidays: A through F and Good Friday, provided employee works 15 work days within the 4 calendar weeks prior to the holiday.

m. Paid Holiday: Labor Day, provided employee was employed 10 working days prior to and works the day after the holiday.

FOOTNOTES: CONT'D

n. Paid Holidays: B and D, Good Friday and the Friday after Thanksgiving, plus a half-day the last working day before Christmas, provided the employee is employed during the work week ending the Friday immediately preceding the holiday.

o. Paid Holiday: D

p. Paid Holidays: B, D, E, and half-day paid holiday the Friday after Thanksgiving.

q. Paid Holidays: D, and half-day paid holidays on Friday before Labor Day and Friday after Thanksgiving.

r. A through F and Good Friday, provided the employee works three days in the work week in which the holiday falls, the working day before and the working day after the holiday, if scheduled.

s. A Through F and Good Friday, provided the employee has at least 31 days service and works the last scheduled day before and the first scheduled day after the holiday.

AREA DESCRIPTIONS

ASBESTOS WORKERS:

Area 1: FAIRFIELD; LITCHFIELD (Barkhamsted, Bethlehem, Bridgewater, Cornwall, Goshen, Harwington, Kent, Litchfield, Morris, New Hartford, New Milford, Plymouth, Roxbury, Sharon, Torrington, Warren, Washington, Watertown, Winchester, Woodbury, Thomaston); HARTFORD (Avon, Berlin, Bloomfield, Bristol, Burlington, Canton, East Hartford, West Windsor, Farmington, Glastonbury, Hartford, Manchester, Marlborough, New Britain, Newington, Plainville, Rocky Hill, Simsbury, Southington, South Windsor, West Hartford, Wethersfield, Windsor); NEW HAVEN; MIDDLESEX; NEW LONDON (Bozrah, Colchester, East Lyme, Franklin, Groton, Lebanon, Lyme, Montville, New London, Norwich, Old Lyme, Salena, Sprague, Waterford; TOLLAND (Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Mansfield, Tolland, Vernon, Willington); WINDHAM (Ashford, Chaplin, Eastford, Hampton, Scotland, Windham).

Area 2: LITCHFIELD (Cannan, Colbrook, Norfolk, North Canaan, Salisbury); HARTFORD (East Granby, Enfield, Granby, Hartland, Suffield, Windsor Locks); TOLLAND (Somers, Stafford, Union); WINDHAM (Woodstock).

Area 3: NEW LONDON (Griswold, Ledyard, Lisbon, North Stonington, Preston, Stonington, Voluntown); WINDHAM (Brooklyn, Canterbury, Killingly, Plainfield, Pomfret, Putnam, Sterling, Thompson).

BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:

Area 1: FAIRFIELD (Greenwich).

Area 2: FAIRFIELD (Darien, Stamford).

Area 3: FAIRFIELD (New Canaan, Norwalk, Ridgefield, Weston, Westport, Wilton).

Area 4: Remainder of State.

CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; RESILIENT FLOOR LAYERS:

Area 1: FAIRFIELD (Bethel, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Wilton

Area 2: LITCHFIELD (Barkhamstead, Bethlehem, Bridgewater, Canaan, Colebrook, Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester, Woodbury).

Area 3: FAIRFIELD (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, Westport); NEW HAVEN (Milford, Oxford, Derby, Seymour, Ansonia, Orange-that part south of Route 1 and west of the Oyster River).

Area 4: LITCHFIELD (Harwington, Plymouth, Thomaston, Watertown); HARTFORD (New Britain, Newington, Berlin, Southington, Plainville, Burlington, Canton, Bristol, Marlborough); NEW HAVEN (Meriden, Wallingford, New Haven, East Haven, Branford, Guilford, Madison, North Branford, North Haven, Hamden, West Haven, Orange - east of Orange Center Road and north of Route 1 plus north of Route 1 and east of the Oyster River, Cheshire, Waterbury, Wolcott, Middlebury, Southbury, Naugatuck, Prospect, Bethany, Beacon Falls, Woodbridge); MIDDLESEX.

Area 5: HARTFORD (Hartford, West Hartford, Avon, Farmington, Simsbury, Bloomfield, Windsor, East Granby, Granby, Windsor, Locks, Suffield, Enfield, East Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Rocky Hill, Wethersfield, Hartland); TOLLAND (Stafford, Somers, Tolland, Ellington, Bolton, Vernon).

Area 6: TOLLAND (Mansfield, Union, Willington, Coventry, Hebron, Columbia, Andover); WINDHAM; NEW LONDON.

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ELECTRICIANS:

Area 1: FAIRFIELD (Darien, Greenwich, New Canaan, Stamford).

Area 2: FAIRFIELD (Norwalk, Wilton, Weston, Westport).

Area 3: FAIRFIELD (Bethel, Bridgeport, Brookfield, Danbury, Easton, Fairfield, Monroe, New Fairfield, Newton, Redding, Ridgefield, Shelton, Sherman, Stratford, Trumbull); LITCHFIELD (except Plymouth); NEW HAVEN (Milford, Beacon Falls, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury, Wolcott); HARTFORD (Hartland).

Area 4: LITCHFIELD (Plymouth); HARTFORD (Berlin, Bristol, New Britain, Newington, Plainville, Southington); NEW HAVEN (Remainder of County); MIDDLESEX (Chester, Clinton, Deep River, Durham, East Haddam, East Hampton, Essex, Haddam, Old Saybrook, Killingworth, Westbrook); NEW LONDON (East Lyme, Groton, Ledyard-Ledyard Submarine Base Only, Lyme, New London, Old Lyme, Waterford, Fishers Island Sound).

Area 5: HARTFORD (Suffield, Enfield - portion of Thompsonville west of George Washington Road and north of Hazard Avenue).

Area 6: HARTFORD (Remainder of County); MIDDLESEX (Cromwell, Middlefield, Middletown, Portland); TOLLAND; WINDHAM; NEW LONDON (Bozrah, Colchester, Franklin, Lisbon, Montville, North Stonington, Norwich, Griswold, Lebanon, Ledyard - except Ledyard Submarine Base, Preston, Salem, Sprague, Stonington, Voluntown).

GLAZIERS:

Area 1: FAIRFIELD (Greenwich).

Area 2: FAIRFIELD (Remainder of County; NEW HAVEN (except Waterbury, Meridan, Wallingford); LITCHFIELD (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington, Watertown, Woodbury); MIDDLESEX (Clinton, Essex, Killingworth, Old Saybrook, Westbrook; NEW LONDON (Old Lyme).

Area 3: LITCHFIELD (Remainder of County); HARTFORD; MIDDLESEX (Remainder of County); NEW LONDON (Bozrah, Colchester, East Lyme, Franklin, Lebanon, Lyme, Montville, New London, Norwich, Salem, Sprague, Waterford); TOLLAND; WINDHAM (Ashford, Chaplin, Hampton, East Port, Scotland, Windham).

Area 4: NEW LONDON (Remainder of County); WINDHAM (Remainder of County).

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LINE CONSTRUCTION:

Area 1: FAIRFIELD (Darien, Greenwich, New Canaan, Stamford, Norwalk portion west of Five Mile River).

Area 2: FAIRFIELD (Wilton, Weston, Westport, Norwalk-East of Five Mile River).

Areas 3, 4, 5 & 6: See areas 3, 4, 5, & 6, respectively, of ELECTRICIANS.

PAINTERS:

Area 1: FAIRFIELD (Greenwich, Darien, Stamford, New Canaan, Norwalk, Weston, Westport, Wilton, Bridgeport, Easton, Fairfield - including Southport, Stratford, Trumbull); NEW HAVEN (Milford-South of Gulf Street).

Area 2: FAIRFIELD (Monroe, Shelton); NEW HAVEN (Ansonia, Beacon Falls, Derby, Oxford, Seymour).

Area 3: FAIRFIELD (Bethel, Brookfield, Danbury, Newton, New Fairfield, Redding, Ridgefield, Sherman); LITCHFIELD (New Milford).

Area 4: NEW HAVEN (Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott); LITCHFIELD (Roxbury, Thomaston, Washington, Watertown, Woodbury).

Area 5: LITCHFIELD (Barkhamstead, Canaan, Colebrook, Cornwall, Goshen, Harwington, Kent, Litchfield, New Hartford, Norfolk, North Canaan, Salisbury, Sharon, Torrington, Warren, Winchester); HARTFORD; NEW HAVEN (Cheshire, Guilford, Madison, Meriden, Wallingford); MIDDLESEX; TOLLAND; WINDHAM (Ashford, Windham).

Area 6: NEW HAVEN (Bethany, Branford, East Haven, Hamden, Milford - south to Gulf Street, New Haven, North Branford, North Haven, Orange, West Haven, Woodbridge, Woodmont).

Area 7: NEW LONDON; WINDHAM (Remainder of County).

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PLUMBERS & STEAMFITTERS:

Area 1: FAIRFIELD (Greenwich).

Area 2: FAIRFIELD (Stamford, Darien, New Canaan).

Area 3: FAIRFIELD (Norwalk, Westport, Weston, Wilton).

Area 4: FAIRFIELD (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull); NEW HAVEN (Milford).

Area 5: FAIRFIELD (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding Ridgefield, Sherman); LITCHFIELD (Bridgewater, New Milford).

Area 6: LITCHFIELD (Remainder of County); NEW HAVEN (Ansonia, Beacon Falls, Bethany, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury, Wolcott); HARTFORD (Hartland).

Area 7: HARTFORD (Berlin, Bristol, New Britain, Plainville, Southington and parts of Newington, Farmington and West Hartford--Newington south of Cedar Street, west of Berlin Turnpike, north along New Haven Railroad to South Main Street to Route 6, west on Route 6 to Bristol town line); NEW HAVEN (Cheshire, Meridan, Wallingford); MIDDLESEX (Durham).

Area 8: NEW HAVEN (Branford, Derby, East Haven, Guilford, Hamden, Madison, New Haven, North Branford, North Haven, Orange, West Haven, Woodbridge) MIDDLESEX (Chester, Clinton, Deep River, Killingworth, Westbrook).

Area 9: NEW LONDON; MIDDLESEX (Essex, Old Saybrook, Saybrook); WINDHAM (Except Windham Twsp.).

Area 10: HARTFORD (Avon, Bloomfield, Burlington, Canton, East Granby, East, Hartford, East Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, South Windsor, Suffield, West Hartford, Wethersfield, Windsor, Windsor Locks); MIDDLESEX (Cromwell, East Haddam, East Hampton, Haddam, Middlefield, Middletown, Portland); TOLLAND; WINDHAM.

ROOFERS:

Area 1: FAIRFIELD; LITCHFIELD (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington, Woodbury); NEW HAVEN (Ansonia, Beacon Falls, Bethany, Branford, Derby, East Haven, Guilford, Hamden, Madison, Middlebury, Milford, Naugatuck, New Haven, North Branford, North Haven, Orange, Oxford, Seymour, West Haven, Woodbridge).

Area 2: NEW HAVEN (Cheshire, Meriden, Prospect, Wallinford, Wolcott); LITCHFIELD (Remainder of County); HARTFORD; MIDDLESEX; NEW LONDON; TOLLAND; WINDHAM

SHEET METAL WORKERS:

Area 1: FAIRFIELD; LITCHFIELD.

Area 2: NEW HAVEN; HARTFORD; MIDDLESEX; NEW LONDON; TOLLAND; WINDHAM.

CLASSIFICATION DESCRIPTIONS

LABORERS (BUILDING):

Group 1: Laborers, carpenter tenders, wrecking laborers, fire watchers.

Group 2: Jack hammer operator, mason tenders, mortar mixer, pipelayers, plasterers tenders, power buggy operators, powdermen.

Group 3: Air track operators, wagon drill operators, sand blasters, blasters.

Group 4: Bottom men on open air caisson, cylindrical work and boring crew.

Group 5: Top men on open air caisson, cylindrical work and boring crew.

LABORERS (HIGHWAY - except contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing in the City of Hartford other than state and interstate highways):

Group 1: Laborers (unskilled).

Group 2: Asphalt rakers, chain saw operators, fence and guard rail erectors, pipelayers, mason tenders, pneumatic tool operators, powdermen, and wagon drill operators.

Group 3: Air track operators, block pavers, curb setters.

Group 4: Blasters.

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POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

Group I: Derrick, hoisting engineer 2 drums and over, hoisting structural steel, pile driver & setting stone.

Group II: Dragline, forklift - over 4' lift, front end loader - 7 cy. or over, gradall, hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull, or drag material regardless of motive power or operation), Koehring scooper loader and/or hoe, master mechanic, shovel, & tower crane.

Group III: Maintenance engineer.

Group IV: Central mix operator, Coleman loader and screening plant or similar equipment, combination hoe and loader over ¼ yd, conveyors - regardless of motive power, front end loader 3 cy. up to 7 cy., joy drill limited to joy heavy weight champion or equivalent, mucking machine, post hole digger, pumpcrete machine, rock boring machine, vibratory hammer, welder & well digger.

Group V: Asphalt spreader.

Group VI: Bulldozer, carry-all operators, grader, & scraper pan.

Group VII: Combination hoe and loader machine, concrete mixer - 5 bags and over, front end loader under 3 cy., powerstone spreader.

Group VIII: Fork lift not over 4', Steam Jenny.

Group IX: Roller.

Group X: Dinky machine, power pavement breaker.

Group XI: Mechanical Heater.

Group XII: Fireman (High Pressure).

Group XIII: Oiler.

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POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over).

Class 2: Piledriver; power shovel and crane; dragline; gradall; trenching machine; lighter derrick; master mechanic; paver (concrete); derrick (stiff leg and guy); steel pile sheeting; Koehring loader (scooper).

Class 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid); mucking machine; pumpcrete; rock and earth boring machine; post hole digger; well digger; & hammer (vibratory); central mix; combination hoe & loader (over ¼ yd.).

Class 4: Asphalt spreader.

Class 5: Front end loader (3 yds. or over); grader; power stone spreader; combination hoe and loader.

Class 6: Asphalt roller; bulldozer; carryall; maintenance engineer concrete mixer (5 bags and over); welder.

Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine.

Class 8: Compressor battery.

Class 9: Well point system.

Class 10: Batch plant.

Class 11: Fireman (high pressure).

Class 12: Compressor; pump.

Class 13: Oiler.

Class 14: Track backhoe oiler.

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TRUCK DRIVERS:

Class 1: Two axle trucks; helpers.

Class 2: Three axle trucks; two axle ready mix.

Class 3: Three axle ready mix.

Class 4: Four axle trucks; heavy duty trailer-up to 40 tons.

Class 5: Four axle ready-mix; specialized earth moving equipment other than conventional type on-th road trucks and semi-trailer (including Euclids).

Class 6: Heavy duty trailer-40 tons and over.

SUPERSEDEAS DECISION

STATE: MICHIGAN

AREA: MACOMB, MONROE, OAKLAND, WASHTENAW and WAYNE COUNTIES

DECISION NO.: MI85-5022 DATE: DATE OF PUBLICATION

Supersedes Decision Number MI83-2007 dated February 11, 1983, in 48 FR 6454.

DESCRIPTION OF WORK: Building construction, Heavy construction (does not include Bridge, Airport, Sewer, Water Lines or TV/Grout projects) and Residential construction (consisting of single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$16.85	$2.42
Area 2	15.93	4.00
Area 3	17.38	5.02
BOILERMAKERS:		
Area 1	20.325	3.58
Area 2	16.94	5.70
BRICKLAYERS:		
Area 1	19.62	1.52
Area 2	15.95	2.964+ 19%
CARPENTERS:		
Area 1	16.57	2.15
Area 2:		
Building construction	16.07	1.70 +22%
Residental construction	12.70	2.45 +11%
CEMENT MASONS:		
Area 1	14.11	2.44 +25%
Area 2	19.62	1.52
ELECTRICIANS:		
Area 1	20.00	3.3% +3.00
Area 2:		
Electricians	16.96	1.76+ 19%
Cable Splicers	19.50	1.76+ 19%
Area 3	18.10	4.51 +3%
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	17.30	3.00 +a+b
Helpers	12.11	3.00 +a+b
Probationary Helpers	9.65	
GLAZIER:		
Building construction	14.69	2.70+b
Residential construction	9.00	2.70+b
IRONWORKERS:		
Area 1	19.19	3.84
Area 2	13.53	3.13 +38.64%
LINE CONSTRUCTION:		
Area 1:		
Linemen & Technicians	15.50	1.00 +8 1/2% +c
Cable Splicers	16.13	1.00 + 8 1/2% +c
Combination Digger Operator and Tractor Operator Groundmen	12.07	1.00+ 8 1/2% +c
Light Equipment Operator Groundmen- Distribution Line Truck Driver Operator Groundmen	10.59	1.00+ 8 1/2% +c
Combination winch Truck Driver Groundmen	10.10	1.00+ 8 1/2% +c
Combination Truck Driver & Groundmen	8.55	1.00+ 8 1/2% +c
Area 2:		
Linemen & Technicians	17.63	2.05+ 13.5%
Cable Splicers	18.38	2.05+ 13.5%
Combination Equipment Operators & Groundmen	14.14	2.05+ 13.5%
Combination Truck Driver & Groundmen	13.31	2.05+ 13.5%
Groundmen	12.26	2.05+ 13.5%
MARBLE MASONS	16.23	3.80
MARBLE FINISHERS	13.77	3.05
MILLWRIGHTS	15.4037	2.8611+ 33.5%

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	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 1:		
Brush	$14.75	65.02
Spray, under 40'	15.25	5.02
Spray, over 40'	15.375	5.02
Residential Painter	12.75	5.02
PLASTERERS:		
Area 1	16.61	3.75
Area 2	19.62	1.52
PLUMBERS:		
Area 1	16.62	5.00
Area 2	14.93	4.25
Area 3:		
Single family homes and apartments up to and including 2 stories	13.90	3.20
All others construction	15.09	6.43
ROOFERS:		
Area 1	16.45	3.85
Area 2	15.02	4.09
Area 3:		
Roofers	15.83	5.00
Slater	16.83	5.00
SHEET METAL WORKERS:		
Area 1	16.825	3.64
Area 2:		
Residential construction and light commercial construction (jobs consisting of 10 tons of air conditioning and/or 200,000 B.T.U.'s of heating, and architectural sheet metal work on such projects)	10.11	2.04
All others construction	16.13	3.26+ 26.01%
SPRINKLER FITTERS:		
Area 1	17.17	2.83
Area 2	18.635	4.45
TERRAZZO WORKERS	15.07	3.80
TILE SETTERS	15.62	3.82
TILE FINISHERS	13.77	3.55
TRUCK DRIVERS:		
Building, Heavy and Residential work:		
Group 1	13.80	*111.50
Group 2	13.95	*111.50
Group 3	14.05	*111.50

*PER WEEK PER EMPLOYEE

WELDERS:
Receive rate prescribed for craft performing operation to which welding is incidental.

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	Basic Hourly Rates	Fringe Benefits
LABORERS - BUILDING AND HEAVY CONSTRUCTION:		
Area 1:		
Group 1	12.76	2.94
Group 2	12.96	2.94
Group 3	13.08	2.94
Area 2:		
Group 1	14.68	1.69
Group 2	14.88	1.69
Area 3:		
Group 1	11.84	4.84
Group 2	11.92	4.84
Group 3	12.09	4.84
Group 4	12.03	4.84
Group 5	12.07	4.84
Group 6	12.17	4.84
Group 7	12.22	4.84
Group 8	12.59	4.84
Group 9	12.34	4.84
Group 10	11.09	4.84
LANDSCAPE LABORERS:		
Class A	8.60	
Class B	6.56	
LABORERS - Open Cut Construction:		
Contracts over $400,000:		
Area 1:		
Group 1	12.03	2.54
Group 2	12.12	2.54
Group 3	12.17	2.54
Group 4	12.22	2.54
Group 5	12.27	2.54
Area 2:		
Group 1	12.07	2.54
Group 2	12.17	2.54
Group 3	12.27	2.54
Group 4	12.32	2.54
Group 5	12.43	2.54
Area 3:		
Group 1	12.34	4.14
Group 2	12.42	4.14
Group 3	12.47	4.14
Group 4	12.53	4.14
Group 5	12.58	4.14
Contracts $400,000 or less:		
Area 1:		
Group 1	10.28	2.54
Group 2	10.37	2.54
Group 3	10.42	2.54
Group 4	10.47	2.54
Group 5	10.52	2.54
Area 2:		
Group 1	10.07	2.54
Group 2	10.17	2.54
Group 3	10.27	2.54
Group 4	10.32	2.54
Group 5	10.43	2.54

DECISION NO. MI85-5022

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
LABORERS- Open Cut Const. (Cont'd)		
Contract $400,000 or less:		
Area 3:		
Group 1	11.09	4.14
Group 2	11.17	4.14
Group 3	11.22	4.14
Group 4	11.28	4.14
Group 5	11.33	4.14
LABORERS - Tunnel, Shaft and Caisson work:		
Contracts over $400,000:		
Area 1:		
Group 1	12.46	4.14
Group 2	12.55	4.14
Group 3	12.60	4.14
Group 4	12.75	4.14
Group 5	12.96	4.14
Group 6	13.22	4.14
Area 2:		
Group 1	12.56	2.99
Group 2	12.65	2.99
Group 3	12.70	2.99
Group 4	12.85	2.99
Group 5	13.06	2.99
Group 6	13.31	2.99
Contracts $400,000 or less		
Area 1:		
Group 1	11.21	4.14
Group 2	11.30	4.14
Group 3	11.35	4.14
Group 4	11.50	4.14
Group 5	11.71	4.14
Group 6	11.97	4.14
Area 2:		
Group 1	10.55	2.99
Group 2	10.63	2.99
Group 3	10.68	2.99
Group 4	10.84	2.99
Group 5	11.04	2.99
Group 6	11.30	2.99
POWER EQUIPMENT OPERATORS - Building, Heavy and Residential Construction		
Group A	16.47	4.35
Group B	16.25	4.35
Group C	15.69	4.35
Group D	15.21	4.35
Group E	14.84	4.35
Group F	12.59	4.35
Group G	11.77	4.35

Page 3

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
Steel Erection:		
Group 1	17.37	4.35+13%
Group 2	18.26	4.35+13%
Group 3	17.13	4.35+13%
Group 4	18.02	4.35+13%
Group 5	16.49	4.35+13%
Group 6	17.37	4.35+13%
Group 7	16.17	4.35+13%
Group 8	17.05	4.35+13%
Group 9	15.96	4.35+13%
Group 10	12.98	4.35+13%
Group 11	11.82	4.35+13%
POWER EQUIPMENT OPERATORS - Underground Work:		
Contracts over $400,000:		
Class 1	14.93	4.35+13%
Class 2	14.55	4.35+13%
Class 3	13.90	4.35+13%
Class 4	13.40	4.35+13%
Contracts $400,000 or less:		
Class 1	14.04	4.35+13%
Class 2	13.66	4.35+13%
Class 3	13.22	4.35+13%
Class 4	12.51	4.35+13%

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES:

A. SEVEN PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day. Vacation Pay Credit: Employer contribution of 8% of basic hourly wage for employees with 5 years' or more of service, and 6% for employees with 6 months' to 5 years' service.

B. FOUR PAID HOLIDAYS: New Year's Day; Decoration Day; Labor Day Christmas Day.

C. SEVEN PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day - provided the employee works the scheduled workday preceding and following the day observed.

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Monroe County
Area 2: Washtenaw County (Townships of Bridgewater, Dexter, Freedom, Lima, Lindon, Manchester, Sharon and Sylvan)
Area 3: Remainder of Area

BOILERMAKERS:
Area 1: Monroe County
Area 2: Remainder of Counties

BRICKLAYERS:
Area 1: Washtenaw County
Area 2: Macomb County, Monroe County (East Half), Oakland County and Wayne County

CARPENTERS:
Area 1: Washtenaw County
Area 2: Remainder of Counties

CEMENT MASONS:
Area 1: Macomb, Monroe, Oakland and Wayne Counties
Area 2: Washtenaw County

ELECTRICIANS:
Area 1: Monroe County
Area 2: Washtenaw County
Area 3: Remainder of Counties

ELEVATOR CONSTRUCTORS:
Area 1: Macomb, Oakland and Wayne Counties

IRONWORKERS:
Area 1: Monroe County
Area 2: Remainder of Counties

LINE CONSTRUCTION:
Area 1: Monroe County (Townships of Bedford, Erie, Lasalle and Whiteford), Oakland County (Township of Holly), and Washtenaw County (Townships of Lyndon, Manchester, Sharon and Sylvan)
Area 2: Remainder of area

PAINTERS:
Area 1: Macomb, Monroe, Washtenaw and Wayne Counties

PLASTERERS:
Area 1: Macomb County (South of 13-miles road), Monroe County (North of route 223 from the west county line east on route 151 to Lake Erie), Oakland County (South of 13-mile road), and Wayne County
Area 2: Washtenaw County

PLUMBERS:
Area 1: Monroe County
Area 2: Washtenaw County
Area 3: Remainer of Counties

ROOFERS:
Area 1: Monroe County
Area 2: Washtenaw County
Area 3: Remainder of Counties

SHEET METAL WORKERS:
Area 1: Monroe County
Area 2: Remainder of Counties

SPRINKLER FITTERS:
Area 1: Monroe County
Area 2: Remainder of Counties

LABORERS-BUILDING AND HEAVY CONSTRUCTION:
Area 1: Washtenaw County
Area 2: Monroe County
Area 3: Remainder of Counties

LABORERS-OPEN CUT CONSTRUCTION:
Area 1: Washtenaw County
Area 2: Monroe County
Area 3: Remainder of Counties

LABORERS-TUNNEL, SHAFT AND CAISSON WORK:
Area 1: Macomb, Oakland and Wayne Counties
Area 2: Remainder of Counties

DESCRIPTIONS OF GROUPS
TRUCK DRIVERS-BUILDING, HEAVY AND RESIDENTIAL WORK

Group 1: Truck drivers on all trucks except semi trucks or tractor trailers, pole trailers, lowboys, straddle carrier, double bottom and special load permit vehicles
Group 2: Truck drivers on semi trucks or tractor trailer except pole trailer driver, lowboy driver, straddle carriers, double bottom and special load permit vehicles
Group 3: Pole trailer driver, lowboy driver, straddle carriers, double bottom driver, special permit load driver and fuel truck driver

LABORERS-BUILDING AND HEAVY CONSTRUCTION

Area 1:
Group 1: General Laborers
Group 2: Mortar mixer, material mixer (hand or machine), air/gas/electric tool operators, power buggy operator, stone setter helper, scaffold builder or dismantler, windlass operator, tar and kettle opertor
Group 3: Crock or pipe layer and caisson worker
Area 2:
Group 1: Laborer and carpenter helper
Group 2: Mortar mixer, including concrete and mortar 1/2 cu. yd. or smaller machine, or by hand in a mortar box; mason tender and cement mason helper, plaster tender, portable mixer operator, air/diesel/electric/gasoline tool operator (including concrete vibrator operator and acetylene torch), furnace battery heater helpers, caisson workers, signalman on concrete pours only
Area 3:
Group 1: Construction laborer
Group 2: Mortar mixer (including concrete and mortar 1/2 cu. yd. or smaller machine, or by hand in mortar box), scaffold builder
Group 3: Signal man and top man (on sewer and caisson work), air, electric or gas tool operator, including concrete vibrator and acetylene torch air hammer
Group 4: Windlass and tugger operator (on caisson work)
Group 5: Crock grade man
Group 6: Crock layer and pipe layer
Group 7: Caisson worker
Group 8: Lansing burner, blaster and powder man
Group 9: Furnace battery heater helpers, burning bar and oxy-acetylene gun
Group 10: Cleaner/sweeper laborer

LANDSCAPE LABORERS

Class A: Landscape specialist, including air, gas, diesel, electric tools and equipment
Class B: Landscape Laborers, truck drivers, material haulers and small power equipment

LABORERS-OPEN CUT CONSTRUCTION-AREA 1, 2, AND 3:

Group 1: Construction Laborers
Group 2: Mortar and Material Mixer, concrete form man, signal man, well point man, manhole, headwall and catch basin builder, guard rail builders and fence erector
Group 3: Air, gasoline and electric tool operator, vibrator operator, bracers, rodders, reinforced steel or mesh men (e.g., wire mesh, steel mats, dowel bars, etc.), cement finisher, pipe jacking and boring man, wagon drill and air track operator and concrete saw operator (under 40 H.P.), windlass and tugger man
Group 4: Trench or excavating grade man
Group 5: Pipe layer (including crock, metal pipe, multi-plate or other conduits)

LABORERS-TUNNEL, SHAFT AND CAISSON WORK-AREAS 1 AND 2:

Group 1: Tunnel, shaft and caisson laborer, pump man, shanty man, hog house tender, testing man (on gas)
Group 2: Manhole, headwall, catch basin builders, bricklayer tender, mortar man, material mixer, fence erector and guard rail builder
Group 3: Air tool operator (jackhammer man, bush hammer man and grinding man), first bottom man, second bottom man, cage tender, car pusher, carrier man, concrete man, concrete form man, concrete repair man, cement invert laborer, cement finisher, concrete shoveler, conveyor man, floor man, gasoline and electric tool operator, gunmite man, grout operator, pump man, outside lock tender, scaffold man, top signal man, switch man, track man, tugger man, utility man, vibrator man, winch operator, pipe jacking, boring man, wagon drill and air track operator and concrete saw operator (under 40 H.P.)
Group 4: Tunnel, shaft and caisson mucker, bracer man, liner plate man, long haul dinky driver and well point man
Group 5: Tunnel, shaft and caisson miner, drill runner, key board operator, power knife operator, reinforced steel or mesh man (e.g., wire mesh, steel mats, dowel bars, etc.)
Group 6: Dynamite man and powder man

POWER EQUIPMENT OPERATORS-BUILDING, HEAVY AND RESIDENTIAL CONSTRUCTION:

Group A: Crane with boom and jib or leads 220' or longer
Group B: Crane with boom and jib or leans 140' or longer
Group C: Crane with boom and jib 120' or longer
Group D: Regular crane operator
Group E: Regular engineer
Group F: Engineer when operating compressor or welding machine
Group G: Firemen or oiler

POWER EQUIPMENT OPERATORS-STEEL ERECTION:

Group 1: Crane operator when operating combination of boom and jib 220' or longer
Group 2: Crane operator when operating combination of boom and jib 220' or longer on a crane that requires an oiler
Group 3: Crane operator when operating combination of boom and jib 140' or longer
Group 4: Crane operator when operating combination of boom and jib 140' or longer on a crane that requires an oiler
Group 5: Crane operator when operating combination of boom and jib 120' or longer
Group 6: Crane operator when operating combination of boom and jib 120' or longer on a crane that requires and oiler
Group 7: Crane operator and job mechanic
Group 8: Crane operator on a crane that requires an oiler
Group 9: Hoisting operator
Group 10: Compressor and/or welder operator
Group 11: Oiler

POWER EQUIPEMENT OPERATORS-UNDERGROUND WORK:

Class 1: Backfiller tamper, backhoe, batch plant operator (concrete), clamshall, concrete paver (two drum or larger), conveyor loader (euclid type), crane (crawler, truck type or pile driver), dozer (9 ft. blade and over), dragline, elevating grader, endloader (over 1-1/2 cu yds. capacity), gradall (and similar type equipment), mechanic, power shovel, roller (asphalt), scraper (self-propelled or tractor drawn), side boom tractor (type D-4 or equivalent and larger), slip form paver, slope paver, trencher (over 8 ft. digging capacity), well drilling rig
Class 2: Boom truck (power swing type boom), crusher, dozer (less than 9 ft. blade), endloader (1-1/2 cu. yds. capacity and smaller), hoist, pump (one or more - 6 in. discharge or larger - gas or diesel-powered or powered by generator of 300 amps or more - inclusive or generator), side boom tractor (smaller than type D-4 or equivalent), sweeper (Wayne type and similar equipment), tractor (Pneu-tired, other than backhoe or front-end loader), trencher (8 ft. digging capacity)
Class 3: Air compressor (6,000 cfm or larger), air compressor (2 or more, less than 600 cfm), boom truck (non-swinging, non-powered type boom), concrete breaker (self-propelled or truck mounted - includes compressor), concrete paver (one drum - 1-1/2 yd or larger), elevator (other than passenger), maintenance man, mechanic helper, pump (2 or more - 4 in. up to 6 in. discharge - gas or diesel powered - excluding submersible pumps), pumpcrete machine (and similar equipment), wagon drill (multiple), welding machine or generator (2 or more 300 amp. or larger - gas or diesel powered)
Class 4: Boiler, concrete saw (40 H.P. or over), curing machine (self-propelled), farm tractor (with attachment), finishing machine (concrete), fireman, hydraulic pipe pushing machine, mulching equipment, oiler, pumps (2 or more up to 4 in. discharge if used 3 hours or more a day - gas diesel powered - excluding submersible pumps), roller (other than asphalt), stump remover, trencher (service), vibrating compaction equipment (self-propelled, 6 ft. wide or over)

SUPERSEDEAS DECISION

STATE: Virginia

COUNTIES: Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington Wise & Wythe

DECISION NO. VA85-3028

DATE: Date of Publication

Supersedes Decision No. VA85-3000, dated January 11, 1985 in 50 FR 1681.

DESCRIPTION OF WORK: Highway Construction

	Basic Hourly Rates	Fringe Benefits
Asphalt Raker	5.16	
Carpenter, Structure	6.42	
Carpenter Helper, Structure	5.15	
Concrete Finisher	6.81	
Concrete Finisher Helper	5.25	
Electrician	8.00	
Guardrail/Fence Erector	6.90	
Ironworker, Reinforcing	7.00	
Laborer, Unskilled	6.41	
Mechanic	7.99	
Mechanic Helper	6.09	
Pipe Layer	6.58	
Powderman Blaster	6.85	
Sign Erector	8.00	
Asphalt Distributor Operator	5.25	
Asphalt Paver Operator	5.30	
Backhoe Operator	7.05	
Bulldozer Operators	6.46	
Crane, Derrick, Dragline Operator (1 yd. & under)	6.75	
Crane, Derrick, Dragline Operator (Over 1 yd.)	7.00	
Drill Operator	6.07	
Form Grader Operator	7.50	
Line Marker Operator	8.00	
Loader Operator (2 yds. & under)	6.94	
Loader Operator (over 2 yd.)	6.57	
Motor Grader Operator (Fine Grade)	6.88	
Motor Grader Operator (Rough Grade)	6.24	
Oiler Greaser	5.97	
Roller Operator (Rough)	6.78	
Roller Operator (Finish)	5.00	
Scraper Pan Operator	5.05	
Stone Spreader Operator	5.16	
Plant Operator	5.00	
Power Tool Operator	8.00	
Tractor Operator (Utility)	5.00	
Trenching Machine Operator	6.50	
Truck Driver, Heavy Duty (7 cy. & under)	4.83	
Truck Driver, Heavy Duty (over 7 cy.)	5.50	
Truck Driver (Multi-Rear Axle)	5.10	
Truck Driver (Single-Rear Axle)	4.82	

[FR Doc. 85-13531 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday,
June 7, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control; Public Hearings and Extension of Public Comment Period

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Public Hearings and Extension of Public Comment Period.

SUMMARY: In response to requests from the public, the Office of Surface Mining (OSM) will hold public hearings in two States and will extend until June 28, 1985, the public comment period on the rule it proposed in the April 5, 1985 **Federal Register** (50 FR 13724).

The proposed rule would amend OSM regulations pertaining to the permit approval process by adding definitions for the terms "ownership" and "control", and expanding the scope of findings required prior to permit approval

A clear explanation of the meaning of "ownership" and "control", along with a corresponding expansion of the findings required prior to permit approval is needed to eliminate or greatly reduce the possibility of persons obtaining and/or holding permits in violation of the permit approval provision of section 510(c) of the Surface Mining Control and Reclamation Act. More detailed background on the proposed rule can be found in the April 5, 1985, **Federal Register** (50 FR 13724).

DATES: The public hearings will be held:

Thursday, June 20, 1985, beginning at 10:00 a.m. in the auditorium, Mountain Empire Community College, Route 23, Gate City Highway, Big Stone Gap, VA; and

Friday, June 21 1985, beginning at 10:00 a.m. at 2242 South Hamilton Road, 2nd Floor, Columbus, OH.

Persons wishing to speak at the hearings are asked to contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" by June 14, 1985, to facilitate the scheduling of testimony.

The comment period on the proposed rule will extend until June 28, 1985. All written comments must be received at the location below under "**ADDRESSES**" by close of business on that date.

ADDRESSES: Hand-deliver or mail written comments to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Acting Chief, Division of Regulation and Inspection, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C., 20240; Telephone: 202–343–5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: Public hearings on the proposed rule will be held at the times and locations listed above to hear all those who wish to testify.

OSM appreciates all comments on the proposed rules, but those that will be most useful will be those that are as specific as possible, focus on the issues in this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this rule, nor can OSM ensure consideration of written comments received after the comment period ends or those delivered to an address other than that specified.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful, and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advanced submissions will give these officials an opportunity to consider appropriate questions, which could be asked for clarification, or to request more specific information from the person testifying.

The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Dated: June 3, 1985.

C.B. Kenehan,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 85–13622 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–05–M

Federal Register

Friday
June 7, 1985

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 2090

Special Laws and Rules; Segregation and Opening of Public Lands; Restatement of Procedures; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would revise the regulations in subpart 2091 to restate in one location the regulations that cover all forms of segregation of public lands, as well as the procedures under which those lands are opened to the public land laws and the mineral laws. This proposed rulemaking will remove outdated provisions, making the subpart more useable by the public for the purpose of determining the status of public lands. The revision would also facilitate the improvement of the accuracy of the public land records.

DATE: Comments should be submitted by August 6, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Powell, (202) 343–6486.

SUPPLEMENTARY INFORMATION: This proposed rulemaking is designed to clarify the procedural aspects of specific actions which segregate public lands and interests in lands, as well as the effect of actions which open such lands, including procedures governing the date and time an opening becomes effective. The proposed rulemaking would also provide equal public notice and opportunity to acquire lands and interests in lands which formerly were not available for acquisition.

The proposed rulemaking would provide, in a single location for easy reference and better understanding by the public, a restatement of the description of the circumstances and procedures under which public lands and interests in lands are segregated from and opened to operation of the public land laws and the mineral laws governing the use and disposal of such lands and interests therein.

Historically, in the absence of specific regulations or other authority, notation to the public land records served to segregate or open public lands or interests in those lands to operation of the various public land and mineral laws as of the date of notation. The proposed rulemaking would end the existing uncertainty as to the dates public lands and interests are segregated or opened by providing in one location for easy access the procedures governing the dates and times such actions are effective. The proposed rulemaking would not change the status of the land records as a source of information on the availability of the public lands and the interests therein.

The principal author of this proposed rulemaking is Jim Powell, Division of Withdrawals and Withdrawal Review, assisted by the staff of the Office of Legislation and Regulatory Review, all of the Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The revision made by this proposed rulemaking is a restatement in one location of the existing procedures for segregating or opening the public lands to the various public land laws and the mineral laws. The proposed rulemaking makes no change in the procedures that exist in other parts of Title 43 of the Code of Federal Regulations, procedures that apply equally to all entities who desire to use the public lands.

This proposed rulemaking is a restatement of regulations that are located in other parts of Title 43 of the Code of Federal Regulations and there are no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), it is proposed to amend Part 2090, Group 2000, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 2090 is amended by revising subpart 2091 to read:

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.

2091.0–1 Purpose.
2091.0–3 Authority.
2091.0–5 Definitions.
2091.0–7 Principles.
2091.1 Action on applications and mining claims.
2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
2091.2–1 Segregation.
2091.2–2 Opening.
2091.3 Segregation and Opening resulting from the filing of an application or offer.
2091.3–1 Segregation.
2091.3–2 Opening.
2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
2091.4–1 Segregation and opening—Desert land entries and Indian allotments.
2091.4–2 Segregation and opening—airport leases and grants.
2091.4–3 Segregation and opening—Carey Act.
2091.5 Withdrawals.
2091.5–1 Segregation and opening of withdrawals resulting from applications filed on or after October 21, 1976.
2091.5–2 Withdrawals resulting from applications filed prior to October 21, 1976.

Sec.
2091.5–3 Segregative effect and opening—emergency withdrawals.
2091.5–4 Segregative effect and opening—water power withdrawals.
2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.
2091.5–6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands—general.
2091.7 Segregation and opening of lands for a specific use.
2091.7–1 Segregative effect and opening—Recreation and Public Purposes Act, Small Tract Act and the Classification and Multiple Use Act.
2091.7–2 Segregative effect and opening—Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
2091.9–1 Alaska Native selections.
2091.9–2 Selections by the State of Alaska.
2091.9–3 Lands in Alaska under grazing lease.

Authority: R.S. 2478 (43 U.S.C.1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 Note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 43 U.S.C. 1701 et seq.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in Title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2091.0–3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 2091.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) "Land" or "public lands" means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Mineral laws" means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) "Public lands records" means the Tract Books, Master Title Plats and Historical Indices, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, openings, classifications, applications, segregations, leases, permits and disposals.

(f) "Opening" means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if necessary, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals and reservations. Depending on the language in the opening order, an opening may restore the lands to all or some of the public land laws.

(g) "Opening order" means an order issued by the Secretary or the authorized officer and published in the **Federal Register** that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) "Revocation" means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the "Secretary".

§ 2091.0–7 Principles.

(a) Segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to application, lease and permit under the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is for a limited period which is specified in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, when approval of the application is prevented by:

(1) Withdrawal or reservation of lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classification under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action published in the **Federal Register** under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2–1 Segregation.

The publication of a Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869–4), for a period of 18 months (See Part 2740 and Subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See Part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for a period of 2 years (See Part 2200).

§ 2091.2–2 Opening.

(a) The segregative effect of a Notice of Realty Action terminates and the lands automatically become open either:

(1) At the end of the periods set out in § 2091.2–1 of this title; or

(2) Upon the publication in the **Federal Register** of an opening order; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands and become open to the operation of the public lands laws to the extent and on the date and time set forth in an opening order published in the **Federal Register**.

§ 2091.3 Segregation and opening resulting from the filing of an application or offer.

§ 2091.3–1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See Subparts 2621 and 2622)

(b) The proper filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized officer. (See § 2202.1(b))

(c) The filing of an application and publication in the **Federal Register** of a notice of the filing of an application for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the filing of the application with the authorized officer. (See Part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. 211–214), segregates the lands as of the date of filing with the authorized officer. (See Subpart 2911)

§ 2091.3–2 Opening.

(a) If the application or offer described in § 2091.3–1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of those actions terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the **Federal Register** of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3–1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are open to operation of all laws and regulations applicable to National Forest System lands and the public lands, as applicable, on the date of acceptance of title by the United States.

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4–1 Segregation and opening—Desert land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See Subparts 2520 and 2530)

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the **Federal Register** of an opening order which specifies the date and time of opening. (See Subparts 2520 and 2530)

§ 2091.4–2 Segregation and opening—airport leases and grants.

(a) For lands covered by an airport lease or grant, the issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands on the date the lease, patent or document of conveyance is signed by the authorized officer. (See Subparts 2640 and 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See Subparts 2640 and 1911).

§ 1091.4–3 Segregation and opening—Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the **Federal Register** that a contract has been signed segregates the lands

described in the contract, as of the date of publication for a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See Subpart 2610)

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of Subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5–1 Segregation and opening of withdrawals resulting from applications filed on or after October 21, 1976.

(a) Publication in the **Federal Register** of a notice of an application for withdrawal, as provided in Subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Withdrawals resulting from applications and proposals filed on or before October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the issuance of a Public Land Order approving or effecting a new withdrawal, in whole or in part, including any new lands that might be added by the Public Land Order;

(3) The publication of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the **Federal Register** of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5–2 Withdrawal resulting from applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the **Federal Register**, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5–1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, or on or after October 21, 1986, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5–1 of this title.

(b) Withdrawals resulting from applications filed under this section terminate in accordance with procedures in § 2091.5–1 of this title.

§ 2091.5–3 Segregative effect and opening—emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration unless the segregative effect is continued by a withdrawal application or proposal and the publication in the **Federal Register** of a notice as provided under Subpart 2310 of this title.

§ 2091.5–4 Segregative effect and opening—water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public lands laws, but are open to operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws, subject to Federal Energy Regulatory Commission concurrence and appropriate terms and conditions. (See Subpart 2320) Mining claims may be located on such lands under procedures in Subpart 3730 of this title. These lands are opened by publication in the **Federal Register** of an opening order specifying the extent, date and time of opening.

§ 2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate under the provisions of section 24 of the Federal Power Act of 1920, as amended (16 U.S.C. 818).

(2) The issuance of a permit or license by the Federal Energy Regulatory Commission continues the earlier withdrawal and withdraws the lands from the operation of the mining laws.

(b) Upon the effective date of the cancellation of permits or licenses issued by the Federal Energy Regulatory Commission, lands covered by the cancellation are automatically opened to the operation of the public land laws and the minerals laws, as applicable.

§ 2091.5–6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date the lands are to be withdrawn, the Secretary publishes in the **Federal Register** a Public Land Order specifying the extent, date and time the lands are withdrawn.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the **Federal Register** an opening order specifying the extent, date and time of opening and the lands are automatically opened as of that date.

§ 2091.6 Opening of withdrawn lands—general.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the **Federal Register** of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the **Federal Register** of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the **Federal Register** as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened.

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7–1 Segregative effect and opening—Recreation and Public Purposes Act, Small Tract Act and Classification and Multiple Use Act.

(a)(1) Lands classified under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869–4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411–18) are segregated to the extent described in the notice of cancellation.

(b) The segregative effect of the classifications described in § 2091.7–1 of

this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications: (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2470 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2470 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date of these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classifications shall be terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening.

§ 2091.7–2 Segregative effect and opening—Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice, but not to the mineral laws. The segregative effect of such classifications for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening.

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9–1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), are covered by Part 2650 of this title.

§ 2091.9–2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by Subpart 2627 of this title.

§ 2091.9–3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a–316o) are covered by Part 4220 of this title.

Dated: February 7, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–13696 Filed 6–6–85; 8:45 am]

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Friday
June 7, 1985

Part V

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 161, and 284

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Proposed Rulemaking

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 161, and 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued May 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its rules in four specific areas.

In order to open up natural gas transmission to more competition, any natural gas pipeline that holds itself out as a transporter of natural gas would be required to provide firm transportation service on a non-discriminatory basis with volumetric rates to all shippers for all categories of gas and for all end-uses. During a transition period, firm sales customers and their pipeline suppliers would be able to adjust their contract demands and certificated service obligations to take advantage of transportation or other services.

In order to assure pipelines that transport gas on a non-discriminatory basis that their current "take-or-pay" contracts with producers will not be an obstacle to such transportation, a rebuttable presumption of prudence would be established for certain limited and circumscribed payments ("buy-outs") made by such pipelines to extinguish all future minimum payment or purchase obligations in certain contracts with producers and suppliers.

In order to foster competition and a broader range of services to consumers, easier entry and exit from the natural gas industry would be made available for new services, facilities, and operations where a pipeline is willing to assume the whole risk of the new venture. New, expedited certificate procedures would be available on an optional basis to persons who apply for certificates to the Commission under section 7 of the Natural Gas Act, 15 U.S.C. 717f (1982). These optional certificates would only be available to pipelines who agree to charge "volumetric rates" which allow recovery of fixed costs from customers proportionate to their gas purchases. Competing certificates would be available as well. Traditional certificates would remain available under non-expedited procedures to pipelines who are not willing to assume the full risk of their ventures.

This proposal would also preserve to existing consumers the benefits of "old gas" price-controlled under the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301-3432 (1982). In addition, the proposal would remove the inaccurate price signals sent to producers by pipelines who "roll-in" their pricing of all other gas with "old gas" in order to compete for new customers and markets.

In order to achieve these two goals, the proposal would require pipeline gas purchase costs to be billed on the basis of three parts, including a two-block gas rate. The first block would contain so-called "old gas" price-controlled under the NGPA. Such gas would be reserved to existing firm sales customers based on their average percentage takes. The second block would consist of all other gas. All other demand and commodity costs would be billed as a third part of the rate.

After a transition period, prices charged by pipelines for gas in the second block, i.e., gas other than price-controlled "old gas," would be rebuttably presumed just and reasonable where a pipeline makes available non-discriminatory transportation services to its firm sales customers.

DATES: Comments must be received before 5:00 p.m., Monday, July 15, 1985. A public conference will be held on Tuesday, July 30, 1985. Written requests to participate in the conference must be received by July 22, 1985.

ADDRESSES: Comments and written requests to participate in the public conference should be directed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM85-1-000 (Parts A-D). An original and fourteen copies of each comment must be filed. The conference will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and will begin at 10:00 a.m. local time. The number of the room in which the conference will be held will be available in the Commission's Division of Public Information, Room 1000, prior to the conference on the morning of the conference.

FOR FURTHER INFORMATIN CONTACT: Charles E. Teclaw, Director, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8100.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 29, 1985, the Federal Energy Regulatory Commission (Commission) concluded the public proceedings in Phases I, II, and III of our Notice of Inquiry in Docket No. RM85-1-000 (NOI), commenced in December of 1984.[1] In that proceeding, the Commission received over 200 detailed comments from entities representing all facets of the natural gas industry.[2] Those comments addressed a wide range of topics and provided a wealth of information and insight to guide the Commission.

During the past five months, we have also begun to observe the actual behavior of the industry—including field markets, burner tip markets and capital markets—following the partial removal of wellhead price controls on January 1, 1985, in accordance with the Congressionally mandated schedule contained in the Natural Gas Policy Act of 1978 (NGPA).[3]

We have also begun to receive the guidance of reviewing courts on appeal of some of the initiatives set in motion by the Commission over the last year and a half in anticipation of partial wellhead decontrol.[4]

In addition, we have been informed by the comments of elected representatives in their oversight of the Commission's exercise of its delegated authority,[5] and by executive branch policy-makers pursuant to the NGPA.[6]

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[1] Interstate Transportation of Gas for Others, 50 Fed. Reg. 114 (January 2, 1985) (Phase I); Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 Fed. Reg. 3801 (January 28, 1985) (Phases II and III).

[2] For a more detailed discussion of these proceedings, see Statement of Policy and Interpretive Rule on Regulatory Treatment of Payments Made In Lieu of Take-or-Pay Obligations, Docket No. PL85-1-000, 31 FERC ¶ 61,040 (April 10, 1985).

[3] 15 U.S.C. 3301, *et seq.* (1982).

[4] *Maryland People's Counsel* v. *FERC, et al.*, No. 84-1019, slip op. (D.C. Cir., May 10, 1985) and *Maryland People's Counsel* v. *FERC, et al.*, No. 84-1090, slip op. (D.C. Cir., May 10, 1985).

[5] Letter dated May 20, 1985, from The Honorable Jim Wright, Majority Leader, United States House of Representatives; Robert H. Michel, Republican Leader, United States House of Representatives; John D. Dingell, Chairman, Committee on Energy and Commerce; and James T. Broyhill, Ranking Minority Member, Committee on Energy and Commerce.

[6] United States Department of Energy, *Increasing Competition in the Natural Gas Market, The Second Report Required by Section 123 of the Natural Gas Policy Act* 6, 17 (Jan. 1985) (here aftercited as Section 123 Report).

The NOI comments, judical decisions, comments of both the legislative and executive branches of the Federal Government—and our own experience—have led us to the conclusion that the present regulatory framework for the natural gas transmission industry may not be as well adapted as it could be to the economic realities of the industry as they exist today and are likely to evolve in coming years. As pointed out by the commenters, the partial removal of wellhead price controls mandated by the NGPA has been responsible in large part for economic forces that have fundamentally changed the behavior of the various segments of the natural gas industry.[7] This natural evolution in the industry appears to have been impeded to some degree by a regulatory framework which, while well adapted to the earlier period, has not been sufficiently adjusted to promote adequately the public interest in the newer, evolving economic environment.

For these reasons, as detailed more fully below, the Commission is proposing a series of changes in our existing rules.

Our overall goal is to make such adjustments in our regulation of interstate transportation of natural gas as are required to ensure that the natural gas markets are viably and sufficiently competitive so that consumers are provided natural gas at the lowest reasonable rates consistent with reliable, long-term service. If we are successful in this goal, we will also be fostering a more efficient allocation of scarce resources among the energy production, transmission and consumption segments of the economy. That, in turn, will permit natural gas (and other energy sources, to the extent that natural gas prices affect other energy prices) to play the appropriate roles in producing goods and services which their respective comparative advantages and real economic costs permit.

More particularly, our goal is to identify and then adjust, within the scope of the authority delegated by the Congress, those aspects of our current regulations that may now appear to hinder the development of competition in those areas where competition will better protect the public interest than will traditional public utility regulatory rules.

[7] *See, e.g.*, Phase I comments of Interstate Natural Gas Association of America (at 2); Indicated Producers (at 2); and United Distribution Companies (at 5).

The comments in the NOI were of great help in identifying areas where some changes may be appropriate.

A number of common threads emerged. For example, the commenters generally supported the availability of transportation programs and urged that such programs be made a permanent part of the regulatory framework.[8] At the same time, however, many commenters expressed some dissatisfaction with the present scheme of fairly numerous, individually-tailored transportation programs.[9]

Second, the commenters indicated that pipeline services could appropriately be unbundled, with concomitant rate changes that might include unbundled, downwardly flexible, cost-of-service rates for self-implementing transportation.[10]

Third, and more important, a rather broad consensus appeared among the commenters that, *in the longer-term*, a regulatory framework for transportation could be established which could incorporate open access to nondiscriminatory transportation, at appropriate rates, to the extent that capacity is available, *provided* this adjustment is made over some reasonable time period during which all parties would have an opportunity to realign their gas purchase contracts, service agreements and service obligations more in keeping with their new requirements and responsibilities.[11]

[8] *See* Phase I comments of Process Gas Consumers Group, *et al.* (PGC) (at 25–27); Tennessee Gas Pipeline Co. (at 12–13); Texas Gas Transmission Corp. (at 9); Maryland Industrial Group; Firestone Tire and Rubber Co.; Natural Gas Supply Assoc. (at 13); Yankee Resources, Inc. (at 10); United Distribution Cos. (at 13–14); Montana-Dakota Utilities (at 8); and Interstate Natural Gas Assoc. of America (at 9, 14–15) (noting how broadly all customers have benefited from existing programs and calling for increased incentives).

[9] *See, e.g.*, Phase I comments of PGC (at 27–30); Piedmont Natural Gas Co. (at 4–5, 12–13); Association for Equal Access to Natural Gas Markets and Supplies (at 29).

[10] *See, e.g.*, Phase I comments of Tennessee Gas Pipeline Co. (at 24–25); El Paso Natural Gas Co. (at 36–38); Natural Gas Supply Assoc. (at 15–16; Association for Equal Access to Natural Gas Markets and Supplies (at 26–27).

[11] *See, e.g.*, Transcript of Public Conference of March 29, 1985, at 345–351 (Statement on behalf of Northern Natural Gas Co. *See also* Phase I comments of Indicated Producers (at 10); Interstate Natural Gas Association of America (at 14–15); Tennessee Gas Pipeline Co. (at 3, 7); Panhandle Eastern Pipe Line Co. and Trunkline Gas Co. (at 2); El Paso Natural Gas Co. (at 8–9); United Gas Pipe Line Co. (at 30); Columbia Gas Transmission Corp. (at 25–26); Pacific Gas Transmission Co. (at 5); Texas Gas Transmission Corp. (at 7–8); Williams Co. (at 2–3); Peoples Gas Light and Coke Co. (at 3); Southern California Gas Co. and Pacific Lighting Gas Supply Co. (at 2); American Gas Assoc. (at 5); Columbia Gas Distribution Cos. (at 9–10); California Public Utility Commission; Natural Gas Supply Assoc. (at 17–18); Delhi Gas Pipeline Corp. (at 5–6); Louisiana Intrastate (at 3); Consolidated Edison Co. of New York (at 1–2); Florida Cities (at 5); Associated Gas Distributors (at 5–6); Yankee Resources, Inc. (at 7, 21); Tenngasco Corp. (at 22–23); Process Gas Consumers (at 12–15); American Paper Institute (at 5); Chemical Manufacturers Assoc. (at 2–3); Illinois Commerce Commission (at 1); and U.S. Department of Energy (2, 11).

One of the main obstacles to such a transition cited by commenters—especially the interstate pipelines—was the continuing effect of take-or-pay exposure under wellhead contracts entered into before the more competitive environment began clearly to emerge.[12] The other major obstacles cited was the distorting effect of the so-called old gas "cushion."[13] Many of the commenters asserted that there was a need for a "more level playing field" before the Commission could appropriately allow more open access to transportation and greater ease in the entry to other markets.

Finally, with regard to encouraging non-discriminatory transportation, the commenters suggested a variety of approaches. Many commenters indentified changes in ratemaking, including the setting of representative volumes (with appropriate cost allocation and pipeline retention of transportation revenue), which would attempt to make the pipeline economically indifferent as to whether it sold gas or transported it for other.[14] In addition, a number of commenters urged the Commission to condition our grant of transportation authorization to require pipelines to provide equal access to all potentital shippers.[15]

In addition, however, many commenters asserted that there was no need for major changes in the Commission's rules.[16]

In light of the comments and our obligations under the NGA, the NGPA and the Department of Energy Organization Act, it appears appropriate to propose changes to our regulations to address these points. Accordingly, the Commission is proposing to modify our rules in four specific areas, pursuant to

[12] *See, e.g.*, Phase I comments of Tennessee Gas Pipeline Co. (at 4–5, 18–19); ANR Pipeline Co. (at 9–10); Pacific Gas and Electric Co. (at 8–10); Peoples Gas Light and Coke Co. and North Shore Gas Co. (at 4–5); Niagara Mohawk Power Corp. (at 7–8).

[13] *See, e.g.*, Phase I comments of Natural Gas Supply Assoc. (at 19).

[14] *See, e.g.*, Phase I comments of Tennessee Gas Pipeline Co. (at 21–22); Texas Gas Transmission Corp. (at 3–7, 18–24); Peoples Gas Light and Coke Co. and North Shore Gas Co. (at 24); Niagara Mohawk Power Corp. (at 8–10).

[15] *See, e.g.*, Phase I comments of Process Gas Consumers (at 53–86); and Assoc. for Equal Access to Natural Gas Markets and Supplies.

[16] *See, e.g.*, Phase I comments of Interstate Natural Gas Assoc. of America and United Distribution Cos.

sections 4, 5, 7 and 16 of the NGA,[17] sections 311 and 50.1 of the NGPA,[18] and sections 402 and 403 of the Department of Energy Organization Act.[19]

Part A—Transportation

- A simplified transportation program is proposed, including blanket certificates under section 7 of the NGA and transportation under section 311 of the NGPA, conditioned to require non-discriminatory access to such transportation.
- Tariffs for such service would be required to be volumetric, downwardly flexible, cost-of-service rates, differentiated by time-of-use, and consistent with sections 4 and 5 of the NGA.
- A conditional opportunity would be created for customers of pipelines to modify their existing service agreements in order to reduce their contract demands for firm sales service. This customer option would only be available if the pipeline held itself out as a transporter of gas for others. Pre-granted abandonment would be available to the pipeline to the extent of any customer's reduction. This would enable such customers to choose more freely among a portfolio of service options offered by pipelines. This would entail an adjustment in the pipeline's sales obligation under its existing service agreement and certificate, and revision of any demand charges, minimum bills, etc. that may be required under the firm sales tariff for the sales service being adjusted.
- Traditional sales and transportation options would remain available to pipelines and their customers under the Commission's existing certificate authority.

Part B—Take-or-Pay

- During a limited transition period, a rebuttable presumption of prudence would be established for certain limited and circumscribed payments made by pipelines to extinguish all future minimum payment or purchase obligations in certain contracts.
- This presumption would be available only to pipelines willing to offer non-discriminatory access to transportation service; this in turn gives rise to an option for firm sales customers to reduce their contract demands.

Part C—Optional, Expedited Certificates

- Optional expedited certification procedures under section 7 of the NGA for new services, facilities and operations would be established and would be made available by choice to pipelines willing to assume the risk of these ventures by agreeing to specified conditions (including volumetric rates) governing the proposed services.
- Appropriate abandonment may generally be pre-granted to the pipeline to be effective at the expiration of the underlying contracts. In those instances where the customer has an alternate provider of service, the pipeline would be able to discontinue service at the expiration of the applicable private contract.
- Because pipelines would knowingly assume the risk of their ventures, competing certificates would be granted.
- Traditional certification proceedings would remain available to pipelines seeking to impose some of the risk of their venture on other parties, in order to ensure that the risk imposed involuntarily on others is required by the public convenience and necessity.
- Where customers have no alternate provider of service and are willing to pay the just and reasonable rate for continued service, abandonment would require Commission approval.
- The initial rates for optional expedited certificates authorizing such unbundled services would be volumetric rates.

Part D—Billing Mechanism for Old Gas Supplies

- A three-part gas rate would be required for pipeline gas sales, to preserve the benefits of "old" gas for existing firm sales customers and to mitigate competitive distortions resulting from the lingering effects of existing wellhead price controls.
- The first block would contain "old gas" under sections 104, 106(a) and 109 of the NGPA and would be available first to all existing firm sales customers of the pipeline; the second block would contain all other gas. All non-gas costs associated with purchasing gas would be billed as a third charge. At present, the proposal does not specify an allocation mechanism for the third charge as between the two blocks.
- This procedure would permit all pipelines to compete for marginal markets and additional sales on the basis of current markets for gas supplies, not on the basis of rolled-in pricing of forever price-controlled gas.
- When a pipeline has permitted its firm sales customers to reduce 100 percent of their contract demands and offers those customers non-discriminatory self-implementing transportation, then, subject to a transition period, the sales price established by the pipeline for natural gas assigned to the second block would be presumed to be just and reasonable.

The reasons underlying this proposal, and the interrelationship of the four parts of the proposal are detailed below.

II. Statement of the Problem

A. The NGPA and its Effects on the Natural Gas Industry

In November of 1978, Congress enacted the NGPA.[20] As noted by the U.S. Supreme Court, the NGPA "has been justly described as 'a comprehensive statute to govern future natural gas regulation.' "[21] In adopting the NGPA, one of Congress' "motivating purposes" was "to eliminate the dual market that distinguished between interstate and intrastate sales of natural gas."[22]

This integration of the two markets was to be established by a scheme of gradual removal of federal price controls over natural gas at the wellhead (NGPA Title I and section 601 (a)(1) and (b)(1)) and by the provision for more efficient transportation of natural gas (NGPA Title III and section 601(a)(2)).

In short, the NGPA set in motion a gradual transition from a regulatory scheme in which interstate natural gas was subject to federal regulation from the wellhead to the city gate to a scheme whereby wellhead and burnertip prices are increasingly set by market forces, even though interstate pipelines remain subject to regulation under the NGA.

Developments over the last six years have moved the natural gas industry significantly along in this transition. Since 1978, wellhead prices have risen,[23] encouraging the development of new supplies of natural gas.[24] At the

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[17] 15 U.S.C. 717c–717f, 717o (1982).

[18] 15 U.S.C. 3371, 3411 (1982).

[19] 42 U.S.C. 7172, 7173 (1982).

[20] *See, supra* n.3.

[21] Public Service Commission of New York v. Mid-Louisiana Gas Co., ——— U.S. ———, 103 S.Ct. 3024, 3031 (1983) (quoting Note, *Legislative History of the Natural Gas Policy Act*, 59 Texas L. Rev. 101, 116 (1980)).

[22] *Id.* 3037 (footnote omitted).

[23] *See e.g.*, U.S. Energy Information Administration, *Natural Gas Monthly*, at 23 (Table 10) (February 1985) (DOE/EIA–0130) (85/02)) (hereafter cited as *Natural Gas Monthly*).

[24] U.S. Energy Information Administration, *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, 1983 Annual Report* (October 1984) (DOE/EIA–0216 (83)) (showing stabilization of U.S. natural gas reserves levels).

same time, rising prices have provided incentives for users of gas to conserve,[25] thereby cutting back on demand.[26] After the sharp increases from 1978 to 1982, *average* wellhead prices stabilized in early 1983 and have hovered at the same level during the last two years.[27]

One result of the rapid supply and demand changes under the NGPA was the appearance in 1982 of a substantial surplus of gas deliverability.[28] This surplus translated into significant take-or-pay exposure for many interstate pipelines.[29] As the price of natural gas in the "spot" or short-term markets fell below the price of gas in the long-term or "contract" market, demand for transportation services also tended to increase.[30]

Equally significant have been changes that have occurred at the other end of the pipeline. Economic forces, in the form of declining oil prices and improvements in electricity-using technologies, have created strong and viable competition for end uses in many markets previously dominated by natural gas. The effect of these events has been to increase market competition at both ends of many pipelines.

The competitive pressures caused by partial wellhead deregulation continue to grow and have become even more evident since January 1, 1985.[31] Demand for transportation services to reflect the growing competition at both wellhead and burnertip can also be expected to increase.[32] Greater customer access to alternate suppliers and/or transporters of gas is giving rise to innovative marketing strategies both by new entrants to the natural gas sales business as well as by traditional suppliers.[33] Alterations in the way risks are shared, more open access to transportation and concomitant changes in service agreements, and new gas purchase policies are reflections of and responses to fundamental changes which have already occurred in natural gas markets. These new ways of doing business in response to market forces have important implications for the way the industry is regulated, and have made necessary timely regulatory adjustments.

B. The Problem in a Nutshell

As these changes in the industry have occurred, a number of problems have been brought to the Commission's attention:

1. Many interstate pipelines have contracted for more gas supply than can be marketed at the prices set forth in those contracts.[34]

2. Producers of gas, responding to very high prices for small supplies of deregulated gas, have developed new supply sources of gas.[35] But since the market could not absorb these quantities at prevailing prices, a surplus has been created,[36] resulting in many wells being shut-in and in producers—particularly independent producers—seeking alternative markets for their gas.[37]

3. Pipelines have sought alternative markets as well and sought out new customers. But the existing customers of the pipelines have been concerned that so-called "off-system" sales would effectively transfer to the new customers a portion of the economic rent associated with the old, price-controlled gas. Reflecting these same concerns, the Commission generally has allowed these sales only under somewhat restrictive conditions.[38]

4. Purchasers of natural gas, seeing the availability of supplies in the field at prices below the rolled-in average cost of all gas, have sought to purchase gas in the field and receive it instead of the supplies which the pipeline has obtained under the non-uneconomic long-term contracts.[39]

5. The pipelines have generally expressed a reluctance to provide this transportation.

a. With respect to incremental volumes (*i.e.*, gas that would not displace a sale by the pipeline itself from its own contracted-for supply), pipelines generally have not had adequate incentives to provide this service as long as the pipeline's rate structure required the crediting to the pipeline's sales customers of essentially all revenues received from the transportation. The regulations allowed the pipeline to elect an option pursuant to which costs would be allocated to the transportation service (allowing retention of the revenues), but until fairly recently most major pipelines had not elected that option.[40] Moreover, the pipelines were under no legal obligation to elect the revenue retention option. Once pipelines began to design their rates to allocate costs to the transportation service, thereby obtaining the right to retain revenue, the ratemaking rationale for declining to transport incremental volumes has diminished.

b. With regard to volumes of gas that would displace a sale by the pipeline from its own contracted-for supply, the situation has been somewhat more complex.

(i) Where the pipeline's take-or-pay exposure was so great that it believed that prepaid gas would never be able to be "made up," the pipeline faced the possibility of forfeiting the entire principal amount of the prepayment. Under these economic circumstances, even where the pipeline was able to retain the revenues received from providing transportation, the pipeline would still lose money were it to transport gas that would displace a unit of contracted-for gas. The more gas it transported, the more money it would lose. Under these circumstances the pipeline's reluctance to transport was at its height.

(ii) Where the pipeline's take-or-pay exposure was *not* so great as to confront it with the prospect of forfeiting

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[25] U.S. Energy Information Administration, *Monthly Energy Review* at 14 (January 1985) (DOE/EIA–0035 (85/01)) (showing petroleum and natural gas consumption per 1972 dollar of Gross National Product declining from 41.6 MBtu in 1977 to 28.6 MBtu in the fourth quarter of 1984).

[26] *Natural Gas Monthly*, *supra* at note 5, 12 (Table 3) (showing decline in natural gas consumption from approximately 19.8 Tcf in 1975–1980 period to 17.5 Tcf in 1984).

[27] *Natural Gas Monthly*, *supra* note 5, at 23 (Table 10).

[28] *Natural Gas Monthly*, *supra* note 5, at 43 (Table 23).

[29] Interstate Natural Gas Association of America, "The Gas Contracts Problem: Results of an INGAA Survey" (May 1983).

[30] Interstate Natural Gas Association of America, "Voluntary Carriage Through 1984" (May 1985).

[31] To assure that this goal was being achieved, Congress established a monitoring mechanism. Section 123 of the NGPA requires DOE to submit to the President and Congress two reports that examine "natural gas prices, supplies and demand, and the competitive conditions and market forces in the natural gas industry."

[32] Interstate Natural Gas Association of America "Voluntary Carriage Through 1984" (May 1985).

[33] *See, e.g., Citizens Energy Corp.*, 31 FERC ¶——— (1985). (Order approving special marketing program for subsidiary of non-profit energy company); *Yankee Resources, Inc.*, 30 FERC ¶ 61,201 (1985) (Order authorizing spot marketing program for an independent gas marketer); *Tenngasco Corp., et al.*, 30 FERC ¶ 61,200 (1985) (Order approving spot market or exchange program for new marketing affiliates of Tennessee Gas Pipeline Co.); *PanMark Gas Co.*, 26 FERC ¶ 61,341 (1984), *clarified*, 28 FERC ¶ 61,398 (1984) (Order approving marketing program for affiliate of Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.). *See also*, Phase I comments of New York Mercantile Exchange (at 9).

[34] Interstate Natural Gas Association of America, *supra*, n.32.

[35] Note 24, *supra*.

[36] Note 28, *supra*.

[37] *See, e.g.*, applications for special marketing programs filed with the Commission by producers since November 20, 1983.

[38] Statement of Policy in Off-System Sales, 23 FERC ¶ 61,140 (1983). *But see also* Natural Gas Pipe Line Co. of America, 28 FERC ¶ 61,174 (1984).

[39] U.S. Energy Information Administration, *Natural Gas Monthly*, Table 22 (November 1984) (published January 1985).

[40] This is based on rate filings with the Commission.

prepayments, the question was more one of cost allocation. If the pipeline had to finance the prepayments, who should bear the burden of the carrying charges associated with the prepayment: the sales customers, the transportation customers, the producer (by not being paid in accordance with the contract), or the pipeline's shareholders?

6. A number of key aspects of the existing contractual arrangements in the industry from wellhead to city-gate tended in large part to allocate to the buyer the risk that the supply of the commodity might prove unmarketable at some point over the life of the contract. As a result, the average delivered price of gas has been slow to adjust downwards to transmit price signals more accurately that would help increase consumption and absorb the available excess supply.

7. This situation is resulting in a very large loss to the American economy in terms of net economic efficiency.[41] In concrete terms, this has meant a drag on the competitiveness of American products in world markets, lost jobs, lost production, and unnecessarily high energy costs to all consumers. It has contributed to distortions in the financial markets and to the inefficient allocation of scarce investment capital by encouraging the over-investment in what now appear to be uneconomic energy supplies.

8. As a result, it appears that the current regulatory principles now tend to result in rates for the jurisdictional sale or transportation of natural gas that may not be the lowest reasonable rates consistent with reliable, long-term supply.

C. Legal Obligations Under the Natural Gas Act

Sections 4 and 7 of the Act establish the basic framework and authority under which the Commission regulates natural gas transportation and sale for resale in interstate commerce.

First, section 7(c) provides that natural gas companies must obtain authorizations from the Commission, in the form of a certificate of public convenience and necessity, before constructing or operating any facilities to be used for activities within the Commission's jurisdiction. This authorization is given only if the Commission finds that the proposed service, sale, operation, or construction will be required by the present or future public convenience and necessity. Additionally, under section 7(b), the Commission's authorization must be obtained before any service or facilities subject to the Commission's jurisdiction are abandoned.

Second, section 4(a) establishes the general standard (which forms the purpose of the Act) that all rates and charges for service subject to the Commission's jurisdiction must be just and reasonable. Section 4(b) establishes an additional standard requiring that the transportation or sale for resale of natural gas by regulated companies may not result in the grant of any undue preference or advantage or subject any person to an undue prejudice or disadvantage. Any changes by a natural gas company in its rates, charges, classifications, or service may only take place after proper notice to the Commission, as specified in section 4(d).

In addition to this basic framework created by sections 7 and 4, Congress gave the Commission very significant authority in sections 16 and 5 of the Act. Section 16 reads in pertinent part:

> The Commission shall have power to . . . prescribe, issue, make, amend, and rescind such orders, rules or regulations as it may find necessary or appropriate to carry out the provisions of this act.

Section 5(a) provides in pertinent part, that if the Commission:

> [s]hall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that *any* rule, regulation, practice or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission *shall* determine the just and reasonable rate, charge, or classification, rule, regulation, practice or contract to be thereafter observed and in force, and *shall* fix the same by order. [Emphasis supplied.]

These statutory pronouncements are mandatory as opposed to precatory. The broad language of section 16, when employed in conjunction with section 5, has permitted the Commission to alter and amend conditions to certificated service with full approval of the courts. Section 5(a) has been interpreted as giving the Commission authority to alter the terms and conditions of certificated service even though the affected parties, acting alone, could not have changed them. *F.P.C. v. Louisiana Power and Light Co.*, 406 U.S. 621, 646–647 (1972). In Opinion No. 754–A, Docket No. RP71–119, issued August 17, 1976, *aff'd on other grounds, Hercules, Inc. v. F.P.C.*, 559 F.2d 1208 (3rd Cir. 1977), the Federal Power Commission concluded, with court approval, that it could exercise its section 5 authority to promulgate new terms and conditions under which certificated service would be performed.

Moreover, the Commission also has an obligation under the statute to weigh and consider the competitive effects of our decisions. *See, e.g., Gulf States Utilities Co. v. F.P.C.;* and 411 U.S. 747, 760 (1973); and *Northern Natural Gas Co. v. F.P.C.*, 399 F.2d 953, 958 (D.C. Cir. 1968).

The combined effect of sections 5(a) and 16 is to require the Commission to change terms and conditions under which a pipeline renders a certificated service if those terms and conditions result in rates or changes which are subsequently found unjust and unreasonable. As the United States Court of Appeals for the District of Columbia Circuit stated in *American Smelting and Refining Company v. F.P.C.*, 494 F.2d 925, 940–941 (1974), *cert. denied*, 419 U.S. 882 (1974), once the Commission finds that an existing rate or charge is unjust or discriminatory, it "must prescribe the remedy for that condition." If the existing illegal rate or charge is the result of the operation of a provision that was set out in the initial tariff or terms and conditions of service when the certificate was issued, the remedy clearly will lie in the alteration of that provision.

As noted above, it is our tentative judgement that the existing regulatory framework may no longer operate to provide the lowest reasonable rates consistent with reliable long-term service. Accordingly, the Commission is proposing to modify its regulations to address each of the major aspects of these problems.

III. Discussion of Proposed Policies

A. Increasing Regulatory Options

The proposed regulations are intended, for the most part, to supplement existing Commission regulations and provide additional options to interstate pipelines that seek increased flexibility in offering those services that their customers wish to purchase.

The proposed regulations permit pipelines to enjoy greater flexibility and the opportunity for increased returns as long as the pipeline is willing to assume the economic risks of under-recovery of costs.

With one notable exception, there is no requirement in this proposal that would be imposed involuntarily on any pipeline. Rather, a pipeline that so desires would remain free to offer only natural gas sales and storage services in which the transportation component of the service is part of a package or

[41] Section 123 Report, *supra*, at S–2.

"bundle" of services.[42] *The various access and rate conditions would only apply if the pipeline chose, after the effective date of the proposed rules, to hold itself out as a transporter of gas for others.*

The exception is the requirement that all pipelines separate out, for billing purposes, their supplies of "old" gas. Under this three-part billing mechanism, the subsidy associated with the old, price-controlled gas would be effectively allocated to the historical customers. This requirement is intended to help "level the playing field" by requiring all pipelines to compete for new markets on the basis of their current cost of gas unaffected by their relative shares of older, price-controlled supplies.

B. Accountability, the Allocation of Risk, and Returns to Equity

Accountability is inherent in a competitive environment: each participant assumes responsibility for the success or failure of its own market participation. Accountability is ultimately achieved in the marketplace through revenue collections which are either sufficient or insufficient for cost recovery. The risk that revenues will be insufficient for cost recovery is what motivates the firm to recognize the potential consequences of its decisions. Efficient firms can expect to recover their costs of providing service. Inefficient firms cannot. Involuntary cost shifting and cross-customer subsidies do not occur.

Our intention is to foster, consistent with the NGA and NGPA, viable competition where it exists or could exist, and to retain more traditional public utility-type regulation where it is necessary to protect natural gas consumers. In those areas where viable competition exists or could exist, general regulatory principles that foster such competition are likely to offer greater protection of purchasers than an individually adjudicative-type procedure.

Thus, in those markets that could be viably competitive, accountability may be supplied by the discipline of the market. Regulatory oversight would still be required in the other markets.

Clearly, the question of how risks are allocated among market participants is intimately tied to the question of accountability. Where risks are allocated by legal rules to one party to a transaction, there tends to be little accountability borne by the other party. It is our tentative judgement that, with regards to pipelines that in the future hold themselves out as transporters, the risk of under recovering the costs of the services in question between rate periods is appropriately be assigned to the pipeline. This tentative judgement is reflected in the proposed rules that require the use of volumetric rates for these services and that forbid the use of minimum bill and minimum take-type provisions. As detailed below, we call for comment on the appropriateness of allowing for capacity reservation charges to be used, however, where specifically agreed to by the customer.

To the extent that these proposed changes result in increased risks borne by pipelines that are not offset by reduced risk elsewhere, the Commission anticipates that returns on equity will be adjusted appropriately.

C. Proposed Policies.

Accordingly, the Commission is proposing to adopt policies to address the major components of the problems identified during our NOI proceeding. The proposed policies would be implemented in the various rule changes described in Part V of the proposal. Generally stated, those proposed policies are as follows.

1. *Non-discriminatory access to transportation.* A pipeline that chooses, after the effective date of the proposed rules, to hold itself out as a transporter of natural gas for others should offer that service without discrimination to all shippers willing to pay appropriate cost-based rates.

2. *Increased flexibility in offering new services and changing rates.* In those areas where competitive forces are adequate, the regulatory framework should allow all participants in the industry greater flexibility to adjust to market conditions so long as the adjustments do not involve cross subsidization or the involuntary shifting of costs among customers. This flexibility should not preclude—at the federal regulatory level—the entry of new companies to serve existing loads, as long as the regulatory framework allows comparable flexibility to all competitors. We recognize that the prospect of new entry may raise issues of acute concern in some cases for individual localities. However, it is our tentative judgement, reflected in the proposed rules, that, under our system of federalism, State governmental authorities, not the Commission, are provided the discretion and authority to evaluate these issues and to strike the appropriate balance among competing local interests.

3. *Establishing appropriate levels of company accountability.* The more competitive environment that has begun to emerge for the pipeline industry has required firms within the industry to respond in new and innovative ways. For the Commission to allow *regulated* companies to respond flexibly and quickly to these requirements (by authorizing new ventures, or allowing companies to alter the way in which some traditional service has been rendered because of an unregulated entity's market threat) the pipeline must be held accountable for such decisions. To do otherwise is to eliminate a very powerful incentive to reasoned and rational behavior on the part of pipeline companies, and require more explicit regulatory requirements and oversight instead.

Common sense and economic theory both suggest that putting a firm at risk for the consequences of its investment and operational decisions can affect the incentives to undertake those decisions judiciously: a firm is more likely to work to minimize its costs if its financial health is at stake than if its costs, even some fraction of its costs, are guaranteed. It is generally accepted that the potential for profit and the fear of financial loss create strong incentives for firms to hold down costs. Thus, pipelines that bear significant business risk, that is, firms that are ultimately accountable for their business decisions, are more likely to operate efficiently than are those firms that bear little or no risk. This aspect of policy implementation in the current rulemaking is reflected in the ratemaking design requirements as well as the Commission's willingness to grant competing certificates when pipelines demonstrate a willingness to assume all risk of the certificated activities.

4. *Adjustment of service agreements and service obligations.* Existing certificate obligations and individual service agreements were largely developed in an era of wellhead price controls when natural gas was the cheapest fuel. Markets were largely supply or capacity constrained rather than demand constrained. With the gradual lifting of those controls, conditions have changed; it now appears appropriate to provide an opportunity to pipelines and their customers to make necessary adjustments to better reflect current conditions, especially where a pipeline is willing to assume these non-discriminatory access conditions and open its system for transportation. This proposed policy is reflected in the proposed rules regarding customers'

[42] In addition, a pipeline could continue to perform transportation services for others under existing individualized section 7(c) transportation certificates. These pre-existing arrangements would be "grandfathered" under the proposed rules.

conditional rights to reduce their firm sales obligations and the provision for a corresponding pre-grant of abandonment to the pipeline.

5. *Removing the remaining distorting effects of prior price controls.* For the proposed policies enumerated above to be effectively implemented, it is necessary to minimize the distortions still caused in current and future markets by past price controls on natural gas at the wellhead. It is the Commission's tentative judgment that transitional policies should be adopted: (1) To provide regulatory predictability to interstate pipelines seeking to resolve future take-or-pay exposure under so-called "problem contracts;" and (2) to require all pipelines to separately bill the old gas volumes to their customers while reserving to historical customers the benefits of that gas for which Congress saw fit to retain wellhead price control.

6. *Regulations that are appropriate in times of rising as well as falling commodity prices.* Finally, the proposed regulations are intented to establish a long-term regulatory framework—not to be a reaction to immediate circumstances. The measure of a good regulatory scheme is that it remains valid in all circumstances—in times of shortage as well as surplus. To this end, the proposed regulation would establish a scheme that reflects and promotes competition, secures its benefits to natural gas consumers, and gives to natural gas companies the tools with which they can compete.

D. Specific Policy Proposals

1. *Transportation policies.* The initial focus of this proposal is a simplified transportation framework for non-owner shippers. Since 1978, transportation of gas for non-owner shippers has increased significantly; today, it is a fact of life. These proposed regulations provide an appropriate framework in which transportation may take place, and appropriate regulations to facilitate such transactions.

a. *Non-discriminatory access to transportation.* This proposed rule would require that any natural gas pipeline seeking blanket or expedited authorization to provide transportation service separately from gas sales would be required to offer transportation service on a non-discriminatory basis. Such transportation service would be offered as a stand-alone service, unbundled from any other services, and separately tariffed. This precludes any tying arrangements between the transportation service so offered and other services unless such bundled transportation services are offered as an additional option to the stand-alone transportation service.

The rule, as it applies to newly certificated transportation, would apply the Natural Gas Act prohibition against unduly discriminatory rates and services. Discrimination is objectionable because it benefits certain customers at the expense of others. Thus, this rule would prohibit discrimination in the outright selection of customers. It would also preclude more subtle forms of discrimination, such as proscribing discrimination only within a customer class and then permitting establishment of countless customer classes. It prohibits discrimination among customer classes as well as exclusion on the basis of volume requirements, the quality of service rendered, the end-use to which the gas is put, or the type of gas transported.

b. *Quality of self-implementing transportation service.* The basic transportation service to be offered on a non-discriminatory basis must be service subject to the same curtailment priorities and curtailment procedures as the pipeline has established for its sales customers. Those customers electing this service can neither be discriminated against nor unduly favored in terms of the quality of service they receive when compared with any other service involving transportation made available by the pipeline.

A simplified example may be helpful. Suppose a pipeline has 100 units of capacity. The services offered include: (a) Contract demands for sales of 60 units, (b) contract demands for long-term section 7(c) transportation of 20 units, and (c) 20 units of self-implementing transportation.

Assume the pipeline has fixed costs of $100 and that these costs are allocated to the three services in proportion to the capacity available for each service. Assuming representative volumes of 4000 units of transportation over the year, the volumetric rate for self-implementing transportation would be 5.0 mills per unit ($20 of fixed cost ÷ 4000 units = 5 mills per unit of transportation service).

The 4000 units of self-implementing transportation, if fully utilized, would recoup the full allocation of fixed costs attributable to this service. Thus, self-implementing transportation has equal standing with the other types of service. The 20 units of capacity for self-implementing transportation are guaranteed to be available for the purpose of short-term transportation. They are not guaranteed to any individual customer, however. A customer seeking such an individual assurance may prefer traditional section 7(c) transportation (what some commenters referred to as "Cadillac" service). Once a customer contracts with the pipeline for self-implementing transportation service, the customer will receive firm service so long as capacity is available. Self-implementing transportation is not subject to any other type of service (contract sales or contract transportation). The pipeline may also provide interruptible transportation service, but this is, of course, subject to interruption if customers for those other services make demands up to their contract limits.

c. *Adjustments of contract demand.* Additionally, in order to assure truly non-discriminatory access to transportation service under this rule, all pipeline customers must have the opportunity to adjust their contract demand for sales service so that may take advantage of transportation service. This means that customers that have signed exclusive supplier sales contracts must also be given an opportunity to choose between either continuing their present sales agreement or adjusting some portion of it to transportation service.

Reductions to contract demand may be accomplished by the customer by reducing its contract demand by no more than 25 percent of its contract demand in any given year. At the discretion of the pipeline, the customer will be permitted to reduce up to 100 percent of its sales volumes under contract.

Such reductions of sales entitlements require thirty-days notice to the pipeline. Once firm sales volumes have been reduced, the pipeline may, at its discretion, readjust the contract demand of a customer back to the original sales entitlement, if requested by the customer. Such adjustment of sales entitlement require a proportionate adjustments to any demand charges, minimum bills, minimum takes, or any other fixed charges that are otherwise required under the tariffs in effect for the firm sales service being adjusted. Total reduction of sales service to transportation service would therefore eliminate entirely any revenues paid the pipeline by the customer arising from the sales tariff.

d. *Rate conditions.* In order to insure that the pipeline is fully accountable for the consequences of its decision to offer transportation services under this rule, the rates permissible under this transportation program are conditioned as detailed below. As a consequence, customers should not be concerned by the potential for unwarranted cost shifting in the event the transportation

program causes third-party gas sales to replace the pipeline's sales. Similarly, customers electing transportation service from the pipeline would be accountable for that decision. That accountability is realized through the responsibility they assume for securing their own gas supplies up to the volumes of transportation they have elected.

(i) *Proscription on cost shifting.* First, rates for transportation would recover only those costs properly attributable to transportation service. Analogously, customers who do not avail themselves of the transportation service would not have any costs shifted to them as a consequence of the pipeline's having failed to recover its costs associated with its transportation service. As discussed below in our optional, expedited certificate proposal, the Commission proposes to prohibit applicants availing themselves of these optional procedures from ever shifting costs of underutilized capacity onto ratepayers in future rate cases. The Commission requests comment on whether it should impose such a condition to certificates for self-implementing transactions.

(ii) *Use of volumetric rates.* As noted above, between rate cases, volumetric, cost-based rates allocate to the pipeline the risk of providing the service. Volumetric rates also preclude cost shifting among customers for different services, and provide accurate price signals as to the cost and the value of the service.

Rates for transportation should be designed to achieve three objectives concurrently. Peak rates should ration capacity, off-peak rates should maximize throughput, and the pipeline's revenue requirement allocated to transportation would be attained through transporting the expected peak and non-peak volumes at the maximum rate.

Volumetric rates will be fully allocated and will recover costs assigned to a particular rate period. Each customer would have a mileage or zone differentiated volumetric rate ceiling depending upon where the transported volumes are delivered. Thus, each customer pays only for the cost allocated for its own service. The customer who takes proportionally more of the service will pay, at the price ceiling, an amount greater by the same proportion.

In the event the pipeline charges a rate less than the maximum level allowed in a particular rate period, but does not make that discounted rate generally available to all transportation customers taking service under the volume rates, the Commission would not hold that such selective discounting is *per se* unduly discriminatory. Such discounting would be unduly discriminatory if there were cross-subsidization as a consequence; that is, if the discount provided one customer was based on costs borne by customers to whom the discount was not offered. That fact that a different price is paid is not, in itself either undue discrimination or "an unreasonable difference" in rates.[43]

Price discounting would not be undertaken lightly by a pipeline given the associated revenue loss from selling below the price ceiling; however, downward price flexibility would permit the pipeline to sell at a lower profit margin rather than not make any contribution to its overhead due to a lost sale. Indeed, to the extent that transitory demands for transportation services may be highly elastic, a pipeline may actually increase total revenues by lowering the price of transportation services and increasing throughput by a larger percentage.

(iii) *Interruptible transportation service.* The transportation service required to be offered under the certificate procedures described in this rule would not preclude the pipeline from retaining what are traditionally thought of as interruptible loads. Indeed, the maximum prices in the offpeak periods should presumably approach the rate levels formerly associated with interruptible transportation tariffs. The maximum rate in the peak period, by contrast, should be higher than the transportation component of non-seasonally differentiated rates presently on file. Thus, those customers previously unwilling to pay firm service rates will be even less likely to avail themselves of peak transportation service. Further, if the pipeline and some customer or set of customers are willing to establish some transportation service of inferior quality to the service covered in this rule, then as long as the tariff established for such service is a volumetric rate form and falls within the rate band established for transportation service under the rule, the Commission would presume the rate to be just and reasonable.

2. *Presumption of prudence.* If a pipeline's gas is properly priced, it can compete as a merchant with itself as transporter. If a pipeline loses sales to other suppliers, it may have exposure or incur costs associated with excess gas supply. As a result, pipelines may be reluctant to transport gas that might replace sales and aggravate their surplus deliverability and take-or-pay obligations.

Rather than limit transportation, the proposed rules relating to the "safe harbor" presumption of prudence is intended to create a framework with which these problems may be addressed. This presumption will be available only to those pipelines which offer open access to this rule. Moreover, the opportunity to enter new markets should reduce the likelihood of persistent losses. Having brought their wellhead purchase obligations into line with current market realities by means of lump sum payments to producers, pipelines will be able to make their gas purchase decisions and compete for markets on the basis of the actual wellhead prices unencumbered by the now uneconomic gas supply agreements.

3. *Optional expedited certificate.* This rule proposes four vehicles to implement this policy of granting expedited certification, namely, expedited processing, granting of competing certificates, pipeline willingness to bear the full risk of new investment, and pre-granted abandonment.

a. *Expedited certification.* This rule would amend the Commission's present regulations governing certificate and abandonment by adding an additional expedited certification process which will be available to pipelines willing to accept the full risk of the proposed venture. Blanket certification may be granted under this process. These certificates will be available for all new and expanded services and construction of additional facilities requisite thereto.

Consumers are provided greater options in the array of gas services available when pipelines have the ability to offer new and expanded services and to construct new facilities on a timely basis. Easier entry and exit by a pipeline in the provision of new or expanded services are prerequisities for consumers to gain the full benefits of greater competition.

This rule removes certification as a barrier to entry, and thus helps insure that pipelines proposed the most efficient scale for new facilities. Suboptimally-sized facilities will have higher average costs at design volumes and will be vulnerable to entry of more correctly-sized facilities.

This rule proposes to maximize the use of alternative market access for producers and consumers and to provide incentives for competition where none exists. Distributors which are now restricted to one pipeline, even where new hook-ups involve construction of minimal tap facilities, may gain access

[43] *See, Sea-Land Service v. ICC*, 738 F2d 1311, 1317 (D.C. Cir. 1984).

to more than one pipeline. Offerings of new pipeline services to off-system markets will be more readily possible, and willing competitors may enter established markets. This rule, then, removes any federal prohibition against adding new receipt or delivery points and does not permit discrimination which would permit some customer groups to add delivery points more easily than others.

b. *Granting competing certificates.* The NGA gives the Commission broad certification authority. It does not require franchised monopolies, but instead provides for the certification of competing ventures. The proposed rule is intended to create conditions that will assure the benefits of existing pipeline market competition. Certification of competing services will be granted.

c. *Pipeline accountability.* The essential aspect of this rule is the matter of accountability in the more competitive environment. To the extent a pipeline accepts full responsibility for its ventures, it is given a relatively free rein to function as a prudent, rational economic entity. So long as pipelines assume full risk of their ventures, there is little danger the ratepayers will be forced to absorb inappropriate costs. If a pipeline voluntarily accepts a certificate assigning all risk to the pipeline, the presumption must be that the undertaking is prudent.

The rule would require pipelines to be at risk for services authorized under these optional, expedited certifications and would prohibit pipelines from shifting costs among customers in future rate cases.

The Commission would impose four principles to carry out the requirement that no inappropriate costs be borne by customers. First, rates would be volumetric. Thus, the pipeline would be at risk for any failure to sell or transport up to its representative volumes. Second, only properly allocated costs would be included in the rates for this new service. Thus, this service would not cross-subsidize any other service, nor would it be cross-subsidized by any other service. Third, the pipeline would not be allowed to reduce its representative volumes in future rate cases. Thus, fixed costs will never be allocated to smaller volume of sales than those originally anticipated. Fourth, the pipeline would not be allowed to recover past losses in future rate cases. Thus, future customers' rates will never reflect a recoupment of past losses.

The mechanisms to promote this accountability are the same as those discussed at more length above in the transportation proposal. Thus, the rule proposes that rates be time-varying, downwardly flexible, volumetric rates. No minimum bill, no demand charge and no revenue guarantee provisions and no cost banking will be permitted under these initial rates. Volumetric cost-based rates allocate initially to the pipeline the risk of providing the service. Properly allocated rates also preclude cost shifting among customers for different services (even though the rates are downwardly flexible), and provide accurate price signals as to the cost and the value of the service.

d. *Pre-granted abandonment.* Where applicable, pre-granted abandonment will be provided, the period for authorization of any given service will be coterminous with the contracts governing that service.

A part of accountability in a competitive market involves the negotiation of contracts defining rights and obligations, and assigning risk among the parties. Certificate applications are geared to fulfilling these contractual obligations. It is therefore logical to make new certificates co-terminous with the governing contracts. Abandonment can thus be pre-granted or assumed to occur at the expiration of the relevant contracts *when alternate suppliers exist.*

e. *Traditional certification.* This rulemaking would not preclude the pipeline from having the full protection of a section 7 proceeding for obtaining a certificate with different terms and conditions, such as a different assignment of risk. Similarly, where customers have no alternate provider of the service in question and are willing to pay the just and reasonable rate for continued service, existing section 7 abandonment procedures and protection would continue to be available.

This proposed rule would not eliminate any of the existing section 7 requirements; rather it would constitute an additional option available to natural gas companies, provided they are willing to abide by the conditions set forth herein. The conditions of this proposal may not be appropriate for *existing* service agreements or certificates unless the former are renegotiated and the latter amended accordingly.

4. *Billing mechanism for gas costs.* Finally, the rule proposes three substantive policies with respect to the billing mechanism for a pipeline's purchase gas costs. First, consumers and producers shall see clear and more accurate price signals. Second, the playing-field on which pipelines compete will be leveled such that competition is fair and leads to economic efficiency. Third, the economic rents associated with "old" gas are preserved for a pipeline's traditional customers.

Currently, the rolled-in pricing of all gas purchases prevents these substantive policy objectives from being realized. Consumers are misled in their decisions on gas purchases and price signals are sent that natural gas is cheaper than the cost of purchasing additional increments. Producers, on the other hand, are given price signals that higher cost new gas supplies are marketable. Consumption decisions should be based on a more accurate cost of gas supply; production decisions should be based on a more accurate measure of the value of the gas supply. Pipelines and merchants should be at risk in marketing gas, and their prices should reflect these production costs and consumer values.

Currently, interstate pipelines have a relatively uneven distribution of low-priced gas from old fields. Newer independent merchants typically do not have access to these lower-priced gas supplies at all. Thus, some firms may possess comparative advantages which are not based upon current operational efficiency. It is important that concommitantly with the Commission's encouragement of greater competition that the Commission ensures that the playing-field has been leveled such that competition leads to greater economic efficiency and not to expenditures for new transmission facilities or new gas supplies that would not be economic except for the one pipeline's relatively greater access to old gas.

This rule proposes three vehicles for implementing these substantive policy objectives, namely, a three-part billing mechanism for natural gas supply, a presumption that certain gas priced by the pipeline is just and reasonable, and the assignment of entitlements to old gas to customers based upon their historical purchases.

This proposed rule is intended to neutralize the price distortions caused by vintaged gas. While it does not *per se* mandate any change in pipeline costs, it does provide customers with a clearer understanding of the mix of gas being offered by the pipeline and of the real cost of incremental consumption.

a. *Three-part billing.* The present practice of across-the-board rolled-in pricing permits and may encourage pipeline gas purchases at prices above market-clearing levels. Such purchases can then be balanced out by other low-cost gas which serves as a cushion. The proposed three-part scheme will not eliminate the possibility of that happening, but will mitigate the effects of pricing signals distorted by cushion

gas, and will make explicit the effect of the cushion in the pricing of system supply.

The proposed three-part rate would preserve the economic rents associated with this gas for the pipeline customers as Congress apparently intended. However, by confining the sales of old gas to the initial block, the effective use of old gas as a competitive tool in marginal or new markets will be blunted. Ownership of an old gas cushion will become less relevant for inter-pipeline competition.

The proposed rule would, through the pricing of the second block, convey immediate price signals along the distribution chain from customers to pipelines to producers. Customers would be able to base consumption decisions on the present incremental cost of gas.

Further, the second block would be priced higher than a pipe-line's present WACOG, which includes old gas. However, since customers would be purchasing from both blocks, a given pipeline customer's total gas costs might not necessarily change. Second, for the gas solid to marginal and new markets, or for additional sales to pipeline customers, any significant disparity between pipeline prices and market clearing prices would impose market discipline on the pipeline in the form of load loss. The sale of gas in the second block would thus provide an immediate measure of the appropriateness of a pipeline's gas acquisition practices. This in turn would also provide a strong incentive for pipelines to realign their gas costs and prices. Finally, we would note that, if the price of gas in the second block were such that the gas was difficult to market, this would not mean it was inappropriate to use a scheme which priced a pipeline's gas sales to reflect acquisition costs. Rather, it would mean that the pipeline's purchase price for gas was inappropriately established above market-clearing levels.

The Commission requests comments on how the costs contained in the third charge should be allocated as between the two blocks.

b. *Prudence tests for price of gas in the second block.* If the pipeline offers transportation as a distinct service on a non-discriminatory basis and the pipeline has provided its customers full adjustment rights to reduce contract demands, then the price established for the volumes of gas sold in the second block would be determined by the pipeline and this price would be presumed to be just and reasonable by this Commission. This presumption may be rebutted.

This proposal acknowledges that the selling price of the second block reflects an accurate measure of the cost of and value of new gas when the pipeline has provided transportation as a distinct service on a non-discriminatory basis to all customers and after which its customers gain the ability to convert fully their system sale pruchases to transportation. In this event, the pipeline would be at risk for its purchasing practices with both profit and loss possible. If the pipeline attempted to charge a price higher than the delivered price charged by other suppliers, its customers could turn to other merchants. The pipeline, then, may suffer a loss from having to sell below its weighted average cost of new gas and from being unable to pass on any attendant take-or-pay obligations. There is no deferred balance account for new gas supply in which the pipeline can place these losses for future guaranteed pass-through.[44] On the other hand, if the pipeline has vigorously pursued a more effective low-cost gas acquisition program than that of competing merchants (*i.e.*, the pipeline's weighted average cost of new gas is below the market price for new gas), then the pipeline should be rewarded with any gains that can be made in selling gas at the market price.

This proposed rule would recognize that when customers can purchase from alternative merchants, the oversight of gas purchasing practices can be effectively augmented by greater reliance upon market forces. As independent merchants and marketers have arisen in the last few years, both consumers and producers have benefitted from their transmission of clearer price signals. Under the proposal, there would be a presumption that if the pipeline has opened its system to competition, the competitive city gate or delivered price would be a just and reasonable price.

Given the proposed 25 percent per year reduction of firm sales to transportation specified in these proposed regulations, this rule would provide at least a four-year transition period for this provision to be implemented. Particularly when taken in tandem with the safe harbor provisions of this rule, this adjustment period will allow pipelines to realign their gas pruchase schemes in a competitively efficient manner.

Many of the NOI commenters argued for this change in the form of oversight on new gas supply purchases. This form of oversight is consonant with relying upon competition where competition can exist and with the assignment of proper risk and rewards for gas supply acquisition.

For the pipeline which does not choose to provide transportation as a distinct, unbundled service, or until the pipeline's customers gain the full ability to convert sales to transportation, the pipeline would continue to price its volumes in the second block at the weighted average cost of their "new" gas supplies. For this supply, a deferred balance account would still exist to rectify differences between projected and actual new gas supply costs. Customers of this bundled service may still file complaints with the Commission that their pipeline supplier did not engage in prudent purchasing practices, and the Commission would still hold hearings on such complaints, where appropriate.

c. *Entitlements to old gas.* Each customer's percentage entitlement to gas in the initial block would be equivalent to its relative share of the pipeline's firm sales volumes. This share would be calculated using actual sales and averaged for the years 1982, 1983 and 1984. Within thirty days of the effective date of this rule, each pipeline would notify its customers of: (1) Each customer's actual takes for the years 1982, 1983 and 1984; (2) the annual contract quantity of sections 104, 106(a) and 109 gas that was available to the pipeline for 1986; and (3) each customer's percentage entitlement to gas in the first block calculated as prescribed herein.

If a pipeline and its customers by uncontested settlement, agreed on an entitlements formula other than that proposed in the rule, that alternative entitlement scheme could be used to allocate gas in the first block.

This approach would assign the rent on old gas to consumers as Congress apparently intended. (The rent is the difference between the current market value on the old gas and its vintaged price.) However, to prevent these supplies from being a large influence on consumers' purchases in the current and future periods, the entitlement to old gas would be assigned to consumers based upon their past purchases. Thus, any incremental change in the current or future period would only reflect the price of gas in the second block. This rule indicates that this Commission is

[44] The division of system supply gas in storage between Block 1 and 2 will be in the same proportion as the pipeline's purchase of these gas supplies for firm system sales over the past twelve months. Further, Block 1 and 2 gas in storage will be priced, as are all other gas sales, in these two blocks respectively. (The Commission does, however, request comments on alternative accounting treatment.)

not concerned with the formula used to allocate the price benefits of old gas among a pipeline's customers as long as it is not based upon current purchases on new gas from that pipeline. Thus, this rule permits the pipeline and its customers to attempt to devise a better allocation formula before the starting date for this new three-block billing mechanism.

New customers or expanded service of a pipeline will be served entirely from the second block of gas supply of that pipeline or from third-party supply.

This rule removes the artifical advantage of the pipeline or merchant with great amounts of old gas. Further, the incentive for new interconnections will be based upon differences in current market efficiencies rather than access to old gas.

E. Inter-relating the Proposed Policies

These proposed policies are intended to implement our overall goal in the instant docket and to adjust our regulations to current and anticipated future economic realities in order to assure customers the lowest reasonable rates consistent with reliable long-term service.

A detailed analysis of each of the rules being proposed to implement these proposed policies is set out in Section V of this proposal. But the proposed policies, and the rules being proposed to implement those policies, cannot be considered in isoloation.

Rather, they reflect an effort to establish a comprehensive non-discriminatory program for the future interstate transportation of natural gas.

This may be seen in several areas. For example, with respect to risk allocation, the proposed policies and implementing rules would open up access to many gas markets and parties. While this may increase the risk to a particular pipeline, that risk may be offset by other aspects of the proposed rules that provide to pipelines offering nondiscriminatory transportation the opportunities for commensurate competitive rewards. For example, for pipelines offering transportation as a separate service, these proposed rules would eventually provide a presumption that market prices are just and reasonable prices for certain of their gas sales. Similarly, the proposed rules offer pipelines providing non-discriminatory transportation an opportunity to recover the costs of extinguishing certain contract obligations. Furthermore, it should be noted that, with open access to transportation under the proposed rules, the pipeline may over time eliminate a considerable amount of market risk for security of gas supplies that customers and/or suppliers will assume directly.

The proposed streamlined certification procedure will provide all pipelines with new market opportunities. Revenue guarantees will not be provided for such new competitive ventures, but the opportunity for commensurate reward will be, by virtue of the volumetric rates proposed for such undertakings. Moreover, because of these proposed rates, no cost shifting can occur in the case of unsuccessful ventures.

Core market protection as now defined by some market participants would be less feasible under the proposed rules. We would note, however, that such protections appear to play less of a role after enactment of the NGPA than was previously the case. The proposed policies would allow pipelines, their customers and suppliers, to compete more effectively and on more equal bargaining terms. Each of the various aspects of the proposal is designed to achieve this end.

For example, the proposed three-part gas sales billing proposal is designed to minimize the distortions associated with the unequal availability of the old gas "price cushion." It confines the benefits of a pipeline's old gas to the pipeline's historical customers, and makes the acquisition of new and marginal markets a function of the pipeline's efficiency in acquiring gas at competitive market prices—and a producer's ability to meet those market prices. Pipelines would thus compete with each other on a far more equal regulatory footing than previously.

Such a sales billing structure also provides the incentive for pipelines to reduce their gas costs. As competition increases between pipelines, or on a pipeline system between sales and transportation, this three-part rate structure should serve to lower gas prices in the second block and act as a disincentive to imprudent pipeline gas purchasing practices.

Incentives to operate efficiently, and to offer flexible innovative services (in short, incentives to achieve the maximum throughput possible consistent with recovery of the costs incurred under traditional public utility ratemaking principles) require that certification procedures neither hinder nor inhibit potential entrants from offering increased competition to firms currently operating in a market.

Where a pipeline is willing to assume the full economic risks of a new venture, the public interest is not furthered by precluding the pipeline and its willing customers from obtaining expeditious regulatory approval. As long as pipelines assume the full risk of these ventures, as required by the proposed rules, there is little danger that ratepayers will be forced to absorb inappropriate costs. Also, if a pipeline voluntarily accepts a certificate assigning all risk to that pipeline, the presumption must be that the undertaking is prudent. On the other hand, pipelines and their customers retain the option to contract for new services, facilities and operations under traditional Commission certification and ratemaking procedures.

IV. General Requests for Comments

A. Administrative Procedures

These proposals open up a number of new service options for pipelines and their customers. In order to take advantage of these options, pipelines may choose to revise their rates and tariffs in rate cases under section 4 of the NGA. The Commission requests comments on what changes in its administrative procedures or Rules of Practice may be necessary in order to assure that we are able to process and review filings in a timely fashion. In particular, we request comments on the appropriateness of the effective dates proposed for these rules and on the potential need for the Commission to prescribe a schedule for making rate filings subsequent to the effective date of this rule.

B. Strength of Presumptions

One of the primary goals of these proposed rules is to provide the industry with regulatory predictability and stability in the Commission's treatment of services, facilities and operations provided by natural gas companies in competitive markets. In order to provide such predictability, these proposals provide that, if certain conditions are met and subject to rebuttal, certain activities are presumed to be consistent with the applicable NGA criteria. The Commission requests comments on whether such presumptions provide adequate regulatory predictability under the Commission's rules and procedures, or whether such presumptions should be strengthened into general principles or promulgated as binding rules.

The Commission also calls for comment on whether there should be a presumption that the issuance of a blanket certificate under § 284.221 is required by the public convenience and necessity.

C. Contract Adjustment Rights

The Commission also requests comments on whether firm sales customers and their pipeline suppliers

should be provided greater or less flexibility to adjust their contract rights, service obligations or certificates in order to meet changing market conditions or certificates in order to meet changing market conditions consistent with the NGA.

V. Changes to the Regulations To Implement the Proposals

Explanation of Organization

This section is divided into four proposals designed to address the policy considerations discussed in Sections I, II, III, and IV.

The four proposals are:

A. Transportation
B. Take-or-Pay
C. Optional Expedited Certificates
D. Billing Procedures for Purchased Gas

A. Transportation

Part 284–Section 311 Transportation By Interstate/Intrastate Pipelines

Section 284.3(c) Generally applicable provisions. This section currently provides that the Natural Gas Act shall not apply to facilities utilized solely for transportation authorized by section 311(a) of the NGPA. It thereby implements NGPA § 601(a)(2) and exempts from NGA jurisdiction those facilities used exclusively for section 311 transactions. The proposed rule does not propose any change to this regulation. In two recent orders, however, we addressed two complaints regarding reliance on § 284.3 to permit the construction of facilities that would result in core market displacement.[45] In light of those orders, the Commission requests comments on the role and function of this section, including the impact on the Commission's jurisdiction and how facilities constructed under section 311 may be used in the future.

Section 284.4(b). This section requires any interstate pipeline engaging in section 311 transactions to file by telegram a summary report to the Commission within 48 hours after commencing deliveries of natural gas sold, assigned, or transported under Part 284. Intrastate pipelines engaging in such transactions are required to file a summary report with both the Commission and appropriate state regulatory agencies. The report includes the dates of commencement and anticipated termination of the deliveries, the estimated total quantities to be delivered and maximum daily deliveries, and the rates to be charged.

The proposed rule would delete this 48 hour report as unnecessary in light of our experience with these transactions and the other reporting requirements in §§ 284.106 and 284.126 relating to these transactions.

Section 284.7 Rate Conditions. This is a new section which sets forth a number of requirements for the rate filed by any person for transportation service preformed under new §§ 284.102, 284.122, 284.221, 284.224 or 284.243, or transportation or sales service under 157.105. These conditions require the rate schedule to provide for a volumetric rate which does not include provisions that Guarantee revenue, such as minimum bills, minimum-take provisions, or demand charges. The rate must also reasonably reflect any material variation in the cost of service due to the time that the service is provided (such as seasonal variations) or attributable to geographic variations.

The rate schedule must also provide for maximum and minimum rates. The "maximum rate" is defined as the incremental cost of providing service if the service is offered at off-peak periods. The "minimum rate" is defined as the short-run average variable costs of providing service. If offered during peak periods, the "maximum rate" is based on the fully allocated costs of providing the service, less any fixed costs recovered in the maximum rate for off-peak service.

All rates filed pursuant to this paragraph are subject to the Commission's review pursuant to section (4)(e) of the Natural Gas Act.

Paragraph (c) provides that pipelines may charge a customer any rate between the maximum and minimum rates. A pipeline may not file rates to recover revenue lost, during the period the rates were in effect, as a result of charging a rate less than the maximum rate.

Paragraph (d) provides that if the pipeline offers rate schedules in conformance with paragraph (b), the pipeline may, subject to the specific agreement of the affected customer, file rate schedules containing other types of rates.

The Commission requests comments on whether the restrictions placed on the pipeline's discretion to charge rates less than the maximum are consistent with the Natural Gas Act.

Section 284.102 Transportation by Interstate Pipelines. Sections 284.101 through 284.107 apply to interstate pipelines transporting gas under section 311. Section 284.102(a)(4) requires interstate pipelines engaging in section 311 transportation to file the 48 hour report described above. This section would be revised to reflect the deletion of the 48-hour report.

Section 284.102(b)(1)(i) currently limits transportation arrangements under this section to a period of two years. This condition is eliminated so that transportation arrangements may extend for the period agreed to by the parties.

Paragraph (b)(1)(ii) of this section currently imposes the system supply limitation on interstate pipelines transporting gas under section 311. Such transportation currently is limited to gas delivered directly or indirectly to an interstate pipeline, intrastate pipeline, or local distribution company, which receives the gas for its system supply for resale. The proposed rule would eliminate this test and allow interstate pipelines to transport gas under the authorization in § 184.102 without any system supply limitations. Therefore, interstate pipelines would be permitted to transport gas on behalf of an intrastate pipeline or local distribution company without any restrictions to the actual recipient.

While we have eliminated the system supply test, we wish to note that such transportation must still be "on behalf of" the intrastate pipeline or local distribution company. This is a statutory test in section 311 of the NGPA and is a necessary condition of transportation under that section. However, as we discussed in Order No. 46,[46] which implemented section 311, this test is a legal test, not a physical test, and only requires some nexus between the transporter and the intrastate pipeline or local distribution company. Thus, the intrastate pipeline or local distribution company need not physically receive the gas, but need only have the gas transported for its account.

By eliminating the system supply test condition not required under the broad mandate of section 311, the Commission is recognizing that, under our system of federalism, it is within the traditional sound discretion of the states and local governments to regulate local distribution companies in the public interest. The states, not the Commission, have the opportunity, and indeed the right, to determine the appropriate mixture of transportation and sales service provided to customers by local distribution companies not within the Commission's jurisdiction.

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[45] *See Columbia Gas Transmission Corp.* v. *Consolidated Gas Transmission Corp.*, 31 FERC 61,057 (1985), and *Columbia Gas Transmission Corp.* v. *Transcontinental Gas Pipe Line Corp.*, 30 FERC ¶ 61,298 (1985).

[46] Sales and Transportation of Natural Gas, 44 FR 52179 (Sept. 7, 1979).

Section 284.103 Rates and Charges. The current provisions of §§ 284.103 (a), (b), and (c) are retained but made subject to the volumetric rate conditions of new § 284.7 and new paragraph (d), discussed below.

Paragraph (d)(2) of § 284.103 currently provides that all revenues received by interstate pipelines for section 311 transportation which are in excess of one cent per MMBtu are to be credited to Account 191 and flowed back to the interstate pipeline customers. However, the current section provides that such crediting is not required to the extent revenues fall within representative levels which have been credited in arriving at a test period cost of service or to the extent that volumes transported fall within representative levels which have been included in billing determinants for the purpose of establishing rates.

Current paragraph (d) of § 284.103 would be removed and replaced with the requirement that rates for all self-implementing transportation be based on representative levels. Specifically, new § 284.103(d) provides that the rates for transportation shall separately identify cost components for transportation, storage, and gathering and will be based on representative levels of volumes of natural gas transported under § 284.102 of Subpart B, § 284.221 of Subpart C, and § 284.243 of Subpart H of Part 284 and § 157.105 of Subpart E of Part 157. Representative levels shall reflect either volumes that have been: (1) Credited in arriving at a test period cost of service, or (2) included in billing determinants for the purpose of establishing rates.

Section 284.104 Terms and Conditions. This section sets forth the terms and conditions required in contracts for interstate pipeline transportation under section 311.

The proposed rule would change paragraph (b) which now simply provides that the transportation arrangement be subject to the provisions of Subpart B, and inserts a new non-discriminatory access provision. The new paragraph (b) reads as follows:

> An interstate pipeline that provides any transportation service pursuant to § 284.102 shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

This new provision will ensure that this transportation authorization is available to all shippers without any discrimination.

This non-discriminatory access provision is identical in effect to the conditions required under new §§ 284.124(b), 284.221(c), 284.245(d) and 157.103(f). The Commission proposes that this nondiscriminatory access condition apply to all self-implementing transportation for others authorized under the Natural Gas Act or the NGPA. By this condition, the Commission proposes that all natural gas companies under the jurisdiction of the Commission who hold themselves out generally as transporters of natural gas for others in interstate commerce will do so subject to the general and specific condition that access to such transportation be provided to all shippers on a non-discriminatory basis.

The Commission requests comments on whether all transportation certificates issued under section 7 of the NGA after the effective date of this proposed rule should be conditioned on non-discriminatory access of all shippers to transportation service. The Commission also requests comments on whether such a non-discriminatory access condition should be applied where a pipeline is not choosing to hold itself out generally as a transporter of gas, but is transporting under the requirements of law, such as a pipeline obligated to transport Outer Continental Shelf gas under the Outer Continental Shelf Lands Act of 1978. In addition, we request comments on whether such a non-discriminatory access condition should apply to certain transactions which are now defined as transportation under our regulations, such as exchanges of gas, but which may not involve a pipeline holding itself out generally as a transporter of natural gas.

We are also proposing that acceptance of a certificate with the non-discriminatory access provision will be a condition on the availability of the take-or-pay payment presumption in new Part 161, the optional expedited transportation certificate presumption in new § 157.104(b), and the just and reasonable rate presumption under the billing procedure for purchased gas in new § 154.38(d)(4)(xi) described elsewhere in this proposed rule. Finally, the Commission elsewhere in this NOPR is proposing that transportation under this proposed new § 284.104, under a blanket transportation certificate issued under new § 284.221 pursuant to section 7 of the NGPA, or under an optional, expedited transportation certificate issued pursuant to new § 157.105, as also proposed by this NOPR, would trigger the availability under new § 157.21 of certain contract adjustment rights to the firm sales customers of that certificateholder.

By so conditioning the transportation programs available to pipelines and their customers under the NGA and NGPA, the Commission believes that this proposed rule will assist the gas transmission segment of the industry in accurately transmitting the competitive pressures and price signals which now exist at the wellhead and the burner-tip. In so doing, the Commission believes that it will be carrying out its statutory responsibilities consistent with the Natural Gas Act and the Natural Gas Policy Act.

Three new paragraphs will be added to § 284.104 that set forth the firm transportation requirement, a limited qualification to that condition and to the non-discriminatory access condition, and the customer contract adjustment rights. Paragraph (c) provides that the certificate holder transporting gas under the authority in § 284.102 is required to offer firm transportation service to all customers receiving such service and to all other shippers requesting such transportation, provided they are willing to pay the applicable tariff rate. This will assure that this transportation authorization is available to all shippers who request it. An interstate pipeline will not be required, but may at its discretion, provide interruptible transportation service.

Paragraph (d) qualifies the non-discriminatory access and firm transportation conditions set forth in paragraphs (b) and (c), respectively, providing that they will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

New paragraph (e) provides that the transportation service provided under this section is subject to the customer contract demand adjustment rights in new § 157.21.

Section 284.105 Extensions. This section, which sets forth the requirements for filing for extensions of transportation arrangements, is being eliminated. The revisions to § 284.102 eliminate the two year limitation on transportation arrangements. Therefore, transportation arrangements under Subpart B may be for any term agreed to by the parties. The new paragraph permits extensions for any period of time unless the Commission orders otherwise.

Section 284.106 Reporting Requirements. This section sets forth the reporting requirements for interstate pipelines transporting gas under section 311. Briefly stated, it currently requires an initial report, subsequent reports for

any significant changes, extension reports for interstate pipelines seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension, a final report within 30 days after the period of the extension or termination of any transportation arrangement, and the filing fees.

Since § 284.102 is being revised to eliminate any restriction on the term of transportation arrangements, the provision for extension reports is being eliminated. However, the Commission is proposing to require annual reports by March 1 of each year under a new § 284.106(c) that would state the actual volumes of natural gas transported under Subpart B during the preceding calendar year and the revenues received.

The Commission requests comment on how these requirements should be further modified or reduced to accommodate the regulatory changes proposed herein.

Section 284.107 Applications. This subsection permits interstate pipelines to file applications for transportation arrangements under section 311(a)(1) of the NGPA which otherwise would be excluded by § 284.102(b)(1) of the Commission regulations. The new § 284.102, however, eliminates the system supply test and the two-year limitation on transportation, the two restrictions from which an applicant might have sought an exception. Therefore, this subsection would be eliminated.

Section 284.122 Transportation by Intrastate Pipelines. Subpart C deals with certain transportation by intrastate pipelines under NGPA section 311 and begins with § 284.121 dealing with applicability. Section 284.122 is the first substantive section of that subpart and sets forth the general rule and limitations on such transportation. Paragraph (b)(1)(ii) of that section currently imposes the system supply limitation and is identical to current § 284.102(b)(1)(ii). This subparagraph would be eliminated since the system supply test is eliminated. In addition, as under § 284.102, the two-year limitation on transportation authorization would be removed. As discussed under § 284.102, the transaction must still comply with the "on behalf of" test set forth in the statute and more fully explained in Order No. 46, *supra.*

Section 284.123 Rates and Charges. This section establishes the rates and charges for gas transported under § 284.122. Paragraph (b) sets forth certain elections that the intrastate pipeline may choose in establishing its rates for transportation. These options are retained in the current regulations, but new paragraph (e) makes them subject to the volumetric conditions in new § 284.7.

Section 284.124 Terms and Conditions. This section sets forth the terms and conditions for intrastate pipelines transporting under section 311 and requires that contracts for such transportation provide that the transportation arrangement is subject to the provisions of Subpart C. The new § 284.124 retains this requirement in a new paragraph (a).

A new paragraph (b) containing a non-discriminatory access provision similar to that inserted in § 284.104(b) is inserted.

It provides as follows:

> An intrastate pipeline that provides any transportation service pursuant to § 284.122 shall provide transportation service for all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

A new paragraph (c) is also added imposing a firm transportation requirement on intrastate pipelines. This provision is identical to the provision for interstate pipelines discussed above and set forth in new § 284.104(c).

Section 284.125 Extensions. This section permits intrastate pipelines to file for an extension of their transportation arrangement for a period of up to two years. Since the two-year limitation on transportation agreements in current § 284.122(c) would be eliminated under the proposals, the parties to a transportation agreement will be able to obtain authorization for any length of term. Therefore, there will be no need to provide for extensions. Accordingly, § 284.125 will be eliminated in its entirety.

Section 284.126 Reporting Requirements. This section sets forth the reporting requirements for intrastate pipelines transporting gas under section 311. These requirements are similar to those for interstate pipelines in § 284.106 and require an initial report, certain subsequent reports, extension reports, a final report, and reference the filing fee provisions.

With one exception, the initial full report, subsequent report, and final report requirements remain substantively unchanged and are set forth in §§ 284.126 (a), (b), and (d), respectively. The subsequent report requirement is revised to specify 30 days as time within which significant changes must be reported. Since § 284.122 is being revised to eliminate any limitation on the term of transportation arrangements, the extension reports requirement under § 284.126(c) would be eliminated. A new § 284.126(c) would be added to require annual reports by March 1, of each year stating the actual volumes transported during the preceding calendar year and the revenues received.

Section 284.127 Applications. This section permits intrastate pipelines to file applications for transportation arrangements under section 311(a)(2) of the NGPA which otherwise would be excluded by current § 284.122 of the Commission's regulations. The new § 284.122, however, eliminates the system supply test, thereby permitting natural gas to be delivered to any person, and the two-year limitation on transportation. These are the only restrictions from which an applicant may seek exception under current § 284.122(b). Therefore, this section would be eliminated.

Part 284—Subpart F, Section 311 Transportation for the Displacement of Oil (Order No. 30)

Under Subpart F of Part 284 (§§ 284.200–284.208), interstate pipelines were authorized to transport gas to end-users for the displacement of fuel oil during a "fuel oil emergency period," as defined in § 284.201(e). When we issued Phase II of our blanket certificate regulations, we terminated this program since a separate, fuel-oil displacement program was unnecessary in view of the new generic transportation program. This program is therefore no longer in existence and these regulations will be removed.

Part 284—Subpart G, Section 7(c) Blanket Certificates. General Descriptions of Revisions to Subpart G

Existing § 284.221 authorizes interstate pipelines to apply for a blanket certificate under section 7(c) of the Natural Gas Act to transport natural gas for the system supply of any other interstate pipeline. This section was intended to permit interstate pipelines to perform for other interstate pipelines the same activities that section 311 authorizes interstate pipelines to perform on behalf of intrastate pipelines and local distribution companies. Under the proposed rule this section would be substantially revised to consolidate this blanket certificate with the blanket transportation authorization now available to interstate pipelines under §§ 157.201 and 157.209. Section 284.221 would be revised, as indicated below, to set forth the general terms and conditions of both blanket certificates.

Section 284.222, which now deals with the transportation, sale, and assignment of gas by local distribution companies, would be renumbered as § 284.224 and revised as discussed below. The new § 284.222 provides for essentially the same authority as current § 284.221. A new § 284.223 would be added which would provide transportation authorization similar to, but less restrictive than that set forth in the Commission's blanket interstate pipeline transportation program in § 157.209.

Section 284.221 General Transportation by Interstate Pipelines on Behalf of Others. New paragraph (a) of the new section will generally set forth the applicability of the blanket certificate, *i.e.*, permit any interstate pipeline to apply for a blanket certificate. This certificate will be different from that for which interstate pipelines may now apply under § 157.201. Upon receipt of such application, the Commission will conduct a hearing under section 7(c) of the Natural Gas Act. If required by the present or future public convenience and necessity, the Commission or its delegate will issue the pipeline a blanket certificate authorizing the pipeline to transport gas as provided in the new § 284.222 (for any other interstate pipeline) and § 284.223 (for any person other than an interstate pipeline).

New paragraph (b) would set forth the application procedures and would be virtually identical to the procedures now set forth in the current § 284.221(c). That section provides that the application shall contain the name of the interstate pipeline and a statement by the interstate pipeline that it intends to comply with the conditions in the certificate.

New paragraph (c) would set forth the general conditions of the certificate. A new subparagraph (1) would be inserted which would contain the non-discriminatory access condition described above:

> An interstate pipeline that provides any transportation service pursuant to a certificate issued under this section shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for the service requested without discrimination in the quality of service provided, the categories, prices, volumes of natural gas transported, customer classification, or discrimination of any kind.

New paragraph (c)(2) would establish the firm transportation requirement described above and set forth in § 284.104(c) and § 284.124(c). Thus, certificate holders would be required to offer firm transportation service to all customers receiving firm sales service and all other shippers requesting transportation provided they are willing to pay the applicable tariff rate on file with the Commission.

New paragraph (c)(3) would qualify the non-discriminatory access and firm transportation conditions set forth in subparagraph (c)(1) and (2), respectively, by providing that they will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any facilities.

New paragraph (c)(4) of § 284.221 requires that the rates for all self-implementing transportation be based on representative levels. Specifically, new § 284.221(c)(4) provides that the rates for transportation shall separately identify cost components for transportation, storage, and gathering and will be based on representative levels of volumes of natural gas transported under § 284.102 of Subpart B, § 284.221 of Subpart G, and § 284.243 of Subpart H of Part 284 and § 157.105 of Subpart E of Part 157. Representative levels shall reflect either volumes that have been (1) credited in arriving at a test period cost of service, or (2) included in billing determinants for the purpose of establishing rates.

Paragraph (c)(5) would contain the condition that each filing made with the Commission and reporting individual transactions should reference the appropriate docket number in which the blanket certificate was granted. This is the same condition now contained in the current § 284.221(d)(2).

Paragraph (d) of the new § 284.221 will contain a pre-grant of abandonment identical to that which is currently set forth in § 284.221(e). That section provides that abandonment of transportation services under section 7(b) of the Natural Gas Act is authorized when the contractual term of the individual transportation arrangement expires.

New paragraph (e) will set forth the availability of a regular certificate. This paragraph would be similar to that which is now contained in § 284.221(f) of our current regulations which provides that nothing precludes an interstate pipeline from applying for individual certificates of public convenience and necessity for particular transportation services provided to another interstate pipeline or from proceeding under section 311(a)(1) of the NGPA. It is worth noting that the conditional contract demand adjustment rights of a pipeline's firm sales customers under § 157.21 are triggered equally by any new transactions in which the pipeline transports natural gas for others. See Part V.B.1.(a). The new subparagraph would be applicable to transportation to any person. The reference to section 311(a)(1) would be deleted since it would no longer be applicable.

The new paragraph (f) would cross reference a number of related sections, such as blanket certificates for local distribution companies served by interstate pipelines under new § 284.224 and blanket certificates for interstate pipelines to construct and operate certain facilities under Subpart F of Part 157.

Any interstate pipeline may apply under Subpart F of Part 157 for a blanket certificate to construct or acquire and operate certain natural gas facilities under Subpart F of Part 157 of this chapter that are necessary to provide transportation under § 284.222 or 284.223. Section 157.208 of Subpart F provides automatic authorization not subject to prior notice for the construction, acquisition, operation, and miscellaneous rearrangement of eligible facilities, as defined in § 157.202, if the associated costs do not exceed the limits specified in § 157.208(d). Other facilities may be constructed, acquired, rearranged, and operated subject to the prior notice requirements of § 157.205. Eligible facilities include pipeline receipt points and pipeline interconnections, where more than one transporter is involved. The construction and operation of sales taps, explicitly excluded from the § 157.202 definition of eligible facilities, are subject to the conditions set forth in § 157.211 and the prior notice conditions of §157.205.

Two new paragraphs (g) and (h) would be added to provide for flexible authority for establishing receipt and delivery points of transported gas.

Subparagraph (g)(1) would permit interstate pipelines transporting gas under new § 284.221 to reduce or discontinue receipts of gas at a particular delivery point, and commence or increase receipts of gas at another delivery point from the same supplier or a different supplier. Such changes must be made at the request of the shipper and are not subject to prior notice. However, the total gas volumes received by the interstate pipeline after such reassignment are not permitted to exceed the total volume that the interstate pipeline is authorized to transport on behalf of the shipper. New paragraph (g)(2) also clarifies that the receipt points to which gas may be reassigned under paragraph (g)(1) may be constructed and operated without prior notice under a blanket certificate issued under Subpart F of Part 157.

Similarly, paragraph (h) provides for flexible delivery points. New paragraph (h)(1) permits interstate pipelines transporting gas pursuant a certificate issued under § 284.221 to reduce or discontinue deliveries of gas to a particular delivery point. The pipeline may also commence or increase deliveries to another delivery point. Such changes must be requested by the shipper and are not subject to the prior notice procedures. As with paragraph (g) above, the total delivered volumes following the reassignment under paragraph (h)(1) are not permitted to exceed the total volumes that the interstate pipeline is authorized to transport for that shipper under this certificate. Paragraph (h)(2) also clarifies that the delivery points to which the gas may be reassigned may be constructed and operated under a blanket certificate issued pursuant to Subpart F of Part 157. The construction and operation of such facility, however, will be subject to the prior notice procedures in § 157.205.

The Commission considers that flexibility in the construction and operation of delivery and receipt points is necessary in order to assure to gas markets the competitive benefits of transportation services. However, the Commission recognizes that flexibility in such services may affect similar services now provided by local distribution companies primarily regulated by the states and local governments; thus, construction of facilities by pipelines to provide delivery points is subject to prior notice and protest procedures. When the Commission reviews such protests, it will expect such protestors to demonstrate, with specific facts and particularity, why construction of such facilities should not be authorized in the public interest. The Commission recognizes that the same state and local jurisdictional concerns which apply to elimination of the system supply test also relate to the construction of facilities for flexible delivery points.

New paragraph (i) provides that the conditions set forth in § 157.21 of Subpart A of Part 157 relating to a customer's right to adjust contract demand will apply to any interstate pipeline that transports natural gas under § 284.221.

Section 284.222 Transportation on Behalf of Other Interstate Pipelines. As mentioned above, this new section would be similar to the authorization in current § 284.221, authorizing transportation for other interstate pipelines. It provides that an interstate pipeline with a certificate issued under new § 284.221 is subject to the same terms and conditions, rates and charges, and reporting requirements as if the transaction were authorized under Subpart B of this part (Certain Transportation by Interstate Pipelines), including the proposed new and revised conditions.

Section 284.233 Transportation on Behalf of Persons Other Than Interstate Pipelines. This new section would apply to interstate pipelines transporting gas on behalf of all persons other than interstate pipelines and would describe the scope and special terms and conditions of such transportation. It would contain several of the provisions now set forth in § 157.209 of the Commission's blanket certificate transportation program.

New subparagraph (a)(1) of this section would continue to permit automatic authorization now authorized under the interstate blanket certificate program. Interstate pipelines would be authorized to transport gas to anyone for a period of 120 days for any gas. Thus, any restrictions on qualifying gas would be eliminated and any gas, including imported gas, gas from the Outer Continental Shelf, and gas committed or dedicated to interstate commerce on November 8, 1978, could be transported.

New paragraph (a)(2) has been added to "grandfather" 120-day transportation terms commenced under authority of current § 157.209(e) that are still continuing as of November 1, 1985. Accordingly, an interstate pipeline that commenced transportation on behalf of an end-user prior to November 1, 1985, under authority of current § 157.209(e)(1), may continue to transport under the certificate issued pursuant to that section after October 31, 1985, provided the term of that particular transportation arrangement does not exceed 120 days, including periods both prior to and subsequent to November 1, 1985.

We recognize that in some instances, depending largely on when the transportation begins, there might not be sufficient time prior to expiration of the 120-day term for the filing of the application on or after November 1, 1985, for the processing of the application, for the 45-day prior notice period under § 157.205, and, assuming final authorization under § 157.205(g), for the filing of rates. In view of these considerations, the Commission is requesting comments to help it determine whether additional time should be permitted for the 120-day transportation arrangements affected by this proposal, and, if so, how much additional time.

Paragraph (2) also clarifies, however, that regardless of any expired portion of the transportation term authorized under current § 157.209(e)(1), if, prior to the expiration of a 120-day transportation term, but after November 1, 1985, the interstate pipeline obtains a certificate issued pursuant to § 284.221 automatically authorizing a transportation arrangement under § 284.223(a) involving the same interstate pipeline and shipper, the transportation term authorized under § 284.223(a) shall not continue for more than 120 days after the date of final authorization under § 157.205(g).

New subparagraph (a)(3) clarifies that additional 120-day transportation terms may be automatically authorized under subparagraph (a)(1), subject to certain conditions. Subsequent 120-day terms are automatically authorized, provided: (i) The gas is transported by the same pipeline for the same shipper and (ii), after the commencement of the last 120-day transportation term, the transportation arrangement between that transporter and that shipper was authorized under the prior notice procedures of § 157.205. Thus, any time the pipeline and shipper have obtained prior notice authorization under paragraph (b) for an arrangement which has since terminated, whether or not it was preceded by a 120-day term under paragraph (a), they may rely on paragraph (a) for automatic authorization to transport for a new maximum 120 days, during which time they may apply under the prior notice procedures for authorization that would cover the duration of the reinstated transportation arrangement.

We recognize that the transportation authority as provided for in these proposed rules is broader than existing producer abandonment and certification requirements currently allow. The Commission requests comments on exactly what procedural changes to the producer abandonment and certification regulations are needed to allow efficient implementation of transportation arrangements under new § 284.223.

Two provisions currently in § 157.209 regarding 5-year and 10-year automatic transportation authorization would be eliminated prospectively for transactions commenced after October 31, 1985, under new § 284.223. Those provisions are as follows:
§ 157.209(a)(1)(i) currently automatically authorizes transportation on behalf of high-priority end-users for 5 years if the gas was purchased from: (1) A producer or seller and the gas was not committed or dedicated to interstate commerce on November 8, 1978, and was not

produced by an interstate pipeline; (2) an intrastate pipeline; or (3) a local distribution company and the volumes purchased are attributable to the local distribution company's local supply. Current § 157.209(a)(1)(ii) automatically authorizes transportation for a high-priority user for a 10-year period or the life of reserves, whichever is less, if the natural gas was produced from reserves owned and developed by the high priority user, provided that the reserves were not proven reserves purchased in place by the end-user. Longer terms for all of these types of transactions may be authorized subject to the prior notice provisions of current § 157.209(b) and § 157.205. Section 157.209 will be removed in its entirety. Transportation authorized thereunder, prior to the effective date of these proposals, may continue in accordance with certificate conditions.

New paragraph (b) would set forth the prior notice procedures which are now set forth in § 157.209(b). As indicated below, these procedures would be similar to those set forth in the current procedures, and would authorize the holder of the blanket certificate issued pursuant to new § 284.221 to transport, on behalf of any person, natural gas for any end-use by that person or any other person. The person, or his agent, for whom the interstate pipeline would be transporting would be permitted to make the necessary filing in an application on behalf of the interstate pipeline.

New paragraph (c) sets forth the contents of the prior notice request. It would contain the same requirements as those currently reflected in § 157.209(c), except that the following information, which would continue to be required for non-transportation related applications under Subpart F of Part 157, would *not* be required under new § 284.223: (1) The proposed end-use and a statement that it is a qualified end-use (§ 157.209(c)(1)(vi)); (2) the total end-use requirements profile for natural gas at the location where the transported gas will be used (§ 157.209(c)(i)(vii)); (3) a copy of the gas purchase contract with the seller underlying the proposed transaction (§ 147.209(c)(1)(viii)); (4) if an intermediary participates in the transaction between end-user and the seller and charges a fee, the amount of the fee and terms of payments and the intermediary's affiliation, if any, with the producer, pipeline, and/or distributor (§ 157.209(c)(1)(ix)); and (5) if the end-user assumes the costs of the construction of any facilities in order to consummate the purchase, the cost terms of payment, ownership, and date of construction of the facilities.

The applicant need not state the type of gas which would be transported since any gas is eligible for transportation.

New paragraph (d) would also include the requirement of current § 157.209(d)(i) that the rates and charges shall be subject to the requirements of § 284.7 and of § 284.103 of Subpart B and shall be stated in a generally applicable transportation tariff. In addition, new § 284.223(d) would not include the requirement of § 157.209(d)(7)(ii) that the contract for the transportation shall provide that service under the contract shall be subject to the availability of capacity sufficient to provide the service without detriment or disadvantage to the certificate holder's existing customers who are dependent upon the certificate holder's general system supply. The system supply test in current § 157.209(d)(2) would not be reflected in new § 284.223(d). Section 284.223 would include the requirement of § 157.209(d)(iv) that each initial report be accompanied by the fee set forth in § 381.404 or a petition for waiver pursuant to § 381.106 of the Commission's regulations.

New paragraph (e) would set forth the reporting requirements which would be similar to those set forth in § 157.209(g) of the current regulations. A new subparagraph (e)(1)(vii) would be added to require the identity of other pipelines involved in transporting the gas from the source to the shipper to be reported. References to the additional incentive charge are also deleted since this program expired on February 1, 1985.

The Commission requests comment on how these reporting requirements should be further modified to accommodate the proposed regulatory changes.

A new paragraph (f) is added to coordinate transportation authorization under this section with that currently provided under § 157.209(b). New paragraph (f) provides that certificate authority under § 284.22 shall not provide for continued transportation under § 157.209 beyond the date authorized by the certificate issued under § 157.209. At the expiration of that authorization, however, new authorization could already be in place under proposed new § 284.223(b).

Section 157.209 (e) and (g) in our current regulations would not be incorporated in the program because they deal with the current experimental transportation program and the added incentive charge which was allowed to expire February 1, 1985.

4. Order No. 63—Limited Blanket Certificate Authorization for Local Distribution Companies

Section 284.222 of our current regulations was implemented by Order No. 63 and permits any local distribution company served by an interstate pipeline or any Hinshaw pipeline to apply for a blanket certificate under section 7(c) of the Natural Gas Act. This section would be renumbered as § 284.224 and would be amended to include the access and rate design conditions discussed above that are also proposed to be made applicable to transportation under §§ 284.102, 284.122, 284.221, 284.243, and 157.105.

5. Order No. 92 Regarding Local Distribution Access to Offshore Gas

Sections 284.241 through 284.246 implement section 603 of the Outer Continental Shelf Lands Act Amendment of 1978 and apply to certain transportation of gas produced from OCS leases owned by an eligible distributor for general system supply. These sections will essentially be retained in their current form. However, references to the system supply test are deleted since this test would be eliminated. Transportation under § 284.245 by interstate pipelines would be subject to the proposed access provision, firm transportation conditions, and volumetric rate conditions of § 284.7. Interstate pipelines would be subject to customers' rights to adjust contract demands and establish representative levels.

6. New § 157.21, Condition Permitting Pipelines' Customers to Adjust Certain Firm Sales Rights

This Commission's proposed § 157.21 sets forth a condition that applies when, after the effective date of this rule, the pipeline: (1) Accepts a certificate issued under § 284.221 or § 157.105 pursuant to section 7 of the Natural Gas Act that authorizes the pipeline to transport natural gas for any other person, or (2) operates under authority of §§ 284.102 or 284.243. The condition provides that any existing firm sales customer of the pipeline may reduce its contract demand by up to 25 percent in any calendar year. Thus, if on the effective date of this rule the contract demand in the customer's firm sales agreement is 1,000 MMcf per day, the customer may reduce its contract demand by 250 MMcf per day in the first calendar year after this rule becomes effective, 250 MMcf per day in the second year, 250 MMcf per day in the third year, and 250 MMcf in the fourth year.

When the customer exercises the right to reduce its contract demand, the pipeline may, but need not, abandon service to the extent of the reduction. If the pipeline elects to abandon service, the customer may subsequently increase its contract demand after the Commission issues an order pursuant to either section 7(a) or 7(c) of the Natural Gas Act permitting the customer to increase the contract demand. The pipeline may file tariff sheets setting forth the general terms and conditions under which it will agree to an increase in its customer's contract demands.

Whenever a customer reduces its contract demand or the pipeline agrees to allow the customer to increase its contract demand, the pipeline must file appropriate adjustments to its firm sales tariffs.

The Commission requests comments on whether firm sales customers who reduce their contract demand for sales should have the right to convert that reduction into an equivalent amount of reserved firm peak transportation capacity by paying a reservation charge equal to the demand charge formerly paid for the reservation of capacity for sales. The customer would have to specify the receipt and delivery points for the capacity being reserved and there would have to be rate adjustments of this reservation charge in any future rate cases. Under this approach, then, a pipeline might sell three types of firm service: contract sales, contract transportation for former sales customers, and self-implementing transportation.[47] The Commission requests comment on whether such a conversion should be allowed or whether it is necessary where customers can buy spot firm transportation.

7. Existing Subpart E of Part 157, Transportation Certificate Under Section 7(c)(2) of the Natural Gas Act and § 2.79 Policy With Respect to Certification of Pipeline Transportation Agreement

Section 157.100 through 157.105 apply to transportation certificates for direct sales of gas to certain high priority users. Section 2.79 covers the transportation of natural gas for high priority industrial and commercial uses during pipeline curtailment. They establish regulations for transporting gas to essential agricultual users, schools, hospitals, or similar institutions and curtailed high priority industrial and commercial users. Given the expansion of the blanket certificate program to all persons, these sections will not be necessary and would be deleted.

8. Subpart F of Part 157, Interstate Pipeline Blanket Certificates

Section 157.209 sets out the existing blanket certificate transportation program. This section will be eliminated since the relevant substantive portions will be included in new § 284.223. However, automatically authorized 120-day transportation arrangements that already have commenced prior to the effective date of the proposed amendments could continue for the full 120 days. Further, transportation undertaken under Subpart F pursuant to the prior notice provisions of § 157.205 may continue for the term specified in the Subpart F certificate subject to the conditions thereof.

Other editorial changes have been made to accommodate the revisions discussed above. A new paragraph (c) is added to § 157.211 to provide for flexible deliveries as discussed above under Part 284.

B. Take-or-Pay

Part 161—Payment in Lieu of Take-or-Pay Obligations

The proposed "safe harbor" presumption is available only to pipelines that agree to offer transportation on a non-discriminatory basis as discussed in Part I of this Notice. Under the proposed rule, a pipeline making qualifying payments to extinguish all minimum payment or purchase obligations under a qualifying contract shall be presumed to have acted prudently, subject to rebuttal, for purposes of sections 4 and 5 of the Natural Gas Act. In brief, the rule requires that a pipeline identify its qualifying contracts, divide them into two groups depending on whether or not the primary term extends for more than five years after December 31, 1985, and calculate the minimum payment or purchase obligation under each such contract in the group. The pipeline then determines how much of this minimum payment or purchase obligation under each qualifying contract is reasonably estimated to obtain in 1986 and 1987, and of that amount, how much the pipeline reasonably estimates that it will not be able to recoup under the terms of the qualifying contract. The total of the amounts reasonably estimated to be unrecoupable is the pipeline's 1986–1987 unrecoupable obligation. The total qualifying payments that may be presumed prudent may not exceed a certain percentage of the 1986–1987 unrecoupable obligation, depending on the length of the remaining primary term.

The Commission is proposing that the safe harbor presumption apply only to future payment or purchase obligations under qualifying contracts. Since the regulatory changes proposed in the Notice are prospective, it appears appropriate that take-or-pay relief should also be prospective. However, the Commission recognizes the possibility that past and/or current take-or-pay prepayments may affect a pipeline's current and future business decisions. For example, a pipeline already may have made prepayments for past take-or-pay obligations, but has yet to take the make-up volumes. If a pipeline decides to offer non-discriminatory transportation, those transportation volumes may displace its own sales. To some degree then, the pipeline may be unable to recoup the prior prepayments.

The Commission seeks comments on whether the safe harbor presumption should be expanded also to include previously incurred and outstanding liabilities. To the extent that past prepayments do not affect current business decisions, the level which might be determined to be prudent would presumably be a lesser amount.

Section 161.1 Safe Harbor Applicability. Section 161.1 defines the applicability of the safe harbor presumption. The presumption is available only to pipelines that offer transportation services on a non-discriminatory basis. To meet this requirement, an interstate pipeline must do one of the following:

(1) Accept a certificate issued pursuant to section 7 of the Natural Gas Act that authorizes the pipeline under § 284.243 or proposed § 157.105 to transport natural gas for any other person; or

(2) Operate under authority of § 284.102; or

(3) Accept a blanket certificate issued under proposed § 284.221.

These sections are discussed in more detail in Parts I and III of this Notice.

The Commission does not believe that there should be any Commission exceptions to this requirement. The Commission intends that the safe harbor presumption remove artificial constraints on pipelines to enable them to engage in more competitive market practices.

Section 161.2 Definitions. The proposed "safe harbor" rule defines four particular terms. They are: (1) Qualifying contract; (2) minimum payment or

[47] A pipeline would, of course, still be allowed to apply for a traditional section 7(c) certificate to provide contract transportation service where a customer pays a reservation charge and a transportation rate instead of only a volumetric rate.

purchase obligation; (3) 1986–1987 unrecoupable obligation; and (4) qualifying payment.

Section 161.2(a) Qualifying Contract. "Qualifying contract" is defined as a contract for the "first sale" of natural gas which was entered into before January 1, 1982, and the primary term of which will continue beyond January 1, 1986.

The Commission proposes that a pipeline wishing to avail itself of the safe harbor presumption must be a party [48] to a qualifying contract. A "first sale" of natural gas is defined in section (2)21 of the NGPA.

"Primary term" means the initial term of service specified in the contract. The Commission proposes that if a "qualifying contract" was amended to extend the primary term, that amendment must also have been entered into prior to January 1, 1982.

The Commission proposes a cut-off date of January 1, 1982, based on market conditions at that time. The Commission proposes this date because in 1982 pipelines that had contracted for large supplies of gas at NGPA prices experienced difficulty in marketing this gas. Moreover, it appears that by 1982, most wellhead contracts contained some type of "market-out" provisions ensuring a more market-responsive contract.[49] The Commission welcomes comments on whether January 1, 1982, or another date is an appropriate date for defining qualifying contracts.

The Commission is not proposing to require that the primary term of the qualifying contract extend beyond January 1, 1986, for any particular length of time. For example, the contract remainder may be only one month, *i.e.*, a contract whose primary term expires February 1986. However, the length of the primary term in a pipeline's qualifying contract will determine the level of payments that qualify for the safe harbor presumption.

Under the proposed regulations, a pipeline would divide its qualifying contracts into two groups: (1) Contracts that, on December 31, 1985, have five years, or fewer than five years, remaining in the primary term, and (2) contracts that, on December 31, 1985, have more than five years remaining in the primary term.

Section 161.2(b) Minimum Payment or Purchase Obligation. Section 161.2(b) defines "minimum payment or purchase obligations" as:

> The minimum take-or-pay quantities specified in a qualifying contract for the time period remaining in the primary term of such contract after January 1, 1986, multiplied by the contract price for such quantities

The proposed regulation requires that a pipeline first determine the length of time remaining in each qualifying contract's primary term after January 1, 1986. Then, the pipeline determines the minimum take-or-pay quantities which could be incurred over that length of time according to the terms of the contract. For example, suppose that a qualifying contract's primary term extended until June 30, 1988. The remainder period would be two and one half years. If the minimum annual take-or-pay quantity specified in the qualifying contract is 100 MMcf, then the pipeline would have minimum take-or-pay quantities of 250 MMcf. The minimum take-or-pay quantity having been determined, that quantity is multiplied by the contract price applicable to such quantities. The result is the pipeline's minimum payment or purchase obligation for that qualifying contract. Thus, if the contract price is $7.00, then the minimum payment or purchase obligation is $1,750,000.

The pipeline must calculate the minimum payment or purchase obligation for *each* qualifying contract separately.

The Commission's Statement of Policy [50] addressed payments made by jurisdictional pipelines to first sellers of natural gas for the purpose of waiving or revising purchase obligations under natural gas sales contracts. The safe harbor presumption the Commission is proposing is intended to apply to these types of payments only if such payments completely cancel all of a pipeline's obligation under the qualifying contract to take any minimum amount of gas or to pay for any minimum amount of gas. Payments which revise, but do not cancel, such obligations are not eligible for the safe habor presumption.

Section 161.2(c) "1986–1987 Unrecoupable Obligation". Section 161.2(c) defines the 1986–1987 unrecoupable obligation. Under the provision, a pipeline estimates the extent of its sales for this two-year period and whether it will incur a take-or-pay obligation under each of its qualifying contracts. Then, the pipeline estimates how much of this amount it does not expect to recoup under the terms of the contract. In order to determine the total 1986–1987 unrecoupable obligation, the pipeline aggregates the non-recoupable amounts for each group of contracts.

The pipeline's estimate will presumably be based on such considerations as its individual sales and transportation experience, projected sales and transportation, projected growth in its markets, degree of competition of the system, and customer buying patterns. The Commission recognizes that circumstances may vary greatly from pipeline to pipeline, and that a set of facts that would cause pipeline A to incur an unrecoupable obligation may not affect pipeline B. Also, the Commission is not proposing to require a pipeline to demonstrate that any particular event or events has occurred or that specified circumstances exist on its system in support of its estimates. Since a pipeline must provide a detailed explanation of how it arrived at the amount of its 1986–1987 unrecoupable obligation in order to meet the presumption of prudence standard, a mere recitation that pipeline X believes it will not be able to recoup a stated amount will not suffice. The Commission invites comment on what facts and circumstances may influence a pipeline's estimate of its 1986–1987 unrecoupable obligation.

Section 161.2(a) and section 161.2(b) "Qualifying Payments". Section 161.2(a) and section 161.2(b) define what amounts of payments made in lieu of take-or-pay obligations may be considered qualifying payments and, thus, presumed prudent. The amount of qualifying payments will vary depending on the amount of time remaining in the primary term of the contract as of December 31, 1985. If, on that date, five years, or fewer than five years remain qualifying payments may be any amount not in excess of a specific percentage (X percent) of the total 1986–1987 unrecoupable obligation. If more than five years remain, the qualifying payment may be no more than Y percent.

The Commission is not proposing at this time to specify numbers for X or Y percent. Instead, the Commission is requesting comments on what these percentages should be. The Commission expects many factors will enter into the determination of these percentages. Foremost among these is the relationship of the safe harbor presumption to the other proposed rules in this Notice. The Commission recognizes that if a pipeline operates

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[48] There may be qualifying contracts where the original pipeline purchaser has been succeeded by another pipeline, as a result of, among other things assignment or corporate reorganization. In that event, the Commission proposes that the current party in interest be eligible for the safe harbor presumption.

[49] *See*, U.S. Energy Information Administration, Ip at 44 Table FS4 (Summary of Major Provisions in Recent Contracts Filed at the Commission (Based on Percentage of Number of Contracts)) shows that whereas in 1981, only 36 percent of gas purchase contracts had market-out pricing provisions, by 1982, 85 percent of such contracts had them

[50] *See, supra* note 4

under the proposed transportation program, it will be carrying gas that may displace its own sales. The Commission believes that the rate changes it is proposing in this Notice, however, will enable a pipeline to be economically indifferent to whether it sells or transports gas, *assuming it is acting on a clean slate*. The Commission's intent in proposing the "safe harbor" presumption is to provide pipelines with the opportunity to "clean the slate" by buying-out their so-called "problem contracts," thereby removing the distorting effects these contracts have in today's marketplace. In order to provide that opportunity, the Commission is proposing regulatory predictability to enable pipelines to deal with those problems, particularly the question whether such payments will be considered prudent in the future.

The Commission believes that, in the era of increased competition, which a pipeline would be accepting by agreeing to operate under the proposed transportation rules, the Commission should provide guidelines in advance as to what types of action it considers in the public interest.

The proposed percent limitations are ceilings only on the amounts eligible for the safe harbor presumption. Any payments made in excess of these percentages are not presumed prudent and are subject to a full review for prudence as contemplated in § 2.76 of the regulations.

For example, assume that a pipeline has determined that its total 1986–1987 unrecoupable obligation for qualifying contracts in Group A (five years or less) is $100 million. Under the rule, a pipeline could make payments up to X percent of $100 million and have these payments be eligible for the presumption of prudence. Total payments to *all* suppliers may not exceed the X percent if the pipeline wishes the payments to be eligible for the presumption. (In other words, the rule does not permit a payment to *each* producer which does not exceed X or Y percent.) The monies up to the X percent level are available to the pipeline to make payments in whatever amounts it chooses. There is no restriction on what amounts must be paid to each supplier. The Commission believes this matter should be resolved between pipelines and their suppliers.

Section 161.3 "Safe-Harbor" Presumption of Prudence. Section 161.3(a) of the proposed rule defines what pipeline action is eligible for the rebuttable presumption of prudence. A pipeline that makes a qualifying payment up to the ceiling defined in either § 161.2(d)(1) or (d)(2) to extinguish *all* minimum payments or purchase obligations as defined in § 161.2(b) under a qualifying contract as defined in § 161.2(a) shall be deemed to have acted prudently, subject to challenge, for purposes of sections 4 and 5 of the Natural Gas Act. The qualifying payments must be made in return for a total cancellation of all minimum payments or purchase obligations under the qualifying contract. The intended end result after the pipeline makes the qualifying payment is that the pipeline will have no take-or-pay obligations of any kind for the remainder of the contract. Qualifying payments made in return for partial cancellation or postponement of such obligations, or extended make-up periods, and the like are not eligible for the presumption of prudence and will be treated on a case specific basis as provided in § 2.76 of the regulations.

Of course, a pipeline and its suppliers are free to execute a new contract for the same supplies of gas. Particularly in view of the other provisions of this proposed rule, any new contract executed by the parties will presumably be sufficiently market-responsive so as to avoid similar problems arising in future years.

Section 161.3(a) also identifies the burden of proof on the pipeline that seeks to invoke the presumption. The pipeline has the initial burden of proof that it has in other section 4 filings. A pipeline must prove that its payments meet all the requirements of this rule. There must be a qualifying contract, which specifies the amount of minimum take-or-pay quantities and the price applicable to such quantities. Also, the pipeline must provide a clear and detailed explanation of how it estimated its 1986–1987 unrecoupable obligation.

If a pipeline can show that its payments come within the scope of the rule, the burden shifts to any persons challenging the prudence of the payments. Section 161.3(b) provides that such persons must demonstrate that the payments were imprudent. (Of course, if a person challenging the prudence of the payments can show that a pipeline did *not* comply with the requirement of this section, the presumption fails.) The Commission contemplates that any interested person and the Commission Litigation Staff may challenge the prudence of said payments.

The Commission is not proposing precise facts that need be shown since circumstances are likely to vary from system to system. However, alleging that the pipeline was imprudent in having executed the contracts in question, *i.e.*, having "put us all in the pickle," [51] may not be enough to overcome the presumption of prudence. In establishing the appropriate values for "X" and "Y" percent, the Commission intends to take into account the peculiar circumstances prevailing in the natural gas field markets during the 1970's and early 1980's, and the pervasive distorting impacts of the various schemes of federal wellhead price controls which existed during this period. The Commission seeks to build a regulatory framework for interstate pipelines in a world where price controls have been progressively removed by the Congress.

Section 161.4 Procedures; and Section 161.4(a) Accounting and Cost Recovery. Section 161.4(a) describes the proposed accounting treatment for these qualifying payments. The pipeline must record the amount of the qualifying payments in a separately-identified subaccount to Account No. 186 (Miscellaneous Deferred Debits), and must record amortization of the payments in Account No. 813 (Other Gas Supply Expenses). The Commission proposes that such amounts be amortized over a period of five years. Because of the potentially large sums involved, a five-year amortization period will have a less disruptive impact on rates.

The Commission believes that no carrying charges should be collected on the unamortized balances, nor should the Commission permit unamortized balances to be included as a rate base item. This means that no rate of return may be earned on these amounts. The Commission believes this approach will effect an equitable sharing of these costs between the ratepayers and the pipeline's shareholders. To permit the pipeline also to recover carrying charges would effectively relieve the shareholders of any of the burden of these take-or-pay buy-outs.

In prohibiting a pipeline to earn a return, an analogy may be drawn to the Commission's policy in electric rate cases [52] where a company is prohibited from earning a return on the unamortized portion of an investment in a prudently-abandoned or cancelled project. Under this proposal, the pipeline is granted recovery of, but not on, part of the investment it made to acquire gas supplies. The 1986–1987 unrecoupable obligation in effect reflects cancellation

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[51] Monsanto Co. v. FPC, 463 F.2d 799, 808 (D.C. Cir. 1972).

[52] *See*, New England Power Co., 8 FERC ¶ 61,054 (1979), *aff'd sub nom.* NEPCO Municipal Rate Committee v. FERC, 668 F.2d 1327 (D.C. Cir. 1981), *cert. den'd* 457 U.S. 1117 (1982); Jersey Cent. Power & Light Co. v. FERC, 730 F.2d 816 (D.C. Cir. 1984).

of a pipeline's investment in gas supply. Since the ratepayers will never have the benefit of this gas, nor recoup the monies expended, they should not be expected to provide the pipeline with return dollars. As the Commission stated in New England Power Co. (8 FERC ¶ 61,054 at 61,175-76 (1979)):

> Ratepayers are not required to ensure that a utility receive a return on all monies invested in the enterprise; ratepayers are required to pay a return on only those investments in properties that are used and useful in the public service.

Section 161.4(b) Filing Requirements. Section 161.4(b) establishes the filing requirements for recovery of qualifying payments. To be eligible for the presumption of prudence, a pipeline must make, by January 1, 1987, all qualifying payments and an appropriate Natural Gas Act section 4 filing. The pipeline may only file to claim only qualifying payments, or, file as part of a general section 4 rate increase filing. Additionally, the pipeline may include an estimated surcharge as part of the section 4(e) filing it makes to obtain a new blanket transportation certificate. The Commission invites comments on which types of filing may be appropriate and when the amortization period should begin. The Commission previously determined in its Statement of Policy and Interpretive Rule that these types of payments are not purchased gas costs and may not be claimed in a PGA filing.

The Commission is proposing January 1, 1987, because under the rules proposed elsewhere in this Notice, the pipeline would already have made its decision on whether to offer non-discriminatory transportation prior to January 1, 1986. Having made that decision, the pipeline would have a year to finalize an agreement with its suppliers.

The Commission is proposing that filings made to recover qualifying payments contain, at a minimum, certain information. This information is necessary if the Commission is to apply the presumption of prudence proposed in § 161.3.

First, a pipeline must identify the qualifying contracts for which it has made payments. At a minimum, the pipeline must provide the date the contract was entered into, the primary term remaining, and the NGPA vintage or vintages covered by the contract.

Second, a pipeline must show, in sufficient detail, how it derived the amount of its minimum payment or purchase obligations. This would entail a listing, per qualifying contract, of the minimum take-or-pay quantities specified in each qualifying contract, the remainder of the primary term, the applicable contract price, and the actual calculations.

Third, the pipeline must provide an explanation of how it determined the amount of its 1986–1987 unrecoupable obligation.

The Commission requests comments on how "qualifying payments" under this proposal should be allocated. For example, allocation should be between transportation and sales customers; on a pro rata basis, in effect, a surcharge on each pipeline's assets; or on some other basis. The Commission invites comments on whether additional information should be required with the initial filing.

Section 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations. The Commission also proposes to amend § 2.76 of the regulations to reflect the availability of the proposed safe harbor presumption. Section 2.76 was promulgated in the Commission's Statement of Policy and Interpretive Rule which addressed pipeline payments to first sellers for the purpose of waiving or revising purchase obligations under natural gas sales contracts. At that time, the Commission stated that a pipeline's method of recovering these costs and its apportionment of them among its customers would be addressed on a case-by-case basis in the context of individual rate case filings. We are amending the rule to make clear that a pipeline may seek to recover some of these costs, if eligible, under the terms of the safe harbor presumption.

C. Optional Expedited Certificates

Section 157.100 Applicability. The proposal would establish a new Subpart E to Part 157, Optional Procedures for Applications for Certificates of Public Convenience and Necessity Authorizing Activities to Provide New Service and Providing Pre-Granted Approval of Activities and Facilities Used to Provide New Service. New Subpart E would provide, pursuant to a new § 157.100, optional procedures whereby any eligible applicant may obtain a certificate authorizing "new service" under which the applicant would sell and/or transport natural gas, the construction or acquisition of natural gas facilities necessary to provide the new service and the operation of those facilities, and pre-granted abandonment of such activities and facilities upon termination of its underlying contractual obligations.

The proposed new Subpart E would replace the existing Subpart E, "Transportation Certificates under Section 7(c)(2) of the Natural Gas Act." The Commission is proposing to delete the existing Subpart E in its entirety, as the regulations set forth therein, which pertain to the transportation of natural gas on behalf of certain high-priority end users, are no longer necessary. Any transactions already authorized under existing Subpart E would be allowed to continue until expiration. Such transportation arrangements presently may be authorized under Subpart F of Part 157 and will be eligible for certification under proposed § 284.221 of Subpart G of Part 284.

Section 157.101 Definitions. The definitions of terms for purposes of proposed Subpart E are set forth in § 157.101. Terms defined in the Natural Gas Policy Act of 1978 have the same meaning for purposes of Subpart E as they have under that Act.

"Eligible applicant" is defined in § 157.101(b)(1) as a natural-gas company or person who will be a natural gas company upon completion of any proposed construction or extension of natural gas facilities. "Natural gas company," defined in § 157.101(b)(2), has the same meaning as under the Natural Gas Act. Section 2 of the Act defines "natural-gas company" as a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"New service," the only activities for which certification would be available under the optional procedures of Subpart E, is defined in § 157.101(b)(3) as a service that the applicant has not previously provided. In cases where service was already being provided under certificate issued pursuant to Subpart E or the regular procedures of Subpart A of Part 157, the optional Subpart E procedures could be used to obtain certification for an increase in the existing service or an additional kind of service that might be needed pursuant to renegotiation of the contract underlying the service. Certification of any service other than the incremental service or the different service would continue to require that an application be filed in accordance with the regular Subpart A procedures. Further, certification may be obtained under Subpart E only if all facilities that are to be constructed and operated satisfy the definition of "qualifying facilities" in § 157.101(b)(4), which limits certification to facilities that will be used solely to provide new service. Qualifying facilities include facilities authorized under a related application under Subpart F or Part 157.

Section 157.102 Contents of Application. Applications under Subpart E will be subject to the conditions set forth in § 157.102, which requires that applicants provide all information necessary to fully describe the proposed transportation, sales, and other services to be provided and the facilities needed to provide such service. The application must also state whether pre-granted abandonment authorization is requested and, if so, to what extent.

Pursuant to § 157.102(b), most of the requirements of Subpart A, which apply to applications for certification under the regular procedures of that Subpart, also would apply to applications under Subpart E. The exceptions, described below, are set forth in subparagraphs (1)–(5) of § 157.102(b).

Since applicants under Subpart E would be required to furnish information described under § 157.6(b), they should plainly state that they are requesting consideration under the optional procedures of Subpart E and that they agree to comply with all terms and conditions specified in Subpart E. Any person wishing to intervene in the proceeding on an application or protest an application under Subpart E must include in its filing, in addition to the information required under § 157.10, which sets forth the requirements generally applicable to interventions and protests, a statement of any issues of fact that the intervenor wishes to raise. The intervenor's statement should include only those issues material to a determination as to whether the applicant's proposal is in the public convenience and necessity.

The provisions of § 157.7 of Subpart A permitting abbreviated applications, do not apply to applications under Subpart E. Further, the provisions of § 157.11 of Subpart A relating to hearings will not apply to applications for certificates under Subpart E. Hearing procedures for Subpart E are set forth in § 157.103, discussed below.

With one exception, Subpart E applications will be subject to the provisions of § 157.14, which require the filing of information necessary to determine a pipeline's cost of service, compliance with relevant non-federal requirements, and other matters to be considered by the Commission in determining whether proposed services, under the proposed terms, would be in the public convenience and necessity. The provision of § 157.14 of Subpart A that will not apply to applications under Subpart E is the requirement under § 157.14(a)(18) that applicants submit proposed rates. In lieu of, but similar to the information required under § 157.14(a)(18), proposed § 157.202 requires that an applicant provide a statement of the rates to be charged for the proposed sales or service, including: (a) *pro forma* copies of appropriate changes in or additions to the effective tariff or a *pro forma* copy of the new gas tariff proposed, or (b), when a new rate is proposed, a statement explaining fully how the proposed rate was derived. Such statement must clearly show whether the proposed rate results from negotiation, cost-of-service determination, competitive factors or others, and explain the bases for the findings and conclusions of any studies which have been made in connection therewith. Section 157.202 further requires that proposed rates conform to the rate conditions set forth in proposed § 157.103(c), discussed below.

Section 157.103 Terms and Conditions. Special terms and conditions applicable to services provided under Subpart E are set forth in proposed § 157.103. The only conditions therein that are applicable to only Subpart E are set forth in paragraphs (a) and (b) of § 157.103. Paragraph (a) provides that a certificate issued pursuant to Subpart E will be non-exclusive and non-prejudicial to any application for any other certificate under Subpart E or elsewhere under the Commission's regulations for authorization to serve any customers that are already being provided new service under a Subpart E certificate or any other customers in the same area.

Paragraph (b) of § 157.103 provides that a certificate issued under Subpart E provides only for authorization to construct or acquire and operate qualifying facilities and to provide new service, as those terms are defined in § 157.101(b).

The other conditions, described below, set forth in proposed § 157.103 are also being proposed for application to self-implementing transactions under Subparts B, C, G, and H of Part 284 for interstate pipelines, intrastate pipelines, and local distribution companies.

Paragraphs (c)(1) of § 157.103 provides that any rate charged for any new service shall comply with the rate conditions set forth in proposed § 284.7 of Subpart A of Part 284. As discussed above, this proposed new section sets forth a number of requirements applicable to any rate proposed for transportation service performed under new §§ 284.102, 284.122, 284.221, 284.243, or any service under § 157.105 of Subpart E. The conditions also would become applicable to a rate already in effect if a customer's adjustment rights under § 157.20(h) are triggered, and the customer exercises its right to stop its purchase from a pipeline and demand instead that the pipeline transport natural gas purchased elsewhere by the customer. The conditions require the rate to be a volumetric rate with no provision to guarantee revenue. The rate also must reflect any variation in the cost of service due to time-of-service and geographic area. The rates may be downwardly flexible, in which case the "ceiling rate" would be the off-peak incremental cost of such service and the "rate floor" would be the short-run average variable costs incurred in providing such service. The above-described conditions apply. However, the customer may specifically agree to services under other terms and conditions.

Paragraph (c)(2) of § 157.103 provides that rates will not be certificated for an applicant proposing to sell or transport natural gas under Subpart E prior to the pipeline filing a rate case under section 4 of the Natural Gas Act wherein the applicant establishes representative levels of volumes of natural gas to be transported under Subpart E and Subparts B, G, and H of Part 284. Further, retention of revenues will be permitted in the same way as for self-implementing transportation services under Part 284.

Paragraph (d) of § 157.103 provides that, upon request by the applicant, any order issuing a certificate under Subpart E shall provide conditional pre-granted authority to abandon the proposed new service and qualifying facilities at the expiration of the contracts underlying the new service. Section 157.103(d) provides that, under certain conditions any pre-granted abandonment authorization shall be subject, however, to protest under proposed § 157.106 by any customer currently receiving any service that would be abandoned. In this regard, § 157.103(d) requires that an interstate pipeline provide at least forty-five days written notice to a customer, if it intends to abandon any new service being provided to the customer upon expiration of their contract.

Paragraph (e) of § 157.103 requires that an interstate pipeline providing any transportation service under a certificate issued pursuant to Subpart E offer firm transportation service to all existing customers and all other shippers that request firm transportation service and that are willing to pay the applicable tariff rate on file with the Commission. The applicant would not be required to offer interruptible service.

Paragraph (f) of § 157.103 prohibits any certificate holder transporting under Subpart E from discriminating against any shipper, whether it be in the quality of service offered, the categories, prices,

or volumes of natural gas that the pipeline agrees to transport, or by customer classification or discrimination of any other kind.

As indicated above, any transportation service provided under a Subpart E certificate will be subject, pursuant to paragraph (i) of § 157.103, to the customer's rights to adjust contract demand, as set forth in proposed § 157.21 of Subpart A.

Authority providing flexibility in changing receipt and delivery points is provided by paragraphs (g) and (h) of § 157.103, respectively. Under these provisions, a certificate holder may, at the request of the shipper and without prior notice, reduce or discontinue receipts or deliveries of natural gas or deliveries at a particular point and commence or increase receipts or deliveries at another point. This flexibility would be subject only to the condition that the total natural gas volumes received or delivered by the interstate pipeline following any such reassignment may not exceed the total volume of natural gas that the certificate holder is authorized under its Subpart E certificate to transport on behalf of the shipper. The points of receipt or delivery to which natural gas volumes may be reassigned under § 157.103 (g) or (h) include sales taps and other facilities authorized to be constructed and operated pursuant to a related certificate issued under Subpart F.

Subpart E incorporates the provisions of Subpart F relating to environmental safeguards. Accordingly, pursuant to paragraph (j) of § 157.103, any certificate holder providing new service under Subpart E is required to adopt the environmental compliance guidelines set forth in § 2.69 of the Commission's regulations and to provide the relevant portions thereof to construction personnel with instructions to adhere to the guidelines. Further, all new service must be consistent with all applicable law, including but not limited, to the statutes, regulations, and compliance plans specified in paragraph (j).

Paragraph (k) of § 157.103 requires that the interstate pipeline complete any authorized construction, extension, or acquisition of qualifying facilities, place such facilities in actual operation, and commence all authorized services within one year of the date its certificate is issued, unless an extension is received from the Director of the Office of Pipeline and Producer Regulation.

The reporting requirements for Subpart E are set forth in paragraph (*l*) of § 157.103. On or before May 1, of each year, the certificate holder must file an annual report, under oath, and signed by a senior official of the company, containing the information required under items (i) through (viii) of § 157.103(*l*). These items reference the corresponding reporting provisions of Subpart F for all services and activities other than transportation, since the services and activities for which certification would be available under Subpart E are the same, with the exception of transportation services which are proposed herein to be removed from the scope of Subpart F, as those for which authorization may be obtained under Subpart F.

The information to be required under § 157.103(*l*) regarding transportation under Subpart E is specified in proposed § 284.221(e)(2) of Subpart G.

In the event that a certificate holder fails to undertake any activity certificated under Subpart E, § 157.103(*l*) requires that the certificate holder include a statement to that effect in its annual report.

In addition to the annual report, supplemental reports would be required by paragraph (*l*)(2) of § 157.103 within 30 days of any significant change with respect to the information filed in the last annual report. Such supplemental reports also must be under oath and signed by a senior official of the company.

Section 157.103(m) provides that a Subpart E certificate holder may permit an existing customer, at the customer's request, to change from one rate schedule to another for new service, if the changes are consistent with the terms of effective tariffs on file with the Commission and the combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, for either annual or peak day limitations.

Section 157.104 Hearings. Section 157.104 sets forth the hearing procedures for Subpart E. Paragraph (a) states that the Commission will give notice of and schedule each application for public hearing at the earliest possible date, giving due consideration to statutory requirements and other pending matters.

As provided in § 157.104(b), if an application by any person for the issuance of a certificate under Subpart E fully complies with the requirements of §§ 157.102 and 157.103, thereby demonstrating the applicant's willingness to assume all economic risks of the proposed activities, the Commission shall presume that the provisions of section 7(e) of the Natural Gas Act have been satisfied and that the proposed new service is in the public convenience and necessity. Paragraph (c) of § 157.104 provides for rebuttal of this presumption by any protestor complying with the requirements applicable to interventions and protests under § 385.211 and § 385.214 of the Commission's regulations and under proposed § 157.106. The protestor shall carry the burden of proof in demonstrating that certification of the proposed activities would not be in the public convenience and necessity.

Section 157.105 Issuance of Certificate. As provided in § 157.105, in the event any intervenors protest an application in accordance with the procedures set forth in § 157.106 but fail to rebut the Commission's presumption, based on the applicant's full compliance with all applicable requirements of §§ 157.102 and 157.103—including the applicant's assumption of all economic risks of the proposed activities—that the proposed new service activities are in the public convenience and necessity, the Commission will issue the requested certificate.

Section 157.106 Protests to Abandonment of New Service. Section 157.106 provides that, if a customer has received notice from a certificate holder in accordance with § 157.103(e) that it intends to abandon any part of new service being provided to the customer under Subpart E upon expiration of their contract, the customer may, within thirty days prior to such expiration date, file a petition under § 385.207 of this chapter protesting the abandonment and requesting issuance of an order by the Commission directing the certificate holder to continue the new service in accordance with the expired contractual agreement. The customer must state under oath that it is willing to pay the just and reasonable rate for continuation of the new service and that continuation is necessary because it has been unable, after having made all reasonable efforts, to arrange for alternative service. If such a filing is made by the customer, the certificate holder shall be required to continue the new service until the date established by any order issued by the Commission on the customer's petition.

D. Billing Procedure for Purchased Gas

This section of the proposed rule establishes a three-part billing procedure which provides an incentive for pipelines to reduce their gas acquisition costs applicable to new markets by eliminating the rolled-in pricing of the pipeline's gas supplies prices under NGPA sections 104, 106(a) and gas") with gas priced under any other NGPA category and comparable costs of imported gas ("new gas").

The Commission believes that existing customers of the pipeline are entitled to be billed on the basis of the reserves of

"old gas" the pipeline has. The Commission reasons that the pipeline entered into a long-term contract with a producer in the 1960's or 1970's based on its projected sales to its existing customers. It would be inequitable to permit new customers that come onto the pipeline's system as a result of these proposed rules to benefit from the pipeline's reserve of old gas. The Commission is proposing a new billing procedure so that the pipeline and the customer can determine the amount of old gas the customer is entitled to be billed for by the pipeline.

The Commission is concerned that rolled-in pricing under current Commission policy may distort the accuracy of price signals being transmitted from new customers to producers, especially for gas supplies incentively priced under the NGPA. In previous orders, the Commission has expressed similar concern over the allocation of rolled-in priced gas supplies as between on-system and off-system customers.[53] The Commission requests comments on whether the proposed billing procedures achieve more accurate and efficient pricing of gas to new and marginal pipeline markets consistent with the Natural Gas Act.[54]

This new billing procedure, along with the new revenue retention and volumetric rate proposals in this Notice, would require changes to rates and tariffs on file with the Commission. For this reason, the Commission requests comments on what changes in Commission procedures and administration may be needed; especially in rate cases under section 4 of the Natural Gas Act, in order to ensure the Commission is able to meet the needs of the industry for timely review of rates and tariffs filed in response to the proposed rule.

If transportation customers are provided non-discriminatory access to transportation services, a pipeline and such customers would appear to be placed in comparable bargaining positions. Similarly, existing firm sales customers who are provided a right to adjust their contract demands with their pipeline suppliers would also appear to be in comparable bargaining positions with their suppliers. In both cases, the customer and the pipeline enjoy the fruits of competition between transportation and sales services made available on the same pipeline. Thus, if the firm sales customer does not choose to pay the costs of "new" gas billed by the pipeline in the second block under this proposed billing procedure, it may reduce its contract demand and seek gas supplies elsewhere and have them transported by the same pipeline or, if a partial requirements customer, seek sales or transportation services by another pipeline. Similarly, a firm transportation customer that chooses not to reserve firm pipeline capacity may purchase gas on the spot market and have it transported under the non-discriminatory self-implementing transportation services made available by this proposal. For these reasons, the Commission is proposing that any sales prices for gas described in block 2 will be presumed to be just and reasonable under the Natural Gas Act if non-discriminatory transportation services are available to a pipelines's customers. The Commission requests comments on whether negotiated rates available to one or some of a pipeline's customers should also be made available to all customers, consistent with the Natural Gas Act. The Commission also requests comments on whether the four-year delay before the just and reasonable rate presumption for block 2 may be applied is too long or too short. Would such a phase-in period have beneficial or adverse effects on competition?

Section 154.38 (d)(4)(xi) Billing Procedure for Purchased Gas, and Section 154.43 Billing Procedures for Purchased Gas On or After October 1, 1985. The Commission is proposing to establish new billing procedures for natural gas pipeline companies. For companies that file purchased gas adjustments (PGAs) under 18 CFR 154.38, the Commission is proposing to add a new § 154.38(d)(4)(xi). For companies that do not, the Commission is proposing to add a new § 154.43. Since both of the billing procedures are the same, only the proposed PGA regulation is reviewed.

Paragraph (A)(1). Paragraph (A)(*1*) requires that beginning October 1, 1985, each natural gas pipeline separate, in its PGA filing, its gas purchase costs into three parts, regardless of whether such purchases were obtained directly or indirectly from a producer.

The first part will include the volumes, on a Btu basis, of purchases of gas under sections 104, 106(a) and 109 of the NGPA (block 1). The second part will include the volumes on a Btu basis of purchases of gas under all other sections of the NGPA and all comparable costs of imported gas at the border or at the tailgate of the regasification plant (block 2). The third part includes all other demand and commodity costs not included in the first two paragraphs, as billed to the pipeline. The Commission requests comments on whether to include all costs of imported gas in block 2.

Paragraph (A)(2). The Commission is proposing to establish new subaccounts to Account Nos. 800–803 of the Uniform System of Accounts to reflect the three categories. The Commission is also proposing to establish separate sets of subaccounts to Account No. 191 to reflect deferred gas costs of the above gas purchase categories. The proposed revisons to the Uniform System of Accounts and Account No. 191 do not appear in the regulatory text. The Commission requests comments on how appropriate storage costs should be allocated among the categories proposed to be established.

Paragraph (A)(3). The Commission is proposing to require a pipeline to provide certain natural gas sales information to its customers so that each customer would be able to determine what percentage of block 1 gas it would be entitled to purchase. In paragraph (A)(*3*)(*iv*) the Commission proposes the following methodology to permit the customer to calculate the percentage of its entitlement. Unless a pipeline and its customers reach an alternative agreement in an uncontested settlement, each customer's percentage entitlement to purchase block 1 gas is derived by dividing the amount of each customer's total firm purchases for calendar years 1982, 1983 and 1984 by the pipeline's corresponding total firm sales.

In addition, the proposed regulation provides that beginning October 1, 1985, and every year thereafter, in sufficient time to permit timely preparation of PGA filings, each pipeline will notify its customers of the estimated annual contract quantity of block 1 gas available to it and the pipeline for sales for that year. Each of the above procedures will be done on a Btu basis

Paragraph (B)(1). Proposed paragraph (B)(*1*) requires a pipeline to begin to bill its customers using this three-tier procedure as soon as its first PGA after the effective date of these regulations becomes effective. Also, it requires it to file a revised tariff to conform to paragraph (A).

Paragraph (B)(2). The proposed regulations also provide that pipelines must bill their customers using both a gas and a non-gas rate structure. For each customer the bill will separately state: (1) The units of gas purchased under block 1 multiplied by the weighted average cost of gas in block 1.

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[53] Statement of Policy, "Off-system Sales", Docket No. PL83–2–000 April 26, 1983, 23 FERC ¶ 61,140 (1983).

[54] United Gas Pipe Line v. FERC, 649 F.2d 1,110 (5th Cir. 1981), and Battle Creek Gas Co. v. FPC, 281 F.2d 42 (D.C. Cir. 1960).

and (2) the units of gas purchased under block 2 multiplied by the weighted average cost of gas described in block 2, and (3) the non-gas rate currently in effect consisting of the pipeline's other costs including, among other things, the pipeline's demand and commodity charges, as billed to the pipeline, under paragraph (D) applies.

Paragraph (C). The Commission is proposing to require the pipeline, beginning with its first PGA filing under the proposed regulation, to prorate its total balance in Account No. 191 to sets of subaccounts of Account No. 191 as follows: (1) Purchases of block 1 gas for calendar years 1982, 1983 and 1984 over its total purchases in those years; and (2) purchases of block 2 gas for calendar years 1982, 1983 and 1984 over its total purchases for these years.

Paragraph (D). The Commission is proposing that if a pipeline offers firm transportation on a non-discriminatory basis to all customers and offers to reduce firm sales contract demands by 100 percent under § 157.21, over a four-year transition period, firm sales for gas described in block 2 will be presumed to be just and reasonable under the Natural Gas Act.

Refunds. In order to clarify application of the proposed billing procedure, a new sentence is added to the PGA regulations that deal with the refund obligations. The Commission proposes that a pipeline shall pay, in cash, any refund it owes to its customers for periods prior to October 1, 1985, or until the date a PGA becomes effective. For future periods, any refund a pipeline owes will be distributed through the appropriate subaccount of Account No. 191 and will be apportioned to the newly effective gas and non-gas rates.

VI. Regulatory Flexibility Act

When the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), to prepare and make available for public comment an initial regulatory flexibility analysis unless the Commission certifies pursuant to section 605(b) of the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities.[55] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

In this case, the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. This rule would only apply to natural gas companies whose services, rates, or facilities are regulated under the Natural Gas Act or the NGPA. Most jurisdictional natural gas companies that would comply with this rule do not fall within the RFA's definition of small entity because: (1) The jurisdictional natural gas company is too large to be considered a "small-entity", or (2) the regulated natural gas company hold exclusive selling rights within its respective fields of operation and is therefore dominant in that field of operation. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VII. Paperwork Reduction Act Statement

The information collection provisions in this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[56] and OMB's regulations.[57] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Ellen Brown (202) 357–5250). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

VIII. Environmental Issues

An environmental assessment of the proposed rulemaking will be prepared by the Commission's environmental staff. This assessment will identify the significance of any potential environmental impact that might result from transactions that would be authorized under the blanket certificate. The environmental assessment will provide the basis for determining the need to prepare an environmental impact statement (EIS) prior to the issuance of the final rule.

Full consideration will be given to the type of projects and actions allowed under the self-implementing and notice procedure authorizations and to the proposed standard environmental compliance conditions and environmental reporting requirements proposed in this rulemaking. The assessment will evaluate direct environmental effects that may occur from authorizing transactions such as construction of facilities and secondary effects that might arise from non-construction transactions.

Any person who wishes to submit comments on environmental issues should provide a detailed explanation that addresses specific environmental concern why that concern is significant. This information will be helpful to the staff in developing an environmental record in this rulemaking, and will be incorporated in the Commission's scoping process should an EIS be prepared.

IX. Comment Procedures

A. Written Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide a 2–4 page executive summary of their position on the issues raised in this NOPR. Commenters are requested to identify the page or section of the NOPR that their discussion addresses and to use as many headings as possible. Additionally, commenters should double-space their comments, use elite type, and only use white, 8½" by 11" paper.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Monday, July 15, 1985. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426 and should refer to Docket No. RM85–1–000 (Parts A–D).

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, Washington, D.C. 20426 during regular business hours.

B. Public Conference

The Commission has determined to also provide an opportunity for the oral presentation of data, views, and arguments on the matters discussed in

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[55] 5 U.S.C. 601(3) citing section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121)

[56] 44 U.S.C. 3501–3520 (1982).

[57] 5 CFR 1320.13 (1983).

this notice. A public conference will be held in Washington, D.C., on Tuesday, July 30, 1985. The conference will be held at the Office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and will begin at 10:00 a.m., local time. The number of the room in which the conference will be held will be available in the Commission's Office of Public Information prior to the conference on the morning of the conference.

Requests to participate in the conference must be received by July 22, 1985, and should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Requests should refer to Docket No. RM85–1–000 (Parts A–D) and should indicate the name of the person who will be making the presentation and a telephone number at which that person may be contacted.

The conference will not be a judicial or evidentiary-type hearing. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross-examination of persons presenting statements. However, the members participating in the panel may ask questions. In addition, anyone may submit to the presiding officer questions to be asked of the participating panels. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented.

Other procedural rules relating to the conference will be announced at the beginning of the proceeding. A transcript of the conference will be made, and a copy of that transcript will be placed in the public file for Docket No. RM85–1–000 (Parts A–D) and made available for inspection at the Commission's Office of Public Information in Room 1000, 825 North Capitol Street, NE., Washington, D.C.

X. List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 161

Natural gas, pipelines.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

2. The table of contents for Part 284 is amended by adding under Subpart A a new § 284.7, removing §§ 284.105, 284.107, 284.125, and 284.127, removing and reserving Subpart F, and by revising the title of Subpart G and the sections in Subpart G to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

Subpart A—General Provisions

Sec.

* * * * *

284.7 Rate conditions.

* * * * *

Subpart F—[Reserved]

* * * * *

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

Sec.

284.221 General provision. Transportation by interstate pipelines on behalf of others.

284.222 Transportation by interstate pipelines on behalf of other interstate pipelines.

284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

284.224 Certain transportation, sales, and assignments by local distribution companies.

* * * * *

§ 284.4 [Amended]

3. In § 284.4, the designation "(a)" is removed from the the first paragraph and paragraph (b) is removed.

4. Part 284 is amended by adding a new § 284.7 to Subpart A to read as follows:

§ 284.7 Rate conditions.

(a) A person providing transportation service under §§ 284.102, 284.122, 284.221, 284.224 or 284.243 of this part, or transportation or sales service under § 157.105 of Part 157 of this chapter, shall have on file with the Commission, prior to commencing such service, an appropriate rate schedule as required under this section.

(b) Any rate schedule required under this section:

(1) Must include a rate that is designed to recover on a volumetric basis all costs properly allocable to such service, based solely on a representative level of projected volumes ("volumetric rate"); and

(2) May not include a minimum-bill provision, a minimum-take provision, a demand charge, or any other provision that has the effect of guaranteeing revenue;

(3) Must reasonably reflect any material variation in the cost of providing service due to:

(i) When the service is provided; or

(ii) The geographic area in which the service is provided; and

(4) Must include:

(i) A maximum rate, which

(A) In the case of a service provided at a time other than during the peak period, is based on the incremental cost of providing that service; and

(B) In the case of a service provided during the peak period, is based on fully allocated costs of providing that service, less any fixed costs recovered in the ceiling rate for off-peak service; and

(ii) A minimum rate, which is based on the short-run average variable costs the pipeline incurs in providing that service.

(c) The pipeline may charge any rate between the maximum and minimum rate. The pipeline may not file revised rates to recover any revenues lost, during the period the rates were in effect, as a result of charging less than the maximum rate.

(d) If a pipeline has offered a volumetric rate in compliance with paragraph (a) of this section, nothing in this section precludes the Commission from approving a rate form other than a volumetric rate that is filed by a pipeline and specifically agreed to by a customer who will pay the alternative rate, such as a rate which includes a reservation

charge for the reservation of capacity for firm transportation service.

5. Section 284.102 is revised to read as follows:

§ 284.102 Transportation by interstate pipelines.

(a) Subject to the provisions of this subpart, any interstate pipeline is authorized, without prior Commission approval, to transport and deliver natural gas to any person on behalf of:

(1) Any intrastate pipeline; or

(2) Any local distribution company.

(b) Rates charged for transportation under this paragraph may not exceed the just and reasonable rates established under § 284.103.

(c) Interstate pipelines engaging in transportation arrangements authorized under this paragraph must file reports in accordance with § 284.106.

6. Section 284.103 is revised to read as follows:

§ 284.103 Rates and charges.

(a) *General rule.* Rates and charges for transportation authorized under § 284.102 shall be determined as provided in paragraphs (b) and (c) of this section.

(b) *Rate schedules on file.* If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to transportation arrangements authorized under § 284.102 and in conformance with the conditions set forth in § 284.7 and paragraph (d) of this section, the interstate pipeline shall use the rates contained in that schedule.

(c) *Election.* Subject to the conditions of § 284.7 and paragraph (d) of this section, if an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements authorized under § 284.102, the interstate pipeline may elect either:

(1) To base its rates upon the methodology used in designing rates to recover the transmission and related storage costs included in one of its then effective sales rate schedules; or

(2) To use the rates contained in one of its transportation rate schedules on file with the Commission which the interstate pipeline determines covers service comparable to transportation service authorized under § 284.102; or

(3) To use new rates established in conformance with § 284.7 and paragraph (d) of this section.

(d) *Retention of revenues.* The rates charged by any interstate pipeline transporting under this subpart shall be appropriate rates, and shall:

(1) Be based on:

(i) Representative levels of revenues attributable to such services that have been credited in arriving at a test period cost of service; or

(ii) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(2) Separately identify the cost components attributable to transportation, storage, and gathering costs.

7. Section 284.104 is revised to read as follows:

§ 284.104 Terms and conditions.

(a) *Contracts.* Any contracts for the transportation of natural gas authorized under § 284.102 must provide that the transportation arrangement is subject to the provisions of this subpart.

(b) *Non-discriminatory access.* An interstate pipeline that provides any transportation service pursuant to § 284.102 shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

(c) *Firm transportation requirement.* (1) An interstate pipeline providing any transportation service pursuant to § 284.102 must offer firm transportation service to all existing customers and all other shippers requesting firm transportation service that are willing to pay the applicable tariff rate on file with the Commission.

(2) An interstate pipeline subject to this paragraph may also offer interruptible transportation service.

(d) *Qualification to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraphs (b) and (c) respectively, will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

(e) *Customer right to adjust contract demand.* The conditions set forth in § 157.21 of Subpart A of Part 157 relating to a customer's right to adjust contract demand, shall apply to any interstate pipeline that transports natural gas pursuant to § 284.102.

§ 284.105 [Removed]

8. Section 284.105 is removed.

9. Section 284.106 is revised to read as follows:

§ 284.106 Reporting requirements.

(a) *Initial full report.* Within thirty days after commencing transportation authorized by § 284.102, an interstate pipeline shall file with the Commission an initial full report, under oath, signed by a senior official of the company, containing the following information:

(1) The identity of the interstate pipeline and its affiliation, if any, with the other entities involved in the transaction and the identity, title and mailing address of the person or persons to whom communications concerning the transportation arrangement authorized under this subpart should be addressed;

(2) A general description of the interstate pipeline's existing operations;

(3) A description of the transportation service including:

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) The points between which the natural gas is to be transported; and

(v) The rate to be charged, and with respect to the rate:

(A) If the interstate pipeline is charging a rate pursuant to § 284.103(b) that is currently on file with the Commission, the identity of the rate schedule;

(B) If the interstate pipeline is charging a rate computed pursuant to § 284.103(c)(1), an explanation of how the rate is computed;

(C) If the interstate pipeline is charging a rate contained in one of its rate schedules under § 284.103(c)(2), a statement of the basis upon which the interstate pipeline determined that the rate schedule used was for comparable service; or

(D) If the interstate pipeline is charging a rate pursuant to § 284.103(c)(3), an explanation of how the rate is computed, the date on which such rate was filed, and the docket number in which such rate was filed; and

(4) A statement that the contract provides that the transportation arrangement is subject to the provisions of this subpart.

(b) *Subsequent reports.* If any significant change occurs with respect to the information filed under paragraph (a) of this section, the interstate pipeline shall file with the Commission, under oath, within thirty days of the change, appropriate amendments to its initial full report, signed by a senior official of the company.

(c) *Annual report.* By March 1, of each year, an annual report shall be filed by an interstate pipeline containing, for all transportation provided during the preceding calendar year under authority of § 284.102, the following information:

(1) Total volumes transported and the source of such volumes;

(2) Total revenues received; and

(3) Any changes in the points of receipt and delivery of natural gas from those points identified in the initial full report.

(d) *Final report.* Within thirty days after the termination of any transportation arrangement authorized under § 284.102, the interstate pipeline shall file with the Commission a report, under oath, signed by a senior official of the company, stating:

(1) Current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) Actual total and maximum daily volumes of natural gas transported pursuant to the arrangement; and

(3) Total revenues received and a complete statement of the manner in which the revenues were treated.

(e) *Filing fees.* Each initial full report required by paragraph (a) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

§ 284.107 [Removed]

10. Section 284.107 is removed.

11. Section 284.122 is revised to read as follows:

§ 284.122 Transportation by intrastate pipelines.

(a) Subject to the provisions of this subpart, any intrastate pipeline is authorized, without prior Commission approval, to transport and deliver natural gas to any person on behalf of:

(1) Any interstate pipeline; or

(2) Any local distribution company served by an interstate pipeline.

(b) Rates charged for transportation authorized under this subpart may not exceed fair and equitable rates as provided in § 284.123.

(c) Intrastate pipelines engaging in transportation arrangements authorized under this paragraph shall file reports as required by § 284.126.

12. Section 284.123 is revised to read as follows:

§ 284.123 Rates and charges.

(a) *General rule.* Rates and charges for transportation of natural gas authorized under § 284.122 shall be fair and equitable as determined in accordance with paragraph (b) of this section.

(b) *Elections.* (1) The intrastate pipeline may, subject to the conditions set forth in paragraph (e) of this section, elect to:

(i) Base its rates upon the methodology used:

(A) In designing rates to recover the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage service) included in any of the pipeline's effective firm sales rate schedules for city-gate service on file with the appropriate state regulatory agency; or

(B) In determining the allowance permitted by the appropriate state regulatory agency to be included in a natural gas distributor's rates for city-gate natural gas service; or

(ii) Use the rates contained in any of the pipeline's effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart.

(2) (i) If an intrastate pipeline does not choose to make any election under paragraph (b)(1) of this section, it shall apply for Commission approval, by order, of the proposed rates and charges by filing with the Commission the proposed rates and charges. Each petition for approval filed under this paragraph must be accompanied by the fee set forth in § 381.403 or by a petition for waiver pursuant to § 384.106 of this chapter.

(ii) Subject to compliance by the intrastate pipeline with the conditions set forth in paragraph (e) of this section, 150 days after the date on which the Commission receives an application filed pursuant to paragraph (b)(2)(i) of this section, the rates proposed in the application will be deemed to be fair and equitable and not in excess of amounts which interstate pipelines would be permitted to charge for providing similar transportation, unless within the 150 day period, the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data, and arguments. In such proceeding, the Commission either will approve the rates or disapprove the rates and order refunds, with interest, of any amounts which have been determined to be in excess of those shown to be fair and equitable or in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation services.

(iii) Transportation rates approved or disapproved under this subparagraph pursuant to a Commission order supersede rates determined in accordance with paragraph (b)(1) of this section.

(c) *Treatment of Revenues.* The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation authorized under § 284.122 and computed in accordance with paragraph (b)(1) of this section, subject to the conditions set forth in § 284.7 and paragraph (g) of this section, have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation charges by the intrastate pipeline for service to intrastate customers.

(d) *Presumptions.* If the intrastate pipeline is charging a rate computed in conformance with § 284.123(b)(1) and paragraph (e) of this section the rate charged is presumed to be:

(1) Fair and equitable; and

(2) Not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(e) *Applicability of § 284.7 conditions.* The rate for any service provided under § 284.122 shall be subject to the conditions of § 284.7.

13. Section 284.124 is revised to read as follows:

§ 284.124 Terms and conditions.

(a) *Contracts.* Contracts for the transportation of natural gas by an intrastate pipeline under authority of this subpart shall provide that the transportation arrangement is subject to the provisions of this subpart.

(b) *Non-discriminatory access.* An intrastate pipeline that provides any transportation service pursuant to § 284.122 shall provide transportation service for all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any other kind.

(c) *Firm transportation requirement.* (1) An intrastate pipeline providing any transportation service pursuant to § 284.122 shall offer firm transportation service to all existing customers and all other shippers that request firm transportation service and that are willing to pay the applicable rate on file with the Commission.

(2) An intrastate pipeline subject to this paragraph may also offer interruptible transportation service.

(d) *Qualification to access and firm transportation conditions.* The non-

discriminatory access and firm transportation conditions set forth in paragraphs (b) and (c), respectively, will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction of acquisition of any facilities.

§ 284.125 [Removed]

14. Section 284.125 is removed.

15. Section 284.126 is revised to read as follows:

§ 284.126 Reporting requirements.

(a) *Initial full report.* Within thirty days after commencing transportation authorized by this subpart, an intrastate pipeline shall file with the Commission and the appropriate state regulatory agency an initial full report, under oath, signed by a senior official of the company, containing the following information:

(1) The identity of the intrastate pipeline; and the identity, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) A general description of the intrastate pipeline's existing operations;

(3) A description of the transportation service, including

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the services;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) The points between which the gas is to be transported; and

(v) The rate to be charged.

(vi) With respect to rate described in paragraph (a)(3)(v), a statement of the basis upon which the intrastate pipeline determined that the service provided is comparable to service provided for under that rate schedule, if the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1)(ii).

(4) A statement that:

(i) The appropriate state regulatory agency has been notified that the Commission has presumed that all revenues received by an intrastate pipeline in connection with the transportation arrangement authorized under § 284.122 and computed in accordance with § 284.123(b)(1), have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates charged by the intrastate pipeline for service to intrastate customers; and

(ii) The transportation arrangement is subject to the provision of this subpart.

(b) *Subsequent reports.* If a significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, within 30 days of the significant change, appropriate amendments to its initial report, signed by a senior official of the company.

(c) *Annual report.* By March 1 of each year, an annual report shall be filed by an intrastate pipeline containing, for all transportation provided during the preceding calendar year under authority of § 284.122, the following information:

(1) Actual volumes transported and the source of such volumes;

(2) Total revenues received; and

(3) Any changes in the points of receipt and delivery of natural gas from those points identified in the initial full report.

(d) *Final report.* Within thirty days after the termination of any transportation arrangement authorized under § 284.122, the intrastate pipeline shall file with the Commission and with the appropriate state regulatory agency a report, under oath, signed by a senior official of the company, stating:

(1) Current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) Actual total and maximum daily quantities of natural gas transported; and

(3) Total revenues received.

(e) *Filing fees.* Each initial report required by paragraph (a) of this section must be accompanied by the fee set forth in § 381.404 of this chapter, or a petition for waiver pursuant to § 381.106 of this chapter.

§ 284.127 [Removed]

16. Section 284.127 is removed.

Subpart F (§§ 284.200–284.208)—[Removed]

17. Subpart F (§§ 284.200–284.208) is removed and reserved.

18. The title of Subpart G of Part 284 is revised to read as follows:

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

19. Section 284.221 is revised to read as follows:

§ 284.221 General transportation by interstate pipelines on behalf of others.

(a) *Blanket certificate.* Any interstate pipeline may apply for a blanket certificate under this section. Upon application therefor, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 of this chapter and, if required by the public convenience and necessity, will issue to the interstate pipeline a blanket certificate authorizing such pipeline company to transport natural gas, as provided under this subpart.

(b) *Application procedure.* Applications for blanket certificates shall state:

(1) The name of the interstate pipeline; and

(2) A statement by the interstate pipeline that it will comply with the conditions in paragraph (c) of this section.

(c) *General conditions.* Any blanket certificate under this section shall be issued subject to the following condition:

(1) *Non-discriminatory access.* An interstate pipeline that provides any transportation service pursuant to a certificate issued under this section shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, and volumes of natural gas transported, customer classification, or discrimination of any kind.

(2) *Firm transportation requirement.*

(i) Except as provided in paragraph (b)(3), an interstate pipeline providing any transportation service under a certificate issued pursuant to this section shall offer firm transportation service to all existing customers and to all other shippers that request firm transportation service and that are willing to pay the applicable tariff rate on file with the Commission.

(ii) An interstate pipeline subject to this paragraph may also offer interruptible transportation service.

(3) *Qualification to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraphs (c)(1) and (2) of this section, respectively, will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any facilities.

(4) *Retention of revenues.* The rates charged by any interstate pipeline transporting under this subpart shall be appropriate rates, and shall:

(i) Be based on:

(A) Representative levels of revenues attributable to such services that have

been credited in arriving at a test period cost of service; or

(B) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(ii) Separately identify the cost components attributable to transportation, storage, and gathering.

(5) *Related docket numbers.* Any filings made with the Commission reporting individual transactions under § 284.222 or § 284.223 pursuant to a certificate issued under this section shall reference the docket number of the proceeding in which the blanket certificate was granted.

(d) *Pre-grant of abandonment.* Abandonment of transportation services pursuant to section 7(b) of the Natural Gas Act is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate issued pursuant to this section.

(e) *Availability of regular certificates.* Nothing in this subpart shall preclude an interstate pipeline with regard to a particular transportation service from applying for an individual certificate of public convenience and necessity for that service.

(f) *Cross references.* (1) Any local distribution company served by an interstate pipeline may apply for a blanket certificate to perform certain services under § 284.224.

(2) Any interstate pipeline may apply under Subpart F of Part 157 of this chapter for a blanket certificate to construct or acquire and operate certain natural gas facilities under Subpart F of Part 157 of this chapter that are necessary to provide transportation under § 284.222 or § 284.223. Section § 157.208 of this chapter provides automatic authorization not subject to prior notice for the construction, acquisition, operation, and miscellaneous rearrangement of eligible facilities, as defined in § 157.202 of this chapter, if the associated costs do not exceed the limits specified in § 157.208(d) of this chapter. Other eligible facilities may be constructed, acquired, rearranged, and operated subject to the prior notice requirements of § 157.205 of this chapter. Eligible facilities include pipeline receipt points and pipeline interconnections, where more than one transporter is involved. The construction and operation of sales taps, explicitly excluded from the § 157.202 of this chapter definition of eligible facilities, are subject to the conditions set forth in § 157.211 of this chapter and the prior notice conditions of § 157.205 of this chapter.

(g) *Flexible receipt point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this section may at the request of the shipper and without prior notice:

(i) Reduce or discontinue receipts of natural gas at a particular receipt point from a supplier; and

(ii) Commence or increase receipts at another receipt point from that supplier or any other supplier. The total natual gas volumes received by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(2) The receipt points to which natural gas volumes may be reassigned under paragraph (g)(1) for receipt by an interstate pipeline transporting under a certificate issued pursuant to this section include facilities authorized to be constructed or acquired and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(h) *Flexible delivery point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this section may at the request of the shipper and without prior notice:

(i) Reduce or discontinue deliveries of natural gas at a particular delivery point; and

(ii) Commence or increase deliveries at another delivery point. The total natural gas volumes delivered by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(2) The delivery points to which natural gas volumes may be reassigned under paragraph (h)(1) of this section for delivery by an interstate pipeline transporting under authority of this section include sale taps authorized to be constructed and operated pursuant to § 157.211 and the prior notice conditions of § 157.205 of Subpart F of Part 157 of this chapter.

(i) *Customer right to adjust contract demand.* The conditions set forth in § 157.21 of this chapter relating to a customer's right to adjust contract demand shall apply to any interstate pipeline that transports natural gas under § 284.221.

§ 284.222 [Redesignated as § 284.224 and Amended]

20. Part 284 is amended in subpart G by redesignating § 284.222 as new § 284.224, adding new § 284.222 and new § 284.223 and revising paragraphs (b), (d)(1), (e)(1), and (g) of redesignated § 284.224 to read as follows:

§ 284.222 Transportation by interstate pipelines on behalf of other interstate pipelines.

An interstate pipeline issued a certificate pursuant to § 284.221 may transport natural gas on behalf of another interstate pipeline subject to the same terms and conditions, rates and charges, and reporting requirements that would apply if the transaction were authorized by Subpart B of this Part (as such subpart may be amended from time to time).

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

(a) *Automatic authorization.* (1) An interstate pipeline may transport any natural gas for any shipper for any end-use by the shipper or any other person for a single term that shall not exceed 120 days.

(2) Any interstate pipeline that began transportation on behalf of an end-user prior to November 1, 1985, under authority of previously effective § 157.209(e)(1) of this chapter, may under the certificate issued pursuant to that section after October 31, 1985, provided the term of that particular transportation transaction does not exceed a total of 120 days, including periods both prior to and subsequent to November 1, 1985. Regardless of any unexpired portion of the transportation term authorized under previously effective § 157.209(e)(1) of this chapter, if, between November 1, 1985, and the expiration of the 120-day authority to transport, the interstate pipeline obtains a certificate under § 284.221 automatically authorizing a transportation arrangement under § 284.223(a) involving the same interstate pipeline and shipper, the transportation term authorized under § 284.223(a) shall not continue for more than 120 days after the date of final authorization under § 157.205(g) of this chapter.

(3) Additional 120-day transportation terms are authorized under this paragraph for a transportation arrangement between the same interstate pipeline and shipper under which natural gas has been transported previously under the automatic authority of this paragraph, *provided that,* (i) the gas transported by the same

pipeline for the same shipper and (ii), after the commencement of the last 120-day transportation term authorized under this paragraph but prior to the commencement of the next 120-day transportation term, the transportation arrangement between that transporter and that shipper was authorized under the prior notice procedures of § 157.205 of this chapter.

(b) *Prior notice.* Subject to the prior notice requirements of § 157.205 of this chapter, an interstate pipeline is authorized under this paragraph of this section to transport any natural gas pursuant to a certificate issued under § 284.221 for any shipper for any end-use by the shipper or any other person. Necessary filings under § 157.205 of this chapter may be made by the interstate pipeline, the shipper, or an agent acting on their behalf.

(c) *Contents of prior notice application under § 284.221.* In addition to the requirements of § 157.205(b) of this chapter, applications under § 284.221 for issuance of a certificate authorizing transportation under paragraph (b) of this section shall contain:

(1) The name of the shipper;

(2) The volumes of gas to be transported on a peak day, on an average day, and on an annual basis;

(3) A copy of the executed transportation agreement indicating the interstate pipeline's proposed transportation rate, together with a breakdown and justification of the proposed rate level to the extent indicated in § 284.103;

(4) A clear description of any agency relationship under which a local distribution company or affiliate of the shipper will receive natural gas on behalf of the shipper. If any such agency relationship is clearly described in the executed transportation agreement, another separate statement is not necessary;

(5) If the interstate pipeline will deliver the natural gas to a local distribution company on behalf of another shipper, a statement by the distributor or that it has capacity sufficient to perform the transportation service without detriment or disadvandage to its other customers;

(6) A description of projected costs, and location of any facilities that will be constructed in order to provide the transportation service, as well as any other facilities that will be utilized; and

(7) If the interstate pipeline has transported for the same shipper under Subpart B of this part or the 120-day automatic authorization provisions of paragraph (a) of this section, the docket numbers under which the pipeline or any person acting on its behalf made any filings required with respect to such transportation.

(d) *Special conditions.* In addition to the conditions set forth in § 284.221, any transportation authorized under either paragraph (a) or (b) of this section shall be subject to the following conditions:

(1) The rates and charges shall be subject to the requirements of § 284.103 and shall be stated in a generally applicable transportation tariff; and

(2) Each initial report required by paragraph (g)(1) of this section must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

(e) *Reporting requirements*—(1) *Initial report.* Within thirty days after commencing transportation authorized by § 284.223(a) or (b), an interstate pipeline shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing a description of the transportation service which includes:

(i) The identities of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) A justification of the basis for its eligibility for transportation under this subpart;

(v) The points between which the natural gas is to be transported;

(vi) The rate to be charged, together with a breakdown and justification of the rate level;

(vii) The identities of any transportation other than the certificate holder involved in transporting the natural gas from its source to the shipper; and

(viii) Each initial report must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.406 of this chapter.

(2) *Annual report.* By March 1 of each year, an annual report shall be filed by an interstate pipeline containing, for all transportation provided during the preceding calendar year under authority of §§ 284.223(a) and (b), the following information:

(i) Total volumes transported and the source of such volumes;

(ii) Total revenues received;

(iii) The total cost and completion dates for any facilities constructed by the interstate pipeline pursuant to a certificate issued under Subpart F of part 157 of this chapter in order to provide transportation service under § 284.223(b) during the preceding calendar year; and

(iv) Any changes under authority of §§ 284.221(g) and (h) in the points of receipt and delivery of natural gas by the interstate pipeline identified, in the case of the first annual report, in its initial report or, in the case of subsequent annual reports, in its preceding annual report and the quantities of natural gas by which receipts or deliveries at each point were decreased or increased.

(f) *Coordination with transportation services authorized prior to November 1, 1985, under Subpart F of Part 157.* No certificate issued under this section shall provide any authority for the continuation of transportation authorized under § 157.209 of this chapter prior to November 1, 1985, beyond the date authorized by the certificate issued pursuant to that section.

§ 284.224 Certain transportation, sales and assignments by local distribution companies.

* * * * *

(b) *Blanket certificate.* Any local distribution company served by an interstate pipeline or any Hinshaw pipeline may apply for a blanket certificate under this section. Upon application therefor, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 and Subpart H of Part 385 of this chapter and, if required by the present or future public convenience and necessity, the Commission will issue a blanket certificate to such local distribution company or Hinshaw pipeline. Such certificate will authorize the local distribution company to engage in the sale, transportation, or assignment of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E of this part (as amended from time to time), except as otherwise provided in paragraph (e)(2) of this section.

* * * * *

(d) *Effect of certificate.* (1) A certificate issued pursuant to this section will authorize the certificate holder to engage in transactions of the type authorized by Subparts C, D, and E of this part.

* * * * *

(e) *General conditions.* (1) Except as provided in paragraph (e)(2) of this section, any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms and conditions, and reporting requirements that would apply if the

transaction were authorized for an intrastate pipeline under Subparts C, D, and E of this part (as amended from time to time).

* * * * *

(g) *Hinshaw pipeline without blanket certificate.* A Hinshaw pipeline which does not obtain a blanket certificate under this section is not authorized to sell, assign, or transport natural gas as an intrastate pipeline authorized to engage in such transactions by Subparts C, D, and E of this part.

* * * * *

20. Section 284.241 is revised to read as follows:

§ 284.241 Applicability.

This subpart implements section 603 of the Outer Continental Shelf Lands Act Amendments of 1978 43 U.S.C. 1862 and applies to certain transportation of natural gas produced from OCS leases owned in whole or in part by an eligible distributor to its service area for its general system supply.

21. In § 284.242, paragraph (e) is revised to read as follows:

§ 284.242 Definitions.

For purposes of this subpart:

* * * * *

(e) "Covered transportation" means any transportation of natural gas produced from an eligible OCS lease by an interstate pipeline for ultimate delivery to the service area of the eligible distributor participating in the lease.

22. In § 284.244, the introductory text and paragraphs (a) and (b) are revised to read as follows:

§ 284.244 Application requirements.

An application by an interstate pipeline for covered transportation shall include the following:

(a) A stated preference for authorization under either section 7(c) of the Natural Gas Act or section 311(a)(1) of the NGPA. If section 7(c) authorization is preferred, the application shall also meet the prior requirements of Part 157. If section 311(a)(1) authorization is preferred, the application shall also meet the requirements of Subpart B of this part.

(b) A statement that all of the natural gas transported pursuant to this subpart (other than normal compressor fuel and loss allowance) shall enter the eligible distributor's service area.

* * * * *

23. In § 284.245, paragraph (a) is revised and new paragraphs (d) through (h) are added to read as follows:

§ 284.245 Terms and conditions.

(a) *General.* Covered transportation by an interstate pipeline authorized under section 7(c) of the Natural Gas Act, or under section 311(a)(1) of the NGPA, shall be subject to the notice requirements of § 157.205 of Part 157 of this chapter and the same terms and conditions, rates and charges, and reporting requirements that would apply if the transportation were authorized under Subparts A and B of this part (as such subparts may be amended from time to time).

* * * * *

(d) *Non-discriminatory access.* An interstate pipeline that provides any transportation service under a certificate issued pursuant to this subpart shall provide transportation service to all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

(e) *Firm transportation requirement.* (1) An interstate pipeline providing any transportation service under a certificate issued under this subpart shall offer firm transportation service to all existing customers and all other shippers that request firm transportation service and that are willing to pay the applicable rate on file with the Commission.

(2) An interstate pipeline subject to this paragraph may also offer interruptible service.

(f) *Qualifications to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraph (d)(1) and (e), respectively, will apply subject only to the limited qualification that the interstate pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

(g) *Customer right to adjust contract demand under § 157.21.*

The conditions set forth in § 157.21 of this chapter relating to a customer's rights to adjust contract demand shall apply to any interstate pipeline that transports natural gas under § 284.243.

(h) *Retention of revenues.* The rates charged by any interstate pipeline transporting under this subpart shall be appropriate rates, and shall:

(1) Be based on

(i) Representative levels of revenues attributable to such services that have been credited in arriving at a test period cost of service; or

(ii) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(2) Separately identify the cost components attributable to transportation, storage, and gathering costs.

24. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009 3 CFR 142 (1978).

25. The table of contents for Part 157 is amended by adding a new § 157.21 to Subpart A, by revising Subpart E, and by removing § 157.209 from Subpart F to read as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, As Amended, Concerning any Operation, Sales, Service, Construction, Extension, Acquisition or Abandonment

Sec.

* * * * *

157.21 Condition permitting firm sales customers of interstate pipelines to adjust firm sales purchase obligations.

* * * * *

Subpart E—Optional Procedures for Applications for Certificates of Public Convenience and Necessity Authorizing Activities To Provide New Service and Providing Pre-Granted Approval of Abandonment of Activities and Facilities Used To Provide New Service Under Section 7 of the Natural Gas Act.

157.100 Applicability.
157.101 Definitions.
157.102 Contents of application.
157.103 Terms and conditions.
157.104 Hearings.
157.105 Issuance of certificate.
157.106 Protests to abandonment of new service.

* * * * *

26. Part 157 is amended by adding a new § 157.21 to read as follows:

§ 157.21 Condition permitting firm sales customers of interstate pipelines to adjust certain firm sales purchase obligations.

(a) *General rule.* Except as provided in paragraph (b) of this section, any firm

sales customer of an interstate pipeline as of the effective date of this rule may reduce the contract demand in its firm sales service agreements with that pipeline if:

(1) The pipeline, after the effective date of this rule:

(i) Accepts a certificate issued pursuant to section 7 of the Natural Gas Act that authorizes the pipeline pursuant to § 284.221 of this chapter or § 157.105 to transport natural gas for any other person; or

(ii) Operates under authority of §§ 284.102 or 284.243 of this chapter; and

(2) The customer gives the pipeline written notice, at least 30 days in advance, of the extent of the firm sales service agreement to be reduced.

(b) *Exception.* In any calendar year, a customer may reduce up to 25 percent of the contract demand in its firm sales service agreements existing as of the effective date of this rule. At any time, the pipeline may permit a firm sales customer to reduce its contract demand by more than 25 percent. No adjustment may occur prior to November 1, 1985.

(c) *Abandonment.* (1) If a firm sales customer exercises its right under paragraph (a) of this section to reduce its contract demand, the pipeline may, pursuant to § 157.18, apply to abandon the service to the extent of the reduction.

(2) The abandonment of service authorized by this subparagraph shall be deemed to be permitted by the present or future public convenience and necessity.

(3) By exercising its right under paragraph (a) of this section to reduce its contract demand, the customer shall be deemed to have consented to the abandonment.

(d) *Rate adjustments.* Whenever a customer's contract demand in its firm sales service agreements is adjusted pursuant to this section, the pipeline shall file appropriate adjustments to its rates for firm sales service.

27. In Part 157, Subpart E is revised to read as follows:

Subpart E—Optional Procedures for Applications for Certificates of Public Convenience and Necessity Authorizing Activities To Provide New Service and Providing Pre-Granted Approval of Abandonment of Activities and Facilities Used To Provide New Service Under Section 7 of the Natural Gas Act

§ 157.100 Applicability.

This subpart establishes optional procedures whereby any eligible applicant, as defined in § 157.101, may obtain, for the purpose of providing new service, a certificate authorizing the following activities subject to the Commission's jurisdiction:

(a) The transportation of natural gas;

(b) Sales of natural gas;

(c) The construction and operation of natural gas facilities;

(d) The acquisition and operation of natural gas facilities; and

(e) Pre-granted abandonment of such activities and facilities upon termination of its contractual obligations to provide the services.

§ 157.101 Definitions.

(a) *General rule.* Terms defined in the Natural Gas Policy Act of 1978 shall have the same meaning for the purposes of this subpart as they have under that Act.

(b) *Subpart E definitions.* For purposes of this Subpart:

(1) "Eligible applicant" means any natural gas company, as defined in section 2 of the Natural Gas Act, or person who will be a natural-gas company upon completion of any proposed construction or extension of natural gas facilities.

(2) "Natural-gas company" has the same meaning as under section 2 of the Natural Gas Act, which provides that natural-gas company means a person engaged in transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(3) "New service" means a service that the applicant for a certificate under this Subpart has not previously provided. If a contract pursuant to which service is being provided under a certificate issued pursuant to this Subpart or Subpart A of this Part is renegotiated to provide for an increase in existing service or an additional kind of service, only the incremental service or the different service qualifies as "new service."

(4) "Qualifying facility" means a facility that will be used solely to provide new service, including facilities authorized under Subpart F of this part.

(5) "Sensitive environmental area" means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended);

(ii) National or state forests or parks;

(iii) Properties listed on, or eligible for inclusion in, the National Register of Historic Places, or the National Register of Natural Landmarks;

(iv) Floodplains and wetlands;

(v) Designated or proposed wilderness areas, national or state wild and scenic rivers, wildlife refuges, management areas, and sanctuaries;

(vi) Prime agricultural lands, designated by the Department of Agriculture; or

(vii) Sites which are subject to use by American Indians and other Native Americans for religious purposes.

§ 157.102 Contents of application.

(a) *General.* Applications under this subpart shall set forth all information necessary to advise the Commission fully concerning the transportation, sales, and other services, and facilities construction, extension, or acquisition, and operation for which a certificate is requested and the pre-granted abandonment authorization requested.

(b) *Additional conditions and applicability of Subpart A.* The requirements of Subpart A of this part shall apply to applications under this subpart, in addition to or except as provided in paragraph (b) (1)–(5) of the section.

(1) In addition to the information required under § 157.6(b), *General content of application; filing fee,* an application under this subpart shall contain a statement plainly requesting that the application be considered under the optional procedures of this Subpart and a statement that the applicant agrees to comply with all terms and conditions specified in § 157.103.

(2) The provisions of § 157.7, *Abbreviated applications,* shall not apply or be available to applications under this subpart.

(3) Any person filing a petition to intervene, notice of intervention, or protest in a proceeding on an application for a certificate under this subpart shall include in its filing, in addition to the information required under § 157.10, *Interventions and Protests,* a statement of any issues of fact that the intervernor wishes to raise and which the intervenor believes to be material to a determination of whether the applicant's requested certificate is or will be required by the present or future public convenience and necessity.

(4) Section 157.11, *Hearings,* shall not apply to applications for certificates under this subpart. Procedures applicable to the conduct of hearings on applications under this subpart are set forth in § 157.103, *Hearings.*

(5) The requirements of § 157.14, *Exhibits,* shall apply to applications under this subpart, except for subsection 157.14(a)(18), *Exhibit P–Tariff.* In lieu of the information required under subsection 157.14(a)(18), the applicant shall provide a statement of the rates to be charged for the proposed sales or

service, including: (i) *pro forma* copies of appropriate changes in or additions to the effective tariff or a *pro forma* copy of the new gas tariff proposed, or (ii), when a new rate is proposed, a statement explaining fully how the proposed rate was derived. Such statement shall clearly show whether the proposed rate results from negotiation, cost-of-service determination, competitive factors or others, and explain the bases for the findings and conclusions of any studies which have been made in connection therewith. The rates filed pursuant to this paragraph for application to transportation services provided pursuant to a certificate issued under this subpart shall comply with the conditions set forth in § 157.103(c).

§ 157.103 Terms and conditions.

(a) *Non-exclusivity of certificates issued under this subpart.* A certificate issued pursuant to this subpart shall be non-exclusive and shall provide that it in no way prejudices any application for any other certificate under this subpart or any other subpart of this part or Part 284 for authorization to serve any customers that are already being provided new service under a certificate issued under this subpart or any other customers in the same area.

(b) *Certificate limited to qualifying facilities and new service.* A certificate issued under this subpart provides only for authorization to construct or acquire and operate qualifying facilities and to provide new service, as those terms are defined in § 157.101(b).

(c) *Rate conditions*— (1) *Applicability of § 284.7.* Any rate charged for any new service authorized by a certificate issued pursuant to this subpart shall comply with the rate conditions set forth in with § 284.7 of this chapter.

(2) The rates charged by any certificate holder transporting under this subpart shall be appropriate rates, and shall:

(i) Be based on:

(A) Representative levels of revenues attributable to such services that have been credited in arriving at a test period cost of service; or

(B) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(ii) Separately identify the cost components attributable to transportation, storage, and gathering costs.

(d) *Conditional pre-granted abandonment authority.* Upon request by the applicant in its application, any order issuing a certificate under this subpart shall provide pre-granted authority to abandon the proposed new service and qualifying facilities at the expiration of the contracts underlying the new service; *provided, however,* That any pre-granted abandonment authorization shall be conditional and subject:

(1) To the requirement that the certificate holder provide written notice to any customers at least forty-five days prior to the expiration of any contractual agreement with that customer to provide new service, if it intends to abandon any part of the new service upon expiration of the contractual agreement for that service, and

(2) To protest under § 157.106 by that customer following receipt of such notice.

(e) *Firm transportation requirment.* (1) A certificate holder providing any transportation service under a certificate issued pursuant to this subpart shall provide firm transportation service to all existing customers and all other shippers that request transportation service and that are willing to pay the applicable rate on file with the Commission.

(2) A certificate holder may also offer interruptible service.

(f) *Non-discriminatory access.* A certificate holder that provides any transportation service under a certificate issued pursuant to this subpart shall provide transportation service for all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

(g) *Qualification to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraphs (e) and (f) of this section, respectively, will apply subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

(h) *Flexible receipt point authority.* (1) A certificate holder authorized to transport gas under a certificate issued pursuant to this Subpart may at the request of the shipper and without prior notice

(i) Reduce or discontinue receipts of natural gas at a particular point from a supplier, and

(ii) Commence or increase receipts at another delivery point from that supplier or any other supplier. The total natural gas volumes received by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this subpart to transport on behalf of the shipper.

(2) The receipt points to which natural gas volumes may be reassigned under paragraph (h)(1) of this section for receipt by an interstate pipeline transporting under a certificate issued pursuant to this subpart include sale taps authorized to be constructed and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(i) *Flexible delivery point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this subpart may at the request of the shipper and without prior notice

(i) Reduce or discontinue deliveries of natural gas to a particular delivery point, and

(ii) Commence or increase deliveries at another delivery point. The total natural gas volumes delivered by the interstate pipeline following any such reassignment shall not exceed the total amount of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(2) The delivery points to which natural gas volumes may be reassigned under paragraph (h)(1) of this section for delivery by an interstate pipeline transporting under authority of this subpart include sale taps authorized to be constructed and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(j) *Customer rights to adjust contract demand under § 157.21.* The conditions of § 157.21 relating to a customer's rights to adjust contract demands shall apply to any person transporting natural gas under a certificate issued pursuant to § 157.105.

(k) *Environmental compliance.* (1) The holder of a certificate issued pursuant to this subpart shall adopt the guidelines set forth in § 2.69 of this chapter for all activities authorized by the certificate and shall issue the relevant portions thereof to construction personnel, instructing them to use these guidelines.

(2) All activities shall be consistent with all applicable law including the provisions of the following statutes and regulations or compliance plans developed to implement these statutes:

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the National Pollution Discharge Elimination System Program, 40 CFR Part 122 *et seq.*;

(ii) Clean Water Act, as amended (42 U.S.C. 1801 *et seq.*) and air quality regulations and state implementation plans adopted pursuant to 40 CFR Parts 50–99;

(iii) National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*);

(iv) Archaeological and Historic Preservation Act of 1974 (Pub. L. 93–291);

(v) Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*);

(vi) Endangered Species Act of 1973, Pub. L. 93–205, as amended (16 U.S.C. 1531 *et seq.*);

(vii) Executive Order 11 988, May 24, 1977 requiring Federal agencies to evaluate the potential effects of any actions it may take on a floodplain;

(viii) Executive Order 11,990, May 1977 requiring an evaluation of the potential effects of construction on wetland;

(ix) Wild and Scenic Rivers Act (16 U.S.C. 1274 *et seq.*);

(x) National Wilderness Act (16 U.S.C. 1133 *et seq.*);

(xi) National Parks and Recreation Act of 1978 (16 U.S.C. 1 and 230 *et seq.*).

(3) The certificate holder shall be deemed in compliance with:

(i) Paragraph (e)(2)(vi) of this section only if it adheres to the procedures in Appendix I to Subpart F of Part 157 of this chapter in which case the Commission finds that endangered species and their critical habitats are protected in accordance with 16 U.S.C. 1536;

(ii) Paragraph (e)(2)(iii) of this section only if it adheres to the procedures in Appendix II to Subpart F of Part 157 of this chapter in which case the Commission finds that there is no effect on any property protected by 16 U.S.C. 470f;

(iii) Paragraph (e)(2)(v) of this section only if the appropriate state agency designated to administer the state's coastal zone management plan, prior to construction of the project, waives its right of review or determines that the project complies with the state's coastal zone management plan.

(4) Any transaction authorized under certificate issued pursuant to this subpart shall not have a significant adverse impact on a sensitive environmental area.

(5) The noise attributable to any compressor facility installed pursuant to the blanket certificate shall not exceed a day-night sound level (L_{dn}) of 55 dB (A) at any noise sensitive area unless the noise-sensitive areas (such as schools, hospitals, or residences) are established after facility construction.

(6) Any activity to construct, acquire, or operate eligible facilities shall not be authorized if the activity is located within 2.0 miles of a nuclear power plant which is either operating or under construction, or for which a construction permit has been filed with the Nuclear Regulatory Commission.

(7) The certificate holder shall act as the Commission's non-Federal representative upon acceptance of the certificate for purposes of complying with the Endangered Species Act of 1973.

(l) *Commencement of new service.* The certificate holder shall complete any authorized construction, extension, or acquisition of qualifying facilities and place such facilities in actual operation and commence all authorized services within one year of the date its certificate is issued. The certificate holder may apply to the Director of the Office of Pipeline and Producer Regulation for an extension of this deadline.

(m) *Reporting requirements.*—(1) *Annual reports.* On or before May 1, or each year, the certificate holder shall file an annual report, under oath, and signed by a senior official of the company, listing for the previous calendar year;

(i) For each new facility or expansion thereof authorized pursuant to this Subpart, the information specified by § 157.208(e) of Subpart F of Part 157 of this chapter;

(ii) For each transportation arrangement authorized pursuant to this Subpart, the information specified in § 284.221(e)(2) of this chapter;

(iii) For each new sales tap or expansion thereof authorized pursuant to this Subpart, the information required by § 157.211(d);

(iv) For each new or increased storage service authorized pursuant to this Subpart, the information specified by § 157.215(b)(1);

(v) For each storage project tested or developed pursuant to this Subpart, the information specified by § 157.215(b)(1);

(vi) For each abandonment authorized pursuant to this Subpart, the information specified by § 157.216(d);

(vii) For each change in rate schedule authorized pursuant to this Subpart, the information specified by § 157.217(b);

(viii) If any activity required to be reported under paragraphs (m)(1)(i) through (vii) of this section was not undertaken, a statement to that effect.

(2) *Subsequent reports.* If any significant change occurs with respect to the information filed under this section, the certificate holder shall file with the Commission, within 30 days, under oath, appropriate amendments to its annual report, signed by a senior official of the company.

(n) *Automatic authorization for changes in rate schedules.* The certificate holder is authorized to permit an existing customer, at the customer's request, to change from one rate schedule to another for new service, if:

(1) The combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, for either annual or peak day limitations; and

(2) The changes are consistent with the terms of effective tariffs on file with the Commission.

§ 157.104 Hearings.

(a) *General.* The Commission will schedule each application for public hearing at the earliest possible date giving due consideration to statutory requirements and other matters pending, with notice thereof as provided by § 157.9 and § 1.19(b) of this chapter.

(b) *Presumption.* If an application by any person for the issuance of a certificate under § 157.105 fully complies with the requirements of §§ 157.102 and § 157.103, thereby demonstrating the applicant's willingness to assume all economic risks of the proposed activities, the Commission shall presume, in satisfaction of the provisions of section 7(e) of the Natural Gas Act, that the applicant is qualified to perform all the activities for which certificate authorization is requested, that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition is or will be required by the present or future public convenience and necessity.

(c) *Rebuttal of presumption.* A presumption arising under paragraph (b) that the proposed activities set forth in an interstate pipeline's application for issuance of a certificate under § 157.105 are or will be in the public convenience and necessity will be subject to rebuttal by any protestor complying with the requirements of § 157.102(d) and § 385.214 of this chapter. The protestor shall carry the burden of proof in demonstrating that certification of the proposed activities would not be in the public convenience and necessity.

§ 157.105 Issuance of certificate.

If an application for issuance of a certificate under this section fully complies with the requirements of §§ 157.102 and 157.103, demonstrating

that the applicant assumes all economic risks of the proposed activities, and the presumption thereby arising under paragraph (b) of § 157.104 that the proposed activities are in the public convenience and necessity is not rebutted, the Commission will issue the requested certificate.

§ 157.106 Protests to abandonment of new service.

Pursuant to § 157.103(e), any pre-granted authority to an interstate pipeline to abandon any new service or qualifying facilities authorized by a certificate issued under this subpart upon the expiration of the contracts underlying the new service is conditional and subject to protest by any customer to which the new service is provided. If such a customer has received notice from an interstate pipeline in accordance with § 157.103(e) that it intends to abandon any part of new service certificated under this subpart upon expiration of the contractual agreement with the customer for such service, the customer may, within thirty days prior to such expiration date, file a petition under § 385.207 of this chapter protesting the abandonment and requesting issuance of an order by the Commission directing the certificate holder to continue the new service in accordance with the expired contractual agreement. The customer must state under oath (a) that continuation of the new service is necessary because it has been unable, after having made all reasonable efforts, to arrange for alternative service and (b) that it is willing to pay the just and reasonable rate for the new service. Following the filing of the customer's petition, the certificate holder shall be required to continue that part of the new service with respect to which it gave abandonment notice under § 157.103(e) until the effective date of any order issued by the Commission on the customer's petition.

28. Section 157.201 is amended by removing the word "transportation," from paragraph (a) and by revising paragraph (c) to read as follows:

§ 157.201 Applicability.

* * * * *

(c) *Cross-reference.* The procedures applicable to transportation by interstate pipelines under blanket certificates are set forth in Subpart G of Part 284 of this chapter.

* * * * *

29. In § 157.202, paragraph (b)(2)(i) is revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) *Subpart F definitions.* For purposes of this subpart:

* * * * *

(2)(i) "Eligible facility" means, except as provided in paragraph (b)(2)(ii) of this section, a facility subject to the Natural Gas Act jurisdiction of the Commission necessary to provide service within existing certificated volumes, or a gas supply facility. "Eligible facility" includes a facility needed by the certificate holder to receive gas from a supplier and interconnecting points between transporters transporting natural gas under § 284.223 of this chapter.

* * * * *

§ 157.203 [Amended]

30. In § 157.203, paragraph (b) is amended by removing the word "157.209(a)," and paragraph (c) is amended by removing the word "157.209(b),".

§ 157.204 [Amended]

31. In § 157.204, paragraph (d)(4) is amended by removing the word "157.209,".

32. In § 157.205, paragraph (a) introductory text and paragraph (h) are revised to read as follows:

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.211(b), 157.212, 157.312(b), 157.214, or 157.216(b) is authorized by a blanket certificate issued under this subpart unless, prior to undertaking such activity:

* * * * *

(h) *Final authorization.* (1) If no protest is filed within the deadline prescribed by the Secretary, the certificate holder shall be deemed to be authorized to conduct the activity under its blanket certificate, effective upon the day after the deadline for the filing of protests and interventions established by the Secretary, unless prior to that date the certificate holder has withdrawn its application under § 385.216 of this chapter.

(2) If one or more protests are filed within the deadline but subsequently withdrawn pursuant to paragraph (g) of this section, the certificate holder shall be deemed to be authorized to conduct the activity under its blanket certificate, effective upon the day after the withdrawal of all protests, unless prior to that date the certificate holder has withdrawn its application under § 385.216 of this chapter.

33. In § 157.206, the introductory text and paragraph (h) are revised to read as follows:

§ 157.206 Standard conditions.

Any activity authorized under a blanket certificate issued pursuant to this subpart shall be subject to the following conditions:

* * * * *

(h) *Treatment of revenues.* (1) Except as provided in paragraph (h) (2) and (3) of this section, all revenues received for storage services authorized under § 157.213 or for sales for resale authorized under § 157.210 in excess of an allowance of one cent per MMBtu shall be credited to Account No. 191 and flowed back to the certificate holder's customers.

(2) A certificate holder is not required to credit revenues to Account No. 191 pursuant to paragraph (h)(1) of this section:

(i) If representative levels of revenues attributable to such services have been credited in arriving at a test period cost of service; or

(ii) If representative levels of volumes transported have been included in billing determinants for the purpose of establishing rates.

(3) The certificate holder may elect to forego the one cent per MMBtu allowance provided in paragraph (h)(1) of this section. In such a case the certificate holder is not required to credit to Account No. 191 any amount which, upon application, the Commission finds to have been demonstrated as representing the out-of-pocket expenses of the certificate holder in connection with a transaction authorized under this Subpart.

* * * * *

34. Section 157.207 is revised to read as follows:

§ 157.207 General reporting requirements.

On or before May 1, of each year, the certificate holder shall file an annual report under oath, and signed by a senior official of the company, listing for the previous calendar year:

(a) For each new facility authorized as by § 157.208, the information specified by § 157.208(e);

(b) For each sales tap authorized pursuant to § 157.211(a), the information required by § 157.211(d);

(c) For each storage service authorized pursuant to § 157.213(1), the information specified in § 157.213(c);

(d) For each storage project tested or developed pursuant to § 157.215, the information specified in § 157.215(b)(1);

(e) For each abandonment authorized pursuant to § 157.216(a), the information specified by § 157.216(d);

(f) For each change in rate schedule authorized pursuant to § 157.217, the information specified by § 157.217(b);

(g) For each change in customer name authorized pursuant to § 157.218, the information specified by § 157.218(b); and

(h) If any activity required to be reported under paragraphs (a) through (h) of this paragraph was not undertaken, a statement to that effect.

35. Section 157.211 revised to read as follows:

§ 157.211 Sales taps.

(a) *Construction and operation*—(1) *Automatic authorization.* The certificate holder is authorized to construct and operate sales taps for the delivery of gas to an end user if:

(i) The natural gas is ultimately delivered to and consumed by a right-of-way grantor; and

(ii) No more than 200 MMBtu of natural gas per day are to be delivered to the right-of-way grantor.

(2) *Prior notice.* Subject to the notice procedure of § 157.205, the certificate holder is authorized to construct and operate sales taps for service to other end-users if:

(i) The natural gas is ultimately consumed by an end-user who is, or will be, served directly or indirectly from the general system supply of the certificate holder;

(ii) The volumes delivered are within the certificated entitlements of the customer; and

(iii) The certificate holder's tariffs do not prohibit the addition of new delivery points.

(3) *Contents of request.* In addition to the requirements of § 137.205(b), requests for activities described under paragraph (b) shall contain:

(i) The name of the distributor and/or the end-user and the location of all proposed sales taps;

(ii) The authority for the current sale to the distributor and end-user;

(iii) The quantity of gas to be sold through the proposed facility and its end-use;

(iv) The rate or rate schedules applicable to the sale made through the proposed tap; and

(v) A description, with supporting data, of the impact of the service rendered through the proposed sales tap upon the certificate holder's peak day and annual deliveries.

(4) *Reporting requirements.* As part of the certificate holder's annual report of projects authorized under paragraph (a) of this section, the certificate holder shall report;

(i) The name of the end-user;

(ii) The maximum daily volumes to be sold; and

(iii) The actual cost of the sales tap and date placed in service.

(b) *Indirect customers.* The authorization in paragraphs (a) and (b) of this section shall apply irrespective of whether the certificate holder sells the natural gas directly to the end-user or the natural gas is delivered to the end-user for the account of a local distribution company.

(c) *Flexible delivery point authority.* An interstate pipeline authorized to transport gas under a certificate issued pursuant to previously effective § 157.209 prior to November 1, 1985, or §284.221 of this chapter may at the request of the shipper and without prior notice (1) reduce or discontinue deliveries of natural gas at a particular delivery point constructed and operated under a related certificate issued under this subpart; *provided, that,* the total natural gas volumes delivered by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized to transport on behalf of the shipper under the certificate issued pursuant to previously effective § 157.209 or § 284.221.

36. Subchapter E is amended by adding a new Part 161 to read as follows:

SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

* * * * *

PART 161—PAYMENTS IN LIEU OF TAKE OR PAY OBLIGATIONS

Sec.

161.1 Applicability.
161.2 Definitions.
161.3 "Safe Harbor" presumption of prudence.
161.4 Procedures.

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Exec. Order No. 12009, 3 CFR 142 (1978).

§ 161.1 Applicability.

This section applies only to a natural gas pipeline that, on or after the effective date of this section:

(a) Accepts a certificate issued under section 7 of the Natural Gas Act that authorizes the pipeline pursuant to § 284.243 or § 157.105 of this chapter to transport natural gas for any other person; or

(b) Operates under authority of § 284.102 of this chapter; or

(c) Accepts a blanket certificate under § 284.221 of this chapter.

§ 161.2 Definitions.

For the purposes of this part—

(a) "Qualifying contract" means a contract for a first sale of natural gas entered into before January 1, 1982, the primary term of which will continue beyond January 1, 1988.

(b) "Minimum payment or purchase obligations" means the mathematical product of:

(1) The minimum take-or-pay quantities specifies in a qualifying contract for the time period remaining in the primary term of such contract after January 1, 1986, multiplied by

(2) The contract price for such quantities.

(c) "1986–1987 unrecoupable obligation" means the minimum payment or purchase obligations of a pipeline which are reasonably estimated to:

(1) Obtain under all of a pipeline's qualifying contracts for a two-year period commencing January 1, 1986; and

(2) Not be recouped under the terms of the contract.

(d) "Qualifying payment" means:

(1) For qualifying contracts with no more than five years of the primary term remaining as of December 31, 1985, any amount not in excess of x percent of the 1986-1987 unrecoupable obligation; or

(2) For qualifying contracts with more than five years of the primary term remaining as of December 31, 1985, any amount not in excess of Y percent of the 1986-1987 unrecoupable obligation.

§ 161.3 "Safe Harbor" presumption of prudence.

(a) *Presumption.* Any pipeline making qualifying payments to extinguish all minimum payment or purchase obligations under qualifying contracts is presumed, subject to rebuttal, to be acting prudently for purposes of sections 4 and 5 of the Natural Gas Act. A pipeline that seeks to invoke the presumption of prudence has the burden of demonstrating that its payments are within the scope of this part.

(b) *Rebuttal of presumption.* Any participant or interested person challenging the prudence of payments made by a pipeline in accordance with § 161.3(a) has the burden of demonstrating that the pipeline's payments were imprudent.

§ 161.4 Procedures.

(a) *Accounting and cost recovery.* (1) Qualifying payments must be recorded in a separately identified subaccount to Account No. 186.

(2) Amortization of qualifying payments must be recorded in Account No. 813. Only the amortization of the

amounts under this section may be included in any filing under section 4 of the Natural Gas Act. Unamortized balances may not be included as a rate base item.

(3) Qualifying payments must be amortized over a period of 5 years.

(4) A pipeline may not recover any carrying charges on the unamortized balances.

(b) *Filing requirements.* (1) A pipeline must make all qualifying payments and all appropriate section 4 rate filings under this section before January 1, 1987.

(2) In order to recover qualifying payments, a pipeline's filing must:

(i) Identify the qualifying contracts;

(ii) Show the calculations underlying the minimum payment or purchase obligation; and

(iii) Explain how the pipeline has estimated the amount of its 1986–1987 unrecoupable obligation.

PART 2—[AMENDED]

36a. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 432–4361 (1978), unless otherwise indicated.

37. In § 2.76, paragraph (c) is revised to read as follows:

§ 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations.

* * * * *

(c) *Case-specific review.* A pipeline's method of recovering these costs and how it should apportion them among customers will be addressed on a case-by-case basis in the context of individual rate case filings, except that if any of these costs are eligible for the "safe harbor" presumption in § 161.3, such costs may be recovered in accordance with the provisions of that section.

* * * * *

PART 154—[AMENDED]

37a. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

38. Section 154.38 is amended by adding a new paragraph (d)(4)(xi) to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(4) * * *

(xi) *Billing Procedure for Purchased Gas.* (A)(*1*) Beginning October 1, 1985, each natural gas pipeline company must provide in its PGA filing its gas purchase costs, relating to both direct and indirect purchases from suppliers, separated into the following categories:

(*i*) The volumes on a Btu basis of purchases of natural gas priced under sections 104, 106(a), and 109 of the NGPA;

(*ii*) The volumes on a Btu basis of purchases of natural gas priced under all other sections of the NGPA and all comparable costs of imported gas at the United States border or at the tailgate of the regasification plant; and

(*iii*) All other demand and commodity costs not included in paragraphs (d)(4)(xi)(A)(*1*) (*i*) or (*ii*), of this section, as billed to the natural gas pipeline from its supplier(s).

(*2*) Any gas purchase costs listed under paragraph (d)(4)(xi)(A)(*1*) of this section must be recorded in subaccounts of Account Nos. 800–803 of the Uniform System of Accounts. Separate sets of subaccounts of Account No. 191 must be established to reflect deferred gas costs for each gas purchase category in paragraph (d)(4)(xi)(A)(*1*) of this section.

(*3*) Within 30 days of [the effective date of this rule] each natural gas pipeline must notify its customers of:

(*i*) The pipeline's total firm sales to all customers for calendar years 1982, 1983, and 1984 on a Btu basis;

(*ii*) The customer's total firm purchases for calendar years 1982, 1983, and 1984, on a Btu basis;

(*iii*) Unless the pipeline and its customers agree otherwise in an uncontested settlement, the customer's percentage entitlement to purchase gas priced under NGPA sections 104, 106(a), and 109 is the quotient of the firm purchases reported in paragraph (d)(4)(xi)(A)(*3*)(*ii*) of this section divided by the firm sales reported in paragraph (d)(4)(xi)(A)(*3*)(*i*) of this section; and

(*4*) Beginning October 1, 1985, and in every subsequent year, the natural gas pipeline must notify its customers, in sufficient time to permit timely preparation of the PGA adjustment filing, of the estimated annual contract quantity of gas volumes priced under NGPA sections 104, 106(a), and 109, a Btu basis, which is available to the pipeline for sale for that year.

(B)(*1*) A natural gas pipeline must bill its customers under paragraph (d)(4)(xi), beginning on the date that its first PGA filing becomes effective, and must file a revised tariff that conforms to the provisions of paragraph (d)(4)(xi)(A) of this section.

(*2*) Such natural gas pipeline must bill its customers using both a gas and a non-gas rate structure and, for each customer, the bill must separately show:

(*i*) The units of gas purchased under paragraph (d)(4)(xi)(A)(*1*)(*i*) of this section, multiplied by the weighted average cost of gas described in that clause and each customer's entitlement percentage as determined in paragraph (d)(4)(xi)(A)(*3*) of this section;

(*ii*) The units of gas purchased under paragraph (d)(4)(xi)(A)(*1*)(*ii*) of this section multiplied by the weighted average cost of gas described in that paragraph unless paragraph (d)(4)(xi)(D) of this section applies; and

(iii) The non-gas rate currently in effect consisting of the pipeline's other costs, including, among others, the costs under paragraph (d)(4)(xi)(A)(*1*)(*iii*) of this section.

(C) Beginning with its first PGA filing under paragraph (d)(4)(xi) of this section, each natural gas pipeline must prorate over its total purchases, computed on a Btu basis, for calendar years 1982, 1983, and 1984, the total balance in Account No. 191 to sets of subaccounts of Account No. 191, in accordance with the following categories:

(*1*) Purchases under paragraph (d)(4)(xi)(A)(*1*)(*i*) of this section for the calendar years 1982, 1983, and 1984, computed on a Btu basis; and

(*2*) Purchases under paragraph (d)(4)(xi)(A)(*1*)(*ii*) of this section for calendar years 1982, 1983, and 1984, computed on a Btu basis.

(D) Beginning no earlier than four years after [the effective date of this rule], if a natural gas pipeline offers firm transportation to all customers on a non-discriminatory basis and offers an opportunity to reduce firm sales contract demands by 100 percent under § 157.21 of this chapter, the sales price for gas described in paragraph (d)(4)(xi)(A)(*1*)(*ii*) of this section will be presumed to be just and reasonable under the Natural Gas Act.

* * * * *

39. In § 154.38(d)(4), paragraph (d)(4)(vii) is amended by adding at the end a sentence to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(4) * * *

(vii) * * * If a pipeline owes its customers refunds attributable to periods prior to October 1, 1985, or prior to the date upon which a new PGA filing becomes effective, whichever is later, the pipeline must refund such amounts on a cash basis applicable to the pertinent period involved. For future periods, refunds must be distributed through the appropriate subaccount of Account No. 191 attributable to any newly effective gas and non-gas rate requirement prescribed in this section.

. . . . . .

40. Part 154, is amended by adding a new § 154.43 to read as follows:

§ 154.43 Billing procedure for purchased gas on or after October 1, 1985.

(a) This section applies to natural gas pipeline company that elects not to file a purchased gas adjustment clause under § 154.38, for the purposes of billing purchased gas components of its rate beginning October 1, 1985.

(b) Beginning October 1, 1985, each natural gas pipeline company shall file with the Commission its gas purchase costs, relating to both direct or indirect purchases from suppliers separated into the following categories:

(1) The volumes on a Btu basis of purchases of natural gas priced under sections 104, 106(a), and 109 of the NGPA;

(2) The volumes on a Btu basis of purchases of natural gas priced under all other sections of the NGPA and all costs of imported gas at the United States border or at the tailgate of the regasification plant; and

(3) All other demand and commodity costs not included in paragraphs (b) (1) and (2) of this section as billed to the natural gas pipeline from its supplier(s).

(c) Absent an alternative agreement by a pipeline and its customers in an uncontested settlement, each customer shall be billed under paragraph (b) of this section based on its relative share of the pipeline's firm sales volumes using actual sales on a Btu basis and averaged for calendar years 1982, 1983, and 1984.

(d) Beginning on October 1, 1985, and every subsequent year, the natural gas pipeline must notify its customers of the estimated annual contract quantity of gas volumes, priced under NGPA sections 104, 106(a), and 109, on a Btu basis, which is available to the pipeline for sale that year.

(e) Each pipeline to which this section applies shall file a revised tariff to conform to the requirements of this section.

(f) Beginning no earlier than four years after [the effective date of this rule], if a natural gas pipeline offers firm transportation to all customers on a non-discriminatory basis and offers an opportunity to reduce firm sales contract demands by 100 percent under § 157.21 of this chapter, the sales price for gas described in paragraph (b)(2) of this section will be presumed to be just and reasonable under the Natural Gas Act.

[FR Doc. 85-13630 Filed 6-6-85; 8:45 am]

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federal register

Friday
June 7, 1985

Part VI

Department of Agriculture

Agricutural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 519; Lemon Reg. 518, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,000 cartons during the period June 9–15, 1985, and increases the quantity of lemons that may be shipped to 340,000 cartons during the period June 2–8, 1985. Such action is needed to privide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.819) becomes effective June 9, 1985, and the amendment (§ 910.818) is effective for the period June 2–8, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 4, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

PART 910—[AMENDED]

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. New § 910.819 is added to read as follows:

§ 910.819 Lemon Regulation 519.

The quantity of lemons grown in California and Arizona which may be handled during the period June 9, 1985, through June 15, 1985, is established at 375,000 cartons.

3. Section 910.818 Lemon Regulation 518 is revised to read as follows:

§ 910.818 Lemon Regulation 518.

The quantity of lemons grown in California and Arizona which may be handled during the period June 2, 1985, through June 8, 1985, is established at 340,000 cartons.

Dated: June 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–13996 Filed 6–6–85; 11:36 am]

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federal register

Monday
June 10, 1985

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Agricultural Marketing Service

Medicare
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Probation and Parole
Parole Commission

Trade Practices
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 am (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 am (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

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Rules and Regulations

Federal Register
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Monday, June 10, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 84-349]

7 CFR Part 319

Exotic Bee Diseases and Parasites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes regulations imposing restrictions on the importation into the United States of the following articles from any foreign country of locality other than Canada:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

These regulations are necessary to prevent the introduction into the United States of exotic bee diseases and parasites and thereby to prevent damage to crops and other plants that depend upon bees for pollination.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Philip J. Lima, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 628, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6603.

SUPPLEMENTARY INFORMATION:

Background

A document was published in the **Federal Register** on May 14, 1984 (see 49 FR 20293–20299), which proposed to restrict the importation into the United States of the following articles from any foreign country or locality other than Canada, in order to prevent the introduction and establishment of exotic bee diseases and parasites:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

Under the proposed regulations, restricted articles could be imported if requirements concerning permits, inspections and treatments, marking and shipping, arrival notification, costs and charges, and ports of entry were met, or if imported by the U.S. Department of Agriculture for experimental or scientific purposes.

Comments were solicited for 60 days. Nine comments were received on the proposed regulations. Five comments were in support of the proposal and four comments recommended changes. The recommended changes are discussed below. The provisions of the proposed regulations have been adopted in the final rule without change based on the reasons set forth in the document of May 14, 1984 and the reasons discussed below.

One commenter recommended that § 319.76–4(a) be amended to provide that shipments of imported live bees be kept small so that each live bee could be inspected. The commenter asserted that the provision in § 319.76–4(a) concerning inspection of a statistically designed representative sample of imported bees would not be sufficient to detect exotic bee diseases or parasites that might be present in the shipment.

No changes in the proposal have been made based on this comment. Specifically, the Department has determined from experience that it is not necessary to inspect each bee from a shipment of imported live bees to determine whether the shipment of bees is infested with exotic bee diseases or parasites, and that a representative sample would be adequate to reveal an infestation of exotic bee diseases or parasites in the shipment of bees.

Another commenter recommended that the Department approve an alternative to the ethylene oxide treatment proposed in § 319.76–4(c)(1) so that there would be a treatment available for the restricted articles listed in § 319.76–4(c)(1) in the event that the Environmental Protection Agency cancels the registration on ethylene oxide.

No changes have been made based on this comment. The Department is not aware of any other method of treating dead bees, used bee boards, hives, nests, or nesting material, used beekeeping equipment, and pollen for bee feed that could feasibly be used for destroying any exotic bee diseases or parasites that may be present in the shipment.

Another commenter recommended that entomologists be allowed to import dead bees of any genus, without a permit, if immersed in alcohol and imported for the purpose of collecting specimens.

No changes have been made based on this comment. The permit requirement is necessary regardless of who the importer is. It allows the Department to determine whether the intended importation is permitted under the regulations and to prevent the arrival of restricted articles under conditions that could cause unnecessary risk of introduction into the United States of exotic bee diseases and parasites.

Finally, one commenter questioned the safety of allowing restricted articles to be imported by the Department under an experimental or scientific permit and recommended that such research be performed outside the United States so as to avoid the possibility that exotic bee diseases or parasites will become established in the United States.

No changes have been made based on this comment. The Department has determined that the safeguards and procedures established for those articles allowed to be imported pursuant to a scientific or experimental permit (see § 319.76(c) in the text portion of this document) are adequate to protect against the establishment or spread of exotic bee diseases and parasites that may accompany such articles.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule imposes restrictions on the importation into the United States of the following articles from any foreign country or locality other than Canada:

(a) Live bees, other than honeybees of the genus *Apis*, in any life state;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

Consideration was given concerning whether: (1) To allow the importation of such articles without the imposition of the restrictions, (2) to impose the restrictions on the importation of such articles from all foreign countries and localities, including Canada, or (3) to impose the restrictions on the importation of such articles from all foreign counties and localities except Canada.

Alternative (1) has not been adopted because the unrestricted entry of such articles would present a significant risk of introducing exotic bee diseases and parasites into the United States. Alternative (2) has not been adopted because exotic bee diseases and parasites do not occur in Canda and because Canada has in operation precautions adequate to prevent the introduction of exotic bee diseases and parasites into Canada from other countries and localities. Alternative (3) has been adpoted because the restricted articles can be imported under the provisions of the rule without a significant risk of introducing exotic bee diseases and parasites into the United States.

This action would not have a significant economic effect since there is little, if any, importation into the United States of articles designated as restricted articles. Further, it appears that there is no feasible alternative to consider in compliance with the requirement that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions included in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0579–0072.

List of Subjects in 7 CFR Part 319

Bees, Honey, Imports, Transportation.

Under the circumstances set forth above, 7 CFR Part 319 is amended by adding "Subpart-Exotic Bee Diseases and Parasites" to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Exotic Bee Diseases and Parasites

Sec.

319.76 Restrictions on importation of restricted articles; disposal of articles refused importation.
319.76–1 Definitions.
319.76–2 Restricted articles.
319.76–3 Permits.
319.76–4 Inspections and treatments.
319.76–5 Marking and shipping.
319.76–6 Arrival notification.
319.76–7 Costs and charges.
319.76–8 Ports of entry.

Authority: Secs. 105, 106, and 107; 71 Stat. 32–34 (7 U.S.C. 150dd, 150ee, 150ff); 7 CFR 2.17, 2.51, and 371.2.

Subpart—Exotic Bee Diseases and Parasites

§ 319.76 Restrictions on importation of restricted articles; disposal of articles refused importation.

(a) No person may import any restricted article unless in conformity with all of the restrictions in this subpart.

(b) Any article refused importation for noncompliance with the requirements of this subpart shall be promptly removed from the United States or abandoned by the importer, and pending such action shall be subject to the immediate application of such safeguards against escape of plant pests as the inspector determines necessary to prevent the introduction into the United States of plant pests. If such article is not promptly safeguarded, removed from the United States, or abandoned for destruction by the importer, it may be seized, destroyed, or otherwise disposed of in accordance with sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

(c) A restricted article may be imported without complying with other provisions under this subpart if:

(1) Imported by the U.S. Department of Agriculture for experimental or scientific purposes;

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville MD 20705, or at a port of entry designated by an asterisk in § 319.37–14(b);

(3) Imported pursuant to a departmental permit issued for such article and kept on file at the port of entry;

(4) Imported under conditions specified on the departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of plant pests, i.e., conditions of treatment, processing, shipment, disposal; and

(5) Imported with a departmental tag or label securely attached to the outside of the container or securely attached to the article itself if not in a container, and with such tag or label bearing the name of the person to whom the permit is issued.

§ 319.76–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed respectively, to mean:

Bee. Any member of the superfamily Apoidea.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspector Service for Plant Protection and Quarantine, U.S. Department of Agriculture, or any other officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

Exotic bee diseases. Bee diseases of foreign origin, including but not limited to *Aspergillus* spp., *Bacillus* spp., *Entomophthora* spp., *Beauveria* spp., *Cordyceps* spp., and *Saccharomyces* spp.

Exotic bee parasites. Bee parasites of foreign origin, including but not limited to *Coelioxys* spp. and *Chrysis* spp., *Varroa jacobsoni, Euvarroa sinhai.*

Tropilaelaps clareae, and *Acarapis woodi*.

Import (importation, imported). To import or move into the United States.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

Person. Any individual, corporation, company, society, association, or any other organized group.

Plant pest. The egg, pupal, and larval stages as well as any other living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, or other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Federal Plant Pest Act and related legislation and regulations promulgated thereunder.

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his or her stead has been or may hereafter be delegated.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 319.76–2 Restricted articles.

The following articles from any country or locality other than Canada are restricted articles:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;[1]

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests, and nesting material;

(d) Used beekeeping equipment, e.g. smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

§ 319.76–3 Permits.

(a) A restricted article may be imported only after issuance of a written permit by Plant Protection and Quarantine.

(b) An application for a written permit must be submitted to the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, and should be submitted at least 30 days prior to arrival of the article at the United States port of entry. The completed application does not have to be on any particular form but must indicate that it is an application for a written permit, and include the following information:

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds of articles intended to be imported;

(3) Country or locality of origin;

(4) Intended United States port of entry;

(5) Means of transportation; and

(6) Expected date of arrival.

(c) After receipt and review of the application by Plant Protection and Quarantine, a written permit indicating the applicable conditions in this subpart for importation shall be issued for the importation of the articles specified in the application if such articles appear to be eligible to be imported. Even though a written permit has been issued for the importation of an article, it may be moved into the United States from the port of entry only if all requirements of this subpart are met and only if an inspector at the port of entry does not determine that emergency measures pursuant to section 105 of the Federal Plant Pest Act 7 U.S.C. 150dd) are necessary with respect to such article.[2]

(d) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he or she determines that the permit holder has not complied with any condition for the use of the permit. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within 20 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict.

(Approved by the Office of Management and Budget under control number 0579–0072)

§ 319.76–4 Inspections and treatments.

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage shall be microscopically inspected by an inspector for exotic bee diseases and parasites, and any bee disease or parasite found will be physically removed by an inspector or destroyed by an inspector by treatment with a pesticide registered by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 *et seq.*), for use on bees and used in accordance with directions on the label in connection with the registration under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The inspection may include dissection of a statistically designed representative sample of the bees, if deemed necessary by the inspector for determinations concerning the absence or presence of bee diseases or parasites. If the inspector determines that a disease or parasite cannot be removed or otherwise destroyed, the bees shall be killed by immersion in a solution containing at least 70% alcohol.

(b) Any dead bees for research at the time of importation must be in a solution containing at least 70% alcohol, or must be in a dry, sealed container. If in a dry, sealed container, the dead bees shall be kept in the container under the control of an inspector at the port of entry for 7 days.

(c) Any restricted article not covered by paragraph (a) or (b) of this section, prior to movement into the United States from the port of entry, shall be treated

[1] The Honeybee Act, as amended (7 U.S.C. 281 *et seq.*), among other things, prohibits the importation into the United States of any live honeybees of the genus *Apis* in any life stage except as allowed under provisions of that Act and regulations in 7 CFR Part 322.

[2] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he or she deems it necessary as a emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he or she deems appropriate, subject to provisions in section 105 (b) and (c) of the Act (7 U.S.C. 150dd (b) and (c)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he or she has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against articles which are not in compliance with the provisions of this subpart.

under the supervision of an inspector as follows:

(1) Dead bees; used bee boards, hives, nests, or nesting material; used beekeeping equipment; and pollen for bee feed shall be treated in an airtight chamber with 450 mg of ethylene oxide per liter of chamber space at a temperature of at least 100°F (37.78°C) for 8 hours.

(2) Beeswax that has not been liquefied shall be melted.

(3) Honey for bee feed shall be heated to 212°F (100°C) for 30 minutes.

§ 319.76–5 Marking and shipping.

(a) Any restricted article for importation by means other than mail shall at the time of importation bear on the outer container (if in a container) or on the article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee, and

(5) Identifying shipper's mark and number.

(b) Any restriction article for importation by mail must be addressed and mailed to Plant Protection and Quarantine at a port of entry designated by an asterisk in § 319.37–14(b) of this Part; must be accompanied by a separate sheet of paper within the package bearing the name, address, and telephone number of the intended recipient; and must bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin, and

(3) Name and address of shipper, owner, or person shipping or forwarding the article.

(c) Any restricted article must be accompanied at the time of importation by an invoice or packing list indicating the contents of the shipment.

(d) Live bees in any life stage, other than honeybees of the genus *Apis*, may be imported only in loose cells within noncrushable (hard plastic, wood, or metal), insect-proof containers.

(Approved by the Office of Management and Budget under control number 0579–0072)

§ 319.76–6 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, except for mail shipments, the importer must notify Plant Protection and Quarantine of the arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

(Approved by the Office of Management and Budget under control number 0579–0049)

§ 319.76–7 Costs and charges.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[3] The importer shall be responsible for arrangements for treatments required under § 319.76–4. Any treatment required under § 319.76–4 for a restricted article, other than for treatments of live bees in any life stage or for holding dead bees in dry, sealed containers, shall be performed at the port of entry by a nonfederal establishment at the importer's expense, and shall be performed under the direction of an inspector. Plant Protection and Quarantine will not be responsible for any costs or charges, other than those indicated in this section.

§ 319.76–8 Ports of entry.

(a) Any restricted article, other than bees in any life stage, imported by means other than mail may be imported only at a port of entry listed in § 319.37–14(b) of this Part.

(b) Any restricted article, other than bees in any life stage, imported by mail may be imported only at a port of entry designated by an asterisk in § 319.37–14(b) of this Part.

(c) Live bees in any life stage, other than honeybees of the genus *Apis*, may be imported at the Bee Biology and Systematics Laboratory, USDA, ARS, 261 NRB–UMC 53, Utah State University, Logan, Utah 84322; or at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705.

Done at Washington, D.C., this 5th day of June 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 85–13833 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–34–M

[3] Provisions relating to costs for other services of an inspector are contained in 7 CFR Part 354

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Change in the Definition of "Inedible Kernel" Relating to Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies the definition of "inedible kernel" under the Federal marketing order for California almonds by deleting the reference to internal discoloration. Last fall, that definition was changed so almond kernels with internal discoloration would be inedible kernels and have to be disposed of in non-normal outlets such as almond oil and animal feed. However, the industry found that almond processing equipment is not able to separate internally discolored almonds from sound almonds. Without a method of separation, internal discoloration cannot be used as a factor in classing inedible almond kernels. The Almond Board of California recommended this action. The Board works with the Department in administering the almond order.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (50 U.S.C. 553) in that: (1) No practical way of removing internally discolored almonds from lots of otherwise sound almond kernels currently exists within the industry; (2) the inclusion of internal discoloration as one of the factors in

classing inedible kernels places an unreasonable processing burden on handlers; and (3) no useful purpose would be served by providing an opportunity for public input or by delaying the effective date 30 days after publication in the **Federal Register**.

This final rule amends § 981.408 of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474) by deleting the reference to internal discoloration in the definition of inedible kernels. Section 981.408 is issued pursuant to § 981.8 of the marketing agreement and Order No. 981 (7 CFR 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action taken herein is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

The term "inedible kernel" is used in connection with the order's quality control provisions. The purpose of these provisions is to separate "inedible kernels" from "edible kernels", and requires the disposal of the inedible kernels in non-normal outlets such as almond oil and animal feed.

Pursuant to § 981.8, the definition of "inedible kernel" was modified last fall (49 FR 40788) to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing or has internal discoloration. The words "or has internal discoloration" were added to the definition of inedible kernel to improve the quality of almond kernels moving into normal markets.

Discoloration is a darkening of an almond kernel's interior and usually results when almond lots have excessive moisture or are subjected to high temperatures during storage or drying. The interior of an almond kernel normally is cream-colored, whereas a discolored kernel is yellowish-brown or, in serious cases, brown. Discolored almonds usually have objectionable off-flavors. Hence, discolored almonds are unsuitable for normal market uses and should more appropriately be classed as "inedible almonds" and disposed of in outlets such as almond oil and animal feed.

However, the industry found that current almond processing equipment is not capable of separating discolored almond kernels from otherwise sound almonds. Because no practical means of separation currently exists, internal discoloration cannot be used as a factor in classing inedible kernels, and the Board recommended deletion of the reference to internal discoloration in § 981.408.

After consideration of all relevant matter presented, including the Board's recommendation, and other available information, it is further found that to change Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474) by amending § 981.408 will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 49 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 981.408 [Amended]

2. Section 981.408 is amended by removing the words "or has internal discoloration".

Dated: June 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–13913 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1984–85 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: FINAL RULE.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1984–85 crop year, which began July 1, 1984. The salable percentage is increased from 90 percent to 95 percent, and the reserve percentage is correspondingly decreased from 10 percent to 5 percent. This action is being taken under the marketing order for almonds grown in California and is designed to make more 1984 crop almonds available for immediate shipment, thereby promoting orderly marketing.

EFFECTIVE DATES: July 1, 1984 through June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment This action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of public rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The marketing order for California almonds requires that revised salable, reserve, and export percentages established for a particular crop year shall apply to all marketable California almonds received by handlers from the beginning of that year. The 1984–85 crop year began July 1, 1984.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 981.48 of the order provides for as increase in the salable percentage by the Secretary upon findings of fact that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On October 1, 1984, a final rule was published in the **Federal Register** (49 FR 38530) establishing salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for

the 1984–85 crop year. That action was based on a recommendation of the Almond Board of California made at a meeting held on July 25, 1984. The Board works with USDA in administering the order.

On February 26, 1985, the Board met to review the salable and reserve percentages established for the 1984–85 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 79 percent and a corresponding decrease in the reserve percentage to 21 percent. A final rule establishing those revised percentages was published in the **Federal Register** on March 28, 1985 (50 FR 12219).

On March 29, 1985, the Board met again to review 1984–85 salable and reserve percentages and recommended an increase in the salable percentage to 90 percent and a corresponding decrease in the reserve percentage to 10 percent. A final rule establishing those revised percentages was published in the **Federal Register** on May 7, 1985 (50 FR 19161).

On May 6, 1985, the Board met again to review 1984–85 salable and reserve percentages and recommended an increase in the salable percentage to 95 percent and a corresponding decrease in the reserve percentage to 5 percent. The momentum in sales the industry has been experiencing since early 1985 is continuing and some handlers are in a sold-out position on the salable portion of their 1984 crop receipts in spite of the two recent changes in the percentages. In recognition of this to ensure that ample supplies of almonds are available to meet trade demand and carryover requirements, the Board recommended a further relaxation in the percentages. The Board was also cognizant that many growers still are facing a cash flow problem in preparing for 1985 crop production activities. Customarily, handlers do not pay growers for reserve almonds until such almonds are released for sale to normal markets or until alternate outlets have been designated. Growers normally receive a higher price for almonds designated for normal outlets than for almonds designated for alternate outlets.

In arriving at its recommendation, the Board noted that the current estimate of 1984 crop production is up 4.7 million pounds from its March 29, 1985, estimate to 586.1 million pounds. The Board decreased its estimate of loss and exempt almonds by 5.7 million pounds to 23.4 million pounds. Thus, marketable supply is increased by 10.4 million pounds to 562.7 million pounds. The Board also decreased its estimate of domestic trade shipments by 10.0 million pounds to 130.0 million pounds, resulting in a decrease in total trade shipments from 390.0 million pounds to 380.0 million pounds. Finally, the Board increased the quantity of almonds deemed desirable to be carried out on June 30, 1985, from 198.9 million pounds to 246.4 million pounds.

The estimates used by the Board in making its May 6, 1985, recommendation to revise the salable and reserve percentages are tabulated below. The Board's July 25, 1984, February 26, 1985, and March 29, 1985, estimates are shown as a basis of comparison.

MARKETING POLICY ESTIMATES—1984 CROP

[Kernel weight basis; million pounds]

	Initial estimate (July 25, 1984)	First revised estimate (Feb 26, 1985)	Second revised estimate (Mar 29, 1985)	Third revised estimate (May 6, 1985)
Production:				
1. 1984 crop	520.0	581.4	581.4	586.1
2. Loss and exempt—5 pct	26.0	29.1	29.1	23.4
3. Marketable supply	494.0	552.3	552.3	562.7
Trade shipments:				
4. Domestic	150.0	140.0	140.0	130.0
5. Export	230.0	250.0	250.0	250.0
6. Total	380.0	390.0	390.0	380.0
Inventory adjustment:				
7. Carry in July 1, 1984	91.8	91.8	91.8	91.8
8. Estimated carryover June 30, 1985	82.3	138.1	198.9	246.4
9. Adjustment	(9.5)	46.3	107.1	154.6
Salable/reserve:				
10. Salable supply (item 6 plus item 9)	370.5	436.3	497.1	534.6
11. Reserve supply (item 3 minus item 10)	123.5	116.0	55.2	28.1
12. Salable percentage (item 10 ÷ item 3 × 100) (percent)	75	79	90	95
13. Reserve percentage (100 percent minus item 12) (percent)	25	21	10	5

The reserve of 5 percent (28.1 million pounds) must be withheld by handlers from normal domestic and export outlets to meet their reserve obligations. The Board has allocated these almonds for use chiefly in the almond butter and school lunch projects begun during the 1982–83 crop year. These long-term projects are a means for the industry to develop new markets for almonds in view of larger crops. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in the order or approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds; and California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.233 is revised to read as follows:

[The following provisions will not appear in the Code of Federal Regulations].

§ 981.233 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1984.

The salable, reserve, and export percentages during the crop year beginning July 1, 1984, shall be 95, 5, and 0 percent, respectively.

Dated: June 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–13914 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area Temporary Revision of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action reduces temporarily the pooling standard for plants operated by cooperative associations under the Southwest Plains Federal milk order. For the months of May through August 1985, the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants during the month in order for plants operated by cooperative associations to be pooled is reduced from 50 to 40 percent. The action was requested by Mid-America Dairymen, Inc., a cooperative association that operates plants and represents producers who supply the market, in order to prevent uneconomic movements of milk.

Notice of this action was published in the **Federal Register** and interested parties were given the opportunity to submit comments on the proposed action. A cooperative association

supported the proposed action and a dairy farmer opposed a lowering of the pooling standard.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision of Rule: Issued May 20, 1985; published May 23, 1985 (50 FR 21268).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1106.7(d) of the Southwest Plains milk order.

Notice of proposed rulemaking was published in the **Federal Register** (50 FR 21268) concerning a proposed decrease in the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants in order for plants operated by cooperative associations to be pooled under the order for the months of May through August 1985. Interested parties were given the opportunity to comment on the proposal by submitting written data, views, and arguments. The action was supported by a cooperative association while one producer submitted views in opposition to the action.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views and arguments filed thereon, and other available information, it is hereby found and determined for the months of May through August 1985 the delivery percentage of 50 percent applicable to milk marketed by cooperative associations as set forth in § 1106.7(c) should be decreased to 40 percent.

Pursuant to § 1106.7(d) of the Southwest Plains milk order, the Director of the Dairy Division may increase or decrease the delivery percentage by up to 10 percentage points in order to obtain needed shipments for the market or to prevent uneconomic shipments of milk to distributing plants.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association which represents producers supplying the Southwest Plains market, requested this temporary reduction of 10 percentage points in the quantity of milk that must be physically received at pool distributing plants. Mid-Am states that for May through August 1985 the order would require a greater proportion of milk to be physically received at distributing plants than is necessary to meet the fluid, or bottling, requirements of the market. Thus, absent a lowering of the delivery percentage, Mid-Am Contends that costly and inefficient movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who supply the market.

Associated Milk Producers, Inc. (AMPI), a cooperative association which represents a substantial number of producers who supply milk for this market, submitted comments in support of the proposed reduction in the pooling standard for plants operated by cooperative associations. AMPI, as well as Mid-Am contends that the current pooling standard for cooperative association plants is no longer appropriate because of changes in the market environment that occurred as a result of the termination of the former, adjacent St. Louis-Ozarks order on April 1, 1985. Because of the termination of the adjacent order, certain plants and producer milk supplies have become associated with the Southwest Plains order, causing an overall change in the market's supply/demand relationahip. The cooperatives indicate that the situation is exacerbated by favorable weather conditions that have caused earlier than usual seasonal increases in production. Also, as schools are dismissed for the summer, there will be a reduction in the fluid milk requirements of distributing plants. As a result of these changes, the cooperatives contend that a lowering of the pooling standard for cooperative association plants is necessary to reflect the current market environment and to eliminate uneconomic movement of milk to distributing plants for the sole purpose of pooling the milk of dairy farmers who supply the market.

One comment in opposition to the proposed action was received from a dairy farmer. The producer indicated that, since Class I sales are relatively stable from year-to-year, a decline in the class I utilization of producer milk represents an oversupply of milk. The producer contends that an accommodation to pooling the milk by lowering the pooling standard is contrary to efforts to solve long-range supply problems in the dairy industry.

The pooling standard at issue is not directly associated with efforts under the price support program that address the overall milk supply situation in the country. The pooling standard is intended to insure the delivery of sufficient supplies of milk to distributing plants for fluid use as well as to insure the orderly disposition of those reserve supplies of milk that are associated with the market. Specific authority is provided in the order to temporarily revise the pooling standard as a result of changes in supply/demand relationships that could not be anticipated at the time the Southwest Plain order was established on the basis of testimony and evidence presented at a public hearing. The pooling standard may be increased or decreased by up to 10 percentage points to obtain needed shipments for the market or to prevent uneconomic shipments of milk to distributing plants.

A review of current market statistics indicates that significant changes have occurred in the market's supply/demand relationship as a result of the April 1, 1985, termination of the St. Louis-Ozarks order. Producer milk in Class I (fluid) uses increased by 58.7 percent from 69.7 million pounds in March to 110.6 million pounds in April. However, the volume of producer milk pooled under the order more than doubled from 121.8 million pounds in March 1985 to 248.5 million pounds in April 1985. As a result, the Class I utilization of producer milk declined by almost 13 percentage points from 57.3 percent in March to 44.5 percent in April.

Under these circumstances it is concluded that a reduction of 10 percentage points in the pooling standard for cooperative association plants during the months of May through August 1985 is necessary to reflect the changed market environment. In the absence of a lowering of the pooling standard, more milk would have to be delivered to distributing plants than is necessary to meet the fluid milk needs of the market. A lowering of the pooling standard will prevent uneconomic shipments of milk to distributing plants solely for the purpose of pooling the milk of dairy farmers who supply the market.

It is hereby found and determined that 30 day's notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly

marketing conditions in the marketing area for the months of May through August 1985;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were affored opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective for the months of May through August 1985.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

It is therefore ordered, That the 50 percent pooling standard specified in § 1106.7(c) of the order be reduced to 40 percent for the months of May through August 1985.

Effective date: June 10, 1985.

Signed at Washington, D.C., on June 5, 1985.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 85–13912 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is implementing a new regulation which shows the formulas used to allocate loan and grant program funds. The intended effect of this action is to inform the public of FmHA's method of allocating program funds to field offices by incorporating the methodology in published regulations. With respect to the rural housing program, this action is being taken, in part, as a result of litigation.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Howe, Director, Program Support Staff, Farmers Home Administration, USDA, 14th and Independence Ave., SW., Washington, D.C. 20250, Telephone (202) 382–9619.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only agency management. The formulas described in this regulation provide for the allocation of program funds to field offices within FmHA.

A Court has ordered FmHA to publish the funding allocation formula for its section 502 and 504 Single Family Housing Loan programs. FmHA is publishing these sections 502 and 504 program allocation formulas pursuant to that order. Although it is FmHA's position that the allocation of funds, being the distribution of resources, is a matter involving agency management, FmHA is, nevertheless, publishing all program allocation formulas for programs under both Title V of the Housing Act of 1949 and the Consolidated Farm and Rural Development Act to give the public notice of how funds are allocated.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this regulation are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA Office.

The proposed rule to implement this regulation was published in the **Federal Register** for a sixty day comment period on February 15, 1985 (50 FR 6351). Four sets of comments were received. All comments received through April 23, 1985, were considered.

Discussion of Comments

The comments received appear immediately after the section or paragraph number. Our discussion of the comment appears immediately after the comment as a second paragraph.

Section 1940.552(j): [Require] all applications to be fully processed and certified as eligible within 30 days of receipt (pending availability of funds) so commitment of a loan is immediate when funds become available.

The comment is not considered at this time as it does not address any of the material presented in the proposed rule.

Section 1940.552(j): One commenter felt that the State Director should not be obligated to use the transition formula in suballocating funds based on the same formula used by the National Office and that the proposed rule was not clear on this matter.

To clarify this matter, §§ 1940.565(j), 1940.566(j), and 1940.567(j) have been revised as shown herein.

Section 1940.552(j): One commenter expressed the belief that some section 502 subsidized funds should be reallocated after the first quarter and that allocation below the state level should only be done when a particular problem is noted by the State Director.

We believe that the mid-year and emergency pooling provisions of § 1940.552(h) of the proposed rule adequately allow for the pooling and redistribution of funds. We feel that suballocation by the State Director of section 502 subsidized funds to at least the District Office level is necessary to make funds available to areas based on the funding needs identified in suballocating in accordance with § 1940.565(j).

Section 1940.565: The criteria do not include past utilization of funds.

Past utilization of funds was previously used as a factor for distribution of funds to the States. This factor was removed several years ago and need for housing (including factors such as substandard housing, low-income households, and rural population) was emphasized. Past utilization of funds does not necessarily identify those areas of greatest need.

Section 1940.565(b)(2): We find no justification for including rural population in any of the housing formulas. First of all, this criterion includes not only the eligible population which is already accounted for by § 1940.565(b)(3) but it also includes those not eligible for our program.

We agree with the commenter that part of the population in rural areas has already been counted in another factor and, therefore, the weight given this factor has been reduced. We have changed the final rule by using two population factors instead, and reducing the total weight given to these two population factors to 25 percent from the currrent 33⅓ percent weight. These factors are: (1) State's percentage of the National rural population—10 percent weight and (2) State's percentage of the National rural population in places of less than 2,500 population—15 percent weight. This will cover areas that are

most rural in character and will address the priorities for applicants set forth by the Rural Housing Amendments of 1983.

Section 1940.565(b)(3): We recommend that low-income weights be determined by the state's number of households with incomes below 50% of Census region median income as a percentage of the national total.

We believe that, for the formula, 80 percent of the median income for the incomes served is more adequate as a factor than 50 percent. It includes the families now eligible for the program, namely: low and very low-income. The use of 50 percent of median income as a factor will represent use of only 40 percent of the funds available in the program. However, in order to direct funds toward those most in need of housing and at the same time include those income groups eligible for the program, we produced two income factors, namely: (1) State's percentage of the number of National rural households between 50 and 80 percent of the area median income, and (2) State's percentage of the number of National rural households below 50 percent of area median income. These two criteria are given weights of 30 percent and 20 percent, respectively. We have decided to delete the exclusion of rural households with incomes under $5,000 from the formula in the final rule. The reason for including these households is that although the assistance may be mostly for repair and rehabilitation, they are also served by the program.

In consolidating the responses to the comments on § 1940.565(b)(2), above, and for this comment, we have increased the number of factors for allocation of funds to the States from 3 to 5, and selected more appropriate criterion weights.

Sections 1940.565(h) and 1940.552(h): The pooling requirements for each year should be published in the **Federal Register**.

Section 1940.565(h): Mid-year pooling . . . means that there is a redistribution of funds to offices where there is no demand.

See comments for § 1940.565(j). The **Federal Register** publication refers to the authority for pooling and indicates that the approximate dates for pooling are established by the Administrator for each affected program. (e.g., mid-year, year-end, emergency). The specific date for pooling depends on actual use of funds, the need of the program from which funds are pooled, and peak-loan activity periods during the administration of the Agency's other programs. We believe pooling requirements have been properly addressed in the proposed rule. Specific pooling dates are not shown in the **Federal Register** since such dates are not a rule and, if they were, it would be impossible to publish them for comment or even as a final rule, in a timely manner.

Section 1940.565(j): Suballocations to county offices limit the amount available to that particular office per quarter. If there is great demand in one county and no demand in another county, unspent funds remain idle.

There is some validity to the comment in that, in some cases, the quarterly allocation to a County Office may be so small that the funds allocated may not be sufficient to serve all eligible applicants with applications on hand. It may also be that the County Office may have more funds than needed for the quarter. To correct the situation we have revised § 1940.565(j) as follows:

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565(b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing deliquency).

Section 1940.565(k): The language in § 1940.565(k) should be changed to clearly state that not less than 40% of funds, nationally, or 30% for each State, are available only for those at or below 50% of area median income.

The fund set-aside percentage is a matter of program statute and is so described in § 1940.565(k).

Section 1940.566(j): It was suggested that § 1940.566(j) should be deleted since the amount of funds suballocated are small and would result in miniscule suballocations.

We agree that allocations to County Offices may result in small allocations, but believe that funds could, at the option of the State Director, be effectively allocated to the District Office level. We revised § 1940.566(j) as follows:

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, Section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

Section 1940.567(b): The formula should be slightly changed to reflect the fact that the program is only available to very low-income elderly.

We believe that the criteria shown sufficiently cover the requirements for allocation of these funds.

Section 1940.567(j): Should be deleted.

See comments for § 1940.566(j). We revised § 1940.567(j) as follows:

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, Section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

Section 1940.575(b): It was recommended the criteria and weights should be changed to:

1. Number of tenants living in substandard housing—33.3%
2. Number of households with incomes below 50 percent of census region median income—33.3%
3. Number of tenants with incomes below 80 percent of area median income paying more than 35 percent of income for rent—33.3%.

We feel the use of the first and third criterion is not possible due to the lack of adequate and current information or data that would be reflective of FmHA's rural areas. We also feel that the information is impossible to obtain for use by FmHA.

The use of the second criterion has some merit and reliable data can be obtained. However, the change will be considered for future implementation.

The Catalog of Federal Domestic Assistance programs affected are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low-Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities

10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Accordingly, Part 1940 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

(1) The authority citation for Part 1940 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

(2) A new Subpart L is added to read as follows:

. . . . . .

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

Sec.
1940.551 Purpose and general policy.
1940.552 Definitions.
1940.553–1940.554 [Reserved]
1940.555 Insured Farm Operating loan funds.
1940.556 Guaranteed Farm Operating loan funds.
1940.557 Insured Farm Ownership loan funds.
1940.558 Guaranteed Farm Ownership loan funds.
1940.559 Farmer Programs and Indian Land Acquisition appropriations not allocated by State.
1940.560–1940.564 [Reserved]
1940.565 Section 502 Subsidized Rural Housing loans.
1940.566 Section 504 Housing Repair loans.
1940.567 Section 504 Housing Repair grants.
1940.568 Single Family Housing programs appropriations not allocated by State.
1940.569–1940.574 [Reserved]
1940.575 Section 515 Rural Rental Housing (RRH) loans.
1940.576 Rental Assistance (RA) for new construction.
1940.577 Rental Assistance (RA) for existing projects.
1940.578 Housing Preservation Grant (HPG) program.
1940.579 Multiple-Family Housing appropriations not allocated by State.
1940.580–1940.584 [Reserved]
1940.585 Community Facility loans.
1940.586 Water and Waste Disposal loans.
1940.587 Water and Waste Disposal grants.
1940.588 Business and Industrial guaranteed loans.
1940.589 Community and Business programs appropriations not allocated by State.
1940.590–1940.600 [Reserved]

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.551 Purpose and general policy.

(a) The purpose of this subpart is to set forth the methodology and formulas by which the Administrator of the Farmers Home Administration (FmHA) allocates program funds to the States. (The term "State" means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Territories.)

(b) The formulas in this subpart are used to allocate program loan and grant funds to State Offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program resources are available on an equal basis to all eligible individuals and organizations.

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any FmHA State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State.

§ 1940.552 Definitions.

(a) *Amount available for allocations.* Funds appropriated or otherwise made available to the Agency for use in authorized programs.

(b) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic state factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State Factor (SF). The data sources used for each criteria is believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(c) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

BFA = (Amount available for allocation − NO reserve − Total base and administrative allocations) × SF.

(d) *Transition formula.* A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or − percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Maximum } 20\%}{100}$$

$$\frac{\text{Amount available for allocation this year}}{\text{Amount available for allocation previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not

exceed 40% (±20%), but when a smaller range is used it will be stated in the individual program section.

(e) *Base allocation.* An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each FmHA State, District, or County Office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as agency historic data.

(f) *Administrative allocations.* Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program objectives cannot be adequately met with a formula allocation.

(g) *Reserve.* An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it is determined necessary to meet a program need or agency objective.

(h) *Pooling of funds.* A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligatedf by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(1) *Mid-year:* This pooling addresses the need to partially redistribute funds based on use/demand. Mid-year pooling occurs near the midpoint of the fiscal year.

(2) *Year-end:* This pooling is used to ensure maximum use of program funds on a national basis. Year-end pooling usually occurs near the first of August.

(3) *Emergency:* The Administrator may pool funds at any time that it is determined the conditions upon which the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(i) *Availability of the allocation.* Program funds are made available to the Agency on a quarterly basis. In the high demand programs, it is necessary that specific instructions by given to the State Offices regarding the amount which is available for obligation during each quarter.

(j) *Suballocation by the State Director.* Dependent upon the individual program for which funds are being allocated, the State Director may be directed or given the option of suballocating the State allocation to District or County Offices. When suballocating the State Director may retain a portion of the funds in a State Office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(k) *Other documentation.* Additional instructions given to field offices regarding allocations.

§§ 1940.553–1940.554 [Reserved]

§ 1940.555 Insured Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15% This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=STATE FACTOR where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Subobligation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.556 Guaranteed Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to the State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+

For State Factor Where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other Documentation.* See § 1940.552(k) of this subpart.

§ 1940.557 Insured Farm Ownership loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D=Three-year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence of the allocation.

(5) E=Value of farm real estate assets. Source: USDA Economic Research Service. 10%. The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The transition range is plus or minus 15%.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.558 Guaranteed Farm Ownership loan funds.

(a) *Amount available for allocation.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm real estate assets. Source: USDA Economic Research Service. 10%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations:* See Section 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not have administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.559 Farmer Programs and Indian Land Acquisition appropriations not allocated by State.

(a) *Emergency Disaster.* State allocations are not made since it is impossible to predict occurrences.

Obligating documents may be submitted to the Finance Office as loans are approved in designated areas. This type loan is available only in areas designated as disaster areas. Designations may be by a single county, multiple of counties or areas, depending upon scope and severity.

(b) *Soil and Water.* Funds are not allocated to States. Program size does not permit equitable distribution. Obligation of funds are on a first-come, first-served basis, subject to availability.

(c) *Indian Land Acquisition.* Control of funds retained in the National Office and allocated on an individual case basis. Program size and requirements do not permit equitable distribution on an allotment basis. Requests for funds will be made to the Director, Farm Real Estate and Production Division when it is determined the loan can be approved.

§§ 1940.560–1940.564 [Reserved.]

§ 1940.565 Section 502 subsidized Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population,

(3) State's percentage of the National rural population in places of less than 2,500 population,

(4) State's percentage of the National number of rural households between 50 and 80 percent of the area median income, and

(5) State's percentage of the National number of rural households below 50 percent of the area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF)

SF=
(criterion 1 x weight of 25%)+
(criterion 2 x weight of 10%)+
(criterion 3 x weight of 15%)+
(criterion 4 x weight of 30%)+
(criterion 5 x weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 subsidized RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565 (b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing delinquency).

(k) *Other documentation.* The percentage distribution of funds to the States by income levels is based on prevailing legislation.

§ 1940.566 Section 504 Housing Repair loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b). The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units, and

(2) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF=
(criterion No. 1 × weight of 50%)+
(criterion No. 2 × weight of 50%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair Loans is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§1940.567 Section 504 Housing Repair grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population 62 years and older, and

(3) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF=
(criterion No. 1 × weight of 33⅓%)+
(criterion No. 2 × weight of 33⅓%)+
(criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair grants is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.568 Single Family Housing programs appropriations not allocated by State.

The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 523 Self-Help Technical Assistance Grants.

(b) Section 523 Land Development Fund.

(c) Section 524 Rural Housing Site Loans.

(d) Section 509 Compensation for Construction Defects.

(e) Section 502 Nonsubsidized Funds.

§ 1940.569–1940.574 [Reserved.]

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula are:

(1) State's percentage of national rural population,
(2) State's percentage of national number of rural occupied substandard units, and
(3) State's percentage of national rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 × weight No. 1)+
(criterion No. 2 × weight No. 2)+
(criterion No. 3 × weight No. 3)+

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. The basic formula allocation (BFA) for an individual State is equal to:

BFA = (Amount available for allocation − No reserve − Total base and administrative allocations) × SF.

(d) *Transition formula.* See § 1940.552 (d) of this subpart. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or − percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Percent range}}{100} \times \frac{\text{Amount available for BFA this year}}{\text{Available for BFA previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment process for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation.

(e) *Base allocation.* See § 1940.552 (e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552 (f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve.* See § 1940.552 (g) of this subpart. A National reserve of approximately 10 percent of the program amount has been established for the RRH program. Generally, a request for additional funds will not be honored unless a jurisdiction has insufficient funds to obligate the loan requested, and the docket is developed to the point where the loan can be approved upon notification that funds are available.

(h) *Pooling of funds.* See § 1940.552 (h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in a reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552 (i) of this subpart. The allocation of RRH funds is made available for States to obligate on a biannual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552 (j) of this subpart. States allocated $15 million or more must reallocate RRH funds to District Offices based on the formula used by the National Office to allocate program funds to jurisdictions. State Directors who reallocate to District Offices may maintain a State Office reserve. In addition, they may establish a pooling date for all unobligated State program funds prior to the National Office pooling date in order to insure the use of all State program funds.

(k) *Other documentation.* Not applicable.

§ 1940.576 Rental Assistance (RA) for new construction.

(a) *Amount available for allocations.* See § 1940.552 (a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575 (b) of this subpart.

(c) *Basic formula allocation.* See § 1940.575 (c) of this subpart.

(d) *Transition formula.* See § 1940.575 (d) of this subpart.

(e) *Base allocation.* See § 1940.575 (e) of this subpart.

(f) *Administrative allocations.* See § 1940.552 (f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552 (g) of this subpart. At the direction of the Administrator, units may be held for a specific multiple family housing program. At the Administrator's discretion, requests for these units may be handled on a first-come, first-served basis or on a priority basis.

(h) *Pooling of funds.* See § 1940.552 (h) of this subpart. RA is generally pooled at year-end. Pooled units will be placed in a reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552 (i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.522 (j) of this subpart. States that reallocate funds to District Offices must also reallocate RA based on the formula used by the National Office to allocate program funds to jurisdictions.

(k) *Other documentation.* Not applicable.

§ 1940.577 Rental Assistance (RA) for existing projects.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart. RA appropriated for existing projects will first be used to replace contracts expiring each fiscal year and for the first few months of the following fiscal year. This is done to assure continued RA funding. RA units not needed for replacement purposes will be used for existing multiple family housing projects experiencing servicing problems.

(b) *Basic formula criteria, data source and weight.* No formula or weighted criteria is used to allocate replacement RA. The basic allocation for replacement RA will be made based on the following:

(1) *Criteria.* This allocation is based on the estimated need to replace RA contracts expiring from the depletion of funds.

(2) *Date source.* The most accurate and current information available from FmHA computerized data sources.

(c) *Basic formula allocation.* While no formula will be used, the basic allocation will be made to each State according to the need determined using the basic criteria.

(d) *Transition formula.* Not applicable.

(e) *Base allocation.* Not applicable.

(f) *Administrative allocation.* Not applicable.

(g) *Reserve.* See § 1940.552(g) of this subpart. The National Office maintains a reserve adequate to compensate for the differences between actual and projected replacement activity. Units will be administratively distributed for existing housing to either satisfy previously unidentified replacement needs or address servicing situations. Units will be distributed to any State when the Administrator determines that additional allocations are necessary and appropriate.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Units will be pooled at the Administrator's discretion.

(i) *Obligation of the allocation.* See § 1940.578(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

§ 1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.575(c) of this subpart.

(d) *Transition formula.* See § 1940.575(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. No administrative allocation is made.

(g) *Reserve.* See § 1940.552(g) of this subpart. A National Office reserve of approximately 10 percent of the program amount is to be established for the HPG program. Generally, a request for additional funds will be honored if necessary to fund feasible HPG projects within a State where the formula allocation is insufficient.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the section 504 program.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation is made available for States to obligate on an annual basis, although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA will review and evaluate the proposals, adjust State allocations as necessary to comply with with the law and program demand, and redistribute remaining unused HPG resources for use under section 504 (as required by statute).

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

(a) *Section 514 Farm Labor Housing loans.* Funds are not allocated to States because of the small program size. Projects are funded on a first-come, first-served basis.

(b) *Section 516 Farm Labor Housing Grants.* Funds are not allocated to States because of the small program size. State Directors must obtain authorization from the National Office before permitting development of a full applications. Projects are funded on a first-come, first-served basis.

§§ 1940.580–1940.584 [Reserved]

§ 1940.585 Community Facility loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.

(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1×50 percent)+
(criterion No. 2×50 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (±15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this chapter (available in any FmHA office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.586 Water and Waste Disposal loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.
(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 x .5) +
(criterion No. 2 x .5)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (± 15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula and base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. Any State may request reserve funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this Chapter (available in any office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552 (j) of this subpart. The State Director has the option to suballocate funds to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.587 Water and Waste Disposal grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.
(2) State's percentage of National rural population with incomes below the poverty level—50 percent

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 x .5) +
(criterion No. 2 x .5)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent. (± 15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula and base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. Any State may request reserve funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this Chapter (available in any office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the grant requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director has the option to suballocate funds to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.588 Business and Industrial guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

	Weight (percent)
(1) State's percentage of National rural population	33 3

	Weight (percent)
(2) State's percentage of National nonmetropolitan unemployment, and	33.4
(3) State's percentage of National rural population with incomes below poverty level	33.3

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(Criterion No. 1 x weight No. 1)+
(Criterion No. 2 x weight No. 2)+
(Criterion No. 3 x weight No. 3)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30% (±15%).

(e) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. A National reserve of approximately 10 percent of the program amount has been established for the B&I program. States may request reserve funds from the B&I reserve when all of the State's allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. There is a 6-day waiting period from the time project funds are reserved to the time they are obligated.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Not applicable.

§ 1940.589 Community and Business programs appropriations not allocated by State.

Watershed Protection Loans, Resource Conservation and Development Loans, and Flood Protection Loans: State allocations will not be made for these type loans. Instead, obligating documents may be submitted to the Finance Office when a loan is approved. Only states that are authorized to process PL 534 loans may submit obligating documents to the Finance Office for that type loan. Resource Conservation and Development (RC&D) loan funds will be used in preference to community facility funds in designated RC&D areas for loan purposes included in Subpart A of Part 1942 of this chapter.

§§ 1940.590–1940.600 [Reserved]

Dated: May 21, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–13723 Filed 6–7–85; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84–119]

Importation of Cheese

Correction

In FR Doc. 85–11827, beginning on page 20389, in the issue of Thursday, May 16, 1985, make the following correction:

On page 20389, in the third column, "**DATES:** May 16, 1985." should have read: "**DATES:** Effective date: May 16, 1985."

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–46–AD; Amdt. 39–5081]

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the lavatory drain ducts of the Boeing Model 757 series airplanes. This action is prompted by a reported wire bundle fire caused by leaking waste liquids contaminating damaged electrical wiring. Failure to correct these problems could result in additional wire bundle fires.

DATES: Effective June 28, 1985.

Compliance required as indicated in the body of the AD, unless already accomplished.

ADDRESSES: The service bulletins specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office; telephone (206) 431–2942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A recent inflight incident occurred in which both generators on a Boeing Model 757–200 airplane dropped off the line. The right generator could be reset, but when attempting to reset the left generator, smoke appeared from the left and right forward vent louvers in the passenger cabin. Investigation of the area revealed that eight power distribution wires were burned through in the side wall area of the forward left hand side of the electronics bay. It was determined that leaking waste fluids had contaminated damaged wires and caused the fire.

The Boeing Company has used a Trojan hot stamp wire marking machine to code airplane wiring. The machine was first used for marking 30 mil thick insulated wire, but was later used on certain of the newer 8.4 mil thick Kapton insulated wire. The machine can operate with the type face sufficiently misaligned, so that the lettering can cut into the insulation. This had negligible effect on the thicker insulation, but with the newer Kapton insulation it was possible for the type face to cut through the insulation and cause small pinholes. This amendment requires that wires damaged in such a manner be replaced.

The lavatory waste ducts use narrow clamps at several locations to secure the sleeves used in connecting and sealing sections of the ducting. Over a period of time, the clamps can come loose or cut into the sleeve, allowing a leak to develop. Even though the waste ducts are empty, except when draining the lavatory holding tanks, the cumulative effects of the leaking waste fluids can become noticeable over a period of time. The electrical short referred to above occurred when the amount of conductive lavatory waste fluid leaking from the waste duct was sufficient to spread from one damaged wire to another in the bundle, and cause an arc between two

phases of the three-phase wire bundle. Once the critical temperature was reached, the insulation of eight out of nine wires from three bundles were burned through. This amendment requires that the waste duct clamps be replaced with wider clamps, which will reduce the potential for leakage of waste fluids. In addition, this amendment requires that the wires be rerouted to preclude future electrical shorts.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires inspection or replacing and rerouting certain wire bundles, and replacing certain lavatory duct clamps.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89; 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 757–200 series airplanes, certificated in all categories, listed in Boeing Service Bulletins 757–38–008 dated February 1, 1985, and 757–24–0025 dated May 3, 1985. To prevent the electrical shorting of certain wire bundles due to damaged wire and leaking lavatory waste fluids onto the wire, accomplish the following within the next 50 hours time in service after the effective date of this AD, unless already accomplished:

A. Perform a visual inspection of the forward lavatory waste drain ducts, to determine if there is any leakage from the duct seals. Repeat the inspection at intervals not to exceed 100 hours time in service.

B. If leaks are detected, clean and replace forward lavatory waste drain clamps in accordance with Boeing Service Bulletin 757–38–008, dated February 1, 1985, or later FAA approved revision, and continue to inspect in accordance with paragraph A. at intervals not to exceed 250 hours time in service.

C. Incorporation of Boeing Service Bulletin 757–38–008 dated February 1, 1985, or later FAA approved revision, to replace specified narrow clamps with wider clamps on the forward lavatory waste ducts, and incorporation of Boeing Service Bulletin 757–24–0025 dated May 3, 1985, or later FAA approved revision, to replace the damaged wire and to reroute the specified wire bundles from beneath the lavatories, terminates the repetitive inspection requirement of paragraph A., above.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received copies of the service bulletins may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, 1900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 28, 1985.

Issued in Seattle, Washington, on June 3, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–13814 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–NM–51–AD; Amdt. 39–5080]

Airworthiness Directives; Fokker B.V. Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Fokker Model F27 series airplanes which requires a one-time visual inspection, and repair if necessary, of the attachment of the ribs connecting the rudder tab control bracket to the tab skin. This action is prompted by one case of rudder tab flutter in which incorrect rivets used for the attachment was determined to be a factor. Flutter could lead to structural failure and loss of the airplane.

DATES: Effective June 28, 1985.

Compliance required within 20 days of the effective date of this AD unless already accomplished.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O Box 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM–113; telephone (206) 431–2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Ministerie van Verkeer, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has notified the FAA, in accordance with existing provisions of a bilateral agreement, that an unsafe condition may exist on certain Fokker F27 airplanes. Incorrect rivets used in the assembly of at least one rudder tab resulted in inadequate strength of the attachment of the ribs connecting the tab control bracket to the tab skin which contributed to flutter of the tab. The RLD issued Airworthiness Directive number 85–31, April 9, 1985, requiring a one-time visual inspection within 20 days of issue, and repair if necessary, of all F27 airplanes delivered with rudder

tabs not already inspected and repaired as necessary in accordance with Fokker Service Bulletin F27/55–58 dated March 28, 1985. Rudder tab flutter can result in structural failure and loss of flight control to an undetermined degree.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist on develop or airplanes of this type design registered in the United States, the FAA has determined that an AD is necessary which requires inspection, and repair if necessary, in accordance with Fokker Service Bulletin F27/55-58 dated March 28, 1985.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F27 series airplanes, serial numbers 10105 through 10648, 10654, 10658 through 10660, 10662 through 10667 and 10669 through 10672; certificated in all categories.

To insure structural integrity of the rudder tab, accomplish the following, unless already accomplished:

A. Conduct a one-time visual inspection of the rudder tab in accordance with Fokker Service Bulletin F27/55–58, dated March 28, 1985, within twenty days after the effective date of this AD.

B. If incorrect rivets are found, repair the tab before further flight in accordance with the above service bulletin or in a manner approved by the Manager, Seattle Aircraft Certification Office.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. These documents also may be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective June 28, 1985.

Issued in Seattle, Washington, on June 3, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–13813 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–19]

Alteration and Establishment of VOR Federal Airways Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a low altitude Federal airway structure using the new Frankston, TX, Very High Frequency Omni-Directional Radio Range and Distance Measuring Equipment (VOR/DME) installed for the enhancement of the traffic flow within the Houston Air Route Traffic Control Center (ARTCC) area.

EFFECTIVE DATE: 0901 G.M.T., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On April 3, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new segment of V–569 and to create new airway V–583 using the new Frankston, TX, VOR/DME facility, to enhance traffic flow within the Houston ARTCC area (50 FR 13227). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a low altitude VOR Federal airway structure utilizing the new Frankston, TX, VOR/DME (FZT) facility (lat. 32°04′28.12″N., long. 95°31′50.28″W.), with a new segment of V–569 from Lufkin, TX, to Scurry, TX, and by creating new airway V–583 from Leona, TX, to Quitman, TX.

The FAA has determined that this rgulation only involves an established body of techncial regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-569 will be added effective June 6, 1985 (50 FR 14090). The following is an alteration to the original description of V-569.

V-569—[Amended]

By removing the words "to Lufkin." and by substituting the words "Lufkin; Frankston, TX; to Scurry, TX."

V-583—[New]

From Leona, TX, via Frankston, TX; to Quitman, TX.

Issued in Washington, D.C., on June 3, 1985

James Burns, Jr.

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-13817 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 84F-0316]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations that permit gamma radiation treatment of food to include the irradiation of dry or dehydrated enzyme preparations. This action responds to a food additive petition filed by Radiation Technology, Inc.

DATES: Effective June 10, 1985; objections by July 10, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

Introduction

In a notice published in the **Federal Register** of October 19, 1984 (49 FR 41111), FDA announced that food additive petition (FAP 4M3815) had been filed by Radiation Technology, Inc., Lake Denmark Rd., Rockaway, NJ 07866, proposing that the food additive regulations be amended to provide for the safe use of a cobalt-60 or cesium-137 source of gamma radiation to control insect and microbial infestation in certain dried enzyme preparations at doses not to exceed 10 kiloGray (kGy) (1 megarad, Mrad).

Background

Dry enzyme preparations can be used as food-processing aids. The petitioner has requested authorization for radiation treatment of bulk or prepackaged dry, powdery, enzyme preparations. The term "enzyme preparations" may be used to include immobilized enzyme preparations. The agency has, therefore, considered the term "dry or dehydrated enzyme preparations" to include crude or partially purified enzymes as well as immobilized enzymes for purpose of its safety review.

Dry enzyme preparations are used as processing aids and constitute a very minor portion of the daily diet. In an advance notice of proposed rulemaking (46 FR 18992; March 27, 1981), FDA stated that it intended to adopt a policy that a food class comprising only a minor portion of the daily diet and irradiated at a dose of 5 Mrad or less may be considered safe for human consumption based upon minimum biological testing. FDA has evaluated available data on the matter and relevant comments submitted in the ongoing rulemaking dealing with food irradiation. The agency continues to believe that animal feeding studies are not necessary to demonstrate that irradiation of dry enzymes poses no safety problems.

Nevertheless, in evaluating the petition, the agency considered whether data from a U.S. Department of Agriculture-sponsored study, conducted by Raltech Scientific Services, raised sufficient concern to preclude issuing this regulation. Citing this study, comments to an earlier proposed regulation published by FDA concerning the use of radiation to treat food (49 FR 5714; February 14, 1984) claimed that mice fed irradiated chicken were found to have a "statistically significant" increase in the incidence of testicular tumors, and argued that regulations permitting food irradiation should, therefore, not issue. The Center for Food Safety and Applied Nutrition (the Center) evaluated the relevant histopathology data from that study and did not find any treatment-related effect that is either biologically or statistically significant. The National Toxicology Program's (NTP) Board of Scientific Counselors conducted, at FDA's request, a peer review of the relevant histopathology data, including an open meeting on March 28, 1985. In its final summary minutes dated May 16, 1985, and submitted to FDA, NTP's Board of Scientific Counselors concluded that the available data did not allow the study to be categorized as demonstrating a carcinogenic response. The agency has reviewed all available animal feeding studies in its files and finds that no study, including the Raltech study, showed treatment-related effects that would preclude approving this petition.

FDA has evaluated information submitted by the petitioner, as well as information already in the agency's files, and concludes that the proposed use of gamma radiation is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before July 10, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 179 .

Food additives, Food packaging, Irradiation of foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF FOOD

1. The authority citation for Part 179 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 179.22 in the table in paragraph (b) by alphabetically inserting a new item to read as follows:

§ 179.22 Gamma radiation for the treatment of food.

* * * * *

(b) * * *

Food for irradiation	Limitations	Use
Dry or dehydrated enzyme preparations (including immobilized enzyme preparations)	Absorbed dose: Not to exceed 10 kiloGray (kGy) (1 megarad, Mrad).	Control of insects and/or micro-organisms

Dated: June 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–13821 Filed 6–5–85: 10:33 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85–05]

Regatta; Annual Clarkston, WA, Limited Hydroplane Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is promulgating permanent special local regulations for a part of the waters of the Snake River at Clarkston, Washington, from the area west of the confluence of the Snake and Clearwater Rivers, to the area east of the Red Wolf Crossing Bridge. The special regulations will be in effect daily on Friday and Saturday, 5 and 6 July 1985, during the hours from 8:00 a.m. to 6:00 p.m., and on Sunday 7 July 1985 from 8:00 a.m. until one hour after the conclusion of the last race; and thereafter annually on the first Friday, Saturday and Sunday in July as published in the Local Notice to Mariners. This is being done to promote the safe conduct of the Clarkston, Washington, Limited Hydroplane Races, an approved marine event, scheduled during this time period. It is intended to restrict general navigation in the area for the safety of spectators and participants in this event.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR M. P. Troseth, Chief, Group Operations Department, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, (503) 240–9317.

SUPPLEMENTARY INFORMATION: On Monday, April 15, 1985, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** for these regulations (50 FR 14722). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LT M. P. Rand, USCG, Project Officer, U.S. Coast Guard Marine Safety Office, Portland, Oregon, and LCDR D. G. Beck, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Comments

No comments were received. Minor editorial changes were made in the final rule by the drafters to improve the overall clarity of the rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations affect a short section of the Snake River with only light commercial traffic and will be in effect for only three (3) days, two of those being Saturday and Sunday. During the hours of the races, 5 through 7 July 1985, and annually hereafter, the Patrol Commander will allow commercial traffic to transit the area between races.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 of Title 33, Code of Federal Regulations, is amended by adding § 100.1302 to read as follows:

§ 100.1302 Annual Clarkston, Washington, Limited Hydroplane Races.

(a) On Friday and Saturday, 5 and 6 July 1985, this regulation will be in effect from 8:00 a.m. to 6:00 p.m. On Sunday, 7 July 1985, this regulation will not in effect from 8:00 a.m. until one hour after the conclusion of the last race. This section will be effective thereafter annually on the first Friday, Saturday,

and Sunday in July as published in the Local Notices to Mariners.

(b) The Coast Guard will restrict general navigation and anchorage by this regulation during the hours it is in effect on the waters of the Snake River at Clarkston, Washington from the area west of the confluence of the Snake and Clearwater Rivers, to the area east of the Red Wolf Crossing Bridge.

(c) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard personnel and vessels in the area described in paragraph (b) of this section. The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control the movement of vessels and persons in the area described in paragraph (b) of this section.

(d) The Patrol Commander may authorize vessels to be underway in the area described in paragraph (b) of this section during the hours this regulation is in effect. All vessels permitted to be underway in the controlled area (other than racing or official vessels) shall do so only at speeds which will create minimum wake consistent with maintaining steerageway, and not to exceed seven (7) miles per hour. This speed limit may be adjusted at the discretion of the Patrol Commander to enhance the level of safety.

(e) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: May 30, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85-13624 Filed 6-7-85, 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD3 85-05]

Regatta; O.P.A. Classic, Barnegat Bay, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the annual Offshore Performance Association (O.P.A.) Classic. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this powerboat race event.

EFFECTIVE DATE: This regulation becomes effective on June 15, 1985.

FOR FURTHER INFORMATION CONTACT: LT. D. R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 18, 1985, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 15459). Interested persons were requested to submit comments, and no comments were received. Accordingly, no changes have been made to the proposed rule as published. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT. D. R. CILLEY, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn ARISMAN, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Annual O.P.A. Classic is a powerboat race sponsored by the Offshore Performance Association held on Barnegat Bay, New Jersey. This event is traditionally held each year on the second Saturday in June. Because of the annual nature of this event the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. The Coast Guard will provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. There will be one (1), 4 lap, 60 mile National Powerboat Association (N.P.B.A.) sanctioned race. The course has been laid out so that there should be little or no interference with vessel traffic in the Intercoastal Waterway (I.C.W.). The sponsor is providing in excess of 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for the spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectator craft, and should adhere closely to the charted I.C.W.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended by adding § 100.301 to read as follows:

§ 100.301 O.P.A. Classic, Barnegat Bay, New Jersey.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the area bounded on the north by 39 degrees 55 minutes north latitude, and on the south by 39 degrees 48 minutes north latitude, the Intercoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 3:00 p.m. on June 15, 1985 and thereafter annually on the second Saturday in June unless otherwise specified in the Third District Local Notice to Mariners, and in a **Federal Register** notice. In case of postponement this regulation will be in effect the following day.

(c) *Special Local Regulations.* (1) Mariners shall use extreme caution when transiting the regulated area and shall adhere closely to the charted I.C.W.

(2) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within the designated spectator area or moored to a waterfront

facility in a way that will not interfere with mariners transiting the I.C.W. in Barnegat Bay.

(3) The spectator fleet shall be held behind special race course buoys provided by the sponsor in the following areas:

(i) Between the race course and Island Beach State Park in the area north of Tices Shoal.

(ii) Between the race course and the I.C.W. in the area from Holly Park to Forked River.

(4) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(5) The sponsor of the race shall anchor race committee boats at each of the five (5) turns. Checkpoints shall be positioned so that race participants will pass no closer to the I.C.W. than 200 feet. Special markers shall be provided by the sponsor to separate the course from the I.C.W.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated June 3, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-13926 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-85-11]

Special Local Regulations; 1985 Grand Prix, Niagara River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the 1985 Grand Prix to be held on the Niagara River, Tonawanda Channel. This event will be held on July 27-28, 1985 from 11:00 AM (EDT) until 7:00 PM. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on July 27, 1985 and terminate on July 28, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of prepared rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Bulter, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Grand Prix will be conducted on the Niagara River, Tonawanda Channel, on July 27-28, 1985. This event will have an estimated 50-60 hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0911 to read as follows:

§ 100.35-0911 1985 Grand Prix, Niagara River.

(a) *Regulated Area.* That portion of the east branch of the Niagara River, Tonawanda Channel, from the overhead cable, 1300 yards northeast of the South Grand Island Bridge, to an east-west line through Tonawanda Channel Buoy 35 (LLP 29).

(b) *Special Local Regulations.* (1) The above area will be restricted to vessel navigation or anchorage from 11:00 AM (EDT) until 7:00 PM each day on July 27-28, 1985.

(2) The patrol of that portion of Niagara River will be under the direction of a designated Coast Guard Patrol Commander who is empowered to forbid and control movement of vessels in the area before, during, and after the events for such time as he finds it necessary for the safe and orderly conduct of the events.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) This § 100.35-0911 will become effective at 11:00 AM (EDT) to 7:00 PM on July 27 and 28, 1985.

Dated: May 31, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85-13928 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD09-85-02]

Special Anchorage Area, Little Traverse Bay, Lake Michigan, Harbor Springs, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard at the request of the Harbormaster, City of Harbor Springs, Michigan, is amending the Anchorage Regulations by establishing a channel through the existing Special Anchorage Area at Little Traverse Bay in Lake Michigan, Harbor Springs, Michigan.

The Harbormaster, City of Harbor Springs has requested the elimination of a section of the existing Special Anchorage Area in order to designate a navigable channel through the harbor.

The creation of this channel through the existing Special Anchorage Area will increase navigational safety in the harbor as it will provide direct access from the inner harbor to the open waters of Little Traverse Bay and Lake Michigan.

EFFECTIVE DATE: July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Ensign George Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3919.

SUPPLEMENTARY INFORMATION: On 1 April 1985 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 12837). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Ensign George Burns III, Marine Safety Division, project officer, and Lieutenant R. A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

There were no comments received. There have therefore been no changes to the final rule.

Economic Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since this modification only affects a portion of an existing anchorage area. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Part 110 § 110.82a is revised to read as follows:

§ 110.82a Little Traverse Bay, Lake Michigan, Harbor Springs, Michigan.

(a) *Area 1.* Beginning at latitude 45°25'42.2" N., Longitude 84°59'7.5" W.; thence to latitude 45°25'39.5" N., longitude 84°59'09" W.; thence to latitude 45°25'35" N., longitude 84°59'07" W.; thence to latitude 45°25'35" N., longitude 84°58'55.2" W.; thence to latitude 45°25'42.2" N., longitude 84°58'56.5" W., thence to the point of beginning.

(b) *Area 2.* Beginning at latitude 45°25'42.2" N., longitude 84°58'54" W.; thence to latitude 45°25'35" N., longitude 84°58'53" W.; thence to latitude 45°25'35" N., longitude 84°58'24.8" W.; thence to latitude 45°25'36.1" N., longitude 84°58'23"W.; thence to latitude 45°25'42.2" N., longitude 84°58'39" W., thence to the point of beginning.

Dated: May 29, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 85–13923 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[08–84–07]

Drawbridge Operations Regulations; Belle River, Lower Grand River and Pierre Pass, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operation of the following drawbridges:

(1) The pontoon bridge over Belle River, mile 43.5, on LA 70 near Belle River, Assumption Parish, Louisiana.

(2) The pontoon bridge over the Lower Grand River, mile 25.9, on LA 997 at Pigeon, Iberville Parish, Louisiana.

(3) The swing span bridge over Pierre Pass, mile 1.0, on LA 70 at Pierre Pass, Assumption Parish, Louisiana.

This change requires that the draws of the three bridges open on at least four hours advance notice from 10 p.m. to 6 a.m., and open on signal from 6 a.m. to 10 p.m. Presently, these draws are required to open on signal at all times.

The change is being made because of the infrequent requests for opening the draws during the prescribed advance notice period. This action will relieve the bridge owner of the burden of having persons constantly available at the bridges to open the draws during that period, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 29 November 1984, the Coast Guard published a proposed rule (49 FR 46917) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 12 December 1984. In each notice, interested persons were given until 14 January 1985 to submit comments.

Drafting Information:

The drafters of these regulations are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments:

Two comments were received expressing concern about the proposed rule. One was from a LDOTD bridgetender, who felt that the bridge over Pierre Pass could pose a safety hazard during the advance notice period, in the absence of a full time bridgetender to guard against possible vandalism and to perform preventive maintenance. This concern is unfounded, based on the experience of the LDOTD in the operation of other bridges with advance notice periods of eight to 24 hours daily. A marine service company expressed concern about a tow possibly having to wait at either the Belle River or Lower Grand River bridge for an opening during the advance notice period, because of being unable to keep the scheduled time of arrival. In a meeting with that company, the LDOTD reviewed how a tow could schedule an opening four hours in advance and revise that schedule while in transit by contacting the LDOTD District Office through public coast stations and/or LDOTD area bridges with radio telephones. Additionally, the LDOTD explained that a bridgetender would be at each bridge one half-hour before and after the scheduled arrival time, to provide an opening window. In light of this, the company withdrew its objection, which largely was based on the misconception that the advance notice would be in effect around the clock.

The National Oceanic and Atmospheric Administration (NOAA) commented that the proposed Belle River section number (§ 117.424) already is used for Bayou de Large, as published in the **Federal Register** of 29 October 1984 (FR 43460). Also, NOAA suggested that the Belle River and Lower Grand River mileage numbers be changed to correspond with those shown on NOAA navigation charts and NOAA's Coast Pilot publication. NOAA's comments

and suggestion are accepted. This document revises the section number for Bayou du Large with no change in the bridge's operating regulation, and, corrects the mileage numbers for the Belle River and Lower Grand River bridges.

Economic Assessment and Certification:

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridges during the prescribed advance notice period. For that period in 1983, both the Belle River and Lower Grand River bridges averaged 17.7 openings per month (one opening about every two days) while the Pierre Pass bridge averaged 9 openings per month (one opening about every three days). These vessels can reasonably give four hours notice for a bridge opening between 10 p.m and 6 a.m. by placing a collect call at any time to the LDOTD District Office in Baton Rouge, Louisiana, telephone (504) 925–8541. From afloat, this contact can be made through the Morgan City or Baton Rouge Public Coast Station.

Scheduling their arrival at the appointed time would involve little or no additional expense to the mariners. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

The LDOTD recognizes that there may be an unusual occasion, during the advance notice period, to open the bridges on less than four hours advance notice for a bona fide emergency or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

PART 117—[AMENDED]

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.424 is revised and §§ 117.443, 117.478 and 117.486 are added to read as set forth below:

§ 117.424 Belle River

The draw of the S70 bridge, mile 23.8 (Landside Route) near Belle River, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

§ 117.443 Du Large Bayou.

The draw of the Terrebonne Parish bridge, mile 23.2, near Theriot, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.478 Lower Grand River.

The draw of the S997 bridge, mile 41.5 (Landside Route) at Pigeon, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

§ 117.486 Pierre Pass.

The draw of the S70 bridge, mile 1.0 at Pierre Part, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: May 28, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–13927 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–85–09]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is adding regulations governing the McCormick bridge, mile 747.5 at Jacksonville Beach, by permitting the number of openings to be limited during certain periods. This change is being made because vehicular traffic has increased. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATES: These regulations become effective on July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, Bridge Administration Specialist, (305) 350–4103.

SUPPLEMENTARY INFORMATION: On March 25, 1985, the Coast Guard published proposed rules (50 FR 11736) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated April 2, 1985. In each notice interested persons were given until May 9, 1985 to submit comments.

Drafting Information:

The drafters of these regulations are Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments:

Two comments were received. Both supported the proposal.

Economic Assessment and Certification:

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because these regulations exempt tugs with tows and regularly scheduled cruise vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.261 is revised by redesignating paragraph (a) as (a–1) and adding a new paragraph (a) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) The draw of the McCormick Bridge, mile 747.5 at Jacksonville Beach, shall open on signal except as follows:

(1) During April, May, October, and November, from 7 a.m. until 8:30 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour.

(2) During April, May, October, and November, from 12 noon until 6 p.m. Saturday, Sunday, and federal holidays, the draw need open only on the hour and half-hour.

(3) Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

* * * * *

Dated: May 24, 1985.

A.R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District

[FR Doc. 85–13921 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AL–012; A–4–FRL–2848–5]

Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: On March 25, 1985, the State of Alabama requested that EPA delegate authority for implementation and enforcement of 13 additional categories of Standards of Performance for New Stationary Sources (NSPS), and 3 additional categories of National Emission Standards for Hazardous Air Pollutants (NESHAP). Since EPA's review of pertinent State laws and rules and regulations showed them to be adequate for the implementation and enforcement of these Federal Standards, the Agency has made the delegations as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is April 5, 1985.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE, Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the following address: Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, at the EPA Region IV address listed above, and phone 404/881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101 and 111(c)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS, and 40 CFR Part 61, NESHAP.

On August 5, 1976, EPA initially delegated the authority for implementation and enforcement of the NESHAP and NSPS programs to the State of Alabama. On March 28, 1985, Alabama requested a delegation of authority for implementation and enforcement of the following recently promulgated NSPS categories found in 40 CFR Part 60:

Subpart EE: Surface Coating of Metal Furniture
Subpart KK: Lead-Acid Battery Manufacture
Subpart LL: Metallic Mineral Processing Plants
Subpart NN: Phosphate Rock Plants
Subpart QQ: Graphic Arts Industry: Publication Rotogravure Printing
Subpart RR: Pressure Sensitive Tape and Label Surface Coating Industry
Subpart SS: Industrial Surface Coating—Large Appliances
Subpart TT: Metal Coil Surface Coating Operations
Subpart UU: Asphalt Processing and Asphalt Roofing Manufacture
Subpart WW: Beverage Can Surface Coating Industry
Subpart GGG: VOC Fugitive Emission Sources—Petroleum Refineries
Subpart HHH: Synthetic Fiber Production Facilities
Subpart JJJ: Petroleum Dry Cleaners

On the same date, the State of Alabama also requested authority for the following recently adopted NESHAP categories:

Subpart J: Benzene Equipment Leaks
Subpart M: Asbestos
Subpart V: Benzene Fugitive Emission Sources

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of August 5, 1976. Alabama sources subject to the requirements of Subparts EE, KK, LL, NN, QQ, RR, SS, TT, UU, WW, GGG, HHH, and JJJ of 40 CFR Part 60, and Subparts J, M, and V of 40 CFR Part 61, will now be under the jurisdiction of the State of Alabama.

(Secs. 101, 111, and 301 of the Clean Air Act (42 U.S.C. 7401, 7410, 7411, and 7601))

Dated: May 28, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85–13872 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[A–3–FRL–2845–6]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation. The Order requires the company to bring air emissions from its glass container closure manufacturing facility in Connellsville, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 21, 1987. Because of the Administrator's approval, compliance with the Order by Anchor Hocking will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–6553.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and

copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

SUPPLEMENTARY INFORMATION: On September 25, 1984 the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49, No. 187, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation. The notice asked for public comments by October 25, 1984 on the EPA proposal.

No public comments were received by this office, therefore, the delayed compliance order issued to Anchor Hocking is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Anchor Hocking on a schedule to bring its glass container closure manufacturing facility in Connellsville into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, section 129.52, "Surface Coasting Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Anchor Hocking to delay compliance with SIP regulations covered by the Order until April 21, 1987. (The proposed rulemaking notice contained an inadvertent statement that, "The order requires final compliance with the regulation by April 21, 1986 through the use of low solvent coatings, or by April 21, 1987 through the use of control equipment." It should have read, "The order requires final compliance by April 21, 1987 through the use of low solvent coatings or by the use of control equipment.") The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective June 10, 1985 because of the need to immediately place Anchor Hocking on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. By adding the following entry to the table in Part 65:

§ 65.431 EPA approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation involved	Date of FEDERAL REGISTER proposal	Final compliance date
Anchor Hocking Corporation	Connellsville, PA		Section 129.52 of Title 25.	Sept. 25, 1984	Apr. 21, 1987

[FR Doc. 85-13859 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 50, No. 111
Monday, June 10, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE–CP–SPRM–AR006, VA007, FL008, PA009, WI010, SC012, NM013, GA014, RI015, NH016, MA017, CA018, OR019, NY020, MO021, TX022, NJ023, IL024, UT025, IA026, WV027, MN028, WA029, KS030, HI031, TN032]

Energy Conservation Program for Consumer Products; State Petitions for Exemption From Federal Preemption of State Standards for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Central Air Conditioners and Furnaces

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: The Department of Energy gives notice that it is extending the period for final action to either grant or deny the petitions received from 26 States requesting, in each case, that one or more State or local energy efficiency standards pertaining to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces be exempted from Federal preemption. The Department is extending the period for such final action in the matter to July 5, 1985. The Department cites the large number and complexity of comments submitted, and the need for completing a substantive review of these comments as factors affecting the Department's timetable for this rulemaking action.

DATES: The Department of Energy is extending the period for final action to either grant or deny the petitions received from the 26 States to July 5, 1985.

ADDRESS: Copies of the State petitions, transcripts of public hearings, and public comments received may be obtained from the DOE Freedom of Information Reading Room:

U.S. Department of Energy, Freedom of Information, Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6020.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–113, Room GF–217, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Room 6B–128, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513.

SUPPLEMENTARY INFORMATION: Section 325 of Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619),[1] requires that the Department of Energy prescribe an energy efficiency standard for each of 13 major household appliances unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

Section 327(a)(2) of the Act provides that any Federal standard applicable under section 325 supersedes any non-identical State or local standard. Section 325(b) requires that a determination by DOE that no Federal energy efficiency standard for a particular product is warranted would also supersede any State or local energy efficiency standard. Section 327(b)(3), however, provides that a State may petition for, and DOE may issue, a rule exempting a State or local standard from Federal supersession. Section 327(b)(4) directs the Department to take final action to either grant or deny such a petition within 6 months of the date that the petition is filed, except that the Department may publish a notice in the **Federal Register** extending such period to a date certain. It is further required that such notice shall include the reasons for delay.

On December 22, 1982, DOE published a final rule in which DOE determined that energy efficiency standards for clothes dryers and kitchen ranges and ovens would not result in a significant conservation of energy and would not be economically justified. 47 FR 57198. (Referred to hereafter as the December 1982 rule.) The December 1982 rule also established procedures governing petitions to DOE by States to obtain exemption from preemption of State or local energy efficiency standards. These procedures, which are found at § 430.41(b)(2) of Subpart C of Part 430, Code of Federal Regulations,[2] require a State requesting exemption for an existing State standard to submit a notice of intent to petition within 60 days of publication of a final rule, and to submit a petition within 120 days of publication. Under these procedures, the applicable State standard remains in effect while DOE considers the petition. The procedures also allow a State to request exemption for a State standard after the 120-day period; however, in such a case, the applicable State standard is preempted by the Federal rule until DOE grants the petition.

Further, the December 1982 rule established Section 430.48(a) of the Regulation which restates the requirements of Section 327(b)(4) of the Act, previously discussed.

On August 30, 1983, DOE published a final rule with respect to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners, and furnaces. 48 FR 39376. (Referred to hereafter as the August 1983 rule.) For each product, except central air conditioners, DOE determined that an energy efficiency standard would not result in a significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE determined that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

In response to the August 1983 rule, DOE has received petitions from 26 States requesting, in each case, that one or more State or local energy efficiency standards pertaining to refrigerators and

[1] Part B of Title III of EPCA, as amended by NECPA, 42 U.S.C. 6291–6309, is referred to in this notice as the "Act".

[2] Part 430 of the Code of Federal Regulations is referred to in this notice as the "Regulation."

refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners, furnaces and kitchen ranges and ovens be exempted from Federal preemption.[3] The 26 States, and the products covered by each State's energy efficiency standards for which exemption from Federal preemption is sought, are identified in Table 1.

TABLE 1.—STATE PETITIONS

State	State code	Refrigerators and refrigerator-freezers	Freezer	Water heater	Room air conditioner	Central air conditioner	Furnace
Arkansas	AR006			X	X	X	X
Virginia	VA007			X	X	X	X
Florida	FL008			X	X	X	X
Pennsylvania	PA009				X	X	X
Wisconsin	WI010		X			X	X
South Caroline	SC012			X	X	X	X
New Mexico	NM013			X		X	X
Georgia	GA014			X	X	X	X
Rhode Island	RI015			X	X	X	X
New Hampshire	NH016			X	X	X	X
Massachusetts	MA017			X	X	X	X
California	CA018	X	X	X	X	X	X
Oregon	OR019			X	X	X	X
New York	NY020	X	X	X	X	X	X
Missouri	MO021			X	X	X	X
Texas	TX022			X	X	X	X
New Jersey	NJ023			X	X	X	X
Illinois	IL024	X	X	X	X	X	X
Utah	UT025			X	X	X	X
Iowa	IA026			X	X	X	X
West Virginia	WV027			X	X	X	X
Minnesota	MN028			X	X	X	X
Washington	WA029					X	
Kansas	KS030			X	X	X	X
Hawaii	HI031			X	X	X	X
Tennessee	TN032						

Pursuant to Section 327(b)(4) of the Act and Section 430.48(a) of the Regulation, the Department of Energy gives notice that it is extending the period for final action to either grant or deny the petitions received from 26 States, in response to the August 1983 rule, requesting, in each case, that one or more State or local energy efficiency standards pertaining to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces be exempt from Federal preemption. On August 14, 1984, DOE published a notice in the **Federal Register** extending the period for final action in this matter to May 13, 1985, and citing the complexity of processing the 26 State petitions as the factor affecting DOE's timetable for this action. 49 FR 32444. The Department is extending further the period for such final action in this matter to July 5, 1985.

The scope and complexity of many of the 340 comments submitted during the comment period and the need to conclude a substantive review and analysis of the comments has led DOE to extend the period for final action in this matter. Many of the comments included detailed product-by-product and/or State-by-State analyses of the petitions. Typically, the comments addressed the energy and cost savings attributed in the petitions to an applicable State or local energy efficiency standard for each product. Such comments also addressed economic impacts of standards, including business risk, product availability, manufacturer and consumer costs and export markets. The Department review of these comments is time consuming because of the amount and complexity of much of the information provided.

For the reasons cited above, and in consideration of the time and level of effort projected to conduct the rulemakings action on the matter of the 26 State petitions, the Department hereby gives notice that it is extending the period to July 5, 1985, for final action to either grant or deny the petitions received from 26 States requesting, in each case, that one or more State or local energy efficiency standard pertaining to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces be exempted from Federal preemption.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

[3] Since filing its petition, the State of Rhode Island has repealed the State's intermittent ignition device requirements for furnaces and kitchen ranges and ovens. However, Rhode Island is retaining its petition for its furnace energy efficiency standard.

Issued in Washington, D.C., May 29, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 85-13846 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 85-AWA-21]

Proposed Alteration to Restricted Area R-2401 Fort Chaffee, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to move the northern boundary of R-2401 to safely enable military activity in the restricted area simultaneously with aircraft conducting instrument landing system (ILS) approaches to Fort Smith Municipal Airport.

DATES: Comments must be received on or before July 26, 1985.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Southwest Region,
Attention: Manager, Air Traffic

Division, Docket No. 85–AWA–21, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3656.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 73.24 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to move the northern boundary of R–2401, located near Fort Smith, AR, approximately .5 nautical mile south. This change will provide aircraft conducting the Runway 25 instrument landing system (ILS) approach at Fort Smith Municipal Airport with the required separation from activities being conducted within R–2401 Fort Chaffee, AR. Section 73.24 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 is revised to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69.

2. By amending § 73.24 as follows:

R–2401 Fort Chaffee, AR—[Amended]

By removing the words "Beginning at lat. 35°18'35"N., long. 94°11'48"W.; to lat 35°18'10"N., long. 94°16'30"W.;" and substituting the words "Beginning at lat 35°18'17"N., long. 94°12'00"W.; to lat. 35°17'37"N., long. 94°17'23"W.;"

Issued in Washington, D.C., on June 4, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–13816 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9188]

Louisiana State Board of Dentistry; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subjected to final Commission approval, would require the Louisiana State Board of Dentistry (the Board), the sole licensing authority for dentists in Louisiana, among other things, to cease adopting or maintaining any rule, regulation, policy, or course of conduct that would tend to prevent or hinder the advertising or publishing of pricing discounts for dental products and services. The Board would also be barred from prohibiting any dentist or dental organization from advertising the availability of a discounted price; taking or threatening to take disciplinary action against advertisers of such prices, declaring the publication of discounted prices to be illegal, unethical, unprofessional or otherwise improper; and inducing or encouraging any individual or organization to take any of the actions prohibited by the order. The Board would be additionally required to distribute a copy of the order and an explanatory announcement to all dentists licensed to practice in Louisiana; and provide such material to all those applying for a license for a period of two years.

DATE: Comments must be received on or before August 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the

Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur Lerner, FTC/P-1038, Washington, D.C. 20580. (202) 724-1341.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Advertising, Dentists, Trade practices.

Before Federal Trade Commission

[Docket No. 9188]

In the Matter of Louisiana State Board of Dentistry.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between the Louisiana State Board of Dentistry by its duly authorized officer, and its special counsel and co-counsel, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Louisiana State Board of Dentistry is organized and exists under the laws of the State of Louisiana, with its principal office at Ten-O-One Howard Avenue, Suite 4308, New Orleans, Louisiana 70113. Respondent was created by the Louisiana Legislature in 1880 to govern and regulate the practice of dentistry in Louisiana; in 1976 Respondent was placed under the Louisiana Department of Health and Human Resources.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Solely for purposes of this agreement and order and any subsequent action pursuant to the Federal Trade Commission Act for a violation of this order, Respondent admits all of the jurisdictional allegations set forth in the Commission's complaint in this proceeding.

4. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as allleged in the said copy of the complaint issued by the Commission.

5. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the other entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. It this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

For the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Louisiana State Board of Dentistry, its officers, committees, representatives, agents, employees, and successors.

B. "Discounted price" shall mean a price offered or charged by a person or organization for any dental product or service that is less than the price the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted price."

C. "Price advertising" shall mean advertising or publishing information about the price of any dental product or service. It shall not include express offers to provide a product or service free of charge.

D. "Disciplinary action" shall mean:

1. The revocation or suspension of, or refusal to grant, a license to practice dentistry in Louisiana, or the imposition of a reprimand, fine, probation, or other penalty or condition; or

2. The initiation of an administration, criminal, or civil proceeding.

II

It is ordered that the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any device:

A. Prohibiting, restricting, impeding, or discouraging any person or organization from advertising the availability of, offering, or publishing a discounted price, or otherwise engaging in price advertising. Such conduct includes, but is not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit any person or organization from advertising the availability of, offering, or publishing discounted prices;

2. Taking or threatening to take any disciplinary action against any person or organization for advertising the

availability of, offering, or publishing discounted prices; and

3. Declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise the availability of, offer, or publish discounted prices; and

B. Inducing, urging, or encouraging any dentist, group of dentists, or dental association to take any of the actions prohibited by this Part.

Provided that nothing in this Order shall prevent the Board from adopting and enforcing reasonable rules, including reasonable affirmative disclosure requirements, or taking disciplinary or other action, to prevent advertising theat the Board reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of Louisiana Revised Statutes §§ 37775(3), 37776(12), 37776(16) or any Louisiana statutory provision governing dental advertising enated subsequent to the date this Order becomes final, as limited by the First and Fourteenth Amendments to the Untied States Constitution.

In particular, nothing in this Order shall prevent the Board from finding to be fraudulent, false, deceptive, or misleading:

a. Advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual charged by that dentist;

b. Advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that service; and

c. A dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonble period of time from publication of the offer.

III

It is further ordered that this Order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of dentistry as defined in Louisiana Revised Statutes §§ 37:751 *et seq.*

It is further ordered that the Board shall:

A. Distribute by mail an announcement in the form shown in Appendix A, and a copy of this Order:

1. To each person licensed to practice dentistry in Louisiana, and to each person who has at the time this Order becomes final a pending application for such a license, within sixty (60) days after this Order becomes final; and

2. For a period of two (2) years after this Order becomes final, to each person who hereafter applies for a license to practice dentistry in Louisiana, within sixty (60) days after he or she applies for the license;

B. Within one hundred twenty (120) days after this Order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this Order;

C. For a period of five (5) years after this Order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this Order, including records of rulemaking and enforcement proceedings, and written communications, and any summaries of oral communications, to or from the Board regarding the advertising of the availability of, or the offering or publishing of, discounted prices, or other price advertising.

D. In addition to the report required by Part IV.B., at such times as the Commission may by written notice to the Board reasonably require, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this Order; and

E. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practice of dentistry in Louisiana that may affect compliance obligations arising out of this Order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board.

Appendix A—Announcement

[Date]

As you may be aware, the Louisiana State Board of Dentistry has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit dentists from advertising the availability of discounts from their usual fees, or otherwise restrict price advertising for dental services or products, except as provided below. In particular, with respect to advertising of discounts, the Board may not (1) adopt rules, regulations, or policies prohibiting the advertising of discounted prices for dental care, (2) take disciplinary action (such as the imposition of a fine, or the suspension or revocation of a dental license) or threaten disciplinary action against dentists who so advertise, or (3) declare it to be illegal or unethical for dentists to so advertise, except as provided below. The Board is also prohibited from encouraging any dentist or dental association to take actions that the order prohibits the Board from taking.

The Order does not affect the Board's authority to prohibit, and discipline dentists for, (1) advertising free dental services or examinations as an inducement to secure dental patronage (which is expressly prohibited by Louisiana law), or (2) advertising that is fraudulent, false, deceptive, or misleading. Furthermore, the order does not affect the Board's authority to adopt and enforce reasonable affirmative disclosure requirements to prevent advertising that the Board reasonably believes is fraudulent, false, deceptive, or misleading.

In particular, the order provides that the Board may find to be fraudulent, false, deceptive, or misleading:

a. Advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual price charged by that dentist;

b. Advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that service; and

c. A dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonable period of time from publication of the offer.

For more specific information, you should refer to the attached FTC order.

President, Louisiana State Board of Dentistry.

LOUISIANA STATE BOARD OF DENTISTRY DOCKET NO. 9188

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Louisiana State Board of Dentistry.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received

and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

The Commission issued a complaint against the Louisiana State Board of Dentistry ("the Board") on October 29, 1984. The complaint charged the Board with unlawfully prohibiting dentists from adverstising discounts from their usual fees, in violation of Section 5 of the Federal Trade Commission Act. The complaint further alleged that the effect of the Board's conduct has been to suppress competition in the sale of dental services in Louisiana.

The Board is the state licensing authority for dentists in Louisiana. Aside from one dental hygienist, who by law may vote only on matters pertaining to the profession of dental hygiene, the Board is composed entirely of dentists who are engaged in the private practice of dentistry. Most of these dentists, the complaint states, are nominated to serve on the Board by the dentists in their local congressional districts. The rest are appointed by the Governor as at-large members. According to the complaint, the dentists serving on the Board compete with the dentists they regulate.

The complaint alleged that the Board, since at least February 1982, has prohibited advertising of discounts without regard to the truth or falsity of the advertising, and has coerced individual dentists into abandoning their efforts to advertise truthful information about discounts from their usual fees. The complaint cited as an example a group of dentists who advertised a "Back to School Special" offering cleaning, examination, fluoride treatment, and bitewing x-rays for a specified price. The complaint also alleged that the Board acted to prohibit advertising of discounted prices even though it knew that it was unconstitutional for the Board to restrict truthful advertising of the cost and availability of routine dental services.

The Board's restriction of discount advertising is subject to federal antitrust law, the complaint charged, because Lousisiana law does not establish a state policy of restricting truthful advertising of discounted prices. According to the complaint, the state of Louisiana does not ban truthful advertising by dentists, and state laws now in effect do not prohibit dentists from offering or truthfully advertising discounts from their usual fees. The complaint charged the Board based its restrictions on a Louisiana law that declares that advertising free dental services "as an inducement to secure dental patronage" to be unprofessional conduct.

The complaint alleged that the Board's conduct injured competition and consumers in several ways. First, it has restrained price competition among dentists. Second, it has deprived consumers of the benefits of vigorous price competition among dentists, causing some consumers to pay higher prices for dental services and others to delay or forgo needed dental care. Third, it has prevented dentists from disseminating truthful information about their fees and restricted their ability to provide services through innovative dental care financing arrangements that involve discounting of fees. Finally, it has deprived consumers of valuable information about dentists' fees, including the identities of dentists who offer special discounts to the elderly or others.

The Proposed Consent Order

The consent order is designed to remedy the violation charged in the Commission's complaint, and to prevent the Board from engaging in similar allegedly illegal acts and practices in the future. The proposed order is intended to ensure that the Board ceases all conduct prohibiting or discouraging dentists from truthfully advertising discounts or other information about their fees. It is also intended to ensure that dentists in Louisiana are made aware that advertising of discounts is permissible.

Part II of the proposed order prevents the Board from prohibiting, restricting, impeding, or discouraging any person or organization from advertising the availability of, offering, or publishing a "discounted price," which is defined in Part I of the order to be a price for a dental product or service that is less than that usually offered or charged by the person or organization for the product or service. The Board is also prohibited from restricting any person or organization from engaging in other price advertising.

Both "discounted price" and "price advertising" are defined in Part I of the proposed order to exclude express offers to provide a product or service free of charge. This exclusion is intended to leave untouched the Board's authority to enforce a Louisiana statutory provision, Louisiana Revised Statutes § 37:775(7), that defines "the advertising of any free dental services as an inducement to secure dental patronage" to be unprofessional conduct. In so doing, the Commission expresses no opinion as to the constitutionality of this statutory provision.

Part II of the proposed order also provides that nothing in the order would prohibit the Board from taking action against advertising that it reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of certain Louisiana statutory provisions pertaining to dental advertising, provided that such action is consistent with the First and Fourteenth Amendments to the United States Constitution. In addition, the proposed order declares that the Board is not prevented from finding the following to be false, fraudulent, deceptive, or misleading:

a. Advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual price charged by that dentist;

b. Advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that serivce; and

c. A dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonable period of time from publication of the offer.

Part III provides that nothing in the proposed order prevents the Board from seeking legislation concerning the practice of dentistry.

Part IV of the proposed order would require the Board to distribute a copy of the order and an explanatory announcement to all licensed dentists in Louisiana, and, for a period of two years, to all applicants for a dental license. The text of the announcement is contained in Appendix A of the proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-13883 Filed 6-7-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 842 3123]

Montana Board of Optometrists; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Montana Board of Optometrists (the Board), among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that has the effect of prohibiting, restricting or discouraging any qualified person from advertising price-related terms or claims of professional superiority; and declaring such advertising to be illegal, unethical, or unprofessional. The Board would be barred from taking or threatening disciplinary action against any individual or organization that advertises price-related terms and claims of professional superiority; and from inducing or assisting others to take any of the prohibited actions. The order would further require that the Board timely distribute a copy of the order together with an explanatory announcement to each licensed optometrist in the state and to provide a copy to all those individual who apply for a license, for a period of five years.

DATE: Comments must be received on or before August 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Cynthia Wicker, FTC/H–292, Washington, D.C. 20580, (202) 423–5607.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Advertising, Optometrists, Trade practices.

Before the Federal Trade Commission

[File No. 842 3123]

In the Matter of Montana Board of Optometrists.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Montana Board of Optometrists and it now appearing that the Montana Board of Optometrists, hereinafter sometimes referred to as Proposed Respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the Montana Board of Optometrists by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission as follows:

1. Proposed Respondent is organized, exists and transacts business under the laws of the State of Montana, with its principal office and place of business located at Department of Commerce, 1424 9th Avenue, Helena, Montana 59620–0407.

2. Proposed Respondent admits all of the jurisdictional allegations set forth in the draft of the attached complaint.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission both it and the draft complaint will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of the attached complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, in disposition of the proceeding, and without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute, as other orders. The order shall become final upon service. Delivery of the complaint and decision containing the order agreed upon, by the U.S. Postal Service, to Proposed Respondent's address as stated in this agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the proposed complaint and order. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

For the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Montana Board of Optometrists, its successors and assigns.

B. "Disciplinary action" shall mean:

1. The refusal to grant, or the restriction, revocation or suspension of, a license to practice optometry in Montana; the refusal to admit a person to examination for a license to practice optometry; the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; or the imposition of a fine, probation, or other penalty or condition; or

2. The initiation of an administrative, criminal, or civil court proceeding against any person or organization.

C. "Price-related terms" are terms that refer to:

1. Free eye examinations;

2. Down payments, or any stipulated amount of money as a down payment, or any indication that no down payment is required;

3. Periodic payments, or any stipulated amount of money as periodic payments;

4. Credit, installment, or any other term relating to deferred payments.

D. "Professional superiority" shall mean any truthful claim of specialization, skill, equipment, treatment, training, experience or service offered, or any other information that would tend to distinguish an advertiser's practice from other ophthalmic practices.

I

It is ordered that the Montana Board of Optometrists, its officers, agents, committees, representatives, employees, successors, and assigns, directly or indirectly, through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, impeding, or discouraging any person from advertising or publishing the prices, terms or conditions of sale for any ophthalmic service or product offered for sale or made available by any person or organization that may lawfully offer the service or product. Such actions include, but are not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that has the purpose or effect of prohibiting, restricting, or discouraging any person from advertising price-related terms or claims of professional superiority;

2. Taking or threatening to take any disciplinary action against any person or organization for advertising price-related terms or claims of professional superiority;

3. Declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise price-related terms or claims of professional superiority; and

B. Inducing, urging, encouraging or assisting any optometrist or any optometric association, group of optometrists, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this part.

Provided that, nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action to prohibit: (1) Advertising that uses the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; or (2) advertising in a manner that the Board reasonably believes is ambiguous or misleading within the meaning of Mont. Code Ann. § 37–10–311(2) (h) & (i).

Provided further that, this Order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of optometry.

II

It is further ordered that the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A and a copy of this Order:

1. To each person presently licensed to practice optometry in Montana, and to each person who has on the date of service of this Order a pending application for such a license, within thirty (30) days after the date of service of this Order; and

2. For a period of five (5) years after the date of service of this Order, to each person who hereafter applies for a license to practice optometry in Montana, within thirty (30) days after such person applies for the license;

B. For a period of five (5) years after the date of service of this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of all records relating to advertising, including but not limited to, written communications, and any summaries of oral communications to or from the Board regarding the offering, publishing or advertising on information about ophthalmic services;

C. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practive of optometry in Montana that may affect compliance obligations arising out of this Order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board;

D. Within sixty (60) days after the date of service of this Order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which the Board has complied with this Order.

Appendix A—Announcement

[Date]

As you may be aware, the Montana Board of Optometrists has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit optometrists from truthfully advertising their services. The Board may not (1) adopt or maintain rules, regulations, or policies that prohibit truthful advertising of price-related terms and claims of professional superiority with respect to the sale of optometric services, (2) take disciplinary action (such as the suspension of revocation of a certificate of license) or threaten disciplinary action against any person or organization so advertising or (3) declare it to be illegal or unethical for persons to so advertise. The Board is also prohibited from encouraging any optometrist or any professional group or association to take actions that the order prohibits the Board from taking. The order does not affect the Board's authority to prohibit and discipline licensees for advertising that is ambiguous or misleading.

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed. Further information may be obtained from the FTC by calling Jack L. Young at (202) 523–3596.

[Title]

Montana Board of Optometrists.

MONTANA BOARD OF OPTOMETRISTS FILE NO. 842 3123

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Montana Board of Optometrists (the "Board").

The proposed consent order has been placed on the public record for sixty (60) days to allow interested persons to comment. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that:

The Board is subject to the Commission's jurisdiction pursuant to section 5 of the Federal Trade Commission Act.

The Board has acted as a combination or conspiracy of its members or combined or conspired with others to unreasonably restrain competition among optometrists in Montana by

adopting rules prohibiting the dissemination of truthful, nondeceptive information about ophthalmic goods and services, and by coercing individuals to abandon their efforts to advertise truthfully the nature and quality of ophthalmic goods and services. These activities constitute unfair methods of competition and unfair acts or practices in violation of section 5 of the Federal Trade Commission Act.

The Board is organized and exists under the laws of the State of Montana, and is the sole licensing authority for optometrists in that state. It is responsible for establishing standards and rules governing the conduct of optometrists in Montana, so long as such standards and rules are not inconsistent with state law. The Board is authorized to subject persons who violate its rules, or the state laws relating to optometry to disciplinary actions ranging from warnings to revocation of their licenses.

The Board is controlled by optometrists who by law must be actively engaged in the exclusive practice of optometry while serving their membership terms. Except to the extent that competition is restrained as alleged in the complaint, optometrists compete with one another and the Board's optometrist members compete with the optometrists they regulate.

The Board's anticompetitive practices are at variance with state policy, since the State of Montana has a clearly articulated policy protecting the truthful, nondeceptive advertising of optometric goods and service. In 1980 the Office of the Legislative Auditor conducted a review of the Board pursuant to the Montana Sunset Law. The Auditor concluded that a then extant Montana statute prohibiting the advertising of prices or price terms appeared to be unconstitutional. The Montana Legislature repealed the statute in 1981. The current statute prohibits ambiguous or misleading advertising and the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. The statute specifically does not prohibit legitimate or truthful advertising by an optometrist. State law limits rulemaking authority to rules not inconsistent with the provisions of the statute.

In furtherance of the combination or conspiracy, and in direct violation of the state policy favoring truthful advertising, the Board adopted rules that prohibit the advertising of free eye examinations, down payments, credit and installment terms, and claims of professional superiority or of having equipment others cannot obtain.

The Board issued at least two cease and desist letters citing optometric practices for violating a Board rule forbidding optometric advertisements containing the terms "Contact Lens Clinic" and "Vision Center" after that rule had been repealed.

The Board has continued its course of conduct despite being advised by the Montana Attorney General in 1979 that the regulations described in the complaint violate state and federal antitrust laws and should be repealed.

As a result of the Board's restraints on advertising, consumers have been deprived of the benefits of vigorous competition and of truthful information about free eye examinations, credit and payment terms, and differences in the skills, training and experience of optometrists. Optometrists have been prevented from competing on the basis of making this information available to consumers through advertising.

Description of the Proposed Consent Order

The proposed order would require the Board to cease and desist from prohibiting, restricting, impeding or discouraging any person from advertising the prices, terms or conditions of sale for any ophthalmic service or product offered for sale or made available by any person or organization lawfully offering the service or product. Thus, the Board would have to repeal its rules prohibiting the advertising of pricing terms and superiority claims, and would have to refrain from adopting any other rule or policy that prohibits or discourages such advertising. The order would further prohibit the Board from inducing, urging, encouraging or assisting others to take any of the actions prohibited by the order.

The order provides, however, that the Board may adopt and enforce reasonable rules and take disciplinary action to prohibit advertising that uses the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist, and advertising that the Board reasonably believes is ambiguous or misleading within the meaning of Montana State Law. The order also provides that the Board is entitled to petition for legislation concerning the practice of optometry.

The proposed order would require that the Board distribute a copy of the order and an announcement notifying all licensees, as well as all persons with applications pending, of the existence and terms of the consent agreement within (30) days after the order becomes final. The Board would be required to send the same notice to each person who applied for a license for a period of five (5) years thereafter. To ensure that the proposed order is obeyed, the Board would be required within sixty (60) days after the order becomes final to file a written report with the Commission setting forth the manner and form of its compliance. The Board would also be required, for a period of five (5) years, to make its records available to the Commission, and to notify the Commission within thirty (30) days of any change in the Board's authority to regulate the practice of optometry that might affect its ability to comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to in any way modify their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-13884 Filed 6-7-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 832 3031]

Wein Products, Inc., et al.; Proposed Consent Agreement with Analysis To Aid Public Comment; Correction

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Monday, June 3, 1985 (50 FR 23313, FR Doc. 85-13141). The end of the comment period was incorrect. Comments will be received until Aug. 2, 1985.

FOR FURTHER INFORMATION CONTACT: Harrison J. Sheppard, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556-1270.

Emily H. Rock,

Secretary.

[FR Doc. 85-13885 Filed 6-7-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 50448-5048]

Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The International Trade Administration proposes to revise its regulations to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning countervailing duties and modify in other respects provisions in the current version of Part 355. The modifications are intended to improve administration of the countervailing duty provisions of the Tariff Act of 1930.

DATES: Written comments must be received not later than August 9, 1985.

ADDRESS: Address written comments to Alan F. Holmer, Deputy Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Assistant General Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. The International Trade Administration ("ITA") has determined that this proposed revision of the current countervailing duty regulations in 19 Code of Federal Regulations ("CFR") Part 355 is not a major rule as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because it will not: (1) Have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Paperwork Reduction Act. The information collection requirement contained in 19 CFR Part 355 has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been assigned OMB control number 0625-0148.

Regulatory Flexibility Act. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the proposed rule simply improves the administration of the countervailing duty provisions of the Tariff Act of 1930, as amended. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Background

The current countervailing duty regulations in Subparts A, B, and C of 19 CFR Part 355 (45 FR 4932; January 22, 1980, as amended by 49 FR 22466; May 30, 1984) are based on Subtitles A, C, and D of Title I of the Trade Agreements Act of 1979 ("Trade Agreements Act"), which amended section 303 and Title VII of the Tariff Act of 1930 (19 U.S.C. Subtitle IV, Parts I, III and IV) ("Tariff Act"). Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98-573; October 30, 1984) ("1984 Act") amended those provisions, effective on the dates specified in the interim-final rule adding a new Subpart E to 19 CFR Part 355 (50 FR 5746; February 12, 1985). The current regulations relating to subsidies on quota cheese in Subpart D of 19 CFR Part 355 (45 FR 74469; November 10, 1980) are based on section 702 of the Trade Agreements Act (19 U.S.C. 1202 note).

Some of the proposed changes to the current countervailing duty regulations are necessary to implement the amendments made by the 1984 Act. Other proposed changes: (1) Incorporate existing administrative interpretations and practices, not currently stated in the regulations, that will continue under the amended statute; (2) improve administrative efficiency in countervailing duty proceedings; or (3) simplify the language of existing regulations. The proposed text of Part 355 would replace the entire current text of Part 355.

Grammatical changes throuhout the text of the proposed regulations are the use of the word "Secretary" in place of "administering authority," use of the active rather than passive voice, and simplification of sentence structure. When possible, cross references to other sections of this part replace references to the Tariff Act.

Other changes in the regulations incorporated in this proposed rule are described in the following section-by-section analysis.

1. *Section 355.1.* This section corresponds to section 355.0 of the current regulation. The paragraph on environmental impact statements is deleted. References to section 702 of the Trade Agreements Act and to Title VI of the 1984 Act are added.

2. *Section 355.2.* This section corresponds to §§ 355.6 and 355.7 of the current regulation.

Subsections (a) through (f) are revised for clarity.

Subsection (g) is a new definition of "factual information," a term used throughout the proposed rule, especially in §355.31. Factual information and argument (written and oral) describe the submissions which may be made to the Department during a proceeding.

The current definition of "industry" is clarified in subsection (h) of the proposed rule to highlight those aspects of the statutory definition (section 771(4) of the Tariff Act) regarding whether the petitioner has filed "on behalf of" an industry, as required by section 702(b)(1) of the Tariff Act. The modification does not change current practice. The Department would consult with the International Trade Commission on the decision concerning the "like product."

In subsection (i) of the proposed rule, paragraph (6) is added to the definition of "interested party" to include coalitions of firms, unions, or trade associations that have individual standing, as defined in paragraphs (3), (4), or (5). The change conforms the definition to section 771(9) of the Tariff Act, as amended by section 612(a) of the 1984 Act. The word "seller" replaces "wholesaler" in paragraph (3) to clarify that the provision includes all sellers (except retail sellers) rather than only selers at the wholesale level of trade. This change is consistent with current practice. Otherwise, the definition of "interested party" is changed for clarity only.

The definition of "investigation", in subsection (j), is revised to include investigations that begin with a notice of continuation of an investigation under § 355.19 after the Secretary finds that a suspension agreement has been violated. It also includes a reference to investigations that end with a notice of suspension of investigation.

Subsection (k), which is new, is a definition of "the merchandise." The definition avoids continual repetition throughout the proposed regulations to "the class or kind of merchandise subject to the proceeding which has either been imported or sold, or is likely to be sold, for importation."

The definition of "party to the proceeding" in subsection (l) requires,

instead of the current written request, that an interested party actively participate in the particular segment of the proceeding that is judicially reviewable. In order to participate in litigation under section 516A(d) of the Tariff Act, an interested party must be a party to the proceeding. Active participation in the proceeding is a reasonable prerequisite for the right to participate in judicial review of the results.

The definition of "proceeding" in subsection (n) is revised to cover administrative reviews at the direction of the President, under § 355.22(i), and to cover dismissal of a petition prior to initiation of an investigation, rescission of an initiation, and termination of a suspended investigation.

The definition of "order" in § 355.6 of the current regulations is deleted, because orders are defined and described in § 355.21. The definition of "determination" in § 355.6 of the current regulation is deleted because it is not needed.

The new definitions of "producer" and "production" (subsection (o)) are intended to simplify regulatory language by substituting a single word for the phrase "manufacturer or producer" or "manufacture and production" wherever it appears.

Subsection (p) of the proposed rule includes for the first time definitions of "sale" and "likely sale." The definition of "likely sale" implements sections 701(a) and 705(b)(1) of the Tariff Act, as amended by section 602(a) of the 1984 Act. Only in the event that no sale has been consummated will the Secretary consider likely sales, as defined in this subsection. "Likely sale" means an offer that the seller has made irrevocable for a period of time. The definition of "sale" is based on current practice. A "sale" includes a contract to sell, even though during the proceeding the contract may be contingent on a future even or occurence, may not have been reduced to writing, or may not yet be complete in every detail.

The definition of "Secretary" in subsection (q) is amended to summarize current delegations of authority from the Secretary of Commerce and thereby clarify the references to "Secretary" throughout the regulations.

3. *Section 355.3.* Sections 355.15 through 355.21 of the current regulation are completely reorganized and modified, as explained below. Generally, the regulatory procedures for release of proprietary information under administrative protective order are simplified, in accordance with the amendments to section 777 of the Tariff Act made by the 1984 Act.

Rewritten under a new section title, § 355.3 describes in subsections (a) and (b) the two types of records of the proceeding, the official record and the public record. For the purposes of judicial review, the official record under section 516A(b)(2) of the Tariff Act is the official record of the judicially reviewable segment of a proceeding. For example, the record we would file with the court in the event of a judicial challenge to the final results of administrative review issued by the Secretary under § 355.41(c) are the documents pertinent to that particular administrative review. Unless those documents had been used by the Department in the later review, we would not include documents pertinent to an earlier administrative review, or to the investigation, unless those documents had been resubmitted during the review being challenged, in accordance with these proposed rules, and were pertinent to the review. This reflects our current practice. The public record is available for inspection and copying, as described in the proposed rule.

Subsection (c) of the current regulation, concerning reports on the progress of investigation, is deleted because it is unnecessary. No report has ever been requested. The public file provides an accurate record of the progress of the investigation.

Subsection (c) of the revised regulation retains the basic requirement for protection of the record that is stated in subsection (d) of the current regulation. Submission of the official record to the court for the purpose of judicial review is addressed in section 516A(b)(2) of the Tariff Act and in court rules. Reference to submission to the court is deleted in the revised version of this subsection, because these rules do not address procedures for judicial review.

4. *Section 355.4.* Section 355.4 defines each of the four types of information that may be contained in the official file of the proceeding: public, proprietary, privileged, and classified. The term "proprietary" is used throughout the revised regulation in place of the term "confidential" (the term used in the current regulations) to describe the type of business information defined in paragraph (b)(2) of this subsection. "Proprietary" more accurately describes this category of information and eliminates possible confusion with the national security classification of "confidential."

Subsection (a) of the proposed rule generally tracks the substance of the current regulation in § 355.19(b). Written argument, which is described in § 355.39 of the proposed rule, normally is public rather than proprietary.

Subsection (b) of the proposed revision provides a more specific and complete list of information normally considered proprietary than does § 355.19(c) of the current regulation. The list reflects the agency's experience with the various types of proprietary and other information submitted in proceedings. We have found that many of the disagreements over disclosure may be traced to the inappropriate designation of information as proprietary.

Subsections (c) and (d) of the proposed revision are new, although they do not change Department practice. They are intended to complete the definition of the types of information in the official record. Factual information does not acquire national security "classified" status merely because a foreign government submits it to the Secretary. The Department will continue its practice of ensuring that transmission of information through a foreign government is not used to avoid disclosure of publicly available information or of proprietary business information. Of course, during the Secretary's consideration of the request, documents submitted by a government with a request that it be held in confidence will be accorded such treatment, consistent with Executive Order 12356.

5. *Section 355.5.* This section of the proposed rule corresponds to § 355.44 of the current regulation. The proposed rule provides more specific information about the location of the subsidy library.

6. *Section 355.6.* This section, which corresponds to § 355.51 of the current regulation, concerns the effective dates of amendments to the Tariff Act made by the 1984 Act. Section 355.51 was published as an interim final rule on February 12, 1985 (50 FR 5748).

7. *Section 355.11.* This section corresponds to section 355.25 of the current regulation. By use of the term "the merchandise," subsection (a) and later sections of the proposed rules incorporate the concept of likely sales for importation that was added explicitly to section 701(a) of the Tariff Act by section 602 of the 1984 Act. See preamble comment on § 355.2(k). As under § 355.27(b) of the current regulation, subsection (a)(1) of the proposed rule provides for consultation with the Commission on the description of the merchandise. Commission access to information is government by section 355.32(f)(3) of the proposed rule.

8. *Section 355.12.* This section corresponds to § 355.26 of the current

regulation. Subsection (a) of the proposed rule states the general requirements for filing a petition found in § 355.26 of the current regulation. Coalitions of domestic interested parties have the ability to file petitions, consistent with section 612(a)(3) of the 1984 Act. See H.R. Rep. No 98–1156, 98th Cong., 2d Sess. at 175 (1984) ("Conference Report").

Subsection (b) of the proposed rule, entitled "Contents of Petition," corresponds to subsection (a)(1) through (a)(13) of § 355.26 of the current regulation, with some modifications. Subsection (b)(2) of the proposed rule combines subsection (a)(2) and (a)(11) of the current regulation.

Subsection (b)(4) clarifies that the petitioner's description of the merchandise does not necessarily determine the scope of an investigation initiated under § 355.13. In some instances the Secretary may expand or contract the class of kind of merchandise under investigation to conduct an adequate investigation.

Subsection (b)(6) requires reasonable quantification of the share of total exports to the United States accounted for by each allegedly subsidized exporter or producer. This change is consistent with current practice.

Subsection (b)(7) highlights the requirement that petitioner document allegations about subsidy programs. Such documentation helps the Department to judge quickly the adequacy of a petition and to prepare the questionnaires referred to in § 355.31 of the proposed rule.

Subsection (b)(8), which is new, implements section 771A of the Tariff Act, as added by section 613 of the 1984 Act. The subsection sets out petition requirements concerning upstream subsidies.

Subsection (b)(9) of the proposed rule combines without substantive changes subsections (a)(8) and (a)(9) of the current regulation.

Subsection (b)(10) reflects the new definition of likely sales for importation. See preamble comment on § 355.2(p).

The requirement at the end of subsection (a) of the current regulation, concerning forms for submission of petitions is deleted. The only form for petitions is stated in subsection (b) of the proposed rule.

The requirement in subsection (b) of the current regulation, concerning English translations, appears in § 355.31(f) of the proposed rule.

Subsections (c) and (e) of the proposed rule clarify the simultaneous filing requirement for petitions and amendments to petitions contained in subsections (c) and (e) of the current regulation. In addition to Title VII investigations, under section 303 of the Tariff Act the Commission must under certain conditions make injury determinations in investigations involving duty-free merchandise from non-agreement countries. Subsection (e) of the proposed rule also includes a filing certification requirement (as does subsection (c)) and a reference to the time limits in § 355.31.

Subsection (d) is revised for clarity.

Subsection (f) of the proposed rule corresponds to portions of subsection (a) and to subsection (f) of the current regulation. It cross-references the requirements of subsections (d) and (e) of § 355.31 concerning where to file, time of delivery, format, and number of copies. Section 355.31(d) also states the time at which the Department considers a document filed.

Subsection (g) is revised for clarity.

Subsection (h) is added to implement section 702(b)(3) of the Tariff Act, as added by section 650 of Pub. L. 98–181 (November 30, 1983), concerning petitions based solely on alleged derogation of an international undertaking on official export credits. Under this provision the Secretary of the Treasury determines, in consultation with the Secretary, the existence and estimated value of the alleged derogation within 20 days after the petitioner files the petition. Given the short deadline, the simultaneous filing requirement stated in subsection (h) of the proposed rule is a reasonable means of implementing the statutory notification requirement. We not that the determination regarding derogation does not constitute the subsidy determination required by this Part.

Subsection (i)(1), which is new, implements section 221 of the 1984 Act, which explicitly requires the Department to provide technical assistance to eligible small businesses in the preparation and filing of petitions under this section. Subsection (i)(2) is revised to identify specifically the person to contact for additional information on filing any petition.

Subsection (j), which is new, limits communication, before the Secretary determines whether or not to initiate an investigation under § 355.13, between the Secretary and persons that might be respondents in the investigation. The only exception to this limitation on pre-initiation communication with potential respondents is stated in subsection (j)(2), which provides that the Secretary may consult with the representatives of the affected country to the extent required by the international obligations of the United States. The subsection is consistent with the decision of the Court of Appeals for the Federal Circuit in *United States* v. *Roses, Inc.*, 706 F.2d 1563 (1983).

9. *Section 355.13.* This section corresponds to § 355.27 of the current regulation. Subsection (a) of the proposed rule corresponds to subsection (a) and portions of subsection (b) of the current regulation. The last sentence of subsection (a) of the current regulation is now incorporated in § 353.31(d) of the proposed rule.

Subsection (b) of the proposed rule conforms the contents of the notice of initiation published under this section to that for notices of self-initiation under § 355.11. It also limits the requirement for special notice to the Commission to those investigations requiring a determination of injury.

Subsection (c) reflects the Secretary's authority to dismiss a petition in whole or in part. An example of partial dismissal is the Secretary's decision not to initiate an investigation of a subsidy allegation which the Secretary previously found not to be a subsidy and which is not supported by new evidence.

Subsection (d) of the current regulation, which concerns notice to the Commission of the Secretary's decision, appears in subsections (b) and (c) of the proposed rule.

10. *Section 355.14.* This section corresponds to the second sentence of § 355.38 of the current regulation. It now specifies requirements for requests for exclusion from an order, including certifications of the producer, exporter, and the government of the affected country. The Secretary will not extend the time limit for submission of requests for exclusion. Once submitted, a request for exclusion may not be withdrawn, because the Secretary's investigation will be structured to take account of the request for exclusion. The certification requirement, which is tied to the programs the Secretary identifies in the notice of initiation of investigation, is intended to eliminate frivolous requests. (See also § 355.33(e) for the consequences of submission of exclusion certificates which the Secretary is unable to verify.)

Under subsection (c), the Secretary will investigate requests for exclusion "to the extent practicable," which means that the Secretary will consider in each investigation the specific administrative burden created by the requests. Where the Secretary decides that the administrative burden of investigating each request for exclusion is too great, given the statutory time limits, the Secretary may refuse to act on any or all of the requests.

11. *Section 355.15.* This section corresponds to § 355.28 of the current regulation. In subsection (a)(1), the current reference to "best information available" is changed in the proposed rule to read "available information." "Available information" is not limited to the "best information available" within the meaning of § 355.38. The phrase "the merchandise . . . from a country entitled to an injury test for the merchandise" replaces the current reference to "merchandise . . . from a country under the Agreement or duty-free merchandise" in order to clarify the statutory requirement for determination of injury. See preamble comments on § 355.12 (c) and (e).

Subsections (a)(2) and (a)(3) of the proposed rule, which describe the Secretary's preliminary determination, consolidate provisions in subsections (a) and (d) of the current regulation and, in subsection (a)(2)(iii), add a reference to a preliminary finding of critical circumstances. Provisional measures are limited to cash deposit or bond, the current practice. Regarding determination of the estimated net subsidy on a country-wide basis, the proposed rule implements section 607 of the 1984 Act, which amends section 706(a) of the Tariff Act. See the discussion under proposed § 355.20(d).

Subsection (a)(4) states that the notice will include an invitation for argument on the Secretary's preliminary determination. Subsection (a)(4) otherwise is revised to reflect the notice requirements of section 703(f) of the Tariff Act. This revision does not change current practice.

Subsections (b) and (c) of the proposed rule correspond to the respective subsections of the current regulation, except that the notice and publication requirements in subsection (b)(3) and (c) of the current regulation appear in subsection (e) of the proposed rule. Subsection (b)(2)(i) is revised to reflect current practice, and subsection (b)(2) (ii) and (iv) is revised to conform to the similar test for "extraordinary circumstances" in § 355.18(d). Subsection (c) states that the Secretary will grant a timely request from petitioner to postpone the preliminary determination, unless the Secretary finds compelling reasons to deny the request. This reflect current practice and Congressional intent.

Subsection (d) implements section 703(h) of the Tariff Act, as added by Section 613(c) of the 1984 Act, regarding time limits when the Secretary investigates upstream subsidies.

Subsection (e) of the proposed rule consolidates all notice requirements for the postponements of the preliminary determination described in this section.

Subsection (f) implements section 703(b) of the Tariff Act, as amended by section 603 of the 1984 Act, concerning waiver of verification.

Subsection (g), which corresponds to subsection (e) of the current regulation, no longer contains the requirement that the Commission "confirm" the obligation not to disclose "confidential" (proprietary) information. Confirmation is unnecessary, given the limitations on disclosure stated in this subsection and in § 355.32(f) of the proposed rule.

Subsection (h) reflects current practice concerning the disclosure conference, a meeting with a party to the proceeding at which a knowledgeable employee of the Department reviews calculations illustrative of the preliminary determination.

12. *Section 355.16.* This section corresponds to § 355.29 of the current regulation. Subsection (a) of the current regulation is reorganized for clarity and divided into two subsections. Subsection (a) of the proposed rule states the general requirements concerning critical circumstances allegations and clarifies that the Secretary may investigate critical circumstances on the Secretary's own initiative in investigations self-initiated under § 355.11. Subsection (b) of the proposed rule states the conditions for, and timing of, a preliminary finding of critical circumstances.

The word "finding" is used throughout the proposed rule to describe what in the Tariff Act and in the current regulation are called "determinations" of critical circumstances. The change is not substantive. It is intended to differentiate clearly in the regulation a determination regarding critical circumstances from a preliminary determination under § 355.15 or a final determination under § 355.20.

Subsection (b)(2) of the proposed rule incorporates the notice and publication requirements of subsections (b) and (d) or the current regulation.

Subsection (c), which corresponds to subsection (c) of the current regulation, is revised for clarity only. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under § 355.15, the Secretary will amend the order (referred to in this subsection) suspending liquidation.

Subsection (d) states that the Secretary will make a final finding of critical circumstances under certain conditions. The subsection is based on portions of subsection (a) of the current regulation and on section 705 (a)(2) and (c)(4) of the Tariff Act, as added by section 605(a) of the 1984 Act.

Subsection (e), which is new, states that in making findings regarding critical circumstances in self-initiated investigations, the Secretary is not bound by the time limits that apply to findings in investigations based on a petition under § 355.12.

Subsections (f) and (g) describe what the Secretary normally will examine in deciding whether there have been "massive imports" in a "relatively short period," two of the statutory elements of the critical circumstances finding. The criteria described in the proposed rule are intended to clarify the bases for the Secretary's critical circumstances findings without adversely affecting the Secretary's administrative discretion. If the imports have accounted for a preponderance of the U.S. apparent consumption of the merchandise during the relatively short period, the Secretary might consider the imports massive, even if the increase is less than 15 percent over the base period described in this subsection.

13. *Section 355.17.* This section corresponds to § 355.30 of the current regulation. Subsection (a) implements section 704(a)(1) of the Tariff Act, as amended by section 604(a)(1) of the 1984 Act. The proposed rule clearly states the Secretary's authority to terminate self-initiated investigations.

Subsection (b) is new. Paragraphs (1) and (2) of subsection (b) implement section 704(a)(2) of the Tariff Act, as added by section 604(a)(1) of the 1984 Act. Under the 1984 Act, the Secretary must consider special "public interest" factors before terminating an investigation upon withdrawal of the petition based on the Secretary's acceptance of a quantitative restriction agreement. Paragraph (3) of subsection (b) implements section 761(b) of the Tariff Act, as added by section 611(a)(4) of the 1984 Act, regarding modifications of quantitative restriction agreements to take account of consultations held under new section 761(a) of the Tariff Act.

Subsection (c) revises subsection (b) of the current regulation for clarity.

Subsection (d), although a new provision, reflects section 704(f) of the Tariff Act and current practice.

14. *Section 355.18.* This section corresponds to § 355.31 of the current regulation. Subsection (a) of the proposed rule states the public interest requirement in subsection (f) of the current regulation, which is deleted as a separate subsection.

Subsection (b) of the proposed rule reorganizes for clarity the corresponding

subsection of the current regulation. Subsection (b)(1) states the public interest requirement in subsection (f) of the current regulation.

Subsection (b)(3) of the proposed rule modifies subsection (b)(3) of the current regulation to implement section 704(d)(1) of the Tariff Act, as amended by section 604(a)(2)(A) of the 1984 Act.

Subsection (c) provides for measurement of "substantially all" of the imports based either on the volume or on the value of imports, an addition to the current regulation that is consistent with the language and purpose of the Tariff Act. The portion of subsection (c) of the current regulation that concerns modification of agreements during administrative reviews is incorporated in § 355.22 of the proposed rule.

Subsection (d) and (e) are revised for clarity.

Subsection (f) revises for clarity subsection (g) of the current regulation.

Subsection (g) of the proposed rule sets forth in more explicit detail than corresponding subsection (h) of the current regulation the applicable procedures for suspension of investigation. Paragraph (g)(1), as revised, requires the foreign government or exporters to submit a proposed suspension agreement not later than 45 days before the scheduled date for the final determination, a requirement intended to give the Secretary and domestic interested parties adequate time to review and, if appropriate, suggest revisions to the proposed agreement. Paragraph (g)(3) includes a time limit for submitting comments on a proposed suspension agreement. While time may be very restrictive for commenting on a proposed suspension agreement, nothing is served by the Secretary's receipt of comments too late to consider them.

Subsection (h) provides for publication in the **Federal Register** of the text of the suspension agreement, which is the current practice. The last sentence of this subsection, which is new, provides the Secretary with explicit authority to incorporate into a suspension agreement factual and legal conclusions reached after a preliminary determination and subsequently the results of a final determination is an investigation continued under subsection (i). In addition, this subsection of the proposed rule, which includes subsections (i), (j), and (k) of the current regulation, is revised for clarity.

Subsection (i) corresponds to subsection (l) of the current regulation. The only substantive change is the reference to § 355.2(i)(6), the amended definition of interested party which is explained above under that section.

Subsection (j) adds to subsection (g) of the current regulations the additional authority in section 704(d)(2) of the Tariff Act, as amended by the 1984 Act, concerning the treatment of excess entries of the merchandise under a suspension agreement.

Subsection (k), which is new, implements section 761(b) of the Tariff Act, as added by section 611(a)(4) of the 1984 Act.

15. *Section 355.19.* This section, which corresponds to § 355.32 of the current regulation, states the applicable procedures when the Secretary decides or has reason to believe either that the signatory government or exporters have violated a suspension agreement, or that the agreement is no longer in the public interest or no longer subject to effective monitoring.

Subsection (a) of the proposed rule, like subsection (a) of the current regulation, provides for an expedited determination without prior notice or opportunity for comment. The Secretary would use the "fast track" approach in subsection (a) when the Secretary decides that the record shows clear evidence of violation and that notice and comment are unnecessary. Paragraph (a)(4) provides that, it appropriate, the Secretary will notify the Commissioner of Customs of the determination, in accordance with section 704(i)(1)(D) of the Tariff Act, as amended by section 604(a)(4)(C) of the 1984 Act. The Commissioner would take action, if appropriate, under section 704(i)(2) of the Tariff Act, if the violation was intentional.

Subsection (b) establishes a procedure for notice and comment on suspected violations or when the Secretary has reason to believe that a suspension agreement no longer meets the public interest or monitoring requirements of the Tariff Act. After the comment period, the Secretary would take appropriate action, which would mean the steps outlined in subsection (a) (issuing a contervailing duty order or resuming the investigation) if the Secretary finds a violation. If the Secretary does not determine that the agreement has been violated, the Secretary may nonetheless take action to correct any deficiencies in the agreement, including revising the agreement or cancelling it under subsection (a). In revising an agreement under this subsection, the Secretary could, for example, convert a suspension agreement eliminating the net subsidy to one eliminating injurious effect.

Subsection (c), which is new, allows the Secretary to include in an agreement additional signatory exporters. It codifies current administrative practice.

Subsection (d) of the proposed rule, which is new, defines "violation." References in the current regulation to "breach" and "intentional violation" are omitted from the proposed rule in favor of a straight-forward definition of a violation as significant noncompliance with an agreement's terms. If the Secretary finds an insignificant deviation, the Secretary would not consider the agreement to have been violated but could find the agreement is lacking under the public interest standards. Subsection (c) of the current regulation (intentional violations), as noted above, is dealt with in proposed subsection (a).

16. *Section 355.20.* This section corresponds to § 355.33 of the current regulation. Subsection (a) of the proposed rule incorporates subsections (a), (b), (e), and (f) of the current regulation but provides a more specific description, consistent with current practice, of the action the Secretary takes when the final determination is affirmative.

Subsection (b) implements section 703(h)(2) of the Tariff Act, as amended by section 613(c) of the 1984 Act, as to time limits when the investigation involves upstream subsidies.

Subsection (c) implements section 705(a)(1) of the Tariff Act, as amended by section 606 of the 1984 Act, regarding simultaneous antidumping and countervailing duty investigations. Subsection (c) of the current regulation, concerning disclosure conferences, is covered in subsection (h) of § 355.28 of the proposed rule. Subsection (d) of the current regulations is covered in § 355.39 (written argument and hearings) of the proposed rule.

Subsection (d) implements section 706(a)(2) of the Tariff Act, as added by section 607 of the 1984 Act. The enactment of section 607 was meant "to lessen the administrative burden on the administering authority stemming from implementing company-specific rates." Conference Report at 180. To that end, the provision establishes a presumption of a single, country-wide rate for each class or kind of merchandies investigated. The presumption can be overcome as described in subsection (d)(1). The proposed rule would apply a common-sense, two-tiered approach to whether a significant differential is show. With the weighted-average country-wide rate as the starting point, a significant differential would be 10 percentage points, or 25 percent whichever is greater. This recognizes that differences that at lower company

and country-wide rates might be significant are less significant as the weighted-average rate increases. Section 607 is designed to result in fewer company-specific rates than under current practice.

Subsection (e), which is new, states the consequences for an individual producer or exporter of failure to satisfy the requirements for exclusion stated in §§ 355.14 and 355.21.

Subsection (f) is new. It reflects current practice on sharing information with the Commission. See comment on proposed § 355.15(g).

Subsection (g), which corresponds to subsections (g) and (h) of the current regulation, provides a more detailed explanation of the effect, under current practice, of negative final determinations.

17. *Section 355.21.* This section corresponds to § 355.36 of the current regulation, except as noted below. Subsection (a) is modified to clarify the relationship between this section and section 751 of the Tariff Act, as amended by section 611(a)(2)(A) of the 1984 Act. Under current practice, the Secretary notifies the Customs Service of the amount of countervailing duty to assess at the completion of each administrative review under section 751.

Subsection (b) of the proposed rule corresponds to subsection (c) of the current regulation.

Subsection (d) of the current regulation is deleted, because information concerning critical circumstances is included in the Secretary's affirmative final determination under § 355.20(a)(2), not in the order.

Subsection (c) of the proposed rule corresponds to the first sentence of § 355.38 of the current regulation. This subsection ties the nonreceipt of benefits requirement to the programs identified in the Secretary's affirmative final determination. The current regulation is not explicit on this point.

18. *Section 355.22.* This section corresponds to § 335.41 of the current regulation. Subsection (a) of the proposed rule implements section 751(a) of the Tariff Act, as amended by section 611(a)(2)(A) of the 1984 Act. These amendments provide for administrative reviews upon request rather than automatically in each proceeding on an annual basis. The agency will promulgate a separate provision to control administrative reviews during the transition to full implementation of section 611(a)(2)(A) of the 1984 Act.

Any interested party, including an importer, may request a review to cover all producers and exporters of the merchandise. In addition, a foreign producer or exporter may request that the Secretary conduct a review of an order for the merchandise of that producer or exporter, if the requester submits with the request the certifications described in subsection (a)(2) (i), (ii), and (iii). Subsection (a)(2)(iii) requires additional certifications from suppliers and producers when the person submitting the request does not produce the merchandise (see preamble comment under proposed § 355.25(b)). As explained in subsection (f), requests submitted under subsection (a)(2) are premised on certifications that the merchandise has not benefitted during the period of review from any net subsidy.

Subsection (b) of the proposed rule describes the period and the exports (under subsection (b)(2), for first reviews, the entries or exports) of the merchandise that the Secretary will review upon request. The period may be longer or shorter for the first than for subsequent administrative reviews, because it covers the period between the time the Secretary first applied provisional measures and the end of the most recent completed reporting year of the government of the affected country. This subsection reflects the current practice in administrative reviews.

Subsection (c) of the proposed rule expands subsection (c) of the current regulation to provide specifically for each action the Secretary will take in a review under this section. The proposed reference to "a sample of interested parties" in subsection (c)(2) implements section 777A of the Tariff Act, as added by section 620(a) of the 1984 Act. See preamble comment on § 355.38(a)(2). Subsection (c)(7) of the proposed rule provides that the Secretary will issue the final results of administrative review not later than 365 days after the anniversary month during which the review was requested.

Disclosure of factual information, the subject of subsection (d) of the current regulation, is covered in subsection (c)(6). The subject of hearings, also in subsection (d) of the current regulation, is covered in § 355.39 of the proposed rule.

Subsection (d) of the proposed rule, dealing with individual countervailing duty rates, implements for administrative reviews section 706 of the Tariff Act, as amended by section 607(2) of the 1984 Act. This subsection is nearly identical to § 355.20(d) of the proposed rule.

Subsection (e) cross-references § 355.19, concerning cancellation and revision of suspension agreements, and provides that the Secretary may delay publishing final results of administrative review while taking action under § 355.19.

Subsection (f) describes the specific actions the Secretary may take when the Secretary issues final results of reviews based on requests under subsection (a)(2) from individual producers or exporters. In particular, unless the Secretary verifies that during the period of review the merchandise covered by the request under subsection (a)(2) did not benefit from any net subsidy previously found countervailable in the proceeding, the Secretary, as provided in paragraph (6) of this subsection, will refuse to consider any other requests for company-specific reviews for the duration of the countervailing duty order. If the Secretary is unable to verify that the merchandise did not benefit from a net subsidy previously found countervailable in a proceeding, the certification mechanism of the government of the affected country will necessarily be deficient. The impact of that result clearly extends beyond the particular producer or exporter which was the subject of the government's certification.

Subsection (g) provides for assessment of countervailing duties at the rate of the cash deposit of estimated countervailing duties required at the time of entry of the merchandise, when the Secretary has received no request, under subsection (a), for an administrative review. This provision also provides for continuation of the cash deposit of estimated countervailing duties at the latest determined rate. This implements the Congressional intent that the Secretary provide by regulation for duty assessment on entries for which no review has been requested (Conference Report at 181).

Subsection (h) of the proposed rule corresponds to subsection (b) of the current regulation but provides a more detailed statement of procedures applicable to changed circumstances reviews. The Secretary may initiate at any time (except as provided in subsection (h)(2)) a review based on changed circumstances. At the beginning of the review, if the Secretary has information sufficient to form the basis for the preliminary results, and the Secretary concludes that expedited action is warranted, the Secretary under subsection (h)(3) may combine the notices of initiation and preliminary results.

Subsection (i) implements section 762 of the Tariffs Act, as added by section 611 of the 1984 Act. This new provision concerns special reviews, conducted by the Secretary at the President's

direction, of the merchandise covered by quantitative restriction agreements which resulted either in withdrawal of a petition (and the Secretary's termination of the investigation) or the Secretary's suspension of an investigation. Subsection (i)(9) specifies what action, if any, the Secretary will take at the conclusion of the review. While the agreement remains in effect, the Secretary will not publish a countervailing duty order. At the expiration or other termination of the agreement, after any extensions of the agreement, the Secretary will publish and implement the order based on the final results of the review, unless the President before expiration directs the Secretary to conduct a new review under this subsection.

19. *Section 353.23.* This section corresponds to § 353.37 of the current regulation. The title is changed to Provisional Measures Deposit Cap to describe the subject more accurately. The phrase "under the Secretary's affirmative preliminary or affirmative final determination," which is new, clarifies that when an injury test is required, the estimated net subsidy established in the Secretary's final determination becomes the maximum amount which the Secretary may assess on entries made between publication of that determination and publication of the Commission's final affirmative determination. The estimated net subsidy rate set by the Secretary's preliminary determination will be the assessment ceiling for entries made up to the date of publication of the Secretary's final determination.

20. *Section 355.24.* This section corresponds to § 355.40 of the current regulation. Subsection (a) of the proposed rule incorporates the current regulation, revised for clarity, and states that the requirement for interest applies to entries made on or after the date of publication of the Secretary's order.

Subsection (b) implements section 778 of the Tariff Act, as amended by section 621 of the 1984 Act. That amendment makes interest payable at the Internal Revenue Code rates in effect while the particular entry remained unliquidated.

Subsection (c), which reflects current practice, clarifies the period for which the Customs Service calculates interest on overpayments and underpayments.

21. *Section 355.25.* This section corresponds to § 355.42 of the current regulation but is rewritten to provide a detailed statement of the standards and procedures for revocation of orders and termination of suspended investigations. In the proposed rule, subsection (a) provides for revocation or termination based on the absence of a subsidy, subsection (d) provides for revocation or termination based on changed circumstances, and subsection (e) provides for revocation or termination based on injury reconsideration by the Commission.

Subsection (a) provides three separate standards for revocation based on the absence of subsidy. Subsection (a)(1) provides for revocation or termination based on the foreign government's elimination, for a period of at least three years, of subsidy programs which the Secretary has found countervailable. Subsection (a)(2) provides for revocation or termination based on the absence, for a period of at least five years, of any net subsidy on all of the merchandise covered by the order or suspension. Subsection (a)(3) provides for revocation of an order, to the extent it applies to an individual producer or exporter, based on the absence, for a period of at least five years, of any net subsidy on the merchandise of the individual producer or exporter. Each type of revocation or termination under this subsection also is premised on the Secretary's finding that the foreign government is not likely to reinstate the program or substantially equivalent programs or, as appropriate, that the producer or exporter is not likely to apply for or receive any net subsidy from the same or substantially equivalent programs. Revocation for an individual firm which the Secretary previously has found to have received any net subsidy is contingent on an agreement to reinstate the order immediately if the Secretary later finds that the firms has received any net subsidy. The requirements for revocation in subsection (a) are consistent with section 751(c) of the Tariff Act, as amended by section 611(a)(3) of the 1984 Act, which provides that the Secretary may not revoke an order or terminate a suspended investigation based on the levy of an export tax, duty, or other charge intended to offset a net subsidy.

Subsection (b) states the requirements for requests for each type of revocation or termination described in subsection (a), including for each a certification requirement. Only the government of the affected country may submit a request for revocation or termination under subsections (b)(1) and (b)(2). The individual producer or exporter submits the request for revocation under subsection (b)(3). The government's certification is required for all three types of requests submitted by the government. In addition, the certifications of all producers and exporters are required for requests under subsection (b)(2). Requests for revocation under subsection (b)(3) from individual producers or exporters must be accompanied by the certifications described in § 355.22(a)(2) of those individual producers and exporters and, for firms previously found to have received a net subsidy, by the agreement to reinstate the order. If the person submitting the request under subsection (b)(3) is not the producer or supplier of the merchandise, the requester must submit the certifications of the producer and supplier. We recognize that this requirement may be very difficult in some instances. The alternative is to revoke the order with regard to the exporter when the merchandise may continue to benefits from a subsidy. We find this an unacceptable basis for the exercise of our discretionary authority to revoke.

Subsection (c) describes the procedures applicable in the administrative review based on the request for revocation or termination under subsection (b). The procedures add to or modify slightly those described in § 355.22(c). A revocation or termination under subsection (a) is effective for all merchandise entered, or withdrawn from warehouse, for consumption, on or after the first day after the period of review.

Subsection (d), concerning revocation or termination based on changed circumstances, is new. The subject is addressed only in passing in subsection (c) of the current regulation. Subsection (d)(1) states the criteria for revocation or termination under this subsection.

Subsection (d)(2) authorizes the Secretary to conduct an administrative review for the purpose of deciding whether the criteria for revocation or termination under subsection (d)(1) are met. The Secretary may conduct the review at any time that the Secretary concludes from available information that the revocation or termination may be warranted. Consistent with the legislative history of the 1984 Act, subsection (d)(2) also provides that an affirmative statement of no interest from the petitioner is sufficient for the Secretary to initiate a changed circumstances review to consider revocation. See Conference Report at 181.

Subsection (d)(3) adds to or modifies slightly the procedures applicable to an administrative review described in § 355.22(h).

Subsection (d)(4) provides for possible revocation of an order or termination of a suspended investigation based on an absence of interest (as demonstrated by the absence of requests for administrative review) for a period of five consecutive years. This "sunset"

provision will eliminate old orders and suspended investigations no longer of interest to domestic interested parties. Prior to revoking or terminating under this subsection, the Secretary will, in addition to publishing notice in the **Federal Register**, write individually to each known producer and seller of the like product in the United States. If any producer or seller, or any other interested party, objected, the Secretary would not revoke the order or terminate the suspended investigation under subsection (d)(4).

Subsection (d)(5), concerning the ending of suspension of liquidation and refund of cash deposits, corresponds to subsection (c)(3) of the proposed rule.

Subsection (e) provides for revocation or termination based on injury reconsideration by the Commission. This provision was reserved in subsection (d) of the current regulation.

22. *Section 355.31.* This section, which corresponds to portions of § 355.34 of the current regulation, concerns submission of factual information. Submission of written argument, the other portion of § 355.34 of the current regulation, is addressed in proposed § 355.39.

Subsections (a) through (d) are new. The Secretary will consider only those submissions which conform to the timing and other requirements of these subsections. Subsection (a)(1) establishes time limits for submission of factual information, and subsection (a)(2) states the consequences of late submission. Subsection (a)(2) is derived from subsection (a)(1) of the current regulation. "Factual information" is defined in proposed § 355.2(g).

Subsection (b) provides that the Secretary may request submission of factual information at any time during a proceeding. Subsection (b)(2) addresses the subject of time limits for responses to the Secretary's questionnaire and other requests for factual information and, given the need for timely analysis of responses and planning of verification activities, limits the Secretary's authority to consider unsolicited questionnaire responses. Subsection (b)(3) provides that under certain conditions the Secretary may extend the time limit for responding to a request and lists the employees of the Department who may approve (in writing) such an extension.

Subsection (c) establishes the time limit for submission of subsidy allegations not included in the original petition and provides for an extension of the time limit under certain conditions. It also bars submission after the preliminary determination of challenges to a petitioner's standing. Standing is important; however, it is also complex and the Department needs time to gather and evaluate the facts. Under this subsection, only certain specified employees of the Department may authorize extensions. This subsection does not cover upstream subsidy allegations, which are the subject of proposed §§ 355.15(d) and 355.20(b).

We expect the discretion to extend time limits under subsections (a), (b), and (c) to be exercised sparingly.

Subsections (d) and (e) correspond to subsections (a)(1) and (a)(2) of the current regulation, which was adopted as a final rule on May 30, 1984 (49 Fr 22467). Subsection (d) specifies, in accordance with current practice, when the Secretary considers a document received. Subsection (e) includes minor modifications of the current regulation and, in addition, includes a new paragraph (3) on submission of computer tapes. Tape submissions may be required unless the Department finds the firm does not maintain records in computerized form or otherwise could not submit a computer tape response without unreasonable additional burden. As provided in this subsection, the Department intends to reject nonconforming submissions.

Subsection (f), which is new, contains the requirement for submission of an English translation of any document submitted in a foreign language. The similar requirement in § 355.12(b) of the current regulation is limited to petitions.

Subsection (g) of the proposed rule modifies the service requirements in subsection (a)(3) of the current regulation by limiting service generally to interested parties on the Department's service list. The government of the affected country always must be served. The proposed rule also establishes a more specific certificate of service requirement.

Subsection (h) establishes a service list for each proceeding that will be maintained and available to the public in the Import Administration's Central Records Unit. The corresponding provision concerning designation of agents appears in subsection (b) of the current regulation.

23. *Section 355.32.* This section of the proposed rule covers the material in §§ 355.17 and 355.18 of the current regulation, modified as explained below.

Subsection (a) restates the requirement in the first three sentences of § 355.18(a) of the current regulation.

Subsection (b) of the proposed rule covers other portions of § 355.18(a) of the current regulation. Section 619(3) of the 1984 Act amends section 777 of the Tariff Act to require the submitter requesting proprietary treatment either to summarize for public release each portion of the submitted information (in sufficient detail to permit a reasonable understanding of the substance of the information) or to justify specifically why, as to each portion, summarization is impossible. The proposed rule reflects this statutory amendment and includes a special provision concerning summaries of voluminous information. The "brief" nonproprietary statement, permitted by current subsection (b)(3) if the submitter agrees to release under administrative protective order, is no longer consistent with section 777 of the Tariff Act as amended by section 619(3) of the 1984 Act.

Subsection (c) modifies the provision in subsection (a) of the current regulation concerning the submitter's agreement to disclose proprietary information under administrative protective order. Section 619(3) of the 1984 Act amends section 777 of the Tariff Act to require that requests for proprietary treatment be accompanied by the submitter's statement either agreeing or objecting to disclosure. The proposed rule clarifies that an objection to disclosure must include supporting arguments. The submitter should include in the objection any argument against disclosure to particular individuals who have requested disclosure. The Secretary may permit subsequent argument from the submitter only when submission of a request for disclosure raises compelling issues that the submitter could not have anticipated—for example, the identity of the representative who submits the request for disclosure, as may be the case when the requester becomes a party to the proceeding after the information is submitted.

Subsection (d) corresponds to § 355.18(b) and portions of § 355.18(e) in the current regulation. If the Secretary returns information because the submitter failed to provide an adequate summary, agreement to disclose, or the statements described in this revised section, the Secretary will give the submitter an additional 48 hours to return the information with a proper request for proprietary treatment. If the deadline for submitting the information has passed at the time the Secretary returns it, the Secretary will extend the deadline by 48 hours. If a conforming request is not submitted within 48 hours, however, the Secretary will not consider the information in the proceeding.

Subsection (e) corresponds to § 355.18(c) of the current regulation.

Subsection (f) incorporates the limitations on disclosure of proprietary information, under administrative

protective order and otherwise, that are stated in §§ 355.17 and 355.18(d) of the current regulations. The Department does not intend to change its current practice of not disclosing proprietary information submitted by one foreign firm to its foreign competitor. Since § 355.32 of the proposed rule concerns only proprietary information of a business nature, references in the current regulations to classified information are deleted. Subsection (f)(4) of the proposed rule, which is new, authorizes release to a Customs Service employee for use in a fraud investigation. The revision is required by section 619(2) of the 1984 Act, which amends section 777(b) of the Tariff Act.

Subsection (g) incorporates without change most of the substance of § 355.18(e) of the current regulation.

24. *Section 355.33.* This section, which states that information which is classified or privileged is exempt from disclosure, consolidates in one place the similar statements in §§ 355.17, 355.18 (a) and (e), and 355.20(a) of the current regulation.

25. *Section 355.34.* The proposed rule revises current procedures for submission of requests for disclosure of proprietary information under administrative protective order, for the purpose of making the procedure more efficient and more responsive to the needs of parties to the proceeding. The revision is intended to ensure timely action on requests for disclosure and is more specific as to protection of information disclosed. This section replaces § 355.20 of the current regulation.

Subsection (a) states the considerations relevant to the Secretary's decision whether or not to issue an administrative protective order. The Secretary will consider whether the requester has stated a sufficient need for the information, would protect adequately the information, and the probable effectiveness of the available sanctions in the event of a violation of the order. The Secretary will also consider whether disclosure will adversely affect the Secretary's ability to obtain proprietary information in subsequent proceedings. As under current practice, proprietary information is released under administrative protective order only to aid the requester's ability to assist the Department in reaching an accurate and reasoned result in the administrative decision process.

Subsection (b) implements section 619(4) of the 1984 Act, which authorizes standing requests for disclosure of information for the duration of each segment of a proceeding that culminates in a judicially reviewable decision. The interested party's representative must request disclosure at the earliest opportunity, which is defined in the proposed rule as 10 days after the later of the date the requesting interested party becomes a party to the proceeding or the date notice of initiation is published in the **Federal Register.** In addition, the Secretary will not consider requests received later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review. The request must cover all proprietary information which the representative wants disclosed, whether or not in the record of the proceeding at the time the request is filed. The request must be submitted on the standard form provided by the Secretary (not a retyped copy or modified version of the form). The form (Form ITA–367) is drafted specifically to satisfy the requirements of section 777 of the Tariff Act. The regulation recognizes that the standard in section 777(c) for particularity of description of requested information must be read in light of the 1984 Act's provision for requesting information before the Department receives it, or even before the information exists. Consistent with the current practice, in-house (e.g., corporate) counsel are subject to the same rules as other attorneys who request disclosure. The statement in current § 355.20(a)(3) that disclosure generally will be made only to attorneys subject to disbarment for violation has been deleted. Economic and other consultants to a party's attorneys have played an increasingly significant role in recent years. We will continue to insist that the party's attorney (and the law firm) take responsibility for violation of an administrative protective order by consultants assisting the attorney in the proceeding.

Subsection (b)(3) lists the obligations that are imposed on the representative to whom the Secretary discloses the information under administrative protective order. Subsection (b)(4) lists possible sanctions for violation of the order. The representative must acknowledge those possibilities in the request. These subsections correspond to subsections (b), (c), and (e) of the current regulation.

Subsection (c) of the proposed rule is based on subsection (a)(4) of the current regulation, with the addition of a 24-hour time limit on withdrawal of information that the Secretary decides, over the submitter's objection, to disclose under protective order.

Subsection (d) permits the representative to retain the proprietary information, subject to the terms of the administrative protective order, after the Secretary has reached the judicially reviewable decision, for a limited period of time and under specific conditions. Before the administrative protective order lapses, the proposed rule requires that the proprietary information either be subject to the terms of an existing judicial protective order or that the representative destroy or return the proprietary information and certify to the Secretary full compliance with the terms of the order (including return or destruction of the information). The provisions of this subsection are more specific and comprehensive than the corresponding provisions of subsection (d) of the current regulation. They also take account of the potential for inefficiency in the current regulation that requires the representative to destroy notes based on proprietary information before any party decides to sue. We emphasize that this permission to retain proprietary information for a limited time after the Secretary has made the judicially reviewable decision may be withdrawn by the Secretary under the terms of subsection (d)(1). In no event will the Secretary release additional proprietary information after making a judicially reviewable decision, because the need to prepare for judicial review is not an adequate reason for additional disclosure. As stated earlier, release under administrative protective order is intended to benefit the Secretary's administrative decision by full participation of parties—no such benefit can result once the administrative process is concluded.

Subsection (e) states that the General Counsel of the Department will investigate each alleged violation of an administrative protective order and prepare a report to the Secretary. There is no corresponding provision in the current regulations. The Department intends firm and effective enforcement of administrative protective orders.

26. *Section 355.35.* The proposed rule retains the requirement in § 355.16 of the current regulation for preparation of memoranda of *ex parte* meetings during administrative reviews. Section 619(1) of the 1984 Act added this requirement to section 777(a)(3) of the Tariff Act, which previously appeared to limit the requirement to the investigation phase of a proceeding. The Secretary, rather than a party to the proceeding, prepares the memorandum. This is consistent with current practice.

27. *Section 355.36.* This section, which corresponds to § 355.43 of the current regulation, is modified to clarify that it covers all portions of a proceeding, not

just investigations. The change is required by section 775 of the Tariff Act as amended by the 1984 Act, which reflects current practice. The provision in the present regulation concerning initiation of a separate investigation is deleted, because it is neither required by section 775 nor a feasible option for the Secretary. Other clarifying changes are made in this subsection.

28. *Section 355.37.* The proposed rule separates the provisions in § 355.39 of the current regulation into two separate sections. Section 355.37 covers verification of information, and § 355.38 covers the use of best information available, a concept not limited to the verification process.

Subsections (a) and [illegible] of the proposed rule implement section 776(a) of the Tariff Act, as amended by section 618 of the 1984 Act. In addition to the specific verification requirements in that amendment (subsection (a)(1)(iv)), the proposed rule includes in subsection (a)(1)(iii) authority for verifications in administrative reviews whenever "the Secretary decides that there is good cause for verification." As noted by the Committee of Conference on page 177 of its report, section 618 of the 1984 Act generally codifies the current practice of verifying information relied upon in a final determination in an investigation and in later decisions which warrant verification. Specifically, the Secretary is to conduct a verification before revoking an order, in whole or in part, or if the Secretary decides that good cause to verify exists. In addition, the Secretary will carry out a verification if a timely written request for verification is submitted by a domestic interested party in a proceeding in which the Secretary has not conducted verification during either of the two immediately preceding reviews. Section 618 implicitly overrules *Al Tech Specialty Steel Corp. v. United States*, 6 CIT —, 575 F. Supp. 1277 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984).

Subsection (a)(2) implements for administrative reviews of orders and agreements the authority to use generally recognized sampling techniques, confirmed in section 777A of the Act, as added by section 620 of the 1984 Act.

Subsection (b) corresponds to the second sentence of subsection (a) of the current regulation as to notice of the methods and procedures used to verify.

Subsection (c) of the proposed rule clarifies subsection (c) of the current regulation and the current practice concerning verification procedures.

Subsections (d) and (e) of the current regulation are incorporated in § 355.31 of the proposed rule.

29. *Section 355.38.* This section, which is new, corresponds to § 355.39(b) of the current regulation. The proposed rule reflects current administrative practice. Legislative history to the 1984 Act confirms the Congressional intent to apply the concept of "best information available" to administrative reviews and other portions of a proceeding in addition to investigations. Conference Report at 177.

30. *Section 355.39.* This section of the proposed rule concerns written argument, addressed in § 355.34 of the current regulation, and also broadens and modifies substantially the current regulation on hearings in § 355.35.

Subsection (a) of the proposed rule establishes the procedures and requirements for all written argument after the Secretary's preliminary determination or preliminary results of administrative review. "Written argument" means all written submissions after the preliminary determination or preliminary results of administrative review that are not "factual information" and includes legal and policy contentions concerning the proceeding. Under subsection (a), any interested party and any agency of the U.S. government may submit written arguments but must do so in the "case brief" or the "rebuttal brief," as described in subsections (b) and (c), or in response to a request of the Secretary. As with factual information, the Secretary will not consider, or retain in the record, written argument which is untimely or otherwise does not follow these rules.

Subsection (b) describes the case brief and establishes time limits for submission. The case brief is a complete presentation of each argument that the party or the agency wants the Secretary to consider in making a final determination or the final results of administrative review. The case brief must also contain any request for a hearing the party wants on arguments raised in the brief. In an administrative review, an interested party may address only arguments specifically identified in the case brief for hearing presentation. The Department intends to implement this requirement by practice, to the extent possible, in investigations.

Subsection (c) describes the rebuttal brief and establishes time limits for its submission. In the rebuttal brief, an interested party may request a hearing specifically to present rebuttal arguments on issues that are identified and discussed in the rebuttal brief. To the extent possible in investigation and in all administrative reviews, rebuttal at the hearing is limited to arguments specifically identified in the rebuttal brief for such presentation.

Subsection (d) states special service requirements for case and rebuttal briefs in recognition of the tight time frames for submission of briefs by the parties and decisions by the Department in the proceeding. The rebuttal brief will usually be due seven days after the case brief, which ordinarily is due 35 days (30 days in an administrative review) after publication of the Secretary's preliminary determination or preliminary results.

Subsection (e) states when Secretary will hold a hearing, if requested, and the procedural rules that apply to hearings. Paragraph (e)(1) concerns the availability of verbatim transcripts. Paragraph (e)(2) specifies which employees of the Department may chair a hearing. Paragraph (e)(3) states rules for conduct of the hearing. The chair may request post-hearing briefs on specific issues; these requests will be the exception, rather than the rule.

Subsections (f) and (g) cross-reference the filing requirements stated in § 355.31(d) and (e) of the proposed rule.

31. *Sections 355.41 through 355.45.* These sections, which correspond to §§ 355.46 through 355.50 of the current regulation, are changed for clarity. Section 355.45 of the current regulation is incorporated in 355.1 of the proposed rule.

32. *Annex I.* Annex I of the proposed rule corresponds to Annex II of the current regulation, which was reserved. Annex I of the proposed rule provides a complete list of "countries under the Agreement," as defined in section 701(b) of the Tariff Act, on the date of this proposed rule. Annex I of the Current regulation is deleted because statements of policy and interpretation belong in the Secretary's determinations rather than in the regulation. Policy and interpretation are subject to change. Annex I of the current regulations covers only a small portion of the Department's methodology and, even for the covered subjects, is an incomplete statement of current practice.

Drafting Information:

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List of Subjects in 19 CFR Part 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: June 2, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

For the reasons stated in the preamble, we propose to revise 19 CFR Part 355 as follows:

PART 355—COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

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355.31 Submission of factual information.
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355.37 Verification information.
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355.39 Written argument and hearings.

Subpart D—Quota Cheese Subsidy Determinations

355.41 Definition of "subsidy."
355.42 Annual list and quarterly update.
355.43 Determination upon request.
355.44 Complaint of price-undercutting by subsidized imports.
355.45 Access to information.
Annex I—List of Countries Under the Agreement.

Authority: Tariff Act of 1930, as amended, 19 U.S.C. 1303 and Subtitle IV Parts I, III and IV, Trade Agreements Act of 1979, Pub. L. 96–39, 19 U.S.C. 2501 Note; Trade and Tariff Act of 1984, Title VI, Pub. L. 98–573, 19 U.S.C. 1654 Note; and 5 U.S.C. 301.

The authority for § 355.12(h) is section 650 of Pub. L. 98–181 (November 30, 1983), which added sections 702(b)(3), 703(b)(2), and 708 to the Tariff Act of 1930, 19 U.S.C. 1671a (6)(3), 1671b (b)(2), and 1671g.

The authority for § 355.12(i)(1) is section 221 of the Trade and Tariff Act of 1984 which adds section 339 to the Tariff Act of 1930, 19 U.S.C. 1339.

The authority for § 355.41 through 355.46 is section 702 of the Trade agreements Act of 1979, 19 U.S.C. 1202 note.

Subpart A—Scope and Definitions

§ 355.1 Scope.

This part sets forth procedures and rules applicable to proceedings under section 303 and Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1303, 1516a, and 1671–1677(g)) (the "Act"), relating to the imposition of countervailing duties, and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("Trade Agreements Act"), relating to subsidies on quota cheese. This part incorporates the regulatory changes made pursuant to Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98–573; October 30, 1984). Certain portions of the regulations in this part do not apply to proceedings under section 303 of the Act in the case of the merchandise from a country that is not a "country under the agreement," as defined in section 701(b) of the Act, and also is not entitled to an injury test under section 303 of the Act for the merchandise. Specifically, for such proceedings under section 303:

(a) No determination by the Commission under section 703(a), 704, or 705(b)(1) of the Act is required;

(b) No investigation may be suspended by the Secretary under § 355.18(b);

(c) No finding of critical circumstances may be made by the Secretary, under § 355.16; and

(d) If an allegation or factual information regarding injury and subsidies is required by this part, only an allegation or factual information regarding subsidies is required.

§ 355.2 Definitions.

(a) *Act.* "Act" means the Tariff Act of 1930, as amended.

(b) *Agreement.* "Agreement" means the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade", that is, the Subsidies Code, and any amendments accepted by the United States.

(c) *Commission.* "Commission" means the United States International Trade Commission.

(d) *Country.* "Country" means a foreign country or a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries in a customs union outside the United States.

(e) *Customs Service.* "Customs Service" means the United States Customs Service of the United States Department of the Treasury.

(f) *Department.* "Department" means the United States Department of Commerce.

(g) Factual Information. "Factual information" means:

(1) Initial and supplemental questionaire responses;

(2) Data or statements of facts in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Industry.* "Industry" means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 771(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section 771(4)(C) of the Act, an "industry" may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(i) *Interested Party.* "Interested Party" means—

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the country in which the merchandise is produced (the affected country);

(3) A producer or seller (other than a retailer) in the United States of the like product;

(4) A certified or recognized union or group of workers which is representative of the industry in or of

sellers (other than retailers) in the United States of the like product;

(5) A trade or business association a majority of the members of which are producers or sellers (other than retailers) in the United States of the like product; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (i)(3), (i)(4) or (i)(5) of this section.

(j) *Investigation.* An "investigation" begins on the date of the publication of notice of initiation, resumption, or continuation of investigation and ends on date of the publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, (4) notice of suspension of investigation, or (5) an order.

(k) *The Merchandise.* "The merchandise" means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(l) *Party to the Proceeding.* "Party to the proceeding" means any interested party, within the meaning of paragraph (i) of this section, which has actively participated, through written submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party "party to the proceeding" status in a subsequent decision by the Secretary subject to judicial review.

(m) *Person.* "Person" includes any "interested party" as well as any other individual, enterprise, or entity, as appropriate.

(n) *Proceeding.* A "proceeding" begins on the date of the filing of a petition, publication of a notice of initiation under § 355.11, or publication of a notice of initiation under § 355.22(i) if the review is of the merchandise subject to an understanding or other kind of agreement accepted under § 355.17(b), and ends on the date of the publication of the earliest of notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(o) Producer; Production. "Producer" means a manufacturer or producer. "Production" means manufacture or production.

(p) *Sale; Likely sale.* A "sale" includes a contract to sell and a lease that is equivalent to a sale. A "likely sale" means a person's irrevocable offer to sell.

(q) *Secretary.* "Secretary" means the Secretary of Commerce of a designee. The Secretary has delegated to the Assistant Secretary for Trade Administration the authority to make final determinations under § 355.18(i), 355.20, and 355.22(i). The Deputy Assistant Secretary for Import Administration has other delegated authority relating to countervailing duties.

§ 355.3 Record of proceedings.

(a) *Official Record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 355.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertain to the proceeding. It will include governmental memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the **Federal Register**, and transcripts of hearings. It will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under § 355.32(d) or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public Record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides may be disclosed to the general public. The public record will be available to the public for inspection and copying in the Central Records Unit, as provided in § 355.31(d). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of Records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 355.4 Public, proprietary, privileged, and classified information.

(a) *Public Information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Laws, regulations, decrees, orders, and other official documents of a country, including English translation; and

(5) Written argument relating to the proceeding.

(b) *Proprietary Information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product description except as described in paragraph (b)(1) of this section, ort (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, unless the destination or designation would reveal the name);

(7) The exact amounts of the gross of net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official published documents);

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged Information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information

should not be released to the public or to parties to the proceeding.

(d) *Classified Information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

§ 355.5 Library of foreign subsidy practices and countervailing measures.

The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents. For further information, contact the Central Records Unit at the location stated in § 355.31(d).

§ 355.6 Trade And Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573) (for purposes of this subpart, referred to as "the 1984 Act"), the amendments to the Act made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (d), (c) and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 602, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.

Subpart B—Countervailing Duty Procedures

§ 355.11 Self-initiation.

(a) *In General.* (1) If the Secretary determines from available information that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Investigation." The Secretary will publish the notice only after providing the government of the affected country an opportunity for consultation to the extent required by article 3(l) of the Agreement or by a substantially equivalent obligation.

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; and

(iii) A summary of the available information that would, if accurate, support the imposition of countervailing duties.

(b) *Information Provided to the Commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

§ 355.12 Petition requirements

(a) *In General.* Any interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of section 355.2 who has reason to believe that:

(1) A subsidy is being provided with respect to the merchandise, and

(2) If the merchandise is from a country entitled to an injury test for the merchandise, an industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise, may file on behalf of that industry a petition under this section requesting the imposition of countervailing duties equal to the alleged subsidy.

(b) *Contents of Petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry (If numerous, provide information at least for persons that individually accounted for two percent or more of the industry during the most recent 12-month period.);

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 732 of the Act (19 U.S.C. 1337, 1673a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current tariff classification under the Tariff Schedules of the United States;

(5) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;

(6) The names and addresses of each person the petitioner believes benefits from the subsidy and exports the merchandise to the United States and the proportion of total exports to the United States which each person accounted for during the most recent 12-month period (If numerous, provide information at least for persons that individually accounted for two percent or more of the exports.);

(7) The alleged subsidy and factual information (particularly documentary evidence) relevant to the alleged subsidy, including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the merchandise;

(8) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise; and

(iii) The significant effect the subsidies have on the cost of producing the merchandise;

(9) The volume and value of the merchandise (including information on individual sales, customers, and prices) during the most recent two-year period, and any other recent period that the petitioner believes to be more representative, or, if the merchandise was not imported during the two-year period, information as to the likelihood of its importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) If the merchandise is from a country entitled to an injury test for the merchandise, factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR 207.11 and 207.26;

(12) If the petitioner alleges "critical circumstances" under section 355.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) An export subsidy inconsistent with the Agreement; and

(13) Any other factual information on which the petitioner relies.

(The information requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 0625–0148.)

(c) *Simultaneous Filing With Commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary Status of Information.* The Secretary will not consider any petition which contains factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of § 355.32.

(e) *Amendment of Petition.* The Secretary will allow timely amendment of the petition. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file an amendment with the Commission and the Secretary on the same day and so certity in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under § 355.31.

(f) *Where to File; Time of Filing; Format and Number of Copies.* The requirements of § 355.[illegible] (d), (e), (f), and (g) apply to this section.

(g) *Notification of Affected Country's Representative.* Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in § 355.31(e)(2), to a representative in Washington, D.C., of the government of the affected country.

(h) *Petition Based Upon Derogation of an International Undertaking on Official Export Credits.*. In addition to the other requirements of this section, if the sole basis of a petition is the derogation of an international undertaking on official export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(i) *Assistance to Small Businesses; Additional Information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of § 355.13.

(2) For additional information concerning petitions, contact the Director, Office of Investigations, Import Administration, International Trade Administration, Room 3085, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; (202) 377–5497.

(j) *Limitation of Communication Before Initiation.*

(1) Except as provided in paragraph (j)(2), of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (i)(1) or (i)(2) of § 355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by article 3(1) of the Agreement or by a substantially equivalent obligation.

§ 355.13 Determination of sufficiency of petition.

(a) *Determination of Sufficiency.* Not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2.

(b) *Notice of Initiation.* If the Secretary determines that the petition is sufficient under paragraph (a) of this section, the Secretary will initiate an investigation and publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Investigation." The notice will include the information described in § 355.11(a). If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of Petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal, if appropriate, and publish in the **Federal Register** a notice of "Dismissal of Countervailing Duty Petition", summarizing the reasons for dismissal.

§ 355.14 Request for exclusion from countervailing duty order.

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under § 355.11 or 355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary's notice of initiation and will not apply for or receive any subsidy on the merchandise in the future;

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

(3) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise and the certification under paragraph (b)(2) of this section of the government regarding those suppliers and producers.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

§ 355.15 Preliminary determination.

(a) *In General.* (1) Not later than 85 days after the date of filing of a petition or the date of publication of a notice of initiation under § 355.11, the Secretary will make a determination based on the available information at the time

whether there is a reasonable basis to believe that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated net subsidy, if any, stated on a countrywide basis, except as provided in § 355.20(d); and

(iii) A preliminary finding on critical circumstances, if appropriate under § 355.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

(i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's preliminary determination; and

(ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this subsection a cash deposit or bond equal to the estimated net subsidy.

(4) The Secretary will publish in the **Federal Register** a notice of "Affirmative (Negative) Preliminary Countervailing Duty Determination," including the estimated net subsidy, if any, and an invitation for argument consistent with § 355.39.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) *Postponement in Extraordinarily Complicated Investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 150 days after the proceeding begins. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of (i) the large number or complex nature of the alleged subsidies, (ii) novel issues raised, (iii) the need to determine the extent to which particular subsidies are used by individual producers or exporters, or (iv) the large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the Request of the Petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 150 days after the date of filing of the petition unless the Secretary finds compelling reasons to deny the request.

(d) *Postponement to Investigate Upstream Subsidies.* If, prior to the Secretary's preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may postpone the preliminary determination to not later than 250 days after the proceeding begins (up to 310 days if also postponed under paragraph (b) or (c) of this section).

(e) *Notice of Postponement.* If the Secretary decides to postpone the preliminary determination under paragraph (b), (c), or (d) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the **Federal Register** a notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

(f) *Expedited Preliminary Determination.* Not later than 55 days after the initiation of an investigation under § 355.13, the Secretary will review the record of the first 50 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any interested party that has requested disclosure, all available public and proprietary information (subject to the requirements of § 355.34). If, not later than three government business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the fiftieth day of the investigation, the Secretary will make an expedited preliminary determination.

(g) *Commission Access to Information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

(h) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the determination.

§ 355.16 Critical circumstances findings.

(a) *In General.* If the merchandise is from a country entitled to an injury test for the merchandise and if a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 355.11, the Secretary will make a finding whether:

(1) Any alleged subsidy is inconsistent with the Agreement; and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary Finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) As part of the Secretary's preliminary determination under § 355.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination.

The Secretary will notify the Commission and publish in the **Federal Register** a notice of the preliminary finding.

(c) *Suspension of Liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise, if the Secretary had not already done so as part of an affirmative preliminary determination. Any suspension of liquidation that the Secretary orders at this time, or ordered previously under this part, will apply to all entries of the

merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension of liquidation.

(d) *Final Finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in Self-Initiated Investigations.* In investigations initiated under § 355.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive Imports.* In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

(1) The volume and value of the imports;

(2) Seasonal trends; and

(3) The share of domestic consumption accounted for by the imports.

In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively Short Period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending on the date the Secretary orders suspension of liquidation. However, if the Secretary finds that importers or exporters had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider the period from that earlier time to the date the Secretary ordered suspension of liquidation.

§ 355.17 Termination of investigation.

(a) *Withdrawal of Petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner or on the Secretary's own initiative in an investigation initiated under § 355.11, after notifying all parties to the proceeding and, if the merchandise is from a country entitled to an injury test on the merchandise, after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the **Federal Register** a notice of "Termination of Countervailing Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of Petition Based on Acceptance of Quantitative Restriction Agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the affected country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 704(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of this subsection whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(3) At the direction of the President of the United States or a designee, the Secretary will modify any understanding or other kind of quantitative restriction agreement accepted under paragraph (b)(1) of this section as a result of consultations entered into under section 761 (a) of the Act.

(c) *Negative Determination.* An investigation terminates, without further comment or action, upon publication in the **Federal Register** of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of Suspension of Liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

§ 355.18 Suspension of investigation.

(a) *Agreement to Eliminate or Offset Completely a Subsidy or to Cease Exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise:

(1) To eliminate or to offset completely the net subsidy, with respect to the merchandise; or

(2) To cease exports of the merchandise, not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement Eliminating Injurious Effect.* (1) As provided in this paragraph and paragraph (b)(2) of (b)(3) of this section, the Secretary may suspend an investigation at any time before the Secretary's final determination if the merchandise is from a country entitled to an injury test for the merchandise and if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will eliminate or offset completely at least 85 percent of the net subsidy.

(3) The Secretary may suspend an investigation under paragraph (1) by accepting an agreement with the government of the affected country to restrict the volume of the merchandise. In considering for the purpose of this paragraph whether suspension is in the public interest, the Secretary will take into account the factors listed in section 704(a)(2)(B) of the Act and, to the extent practicable, consult with representatives

of potentially affected persons in the industry, including persons not party to the proceeding.

(c) *Definition of "Substantially All".* For purposes of paragraphs (a) and (b)(2) of this section, exporters who account for "substantially all" of the merchandise means exporters that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or other period that the Secretary considers representative.

(d) *Definition of "Extraordinary Circumstances".* For purpose of paragraph (b) of this section, "extraordinary circumstances" means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation, and (2) there are a large number of alleged subsidy practices which are complicated, the issues raised are novel, or the number of exporters is large.

(e) *Monitoring.* The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports Not to Increase During Interim Period.* The Secretary will not accept an agreement under paragraph (a) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period for elimination or offset of the subsidy of cessation of exports does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(g) *Procedure for Suspension of Investigation.* (1) The Government of the affected country or the exporters, as appropriate, shall submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 355.20.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (The agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States government agencies an opportunity to submit, not later than five days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) Acceptance of Agreement. If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the **Federal Register** a notice of "Suspension of Countervailing Duty Investigation," including the text of the agreement. If the Secretary has not already published a notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(1) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release the cash deposit or bond.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release the cash deposit or bond.

(3) If the Commission undertakes a review under section 704(h) of the Act of an agreement and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement eliminate the injurious effect, the Secretary will continue the suspension of investigation and order the suspension of liquidation ended on the date of publication of the Commission's determination, and will instruct the Customs Service to release the cash deposit or bond.

(i) *Continuation of Investigation.* (1) An interested party, as defined in paragraph (i)(2), (3), (4), (5), or (6) of § 355.2, not later than 20 days after the date of publication of the notice of suspension of investigation, may request in writing that the Secretary continue the investigtion. If the merchandise is from a country entitled to an injury test for the merchandise, the party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and, if appropriate, the Commission will continue the investigation. If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(j) *Merchandise Improted in Excess of Allowed Quantity.*

(1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by an agreement under paragraph (a) or (b) of this section.

(2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(2) of this section, the excess merchandise may be held for future opening under the agreement by placing it is a foreign trade zone or by entering it for warehouse.

(k) *Modification of Quantative Restriction Agreements.* At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultations under section 761(a) of the Act.

§ 355.19 Violation of agreement.

(a) *Immediate Determination.* If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after: (i) Ninety

days before the date of publication of the notice of cancellation of agreement, or (ii) if later, the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under § 355.18(i) resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this subsection a cash deposit or bond equal to the estimated net subsidy determined in the affirmative preliminary determination;

(3) If the investigation was completed under § 355.18(i), issue a countervailing duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated net subsidy determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding and, if appropriate, the Commission and the Commissioner of Customs; and

(5) Publish in the **Federal Register** a notice of "Countervailing Duty Order (Resumption of Countervailing Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination After Notice and Comment.* (1) Notwithstanding, paragraph (a) of this section, if the Secretary has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of subsection 704(d)(1) of the Act, the Secretary will publish in the **Federal Register** a notice of "Invitation for Comment on Countervailing Duty Suspension Agreement."

(2) After publication of the notice inviting comment the Secretary will:

(i) If the Secretary determines that the signatory government or exporters have violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 704(d)(1) of the Act: (A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry of the merchandise under the agreement;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(a) (whether or not the Secretary accepted the original agreement under that subsection) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the **Federal Register** a notice of "Revision of Agreement Suspending Countervailing Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(b) (whether or not the Secretary accepted the original agreement under that subsection) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the **Federal Register** a notice of "Revision of Agreement Suspending Countervailing Duty Investigation."

If the Secretary continues to suspend an investigation based on a revised agreement accepted under § 355.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release the cash deposit or bond. If the Commission undertakes a review under section 704(h) of the Act, the provisions of § 355.18(h)(3) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to revise the agreement, the Secretary will publish in the **Federal Register** a notice of the Secretary's decision under this subsection, including a statement of the factual and legal conclusions on which the decision is based.

(c) If the Secretary decides that the agreement no longer meets the requirements of § 355.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "Violation."* For the purpose of this section, "violation " means significant noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory foreign government or exporter.

§ 355.20 Final determination.

(a) *In General.* (1) Not later than 75 days after the date of publication of the Secretary's preliminary determination, the Secretary will make a final determination whether a net subsidy is being provided with respect to the merchandise.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated net subsidy, if any, stated on a country-wide basis, except as provided in paragraph (d) or (e) of this section; and

(iii) If appropriate, a final finding on critical circumstances under § 355.16.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) If the merchandise is from a country not entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit, as provided in § 355.21(b), for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the countervailing duty order under § 355.21; or

(iii) If the merchandise is from a country entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit or bond equal to the estimated net subsidy determined under this subsection for each suspended entry of the merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination.

(4) The Secretary will publish in the **Federal Register** a notice of "Affirmative (Negative) Final Countervailing Duty Determination," including the estimated net subsidy, if any.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will also notify the Commission.

(b) *Postponement to investigate Upstream Subsidies.* If, after the Secretary's preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may:

(1) If the Secretary's preliminary determination was negative, postpone the final determination under this section to not later than 165 days after the preliminary determination;

(2) If the Secretary's preliminary determination was affirmative:

(i) Postpone the final decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any; or

(ii) At the written request of the petitioner: (A) Make the decision concerning upstream subsidization in the final determination under this section;

(B) Postpone the final determination to not later than 165 days after the preliminary determination; and

(C) End the suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order. The Secretary, not later than 20 days before the scheduled date for the Secretary's final determination, will notify all parties to the proceeding of the decision to postpone either the final determination or the decision concerning upstream subsidization.

(c) *Postponement for Simultaneous Investigations.* (1) If the Secretary simultaneously initiated antidumping and countervailing duty investigations on the merchandise (from the same or other countries), the Secretary at the petitioner's request will:

(i) Postpone the final determination under this part to the date of the final determination under Part 353, unless the Secretary's final determination under this part is due on a later date as the result of postponement under paragraph (b) or § 355.15; and

(ii) End any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order.

(2) The petitioner shall submit any such request in writing not later than 10 days before the scheduled date for the Secretary's final determination under this part.

(d) *Calculation of Individual Rates.* (1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, investigate whether a significant differential existed, during the period for which the Department is measuring benefits in the investigation, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final determination an individual estimated net subsidy for that person.

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

(e) *Effect of Decision not to Exclude From Order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, and net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be the greater of the weighted-average net subsidy stated on a country-wide basis or the individual rate calculated for that person.

(f) *Commission Access to Information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(g) *Effect of Negative Final Determination.* An investigation terminates, without further comment or action, upon publication in the **Federal Register** of the Secretary's or the Commission's negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release the cash deposit or bond.

§ 355.21 Countervailing Duty Order.

Not later than seven days after receipt of the notice of the Commission's affirmative final determination under section 705 of the Act, or simultaneously with the publication of the Secretary's affairmative final determination if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary will publish in the **Federal Register** a "Countervailing Duty Order" that:

(a) Instructs the Customs Service to assess countervailing duties on the merchandise, in accordance with the Secretary's instructions at the completion of each administrative review requested under § 355.22(a) or, if not requested, in accordance with the Secretary's instructions under § 355.22(g);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated countervailing duties equal to the net subsidy stated in the Secretary's final determination; and

(c) Excludes from the application of the order any producer or exporter that complies with the requirements of § 355.14 and that the Secretary finds did not receive directly or indirectly, during the period for which the Department measured benefits in the investigation, any net subsidy on the merchandise from any program that the Secretary determined countervailable in the affirmative final determination.

§ 335.22 Administrative review of orders and suspension agreements.

(a) *Request for Administrative Review.* (1) Each year during the anniversary month of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an order or an agreement on which suspension of investigation was based.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person if the person submits with the request:

(i) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the appropriate period described in paragraph (b) of this section, from any program that the Secretary previously

found countervailable in the proceeding, and that the person will not do so in the future;

(ii) The certification of the government of the affected country that the government did not provide to that person any net subsidy, during the period described in paragraph (b) of this section, from any program that the Secretary previously found countervailable in the proceeding; and

(iii) If the person is not the producer of the merchandise, the certifications under paragraph (a)(2)(i) of this section of the suppliers and producers of the merchandise and the certification under paragraph (a)(2)(ii) of this section of the government regarding those suppliers and producers.

(b) *Period Under Review.* (1) Except as provided in paragraph (2), an administrative review under paragraph (a) of this section normally will cover exports of the merchandise during the most recent completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this Part or suspension of investigation to the end of the most recent completed reporting year of the government of the affected country.

(c) *Procedures.* After receipt of a timely request under subsection (a), or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Within the first 10 days after the anniversary month, publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Send to appropriate interested parties or a sample or interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.37(a)(1) (iii) or (iv);

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual, and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** a notice of "Preliminary Results of Countervailing Duty Administrative Review," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.39, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review stated on a county-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review," including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entires. Both the assessment and the cash deposit will be at the rates found in the final results of review, calculated on a country-wide basis, except as provided in paragraph (d) or (f) of this section.

(d) *Calculation of Individual Rates.* (1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, review whether a significant differential existed, during the period under review, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final results an individual rate for that person, and that rate will be the basis for the assessment of countervailing duties and, except as provided in paragraph (c)(7)(iii) of this section, the cash deposit of estimated countervailing duties for that person.

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

(e) *Possible Cancellation of Revision of Suspension Agreement.* If during an administrative review, the Secretary determines or has reason to believe that the signatory foreign government or exporters have violated a suspension agreement or that the agreement no longer meets the requirements of § 355.18, the Secretary will take appropriate action under § 355.19. The Secretary may toll the time limit is subsection (c)(7) while taking action under § 355.19(b).

(f) *Review of Individual Producer or Exporter.* For an administrative review requested under paragraph (a)(2) of this section:

(1) The Secretary will verify whether there is a net subsidy on the merchandise covered by the request from any program that the Secretary:

(i) Previously found countervailable in the proceeding; or

(ii) Determines in the review to be countervailable.

(2) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) and verifies that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary may issue and publish in the **Federal Register** final results for that person and take actions under paragraph (c)(9) of this section that include a zero rate of assessment and cash deposit.

(3) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but is unable to verify there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the net subsidies found; and

(ii) Initiate an administrative review under paragraphs (b) and (c) of this section of all producers and exporters covered by the order, unless the Secretary is concurrently reviewing the same period, as a result of a request is concurrently reviewing the same period, as a result of a request under paragraph (a)(1) of this section.

(4) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but verifies there is not net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will : (i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously or concurrently determined country-wide weighted-average rate.

(5) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section and is unable to verify that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate plus the additional rate under paragraph (f)(1)(ii) of this section, or, if appropriate, the concurrently determined country-wide weighted-average rate; and

(ii) Initiate and administrative review under paragraphs (b) and (c) of this section of all producers and exporters covered by the order, unless the Secretary is concurrently reviewing the same period, as a result of a request under paragraph (a)(1) of this section.

(6) In addition to the actions described in (f)(4) and (5) of this section, if the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section, the Secretary will refuse to accept any other requests for review under paragraph (a)(2) of this section for the duration of the order.

(g) *Automatic Assessment of Duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section, at rates equal to the cash deposit of or bond for estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(2) of this section and no request under paragraph (a)(1) of this section, the Secretary in accordance with paragraph (g)(1) of this section will instruct the Customs Service to assess countervailing duties and continue to collect the cash deposit on the merchandise not covered by the request.

(h) *Changed Circumstances Review.* (1) If the Secretary concludes from available information, including information in a request under this subsection for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the **Federal Register** a notice of "Initiation of Changed Circumstances Countervailing Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(iv) Publish in the **Federal Register** a notice of "Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review," including an invitation for argument consistent with § 355.39;

(v) Notify all parties to the proceeding of the preliminary results;

(vi) If appropriate, promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(vii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and § 355.25(d), that the Secretary will take based on the final results;

(viii) Publish in the **Federal Register** a notice of "Final Results of Changed Circumstances Countervailing Duty Administrative Review;" and

(ix) Notify all parties to the proceeding.

(2) The Secretary will not initiate an administrative review under this subsection before the end of the second annual anniversary month after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(3) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (h)(1)(i) and (h)(1)(iv) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review." In that event, the notification required in paragraph (h)(1)(v) of this section will be given to all interested parties included on the Department's service list described in § 355.31(h).

(i) *Review at the Direction of the President.* At the direction of the President or a designee, the Secretary will conduct an administrative review to determine if a net subsidy is being provided, with respect to the merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under § 355.17(b) or § 355.18(b)(3). The Secretary will:

(1) Publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Administrative Review at the Direction of the President" which will include a description of the merchandise, the period under review, and a summary of the available information which would, if accurate support the imposition of countervailing duties;

(2) Notify the Commission;

(3) Send to appropriate interested parties or a sample of interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factural and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in subsection (d); and

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;

(5) Publish in the **Federal Register** a notice of "Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.39;

(6) Notify the Commission and all parties to the proceeding;

(7) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(8) Issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in subsection (d); and

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated net subsidy;

(9) Publish in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review at the Direction of the President," including the net subsidy, if any, and the estimated net subsidy; and

(10) Notify all parties to the proceeding.

(11) If the Secretary's final results of administrative review under this paragraph and the Commission's final results of review section 762(a)(2) of the Act are affirmative, the Secretary will:

(i) Publish in the **Federal Register** a "Countervailing Duty Order" under § 355.21 on or promptly after the date the agreement terminates; and

(ii) Order the suspension of liquidation of entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.

§ 355.23 Provisional measures deposit cap.

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination or, if the merchandise is from a country not entitled to an injury test for the merchandise, the date of the Secretary's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the net subsidy the Secretary calculates under § 355.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the net subsidy, and to assess countervailing duties equal to the net subsidy calculated under § 355.22 if the cash deposit or bond is more than the net subsidy.

§ 355.24 Interest on certain overpayments and underpayments.

(a) *In general.* The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated countervailing duties and the assessed countervailing duties on entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of a countervailing duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 355.25 Revocation of order; termination of suspended investigation.

(a) *Revocation or Termination Based on Absence of Subsidy.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that the government of the affected country:

(i) Has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable; and

(ii) Is not likely to reinstate for the merchandise those programs or substitute substantially equivalent programs.

(2) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that all producers and exporters covered by the order or the suspension agreement:

(i) Have not applied for or received, for a period of at least five consecutive years, any net subsidy on the merchandise; and

(ii) Are not likely to apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from substantially equivalent programs.

(3) The Secretary may revoke an order in part if the Secretary concludes that one or more producers or exporters covered by the order:

(i) Have not applied for or received, for a period of at least five consecutive years, any net subsidy on the merchandise;

(ii) Are not likely to apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from substantially equivalent programs; and

(iii) For producers or exporters that the Secretary previously has determined to have received any net subsidy on the merchandise, agree to the immediate reinstatement of the order, as long as any producer or exporter is subject to the order, if the Secretary concludes under § 355.22(h) that the producer or exporter has received, subsequent to the revocation, any net subsidy on the merchandise.

(b) *Request for Revocation or Termination.* (1) During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(1) of the section if the government submits with the request its certification that it has satisfied, during the period described in § 355.22(b)(1), the requirements of paragraph (a)(1)(i) of this section and that it shall not reinstate for the merchandise those programs or substitute substantially equivalent programs; or

(2) During the fifth and subsequent annual anniversary months of the publication of an order or suspended investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(2) of this section if the government submits with the request:

(i) The certifications required under § 355.22(a)(2) for all producers and exporters covered by the order or suspension agreement; and

(ii) Those producers' and exporters' certifications that they shall not apply for or receive any net subsidy on the merchandise from any program described in paragraph (a)(2)(ii) of this section.

(3) During the fifth and subsequent annual anniversary months of publication of an order or suspension of investigation, a producer or exporter may request in writing that the Secretary revoke an order with regard to that person if the person submits with the request:

(i) The certifications required under § 355.22(a)(2);

(ii) The certifications described in paragraph (b)(2)(ii) of this section for the merchandise covered by the request; and

(iii) The agreement described in paragraph (a)(3)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under subsection (b), the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 355.22(c).

(2) In addition to the requirements of § 355.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(c)(1), a notice of "Request for Revocation of Order (in Part)" or, if appropriate, "Request for Termination of Suspended Investigation;"

(ii) Conduct a verification, under § 355.37(a)(1)(ii);

(iii) Include in the preliminary results of review, under § 355.22(c)(4), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary's preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(c)(5), a notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 355.22(c)(7), the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary's final decision under paragraph (v) is affirmative, publish with the notice of final results of review, under § 355.22(c)(8), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release the cash deposit or bond, if any.

(d) *Revocation or Termination Based on Changed Circumstances.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that the order or suspended investigation:

(i) Is no longer of interest to interested parties, as defined in paragraph (i) (3), (4), (5), and (6) of § 355.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 355.22(h).

(3) In addition to the requirements of § 355.22(h), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(h)(1)(i), a notice of "Consideration of Revocation of Order (in Part)" or, if appropriate, "Consideration of Termination of Suspended Investigation;"

(ii) Conduct a verification, if appropriate, under § 355.37(a)(1)(iii);

(iii) Include in the preliminary results of review, under § 355.22(h)(1)(iii), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(iv) If the Secretary's preliminary decision under paragraph (d)(3)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(h)(1)(iv), a notice "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 355.22(h)(1)(vii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vi) If the Secretary's final decision under paragraph (d)(3)(v) of the section is affirmative, publish with the notice of final results of review, under § 355.22(h)(1)(viii), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the **Federal Register**, a notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(1) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each party to the proceeding listed on the Department's service list and on any other person which the Secretary has reason to believe produces or sells a like product in the United States.

(iii) If by the last day of that fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the **Federal Register** the notice described in paragraph (d)(3)(vi) of this section.

(5) If the Secretary under this paragraph revokes an order or revokes an order in part, the Secretary will order this suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release the cash deposit or bond, if any.

(e) *Revocation or Termination Based on Injury Reconsideration.* If the Commission issues negative final results of administrative review under section 751(b) of the Act, the Secretary will revoke the countervailing duty order or terminate the suspended countervailing duty investigation, and will publish in the **Federal Register** a notice of "Revocation of Countervailing Duty Order" or, if appropriate, "Termination of Suspended Countervailing Duty Investigation."

Subpart C—Information and Argument

§ 355.31 Submission of factual information

(a) *Time Limits in General.* (1) All submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence; or

(ii) For the Secretary's final results of an administrative review, the earlier of the date of publication of the notice of preliminary results of review or 180 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit.

(b) *Questionnaire Responses and Other Submissions on Request.* (1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The

Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: The Deputy Assistant Secretary for Import Administration, the Director of the Office of Investigations, the Director of the Office of Compliance, and the division director responsible for the proceeding. An extension must be approved in writing.

(4) Subject to the other provisions of this subsection, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time Limits for Certain Allegations.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2, later than:

(i) In an investigation, the twentieth day after the date of publication of the notice of initiation; or

(ii) In an administrative review, 120 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination.

(3) Any interested party may request in writing not later than the time limits specified in paragraph (c) (1) or (2) of this section, as applicable, an extension of those time limits. If the Assistant Secretary for Trade Administration in an investigation, or the Deputy Assistant Secretary for Import Administration in an administrative review, concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary or Deputy Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to File; Time of Filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., N.W., Washington, D.C. 20230, between the hours of 8:30 a.m. and 5:00 p.m. on government business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following government business day.

(e) *Format and Number of Copies.*— (1) *In General.* Unless the Secretary alters the requirements of this paragraph, submitters shall make all submissions in the format specified in this subsection. The Secretary may refuse to accept for the record of the proceeding any submission that does not conform to the requirements of this paragraph.

(2) *Documents.* In an investigation, submit 10 copies of any document and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including the public summary required under § 355.32(b) as a substitute for the portions for which the person has requested proprietary treatment. In an administrative review submit five copies and three copies respectively. In all proceedings, submit documents on letter-size paper, double-spaced, and securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right hand corner with the following information in the following format: (i) On the first line, except for a petition, the Department case number; (ii) on the second line, the total number of pages in the document including cover pages, appendices, and any numbered pages; (iii) on the third line, state whether the document is for an investigation or an administrative review and, if the latter, the period of review; and (iv) on the fourth and subsequent lines, state whether or not the document contains classified, privileged, or proprietary information and the applicable page numbers.

(3) *Computer Tapes.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form or otherwise cannot supply the requested information on computer tape without unreasonable additional burden in time and expense.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translator.

(g) *Service of Copies on Other Parties.* The submitter of a document shall serve a copy, by mail or personal service, on the government of the affected country and any interested party on the Department's service list. The submitter shall attach to each document a certificate of service listing the parties served and, for each, the date and method of service.

(h) *Service List.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party who asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

§ 355.32 Request for proprietary treatment of information.

(a) *Submission and Content of request.* (1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page "Proprietary Treatment Requested." The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 355.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public Summary.* All are requests for proprietary treatment shall include or be accompanied by:

(1) An adequate public summary of all proprietary information incorporated in the public version of the document (Generally, numeric data are adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent of that portion is individually summarized in this manner.); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(c) *Agreement to Release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of Information as a Result of Nonconforming Request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section. If the Secretary returns the information, the Secretary will provide an explanation of the reasons why it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than 48 hours after the return.

(e) *Status During Consideration of Request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide no later than 14 days after the Secretary receives the request.

(f) *Treatment of Proprietary Information.* The Secretary may disclose factual information which the Secretary decides is proprietary only to: (1) A representative of an interested party who requests and is granted an admininstrative protective order under § 355.34;

(2) An employee of the Department of Commerce directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service for use in connection with a fraud investigation concerning the merchandise; and

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure. Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person.

(g) *Denial of Request for Proprietary Treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return it and not consider it in the proceeding.

§ 353.33 Information exempt from disclosure.

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 355.34 Disclosure of proprietary information under administrative protective order.

(a) *In General.* The Secretary may disclose proprietary information under an administrative protective order to an attorney or other representative of an interested party if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary will also consider the ability of the Secretary to obtain factual information in the future.

(b) *Request for Disclosure.* (1) A representative must file a request for disclosure under administrative protective order not later than 10 days after the later of:

(i) The date of publication in the **Federal Register** of the notice of initiation under §§ 355.11 or 355.13, or the notice of initiation of administrative review under § 355.22; or

(ii) The date the representative's client or employer becomes a party to the proceeding, but in no event later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA–367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding then in progress;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that violation of the order may:

(i) Subject the following persons to prohibition from practice before the Department for up to seven years following the Secretary's decision that a violation has occurred:

(A) The representative;

(B) Any firm or business of which the representative is a partner, associate, or employee, and

(C) The representative's partners, associates, employer, and employees;

(ii) In the case of an attorney, lead to the Secretary's referral of the violation to the disciplinary panel of appropriate bar associations; and

(iii) Subject the representative and the client or employer to other administrative sanctions, including removal from the official record of any factual information or written argument submitted on behalf of the interested party.

(c) *Opportunity to Withdraw Proprietary Information.* If the Secretary decides to disclose proprietary information under administrative protective order without the consent of the submitter, the Secretary will notify the submitter of the decision and permit the submitter to withdraw the information from the official record within 24 hours. The Secretary will not consider withdrawn information.

(d) *Disposition of Proprietary Information Disclosed Under Administrative Protective Order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a

court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1).

(e) *Violation of Administrative Protective Order.* The Secretary will refer to the General Counsel of the Department any allegation of a violation of an administrative protective order, and the General Counsel will then investigate the allegation and prepare a report and recommendation (including recommended sanctions, if appropriate) for the Secretary, who will decide.

§355.35 Ex parte meeting.

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make determinations or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

§ 355.36 Subsidy practice discovered during investigation or review.

(a) *Inclusion in Proceeding.* If during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review.

(b) *Deferral of Examination.* If the Secretary concludes that insufficient time remains, before the scheduled date for the Secretary's final determination or final results of review, to examine the practice described in paragraph (a), the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered subsidy practice; or

(2) During an investigation or review, defer consideration of the newly discovered practice until the next review under § 355.22(c).

(c) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovered and whether or not it will be included in the then on-going proceeding.

§ 355.37 Verification of information.

(a) *In General.* (1) The Secretary will verify all factual information the Secretary relies on in:

(i) A final determination under § 355.18(i) or 355.20;

(ii) A revocation under § 355.25; and

(iii) The final results of an administrative review under § 355.22(c), (h), or (i) if the Secretary decides that good cause for verification exists; or

(iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and exporters included in an administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and exporters included in the review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for Verification.* In verifying under this section, the Secretary will request the government of the affected country to allow employees of the Department to visit with producers, exporters, or government agencies in order to verify the accuracy of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or the government agencies which the Secretary considers relevant to factual information submitted by those persons.

§ 355.38 Best information available.

(a) *Use of Best Information Available.* The Secretary may use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What Is Best Information Available.* The best information available includes the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take into account in determining what is the best information available.

§ 355.39 Written argument and hearings.

(a) *Written Argument.* The Secretary will consider in making the final determination under §§ 355.18(i) or 355.20 or final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary, that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States government agency.

(b) *Case Brief; Request for Hearing.* Not later than 35 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit, and not later than 30 days after the date of publication of the preliminary results of administrative review, any interested party or United States government agency may submit a "case brief." The case brief shall:

(1) Separately identify and present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results; and

(2) Include any request for the Secretary to hold a public hearing on any of the arguments raised in the case brief. At a hearing in an administrative review, an interested party or agency may make an affirmative presentation only on arguments included in that party's case brief and identified in the brief for affirmative presentation at the hearing.

(c) *Rebuttal Brief; Request for Hearing.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results, ordinarily seven days after the time limit for filing the case brief, any interested party or United States government agency may submit a "rebuttal brief." The rebuttal brief shall:

(1) Only respond to arguments raised in case briefs and shall separately identify and present in full all rebuttal arguments; and

(2) Include any request for the Secretary to hold a public hearing on any of the arguments raised in the rebuttal brief. At a hearing in an administrative review, an interested party or agency may make a rebuttal presentation only on arguments included in that party's rebuttal brief and identified in the brief for rebuttal presentation at the hearing.

(d) *Service of Briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country and on any interested party on the Department's service list. If the party has designated under § 355.31(h) an agent in the United States, serve either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, serve by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties served and, for each, the date and method of service.

(e) *Hearings.* If an interested party submits a request under paragraph (b) or (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, seven days after the scheduled date for submission of rebuttal briefs and, in an administrative review, 14 days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Deputy Assistant Secretary for Import Administration, the Director of the Office of Investigations, the Director of the Office of Compliance or another supervisory employee of the Department responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or witness and may permit interested parties to present an additional round of rebuttal argument.

(f) *Where to File; Time of Filing.* The requirements in § 355.31(d) apply to this section.

(g) *Format and Number of Copies.* The requirements in § 355.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under § 355.32(b).

Subpart D—Quota Cheese Subsidy Determinations

§ 355.41 Definition of "subsidy".

For purposes of this subpart, "subsidy" means both "subsidy" and "net subsidy" as defined in sections 771(5) and 771(6) of the Act.

§ 355.42 Annual list and quarterly update.

(a) *Annual List.* Not later than January 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether any foreign government is providing a subsidy, as defined in § 355.41, with respect to any article of quota cheese, as defined in the **Federal Register** a list of the type amount of each subsidy. The Secretary will incorporate in each annual list any changes and additional subsidies for the preceding calendar year determined under paragraph (b) of this section or under § 355.43(b).

(b) *Quarterly Update.* Not later than April 1st, July 1st, and October 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether there have been any changes in or additions to the latest annual list, and will publish in the **Federal Register** a quarterly update of those changes and additions.

§ 355.43 Determination upon request.

(a) *Request for determination.* Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list may request in writing that the Secretary determine whether there are any changes or additions. The person shall file the request at the time and place specified in § 355.31(d). The request shall allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and shall contain the following, to the extent reasonably available to the requesting person:

(1) The name and address of the person;

(2) The article of quota cheese allegedly benefitting from the changed or additional subsidy;

(3) The country of origin of the article of quota cheese; and

(4) The alleged subsidy or charged subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

The requirements of § 355.31 (d) and (f) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the **Federal Register** notice of any changes or additions.

§ 355.44 Complaint or price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under § 355.43(b), whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update. The Department of Agriculture regulations concerning complaints of price-cutting by subsidized imports of quota cheese are published in 7 CFR Part 6.

§ 355.45 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I—List of Countries Under the Agreement.

1. As of the date of publication of this part, the Agreement applies between the United States and the following countries, as determined under section 2(b) of the Trade Agreements Act of 1979: Australia, Austria, Brazil, Canada, Chile, Egypt, European Economic Community (accepted for member states), United Kingdom for Hong Kong, Indonesia, Finland, India, Japan, Korea, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Switzerland, Turkey, and Uruguay. See section 701(b)(1) of the Act.

2. Taiwan and Mexico have assumed obligations with respect to the United States which the President has determined are substantially equivalent to obligations under the Agreement. See section 701(b)(2) of the Act.

3. The following countries are entitled to an injury test under section 701(b)(3) of the Act: Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

For further information, contact the Office of Policy, Import Administration, at the address stated in § 355.31(d).

[FR Doc. 85-13751 Filed 6-7-85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31

Conditions Under Which Non-Eligible Students May Attend Bureau of Indian Affairs-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rules; Extension of comment period.

SUMMARY: This notice extends the comment period from June 10, 1985 to July 5, 1985, on the proposed rule concerning conditions under which non-Indians and Indians of less than one-quarter degree blood quantum of a Federally recognized tribe may attend Bureau-funded schools. This proposed rule was published in the **Federal Register** on May 10, 1985 (50 FR 19701). The extension of the comment period is in response to requests received from the public to allow additional time for comment.

DATE: Comments by July 5, 1985.

ADDRESS: Comments should be mailed to Acting Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Room 3512, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Holmgren, Washington, D.C. at (202) 343-4071.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-14084 Filed 6-7-85; 11:20 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule change and request for comments.

SUMMARY: As part of its continuing effort to enhance equity among similarly situated offenders, as well as to assist in relieving prison overcrowding, the Parole Commission added a provision to its rules concerning the referral to the Bureau of Prisons, and ultimately to the sentencing court, of certain selected cases where the Commission would recommend reduction of a judicially imposed minimum sentence. Due to an extremely small number of cases which have been referred to the sentencing court for reduction by the Bureau of Prisons and to the amount of staff time consumed to identify, prepare and process the cases, the Director of the Bureau of Prisons has requested that the Parole Commission jointly discontinue the program. Pursuant to that request, the Parole Commission seeks public comment concerning the proposal to delete § 2.62 from 28 CFR Part 2.

DATE: Public comment must be received by July 15, 1985.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: As part of the Parole Commission's response to a request from the Bureau of Prisons and Department of Justice for assistance in addressing the problem of federal prison overcrowding and pursuant to its mandate to provide consistency in release dates for similarly situated offenders by reducing unwarranted sentence disparity, the Commission published a proposed rule in the **Federal Register** (48 FR 22949, May 23, 1983) designed to relieve prison overcrowding by referring selected cases to the Bureau of Prisons which then might petition the sentencing court for reduction of judicially imposed minimum sentences. After receiving favorable public comment, the Parole Commission published a final rule in the **Federal Register** (48 FR 44525, September 29, 1983) promulgating § 2.62 of 28 CFR Part 2, effective October 1, 1983.

The rule involved a joint effort by the Bureau of Prisons and the Parole Commission (1) to identify certain prisoners who could be safely released from prison under current Parole Commission standards (see 18 U.S.C. 4206 and 28 CFR 2.20) but who must remain in custody beyond the maximum of the applicable guideline range because of a judicially imposed minimum sentence and (2) to seek a reduction of the minimum sentence in such cases through the provisions of 18 U.S.C. 4205(g). Under 18 U.S.C. 4205(g), the Director of the Bureau of Prisons may at any time petition the sentencing court to reduce a minimum term and the court can act on such application without convening a hearing. As contemplated by the rule, referrals to the sentencing court were to be made by the Bureau in the identified and approved cases for a reduction to the time required by the maximum of the applicable guideline range. Prisoners whose offenses had been rated as Category Eight (the most serious offenses) under the guidelines were not eligible for referrals under the rule because there is no maximum to the Category Eight guideline range.

Pursuant to this rule, the Parole Commission first reviewed 1,473 files of prisoners previously given presumptive parole dates at the completion of the minimum sentence for possible sentence reduction recommendations to the Bureau of Prisons. After hearing examiner and Regional Commissioner consideration and review, 401 cases, where the disparity between the minimum sentence and the maximum of the applicable guideline range appeared unwarranted, were identified and forwarded to the Bureau. The remainder were rejected either because of insufficient time remaining on the sentence to fully process the motion or because there existed in the files aggravating factors that could have caused the Commission itself to go above the applicable guidelines. The Parole Commission next began reviewing current files for possible

recommendation, identifying another 171 cases for reduction recommendation. If all of these 572 recommendations had been accepted by the Bureau and, eventually, by the sentencing judge, a savings of 9,591 prisoner incarceration months or about 800 prisoner incarceration years could have been realized.

According to data supplied by the Bureau of Prisons, since December 1983, only 74 of the 572 cases submitted by the Parole Commission made it through the Bureau's processing for consideration by its Director. He denied 68 of these, approving 6 for further review by the appropriate U.S. attorney. Three of these six were referred to the sentencing judges after U.S. attorney review, with the sentencing judge actually reducing the minimum in only two cases.

As a result, in January 1985, the Director of the Bureau of Prisons, citing the extremely small number of cases actually referred to sentencing courts and the amount of staff time involved in identifying, preparing and processing the cases, proposed that the program be discontinued. The Parole Commission now seeks public comment on whether to accept that recommendation and to discontinue its efforts by deleting 28 CFR 2.62 from its rules.

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

1. The authority citation for 28 CFR Part 2 would be revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)9b).

2. Accordingly, 28 CFR Part 2 is amended by removing § 2.62.

Dated: May 13, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85–13376 Filed 6–7–85; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to require all parolees (and mandatory releasees) to satisfy outstanding court orders as a condition of their release, adding this condition to its Conditions of Release, 28 CFR 2.40. While mandated to add this condition as regards fines by the provisions of the Criminal Fine Enforcement Act of 1984, Pub. L. 98–596, and as regards restitution orders by the provisions of the Victim and Witness Protection Act of 1982, Pub. L. 97–291, the Parole Commission proposes additionally to require the satisfaction of court ordered child support or alimony payments, or other court orders. Furthermore, since current conditions of release already obligate a parolee to "not violate any law" (28 CFR 2.40(a)(6)) and to "support his legal dependents" (28 CFR 2.40(a)(8)), the proposed changes will serve to clarify those existing obligations rather than resulting in totally new or additional requirements. To facilitate the payment of these obligations, the Parole Commission proposes to require the parolee to provide relevant financial information and to cooperate, when appropriate, in the establishment of an installment payment plan. Other amendments are proposed to clarify and conform language to the terms of this new release condition.

DATE: Public comment must be received by July 15, 1985.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–4980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: Currently the U.S. Parole Commission imposes several conditions on every grant of parole, conditions deemed necessary to provide adequate supervision and to protect the public welfare. The Commission is proposing to amend its set of conditions at 28 CFR 2.40 by adding the condition that parolees make a diligent effort to satisfy outstanding fines and other court ordered financial obligations such as restitution orders, child support and alimony and, to that end, that they supply financial information and develop installment payment plans. The new condition as to fines is required by the Criminal Fine Enforcement Act of 1984, Pub. L. 98–596 and the Parole Commission is proposing to lend equal weight to the enforcement of other court ordered financial obligations, as it did previously with restitution orders, by making their satisfaction a condition of parole.

In regard to this new condition of parole, several proposed procedures will apply. First, the parolee will meet with the U.S. Probation Officer to develop a written plan for the payment of the fine, restitution order, etc. The plan will include, among other things, a payment schedule and the amount to be paid at each installment. It will include also the following clause: "This plan, and the obligations described herein, are part of the conditions of my parole." The parolee will supply all financial information and records necessary to the development of the plan and will sign the plan, along with the U.S. Probation Officer. A copy of the signed plan will be forwarded to the Parole Commission.

As to the payment schedule and the amounts to be paid at each installment, the plan will include any relevant court ordered installment payment schedule. if no such installment payment schedule exists, one will be developed that takes into account, among other things, the amount of the fine (restitution order, etc.), any interest and penalties due as well as the parolee's employment status, earning ability, financial resources, and the economic burden that the payment of the obligation will impose on the parolee or his dependents. Where feasible, the installment payment term for fines and restitution orders should not exceed two years. When the parolee has an outstanding restitution order in addition to a fine or other financial obligation, the plan will give precedence to the satisfaction of the restitution order.

If the parolee refuses to accept the terms of the plan in general, refuses to accept the installment payment schedule, and/or refuses to sign the plan, the Parole Commission will then resolve any outstanding disputes as to terms and installment payment schedules, completing the plan as necessary and making the terms and schedules contained therein themselves a parole condition. Any changes to or modifications of the plan will be reduced to written form and signed by the parolee and the U.S. Probation Officer. A copy of the signed change or modification will be forwarded to the Parole Commission.

And, finally, if the parolee does not make diligent effort to make the payments according to the schedule in the plan, the U.S. Probation Officer will report such failure to the Parole Commission as a violation of the conditions of parole.

As a conforming amendment, the Parole Commission proposes to delete 28 CFR 2.7(b)(1). That subsection deals

with unsatisfied orders of restitution automatically becoming a condition of release. The proposed new condition renders this part of the subsection duplicative and thus unnecessary. The subsection also requires the inclusion of a payment plan, where feasible, as part of the prisoner's parole release plan. The Parole Commission will retain that requirement, but, for clarity reasons, proposes to amend the language and add it to 28 CFR 2.33 (Release Plans) as new § 2.33(d).

As a second conforming amendment, the Parole Commission proposes to amend the language of 28 CFR 2.7(b)(3), to delete it from 28 CFR 2.7 and to add it to 28 CFR 2.52 as new § 2.52(e). As presently drafted, the subsection deals with factors to be considered in determining whether to revoke parole for non-compliance with a condition of restitution. The proposal would require that the same factors be considered in determining revocation for non-compliance with a condition of fine, court ordered child support or alimony payment and other court ordered financial obligation. The new subsection would become part of 28 CFR 2.52 (Revocation Decisions). Finally, present 28 CFR 2.7(b)(2) would be redesignated 28 CFR 2.7(b).

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

1. The authority citation for 28 CFR Part 2 would be revised to read: Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Accordingly, 28 CFR 2.40, Conditions of Release is proposed to be amended by adding new paragraph (a)(13) to read as follows:

§ 2.40 Conditions of release.

(a) * * *

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court ordered child support or alimony payments and/or other court ordered financial obligation of a similar nature that has been, or may be, imposed, and shall provide such financial information as may be requested, by his Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Probation Officer in establishing an installment payment schedule.

3. Further, as conforming amendments, 28 CFR 2.7(b)(1) and 2.7(b)(3) are proposed to be removed and 28 CFR 2.7(b)(2) is proposed to be redesignated 28 CFR 2.7(b). Also, 28 CFR 2.33, Release Plans, is proposed to be amended by adding new paragraph (d) to read as follows:

§ 2.33 Release plans.

* * * * *

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

4. Finally, 28 CFR 2.52, Revocation Decisions, is proposed to be amended by adding new paragraph (e) to read as follows:

§ 2.52 Revocation decisions.

(e) In determining whether to revoke parole for noncompliance with a condition of fine, restitution, court ordered child support or alimony payments and/or other court ordered financial obligation, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, the willfulness of the failure to pay and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: May 13, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-13377 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders, and Juvenile Deliquents; Proposed Changes in Policy Guidelines

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to make a number of changes in the Commission's paroling policy guidelines. First, separate guidelines for Youth/NARA cases would be eliminated; and the guideline ranges for certain lower severity, better risk offenders would be reduced. Second, this proposal would make a number of changes in the offense severity examples contained in the parole guidelines. Certain of the offense severity amendments will merely clarify present policy and improve the organization of the offense behavior examples, while others are expected to result in actual changes in time customarily served. Third, administrative parole violations resulting in revocation would be treated as if Category One offenses; and a conforming change in the recission guidelines would be made for escape.

DATE: Public comment must be received on or before August 9, 1985.

ADDRESS: Send comments to U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attn: Peter B. Hoffman.

FOR FURTHER INFORMATION CONTACT: Peter B. Hoffman, Research Director, U.S. Parole Commission, telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

Background

The factors which the Commission must consider in evaluating the application of a federal prisoner for release on parole have been established by Congress at 18 U.S.C. 4206(a) (1976) which provides that:

If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstance of the offense and the history and characteristics of the prisoner, determines:

(1) That release would not depreciate the seriousness of his offense or promote disrespect for the law; and

(2) That release would not jeopardize the public welfare; subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

Congress has mandated that the Commission establish paroling policy guidelines making explicit the Commission's national paroling policy (18 U.S.C. 4203 (1976)). The paroling policy guidelines that have been established pursuant to this statutory mandate (at 28 CFR 2.20) contain two dimensions. The first dimension contains a listing of offense behavior examples that provides a means by which the Commission may rate the seriousness of each prisoner's offense. The offense behavior examples are listed in eight categories. The second dimension is an actuarial table (salient factor score) which aids the Commission

in assessing the degree to which the applicant's background indicates likely success or failure on parole (i.e., whether release would jeopardize the public welfare).

For each combination of offense severity rating and degree of parole risk, the guidelines provide a range of months to be served (assuming the appropriate guideline range in the case under consideration, the Commission exercises its discretion to determine whether individual circumstances justify a decision above or below the indicated range. If a decision to require service of a term within the guidelines is reached, then the Commission also exercises discretion to determine at what point within the guidelines release is most appropriate.

In this manner, the Parole Commission discharges its complex duty of converting three separate judgments (as to prison conduct, the severity of the offense, and the risk that release would entail) into a term of imprisonment that reflects an appropriate balancing of each consideration.

Nature and Impact of the Proposed Changes

The proposed revisions to 28 CFR 2.20, 2.21, and 2.36 fall into three categories: (a) Elimination of the youth guideline ranges in § 2.20, and downward revision to the guideline ranges for certain of the lower severity, better risk cases; (b) revision of certain of the offense examples in the Offense Severity Index of § 2.20, and (c) revision of § 2.21 to treat administrative parole violation(s) leading to revocation as if a Category One offense for reparole guideline purposes, and revision of § 2.36 for escape cases to conform to the revision in §2.21.

(a) Revisions of the Guideline Ranges. Currently, three classes of prisoners are considered under the youth guideline ranges: any prisoner less than age 22 at the time of the offense; any prisoner sentenced under the Youth Corrections Act, regardless of age at the time of the offense; and any prisoner sentenced under the Narcotics Addict Rehabilitation Act. The Commission is proposing the elimination of separate guidelines for such offenders. It is proposed to use the adult guideline ranges for certain lower severity, better risk cases. The Commission believes that this revision will conform to the Sense of the Senate Resolution in the Comprehensive Crime Control Act of 1984 by providing heavier penalties for the more serious youth offenders while relying less on incarceration for certain of the lower severity, better risk cases.

(b) Revision of Certain Offense Examples in the Offense Behavior Severity Index. Certain of the proposed changes are for clarity; others add new offense examples or make substantive changes in the current offense examples which will impact upon the time served before parole. The proposed addition of offense example 213 adds a behavior previously not specifically covered in the offense severity index, as do the proposed amendments to 321(b)(2) and 331(f)(1), and the addition of Offense Example 631. The proposed amendments to the titles of Offense Examples 402 and 1161 are for clarity. The proposed amendments to offense Examples 811, 901(h), 1141, 1151, and 1152 would raise the offense severity level for specific offense behaviors. The proposed amendment to Definition 18 of Chapter Thirteen, Subchapter B conforms to an expanded legislative definition of this offense. The Commission also requests public comment on the addition and grading of environmental protection offenses (e.g., unlawful disposal of hazardous wastes).

Two important points should be kept in mind in evaluating these proposed changes. First, the examples within the severity categories are not intended to be used as a form of criminal code. They are merely guideposts for the exercise of discretion, and individual circumstances in actual cases may justify a decision or a severity rating different from that listed. Second, the examples are not comprehensive either as to all possible variations in circumstances or as to all types of behavior that are deemed criminal under federal law. Commonly recurring types have been selected and are defined in general terms so as to focus attention on what the Commission considers to be the most relevant factors (e.g., for drug offenses, the amount and purity of the illicit substance involved).

(c) Revision of the Reparole Guidelines for Administrative Parole Violators. The Commission is proposing to increase the penalties for parole violators with significant prior records by amending the reparole guidelines for prisoners with administrative violations to conform to the guidelines used for parole applicants with Category One (the least serious) offenses. Consequently, instead of a reparole guildeline range of <=9 months for all administrative violators, the applicable guideline range would be <=8, 8–12, or 12–16 months depending upon the prisoner's background characteristics as measured by the salient factor score (prior record, age, and history of opiate use). The Commission believes that this revision will more adequately sanction administrative violations.

While realizing the difficulties in making accurate projections of the impact of proposed guidelines changes on the prison population, the Commission believes that such projections are appropriately considered as one factor in the overall content of guideline revision. It is the Commission's estimate that the elimination of the youth Guideline ranges will increase the prison population by 400–500 prisoners; while the downward revision of the guideline ranges for the lower severity, better risk will decrease prison population by 200–250 prisoners. It is estimated that the proposed modification in the guideline ranges for administrative parole violators will increase the prison population by 200–250 prisoners. The revisions to the Offense Behavior Severity Index are estimated as increasing prison population by 50–100 prisoners. It is noted that these changes will not be immediate, but rather will occur over several years. Thus, it is estimated that the net impact of the proposed revisions will be to increase the prison population by 450–600 prisoners over the next several years.

Implementation

The Commission has previously adopted a policy that guideline changes requiring a greater period of confinement will not be applied retroativity to any prisoner who has received his or her initial hearing prior to the effective date of the final rule. The Commission will apply changes requiring a lesser period of confinement retroactively to prisoners already considered for parole. This reconsideration would be accomplished at the prisoner's next regularly scheduled hearing or review. Given the period specified for public comment, the Commission contemplates that the final rule would become effective in October 1985.

The Rule Making Process

The amendments proposed herein cover a wide variety of criminal offenses. Moreover, since the Commission is dealing with a comparative scale of seriousness, each proposal will have some bearing uon numerous collateral issues. Therefore, it is to be stressed that the Commission invites public comment not only on the specific changes proposed, but on any aspect of the offense severity table or the guideline ranges themselves that may be of concern to interested members of the public.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure: Prisoners, Probation and parole.

Accordingly, the following amendments to 28 CFR 2.20, 2.21, and 2.36 are proposed:

1. The authority citation for 28 CFR Part 2 would be revised to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. It is proposed to remove § 2.20(h)(1) and the first sentence of § 2.20(h)(2); and, as a conforming amendment, to remove the second sentence of § 2.21(b)(2).

3. The table in § 2.20 following paragraph (j)(2) is revised to read as follows:

GUIDELINES FOR DECISION-MAKING

[Guidelines for decision-making, customary total time to be served before release (including jail time)]

Offense characteristics: Severity of Offense Behavior	Offender characteristics: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10–8)	Good (7–6)	Fair (5–4)	Poor (3–0)
	Months	Months	Months	Months
Category 1. Adult range	<=4	<8	8–12	12–16
Category 2. Adult range	<=6	<10	12–16	16–22
Category 3. Adult range	<=10	12–16	18–24	24–32
Category 4. Adult range	12–18	20–26	26–34	34–44
Category 5. Adult range	24–36	36–48	48–60	60–72
Category 6. Adult range	40–52	52–64	64–78	78–100
Category 7. Adult range	52–80	64–92	78–110	100–148
Category 8.[1] Adult range	100+	120+	150+	180+

[1] NOTE.—For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

4. It is proposed to add a new offense example in Chapter Two, Subchapter B, of the Offense Behavior Severity Index in § 2.20 to read as follows:

213 *Firing a Weapon at a Structure Where Occupants are Physically Present*

Grade according to the underlying offense if one can be established, but not less than Category Five.

5. It is proposed to amend Offense Example 321(b)(2) of Chapter Three, Subchapter C, of the Offense Behavior Severity Index in § 2.20 to include cases in which the victim is tied, bound, or locked up.

6. It is proposed to amend Offense Example 331(f)(1) in Chapter Three, Subchapter D, of the Offense Behavior Severity Index of § 2.20 to include "credit cards or money orders".

7. It is proposed to amend the title of Offense Example 402 in Chapter Four of the Offense Behavior Severity Index of § 2.20 to read as follows:

402 *Transportation of Unlawful Alien(s)*

8. It is proposed to add a new Subchapter D—Voting Fraud in Chapter Six of the Offense Behavior Severity Index of § 2.20 to include the following offense example:

631 *Voting Fraud*
Category Four

9. It is proposed to amend Offense Example 811 in Chapter Eight, Subchapter B, of the Offense Behavior Severity Index in § 2.20 to read as follows:

811 *Possession by Prohibited Person* (e.g., ex-felon)

(a) If single weapon (rifle, shotgun, or handgun), grade as Category Three;
(b) If multiple weapons (rifles, shotguns, or handguns), grade as Category Four.

10. It is proposed to remove Offense Example 901(h) in Chapter Nine, Subchapter A, of the Offense Behavior Severity Idex of § 2.20.

11. It is proposed to amend Offense Example 1141 in Chapter Eleven, Subchapter E, of the Offense Behavior Severity Index of § 2.20 to refer to a person less than 18, rather than 16 years of age in (a), to delete (b), and to reletter (c) as (b).

12. It is proposed to amend Offense 1151 in Chapter Eleven, Subchapter F, in the Offense Behavior Severity Index of § 2.20 to read as follows:

1151 *Bribery Not Involving Federal, State, or Local Governmental Officials*

Grade as if a fraud offense according to (1) the amount of the bribe offered or demanded, or (2) the financial loss to the victim, whichever is higher.

13. It is proposed to amend Offense Example 1151(b) in Chapter Eleven, Subchapter F, of the Offense Behavior Severity Index of § 2.20 to read as follows:

1152 *Sports Bribery*

If the conduct involves bribery in a sporting contest, grade as if a theft offense according to the amount of the bribe, but not less than Category Three.

14. It is proposed to amend the title of Offense 1161 in Chapter Eleven, Subchapter G, of the Offense Behavior Severity Index of § 2.20 to read as follows:

Reports on Monetary Instrument Transactions

15. It is proposed to amend Definition 18 of Chapter Thirteen, Subchapter B in the Offense Behavior Severity Index of § 2.20 to include a person less than 18, rather than 16, years of age.

16. It is proposed to create a separate subchapter concerning the grading of environmental protection offenses (e.g., unlawful disposal of hazardous waste).

17. It is proposed to revise paragraph (a) of § 2.21 Reparole Consideration Guidelines to read as follows:

§ 2.21 Reparole consideration guidelines

(a) If revocation is based upon administrative violation(s) only, grade the behavior as if a Category One offense under § 2.20, recalculate the salient factor score, and apply the guidelines for parole consideration at § 2.20.

* * * * *

§ 2.36 [Amended]

18. It is proposed to amend § 2.36(a)(2)(i)(A) to increase the guideline range from "6–12 months" to 8–16 months."

Dated: May 14, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85–13375 Filed 6–7–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 7–85–23]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Florida Department of Transportation and the Venice Area Chamber of Commerce, the Coast Guard is considering changing regulations governing the Venice Avenue and Hatchett Creek (US 41) bridges at Venice by providing for a ten minute closed period between the opening of one bridge and the opening of the other. This proposal is being made because of the proximity of these drawbridges to a major vehicular intersection in downtown Venice. This action should accommodate the needs of

vehicular traffic and yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before July 5, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Paskowsky, Bridge Administration Specialist at (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walter Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The Venice Avenue and Hatchett Creek drawbridges cross the Gulf Intracoastal Waterway about 600 yards apart in Venice, Florida. The roadways crossing these bridges intersect at right angles in downtown Venice within two blocks of the bridges. Congestion at this busy intersection worsens when one of the drawbridges opens. When the second draw opens before the traffic backup from the first bridge has cleared, this congestion intensifies.

Traffic studies have shown that it takes a maximum of 6 to 7 minutes for traffic to resume normal flow once the Venice Avenue bridge has stopped traffic and begun to open. Timing bridge openings so that neither bridge will open until a traffic backup from the other bridge has had an opportunity to clear should reduce traffic congestion attributable to drawbridge openings.

This proposal would limit routine openings of these two bridges to once every 20 minutes between 7 a.m. and 6 p.m. weekdays. The scheduled openings would be offset by 10 minutes so that either bridge would open 10 minutes after the other if required for vessel passage.

Vessels approaching these bridges from either direction and requiring opening of both spans for passage would be expected to time their arrival at the first bridge to coincide with a scheduled opening time and then transit between the bridges in a 10 minute period.

Existing requirements that the Hatchett Creek bridge open every 15 minutes between 7:30 a.m. and 6 p.m. would be retained on Saturdays, Sundays, and federal holidays. Likewise, the Venice Avenue bridge would be required to open on signal on these days. Reduced vehicular traffic and heavier boating activity make these weekend procedures desirable.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows. Since the economic impact of the proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

In consideration of the foregoing, it is proposed to amend Part 117 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. It is proposed to revise § 117.287 by adding a new paragraph (a–1) and revising paragraph (b) to read as follows:

§ 117.287 Gulf Intracoastal Waterway Caloosahatchee River to Perdido River.

* * * * *

(a–1) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday except federal holidays the draw need open only at 10 minutes after the hour, 30 minutes after the hour, and 50 minutes after the hour.

(b) The draw of the Hatchett Creek (US 41) bridge, mile 56.9 at Venice, shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday except federal holidays the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On Saturdays, Sundays and federal holidays from 7:30 am to 6 pm the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: May 24, 1985.

A. R. Larzelere,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 85–13925 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–11–M

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33 CFR Part 117

[CGD5–85–02]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the North Carolina Department of Transportation, Division of Highways, the Coast Guard is considering amending the regulations that govern the operation of the drawbridge across the AICWW, mile 260.7, at Surf City, North Carolina. The request is for hourly openings for pleasure craft during the boating season. This proposal is being made in an effort to alleviate highway traffic congestion in the vicinity of the drawbridge. Approval of this request would reduce the number of draw openings and probably still provide for the reasonable needs of navigation.

DATE: Comments must be received by July 29, 1985.

ADDRESS: Comments should be mailed to Commander (oan), 5th Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23705–5000. The comments received will be available for inspection and copying at the above address, Room 609, between 8 A.M. and 4 P.M., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, Telephone (804) 398–6227.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafter of this notice is W. J. Creed, Project Officer, and Lieutenant Commander W. J. Brudzinski is the Project Attorney.

Discussion of Proposed Rule

The North Carolina Division of Highway made the request to open the bridge on the hour from 7 A.M. to 7 P.M. because of highway traffic congestion in the vicinity of the bridge.

A survey of the marine related businessess in the area indicated that the proposed bridge schedule would not be opposed by these entities. In view of this, it is reasonable to assume that approval of the request is in the public interest.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the proposed regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of this proposal is expected to be so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE REQUIREMENTS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. A new paragraph (c) is added to § 117.821 to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.

* * * * *

(c) From May 1 to October 31, the S. R. 50 bridge at Surf City shall open on the hour from 7 A.M. to 7 P.M. for the passage of pleasure craft. To accommodate approaching pleasure craft, the hourly opening may be delayed up to 10 minutes past the hour. Only pleasure boats are affected by this schedule and the standard rules apply to the operation of this bridge.

Dated June 5, 1985.

James C. Irwin,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 85–13922 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 85–4]

Registration of Claims to Copyright; Inquiry Concerning Registration and Deposit of Databases

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: As part of another proceeding requesting public comment on the Copyright Office's proposed deposit regulations, the Information Industry Association [I.I.A.] submitted a proposal concerning the deposit requirements for machine-readable databases. The Association of American Publishers [A.A.P.] also suggested a procedure for the group registration of databases. Because of the significance of these issues and their timeliness in light of rapid technological development, by this Notice of Inquiry the Office is inviting public comment on the questions that have been raised.

DATES: Comments should be received on or before July 15, 1985.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287–8380.

SUPPLEMENTARY INFORMATION: Copyright ordinarily subsists in the contents of a database either as a compilation or as some other work of authorship. In order for a database to have any meaningful copyright protection, however, the author must register the work. Under the Copyright Act of 1976, Title 17 of the United States Code [Act], registration serves several essential functions: It is a prerequisite to suit, 17 U.S.C. 411(a); if the registration is made before publication or within five years of first publication, the certificate or registration is prima facie evidence of the facts it states and of the validity of the copyright, 17 U.S.C. 410(c); and by registering the work within three months after publication, the copyright owner preserves the right to claim statutory damages and discretionary counsel fees. 17 U.S.C. 412.

Section 408(c)(1) of the Act is also important for the deposit of databases. That section authorizes the Register of Copyrights to specify classes into which works may be placed for purposes of deposit and registration. One of the alternatives is "a single registration for a group of related works." When the Copyright Office issued its 1978 regulations, there were several comments requesting special provisions for group registration of revisions and updates of automated databases. 43 FR 763 (January 4, 1978). At that time the Office invited further comments and suggestions as to the type of related works that could be covered by group registration and the deposit and registration requirements applicable in those cases. The possibility of providing for "a single registration for a group of related works," however, was "reserved for implementation in a separate proceeding." 43 FR 965 (January 5, 1978). The Office also deferred additional amendment to the deposit regulations for machine-readable works prior to developing further experience with the "rapidly developing technology of storing and retrieving information." 43 FR 763 (January 4, 1978). Under present

Office regulations, the group registration of related works has similarly been reserved. 37 CFR 202.3(b)(4)(1984).

Databases provide special problems for copyright deposit and examination because they are constantly changing and there remains some question about the copyright ability of additional small increments of information. Special relief provisions, in any event, provide some flexibility in deposit requirements. *See* H.R. Rep. 94–1476, 94th Cong., 2d Sess. 115 (1976). Presently, the specific provision relating to the registration of machine-readable databases is § 202.20(c)(2)(vii)(B), while the special relief provision is § 202.20(d).

Public Comment Invited on the Following Issues

1. A.A.P. Proposal

In response to the proposed deposit regulations published in the **Federal Register** on February 14, 1985 (50 FR 6208), A.A.P. stated that regulations must be developed to meet the problems of deposit for dynamic databases subject to regular revision, expansion or other change. A.A.P. proposed regulations which "permit: (a) A single 'group' registration for varying versions (enhancements, updates, and other modifications) of a database, and related databases, published within a twelve-month period, or any lesser period within twelve months, on the basis of a single deposit and application; (b) in any case, deposit material based on reasonable portions of output, rather than 'raw data' or the like; and (c) diminished deposit requirements in the case of successively or singly ('group') registered revisions, in the nature of descriptions of content and their relation to prior deposits, rather than data content." Letter from Carol A. Risher, Director-Copyright and New Technology, to Dorothy Schrader, General Counsel, Copyright Office (March 29, 1985). The Copyright Office is interested in comments on the feasibility of a single group registration for databases; deposit based on reasonable portions of output, rather than raw data; and deposit based on description of content and its relation to prior deposits, instead of data content.

2. I.I.A. Proposal

I.I.A. suggested in a comment to the proposed deposit regulations (50 FR 6208) that databases cannot serve as documentation of the complete identify of the work's content, either to show the extent of registration or the entirely of the work. Relevant evidence in the examination of authorship, I.I.A. recommended, would be documentary evidence of the continuing process of creation, hard copy extracts (for example, the first and last 25 pages) and the same direct online access as is offered the customer. Finally, I.I.A. stated, section 408(c)(1) of the Act, Title 17 of the United States Code, provides statutory authority for the Copyright Office to permit a single registration for a group of related works (I.I.A. Comment No. 5).

I.I.A. proposed the addition of a new § 202.3(b)(4) which would permit a single registration for a group of related works if certain conditions are met. The group registration would require that works have the same copyright claimant, the same general title, and similar general content, including subject and organization. If the works are published, each must bear a separate copyright notice as first published and have the same copyright owner, and the work or works must be first published within three months prior to registration.

The deposit accompanying the application for the earliest work or works in the group, fixed or published only in the form of machine-readable copies, would be one copy of identifying portions of the work reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. The required deposit for the remaining work or works in the group would be either the above identifying portions taken from the latest work or works in the group or, where registration is sought for a revised version of, or another derivative work based upon a previously registered database, the claimant may deposit identifying material pursuant to 17 U.S.C. 408(c)(1). The identifying material under section 408(c)(1) would consist of a brief statement that it remains representative of the corresponding pages or equivalent units, or of the data file or files and the data records in such file or files. The descriptive statement submitted with the earlier deposit must also remain accurate except for the changes set forth in the current statement. If the earlier deposit and descriptive statement were submitted more than a year earlier, the claimant could not submit identifying material as an alternative deposit for the revised version or versions, and instead would have to meet the general deposit requirements for machine-readable databases.

I.I.A. also advocates the use of special relief, pursuant to the proposed deposit regulation, 37 CFR 202.20(d)(iv), which would allow the Register of Copyrights to "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

The Copyright Office is interested in public comment on the deposit requirements for machine-readable databases including revisions and derivative works based upon previously registered databases. The Office also welcomes views on the question of the use of the special relief provisions to ease the registration deposit requirements for databases. Although the Office invites public comment specifically on the I.I.A. and A.A.P. proposals, we have not made even a tentative decision that all elements of the proposals have merit.

In this proceeding the Copyright Office is not inviting comment on group registration for works other than databases.

(17 U.S.C. 408, 409 and 702)

List of Subjects in 37 CFR Part 202

Copyright registration.

Dated: May 31, 1985.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

[FR Doc. 85–13827 Filed 6–7–85; 8:45 am]

BILLING CODE 1410–03–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension on the Proposed Rule for Mammillaria Thornberi (Thornber's Fishhook Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of proposed rule and comment period.

SUMMARY: The U.S. Fish and Wildlife Service extends the one-year deadline on the proposed rule (49 FR 17551) for *Mammillaria thornberi* for six additional months as provided for under section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended. Since the proposed rule was published, contractors have provided new information on population numbers and distribution of *Mammillaria thornberi*. The extension period will allow time to gather data for one more field season and to more completely analyze the plant's distribution, population numbers, localities, and potential threats. Comments are solicited.

DATES: With this six-month extension, the new deadline for the final rule will be October 24, 1985. A new comment period will commence with the publication of this notice and will close on July 10, 1985.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, Region 2, Office of Endangered Species, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Mammillaria thornberi (Thornber's fishhook cactus), a member of the cactus family, was proposed for listing as a threatened species in the April 24, 1984, **Federal Register** (49 FR 17551). This species is a narrow endemic and is known only from Pima and Pinal Counties, Arizona. Factors affecting the species, as cited in the proposed rule are collection, habitat destruction from urban development, a proposed Central Arizona Project aqueduct, grazing, and ground water depletion.

In the spring of 1983, a Service contractor conducted a survey of various areas proposed for construction of portions of the Central Arizona Project and a proposed mitigation area (Reichenbacker, 1984). This study, and other studies conducted in 1984 (Steve Boyd, Tierra Madre Consultants, Riverside, California, pers. comm., 1984), expanded the known occurrence of thornber's fishhook cactus and greatly increased known population levels. In light of this information, there is now substantial disagreement among those most familiar with the species' status as to whether it qualifies for listing under the Endangered Species Act and, therefore, more time is needed to analyze the available data regarding potential threats to the species. Therefore, the Service under section 4(b)(6)(B)(i) extends for six months the one-year deadline on the Thornber's fishhook cactus. Future actions on the proposed listing of this species depend on the results of this analysis. After a thorough analysis of the data, the Service will decide either to continue with the final listing of the species or to withdraw the proposal for *Mammillaria thornberi* as provided under section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended.

Literature Cited

Reichenbacher, F.W. 1984. Rare plants of the Central Arizona Project Tucson Aqueduct Phase B. U.S. Fish and Wildlife Service, Endangered Species Office, Albuquerque, New Mexico. 61 pp.

Author

The primary author of this notice is Heather A. Stout, Endangered Species Botanist, Region 2 (See **ADDRESSES** above) (505/766–3972 or FTS 474–3972).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411)

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 3, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–13824 Filed 6–7–85; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Document No. 50587–5087]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement conservation and management measures as prescribed in the proposed Amendment 1 (Amendment) to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This rule provides for measures designed (1) to maintain more effectively the landings and productivity of each user group to the maximum extent possible; (2) to restore overfished stocks; and (3) to prevent overfishing of king and Spanish mackerel, and cobia. The intended effect is to rebuild and maintain all stocks at a maximum sustainable yield (MSY) level.

DATES: Written comments on the proposed rule must be received on or before July 20, 1985.

ADDRESSES: Comments on the proposed rule, the Amendment, or supporting documents should be sent to Mr. Jack Brawner, Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702. Mark the outside of the envelope "Comments on Gulf and South Atlantic Mackerel Plan—Amendment 1." Copies of the Amendment, the supplemental environmental impact statement and the supplemental regulatory impact review/initial regulatory flexibility analysis are available from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, and the Secretary of Commerce (Secretary) implemented final regulations on February 4, 1983 (48 FR 5272), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The proposed rule implements the amendment to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils).

The FMP manages the coastal migratory pelagic fishery throughout the fishery conservation zone (FCZ) off the South Atlantic coastal states from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The proposed rule applies only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish (Gulf of Mexico only), little tunny and cero mackerel are minor species in the fishery, and data collection requirements of the FMP apply only to these seven species.

Background

Recent scientific data and analyses indicate that the king mackerel stock consists of, at least, two migratory groups which, for management purposes, should be treated as separate stocks, i.e., an Atlantic migratory group and a Gulf migratory group. Tagging data indicate that in U.S. waters the Gulf migratory group occupies a range from the Texas-Mexico border to the Florida

Keys during the period from April to November and from the Texas-Mexico boundary to the Volusia-Flagler County, Florida boundary from November to April. Conversely, the Atlantic migratory group occupies a range from North Carolina through the Florida Keys during the period April to November and from North Carolina to the Volusia-Flagler boundary from November to April (see Figure 2). The Gulf migratory group is currently being overharvested, whereas the Atlantic migratory group is currently underharvested. The best estimate of MSY for the king mackerel stock is 26.2 million pounds.

This amendment provides for the fishery a flexible management system which can rapidly adapt to changes in resource abundance, changes in fishing patterns among user groups or by area, and new scientific information. This management system provides for a scientific stock assessment group which will reassess the condition of each stock, stock identity, stock distribution, and MSY, and prepare a range of acceptable biological catch (ABC) for each stock or migratory group from which the Councils will recommend adjustments to the total allowable catch (TAC). The Councils will review the stock assessment information and management alternatives and, after obtaining comment from their advisory panels (APs) and the public, may recommend management measures to the NMFS Director, Southeast Region (Regional Director). If the Regional Director determines that the recommendations are consistent with the national standards, the FMP's goals and objectives, and applicable law, the Secretary of Commerce (Secretary) may implement them by notice in the **Federal Register**.

Optimum Yield (OY)

The Councils established MSY as the long-term goal of OY for the mackerel fisheries. The amount of OY which may be harvested annually for each species, specified as TAC, may vary due to fluctuating recruitment; fluctuating abundance by area or unit of stock; intensity of fishing effort by area or unit of stock; social, economic, or ecological factors; and improving estimates of MSY. The TAC level selected for the Gulf migratory group of king mackerel would allow recovery of the group to a MSY level within approximately three years.

Allocation by User Group

Allocations by user group are specified for the Gulf migratory group of king mackerel and for the Atlantic migratory group of king mackerel for recreational fishermen and for commercial fishermen.

Initially, 68 percent of the TAC for the Gulf migratory group of king mackerel is allocated to recreational fishermen and 32 percent to commercial fishermen. With TAC specified as 14.225 million pounds, the allocations are 9.673 million pounds for recreational fishermen and 4.552 million pounds for commercial fishermen. The commercial allocation is further separated into eastern and western quotas to provide for more equitable access to the resource by all users.

Initially, 62.9 percent of the TAC for the Atlantic migratory group of king mackerel is allocated to recreational fishermen and 37. 1 percent to commercial fishermen. With TAC specified as 11.812 million pounds, the allocations are 7.430 million pounds for recreational fishermen and 4.382 million pounds for commercial fishermen.

The percentage ratio for future allocations between recreational and commercial fishermen fishing each migratory group will be based on the ratio of the average catch of each user group over the most number of years beginning in 1979 for which concurrent recreational and commercial catch data are available, and, therefore, may vary annually. Following the computation of the allocation ratio, two percent (2%) will be transferred from recreational to commercial allocation for the Gulf migratory group to provide for sale by recreational fishermen provided the transfer does not alter the bag limit.

The starting dates for the fishing years specified for allocations of the Gulf and Atlantic migratory groups of king mackerel are adjusted to provide for equal access for all users.

Commercial Quotas

The allocations of TAC for commercial fishermen harvesting king mackerel are specified as harvest quotas. The quotas serve to prevent harvest from exceeding TAC. To provide for equitable access, the quota for the Gulf migratory group is specified as sub-quotas for eastern and western allocation zones (see Figure 2). The quotas may vary annually as a function of TAC and the FMP procedures for setting allocations. When the quotas for either of these Gulf Migratory groups has been reached, fishing under that quota will be prohibited and sale of king mackerel from that migratory group and/or allocation zone will be prohibited. Qoutas are reached when the poundage of fish landed and sold equals the specified quota.

As TAC and the quota for the Gulf migratory group change, the quota will be allocated between commercial user groups as follows: Six percent (6%) not to exceed 400,000 pounds will be reserved for purse seines. Of the remainder, 69 percent will be allocated to the eastern allocation zone and 31 percent to the western allocation zone.

Purse seine harvest of king mackerel is counted in the commercial allocations and is limited by quotas, which are reached when the reported landing by purse seines equals the quotas.

Bag Limits

The allocations of TAC for recreational fishermen harvesting king mackerel are specified as bag limits on a per-person, pre-trip basis, and serve to prevent annual harvest from exceeding TAC. The bag limits may vary annually as a function of the TAC. Under the amendment, separate bag limits may be specified for persons fishing from private vessels and from charter vessels.

Bag limits for recreational fishermen harvesting king mackerel from the Gulf migratory group are established at two fish per person per trip, including all persons aboard private vessels. For persons fishing form charter vessels the bag limit is established at three fish per person per trip, excluding the vessel's captain and crew, or two fish per person per trip, including the vessel's captain and crew.

A bag limit is not established for recreational fishermen harvesting the Atlantic migratory group of king mackerel. However, a bag limit may be specified in the future through the assessment procedure if harvest levels reach TAC.

Statistical Reporting

The statistical reporting requirements of the FMP which were reserved in promulgation of the final rule (48 FR 5272) are included in this proposed rule. The data collection system proposed in these regulations makes mandatory certain voluntary commercial reporting programs administered by NMFS, whereby data on harvest are collected by port agents both from dealers and through interviews from fishermen and establishes mandatory systems for collection of recreational data when necessary.

Interviews may be conducted under a mandatory system for selected recreational vessel operators catching migratory coastal pelagic fish when more exacting data (such as on method of fishing, catch by species, area fished and expenditures incurred) than presently collected under the NMFS Marine Recreational Fishing Statistics Survey are required. This system will be

developed for implementation when specific data requirements are identified. The Center will begin determining the exact data needed and and the best system to gather the data after this rule becomes effective. Sections relating to collection of information will not be effective until after approval by the Office of Management and Budget.

The reporting of statistical information under the current voluntary systems, which included commercial dealers, processors, and vessel owners is inadequate for management of the fishery for the following reasons. First, these voluntary data are not adequate for management on a species approach. Second, the FMP reporting provision calls for collection under mandatory systems, and equity considerations require that mandatory systems apply to all user groups. Stock assessment procedures for the various species require collection of additional data and more precise data than are available through existing systems. Certain species in the fishery are being overfished, and the additional and more precise data are required to assess the degree of overfishing and to formulate measures to restore these stocks. Additionally, certain user groups are not adequately covered under existing systems. Charter vessels, for example, are poorly sampled.

Effective management of the fishery requires comprehensive and uniform data collection. Stock assessments, maximum sustainable yield calculations and optimum yield determinations must be based on information gathered from state waters as well as the fishery conservation zone (FCZ). None of the States is consistently collecting catch information from recreational anglers or from charter vessels and headboats, although some States have infrequently collected these data in the past. Only the State of Florida is collecting catch information from commercial fishermen and these data do not include all the data elements considered necessary for management by the Councils. All of the States collect some information on total landings from dealers and processors, but these data elements differ from State to State and generally are not complete enough to allow for proper management of each species throughout their range. Without this information the Councils' ability to manage the resource throughout the Gulf would be unacceptably limited.

Information collected under the mandatory system is to be used for management of the fishery, and will be released only in aggregate or summary form which does not disclose the identity of the submitter. The Regional Director has reviewed the proposed regulations and has determined that this information is necessary for management of the coastal migratory pelagic fishery.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the Amendment to the FMP and regulations. At this time the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a draft supplemental environmental impact statement for this Amendment; a notice of availability was published on June 29, 1984 (49 FR 26809).

The Administrator, NOAA, has determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The Amendment's management measures are designed to maintain the productivity of each user group to the maximum extent possible, by restoring overfished stocks and preventing overfishing of the king and Spanish mackerel and cobia stocks. The major benefits from this Amendment are greater than the associated Federal costs to manage the fishery on a continuing basis. The Council prepared a supplemental regulatory impact review (SRIR) which concludes that this proposed rule will have the following economic effects. Greater benefits will result in terms of overall poundage produced than the other alternatives. The no action alternative would have resulted in a 32 percent decline in long-term abundance, if fishing pressure remained unchanged. The proposed regulations should restore the king mackerel stock to within five to ten percent of MSY in three years. The proposed regulations are expected to reduce commercial landings value by $101,200 initially or by $337 per vessel over the average of the last five years. No price increases should develop as a result of the regulations.

Recreational catch levels would be initially reduced by about 22 percent or 2.26 million pounds for private vessels and 840,000 for charter vessels. The impact on catch reduction is greater for charter vessels, i.e. 34 percent reduction in king mackerel catch and 11 percent of all fish catch. The impact on reduction in number of charter vessel customers cannot be estimated.

Federal and State enforcement costs of the regulatory actions are estimated at $40,000 if States adopt compatible regulations and at $64,000 if they do not. A copy of the SRIR may be obtained at the **ADDRESS** above.

This proposed rule is exempt from the procedure of Executive Order 12291 under Section 8(a)(2) of that order. Deadlines imposed under Section 304 of the Magnuson Act, as amended by Public Law 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Council prepared an initial regulatory flexibility analysis as part of the SRIR which concludes that this proposed rule will have an insignificant effect on commercial fishing entities and potentially a significant impact on charter vessel entities, dependent on customer reaction to the bag limits. These effects are included in the SRIR which is summarized above. A copy of this analysis may be obtained from the Regional Director at the **ADDRESS** listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The voluntary collection of this information has been previously approved by the Office of Management and Budget (OMB control numbers 0648–0013 and 0648–0052). A request to collect this information under a mandatory requirement has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA. When mandatory reporting by selected recreational fishermen is required, an additional request will be submitted to OMB.

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the states of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. These determinations have been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting requirements.

Dated: June 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 642, the Table of Contents is amended by revising the headings for § 642.5 from "Recordkeeping and reporting requirements [Reserved]" to read "Reporting requirements", and for § 642.6 from "Vessel identification [Reserved]" to "Vessel identification" and by adding under Subpart B three new section designations to read as follows:

Subpart B—Management Measures

* * * * *

Sec.
642.27 Stock assessment procedures.
642.28 Bag and possession limits.
642.20 Area and time separation.

3. Section 642.2 is amended by adding the words "or designee" to the end of the definition for Center Director, by changing the phrase "U.S. harvested fish" to "U.S.-harvested fish" in the definition and throughout Part 642, and adding in alphabetical order the new definition "Acceptable biological catch", "Allocation", "Charter Vessel", "Migratory group", "Species", "Statistical area", "Total allowable catch", "Total length", and "Trip", to read as follows:

§ 642.2 Definitions.

* * * * *

Acceptable biological catch (ABC) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Charter vessel crew means those individuals, including the licensed vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock. (See Figure 2 and § 642.29 for geographical and seasonal boundaries between migratory groups of king mackerel.)

* * * * *

Species refers to the Specific Scientific Name for each fish identified under the definition of *coastal migratory pelagic fish.*

Statistical area means one or more of the statistical grids depicted in Figure 3.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level being specified from within the range of acceptable biological catch.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall or ramp and which terminates with return to a dock, berth, beach, seawall or ramp.

* * * * *

4. Section 642.4 is revised in its entirety to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* Owners or operators of fishing vessels which fish for Gulf migratory group king mackerel under the commercial quotas are required to obtain an annual vessel permit. Owners or operators of charter vessels and headboats are excluded from eligibility for a vessel permit.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director or his designee within 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

(1) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;

(2) Name of vessel;

(3) The vessel's official number;

(4) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;

(5) Approximate fish hold capacity of the vessel;

(6) A sworn statement by owner or operator certifying that at least ten percent of his or her earned income was derived from commercial fishing during at least one of the three preceding calendar years (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel are occurring; and

(7) Any other information concerning vessel, gear characteristics and fishing are requested by the Regional Director.

(c) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(6) before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (i).

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during May and June of each year. The Regional Director will issue permits to newly registered or documented vessels, or cases of demonstrated hardship at other times, as found at paragraph (b) of this section. Until the permit is received, fishermen must comply with the bag limit under § 642.28.

(e) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application form and will be limited to the administrative cost of issuing the permit which may not exceed $10.00.

(f) *Duration.* A permit is valid only for the duration of the year for which it is issued (July 1–June 30) unless revoked or suspended under to 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable, except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf migratory group quota must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceding owner's permit until a new permit has been issued, but for a period not to exceed 60 days.

(h) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and the vessel must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(Approved by the Office of Management and Budget under Control Number 0648-0097)

5. A new § 642.5 is added to read as follows:

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person (1) who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fish under a permit required in § 642.4, in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and (2) who is selected to report must provide upon request the following information regarding any fishing trip to the Center Director or his designee:

(1) Name or official number of vessel;

(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director or his designee to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size and type of gear; and

(6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person (1) who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and (2) who is selected to report must maintain a daily fishing record on forms provided by the Center Director. These forms must be submitted to the Center Director weekly. Information to be included in the forms must include:

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person (1) who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and (2) who is selected to report, must provide upon request the following information to the Center Director or his designee at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealers or processors name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.* Any person (1) who owns or operates any recreational fishing vessel that fishes for or lands any coastal migratory pelagic fish managed by the FMP in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and (2) who is selected to report, must provide the following information to the Center Director or his designee:

(1) Name;

(2) Boat number or identification;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Species targeted;

(6) Number of fish caught by species;

(7) Area fished;

(8) Hours fished; and

(9) Fishing methods and gear.

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Center Director or his designee for the collection of additional information or for inspection by any authorized enforcement officer.

6. A new § 642.6 is added to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in commercial fishing for Gulf migratory group king mackerel under a quota and the permit specified in § 642.4 must

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

7. Section 642.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating paragraphs (a) through (m) as (1) through (13), revising paragraph (6), removing old paragraph (13), adding new paragraph (13) through (27), and adding a new paragraph (b) to read as follows:

§ 642.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(6) Fish for king and Spanish mackerel using a purse seine, except in compliance with § 642.24(b) and (c);

* * * * *

(13) Have in possession aboard in the FCZ Gulf group king mackerel or consume at sea, land, sell, offer to sell or possess Gulf migratory group king mackerel harvested in the FCZ in excess of the bag limit specified in § 642.28(a);

(14) Fail to transfer or to display a permit as provided for in § 642.4 (g) and (h);

(15) Falsify or fail to report information required to be submitted by § 642.5;

(16) Fail to make fish available for inspection as required by § 642.5(e);

(17) Fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6;

(18) Purchase, sell, barter, trade, or accept in trade, king mackerel, harvested in the FCZ from a specific migratory group of specific allocation zone or by purse seine gear, for the remainder of that fishing year specified in § 642.20, after the quota for that migratory group or allocation zone, or purse seine gear as specified in § 642.21(a) or (b) has been reached and closure as specified in § 642.22 has been invoked (Table 2). (This prohibition does not apply to trade in king mackerel harvested, landed and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors);

(19) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted under § 642.4 king mackerel from a migratory group or allocation zoned after the quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21(b) and (d) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Fish for or have in possession on board Spainsh mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(22) Land, consume at sea, sell, or have in possession at sea or time of landing, Gulf migratory group king mackerel harvested from the FCZ in excess of the bag limits specified in § 642.28, except as provided for under § 642.4 and § 642.21;

(23) Fish for king mackerel from the Gulf migratory group in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(24) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(25) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken coastal migratory pelagic fish or the final disposition of such coastal migratory pelagic fish through the sale of the coastal migratory pelagic fish;

(26) Land king mackerel from the Gulf migratory group in other than an identifiable form as specified in § 642.28(b); or

(27) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

* * * * *

8. Section 642.20 is revised in its entirety to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for the commercial quota including purse seines begins at 0001 hours July 1 and ends at 2400 hours on June 30, local time (see Figure 2). The fishing year for the Atlantic migratory group of king mackerel begins at 0001 hours on April 1 and ends at 2400 hours on March 31, local time. The purse seine quotas for King Mackerel begin a 0001 hours on July 1 and end at 2400 hours on June 30, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours on January 1 and ends at 2400 hours on December 31, local time (Table 1).

9. Section 642.21 is revised in its entirety to read as follows:

§ 642.21 Quotas.

(a) *Commercial quotas for king mackerel.* The initial commercial allocation for the Gulf migratory group of king mackerel is 4.552 million pounds per fishing year. This allocation is divided into quotas as follows: (1) 2.940 million pounds for the eastern allocation zone; (2) 1.328 million pounds for the western allocation zone; and (3) 0.284 million pounds for purse seines (see Figure 2 and paragraph (e) of this section for description of allocation zones). The commercial allocation for the Atlantic migratory group of king mackerel is 4.382 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Purse seine quota for king mackerel.* The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 284,000 pounds each fishing year. The harvest of king mackerel by purse seines form the Atlantic Ocean is limited to 400,000 pounds each fishing year. King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

(c) *Spanish mackerel.* The TAC of Spanish mackerel is 27 million pounds per fishing year in aggregate for all user groups (Table 2).

(d) *Purse seine quota for Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Gulf of Mexico and to 300,000 pounds in the Atlantic Ocean per fishing year. Spanish mackerel harvested by purse seines are included in the TAC specified in paragraph (c) of this section (Table 2).

(e) *Geographic boundaries and allocation zones.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83° W. longitude, proceeds north to 24°35′ N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland. The boundary between eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line beginning at the boundary between the states of Alabama and Florida (30°16′53″ N. latitude and 87°31′06″ W. longitude) and running directly south ot its intersection with the outer limit of the FCZ (Figure 2).

10. Section 642.22 is revised in its entirety to read as follows:

§ 642.22 Closures.

The Secretary, by publication of a notice in the **Federal Register**, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group of allocation zone affected is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers or processors.

11. In § 642.23, paragraphs (a)(1) and (b) are revised and a new paragraph (c) is added to read as follows:

§ 642.23 Size restrictions.

(a) *Spanish mackerel—(1) Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the FCZ is 12 inches (fork

length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

. . . . .

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the FCZ in 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

12. In § 642.24, paragraph (b)(1)(i) is revised and a new paragraph (c) is added to read as follows:

§ 642.24 Vessel, gear and equipment limitations.

. . . . .

(b)(1)* * *

(i) at least 30 days in advance of the beginning of the fishing year, or

. . . . .

(c) *Purse seine catch allowance and exclusions.* A vessel with a purse seine aboard will not be considered as fishing for king or Spanish mackerel for the purposes of paragraph (b) of this section and will not be considered in violation of a purse seine closure affected in accordance with § 642.22 provided the catch of king mackerel or Spanish mackerel does not exceed one and ten percent, respectively, by weight or number (whichever is less) of the catch of all fish aboard the vessel. Such king and Spanish mackerel must be reported in accordance with paragraph (b)(3) of this section and will be counted in the quotas provided for under § 642.21 and subject to the prohibition on sale provided for under § 642.22.

13. A new § 642.27 is added to read as follows:

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Council's choosing to discuss the Group's report. The Councils will convene a joint Advisory Panel and may convene the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TACs, bag limits, quotas, or permit, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, draft regulations, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, draft regulations, public comments and other relevant information. If he concurs with the recommendation, he will forward the draft regulations to the Secretary for approval. In the event the Regional Director rejects the recommendations, existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the plan, the national standards, and other applicable law, the Secretary may implement the regulations by notice in the **Federal Register** each year prior to the appropriate fishing year or such dates as agreed upon with the Councils. A 15-day period for public comment will be afforded.

(f) Appropriate regulatory changes which may be implemented by the Secretary by notice in the **Federal Register** include

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—13.5 million pounds to 49.1 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. The TAC may be increased, not to exceed 30 percent annually when warranted by new information. Any number of increases may be made so long as they do not exceed 30 percent in any one year and provided that no TAC will exceed the best point estimate of MSY by more than ten percent. Downward adjustments of any percentage are allowed in order to protect the stock and prevent overfishing. Reductions or increases in allocations as a result of changes in the TAC are to be equitable as may be practicable utilizing similar percentage changes to all participants in a fishery. (Changes in bag limit cannot always accommodate the exact desired level of change.)

(3) Adjusting user group allocations in response to changes in TACs according to the formulas specified in the FMP.

(4) Implementing or modifying quotas, bag limits, or permits as necessary to limit the catch of each user group to its allocation.

14. A new § 642.28 is added to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in § 642.4, § 642.21 and § 642.24(c)) are limited to the following:

(1) Possessing three (3) king mackerel per person per trip, excluding the vessel crew or possessing two (2) king mackerel per person per trip, including the vessel crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two (2) king mackerel per person per trip when fishing from other vessels;

(b) All king mackerel from the Gulf migratory group must be landed in an identifiable form as to number and species (with the understanding that head tail can be removed).

(c) After a closure under § 642.22 is invoked for a migratory group or allocation zone specified in § 642.21 vessels permitted under § 642.4 may not fish for Gulf migratory king mackerel under the bag limit specified under paragraph (a) of this section nor can persons fishing under the bag limit sell their fish.

15. A new § 642.29 is added to read as follows:

§ 642.29 Area and time separation.

(a) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48' N. latitude) to the outer limit of the FCZ (Figure 2).

(b) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25' N. latitude) to the outer limit of the FCZ (Figure 2).

TABLE 1.—FISHING SEASONS FOR COASTAL MIGRATORY PELAGIC FISH IN THE FCZ

Type	Begins—	Ends—
King mackerel		
Gulf migratory group	0001 hours July 1.	2400 hours June 30.
Atlantic migratory group	0001 hours Apr. 1.	2400 hours Mar. 30.
Purse seine quotas	0001 hours July 1.	2400 hours June 30.
Other fish and fishing		
All Other Fishing	0001 hours Jan. 1.	2400 hours Dec. 30.

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/ TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King mackerel:					
Atlantic	1 Apr.–31 Mar.	All types	Entire range [2]	4.382	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Entire range [2]	4.552	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Western zone [3]	1.328	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	All types	Eastern zone [3]	2.940	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	P.S. [5]	Entire range [2]	0.284	Landings from migratory group are projected to reach quota.
G.A. [6]	1 July–30 June	P.S. [5]	Atlantic Ocean [4]	0.400	Landings from migratory group are projected to reach quota.
Spanish mackerel	1 Jan.–31 Dec.	All types	G.A. [6]	27.000	When landings are projected to reach TAC.
	1 Jan.–31 Dec.	P.S. [5]	Atlantic Ocean	0.300	When landings are projected to reach quota.
	1 Jan.–31 Dec.	P.S. [5]	Gulf of Mexico	0.300	When landings are projected to reach quota.

[1] See Figure 2 for delineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.29)—See Figure 2.
[3] See Figure 2 and § 642.21(e).
[4] See § 642.21(e).
[5] Purse Seines.
[6] Gulf and Atlantic.

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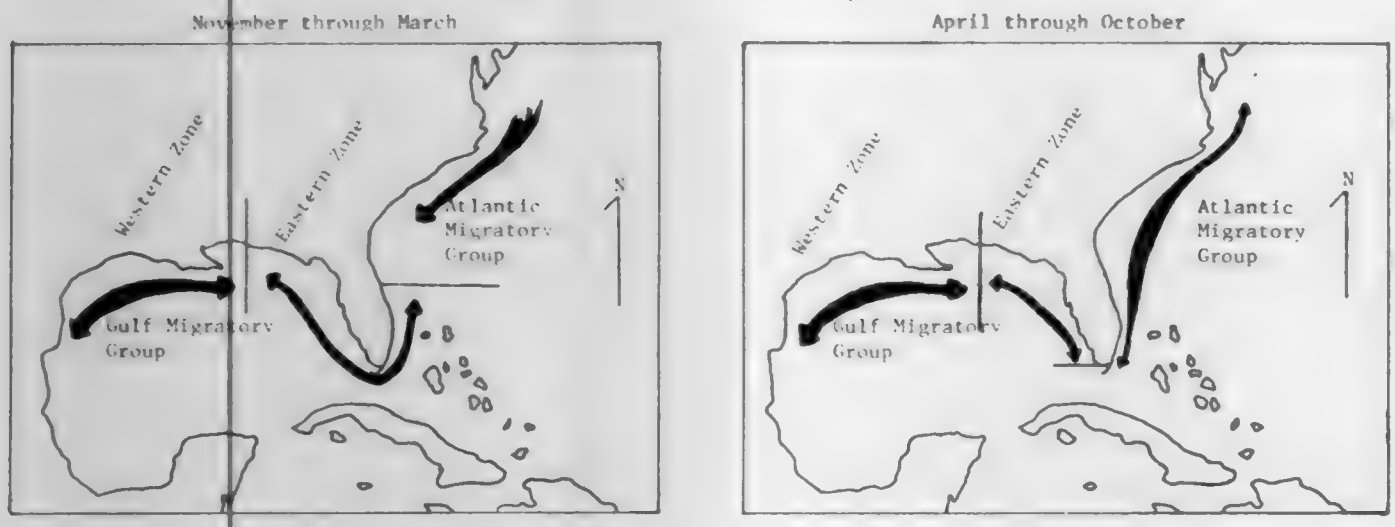
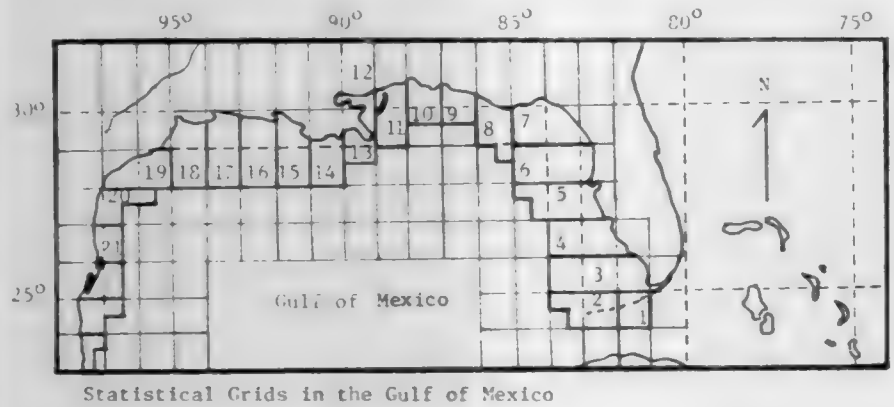
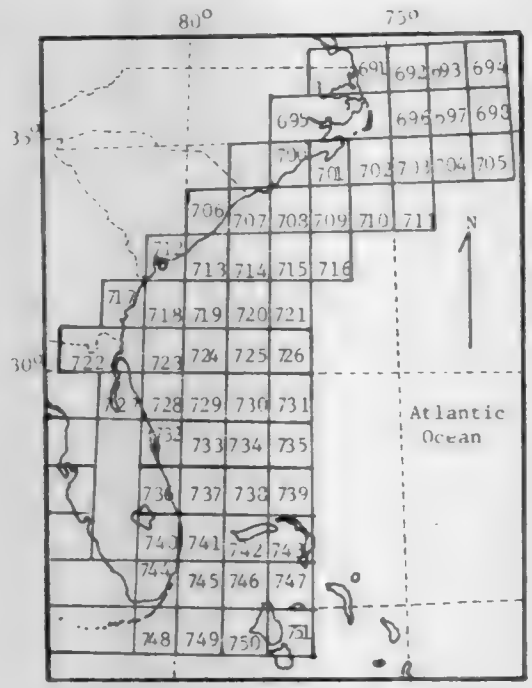


Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.



Statistical Grids in the Gulf of Mexico



Statistical Grids in the South Atlantic

Figure 3. Statistical Grids for Reporting the Harvest of Coastal Migratory Pelagic Fish.

50 CFR Part 649

New England Fishery Management Council; American Lobster Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: American Lobster Fishery Management Plan; Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council will hold a series of public hearings and provide a public comment period to obtain comments on two measures contained in proposed Amendment 1 to the American Lobster Fishery Management Plan. These measures are: (1) Gear marking requirements for the offshore lobster fishery; and (2) an exemption from the trap venting requirements for fishing black sea bass south of Barnegat Light to New Jersey.

DATES: Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings. The public comment period will close June 24, 1985. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of the hearings.

ADDRESS: All written comments should be addressed to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

SUPPLEMENTARY INFORMATION: The amendment proposes to institute a uniform offshore marking system for lobster fishing gear to contribute to the orderly prosecution of the lobster and mobile gear fisheries in the offshore waters of New England and Mid-Atlantic. The measures consist of a requirement to employ a radar reflector and flag on the westernmost end of a lobster trawl and only a radar reflector on the easternmost end of the trawl. Lobster pot trawls of three or fewer pots must be marked with a single buoy made of highly visible material. In addition, the maximum continuous length of any lobster trawl will not exceed 1½ miles as measured from buoy to buoy.

The amendment also proposes to incorporate an exemption to the current requirement for trap escape vents for Mid-Atlantic fishermen engaged in a fishery principally for black sea bass in the area south of Barnegat Light, seaward of the territorial sea, and shoreward of the 30-fathom contour. The current vent requirement would have a significant negative impact on their fish catch and would not produce significant benefits to the lobster resource. The maximum allowed bycatch of lobsters in these unvented traps would be limited to 100 pounds per trip.

The dates, times, and locations of the public hearings are shceduled as follows:

June 18, 1985, 5:30 p.m.—College of Marine Studies Complex, Cannon Lab Building, Room 203, 2nd Floor, 700 Pilottown Road, Lewes, Delaware

June 18, 1985, 7:00 p.m.—Holiday Inn, One Newbury Street (Route 1), Peabody, Massachusetts

June 19, 1985, 7:00 p.m.—Holiday Inn, Routes 1 and 3, Ellsworth, Maine

June 19, 1985, 10:00 p.m.—Howard Johnson's Motor Lodge, Route 37 and Hoper Avenue, Toms River, New Jersey

June 19, 1985, 7:00 p.m.—Holiday Inn, Jct. Route 1 and 138W, South Kingstown, Rhode Island

June 20, 1985, 7:00 p.m.—Holiday Inn-West, 81 Riverside Street, Portland, Maine

June 20, 1985, 7:00 p.m.—Massachusetts Maritime Academy, Buzzards Bay, Massachusetts

Dated: June 4, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–13876 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 669

[Docket No. 50586–5086]

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues and requests comments on this proposed rule to implement the conservation and management measures as prescribed in the proposed Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The proposed rule would (1) establish criteria for the construction of fish traps; (2) require owner identification and marking of gear and boats; (3) prohibit the hauling of or tampering with another person's traps without the owner's written permission; (4) prohibit the use of poisons, drugs, other chemicals, and explosives for the taking of reef fish; (5) establish a minimum size limitation on the harvest of yellowtail snapper and Nassau grouper; and (6) establish a closed season for the taking of Nassau grouper. The intended effect is to rebuild declining reef fish species in the fishery and reduce conflicts among fishermen.

DATES: Comments on the proposed rule must be received on or before July 20, 1985.

ADDRESSES: Comments on the proposed rule and requests for copies of the FMP, the regulatory impact review/initial regulatory flexibility analysis, and environmental impact statement should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service (NMFS), 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands was prepared by the Caribbean Council (Council), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). A notice of availability of the FMP was published in the **Federal Register** on May 9, 1985 (50 FR 19559). These regulations are proposed to implement the FMP.

The FMP addresses the shallow-water reef fish fishery throughout its entire range and the proposed regulations are for the fishery conservation zone (FCZ) in the Caribbean Sea and Atlantic Ocean adjacent to Puerto Rico and the U.S. Virgin Islands. Of some 350 species of shallow-water reef fish in the Caribbean, about 180 are noted in the fishery landings and collectively comprise the most important fishery in the islands. The management unit consists of 14 principal families and 64 species (of the total 180 species) that regularly enter the fishery in quantity and which inhabit the zone from inshore to the shelf edge (at 40 fathoms).

This assemblage of species is utilized by about 2000 commercial fishermen, who use traps, hook and line, nets, seines, and spears to harvest the resource. Additionally, there are more than 12,000 recreational boats which may be used for fishing the same resource. Recreational fishermen use mainly hook and line and spears. Problems, such as trap poaching, have occurred within the commercial sector of the fishery.

The available data show a decline in catch per unit of effort by traps (the predominant gear in the fishery) in Puerto Rico since 1976; i.e., from 321

pounds (lbs) per trap in 1976 to 138 lbs. in 1980. Further declines have been experienced since, but the magnitude has not yet been defined. Total landings of shallow-water reef fish have also decreased each successive year since 1979. Data from the U.S. Virgin Islands indicate catch per unit of effort peaked in 1979 (347 lbs. per trap) and decliend to 254 lbs. per trap in 1981. Although total landings in the U.S. Virgin Islands have increased during this same period, the quality of the data from Puerto Rico is superior and is considered a better indicator of trends throughout the entire management area. Also, according to a special size-frequency survey conducted in 1983, the average size of certain species in the landings, notably yellowtail snapper and Nassau grouper, is less than that at first spawning—another symptom of growth overfishing. These conclusions were generally supported at a number of fact-finding meetings on the FMP. An immediate objective of the FMP is to restore stocks of these species to former levels of abundance through the institution of a combination of progressive size limits and closed seasons.

The intent of the Council in preparing this FMP is to protect the reef fish resource, which is of considerable value to the fishermen and citizens of Puerto Rico and the U.S. Virgin Islands. The reef fish fishery satisfies social customs and life styles and provides employment, income, recreation, and food. Total recreational and commercial shallow-water reef fish landings in 1982 were estimated at 7.5 million lbs., with a value of $8.7 million. This is the most important fishery in the management area in terms of both landings and value.

In addition to the economic problems that have resulted from growth overfishing, the threat to health posed by fish poisoning, or ciguatera, has resulted in loss of income to the fishermen. Although there is insufficient evidence regarding causative organisms to employ direct controls through management measures, the Council recommends that research be pursued to develop tests for determining the presence of ciguatoxins in fish before they are marketed. Once the causative organisms are isolated and their distribution and relationship to ciguatera determined, perhaps other controls, such as area closures, can be employed to curtail fish poisoning.

The Governments of Puerto Rico and the U.S. Virgin Islands have different management regimes which collectively are not adequate for solving the problems in the fishery. The U.S. Virgin Islands has a seaward boundary which extends to 3 nautical miles and Puerto Rico has fisheries jurisdiction out to 9 nautical miles. Because the fishery is limited to a narrow geological shelf area, most of which falls within these governments' zones of jurisdiction, a common regional management philosophy and framework is essential. Both governments have recognized the need for cooperation and have endorsed the Council as the appropriate mechanism to effect jurisdictional management of fisheries as a unit throughout their range in State and Federal waters. This cooperative working relationship is also being pursued with other Caribbean nations that share the same resources.

The Council adopted the following objectives as central to the management and conservation of shallow-water reef fish resources:

(a) Obtain the necessary data to allow for more accurate stock assessment and monitoring of the fishery.

(b) Stop the declining trend of the resource.

(1) Restore adult stocks to levels that ensure adequate spawning and recruitment to the population.

(2) Prevent the harvest of species of high value (e.g. snappers, groupers, and others) which are less than the optimum size.

(c) Reduce conflicts among users of the resource.

(d) Promote international cooperation in managing the pan-Carribbean species of the unit.

(e) Help solve the ciguatera problem.

Optimum Yield

There are many difficulties in estimating the potential fisheries yield of insula, tropical shallow-water banks. So many different researchers and methods of estimating the maximum sustainable yield (MSY) have surfaced in recent years, that making such estimates has evolved into a classic fisheries management problem. After careful consideration of all possibilities, the "biomass approach" was selected to calculate MSY for this fishery, since it utilizes the best available data which apply to the area addressed by the FMP. The estimated MSY is 7.7 million pounds.

The Council established the optimum yield (OY) for this fishery as all of the fishes in the management unit that can be harvested by U.S. fishermen under the provisions of the FMP; i.e., gear and size restrictions, as well as closed seasons for certain species. This amount is currently estimated at 7.7 million pounds, which is equivalent to the MSY estimate for this fishery.

Size Restrictions

Data from the 1983 size-frequency survey indicate that 42 percent of the yellowtail snapper and nearly all of the Nassau grouper landed are less than the respective optimum sizes of 12 and 24 inches necessary to sustain recruitment to the fishery. The FMP sets forth a procedure for progressively increasing the minimum size limits beginning at 8 inches total length for yellowtail snapper and 12 inches total length for Nassau grouper and increasing at the rate of 1 inch per year until the optimum specified sizes are eventually reached. This approach will allow the rebuilding of these overfished resources with a minimum of social and economic disruption. By starting with a minimum size of 8 inches for yellowtail snapper and increasing the size limit to 12 inches over a period of 5 years, a portion of the catch will be returned to the water each year, thereby allowing these fish to enter the fishery later at a larger and more valuable size. This amount will vary from about 5 percent the first year to about 9 percent by the fifth year. It is estimated that annual production of yellowtail snapper will increase by about 200,000 pounds by the end of the tenth year. For Nassau grouper, annual gains in production are expected to amount to approximately 400,000 pounds by year 13 when the size limit is stabilized at 24 inches.

Notice of annual changes in minimum fish size limits will be published in the **Federal Register** annually in advance of the date of effectiveness, and will be announced to affected user groups through news releases throughout the area of concern. The Council by plan amendment will add minimum sizes for other species, as appropriate, by monitoring the fishery in accordance with the FMP, that is using yield-per-recruit analysis or *ad hoc* surveys to detect significant changes that merit establishing or changing minimum sizes for any high value species to impede growth overfishing. If a new size is warranted, the Council will prepare the appropriate documents recommending the pertinent adjustments to the FMP and regulations.

Closed Season

Further restrictions on the harvest of Nassau grouper are proposed to aid in the restoration of this once abundant and valuable species. Nassau grouper spawn in aggregations from January through April in certain areas off the U.S. Virgin Islands and Puerto Rico. Spawning aggregations have been fished with such intensity that many have been

depleted. According to fishermen at the fact-finding meetings, overfishing of spawning aggregations has caused the diminution of the Nassau grouper population. Therefore, the possession of any Nassau grouper, regardless of size, will be prohibited from January 1 through March 31 of each year, or for 75 percent of the period in which spawning aggregations are known to occur. Although total closure would undoubtedly afford maximum protection to the spawning stock, reducing effort over 75 percent of the spawning season coupled with the annual incremental size limitation is expected to be sufficient for the recovery of the Nassau grouper population and, at the same time, cause less socio-economic disruption.

Gear and Harvest Limitations

The most abundant gear used in the harvest of shallow-water reef fish is the West Indian "arrowhead" or "chevron" fish trap. These traps are built mainly of wooden sticks or iron rods for the frame and covered with chicken wire. The Council determined that a minimum mesh size of 1¼ inch (in the smallest dimension) will allow the escape of juveniles of any commercially and recreationally important species that later will be harvested at a more desirable size while, at the same time, allow the retention of the adults of other commercially important species such as goatfishes, grunts, parrotfishes, etc. The 1¼ inch mesh will apply one year after the effective date of the final rule. The Council will continue to evaluate the effectiveness of other mesh sizes, but in the meantime this measure will prevent the use of smaller, less desirable mesh sizes.

Many fish traps are lost each year due to ship traffic, theft, and bad weather. In order to enhance the opportunities for fishes to escape from lost traps, a measure requiring a degradable panel or degradable door fastening in fish traps is required. This will increase the probability of survival of fishes that would otherwise perish and allow these fish to enter the fishery, later benefitting fishermen.

The use of poisons, drugs, other chemicals, and explosives for fishing in the FCZ is prohibited. This measure will prevent alteration and destruction of habitat and incidental mortality of non-target species.

The FMP proposes certain other limitations on fishing practices involving fish trap users to reduce conflicts within the fishery and to aid in the enforcement of these regulations. Owner identification and marking of traps, buoys, and boats are required. The marking of the gear employed in this fishery will alleviate the problem of trap theft and will help in the enforcement of regulations that prohibit the hauling on or tampering with another person's traps.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the FMP and regulations. At this time the Secretary has not determined that the FMP these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a draft environmental impact statement for this FMP; a notice of availability was published on June 8, 1984 (49 FR 23915).

The NOAA administrator determined that this proposed rule is not a "major" rule requiring a regulatory impact analysis under Executive Order 12291. Based on the regulatory impact review prepared, the regulations will have 10-year net impact on the economy of only $3.7 million with a maximum annual impact of $894,489. The regulations are not expected to have a significant adverse effect on the fishery, or cause a major increase in either costs to industry or prices to the consumer because the management regime (1) does not limit access to the fishery or alter fishing practices for the majority of firms involved; (2) affects only about seven percent of the fishery; (3) phases the minimum size limits into the fishery over several years; and (4) reflects the existing practices of most of the vessels in the fishery. Because the above factors will minimize any impacts incurred, the costs imposed on fishermen, including small boat operators, are expected to be relatively minor. During the first year of implementation, any lost revenue associated with the size limit restrictions and the closed season for Nassau grouper are estimated to be less than one percent of the total amount earned by the average vessel, assuming impacts are evenly distributed among the fleet. Revenues in subsequent years are expected to recover to levels well above those experienced prior to implementation of the regulations. The Council prepared a regulatory impact review which concludes that this rule will have the following economic affects:

The minimum size regulation for Nassau grouper and yellowtail snapper and the closed season for Nassau grouper will result in a loss of $165,000 the first year and $80,000 the second year. After the second year, however, there will be a gross gain which will amount to $5.0 million over a period of 10 years. The net benefit over the ten-year period after subtracting the enforcement costs ($1.0 million) and the cost of FMP preparation ($0.2 million) will be about $3.8 million with a present value of $1.7 million.

This proposed rule is exempted from the procedures of Executive Order 12291 under section 8(a)(2) of that Order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 30 days after its receipt. Accordingly, the proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the Order.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would not have significant effects on small entities. These effects are included in the DRIR which is summarized above. A copy of this analysis is available from the Council at the **ADDRESS** listed above.

This rule contains a requirement for collection-of-information (for the issuance of vessel and gear identification numbers and markings) subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

The Council determined that this rule does not directly affect the coastal zone of either State's approved coastal zone management program.

List of Subjects in 50 CFR Part 669

Fish, Fisheries, Fishing.

Dated: June 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, Chapter VI of 50 CFR is proposed to be amended by adding a new Part 669 to read as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

669.1 Purpose and scope.
669.2 Definitions.
669.3 Relationship to other laws.
669.4 Permits.
669.5 Recordkeeping and reporting requirements (Reserved).
669.6 Vessel and gear identification.
669.7 Prohibitions.
669.8 Facilitation of enforcement.
669.9 Penalties.

Subpart B—Management Measures

669.20 Fishing year.
669.21 Closed seasons.
669.22 Harvest limitations.
669.23 Size limitations.
669.24 Gear limitations.
669.25 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

(b) This part regulates fishing for shallow-water reef fish within the Atlantic Ocean and Caribbean Sea portions of the fishery conservation zone (FCZ) adjacent to the State waters of Puerto Rico and the U.S. Virgin Islands.

§ 669.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fish in the shallow-water reef fish fishery means any of the following species:

Squirrelfishes—Holocentridae Family

Squirrelfish, *Holocentrus ascensionis*
Longspine squirrelfish, *Holocentrus rufus*

Groupers—Serranidae Family

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Nassau grouper, *Epinephelus striatus*
Yellowfin grouper, *Mycteroperca venenosa*

Jacks—Carangidae Family

Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*

Snappers—Lutjanidae Family

Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Mangrove snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Yellowtail snapper, *Ocyurus chrysurus*

Grunts—Haemulidae Family

Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae Family

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Goatfishes—Mullidae Family

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Butterflyfishes—Chaetodontidae Family

Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae Family

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Wrasses—Labridae Family

Spanish hogfish, *Bodianus rufus*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Hogfish, *Lachnolaimus maximus*

Parrotfishes—Scaridae Family

Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*

Surgeonfishes—Acanthuridae Family

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Leatherjackets—Balistidae Family

Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys ringens*

Boxfishes—Ostraciidae Family

Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Fish trap or *trap* means any trap and the component parts thereof (including lines and buoys) used for taking finfish, regardless of the construction material.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Director, or a designee, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813–893–3141.

Secretary means the Secretary of Commerce, or a designee.

State means the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Total length means the greatest possible length of a fish with the mouth of the fish closed and the caudal fin (tail) squeezed together to give the greatest over-all measurement (Figure 1).

U.S. fish processors means facilities located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 669.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 669.4 Permits.

No permits are required for fishing vessels engaged in the shallow-water reef fishery within the FCZ (see vessel and gear identification requirements in § 669.6).

§ 669.5 Recordkeeping and reporting requirements [Reserved]

§ 669.6 Vessel and gear identification.

(a) *Applicability.* A vessel in the commercial shallow-water reef fish fishery fishing with traps in the FCZ must obtain an identification number and color code issued by the Regional Director unless the vessel possesses a valid identification number and color code issued by the Government of Puerto Rico or the Government of the U.S. Virgin Islands.

(b) *Application to the Regional Director.*

(1) An application for an identification number and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Vessel identification.* Each fishing vessel must display the identification number and color code issued to the vessel by the Regional Director or State on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its identification number and color code on an appropriate weather deck. All identification numbers and color codes must be displayed permanently and conspicuouly so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, at least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or less. The color code representation must be in the form of a circle not less than 18 inches in diameter or a strip not less than 18 inches high and 18 inches long for vessels over 65 feet long; a circle not less than 10 inches in diameter or a strip not less than 10 inches high and 18 inches long for vessels over 25 feet long; and a circle not less than 3 inches in diameter or a strip not less than 3 inches high and 10 inches long for vessels 25 feet long or less.

(d) *Duties of operator.* The operator of each fishing vessel subject to this part must

(1) Keep the identification number and color code clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or anything else aboard obstructs the view of the identification number and color code from an enforcement vessel or aircraft.

(e) *Gear identification.* (1) All traps and buoys used in the shallow-water reef fish fishery must be marked and identified as follows:

(i) Buoys affixed to traps must bear the number and color code specified for the vessel. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps must bear the number specified for the vessel. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap.

(2) Traps and buoys for shallow-water reef fish fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to shallow-water reef fish traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director, the Government of Puerto Rico, or the Government of the U.S. Virgin Islands, whichever entity issued the vessel's identification number and color code.

(3) Unmarked traps for shallow-water reef fish deployed in the FCZ at any time are illegal gear and may be disposed of in any appropriate manner by the Seceretary or the Secretary's designee (including an authorized officer). Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

§ 669.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish with traps for shallow-water reef fish in the FCZ without an identification number and color code as required by § 669.6;

(2) Falsify or fail to affix and maintain gear and vessel markings as required by § 669.6;

(3) Possess in or harvest from the FCZ Nassau grouper during the closed fishing season specified in § 669.21;

(4) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 669.22;

(5) Possess in or harvest from the FCZ yellowtail snapper less than the minimum size specified in § 669.23(a);

(6) Possess in or harvest from the FCZ Nassau grouper less than the minimum size limit specified in § 669.23(b);

(7) Possess in the FCZ or land any shallow-water reef fish harvested in the FCZ without head and fins intact as specified in § 669.23(d);

(8) Possess or use fish traps in the FCZ with a mesh size smaller than the size limit specified under § 669.24(a)(1);

(9) Possess, or use fish traps in the FCZ without a degradable panel or degradable door fastening as specified in § 669.24(a) (2) and (3);

(10) Fish for shallow-water reef fish in the FCZ with explosives, including powerheads as specified in § 669.24(b)(1);

(11) Fish for shallow-water reef fish in the FCZ with drugs, poisons, or other chemicals as specified in § 669.24(b)(2);

(12) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shallow-water reef fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(13) Fail to comply immediately with enforcement and boarding procedures specified in § 669.8;

(14) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(15) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection under the Magnuson Act;

(16) Interfere with, delay, obstruct, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(17) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shallow-water reef fish or the final disposition of such shallow-water reef fish through the sale of the shallow-water reef fish;

(18) Resist a lawful arrest for any act prohibited by this part;

(19) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part; or

(20) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested shallow-water reef fish to any foreign fishing vessel, while such foreign vessel is in the FCZ unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of the U.S.-harvested fish of the species concerned.

(b) It is lawful to violate any other provisions of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 669.8 Facilitation of enforcement.

(a) *General.* The operator of or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "A" repeated (. – .–)[1], is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (. – .–– . – –– . –. – . – –) means "You should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . – –. –. . . – –) means "You should stop or heave to: I am going to board you."

(4) "L" (. – ..) means "You should stop your vessel instantly."

§ 669.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621, and 15 CFR Part 904 (Civil Procedures), and other applicable law.

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[1] Period (.) means a short flash of light; dash (–) means a long flash of light.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the shallow-water reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Closed seasons.

The fishing season for Nassau grouper in the FCZ is closed from 0001 hours January 1 through 2400 hours March 31, local time. Nassau grouper taken during this period must be returned to the sea immediately with a minimum amount of harm.

§ 669.22 Harvest limitations.

Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has aboard written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying the identification number and color code. Owner's letter of consent must specify effective time period, and trap owner's vessel identification number and color code.

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in the FCZ is 8 inches in total length. Effective September 22, 1986, the minimum size of yellowtail snapper will be increased to 9 inches. On each September 22, the minimum size will be increased one inch until reaching a minimum size of 12 inches total length on September 22, 1989.

(b) The minimum size limit for the harvest or possession of Nassau grouper in the FCZ is 12 inches in total length. Effective September 22, 1986, the minimum size of Nassau grouper will be increased to 13 inches. On each September 22, the minimum size will be increased one inch until reaching a minimum size of 24 inches total length on September 22, 1997.

(c) Undersized yellowtail snapper and Nassau grouper must be returned to the water immediately and with minimum harm.

(d) All shallow-water reef fish harvested in the FCZ and subject to minimum size limits specified in this section must be landed with the head and fins and tail intact.

§ 669.24 Gear limitations.

(a)(1) Effective September 22, 1986, fish traps must have a minimum mesh size of at least 1¼ inches in the smallest dimension of the mesh opening.

(2) Fish traps must have a degradable panel or degradable door fastening made of may materials listed in paragraph (a)(3). The panel and door opening must not be smaller than either of the entry ports or funnel opening of the trap.

(3) Degradable material must be untreated fiber of biological origin, not more than three millimeters (approximately ⅛") maximum diameter, including but not limited to tyre palm, hemp, jute, cotton, wool, or silk, or non-galvanized black iron wire not more than 1.59 millimeters (approximately one-sixteenth inch) in diameter; that is, 16 gauge wire.

(b)(1) Explosives, including powerheads, may not be used to fish for shallow-water reef fish in the FCZ.

(2) Poisons, drugs, and other chemicals may not be used to fish for shallow-water reef fish in the FCZ.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

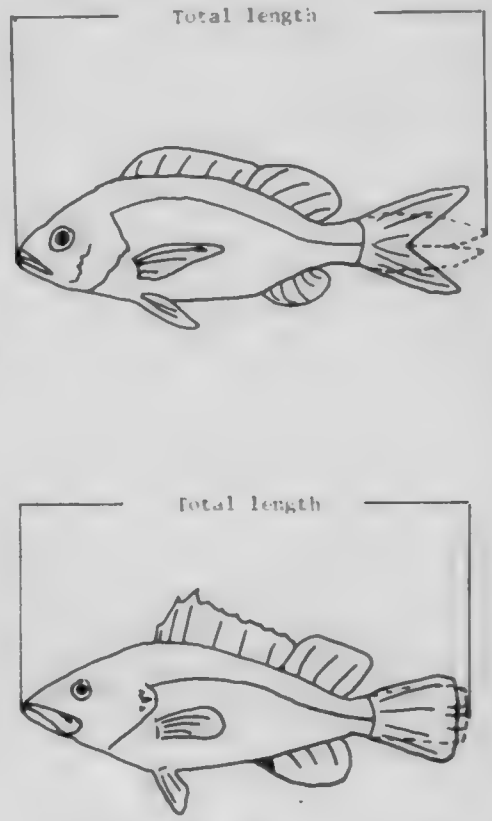


Figure 1. Measurement of total length for fishes with a forked tail, yellowtail snapper (top) and with a rounded tail, Nassau grouper (bottom).

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Notices

Federal Register
Vol. 50, No. 111
Monday, June 10, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-cured, Cigar-Binder (Types 51–52), and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54, & 55) Tobaccos; 1985–86 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of 1985–86 Marketing Quotas and Acreage Allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on January 24, 1985, with respect to the 1984 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: Fire-cured (type 21), 7,782 acres; fire-cured (types 22–23), 22,328 acres; dark air-cured, 8,195 acres; Virginia sun-cured, 1,076 acres; cigar-binder (types 51–52), 2,028 acres; and cigar-filler and binder (types 42–44 & 53–55), 11,554 acres

Separate referenda for cigar-binder (types 51–52), fire-cured, and dark air-cured tobaccos were held during the period February 19–22, 1985, by mail to determine whether these producers favor quotas for the next three marketing years. Producers disapproved marketing quotas for cigar-binder (types 51–52) tobacco.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Tracy, Agricultural Economist, Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447—5187.

The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Under section 312(a) of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), the Secretary is required to proclaim not later than February 1 of any marketing year with respect to any kind of tobacco, other than flue-cured tobacco, a national marketing quota for any kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. This is the case with respect to fire-cured and dark air-cured tobaccos. Also, since producers of cigar-binder (types 51–52) tobacco have not disapproved quotas for 3 consecutive years, the Secretary is required to proclaim quotas for this kind of tobacco. The Act also requires the Secretary to announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder (types 51–52), and cigar-filler and binder (types 42–44 & 53–55) tobaccos for the marketing year beginning October 1, 1984, and to announce for the 1985–86 marketing year the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder (types 51–52), cigar-filler and binder (types 42–44 & 53–55) tobaccos.

These determinations have been made on the basis of the latest available statistics of the Federal Government, and after consideration of data, views, and recommendations received from tobacco producers and others in response to a Notice of Proposed Determination which was published on November 14, 1984 (49 FR 45034).

Pursuant to the provisions of section 317(c) of the Act, it has been determined that acreage-poundage quotas will not be announced for the 1985–86 marketing year for any of these kinds of tobaccos since such quotas would not result in a more effective marketing quota program for such kinds of tobacco.

Discussion of Comments

Twenty-four written responses were received. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Four comments were received. All of these comments recommended that the marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1984 marketing year.

Virginia sun-cured (type 37) tobacco: Three comments were received. All of these comments recommended that the marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1984 marketing year.

Fire-cured (types 22–23) tobacco: Ten comments were received. Eight comments recommended that the marketing quotas be reduced by 10 to 15 percent from the 1984 marketing quota. The other two comments did not address the establishment of marketing quotas.

Dark air-cured tobacco: Seven comments were received. Five comments recommended that the marketing quotas be reduced by 10 to 15 percent from the 1984 marketing year; the other two comments did not address the establishment of marketing quotas.

Cigar binder (types 51–52) tobacco: No comments were received.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Seven comments were received. Six recommended that marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1984 marketing year.

One comment recommended that the marketing quota should be increased by 10 percent from 1984.

No comments were received with respect to the method of holding a referendum.

In addition to the written comments, a meeting was held to discuss the establishment of marketing quotas for Kentucky-Tennessee fire-cured and dark air-cured tobaccos. A combined total of 10 comments were made. These comments were similar to the written comments.

Statutory provisions

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Definitions

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(1)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use an 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1984–85 marketing year was approximately 2.3 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1984–85 marketing year was 3.0 million pounds (farm sales weight basis). Domestic sue has shown an upward trend, while exports have trended downward. Accordingly, a normal year's domestic consumption has been set at 3.0 million pounds while a normal year's exports have been set at 2.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 12.9 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1984, of 8.0 million pounds. The 1984 fire-cured (type 21) tobacco crop is estimated to be 5.8 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1984–85 marketing year is 13.8 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 4.5 million pounds. By deducting this disappearance from the total supply, a carryover of 9.3 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 3.6 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, slightly less than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 7.27 million pounds is necessary to make available production of 3.6 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 8.7 million pounds is necessary to avoid undue restriction of marketings. This results in the 1985–86 national marketing quota of 8.7 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota divided by the 1980–84 5-year national average yield of 1,118 pounds per acre results in a 1985 national acreage allotment of 7,781.75 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.90 is determined by dividing the national acreage allotment, less a national reserve of 50.0 acres, by the total of 1985 preliminary farm acreage allotments. The preliminary farm acreage allotment reflect the factors specificed in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year was about 16.0 million pounds. The average annual quantity of fire-cured (types 22–23)

tobacco produced in the United States and exported during the 10 marketing years preceding the 1984–85 marketing year was 19.4 million pounds (farm-sales weight basis). Domestic use and exports are trending upward. Accordingly, a normal year's domestic consumption has been established at 21.0 million pounds and a normal year's exports at 24.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 102.2 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1984, or 64.2 million pounds. The 1984 fire-cured (types 22–23) crop is estimated to be 47.8 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1984, is 112.0 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 38.0 million pounds. By deducting this disappearance from the total supply, a carryover of 74.0 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 28.2 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1985–86 marketing year a supply equal to the reserve supply level. During the past 5 years, only approximately 85 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1985–86 marketing year of 33.1 million pounds is necessary to make available production of 28.2 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1985–86 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 39.7 million pounds.

The national acreage allotment for the 1985–86 marketing year is determined to be 22,328.46 acres. In accordance with section 313(g) of the Act, the national marketing quota for the 1985–86 marketing year has been divided by the 1980–84, 5-year national average yield of 1,778 pounds per acre, to obtain a national acreage allotment of 22,328.46 acres, for the 1985–86 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of .90 is determined by dividing the national acreage allotment for the 1985–86 marketing year less a national reserve of 85 acres by the total of the 1985 preliminary farm acreage allotments. The preliminary far acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year was approximately 13.8 million pounds. The average annual quantity produced domestically and exported during this period was 2.1 million pounds (farm-sales weight basis). Both domestic use and exports have been erratic. Accordingly, 17.6 million pounds have been used as a normal year's domestic consumption and 2.5 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 55.1 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1984, of 42.7 million pounds. The 1984 dark air-cured crop is estimated to be 17.5 million pounds. Therefore, the total supply for the market year beginning October 1, 1984, is 60.2 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 15.0 million pounds. By deducting this disappearance from the total supply, a carryover of 45.2 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 9.9 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, slightly over 80 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1985–86 marketing year of 12.3 million pounds is necessary to make available production of 9.9 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1985–86 marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 14.8 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota, divided by the 1980–84, 5-year national average yield of 1,806 pounds per acre, results in a national acreage allotment of 8,194.91 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.85 is determined by dividing the national acreage allotment, less a national reserve of 30 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1984–85 marketing year was approximately 680 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 160 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, 600 thousand pounds have been used as a normal year's domestic consumption and 100 thousand pounds have been used as a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 2,000 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1984, of 1,400 thousand pounds. The 1984 Virginia sun-cured tobacco crop is estimated to be 600 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1984–85 marketing year is 2,000 thousand pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 400 thousand pounds. By deducting this disappearance from the total supply, a carryover of 1,600 thousand pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 400 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During

the last 5 years, only approximately 38 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 1,040 thousand pounds is necessary to make available production of 400 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 1,250 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 1,250 thousand pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota divided by the 1980–84 5-year national average yield of 1,162 pounds per acre, results in a 1985 national acreage allotment of 1,075.73 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of .90 is determined by dividing the national acreage allotment, less a national reserve of 5.0 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Binder (Types 51–52) Tobacco

Marketing quotas were disapproved by producers with respect to the 1984 and 1985 marketing years.

The yearly average quantity of cigar-binder (types 51–52) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year, was approximately 2.6 million pounds. The average annual quantity of cigar-binder tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1984–85 marketing year was .1 million pounds (farm-sales weight basis). Both domestic use and exports have fluctuated within a narrow range. Accordingly, 2.5 million pounds have been used as a normal year's domestic consumption and .1 million pounds have been used as a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 7.3 million pounds.

Manufacturers and dealers reported stocks of cigar-binder tobacco held on October 1, 1984 of 6.7 million pounds. The 1984 cigar-binder tobacco crop is estimated to be 1.9 million pounds. Therefore, the total supply of cigar-binder tobacco for the 1984–85 marketing year is 8.6 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total about 3.0 million pounds. By deducting the estimated disappearance during the 1984–85 marketing year from the total supply, a carryover of 5.6 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 1.7 million pounds. This represents the quantity of cigarbinder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 4 years, only approximately 56 percent of the national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 3.03 million pounds is necessary to make available production of 1.7 million pounds. In accordance with section 312(b) of the Act, an increase in the computed quota by 20 percent to 3.64 million pounds is necessary in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 3.64 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota of 3.64 million pounds divided by the 1980–84 5-year national average yield of 1,795 pounds per acre results in a 1985 national acreage allotment of 2,027.66 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 15.0 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year was approximately 22.6 million pounds. The average annual quantity of cigar-filler and binder types 42–44 & 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1984–85 marketing year was very small. Domestic use is erratic, while exports are negligible.

Accordingly, a normal year's domestic consumption has been set at 26.2 million pounds while a normal year's exports has been set at 0.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 75.6 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1984 of 64.4 million pounds. The 1984 cigar-filler and binder crop is estimated to be 17.7 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 & 52–55) tobacco for the 1984–85 marketing year is 82.1 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total about 21.0 million pounds. By deducting this disappearance from the the total supply, a carryover of 61.1 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 14.5 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the past 5 years, approximately 78 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a 1985–86 national marketing quota of 18.6 million pounds is necessary to make available production of 14.5 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 22.3 million pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 22.3 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota of 22.3 million pounds divided by the 1980–84 5-year national average yield of 1,930 pounds per acre results in a 1985–86 national acreage allotment of 11,554.40 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 50.0 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1985 crops of

fire-cured (type 21), fire-cured (types 22–23), dark air-cured, sun-cured, cigar-binder (types 51–52), and cigar-filler and binder (types 42–44 & 53–55) tobacco which were announced by the Secretary on January 24, 1985 and to set forth certain other determinations with respect to these kinds of tobacco. On January 24, 1985 the Secretary also announced that the referenda to be conducted with respect to cigar-binder (types 51–52), fire-cured and dark-air cured tobacco would be conducted by mail.

Accordingly, the following determinations are announced:

DETERMINATIONS

Proclamations of National Marketing Quotas

1. Fire-Cured (Types 21–23)

Since the 1984–85 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for fire-cured (types 21–23) tobacco, a national marketing quota for such kind of tabacco for each of the 3 marketing years beginning October 1, 1985, October 1, 1986, and October 1, 1987 is hereby proclaimed.

2. Dark Air-Cured (Types 35–36)

Since the 1983–84 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for dark air-cured (types 35–36) tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1985, October 1, 1986, and October 1, 1987 is hereby proclaimed.

3. Cigar-Binder (Types 51–52)

Since cigar-binder tabacco farmers voting in a referendum in February 1984, disapproved quotas for the 3 marketing years beginning October 1, 1984, and since such disapproval was not the third consecutive disapproval of quotas for cigar-binder tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1985, October 1, 1986, and October 1, 1987 is hereby proclaimed.

Determinations 1985–86 Marketing Year

For fire-cured (type 21) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 12.9 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1984, is 13.8 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1985, is 9.3 million pounds.

(d) *National marketing quota.* The amount of fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1985 a supply equal to the reserve supply level of such tobacco is 3.6 million pounds. Because producers have been producing slightly less than half of the announced national marketing quota during the past 5 marketing years, a national marketing quota of 7.27 million pounds is hereby announced. It is further determined, however, that a national marketing quota in the amount of 7.27 million pounds would result in undue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for fire-cured (type 21) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985 is 8.7 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 7,781.75 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is .90.

(g) *National reserve.* The national acreage is 50 acres of which 10 acres are made available for 1985 new farms and 40 acres are made available for making corrections and adjusting inequities in old farms allotments.

For fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 102.2 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1984, is 112.0 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1985, is 74.0 million pounds.

(d) *National marketing quota.* The amount of fire-cured (types 22–23) tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 28.2 million pounds. Because producers have been producing about 85 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a national marketing quota for the 1985–86 marketing year of 33.1 million pounds is necessary to make available production of 28.2 million pounds. Accordingly, a 1985–86 national marketing quota of 33.1 million pounds is hereby announced. It has been determined, however, that the 1985–86 national marketing quota in the amount of 33.1 million pounds would result in undue restrictions of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the 1985–86 national marketing quota for fire-cured (types 22–23) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 39.7 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 22,328.46 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is .90.

(g) *National reserve.* The national acreage reserve is 85.0 acres of which 15.0 acres are made available for 1985 new farms, and 70.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For dark air-cured tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 55.1 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1984, is 60.2 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1985, is 45.2 million pounds.

(d) *National marketing quota.* The amount of dark air-cured tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 9.9 million pounds. Because producers have been producing slightly over 80 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a 1985–86 national marketing quota of 12.3 million pounds is necessary to make available production of 9.9 million pounds. Accordingly, a 1985–86 national marketing quota of 12.3 million pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 12.3

million pounds would result in undue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the 1985–86 national marketing quota for dark air-cured (types 35 & 36) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 14.8 million pounds.

(e) *National acreage allotment.* The national acreage marketing allotment is 8,194.91 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is .85.

(g) *National reserve.* The national acreage reserve is 30.0 acres, of which 5.0 acres are made available for 1985 new farms and 25.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Virginia sun-cured tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 2,000 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1984 is 2,000 thousand pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1985, is 1,600 thousand pounds.

(d) *National marketing quota.* The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 400 thousand pounds. Because producers have been producing about 38 percent of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 1,040 thousand pounds is necessary to make available production of 400 thousand pounds. Accordingly, a national marketing quota of 1,040 thousand pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 1,040 thousand pounds would result in undue restriction of marketings during the 1985–86 marketing year. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Virginia sun-cured (type 37) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 1,250 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 1,075.73 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is .90.

(g) *National reserve.* The national acreage reserve is 5.0 acres, of which 2.0 acres are made available for 1985 new farms, and 3.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For cigar-binder (types 51–52) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for cigar-binder (types 51–52) tobacco is 7.3 million pounds.

(b) *Total supply.* The total supply of cigar-binder (types 51–52) tobacco for the marketing year beginning October 1, 1984 is 8.6 million pounds.

(c) *Carryover.* The estimated carryover of cigar-binder (types 51–52) tobacco for the marketing year beginning October 1, 1985 is 5.6 million pounds.

(d) *National marketing quota.* The amount of cigar-binder (types 51–52) tobacco which will make available during the marketing year beginning October 1, 1985 a supply equal to the reserve supply level of such tobacco is 1.7 million pounds. Because producers have been producing about 56 percent of the approved national marketing quota over the past 4 years, it has been determined that a national marketing quota of 3.03 million pounds is necessary to make available production of 1.7 million pounds. Accordingly, a national marketing quota of 3.03 million pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 3.03 million pounds would result in undue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-binder (types 51–52) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 3.64 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 2,027.86 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 15.0 acres of which 5.0 acres are made available for 1985 new farms, and 10.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 75.6 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1984 is 82.1 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1985 is 61.1 million pounds.

(d) *National marketing quota.* The amount of cigar-filler and binder (types 42–44, 53–55) tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 14.5 million pounds. Because producers have been producing about 78 percent of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 18.6 million pounds is necessary to make available production of 14.5 million pounds. Accordingly, a national marketing quota of 18.6 million pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 18.6 million pounds would result in indue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 22.3 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,554.40 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 50 acres, of which 40 acres are made available for 1985 new farms, and 10 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended (7 U.S.C., 1301, 1312, 1313, 1375).

Signed at Washington, D.C., on June 5, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-13555 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Section 20 of the United States Grain Standards Act (Act), as amended, directed the Secretary of Agriculture to establish an advisory committee to provide advice to the Administrator of the Federal Grain Inspection Service with respect to the efficient and economical implementation of the Act. The Federal Grain Inspection Service Advisory Committee (Advisory Committee) was established by the Secretary on Septemter 29, 1981. The Advisory Committee consists of 12 members appointed by the Secretary, representing the interests of all segments of the grain industry, and is governed by the provisions of the Federal Advisory Committee Act. Members of the Advisory Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

Alternate members of the Advisory Committee are needed to serve on behalf of members when they are temporarily unable to serve. In such situations, alternate members are subject to the same rules as are members. Persons interested in serving on this Advisory Committee as alternates, or wishing to submit names of individuals to be considered for appointment on the Advisory Committee as alternates, should contact, in writing, Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, not later than July 11, 1985, and furnish the following information: Name, home address, employer, occupation and title, statement of reason for nomination, and major source of income.

The final selection of alternate committee members will be made by the Secretary.

Dated: June 4, 1985.

K.A. Gilles,

Administrator.

[FR Doc. 85-13915 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Deschutes National Forest Grazing Advisory Board; Meeting

The Deschutes National Forest Grazing Advisory Board will meet at 9 a.m., June 26, 1985, at the Forest Supervisor's Office, 1645 Highway 20 East, Bend, Oregon 97701. The purpose of this meeting and field trip is:

1. Review Deschutes National Forest Range Management Program for 1985 and 1986.
2. Review Allotment Management Plans and Range Betterment Funds.
3. Open discussion of topics of interest to the Advisory Board.

This meeting will be open to the public. Persons who wish to attend should contact Will Griffin, 1645 Highway 20 East, Bend, Oregon 97701, telephone 388-8564.

David G. Mohla,

Forest Supervisor.

May 30, 1985.

[FR Doc. 85-13820 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Cayadutta Creek Watershed, NY; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Cayadutta Creek Watershed, Fulton and Montgomery Counties, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention. Alternatives under consideration to reach these objectives include, nonstructural measures, earth dams, and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Future meetings will be held to determine the scope of the evaiuation of the proposed action. Further informaton on the proposed action may be obtained from Paul A. Dodd, State Conservationist, at the above address or telephone (315) 423-5521.

(Catalog of Federal Domestic Assistance program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 3, 1985.

Paul A. Dodd,

State Conservationist.

[FR Doc. 85-13910 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-503]

Certain Iron Construction Castings From Canada; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that

it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Frank R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4087.

SUPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry; Allegheny Foundry Company; Bingham & Taylor; Campbell Foundry Company; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works; Inc.; E.L. Le Baron Foundry Company; Municipal Castings Inc.; Neenah Foundry Company; Opelika Foundry Co., Inc.; Pinkerton Foundry Company; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc.; filing on behalf of the U.S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on U.S. import statistics, U.S. resale transactions, direct import transactions, bid and price quotations, and price list prices.

Petitioners based foreign market value on selling prices from wholesalers to contractors.

Based on the comparison of these values, petitioners alleged dumping margins range from 17 to 503 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether castings from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of castings from Canada are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85–13822 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–408]

Iron Ore Pellets From Brazil; Suspension of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of suspension of countervailing duty investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving iron ore pellets from Brazil. The basis for the suspension is an agreement to renounce all benefits provided by the government of Brazil which we find to constitute subsidies on exports of iron ore pellets to the United States.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Office of Investigations, or Peggy Clarke, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377–0167 or (202) 377–1487.

SUPPLEMENTARY INFORMATION: On December 20, 1984, we received a petition from the Cleveland-Cliffs Iron Company, the Oglebay Norton Company, Pickands Mather & Company, and the United Steelworkers of America, on behalf of the U.S. industry producing iron ore pellets. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of iron ore pellets receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act").

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on January 9, 1985, we initiated such an investigation (50 FR 2322). We stated that we expected to issued a preliminary determination by March 15, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that these imports materially injure or threaten material injury to a U.S. industry (50 FR 5286). We presented a questionnaire to the government of Brazil in Washington,

D.C., on January 25, 1985. On February 27, 1985, we received a response to the questionnaire. There is only one known producer and exporter in Brazil of iron ore pellets to the United States, Companhia Vale do Rio Doce (CVRD), for which we have received information from the government of Brazil.

We issued an affirmative preliminary determination on March 15, 1985 (50 FR 11527). We preliminarily determined that there was reason to believe or suspect that certain benefits which constitute subsidies within the meaning of the Act are being provided to CVRD. We preliminarily determined that the estimated net subsidies was 5.15 percent *ad valorem* for iron ore pellets. The programs preliminarily determined to bestow countervailable benefits were:

- Income Tax Exemption for Export Earnings
- Mineral Tax Incentives

We directed the U.S. Customs Service to suspend liquidation of all entries of the products under investigation which were entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on these products in an amount equal to the estimated net subsidy.

We conducted verification of the questionnaire response from the government and CVRD in Brazil from April 23 through April 30, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We held a public hearing on April 17, 1985. Both petitioners and respondents submitted comments on this proceeding.

On April 29, 1985, we initialed a proposed suspension agreement with respect to iron ore pellets. Petitioners have had 30 days in which to submit comments regarding the proposed suspension agreement on iron ore pellets. Their comments have been received and taken into consideration.

Scope of Investigation

The product covered by this investigation is iron ore pellets. Iron ore pellets are defined, for purposes of this proceeding, as fine particles of iron oxide, hardened by heating and formed into balls of ⅜" to ⅝" for use in blast furnaces to obtain pig iron. Pellets for use in electric furnaces and containing not over three percent by weight of silica are excluded.

Changes From the Preliminary Determination

Import Duty Exemption

During verification, we found that Decree Law 1287 allows a 100 percent exemption from import duties and IPI tax on equipment, machinery, appliances or instruments, spare parts, etc., provided similar equipment is not produced in Brazil. This program is part of the mining industry incentives administered by the "Grupo Executivo de Industria de Mineracao" ("GEIMI") of the Ministry of Mines and energy. Firms must have projects approved by GEIMI to qualify for the import duty exemption. Because this program is limited to certain industries we find it to be countervailable.

We verified that CVRD used this exemption for the importation of pelletizing and mining equipment during the review period.

Petitioners' Comments

Comment 1: Petitioners argue that the commitments undertaken in the Agreement are equally applicable to subsidiaries and affiliates controlled by CVRD, such as Doce Nave, CVRD's shipping subsidiary.

DOC Position: We agree that subsidiaries and affiliates that mine or produce iron ore pellets for export to the United States or that export iron ore pellets to the United States should be included, and we have so worded in the Agreement.

Comment 2: Petitioners argue that TSUSA number 601.2430 should also be included in the scope of the Agreement because indications are that iron ore pellets may be coming into the United States under that number as well as under TSUSA number 601.2450.

DOC Position: To avoid the problem of basket TSUSA numbers and misclassification, we have made it clear that it is the written description, not the TSUSA number, that determines the scope of the Agreement.

Comment 3: Petitioners argue that the renunciation of the income tax exemption allocated to exports of iron ore to the United States should apply to any tax return filed in "1985 or thereafter" rather than "on any tax return filed on or after the effective date of this agreement," because present Department methodology values income tax exclusions by allocating the benefits earned by 1984 exports to 1985, the year in which the tax savings are construed as being "received".

DOC Position: We agree and have so worded the Agreement.

Comment 4: Petitioners argue that language should be added to specifically preclude the use of any program which the Department finds is a subsidy in any final determination and the use of any programs which the Court of International Trade, after any appeal, orders to be investigated and which are found to constitute subsidies. Language should also be added which would specifically include subsidies which may be alleged by Petitioners in the future, but have not yet been investigated.

DOC Position: We agree and have so worded the Agreement.

Comment 5: Petitioners argue that the decision whether the renunciation obligation continues to exist on those programs that have been found not countervailable in the notice of suspension of investigation, the final determination, or the final results of an administrative review under section 751, should be made by the Department; therefore, language in the suspension agreement should be written to reflect this position.

DOC Position: We disagree. Once a program has been found to be not countervailable, then there is no further requirement on the part of the company to continue renunciation of the benefits under that program.

Comment 6: Petitioners argue that CVRD has to supply any information, "including complete auditor's reports containing a full reconciliation between financial and taxable income."

DOC Position: We agree that CVRD should provide any available reconciliation between financial and taxable income.

Comment 7: Petitioners argue that all effective dates should be from March 31, 1985, rather than June 30, 1985, because then there will be no gaps between the review period and the monitoring periods for which information does not exist.

DOC Position: We disagree. Since the Suspension Agreement is not signed until May 29, 1985, CVRD would technically be in violation if all dates go back to March 31.

Respondents' Comments

Comment 1: The Government of Brazil suggests that the Brazilian government's responsibilites for monitoring the suspension agreement would be better addressed in a government-to-government letter, rather than in the body of the Agreement. U.S. countervailing duty law does not require the Government of Brazil to be a direct party to the Agreement. There is precedent for such a letter (see, Notice of Suspension of Countervailing Duty Investigation of Certain Textile Mill Products and Apparel from Columbia, 50 FR 9863). This would not change the obligations of the government.

DOC Position: Although this has been done in the past, we prefer to include

the government as a direct party to the Agreement.

Comment 2: Respondents argue that CVRD should only have to renounce the income tax exemption for exports of iron ore pellets to the United States. They state that renouncing the benefit for U.S. sales only is consistent with past department practice and refer us to the South African steel suspension agreements. Such a renunciation would reduce the benefit by the same amount as a countervailing duty imposed on U.S. imports would offset it. Further, they argue that the program is segregable for U.S. sales, i.e., since CVRD can prove exactly which exports generate the exemption, it would be possible to segregate U.S. sales and renounce solely on them. Since U.S. sales would no longer be generating the exemption, they also would no longer be receiving the benefit.

Finally, respondents argue that the Department's concern over different levels of profitability for sales to different markets is irrelevant. The profit to which the exemption is applied is based on the firm's overall profitability not on its profits from any specific transactions. Under the methodology used to calculate the exemption, the level of profits on CVRD's exports to the United States makes absolutely no difference. By eliminating exports to the United States from the numerator, the amount of benefits derived by CVRD is reduced by the amount generated by such sales. No adjustment to the profit, therefore, is needed to fully offset the benefit.

DOC Position: The Suspension Agreement, as signed, required CVRD to renounce the income tax exemption only on iron ore pellet exports to the United States.

Comment 3: Respondents argue that the I.U.M. is an indirect tax. Therefore, any reduction in the rate charged on exports is not a subsidy. Therefore, this program should not be included in the Suspension Agreement.

DOC Position: In our preliminary affirmative determination, we preliminarily found this program to confer a subsidy. Therefore, it is appropriate to include this program in the Suspension Agreement. Should it be found not to provide a subsidy, either in a continuation of this investigation or in any section 751 administrative review which may occur, then respondents will no longer be required to renounce use of this program.

Comment 4: Respondents stated that Section II.d. of the Agreement may be difficult to implement as worded because it requires CVRD to renounce any benefits found countervailable in any investigation or section 751 administrative review. Respondents believe the Department should notify CVRD if it should renounce benefits found countervailable in other proceedings.

DOC Position: The Department is not persuaded that it should accept the responsibility of notifying CVRD of programs found to be countervailable in any proceeding. CVRD is responsible for its use of countervailable benefits that are applicable to it.

Comment 5: Respondents argue that notification regarding plans to build a pelletizing facility at Carajas should occur within 30 days of deciding to build such a facility, not within 30 days of consideration of buildings such a facility. Any person might "consider" it but, they argue, unless CVRD actually decides to build a plant, such considerations are irrelevant. There is an approximately two-year lag-time between deciding to build such a facility and completing it. This would give the Department sufficient time to decide its position after notification.

DOC Position: We agree and have so worded the Agreement.

Suspension of Investigation

The Department has consulted with the petitioners and has considered their comments submitted with respect to the proposed Suspension Agreement. We have determined that the agreement will eliminate completely the amount of the net bounty or grant with respect to the subject merchandise exported directly or indirectly to the United States, that the Agreement can be monitored effectively and that the Agreement is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the Agreement, signed May 29, 1985, are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption, of iron ore pellets from Brazil effective March 22, 1985, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination; Iron Ore Pellets from Brazil," 50 FR 11527, is hereby terminated. Any cash deposits on entries of iron ore pellets from Brazil pursuant to that preliminary affirmative determination shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation, if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act (19 U.S.C. 1671c(f)(1)(A)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Suspension Agreement

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Act") and § 355.31 of the Department of Commerce Regulations, the Department of Commerce ("the Department"), the Government of Brazil, and Companhia Vale do Rio Doce (including its subsidiaries and affiliated companies which mine or produce iron ore pellets for export to the U.S. or which export iron ore pellets to the U.S.) ("CVRD"), the only current producer and exporter to the U.S. of certain iron ore pellets in Brazil, as defined in paragraph I below, enter into the following Suspension Agreement (the "Agreement"). In consideration of this Agreement, the Government of Brazil agrees to take such steps as are necessary to ensure that the renunciation of subsidies by CVRD is effectively implemented and monitored, and that the Department is informed of any other companies that begin exporting to the U.S. certain iron ore pellets as defined by paragraph I below. On the basis of the foregoing, the Department shall suspend its countervailing duty investigation initiated on Janaury 16, 1985 (50 FR 2322) with respect to iron ore pellets from Brazil subject to the terms and conditions set forth below.

I. Scope of the Agreement

The Agreement applies to certain iron ore pellets (hereinafter "iron ore pellets"), defined for the purposes of this Agreement, as fine particles of iron oxide, hardened by heating and formed into balls of ⅜ inch to ⅝ inch for use in blast furnaces to obtain pig iron, and exported directly or indirectly from Brazil to the United States, regardless of the TSUSA item under which they are entered.

II. Basis of the Agreement

CVRD, accounting for one hundred (100) percent of the total exports of iron ore pellets from Brazil to the United States, agrees as follows:

a. It will not claim any exemption from income tax or any type of countervailable benefit whatsoever under Decree-Laws No. 1158, No 1721, or No. 1240 of that portion of profits allocated under the relevant Brazilian law to exports of iron ore pellets from

Brazil to the United States on any tax return filed in 1985 or thereafter.

b. It will pay the tax on minerals (Imposto Unico sobre Minerais, or I.U.M.) under Decree-Law No. 1038, as amended by Decree-Law No. 1172 and Decree No. 66694, on or with respect to iron ore pellets exported, directly or indirectly, from Brazil to the United States at the same tax rate which is imposed on iron ore pellets sold domestically.

c. It agrees not to use any exemptions under Decree Laws No. 1287, No. 1137, No. 1428, or Decree No. 77065 from import duties or IPI taxes on imported equipment of pelletizing and iron ore mining operations. This does not include equipment exclusively for use in the Carajas project.

d. It agrees that it will not apply for, or receive, directly or indirectly, countervailable benefits with respect to iron ore pellets exported, directly or indirectly, from Brazil to the United States which are countervailable under the Act. Countervailable benefits with respect to exported iron ore pellets are defined as any subsidy which has been found countervailable in any investigation or review under section 751 of the Act; or which is subsequently determined by the Department in any final determination in this investigation, in any re-determination of the amount of the net subsidy published pursuant to a notice of a decision of the United States Court of International Trade published pursuant to section 516A(c)(1) of the Act, or in an administrative review of this Agreement under section 751 of the Act to constitute countervailable benefits under the Act to the subject product. This would include countervailable benefits which may apply to other products or exports to other destinations that cannot be segregated as applying to such other products or exports. It further agrees that it will not apply for or receive, directly or indirectly, any new or equivalent benefits for the subject merchandise as a substitute for any benefit renounced by the agreement.

e. It shall notify the Department in writing at least thirty days prior to applying for or accepting, directly or indirectly, any new benefit, which has been found to be countervailable in this or other proceedings, on iron ore pellets exported, directly or indirectly, from Brazil to the United States, including countervailable benefits which may apply to other products or exports to other destinations that cannot be segregated as applying solely to such other products or exports.

f. If any program under which subsidies have been received in the past, and which is included in this Agreement, is found in this proceeding not to constitute a countervailable benefit under the Act in the notice of suspension of investigation, the final determination, or the final results of an administrative review of this Agreement under section 751 of the Act, then the renunciation of the subsidies under that program will no longer be required.

g. It agrees that it will not build any pelletizing facilities at the Carajas project or for pelletizing Carajas ore until 1995, and that if it builds such facilities thereafter, it will not ship pellets to the U.S. until after a countervailing duty investigation is completed. It further agrees to notify the Department in writing no later than 30 days after deciding to build any pelletizing facilities at the Carajas project or for pelletizing Carajas ore.

III. Monitoring of the Agreement

1. CVRD agrees to supply any information, including any available reconciliation between financial and taxable income, and documentation which the Department deems necessary to demonstrate that there is full compliance with the terms of this Agreement, including the value of exports of iron ore pellets by CVRD to the United States, within 45 days from the end of each calendar quarter, beginning with the quarter ending June 30, 1985. CFRD also agrees to provide copies of all documents, including source documents such as invoices and ledgers as well as all tax documents and calculations, used in computing the income tax exemption for export earnings; all such documents will be available to counsel for Petitioners under protective order.

2. CVRD will notify the Department if it:

a. Transships iron ore pellets through third countries to the United States;

b. Alters its position with respect to any terms of the Agreement; or

c. Applies for, or receives, directly or indirectly, the countervailable benefits of the programs described in Section II for the production or export of iron ore pellets exported, directly or indirectly, from Brazil to the United States.

3. The Department will request information and may perform verifications periodically pursuant to administrative reviews conducted under section 751 of the Act, in addition to exercising its rights under paragraphs III.1 and 2, above.

4. CVRD agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this Agreement.

5. CVRD agrees to provide to the Department a periodic certification that it continues to be in compliance with the terms of the Agreement. A certification will be provided within 45 days from the end of each calendar quarter beginning with the quarter ending June 30, 1985.

IV. General Provisions

1. In entering into this Agreement, CVRD does not admit that any of the programs investigated or included in this Agreement constitute subsidies within the meaning of the Act or the GATT Subsidies Code.

2. The provisions of section 704(i) shall apply if:

a. CVRD withdraws from this Agreement; or

b. The Department determines that the Agreement is being or has been violated or no longer meets the requirement of section 704 of the Act.

3. Additionally, should exports to the United States by CVRD of iron ore pellets account for less than 85 percent of the iron ore pellets imported, directly or indirectly, into the United States from Brazil, the Department may attempt to negotiate an agreement with additional producers or exporters or may terminate this Agreement and re-open the investigation or issue a countervailing duty order as appropriate under § 355.32 of the Commerce Regulations. If re-opened, the investigation will be resumed for all producers and exporters of iron ore pellets as if the affirmative preliminary determination were made on the date that the Department terminates this Agreement.

4. If, pursuant to section 704(g) of the Act, the investigation is continued after the notice of suspension of investigation, the application of this Agreement shall be consistent with the final determination issued in the continued investigation, and all programs found to constitute countervailable benefits, whether export or domestic, shall be specifically renounced in a manner similar to Subparagraphs II.a., b, and c.

V. Undertaking by the Government of Brazil

1. In consideration of the foregoing Agreement between CVRD and the Department of Commerce, the Government of Brazil agrees not to provide any countervailable benefits, directly or indirectly, for or in respect of iron ore pellets exported to the United States, and agrees to take such steps as are necessary to ensure that the renunciation of subsidies in this Agreement by CVRD is effectively implemented and monitored, including:

a. Reporting any exemption from income tax or any other type of countervailable benefit whatsoever under Decree-Laws No. 1158, No. 1721, or No. 1240 on that portion of profits allocated under the relevant Brazilian law to exports of iron ore pellets from Brazil to the United States;

b. Ensuring that CVRD will comply with provision IIb of this Agreement, that CVRD will pay the tax on minerals (Imposto Unico sobre Minerais, or I.U.M.) under Decree-Law No. 1038, as amended by Decree-Law No. 1172 and Decree No. 66694, on or with respect to iron ore pellets exported, directly or indirectly, from Brazil to the United States at the same tax rate which is imposed on iron ore pellets sold domestically.

c. Notifying the relevant authorities of the Government of Brazil of the terms of this Agreement in order to ensure action by those agencies consistent with the terms of this paragraph;

d. Supplying any information and documentation that the Department deems necessary to demonstrate full compliance by CVRD with the terms of this Agreement;

e. Permitting such verification and data collection as deemed necessary by the Department in order to monitor this Agreement;

f. Notifying the Department within 45 days from the end of each calendar quarter, beginning with the quarter ending June 30, 1985, if producers or exporters of iron ore pellets other than CVRD export to the United States and whether such producers and exporters have agreed to undertake the obligations specified under this agreement as applying to CVRD;

g. Notifying the Department if it becomes aware that CVRD is transshipping iron ore pellets through third countries to the United States;

h. Notifying the Department if it alters its position with respect to any of the terms of this Agreement;

i. Notifying the Department if CVRD applies for, or receives, directly or indirectly, the benefits of the programs described in paragraph II (a, b, and c), or any other programs found to be countervailable in the final determination, or any subsequent review under section 751 of the Act, on exports of iron ore pellets, directly or indirectly, from Brazil to the United States; and

j. Notifying the Department if CVRD becomes eligible for, applies for, or receives, directly or indirectly, any new or substitute subsidies on iron ore pellets exported, directly or indirectly, from Brazil to the United States in contravention of paragraph II(d) of the Agreement.

2. The Government of Brazil agrees to provide to the Department within 45 days of the end of each calendar quarter, beginning with the quarter ending June 30, 1985, all relevant information deemed by the Department to be necessary to maintain this Agreement. The information shall include, but not be limited to:

a. A certification (provided after consultation with each agency responsible for administering the programs in Section II) that CVRD has not applied for or received, directly or indirectly, any countervailable benefits described in Section II on iron ore pellets exported, directly or indirectly, from Brazil to the United States;

b. A certification of the total value of iron ore pellets exported, directly or indirectly, from Brazil to the United States and to all markets both in the aggregate and by producer/exporter; and

c. A certification that CVRD continues to be in full compliance with this Agreement.

3. The Government of Brazil's undertaking under this section is not an admission that any of the programs investigated or included in the Agreement constitute subsidies under the Act or the Subsidies Code.

4. The Government of Brazil recognizes that its undertaking is essential to the continuation of this Agreement.

VI. Effective Date

The effective date of this Agreement is the date of publication in the **Federal Register**. The provisions of paragraphs II (a–g) apply with respect to iron ore pellets exported on or after the effective date.

Signed on this 29th day of May, 1985, for the Government of Brazil.

J. Art. Medeiros,

Chargé d'Affaires of Brazil.

Signed on this 29th day of May, 1985, for Companhia Vale do Rio Doce.

Peter L. Briger,

Counsel for CVRD.

I have determined, pursuant to section 704(b) of the Act, that the provisions of Section II completely eliminate the subsidies that the Government of Brazil is providing with respect to certain iron ore pellets exported, directly or indirectly, from Brazil to the United States. Furthermore, I have determined that the suspension of the investigation is in the public interest, that the provisions of Sections III and V ensure that this Agreement can be monitored effectively, and that this Agreement meets the requirements of section 704(d) of the Act.

United States Department of Commerce.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13798 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–504]

Initiation of Countervailing Duty Investigation; Certain Iron Construction Castings From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Brazil of certain iron construction castings, as described in the "Scope of the Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before June 27, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before August 6, 1985.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Telephone (202) 377–1785.

SUPPLEMENTARY INFORMATION:

Petition

On May 13, 1985, we received a petition in proper form from the Municipal Castings Fair Trade Council, a trade association representing domestic producers of certain iron construction castings and fifteen individual-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe &

Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings, Inc.; Neenah Foundry Co.; Opelika Foundry Co.; Inc.; Pinkerton Foundry Co.; Tyler Pipe Corp.; U.S. Foundry & Manufacturing Co.; and Vulcan Foundry, Inc., filing on behalf of the U.S. producers of iron construction castings. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of certain iron construction castings receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Brazil is a "country under the Ageement" within the meaning of section 701(b) of the Act; therefore Title VII of the Act applies to this investigation and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, within 20 days after a petition is filed, we must determine whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain iron construction castings from Brazil and we have found that the petition meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of certain iron construction castings, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination by August 6, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States* (TSUS).

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Brazil of certain iron construction castings receive benefits which constitute subsidies. We are initiating an investigation on the following allegations:

- IPI Export Credit Premium;
- Income Tax Exemption on Export Earnings (Decree Laws 1158 and 1721);
- BEFIEX Program (Decree Laws 77.065 and 72.1219)
- CIEX (Decree Law 1428);
- Export Financing under CIC–CREGE 14–11 Circular;
- Working Capital for Export Financing (Resolutions 674, 882, and 950);
- Preferential Financing for Storage of Export Merchandise (Resolution 330);
- Resolution 68 Financing;
- PROEX Export Production Credit;
- Incentives for Trading Companies (Resolutions 643 and 883)
- CDI Program (Decree Laws 737 and 738 and Resolution 22)
- ADTEN Program of FINEP;
- Guarantees for Long-Term Foreign Currency Denominated Loans;
- BNDES Financing;
- Accelerated Depreciation; and
- State or Regional Development Financing.

Notification of ITC

Section 702(d) of the Act requires us to notify the U.S. International Trade Commission (ITC) of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of certain iron construction castings from Brazil materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory procedure.

Dated: June 3, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13918 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–406]

Preliminary Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. The estimated net subsidy is 4.33 percent *ad valorem*. In addition, we have determined that "critical circumstances" exist in this case.

We have notified the United States International Trade Commission (ITC) of our determinations. As a result of our preliminary determination that critical circumstances exist, the suspension of liquidation applies to all unliquidated entries of certain agricultural tillage tools entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before publication of this notice. We have also directed the U.S. Customs Service to require a cash deposit or bond for each such entry in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by August 19, 1985.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5050 or 377–1785.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act),

are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. For purposes of this investigation, the following programs are found to confer subsidies to tillage tool manufacturers:

- Preferential Working-Capital Financing for Exports;
- Export Financing Under the CIC–CREGE 14–11 Circular;
- Income Tax Exemption for Export Earnings; and
- Subsidies to Upstream Suppliers of Steel Inputs:

—Government Provision of Equity Capital to USIMINAS
—IPI Tax Rebates for Capital Investment
—Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

We determine the estimated net subsidy to be 4.33 percent *ad valorem.*

Case History

On September 28, 1984, we received a petition filed by Ingersoll Products Corporation of Chicago, Ill., Empire Plow Company of Cleveland, Ohio, and Nichols Tillage Tools, Inc. of Sterling, Colo. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 18, 1984, we initiated such an investigation (49 FR 42971). We stated that we expected to issue a preliminary determination by December 22, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On November 12, 1984, the ITC preliminarily determined that there is a reasonable indication that these imports materially injure or threaten material injury to a U.S. industry (49 FR 37856).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. on October 29, 1984. On December 6, 1984, we received a response to the questionnaire.

On December 14, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the products under investigation benefited from upstream subsidies in the form of subsidized steel inputs. We therefore extended the due date for a preliminary determination to June 4, 1985 (50 FR 300). On January 25, 1985, we issued an upstream subsidy questionnaire and received a response on February 25, 1985. On April 17, 1985, we issued a supplementary upstream subsidy questionnaire and received responses on May 17, 22, and 28, 1985.

Scope of the Investigation

The products covered by this investigation are certain agricultural tillage tools, which are defined for purposes of this proceeding as ground-engaging metal tools for tillage and cultivating equipment such as cultivators, discers, and harrows. Tillage tools include round-shaped tools such as colter, furrow-opener blaues, etc., and tools that are not round-shaped (rectangular, triangular, and other odd shapes) such as points, chisels, sweeps, shovels, knives, furrowers, tines, drills, lister bottoms, rotary tiller blades, bed-shaping tools as well as plowshares, plowshins, moldboards, etc. Tillage tools are currently provided for in items 666.0015, 666.0020, 666.0050, 666.0060, 666.0065, and 666.0075 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

There are three known producers and exporters in Brazil of certain agricultural tillage tools to the United States for which we have received information from the government of Brazil. These are Baldan Implementos Agricolas S.A. (Baldan), Marchesan Implementos e Maquinas Agricolas "TATU" S.A. (Marchesan), and Companhia Semeato de Aços (Semeato). In addition, we have identified Companhia Aços Especiais Itabira S.A. (ACESITA) and Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS) as the upstream suppliers of steel inputs to the tillage tool manufacturers mentioned above. For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1983.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to rigorous verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

In its response, the government of Brazil provided data for the applicable period, including financial statements and debt information for Baldan, Marchesan, and Semeato.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools under the following programs:

A. Preferential Working-Capital Financing for Exports

The Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working-capital financing for the purchase of inputs. During the review period, these working-capital loans were provided under Resolution 674 of the Banco Central do Brasil. On January 1, 1984, Resolution 674 was superseded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 30 percent of the value of exports, and then 22 percent; at present, financing is capped at 20 percent of the value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible The

certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation.

Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue and loans incurred as a result of their use must be repaid within 18 months of that date.

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. On January 1, 1984, Resolution 882 changed the interest rate to full monetary correction plus 3 percent, with the interest and principal payable in one lump sum at the expiration of the loan. On August 21, 1984, Resolution 950 made this working-capital financing available from commercial banks, with interest calculated at time of repayment. Under Resolution 950, the Banco do Brasil pays the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 10 percent, the Banco do Brasil pays the lending bank the difference, up to 10 percent.

Information received last month from U.S. Government sources in Brazil and since placed on the public record indicates that the equalization fee was increased in May 1985 to up to 15 percent of the interest.

Since receipt of working-capital financing is contingent on export performance, and provides funds to participants at interest rates lower than those available from commercial sources, we preliminarily determine that this program confers an export subsidy.

Consistent with our stated policy to take into account programwide changes that occur after the review period and before our preliminary determination, we calculated the benefit by multiplying the current maximum level of eligibility (20 percent) by the equalization fee plus the Imposto sôbre Operaçoes Financeiras (Tax on Financial Operations, or IOF). We allocated the benefit over the total value of all exports by the respondents and calculated an estimated net subsidy of 3.30 percent *ad valorem*.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan.

In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving the working-capital export financing described in section I.A of this notice have a maximum eligibility of 10 percent. All others have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a commercial basis, the government of Brazil did not supply sufficient data, either in previous cases or in its current response, to support its assertion that commissions, exchange contract requirements and collateral requirements serve to raise the effective rates on these loans to a level of comparability with those on short-term loans from other commercial sources. Without sufficient information with which to quantify these additional charges, we must compare unadjusted nominal rates on 14–11 loans with our commercial benchmark, *i.e.*, the nominal discount rate of accounts receivable, as the best information available. This comparison shows that the rate on 14–11 loans is below the benchmark. Therefore, we preliminarily determine that this program confers an export subsidy.

Baldan obtained a loan under this program. To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts. We then allocated the benefit over the total value of all exports by the respondents, which resulted in an estimated net subsidy of 0.25 percent *ad valorem*.

C. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, exporters of agricultural tillage tools are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we preliminarily determine that this exemption confers an export subsidy. Baldan and Marchesan both took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We multiplied that portion by the nominal corporate tax rate, and allocated the benefit over the total value of all exports by the respondents to calculate an estimated net subsidy of 0.07 percent *ad valorem*.

D. Subsidies to Upstream Suppliers of Steel Inputs

Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the products under investigation:

> The term "upstream subsidy" means any subsidy described in section 771(5)(B) (1), (ii), or (iii) by the government of a country that—
>
> (1) Is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Respondents assert that section 771A also requires an analysis of whether the upstream recipient of subsidies limits benefits to specific downstream users or makes them available to all of its customers. We disagree. Nothing in the statute or legislative history supports this contention.

1. *Domestic Subsidies.* As the first step of this test, we preliminarily determine that domestic subsidies are being provided to ACESITA and USIMINAS, suppliers of hot-rolled carbon steel plate in coil and hot-rolled carbon steel sheet in coil to the tillage tool manufacturers, under the following programs:

a. *Government Provision of Equity Capital to USIMINAS.*—Siderurgia Brasileira S.A. (SIDERBRAS) is a government-controlled corporation under the jurisdiction of the Ministry of Industry and Commerce. Pursuant to Decree Law No. 6159 of December 6, 1974, SIDERBRAS became the holding company for the federally owned steel corporations. SIDERBRAS is a majority shareholder of nine Brazilian steel producers and a minority shareholder of one small Brazilian steel producer.

During 1979–1983, SIDERBRAS made equity infusions into USIMINAS. We have consistently held that government provision of, or assistance in obtaining, capital does not *per se* confer a subsidy.

Government equity purchases or financial backing bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations.

For purposes of this preliminary determination, we reviewed the company's financial data and all other factors on the record relevant to a determination of inconsistency with commercial considerations. In order to determine whether a company was a reasonable equity investment (a condition we have termed "equityworthiness"), we focused on the rate of return on equity and long-term prospects for the company in question for the period 1979 through 1983. We examined financial ratios, profits and losses, and other factors, such as market demand projections and current operating results, to evaluate a company's current and future ability to earn a reasonable rate of return on equity investments.

Based on these factors, as applied to information on the record, we found USIMINAS to be equityworthy between 1977 and 1979 and unequityworthy from 1980 through 1982 in the case of *Certain Carbon Steel Products from Brazil* (49 FR 17988). In addition, we now find USIMINAS to be unequityworthy in 1983. Accordingly, we preliminary determine that the action of the government in taking an equity position in the company in those years is inconsistent with commercial considerations and confers a subsidy.

To calculate the benefit, we compared the company's rate of return on equity with the average rate of return in Brazil for the year in question. We then applied the "rate of return shortfall" methodology to all purchases of equity that we consider to be inconsistent with commercial considerations. For purposes of this preliminary determination, we used the nationwide rate of return on equity in Brazil as published by *Business Latin America*. We calculated an estimated net subsidy of 8.02 percent to USIMINAS.

b. *IPI Tax Rebates for Capitol Investment*.—Decree-Law 1547, enacted in April 1977, provides funding for capital investment in approved expansion projects in the Brazilian steel industry through a rebate of the Imposto sôbre Produtos Industrializados (IPI), which is a value-added tax imposed on domestic sales. The IPI tax is an indirect tax and, as such, is passed on to the consumer. A steel company collects this tax on sales as an agent for the government, and does not pay the tax itself. Decree-Law 1547 is a mechanism by which a steel company is permitted to collect funds due the government and then receive a 95 percent tax rebate. The program does not involve the rebate of payments made from the company's own funds.

Originally, the IPI tax applied to all domestic sales transactions. In 1979, the value-added tax was eliminated except for producers in 14 industry sectors, including tobacco, automobiles, spirits and alcohol, ceramics, rubber, and steel. The tax rate is different for each of the specified industry sectors; for steel products, the value-added tax is 5 percent.

A Brazilian steel company may deposit 95 percent of the net IPI tax due in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects. When rebated to the firms, they constitute reserves that must eventually be converted into subscribed capital.

Under the terms of Resolution 68–77 issued by the Conselho de Nao-Ferrosos e Siderurgia (CONSIDER), which implements Decree-Law 1547, IPI tax rebates are payable only on basic steel products and certain fabricated steel products such as seamless steel pipes. ACESITA and USIMINAS both received IPI tax rebates as manufacturers of basic steel products. Because these rebates are provided based on industry-specific criteria, we preliminarily determine that IPI tax rebates confer a subsidy.

In order to calculate the benefit attributable to this program, we treated the total IPI rebates received in each year as a grant. We allocated the rebates received from 1977 through 1983 over 15 years, which is the average useful life of capital assets in the steel industry. In the case of ACESITA, we used as our discount rate the short-term commercial benchmark for Brazil because we did not have a company-specific or national average cost of long-term debt. In the case of USIMINAS, we found the company to have been uncreditworthy from 1980 onwards. Therefore, we used as our discount rate the average annual maximum real cost of trade bill discounts as published by *Analise/Business Trends*, plus a risk premium. We calculated an estimated net subsidy of 2.49 percent for ACESITA and 0.45 percent for USIMINAS.

c. *Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)*.—Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subnsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

Only USIMINAS received benefits under this program during the review period. In our Final Affirmative Countervailing Duty Determination on *Certain Carbon Steel Products from Brazil* (49 FR 17988), we found that receipt of this benefit is limited to projects in 14 industries approved by the government of Brazil. Based on the record of those and earlier Brazilian countervailing duty investigations, we have concluded that these benefits are limited to specific enterprises or industries. Accordingly, we preliminarily determine the CDI program confers a subsidy on USIMINAS. We allocated the benefit in the year of receipt, thereby calcuating an estimated net subsidy of 0.10 percent to USIMINAS.

2. *Competitive Benefit*. The second step of the test outlined in section 771A of the Act is the determination of whether the subsidies received by the upstream suppliers bestow a "competitive benefit" on the merchandise under investigation. Under the terms of section 771A(b)(1),

> [a] competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of the countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

Pursuant to this statutory language, we would have compared ACESITA's and USIMINAS' prices to prices charged by unsubsidized Brazilian producers of the steel inputs used by tillage tool producers. However, we are unaware of any unsubsidized Brazilian producers of these inputs. Therefore, as the next step, we would have compared ACESITA's and USIMINAS' prices to prices paid for unsubsidized imported steel used by the tillage tool respondents, or, failing that, to respondents' information on world market prices for their steel inputs. In the absence of any such information from respondents, we have used the best information otherwise available to calculate a "benchmark" price with

which to compare ACESITA's and USIMINAS' prices.

Lacking the preferred benchmarks, the first "benchmark" price we considered using was the petitioners' estimate of the 1983 price for steel imported into Brazil. Petitioners calculated this by adjusted a 1982 price, obtained from their sources in Brazil, for inflation. Because this "benchmark" price applied to steel imports generally and not to the specific inputs used by tillage tool producers, and because it was based on 1982 prices adjusted for inflation, we sought more accurate information for use as our benchmark.

Secondly, we reviewed the average Japanese f.o.b. price of plate and sheet in 1983 for exports to countries other than the United States, as reported in *Metals Intelligence International*, which incorporates data from trade publications such as *Tekko Shinbun*, *Japan Metal Bulletin*, and *Japan Steel Journal*. To this avarage Japanese price, we added an average ocean freight and insurance charge derived from U.S. Customs Service Special Summary Steel Invoices correspondig to shipments of steel coil from Japan to the East Coast of the United States during the period December 1983 to February 1984.

Respondents state that any customs duties on imported steel inputs can be refunded upon exportation of the finished product in the form of a duty drawback. Because of this statement, we calculated two surrogate import prices based on the Japanese f.o.b. price plus freight and insurance: (1) A surrogate price for steel inputs used in the manufacture of tillage tools for export sales that did not include import duties, and (2) a surrogate price for steel inputs used in the manufacturer of tillage tools for domestic sales that included an average import duty based on the 1985 edition of the *Tarifa Aduaneira do Brasil*. We weighted the first price by the percentage that Brazilian tillage tool exports represent of total sales of tillage tools, and the second price by the percentage of tillage tools sold for consumption in Brazil. The weighted average of these two prices is our benchmark price for purposes of comparison with the prices charged by ACESITA and USIMINAS.

We then compared ACESITA's and USIMINAS' prices to the benchmark price, and found they were lower than the benchmark price. Because both ACESITA's and USIMINAS' prices are below our benchmark price, we preliminarily determine that the "competitive benefit" test has been met.

3. *Significant Effect.* The third and final step of the statutory test is to determine whether the subsidy received by the upstream suppliers has a significant effect on the cost of manufacturing or producing the merchandise. We multiplied the *ad valorem* subsidy rates calculated for ACESITA and USIMINAS by the percentage that the government of Brazil claims the subsidized steel inputs account for in the cost of producing tillage tools. In both cases, we found that the estimated net subsidy accounted for more than one percent of the cost of manufacturing or producing the merchandise. For purposes of this preliminary determination, we consider that the "significant effect" test has been met. Nevertheless, since this is the first determination under section 771A of the Act, we welcome comments on the threshold for, and the measurement of, "significant effect."

All three tests outlined in section 771A(c) having been met, we preliminarily determine that benefits bestowed upon ACESITA and USIMINAS confer an upstream subsidy upon the products under investigation.

4. *Measurement of Upstream Subsidization.* Under section 771A(c) of the Act,

> The administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit . . . except that in no event shall the amount be greater than the amount of subsidization determined with respect to the upstream product.

Pursuant to this statutory language, we added the estimated net subsidy received by ACESITA and USIMINAS to each company's average price in 1983 in order to compare each company's domestic price (including subsidies) for the steel inputs used by Brazilian tillage tool manufacturers to the benchmark price. We compared the domestic prices (including subsidies) of both ACESITA and USIMINAS to our benchmark price, and found that both companies' prices were lower than our benchmark price. Since these prices (including subsidies) were below our benchmark price, the subsidy bestowed upon ACESITA and USIMINAS is passed through in totality to the tillage tool respondents.

We calculated the overall subsidy passed through to tillage tool producers by weighting the net subsidy per ton received by ACESITA and USIMINAS by the tonnage each steel company sold to the respondents in 1983. We then expensed the overall subsidy thus calculated over the total value of tillage tools sold by the three respondents in 1983, and calculated an estimated net upstream subsidy of 0.71 percent *ad valorem*.

II. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Brazil of certain agricultural tillage tools did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Agricultural Tillage Tools from Brazil" (49 FR 40431).

A. IPI Tax Rebates for Capital Investment

Decree-Law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales.

The government of Brazil stated in its response that tillage tool producers are not eligible for IPI rebates under Decree-Law 1547. Accordingly, we preliminarily determine that this program was not used.

B. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specific bonded warehouse and destined for export. Exporters of agricultural tillage tools would be eligible for financing under this program. However, the government of Brazil stated in its response that none of the tillage tool producers participated in this program during the review period; therefore, we preliminarily determine that this program was not used.

C. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity to Brazil.

The government of Brazil stated in its response that none of the tillage tool producers received incentives under this program during the review period. Accordingly, we preliminarily determine that this program was not used.

D. The BEFIEX Program

The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportaçao (Commission for the Granting of Fiscal Benefit to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

In its response, the government of Brazil stated that tillage tool producers did not participate in this program. Accordingly, we preiminarily determine that this program was not used.

E. The CIEX Program

Decree-Law 1428 authorized the Comissao para Incentivos à Exportaçao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. In its response, the government of Brazil stated that none of the tillage tool producers received any benefits under this program. Accordingly, we preliminarily determine that this program was not used.

F. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. In its response, the government of Brazil stated that none of the respondents availed itself of this program during the review period. Therefore, we preliminarily determine that this program was not used.

G. Incentives for Trading Companies

Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolutions 674, 882, and 950. In its response, the government of Brazil stated that tillage tool producers were ineligible for participation in this program because such participation is precluded by receipt of working-capital export financing. Accordingly, we preliminarily determine that this program was not used.

H. The PROEX Program

Short-term credits for exports are available under the Programa de Financiamento à Produçao para a Exportaçao (PROEX), previously referred to as the Apôio à Exportaçao program. In its response, the government of Brazil stated that none of tillage tool producers participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

I. Income Tax Deductions for Foreign Selling Expenses

The government of Brazil offers income tax deductions for foreign selling expenses, although such deductions are not allowed for equivalent domestic expenses.

The government of Brazil stated in its response that tillage tool producers had not taken these deductions. Accordingly, we preliminarily determine this program was not used.

J. Programs Not Used by Upstream Suppliers of Steel Inputs

1. *Special Tax Deductions.* In its response, the government of Brazil states that USIMINAS did not use losses of other companies in the SIDERBRAS group to offset profits during the review period. Neither company benefits from any local tax incentives which minimize their tax liability. Accordingly, we preliminarily determine that this program was not used by either ACESITA or USIMINAS.

2. *Accelerated Depreciation for Brazilian-Made Capital Equipment.* According to the government of Brazil, ACESITA participated in this program, but recaptured more accelerated depreciation than it claimed during the review period, thereby cancelling out any benefit that would have accrued to ACESITA. Accordingly, we preliminarily determine that this program was not used.

III. Programs Preliminarily Determined to Require Additional Information

A. IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sôbre Produtos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice) of the Ministry of Finance No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. Consistent with our stated policy of taking into account program-wide changes that occur prior to our preliminary determination, we are not including this program in calculating the deposit/bonding rate. However, we intend to ascertain at verification that no exports declared eligible for the credit premium before May 1, 1985, were still receiving it after that date.

B. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportaçao (FINEX) to extend dollar-denominated loans to foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis.

In its response, the government of Brazil stated that the respondents did not receive Resolution 68 financing on transactions with the United States during the review period. We intend at verification to obtain complete and accurate information from the administrators of the FINEX program as to the level of financing (if any) received by United States importers of agricultural tillage tools from Brazil.

C. Loan Guarantees to Upstream Suppliers on Foreign-Denominated Debt

In its upstream subsidy response, the government of Brazil stated that USIMINAS received no government loan guarantees on foreign-denominated debt during the review period. We have no evidence that such guarantees have been provided to ACESITA. We have asked respondents for complete information with respect to these guarantees. We will review this program fully at verification.

Preliminary Affirmative Determination of Critical Circumstances

Petitoners alleged that imports of certain agricultural tillage tools from Brazil present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In our preliminary determination, we have found that the government of Brazil confers export subsidies on certain agricultural tillage tools. Although Article 9 of the Subsidies Code provides a general prohibition on the use of export subsidies on non-primary products, Article 14 provides an exception under which export subsidies maintained by a developing country are not automatically considered to be a violation of Article 9. Article 14 is applicable to Brazil as a developing country.

However, Article 14 does set limits on the exception otherwise provided in that article. The paragraph which sets out these limitations reads as follows:

> Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes *serious prejudice* to the trade or production of another signatory.

The Department must determine whether there is sufficient positive evidence on the record that provides a reasonable basis to believe or suspect that, in this case, export subsidies maintained by the government of Brazil cause serious prejudice to the trade or production in the Unitd States within the meaning of Article 14§3 and, hence, are inconsistent with the Agreement. Evidence on the record in this case includes import volume, information on material injury included in the petition, and more importantly, the preliminary determination by the ITC (49 FR 37856) that there is a reasonable indication that the U.S. domestic industry is being threatened with material injury by reason of subsidized imports.

On the basis of this information, we preliminarily determine that there is a reasonable basis to believe or suspect that these subsidized imports have caused serious prejudice to the production of certain agricultural tillage tools in the United States.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: (1) Whether imports have surged recently, (2) whether recent imports are significantly above the average calculated over several years (1980–1984), (3) whether the patterns of imports over that four-year period may be explained by seasonal swings. Based upon our analysis of the information, we preliminarily determine that imports of the products covered by this investigation appear massive over a relatively short period.

For the reasons described above, we preliminarily determine that "critical circumstances" exist with respect to certain agricultural tillage tools from Brazil.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice in the **Federal Register**, and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise of 4.33 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunities to comment on this preliminary determination on July 19, 1985 at 10:00 a.m. at the U.S. Department of Commerce, room 3706, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 12, 1985.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703b(f) of the Act (19 U.S.C. 1671(f)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 4, 1985.

[FR Doc. 85–13916 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–403]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 31, 1985, Lone Star Steel Company and CF&I Steel Corporation withdrew their antidumping petition, filed on June 13, 1984, on oil country tubular goods from Mexico. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Jay Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION:

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Company filed on behalf

of the U.S. industry producing oil country tubular goods.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on July 22, 1984 (49 FR 28987). On July 30, 1984, the ITC found that there was a reasonable indication that imports of OCTG from Mexico materially injure, or threaten material injury to, a United States industry. On August 3, 1984, LTV Steel Company became an additional petitioner. On January 9, 1985, we made a preliminary determination that OCTG from Mexico were being, or were likely to be, sold in the United States at less than fair value (50 FR 2313).

Scope of Investigation

The products under investigation are oil country tubular goods (OCTG). OCTG are extension hollow steel products of circular cross section intended for use in the drilling of oil or gas. OCTG includes oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3935, 610.3925, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Withdrawal of Petition

On May 31, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Mexico to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Dated: May 31, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13919 Filed 6-7-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-405]

Oil Country Tubular Goods From Spain; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on oil country tubular goods from Spain. The review covers the period from October 18, 1984. The petitioners and other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest from domestic interested parties provide a reasonable basis for the Department of revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 18, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 21479) an antidumping duty order on oil country tubular goods from Spain.

The petitioners, Lone Star Steel Company, CF&I Steel Corporation, and LTV Steel Company, and other domestic interested parties, U.S. Steel Corporation, Babcock & Wilcox, and Armco, Inc., informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of oil country tubular goods currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 18, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminary determine that the domestic interested parties' affirmative statements of no interest in continuation of the antidumping duty order on oil country tubular goods from Spain provide a reasonable basis for revocation of the order. In light of the October 18, 1984, effective date for revocation requested by the domestic parties, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on oil country tubular goods from Spain effective October 18, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 18.

1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 31, 1985.

[FR Doc. 85–13917 Filed 6–7–85; 8:45 am]

BILLING CODE 3510-DS-M

Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On August 18, 1983, the Department of Commerce published the preliminary results of its administrative review of and tentative determination to revoke in part the antidumping finding on television receiving sets, monochrome and color, from Japan. The review covers 16 of the 18 known Japanese manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period April 1, 1980 through March 31, 1981.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. Based on our analysis of the comments received we have changed our final results from those presented in our preliminary results of review.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Hudak or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 37506, 37508) the preliminary results of its administrative review of and tentative determination to revoke in part the antidumping finding on television receiving sets, monochrome and color, from Japan (36 FR 4597, March 10, 1971). In accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include but are not limited to projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain sub-assemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

The review covers 16 of the 18 known Japanese manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period April 1, 1980 through March 31, 1981.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results, as provided by § 353.53(d) of the Commerce Regulations. At the request of the Independent Radionic Workers of America, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL–CIO-CLC (collectively referred to as "the Unions"), Zenith Radio Corporation and NEC Corporation, we held a public hearing on October 5, 1983. We received comments from Zenith, the Unions, and respondents Hitachi, Ltd., General Corporation of Japan, Matsushita Electric Industrial Co., Ltd., Victor Company of Japan, Toshiba Corporation, NEC, and Sanyo Electric Co., Ltd.

Comment 1: Zenith and the Unions argue that the Department erred when, in the preliminary results of administrative review, it added to United States price the commodity tax imposed on the home market merchandise. They contend that section 772(d)(1)(C) of the Tariff Act clearly directs the Department to add to U.S. price the tax amount that would have been imposed on the exported merchandise had it been sold in Japan. The Department also has no authority merely to strip the tax out of the foreign market value. The Congress in 1919–21 explicitly rejected subtraction and understood that the addition to U.S. price would not achieve tax neutrality in the calculation of dumping margins.

Further, Zenith and the Unions contend that the addition to U.S. price must be limited to the amount of the tax that is included in the price of the merchandise, *i.e.* passed on to the customer, when sold in the home market. They state that, when discounts and rebates provided on home market sales equal or exceed the tax paid on those sales, the Department should assume no pass-through of the tax and make no adjustment to the U.S. price. Zenith argues that the amount by which a manufacturer's commodity tax value plus commodity tax exceeded that manufacturer's home market sales price reported to the Department represents the amount of the commodity tax not passed on to the purchasers. The Department should limit the addition to U.S. price to the amount passed on.

Matsushita, Victor, General and NEC maintain that the Department should continue to add to U.S. price the amount of the commodity tax collected on the home market comparison merchandise.

General and NEC maintain that the method advocated by Zenith and the Unions would result in an unfair comparison, because the commodity tax is a uniform percentage tax which will act to increase any pre-existing differential between base prices. They note that, if the commodity tax is applied prior to making ordinary adjustments for differences in circumstances of sale and in the physical characteristics of the merchandise, a price differential could exist solely due to the application of the tax. In other words, if there were a

differential in starting prices that was solely the result of differences in the physical characteristics of the merchandise or of the advertising costs in the two markets, applying the tax rate to the different starting prices would create a dumping margin, unless there were a second round of offsetting adjustments.

The respondents state that the clear purpose of the adjustment under section 772(d)(1)(C) is to neutralize the impact of different tax assessments on home market and export sales in determining whether dumping margins exist. They claim that, even if the Department could apply the complex Japanese commodity tax formula to the export merchandise, the Department would have to make additional adjustments for the element of the differential stemming from multiplying the unadjusted bases by the tax rate. They argue that we achieve the same result by adding to U.S. price the amount of tax imposed on the home market comparison sets.

Department's Position: We agree with the petitioners that, for reasons considered important when the provision was enacted as part of the Antidumping Act of 1921, Congress called for the addition to the U.S. price of the amount of the tax that would have been collected on the merchandise exported to the United States had the merchandise not been exported. The tax-neutral method of subtracting the amount of the tax on the home market merchandise was rejected at that time as infeasible.

Congress, the courts, and the agencies charged with administration of the antidumping law have emphasized the statutory purpose of achieving a comparison of the merchanise on a fair basis, "comparing apples to apples." Neither the method advocated by the petitioners nor that advocated by the respondents would achieve a tax neutral comparison. The Department, like the Treasury Department before it, generally assesses antidumping duties based on an absolute margin (foreign market value minus U.S. price) for each sale of the merchandise, and calculates *ad valorem* margins for purposes of issuing orders, setting cash deposit rates, and revoking orders. The *ad valorem* weighted average margin is the total amount of absolute margins on individual sales divided by the total U.S. price for all entries. The petitioner's approach would have the effect of increasing the absolute margin of dumping for assessment, provided there would be a dumping margin in the total absence of taxes in both markets. The respondents' approach (adding to the U.S. price the amount of the tax on the home market sales) neutralizes the multiplier effect on the absolute margin but reduces the *ad valorem* weighted average margin below the level of that margin in the total absence of taxes in both markets.

We also believe, as respondents contend, that there are significant differences in circumstances of sale and differences in physical characteristics of the merchandise that, if not taken into account, would increase the artificial multiplier effect on the absolute and *ad valorem* dumping margins.

We cannot accept Zenith's approach to measuring the pass-through. Discounts and rebates may be provided for a number of reasons, and we have no evidence of a relationship between the discounts and rebates and the manufacturers' commodity tax liability. Absent evidence that clearly demonstrates that a manufacturer's commodity tax cost is not reflected in home market sales prices, the Department may reasonably conclude that cost and price are directly related. To date, the Department has not developed a reasonable method for isolating the cost-price relationship for individual adjustments.

While we did verify the actual amount of the commodity tax paid on the home market merchandise, we have been unable to establish from our review of the materials obtained in response to our questionnaire and at verification what the appropriate tax basis would be for the exported merchandise and exactly how the Japanese taxing authority would calculate the amount of tax on exported merchandise. We have revised our preliminary results calculation by deducting from the home market price the amount of the commodity tax paid on sales of that merchandise. In the absence of a reasonable method for applying the statutory adjustment directly to U.S. price, we believe that this is a reasonable alternative calculation of what the amount of the adjustment should be, based on the best available information. Moreover, this adjustment is consistent with the statutory purpose of a fair comparison of prices.

Comment 2: Zenith and the Unions contend that we incorrectly calculated foreign market value for certain respondents (in particular NEC and General) because we used weighted average selling prices. They state that the antidumping law is transactional in nature, which means that the Department must compare prices of particular sales at a particular time in two markets. They argue that the essential thrust of the law is to use a specific actual price, not a representative price. They acknowledge that the Tariff Act does provide authority for the Department to use weighted average prices in determining foreign market value, but they argue that Congress clearly intended that the authority be used only in rare instances, in cases of highly volatile price changes such as in sales of fungible commodities. Section 773(f) of the Tariff Act cannot be read to make a nullity of the criteria of section 773(a).

Zenith and the Unions states that section 773(a)(1) of the Tariff Act lists three distinct steps the Department must follow to determine which transaction price to use as foreign market value or even which prices to weight average. First, the Department must determine the usual wholesale quantities (*i.e.*, a predominant sale size, not the average quantity) in which the merchandise is sold; second, the Department must examine sales at the time of exportation or on the date of the U.S. sale (not sales over time nor sales after the date of the U.S. sale); third, the price selected for foreign market value must be the price in the principal markets (not an average of the prices in all markets within Japan); and finally, the sales must meet the "all purchasers" requirement. Relying on court cases involving the customs valuation law, Zenith and the Unions urge that we use the price to the least favored class of Japanese customers in our calculation of foreign market value. Zenith and the Unions contend that, by using these steps, the Department could eliminate any need to resort to weighted average prices in determining foreign market value.

General and NEC take issue with the assertion that the Department improperly used weighted average prices. Both companies state that Congress considered the 1979 authority to weight-average in calculating foreign market value to be an important modification to the law and, as such, Congress did not intend that it be used only in rare circumstances. Both maintain that the suggestion by Zenith and the Unions, that we use only the price available to all purchasers, is unfair in that it would force us to compare the U.S. price with the highest home market price at a selected point in time.

Both General and NEC refer to language in the Tariff Act that provides for using weighted averages when there is a significant number of sales or adjustments. General argues that liberal use of the authority of section 773(f) should not be subordinated to section

773(a), for it is precisely the burden of the calculations under section 773(a) that section 773(f) was designed to ameliorate. General also notes that it sells in Japan to approximately 4,000 retailers, ranging in size from large retail outlets to small stores. NEC points out that it reported more than 6,000 sales of the home market comparison merchandise at a wide range of prices during the review period and argues that isolating particular sales for comparison violates the fairness concept embodied in the antidumping law.

General contents that if the Department accepts the approach urged by Zenith and the Unions and resorts to a transaction-to-transaction comparison, the Department should not consider sales to small and medium size stores when determining the usual wholesale quantities.

Department's Position: Section 773(f)(1) of the Tariff Act authorizes the Department to use averaging or generally recognized sampling techniques. Where a significant number of comparison sales exist and prices vary over time, the Department has followed a practice of weight-averaging, by month, home market prices to determine foreign market value. We believe that our use of the authority in section 773(f) is in harmony with the requirements of section 773(a).

We have verified that, during the period reviewed, General sold directly to more than 4,000 retailers in Japan and NEC made more than 6,000 comparison sales. The selling prices varied, depending on the particular competitive situation at the time of sale within the particular sales area. Under these circumstances we believe that use of a monthly weighted average foreign market value is more appropriate than attempting to isolate one particular transaction for purposes of price comparison.

In our preliminary results, we used weighted average prices for periods longer than one month. This does not conform to our practice in administrative reviews. Consequently, we have calculated monthly weighted average prices on home market sales to determine foreign market value for General and NEC. This weighted average price is not a hypothetical constructed price; it is based on the actual prices at which the comparison merchandise was sold in Japan.

Comment 3: Zenith contends the Department erroneously used the sales price to related purchasers in Japan to determine foreign market value. The Department at least should have verified the arm's length nature of the prices by comparing them with the values used to calculate the commodity tax paid by respondents on those sales.

Zenith contends that each of the manufacturers is related, within the meaning of the Tariff Act, to its home market purchasers. To support this claim Zenith describes a socio-economic group system in Japan known as "keiretsu" in which groups act to maximize group benefits and place the common interests of the entire group above the interests of individual members.

Zenith submits that, under these circumstances, prices which respondents reported for establishing foreign market value are suspect, and the Department cannot reasonably accept them as true arm's length prices merely based on an absence of any equity relationship between the seller and buyer or on the existence of allegedly uniform prices. In view of the control the Japanese manufacturers possess over their distribution channels through mechanisms other than equity ownership, Zenith maintains the Department should use as unadjusted foreign market value the sales values upon which manufacturers paid the Japanese commodity tax.

Victor argues that all of its home market sales were to unrelated parties (the dealers which purchase from Victor's related distributors) within the meaning of section 771(13) of the Tariff Act. To the extent that Zenith is attempting to expand the concept of control through its keiretsu argument, Victor considers the underlying studies preferred by Zenith to be both out of date for purposes of this section 751 review and unreliable.

Both Matsushita and Victor argue that the Department should not adopt Zenith's suggestions to test for arm's length pricing by comparing actual prices with the taxable values reported for the commodity tax or use those taxable values as unadjusted foreign market value. They claim that the taxable values are hypothetical constructs, not actual sales prices.

Department's Position: We used actual home market selling prices to calculate foreign market value, after conducting on-site verifications of the accuracy and arm's length nature of those prices. Where there were sales to related and unrelated parties, we examined sales to the unrelated purchasers, and if the price to the unrelated purchaser was higher, we used that price.

The court in *Zenith Corp. v. United States*, Slip Op. 85–30 (C.I.T., March 13, 1985) concluded that the requirements of the antidumping law are satisfied when the Department investigates whether there is a financial relationship between the seller and buyer. To go further and investigate non-financial relationships is not required by the Tariff Act.

Even if we accepted the keiretsu argument, we could not employ, as Zenith and the Unions suggest, the tax basis on which the commodity tax is paid as the unadjusted foreign market value. First, the tax basis itself would be equally "tainted" by the relationship presumed to exist between buyer and seller. Second, when we determine that sales in the home market are not at arm's length prices, we interpret section 771 (13) and (14) and section 773(a) of the Tariff Act to require us to use either third country sales or constructed value. We do not have authority to resort first to the commodity tax basis as a "best information available" price.

We also cannot accept Zenith's suggestion that we test the arm's length nature of home market prices by comparing the prices reported to the Department with the prices used as the basis for calculation of the commodity tax. The proper way to validate related party prices is to comapre those prices to the prices of commercially significant sales to unrelated parties. Given that the commodity tax basis appears to be a hypothetical price construct, not necessarily equal to unadjusted foreign market value under section 773 of the Tariff Act, we believe that comparisons with the commodity tax basis serve no useful purpose in this proceeding.

Comment 4: Zenith and the Unions argue that the Department erred by deducting from foreign market value certain price discounts and rebates that were not available to all purchasers. They state that section 771(14) of the Tariff Act requires that a discount or rebate must be offered "to all purchasers at wholesale" to qualify as part of the calculation of the unadjusted foreign market value. Zenith and the Unions contend that the manufacturers make discounts and rebates available only in special situations to selected customers and that those discounts and rebates represent bargained-for price concessions which vary from customer to customer and transaction to transaction. Consequently, Zenith and the Unions contend that those discounts and rebates do not meet the statutory criteria for adjustment to prices.

Zenith states further that discounts and rebates can only be considered as reductions to price (not as circumstance-of-sale adjustments to foreign market value), because they are agreed-upon price reductions rather than expenses incurred by the manufacturer.

Citing the Department's own protest decisions in March 1980, the Unions argue that deducting such discounts and rebates is not a long-standing administrative practice, as asserted by the Department in the final results of the first administrative review of this finding.

In opposition to the so-called "highest price" or "list price" approach of Zenith and Union, Matsushita and Victor argue that Congress modified the antidumping law to permit calculation of foreign market value based on weighted average prices. They state that Zenith's and the Unions' approach not only lacks a basis in law; it is inherently unfair and protectionist. Under the statute and the regulations, the Department can include in the weighted average foreign market value all actual home market prices, including those subject to discounts and rebates.

Further, Matshushita and Victor argue that, even if we do not take into account discounts and rebates in determining unadjusted foreign market value, such actual expenses are appropriate circumstance-of-sale adjustments.

Department's Position: We believe that we may take discounts and rebates into account in calculating foreign market value, as either a circumstance-of-sale adjustment or as a price adjustment. The Department and the Treasury Department before it have had a longstanding practice of reflecting in foreign market value calculations all discounts and rebates to the extent actually provided, regardless of whether they are available to all purchasers. (The protest decisions referred to by the Unions do not represent another administrative practice because those decisions were not implemented and were, in fact, superseded shortly after they were issued.)

The Court of Appeals for the Federal Circuit ("CAFC") has upheld the Department's authority to make circumstance-of-sale adjustments for rebates. *Brother Industries* v. *United States*, 3 CIT 125, 540 F. Supp. 1341 (1982), *aff'd sub. nom., Smith-Corona Group, Consumer Products Division, SCM Corp.* v. *United States*, 713 F. 2d. 1568 (Fed. Cir. 1983), *cert. denied*, 104 S. Ct. 1274 (1984) ("*SCM*"). The same principle applies to discounts.

We cannot accept Zenith's and the Unions' argument that a discount or rebate is an appropriate price adjustment only if available to all purchasers. This conclusion is not required by the Tariff Act and its history, and is contrary to the principle of price comparability in dumping determinations that the CAFC recognized in *SCM*. The history of the antidumping law, at least since 1958, demonstrates that Congress and the courts have become increasingly aware of the need for fair price comparisons in the determination of dumping. To make the dumping law consistent with customs valuation law is no longer, if it ever was, a central legislative purpose. The concept of price comparability, which is central to the antidumping law, is totally irrelevant to customs valuation law.

Comment 5: Zenith argues that the Department improperly allowed deductions from foreign market value for after-sale rebates. Zenith maintains that the Tariff Act requires that we treat rebates only as deductions from price and, under section 773(a)(1) of the Tariff Act, make such deductions only if the rebate is reflected in the price to all purchasers on the appropriate date of sale. Rebates available upon the purchaser's fulfillment of a condition subsequent to the date of sale do not comprise part of the price on that date. Further, Zenith argues that after-sale rebates which are cumulative quantity rebates do not represent the price of merchandise sold in the usual wholesale quantities.

Department's Position: Rebates, whether fixed or determinable in amount at the time of sale, represent a reduction in the net return to the seller agreed upon at the time of sale, and for that reason they must be deducted in calculating foreign market value. Adjustment for after-sale rebates that are fixed or determinable in amount at the time of sale is a longstanding administrative practice. For the companies under review, the certainty of the rebate was established at the time of each sale to which the rebate applied. The Department's practice of allowing adjustments for after-sale rebates was affirmed by the CAFC in the *SCM* decision, *supra*.

Comment 6: Zenith submits that, assuming the legality of the exporter's sales price ("ESP") offset, we reduced foreign market value by an excessive amount, because we incorrectly determined the amount of indirect selling expenses includable in the ESP offset. Zenith argues that such expenses should be reduced by the total amount of indirect selling expenses incurred in the home market for export sales to the United States.

Matsushita and Victor argue that the Department's ESP offset regulation requires the deduction of *all* actual indirect selling expenses incurred in the home market up to the amount of the indirect selling expenses incurred in the U.S. They contend that Zenith's argument would have the effect of reducing the offset deduction of home market expenses by an amount not deducted in calculating U.S. price. They conclude that such an adjustment would further magnify the inequity that already exists because of the cap on the ESP offset adjustment.

NEC states that Zenith's statements are irrelevant to NEC, because NEC did not include home market indirect selling expenses incurred on U.S. sales in its home market indirect selling expenses.

Department's Position: We agree with Zenith that selling expenses incurred in the marketing of television sets in the United States cannot be included in the pool of home market indirect selling expenses used to offset indirect selling expenses deducted in our ESP calculation. We further believe that all selling expenses incurred in the marketing of television sets in the United States should be deducted from the U.S. price, regardless of the physical location of the entity that incurred the expense. We have revised our calculations accordingly.

Comment 7: Zenith argues that the Department failed to deduct all costs, charges, and expenses associated with certain NEC purchase price transactions. Specifically, Zenith contends that the Department must deduct a clearing agent fee charged by NEC's related U.S. subsidiary to its unrelated U.S. purchaser.

Department's Position: Prior to importation of the merchandise, the unrelated U.S. purchaser placed an order with NEC America at an f.o.b. Japan price, plus the estimated movement expenses and a clearing agent fee.

In our preliminary results, we calculated the purchase price by deducting from the selling price to the unrelated U.S. purchaser (including the estimated movement expenses and the fee) only the actual movement expenses. We have now corrected our calculations by also deducting the fee.

Comment 8: Victor believes that the Department erred by including accommodation sales within the scope of the administrative review. Victor makes accommodation sales of samples, used, or damaged televisions, in "as is" condition, to its employees and sales representatives, generally for cash in advance and at significantly reduced prices.

Victor believed those sales should not be subject to our administrative review because they are not sold "in the ordinary course of trade." Because sales used as the basis for determining foreign market value must be "in the ordinary course of trade," U.S. sales must be

limited to those made in like circumstances.

Victor further states that most televisions it sold as accommodation sets entered the United States during the prior administrative review period, for which the Department did not find any dumping margins for Victor. Victor claims the Department has no authority to review again transactions explicitly covered by the notice of final results of a prior administrative review (namely, all sets entered, not necessarily sold, during that review period). However, if the Department determines that those sales are subject to the antidumping finding and are covered by this administrative review, then the Department should make whatever adjustments are necessary to enable it to make a fair comparison. Comparison of accommodation sales in the U.S. with commercial (rather than accommodation) sales in Japan constitutes an "apples and oranges" comparison.

Department's Position: Goods entered for consumption are subject to an antidumping finding whenever ownership transfers from the exporter of such goods. Sales to employees and sales representatives are transfers of ownership. The words "in the ordinary course of trade" are found in section 773 of the Tariff Act, not in section 772. Such non-commercial disposals are subject to this finding, and to the extent that they occurred during the period covered by this review, they are properly the subject of this review.

As mentioned earlier, we have used monthly weighted averages of such or similar merchandise to calculate our foreign market value. We cannot selectively choose to disregard foreign market values established in accordance with the Tariff Act when merchandise is sold in the United States in other than normal commercial activities.

Comment 9: Sanyo asks the Department to reverse its decision that projection televisions are the same class or kind of merchandise as the televisions subject to this finding. Sanyo specifically focuses on the disparity in physical characteristics between a projection television and a "traditional" television.

Department's Position: We find no reason to reconsider our earlier decision that projection televisions are within the scope of this finding.

Comment 10: NEC and Sanyo contend that the Department incorrectly denied a portion of their home market credit expenses. NEC states that it borrows money to finance its continuing operations and that a portion of the borrowed funds finance sales for the period between delivery to its customers and their payment. NEC and Sanyo argue that the Department should allow the adjustment based on information in the record of this review which shows that NEC and Sanyo incurred short term debt to cover, among other things, the cost of delayed payment on sales in the home market and to the United States.

Sanyo argues that the legislative history of the circumstances of sale provision in section 773(a)(4) of the Tariff Act shows that the phrase "credit terms" refers to differences in terms of sale, not to whether a company had to incur debt specifically to finance a particular sale. Sanyo states that its interpretation is reflected in a longstanding administrative practice of adjusting for differences in credit expenses reflected in differences in terms of sale.

Zenith contends that the Department should not allow an adjustment for differences in credit unless respondents demonstrate that price varies with the length of delay in payment in particular transactions. Zenith argues that, where an identical set is sold at the same price whether a purchaser pays in 60 days or 120 days, the assumption that a credit cost has affected the set's value or price is destroyed and no adjustment should be allowed. Moreover, Zenith claims that Sanyo has failed to supply information to establish the actual periods of delay in payment.

Department's Position: Our practice of calculating credit expenses is similar to that used by many businesses. We use the date of shipment as the starting time for all of our credit calculations because the posting to the accounts receivable occurs on that date. We allow credit expenses for the period between the date of shipment and the date of payment.

We do not agree with Zenith's argument that no adjustment should be made absent evidence that differences in credit costs have affected the price (*i.e.* the value) of the merchandise. We made this adjustment in accordance with § 353.15(d) of the Commerce Regulations, which states that "in determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller . . ." The regulation is valid and consistent with section 773(a)(4) of the Tariff Act, which states that an allowance will be made for any price differences "wholly or partly due to" differences in circumstances of sale. The CAFC has approved of our practice in *SCM, supra.* Because Sanyo and NEC have allowed certain home market customers additional time to pay, they have borne additional costs. The fact that they have not explicitly linked this cost to price does not dispose of the fact that they have had different credit expenses in the two markets or the reasonable assumption that these expenses affect the price or value of the merchandise. To the extent that our preliminary results disagreed with our practice described above, we have changed our calculations. Sanyo provided, and we used, data on its actual period between shipment and payment.

Comment 11: NEC alleges that the Department incorrectly denied circumstance-of-sale adjustments for certain portions of four categories of sales promotion expenses. The portions denied were "depreciation" of signboards and cars provided to retailers, room rental and catering costs for promotion of new merchandise and new sales techniques, instructors' salaries and room rental for training new employees, and assists (for advertising materials, invitations, and hall rentals fees) to large retailers for the retailers' outside (rather than in-store) exhibitions. NEC contends those promotional expenses are necessary to compete in the Japanese market and are expenses directly related to sales during the period.

Department's Position: NEC incurred sales promotion expenses in two areas: The sales promotion section of the home market sales division, which promotes sales of all home market products manufactured by NEC, and the television sales department of the television division, which promotes the sale of NEC televisions. We allowed an allocation of certain expenses incurred by the television sales division. We disallowed all sales promotion section expenses and certain television sales division expenses because these expenses were indirect selling expenses. While we do not believe that this approach is unreasonable, we have decided that the following methodology is more consistent with the Tariff Act and Commerce Regulations, and in future reviews we will apply this methodology. Where the sales promotion expense is directed specifically at promoting sales of a home market comparison model we will allow the full cost of the promotion as an adjustment to that model. If it is a multi-product or multi-model promotion, we will use reasonable allocation methods to determine the appropriate adjustment for the comparison models. Where the promotion concerns only non-comparison models, we will not

consider the cost to be a selling expense directly related to the comparison models used in our calculation of foreign market value.

Comment 12: NEC argues that the Department incorrectly disallowed the portion of NEC's advertising expense claim which was based on an allocation of expenses incurred on behalf of all home market products. NEC contends that allocation of multiple-product advertising expenses is a practice usually accepted by the Department and should be approved in this case.

Department's Position: We allocated advertising expenses incurred by the advertising department, and by the television sales department of the television division, to the home market comparison models. We disallowed certain advertising expenses because those expenses were indirect selling expenses. While we do not believe that this approach is unreasonable, we have decided that the following methodology is more consistent with the Tariff Act and the Commerce Regulations, and in future reviews we will apply this methodology. Where the advertisement is for an individual comparison model, we will allow the full cost of the ad as an adjustment to that model. If it is a multi-product or multi-model ad, we will use reasonable allocation methods to determine the appropriate adjustment for the comparison models included in the ad. Where the ad refers only to non-comparison models, we will not consider the cost of the ad to be a selling expense directly related to the comparison models used in our calculation of foreign market value.

Final Results of Review

As a result of the comments received, we have revised our preliminary results and we determine that the following margins exist for the period:

Manufacturer/exporter	Margin (percent)
Anita	[1]
Denki Onkyo	0.86
General	0
Gulraj	0.86
Hitachi	0.16
Kaga Denshi	0.86
Kogen	0.86
Matsushita	0
Mitsubishi	0.54
NEC	0.86
Nissei Sangyo	0.16
Original	0.86
Sankei	0.86
Sanyo	0
Toshiba	[1]
Victor	0.28

[1] No commercial shipments during the review period

As mentioned earlier, on August 18, 1983, the Department published in the **Federal Register** a notice of tentative determination to revoke in part the finding on television receiving sets from Japan. NEC was one of five firms listed in that notice as eligible for consideration for revocation. Following publication of that notice we corrected mathematical errors in the preliminary calculations, thereby lowering Mitsubishi's weighted average margin below the 0.50 percent *de minimis* standard, and advised parties to the proceeding that Mitsubishi should have been included in our tentative determination to revoke in part.

Based on the margins listed above we are withdrawing the tentative determination to revoke with regard to NEC and Mitsubishi.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the weighted average margins for Hitachi, Nissei Sanyo, and Victor are less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the deposit requirements for shipments of television receiving sets from those firms. For any future shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after April 1, 1981, and who is unrelated to any reviewed firm, a cash deposit of 0.86 percent shall be required. These deposit requirements and waivers are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85-13823 Filed 6-7-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Advisory Committee on Oceans and Atmosphere; Change in Future Meeting Dates

June 3, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold meetings on the days listed below in calendar year 1985. All the meetings will be held in Washington, D.C. except for the November meeting which will be held in San Diego, CA. Exact times and locations will be announced at a later date.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative meeting dates are as follows:

January 22, 23 (revised)—Tuesday and Wednesday
March 4, 5—Monday and Tuesday
April 17-18—Wednesday and Thursday
June 3, 4—Monday and Tuesday
July 15, 16—Monday and Tuesday
August 20, 21 (revised)—Tuesday and Wednesday
Sept. 30, Oct. 1—Monday and Tuesday
November 14, 15—Thursday and Friday

The public is welcome to the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653–7818.

Dated: June 3, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85–13901 Field 6–7–85; 8.45 am]

BILLING CODE 3510–12–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval for Collection of Information About Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension through September 30, 1988 of approval for collection of information about product-related injuries.

The Commission is required by section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) to collect data and information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigation of deaths, injuries, diseases, and economic losses involving consumer products. This information is used by the Commission to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved in or who have witnesed accidents associated with consumer products are an important source of information about deaths, injuries, and illness resulting from such accidents. From consumer compliants, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face or telephone interviews with accident victims or witnesses. The Commission plans to reduce the number of these interviews during the next three years, thereby reducing the hourly burden associated with this information collection activity.

Additional Details About the Requested Extension of Approval for Collection of Information

Agency Address: Consumer Production Safety Commission, 1111 18th Street, Washington, D.C. 20207.

Title of Information Collection: Follow-up Activities for Product-Related Injuries.

Type of Request: Extension of approval.

Frequency of Collection: One time for each respondent.

General Description of Respondents: Persons who have been involved in, or who have witnessed, accidents associated with consumer products.

Estimated Number of Respondents: 3,000.

Total Estimated Number of Hours for All Respondents: 4,267.

Comments: Comments on this request for extension of approval for collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7413. Copies of the request for extension of approval for collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; Telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: June 4, 1985.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 85–13965 Filed 6–7–85; 8.45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Software

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 8 July 1985 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 8 July 1985 the Task Force will meet to determine additional information requirements.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, Telephone: (202) 695–7181. Space is limited and will be awarded on a first come first served basis.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1985.

[FR Doc. 85–13825 Filed 6–7–85; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 6, 1985, Tuesday, August 13, 1985; Tuesday, August 20, 1985 and Tuesday, August 27, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel

Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Dated: June 5, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-13888 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Special Advisory Committee to the Defense Financial and Investment Review: Meeting

ACTION: Notice of Special Advisory Committee Meeting.

SUMMARY: The Special Advisory Committee to the Defense Financial and Investment Review (DFAIR) study will meet in the Washington, D.C. metropolitan area on June 24, 1985 to discuss the DFAIR Final Report.

FOR FURTHER INFORMATION CONTACT: Individuals interested in attending the meeting should call the DFAIR office, telephone number (202) 695-5828/5830/5849, to obtain the time and location of the Special Advisory Committee meeting.

Dated: June 5, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-13874 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Training Leading to a Commission in the United States Air Force (AF Form 56).

This form is used in applying for entry into training as prospective Air Force officers under one of the officer procurement programs indicated on the form. The information that is requested is needed by the selected boards to help determine the eligibility, suitability, and the physical and mental qualifications of the applicant. Civilians and active duty airmen who apply for training leading to a commission complete the form.

Individuals

Responses 6,200

Burden hours 2,067

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Wanda L. Williams, HQ AFMPC/MPCMOP, Randolph AFB, TX 78150-6001, telephone (512) 652-4382.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1985.

[FR Doc. 85-13826 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday, 27 June 1985.

Time: 0900-1500 hours (Open).

Place: Pentagon, Washington, DC.

Agenda: The Training Effectiveness Subpanel of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will meet to review progress to-date. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-13889 Filed 6-7-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 10, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 5, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Financial Status and Grant Performance Report—Indian Education Programs
Agency Form Number: ED 354, 354–1
Frequency: Annually
Affected Public: State or local educational agencies; Tribal schools; Indian tribes; Indian organizations; Indian institutions; Federally supported elementary and secondary schools for Indian children; Institutions of higher education
Reporting Burden: Responses: 1,200; Burden Hours: 3,600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: These forms are required from each grantee annually. The grantee reports the amount of funds spent, amount remaining, number of students participating in the project, and the extent to which the project achieved its objectives.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Fast Response Survey System—Survey of School Districts on High School Academic Requirements and Initiatives
Agency Form Number: ED 2379–23
Frequency: Non-recurring
Affected Public: Local educational agencies
Reporting Burden: Responses: 600; Burden Hours: 300
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey will be used by the National Institute of Education to determine the level of local educational agency initiatives and to identify programs and issues that promote excellence in education.

[FR Doc. 85–13895 Filed 6–7–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. WH–002]

Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedure From Bock Water Heaters, Inc.

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Bock Water Heaters, Inc. (Bock) of Madison, Wisconsin, requesting a waiver from the Department of Energy (DOE) test procedure for water heaters. Bock manufactures a Model 32E oil-fired water heater which has a high mass heat exchanger. The petition requests DOE to grant Bock relief from the DOE test procedure for water heaters for its Model 32E oil-fired water heater on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of this unit. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data and information not later than July 10, 1985.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. WH–002, Mail Station CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), which was subsequently amended by the National Energy Conservation Policy Act (NECPA) Pub. L. 95–619, 92 Stat. 3266). This program requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Water heaters are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of water heaters, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of water heaters to disclose on an EnergyGuide label on each unit to assist consumers in making a purchasing decision.

Bock filed a petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its Model 32E oil-fired water heater. Bock states that the mass of the combustion chamber and heat exchanger of this water heater model is the highest of any water heater known to Bock.

Bock states that in actual home usage this water heater model exhibits recovery efficiencies of 81–83 percent but that the DOE test procedure yields a recovery efficiency value of 67 percent. Bock attributes the lower recovery efficiency value obtained from the DOE test procedure for this water heater model to the inappropriateness of the

DOE "cold start" recovery efficiency test methodology for evaluating the recovery efficiency of water heaters with large thermal masses.

To determine the recovery efficiency of electric, gas-fired and oil-fired storage water heater, the DOE test procedure requires that the mass of a water heater plus the water in its tank be in thermal equilibrium at a temperature of 70 °F at the beginning of the test. The water heater then heats the tank of water through a 90 °F temperature rise (i.e. to 160 °F). The amount of energy consumed by the water heater is measured directly. Recovery efficiency is computed as the quantity of heat energy imparted to the water in the tank divided by the measured energy consumption of the water heater.

Bock states that approximately 15 percent of the energy consumed by their Model 32E water heater under this test methodology is absorbed by the thermal mass of the combustion chamber and heat exchanger as they rise in temperature along with the water in the tank. The DOE test methodology effectively considers this absorbed energy as a loss which reduces the recovery efficiency value determined. Bock states that this is a loss that occurs only once in the life of a water heater—at the time of installation when it must heat a full tank of cold water—and that during subsequent operation in typical home usage this thermal mass remains at an elevated temperature near the thermostat set point of the water heater. Bock suggests three alternative test methodologies for DOE's consideration, each of which Bock considers will yield a more representative value of recovery effficiency.

In addition to comments for or against DOE granting Bock's request for a waiver, DOE invites comments on the efficacy of the alternative test methodologies identified by Bock or of any other test methodology which a commenter may wish to advance.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., May 23, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

February 5, 1985.

U.S. Department of Energy,
Office of Conservation and Renewable Energy, Mail Stop CE–113, 1000 Independence Ave., SW., Washington, D.C.
Attn: Assistant Secretary of Conservation and Solar Energy (DOE) *Petition for Waiver*

Gentleman: We are asking to waive the "cold start" method of deriving recovering efficiency on our Model 32E oil fired water heater. A cold start actually happens only once (on the initial installation) in the lifetime of the water heater. That is to say that the entire heater, including water, is at ambient room temperature (70 °). During the rest of the life of the water heater the entire mass of the water heater is held somewhere near water temperature (which in the DOE test procedure is 160°F).[1]

Our water heater has the highest internal thermal mass of any heater we know and stores its heat for long periods of time after the burner cuts out—similar to the much studied Winnipeg Homes.

	Typical	Typical	Model 32E
Type of Fuel	Gas	Gas	Oil.
Storage Capacity	30	50	30.
Input (Firng Rate in BTU's)	35,000	50,000	103,000
Weight of Heat Exchanger.	13 lbs	17 lbs	39 lbs
Weight of Combustion Chamber.	0	0	0
Total Weight of Heater.	102 lbs	169 lbs	264 lbs

When we start our Model 32E the first time, approximately 15% of the first heat up is lost bringing our thermal mass up to water temperature. Therefore, any test done on a cold start will show a very poor water production, however, any subsequent test done after that time will show recovery efficiencies within 3–5% of our combustion efficiencies which are 86%.

In other words, during actual home usage we would have recovery efficiencies of approximately 81–83% (which is the highest in the marketplace for an oil fired water heater) but, because of the "cold start" method of test we are only allowed to show recovery efficiencies of 67% thereby reducing our E_t and 1st hour rating.

I also propose that all other oil fired water heaters are more severely prejudiced by this method of test because each has significant inputs, therefore, combustion chamber mass and heat exchanger mass are larger than residential gas and electric type heaters (although not as great as our own).

ETL has rated our heater by the "cold start" method and has published its results in the GAMA Directory. Our competitors (especially Canadian) have used these figures to dispute our high recovery efficiencies and to effectively sell a less efficient (but lower thermal mass) heater is place of ours. This has materially disadvantaged our sales, especially on the Eastern corridor of the country.

ETL is about to test a Model 32PPPG which is a similar tank only fired with a power gas burner. This heater is also now rated as one of the most efficient gas heaters on the market. For ETL to rerate with the "cold start" method would essentially neutralize any and all claims for efficiency which we have been trying to make.

As an alternate to this type of test, I would suggest one of three methods, either:

1. A cyclical efficiency test such as is being proposed for heat pump water heaters.

2. A recovery efficiency test where the heater is allowed to heat thru 2 or 3 cycles and is then drained down and refilled with 70 °F water and allowed to heat the tank up to 160 °F.

3. An equilibrium flow-through type test where the heater is allowed to fire with water flowing until equilibrium conditions exist with incoming water at 70 °F ±2 °F and outlet water at 160 °F ±5 °F. The flow rate is then recorded and the computation

$$E_R = \frac{(160^\circ - 70^\circ \times 8.25 \times \text{Flow Rate}}{\text{Fuel Flow Rate} \times \text{BTU/Gal}} \times 100$$

is made.

Each of these tests require care to be taken if they are to give the proper efficiencies and each of these have their own drawbacks, however, any of the above will give a far closer approximation to actual "in field" efficiencies than with the current "cold start" method.

Thank you for your careful consideration to this matter.

Very truly yours,
Bock Water Heaters, Inc.
John C. Bock,
Vice President.

[FR Doc. 85–13847 Filed 6–7–85; 8:45 am]
BILLING CODE 6450–01–M

[1] The jacket and top may be near ambient, however, the tank where it is being heated is between 225° and 250° and the combustion chamber may be as high as 700 °–1000 °. Therefore, even if the water temperature has gone down, the unit mass is much closer to 160 °F than 70 °F now being evaluated and discussed.

Energy Conservation Program for Consumer Products; Petition for Waiver of Furnace Test Procedures From the Magic Chef Company, Inc. (F-014)

AGENCY: Conservation and Renewable Energy Office, Energy.

SUMMARY: Today's notice publishes a "Petition for Waiver" from The Magic Chef Air Conditioning Company, Inc. (Magic Chef) of Columbus, Ohio, requesting a waiver from the existing Department of Energy (DOE) test procedures for furnaces. Magic Chef manufactures residential and commercial heating appliances. The petition requests DOE to grant relief from the test procedure relating to the blower time delay specification for Magic Chef's Ultra series gas furnaces. Magic Chef seeks to test using a blower delay time of 20 seconds instead of the specified 1.5 minutes. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than July 10, 1985.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–014, Mail Stop CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252–9513

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribe test procedures by adding 10 CFR 430.27, Petitions for Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64108 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures or lead to results so unpresentative of the model's true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Magic Chef's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Magic Chef requests the allowance to test using a 20 second blower time delay when testing its Ultra series gas furnaces. Magic Chef states that since the 20 second delay is indicative of how the Ultra series gas furnaces actually operate and since such a delay results in an improvement in efficiency of approximately 0.5%, the waiver should be granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., May 23, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

March 14, 1985.

Assistant Secretary for Conservation & Solar Energy,

United States Department of Energy, 1000 Independence Ave. SW., Washington, D.C.

Re: Petition for Waiver

Gentlemen: This is a petition for waiver which is being submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the condensing furnace test procedure found at Appendix N to Subpart B of Part 430 which requires a 1.5 minute time delay between burner on and circulating air blower on. This is a request for authorization to use a delay of 20 seconds instead of 1.5 minutes.

Magic Chef Air Conditioning manufactures several lines of condensing furnaces comprising the Ultra Series. In order to achieve maximum energy efficiency from these units, the circulating air blower is activated 20 seconds after burner on. This change of state occurs approximately when the stack temperature reaches thermal equilibrium and saves a substantial amount of heat energy. Under the Appendix N procedures, stack temperature in the Ultra Series models is allowed to overshoot thermal equilibrium and a substantial amount of heat energy escapes out the vent. This energy waste would never occur in an actual installation. If this petition is granted, the true blower on delay time (t-) would be used in the calculations.

The standard test procedures do not give Magic Chef credit for this energy savings which averages approximately 0.5%. A 0.5% improvement is a reduction of 5% of the energy loss and we are of the opinion that this 5% savings is significant and that the prescribed test procedures, by prohibiting Magic Chef Air Conditioning from taking credit for the saved energy, distort the facts so as to provide materially inaccurate comparative data.

Confidential test data is available which confirms the 5% waste energy savings claimed above. That data can be made available to you so long as it is protected by the Department of Energy from disclosure to others.

Please contact me for additional information.

Very truly yours,

Magic Chef Air Conditioning.

Charles G. Santangelo,

Vice President of Engineering.

[FR Doc. 85–13848 Filed 6–7–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 85–10–NG]

Czar Resources Inc.; Order Authorizing Import of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on June 3, 1985, the ERA Administrator issued an opinion and order authorizing Czar Resources Inc. (Czar Inc.) to import up to 5,800 Mcf of Canadian natural gas per day, up to a total of 3.4 Bcf, for resale to Weyerhaeuser Company for use in its fiber manufacturing facility in Longview, Washington. The gas will be imported over a two-year period, on a best-efforts, interruptible basis at $2.75 (U.S.) per MMBtu, commencing on the date of first delivery.

The text of the opinion and order follow:

FOR FURTHER INFORMATION CONTACT:

Olga Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal

Building, Room GA–007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–8116

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestall Building, Room 6E–042, 1000 Independence Avenue SW., Washington, D.C. 20585

Issued in Washington, D.C. on June 3, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Department of Energy—Economic Regulatory Administration

[ERA Docket No. 85–10–NG; DOE/ERA Opinion and Order No. 82]

Czar Resources Inc.; Order Granting Authorization To Import Natural Gas From Canada

June 3, 1985.

I. Background

On April 8, 1985, Czar Resources Inc. (Czar Inc.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, to import on an interruptible, best-efforts basis, up to 5,800 Mcf per day of Canadian natural gas from Czar Resources Ltd. (Czar Ltd.). Czar Inc. is a wholly-owned U.S. subsidiary of Czar Ltd., a Canadian-based natural gas producer. Under this proposal, Czar Inc. would purchase a maximum volume of 3.4 Bcf over a peiod of two years, beginning on the date of first delievery, for resale to the Weyerhaeuser Company (Weyerhaeuser). The imported gas is intended to displace No. 6 fuel oil used at Weyerhaeuser's Longview, Washington, fiber manufacturing facility. Following the initial two-year term, the arrangement is to continue on a month-to-month basis until terminated by any party or until a maximum of 3.4 Bcf of gas has been delivered, whichever occurs first.

The contract specifies that the gas would enter the U.S. at a point near Sumas, Washington, where the existing pipeline facilities of Westcoast Transmission Company Limited interconnect with those of Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the facilities of Cascade Natural Gas Corporation (Cascade) which would complete delivery to the Longview facility. At this time, no final transportation agreements ahve been reached by the parties.

The sales contract provided that during the first three months, the price Czar Inc. would pay Czar Ltd. for the gas would be $2.75 (U.S.) per MMBtu. The delivered cost to Weyerhaeuser during that period would be $3.70 (U.S.) per MMBtu. Thereafter, price redetermination may be made quarterly, subject to mutual agreement. On April 25, 1985, Czar Inc. amended its application to reflect an increase in the initial price it will pay Czar Ltd. to $2.84 (U.S.) per MMBtu. The amendment did not change the delivered price to Weyerhaeuser. According to the applicant, the change was needed to meet the Canadian government's current minimum floor price for short-term interruptible export sales.

In support of its application, Czar Inc. asserts that the imported gas would provide Weyerhaeuser with a cost-effective means of improving the manufacturing facility's operating economics because the offered gas supply can be delivered at a significant saving over Weyerhaeuser's cost for No. 6 fuel oil of approximately $4.25 (U.S.) per MMBtu.

According to the applicant, the import is in the public interest because it would (1) provide an environmental advantage compared to burning fuel oil; (2) reduce or eliminate Weyerhaeuser's requirement for fuel oil, thus freeing that oil for use by other domestic purchasers; (3) reduce reliance on imported foreign crude oil; (4) serve an incremental market which the existing transmission and distribution systems have hot been able to serve under similar competitive conditions; and (5) increase revenues for the transporting pipelines which will benefit their residential and industrial customers.

II. Interventions and Comments

The ERA issued a notice of the application on April 8, 1985, inviting protests, motions to intervene or comments to be filed by May 20, 1985.[1] The notice of the amendment was issued April 29, 1985.[2]

Motions to intervene were received from Northwest and Cascade. Northwest stated neither support for nor opposition to the proposed import in its motion to intervene. Cascade's motion contended that approval of the arrangement may not be in the public interest because it asserted that the application contained several factual misstatements and misrepresentations which prevent the ERA from adequately evaluating the arrangement without further information. This order grants intervention to Northwest and Cascade.

[1] 50 FR 15604, April 19, 1985.

[2] 50 FR 18911, April 29, 1985.

III. Decision

Czar Inc.'s application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [3] The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.[4]

Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Cascade questioned in its motion to intervene whether the public interest would be served by approval of this arrangement since Czar Inc. had not yet made arrangements for transportation of this gas nor made any attempt to show how the proposal would qualify under current transportation tariffs and policies of the companies which might transport the gas. It is the ERA's position that contracts for transportation of imported gas do not represent a relevant issue in deciding whether to approve an import authorization, since the ERA only authorizes the import of the gas and not the means of transporting that gas to market. Clearly, the gas will not flow under any arrangement or authorization if all the supply and transportation contracts are not in place. Therefore, Cascade's request that the ERA require additional information from Czar Inc. concerning transportation arrangements is denied.

Cascade also is concerned that Czar Inc.'s arrangement would displace gas it and Northwest sell or intend to sell to Weyerhaueser, and stated that their captive customers would suffer if such displacement occurred. The policy of this agency is to promote competition, not restrict it, and the Czar Inc. arrangement offers new and positive competitive forces in this market place. Just as we encouraged Cascade to compete with Northwest in the gas import authorization granted to Cascade last year,[5] we encourage Czar Inc. to compete with Cascade and Northwest. Czar Inc. only intends to make its gas available to Weyerhaeuser, and no direct displacement is evident. It is for Weyerhaeuser to decide for itself what source of gas offers the best economic

[3] 15 U.S.C. 717b.

[4] 49 FR 6684, February 22, 1984

[5] *See Cascade Natural Gas Corporation*, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA ¶70,578).

choice, given the available options. The best efforts nature of the arrangement ensures that Weyerhaeuser does not have to take Czar Inc.'s gas if it is not the most competitively priced supply available.

Czar Inc.'s import arrangement fully comports with the public interest test established in the DOE's policy guidelines. The volumes will be imported on a best-efforts, interruptible basis. No minimum purchases provision or take-or-pay obligation is included in the contract. The flexibility of the import arrangement, along with the provisions for adjustment of the purchase price contained in the amended gas purchase contract, ensure that the gas will only be imported when the price to Weyerhaeuser is competitive. The pricing flexibility and the other contract terms and conditions, taken together, demonstrate that the import arrangement will be sufficiently flexible to allow Czar Inc. to respond to its market over the length of the contract.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed Weyerhaeuser will purchase the gas only to the extent it needs such volumes for its manufacturing facility and only to the extent that they are priced competitively. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Czar Inc. is not inconsistent with the public interest and should be granted.[4]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Czar Resources Inc. (Czar Inc.) is authorized to import up to 5,800 Mcf of Canadian natural gas per day during the 24-month period beginning on the date of first delivery, and to continue thereafter on a month-to-month basis until terminated by either party or until a maximum of 3.4 Bcf has been imported, whichever occurs first, in accordance with the provisions established in the amended contract submitted as part of the application in this docket.

B. Czar Inc. shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Czar Inc. shall file with the ERA the terms of any renegotiated price that may become effective after the initial 3-month period within two weeks of its effective date.

D. Czar Inc. shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price per MMBtu paid for those volumes.

E. The motions to intervene by Northwest Pipeline Corporation and Cascade Natural Gas Corporation are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that their participation shall be limited to matters affecting asserted rights and interests specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of these intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., June 3, 1985

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-13855 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

[4] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act [42 U.S.C. 4321 *et seq.*] and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

[Docket Nos. CP85-399-000, et al.]

Natural gas certificate filings; ANR Pipeline Co. et al.

June 3, 1985

Take notice that the following filings have been made with the commission:

1. ANR Pipeline Company

[Docket No. CP85-399-000]

Take notice that on March 28, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-399-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to transport natural gas for Anchor Glass Container Corporation (Anchor) and to construct and operate minor pipeline tap facilities necessary to deliver gas for the account of Anchor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authority to transport up to 3,000 dt equivalent of gas per day on a best efforts basis for Anchor pursuant to a transportation agreement with Anchor dated October 9, 1984, as amended. ANR states that the gas to be transported would be purchased by Anchor from ANR Gathering Company (Gathering), as seller or as seller's agent, pursuant to a gas sales agreement dated April 25, 1984, as amended, and which provides that Gathering would sell up to 6,500 dt equivalent per day to Anchor. It is explained that ANR would receive the gas at various points of interconnection between ANR and Gathering and/or ANR and others in Oklahoma, Texas and Kansas and would then transport and deliver the gas to Pressure Transport, Inc. (PTI), for the account of Anchor at tap facilities which it proposes to construct and operate on its pipeline system in McHenry County, Illinois, and/or in Kenosha County, Wisconsin. ANR estimates that the cost of the proposed tap facilities will not exceed $10,000.00 and for which Anchor would reimburse ANR.

Upon PTI's receipt of Anchor's gas from ANR, PTI would transport the gas via pressurized truck/tube trailers to Anchor's Gurnee, Illinois, glass plant, it is stated. ANR indicates that Anchor would utilize the gas to manufacture glass containers for the maintenance of food quality, a high priority end-use.

The initial term of the transportation agreement is one year and year-to-year thereafter. ANR states that it would charge Anchor 31.1 cents per dt equivalent for gas delivered at McHenry County, Illinois, and 32.9 cents per dt for gas delivered at Kenosha County, Wisconsin; and any volumes received by ANR would be reduced by 9 percent as compensation for compressor fuel and lost and unaccounted-for gas.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP85-495-000]

Take notice that on May 7, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-495-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a firm natural gas transportation service for Texas Gas Transmission Corporation (TGT), all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

ANR states that it proposes to transport up to 75,000 Mcf of natural gas per day (contract demand) on a firm basis for TGT pursuant to a transportation agreement date February 7, 1985. ANR states that it would receive natural gas, up to the contract demand, that TGT has acquired in West Cameron Area Blocks 293, 294, 299, and 300 at the manifold platform in West Cameron Area Block 167. ANR states that it would transport and deliver thermally equivalent volumes, less 2.2 percent retained for fuel and lost and unaccounted-for gas, to TGT at the existing interconnection of the pipeline systems of ANR and TGT near Eunice, Louisiana. It is indicated that the term of the proposed firm service is for an initial term of fifteen years from first deliveries and year-to-year thereafter, unless cancelled by either party with six months prior written notice. It is explained that ANR is currently providing a "best-efforts" service on behalf of TGT by transporting the subject gas pursuant to Subpart G of Part 284 of the Commission's Regulations.

As consideration for the proposed transportation service, it is stated that TGT would pay ANR a monthly demand charge of $3.12 per Mcf of contract demand.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Equitable Gas Company, a Division of Equitable Resources, Inc.

[Docket No. CP85–507–000]

Take notice that on May 13, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85–507–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for a period of three years from the date of initial deliveries by Hydrocarbon Energies, Inc. (HE), and year to year thereafter, of up to 500 Mcf of natural gas per day for HE from points along Equitable's pipeline system in West Virginia for redelivery at existing interconnections with the pipeline system of Texas Eastern Transmission Corporation (Tetco) and the construction and operation of several taps and associated measuring and regulating facilities to receive the gas from HE. It is currently anticipated that three meter installations will be required at a cost of $2,560.00. HE will reimburse Equitable its costs of constructing such taps and appurtenant facilities. For the service proposed, HE will pay Equitable 15.5¢ per Mcf of gas transported exclusive of transportation shrinkage of 2 percent.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP85–470–000]

Take notice that on April 26, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–470–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of The Dow Chemical Company (Dow) under the certificate issued in Docket No. CP84–451–000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open for public inspection.

It is stated that Dow has arranged to purchase certain volumes of gas from Petrolane-Texas Gas Service, Inc. (Petrolane), for use as boiler fuel and in direct fire processing at Dow's Midland, Michigan, plant. In order for Dow to receive its gas, it is explained that Dow has entered into a transportation agreement with Panhandle and also Michigan Gas Storage Company (Storage) dated March 15, 1985, as amended April 11, 1985. It is indicated that Panhandle would receive up to 13 billion Btu of natural gas from Petrolane (for Dow's account) at various points in Major, Woods, and Woodward Counties, Oklahoma. Panhandle would then transport on an interruptible basis and redeliver equivalent quantities, less a 4 percent reduction for fuel use, to Storage in Oakland County, Michigan. Storage, in turn, would transport and deliver such gas to Consumers Power Company (Consumers) for Dow's account and Consumers would make ultimate delivery to Dow at the Midland plant.

It is stated that Panhandle proposes to transport 3 billion Btu of gas on an average day and 1.09 trillion Btu of gas on an annual basis on behalf of Dow for a term of 6 months and 2 successive one-month terms unless the Commission terminates the authorizations or either party terminates the agreement on 30 days written notice. Panhandle states that it would charge its effective Rate Schedule OST rate which is currently 42.0 cents plus 1.24 cents GRI surcharge per MMBtu redelivered.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with the sources of gas acquired by the end user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources would only be obtained to constitute the transportation quantities herein and not increase these quantities.

Comment date: July 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation, ANR Pipeline Company

[Docket No. CP79–3–017]

Take notice that on May 6, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243, filed in Docket No. CP79–3–017 a petition to amend the order issued April 4, 1979, in Docket No. CP79–3, as amended, pursuant to Section 7 of the Natural Gas Act, so as to authorize ANR to transport all gas made available by Transco at its Mayfield West field, Beckham County, Oklahoma, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued April 4, 1979, as amended, they were granted authorization to transport and exchange natural gas in accordance with the provisions of a gas transportation and exchange agreement, as amended (agreement).

Petitioners state that pursuant to the terms of the agreement, Transco delivers or causes to be delivered to ANR natural gas from certain wells located in the Mayfield West field, Beckham County, Oklahoma, which wells are specifically set out in Article I of the agreement. ANR redelivers thermally equivalent exchange volumes to Transco at the points of redelivery identified in Article V of the agreement.

Petitioners state that pursuant to a similar provision in Article II of the agreement, ANR delivers gas to Transco at receipt points in Jefferson Davis and Covington Counties, Mississippi, and Transco agrees to take receipt of additional gas which ANR is purchasing from East Cameron Block 38, offshore Louisiana, ANR being responsible for having such gas delivered to Transco at a point of interconnection between the

Vermilion 22 pipeline (jointly owned by Transco, Florida Gas Transmission Company and Sea Robin Pipeline Company) and Transco's central Louisiana gathering system at Pecan Island, Vermilion Parish, Louisiana (East Cameron 38 point of receipt). Transco redelivers thermally equivalent exchange volumes to ANR at the points of redelivery identified in Article V of the agreement.

It is stated that Petitioners use their best efforts to keep in balance the cumulative quantities of gas exchanged under the agreement, and any imbalance of exchange deliveries is eliminated by an appropriate adjustment of gas deliveries at the redelivery point located at the tailgate of Mobil Oil Corporation's Cameron Meadows processing plant located in Cameron Parish, Louisiana, where both Transco and ANR take gas deliveries from others. It is also stated that to the extent that volumes of gas which Transco receives in Mississippi and at the East Cameron 38 point of receipt are in excess of the volumes which ANR receives, Transco would transport these excess volumes, by displacement, to ANR at the points of redelivery.

Petitioners further state that Transco has obtained the right to purchase from Texaco Inc. quantities of gas from the Green Estate No. 2 Well and the Ellis No. 3–33 Well in the Mayfield West field. Also, by letter amendment dated August 20, 1984, Petitioners added to Article I of the agreement such additional wells from which ANR would receive gas from Transco. By the subject petition, Petitioners request that the certificate issued in Docket No. CP79–3, as amended, be further amended to authorize ANR to transport all gas purchased by Transco from the Green Estate No. 2 Well and the Ellis No. 3–33 Well in the Mayfield West field.

Comment date: June 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP85–498–000]

Take notice that on May 8, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–498–000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon the lease and operation of 17 miles of 6-inch pipeline, the operation thereof and metering facilities presently located on same lease line, and to abandon and remove present metering facilities located at a second meter station nearby, and to construct and operate a master meter station at the existing site of the second meter station in Escambia County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the request for abandonment authorization is made following a request from three utility customers, the City of Brewton (Brewton), the Town of Flomaton (Flomaton), and the Utility Board of the City of Atmore (Atmore), Alabama, that United construct and operate a master meter station to allow the delivery of the total combined volumes of 8731 Mcf per day for the three above communities through a single delivery point.

It is indicated that United is presently delivering gas to the above communities at two nearby locations, pursuant to two service agreements. However, these communities have agreed to realign these deliveries so that all volumes under both agreements would be delivered through a master meter station, it is stated. United states that the rearrangements of deliveries would improve its operating efficiency as well as the service to the above customers. United also states that the present facilities at the first station would no longer be needed once the new station is completed and that present facilities at the second station are inadequate for measuring the total volumes of gas to be hereinafter delivered.

United has also stated that it would continue to have separate agreements with Atmore and Brewton-Flomaton and that the proposal would not change the maximum daily quantity of gas already established under these service agreements.

Cost of removal of the facilities to be abandoned and construction and operation of the master station is estimated at $66,247. It is stated that Atmore and Brewton have agreed to reimburse United for a portion of such cost.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13955 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA85-35-000]

Bay State Gas Co. Petition for Staff's Adjustment and Interim Relief

June 5, 1985.

On May 17, 1985 Bay State Gas Company (Bay State), 120 Royall Street Canton Massachusetts, 02021 filed with the Federal Energy Regulatory Commission (Commission) a petition under section 206 (d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3346(d) (1982) and Rule 1101, *et seq.* of the Commission's regulations, 18 CFR 385.1101. Bay State seeks an order from the Director of the Office of Pipeline and Producer Regulations (Director) exempting from incremental pricing certain gas sales made by Bay State to seven non-exempt industrial plants. Additionally, Bay State requests interim relief under Rule 1113(h) of the Rules of Practice and Procedure in order to prevent irreparable injury.

Bay State's pricing provisions for natural gas is based upon customers' alternative fuel costs. In the past, the price for such natural gas has been in excess of the Commission's prescribed alternate fuel price ceiling and thus no incremental pricing surcharge had been levied. However, in May, 1985, the alternate fuel price ceiling for Bay States area climbed to $4.40 per MMBtu, while the prevailing alternate fuel price actually available was as low as $3.97 per MMBtu. Under incremental pricing regulations, a surcharge would then be levied upon Bay State's seven customers in order to bring their gas costs up to the level of the alternative fuel price ceiling. As a result, this surcharge would cause the gas costs to increase above the price of alternative fuel actually available to Bay State's customers. Furthermore, all seven customers have the capability to burn fuel oil and Bay State fears that the imposition of incremental surcharges will result in an immediate switch to that alternate source of fuel.

Bay State asserts, pursuant to Rule 1108, that the loss of these industrial sales will cause special hardship, inequity or unfair distribution of burden, upon Bay State's residential gas customers. Under the terms of Bay State's Massachusetts Cost of Gas Adjustment Clause (CGA), all profits from all interruptible sales are credited to the system cost of gas and then these credits reduce the cost of gas sold to high priority customers. During the twelve month period ending March, 1985, approximately $3,375,000 from sales to these seven non-exempt customers were credited under the CGA provision resulting in an average rate reduction during that period of $0.11 per MMBtu. As a direct result of the incremental price surcharge, Bay State's high priority customers will be irreparably harmed by increases in their monthly cost of gas.

In addition, Bay State requests interim relief pursuant to Rule 1113 of the Commission's Regulations. Bay State believes that interim relief is warranted as the non-exempt customers are likely to switch immediately to the lower priced alternate fuels before the merits of Bay State's request can be considered.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must make a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13929 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-477-000]

Consolidated Fuel Supply, Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity, Limited Partial Abandonment Authorization and Declaration of Limited Jurisdiction

June 5, 1985.

Take notice that on May 28,1985, Consolidated Fuel Supply, Inc. ("Consolidated") 888 South Greenville Avenue, Suite 100, Richardson, Texas, 75081, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act ("NGA"), 15 U.S.C. 717c, 717f, and provisions of 18 CFR Part 157, for blanket limited-term certificate of public convenience and necessity authorizing Consolidated to engage in a limited-term spot sales marketing program hereinafter referred to as the Consolidated Fuel Program, as fully set forth in the application on file with the Federal Energy Regulatory Commission ("Commission") and available for public inspection.

Approval of the application would: (1) Authorize sales of natural gas for resale in interstate commerce; (2) permit limited-term partial abandonment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the Consolidated Fuel Program; and (5) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. Consolidated also requests the Commission to declare that with respect to Consolidated and its activities, the Commission will only assert NGA jurisdiction over jurisdictional transactions not otherwise exempt from the NGA.

Consolidated proposes to sell natural gas qualifying for the sections 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. 3301 *et seq.* Only contractually committed gas will be sold under the Consolidated Fuel Program. Consolidated or participating producers will secure from the purchasers temporary releases of "surplus" gas in order to meet market demand for natural gas with spot sales. Releasing producers will be absolved from take-or-pay liability for any volumes of gas released and sold under the Consolidated Fuel Program. Transportation arrangements for the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make protest with reference to this application should on or before June 21, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless the Applicant is otherwide advised, it will be unnecessary for Applicant to appear or to be represented at a hearing in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13930 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-149-000]

East Tennessee Natural Gas Co.; Filing of Changes in Rates

June 5, 1985.

Take notice that on May 31, 1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1985, consisting of the following revised tariff sheets:

Twelfth Revised Sheet No. 4
First Revised Sheet Nos. 120, 261 and 262
Third Revised Sheet Nos. 121 and 124

The changes would increase non-gas revenues from jurisdictional sales by $5,601,939 based on the test period consisting of the twelve months ended February 28, 1985, adjusted for known and measurable changes through November 30, 1985. The changes also incorporate revisions to the tariff that are necessary to conform to East Tennessee's method of allocating demand costs on the basis of contract demands and to update its Index of Purchasers to reflect authorized revisions to various of its customers' contract demands.

East Tennessee states that the increased rates are required to reflect a decline in sales volumes, increased plant and related expenses, changes in the cost of materials, supplies, wages and services, taxes, fuel and other costs required to operate and maintain its pipeline system, and a claimed overall return of 15.05%.

East Tennessee's filing also incorporates the cancellation of its CSS and CPR Rate Schedules effective June 1, 1984 and July 1, 1985, respectively, as reflected on the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

CSS

First Revised Sheet Nos. 49 and 204

CPR

First Revised Sheet Nos. 26, 37, 39, 42, 117, 119, 125, 130, 132 and 192
Second Revised Sheet Nos. 1, 44, 116, 133 and 194
Fourth Revised Sheet No. 122

East Tennessee states that such tariff sheets constitute its Notice of Cancellation of the CSS and CPR Rate Schedules and those tariff revisions necessary to delete all references to such rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-13931 Filed 6-7-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA85-3-2-000 and TA85-3-2-001]

East Tennessee Natural Gas Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 5, 1985

Take notice that on May 31,1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Eleventh Revised Sheet No. 4 and Ninth Revised Sheet Nos. 5 and 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1985.

East Tennessee states that the purpose of these sheets is to reflect PGA rate adjustments based on its anticipated cost of purchased gas and reflects (1) a rate change filed by Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), and (2) purchases from various local producer-suppliers. East Tennessee states that Tennessee filed in Docket No. TA85-2-9 alternate tariff sheets and that East Tennessee's filing is based on the lower level of Tennessee's rates. East Tennessee states that if the Commission or Tennessee places higher rates into effect, East Tennessee may revise its rates accordingly.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary

[FR Doc. 85-13932 Filed 6-7-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-476-000]

Energy Marketing Exchange, Inc. (Ener-Gen Program); Application for Blanket Certificate and Pre-Granted Abandonment Authorization to Implement Ener-Gen Program

June 5, 1985.

Take notice that on May 29, 1985, Energy Marketing Exchange, Inc. (EME), P.O. Box 6060, Bridgewater, NJ 08807, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f, and the provisions of 18 C.F.R. Parts 157 and 295, for a blanket certificate of public convenience and necessity authorizing EME to market natural gas to "qualifying cogeneration facilities" under its program, hereinafter referred to as ENER-GEN, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

EME states that under ENER-GEN, it proposes to sell natural gas qualifying for the Section 102, 103 or 107 rate under the Natural Gas Policy Act of 1978 to "qualifying cogneration facilities" as defined under Section 3(18)(B) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act of 1978, and as further defined under Part 292 of the Commission's regulations, 18 CFR Part 292. EME states that each sale under the program would be for a term of up to ten (10) years, and will be limited to cogeneration facilities which are placed into service on or after the date the Commission grants the requested authorizations, or which currently use fuel oil or other alternative energy sources.

Approval would: (1) Authorize the transportation of natural gas by interstate pipelines able and willing to participate in (10) years; (2) authorize the transportation of natural gas by local distribution companies (including Hinshaw pipelines) able and willing to participate, ENER-GEN, for a term of up to ten (10) years; (3) confer pre-granted abandonment authorization for the transportation allowed under the requested certificate; and (4) authorize

the transportation of natural gas by intrastate pipelines participating in ENER-GEN for a term of up to ten (10) years.

Any person desiring to be heard or to make any protests with reference to said application should on or before June 19, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13933 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-34-000 and TA85-3-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 5, 1985

Take notice that on May *29*, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff to be effective June 1, 1985.

First Revised Volume No. 1

4th Revised Sheet No. 8

Original Volume No. 2

27th Revised Sheet No. 128

The proposed change reflects a decrease of 1.786¢/therm in FGT's Rate Schedule G and I and .51¢/Mcf in Rate Schedule T-3. In order to implement FGT's out-of-cycle PGA rate decrease, FGT has requested such Commission waivers as may be necessary to approve its filing effective June 1, 1985.

Copies of the filing were served on FGT's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13934 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-152-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Proposed Rate Change

June 5, 1985.

Take notice that on May 31, 1985, Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines) tendered for filing pursuant to Section 4 of the Natural Gas Act and § 154.63 of the Commission's regulations the following:

Twenty-fourth Revised Sheet No. 4, superseding Substitute Twenty-third Revised Sheet No. 4 to Minnesota Pipelines' FERC Gas Tariff, Original Volume No. 1;

Third Revised Sheet No. 11, superseding Substitute Second Revised Sheet No. 11 to Minnesota Pipelines' FERC Gas Tariff, Original Volume No. 2;

Third Revised Sheet No. 12, superseding Substitute Second Revised Sheet No. 12 to Minnesota Pipelines' FERC Gas Tariff, Original Volume No. 2.

With the above, Minnesota Pipelines has filed supporting testimony and exhibits. Minnesota Pipelines has requested that the proposed rate increase be permitted to become effective July 1, 1985. It accordingly requests that the rates be permitted to become effective, subject to refund, on that date and that the Commission waive suspension or, in the alternative, limit the suspension to one day in order that the July 1 date may be permitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13935 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-628-004]

Kansas Gas and Electric Co.; Refund Report

June 4, 1985.

Take notice that on May 3, 1985, Kansas Gas and Electric Company (KG&E) resubmitted its refund report of November 21, 1984. KG&E resubmitted this filing because the Commission had no record that this filing had been tendered to the Commission.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 10, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13945 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-525-000]

Kansas Power and Light Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Kansas Power and Light Company (KPL) tendered for filing Amendment No. 10 to the General Participation Agreement of Mokan Power Pool members.

KPL states that Amendment No. 10 is to outline certain procedures and qualifications by which a Mokan Power Pool member may purchase or sell capacity and to further qualify membership criteria.

KPL further states that the following are presently under the General Participation Agreement with the following FPC Rate Schedule Numbers:

Kansas City Power & Light Company—Rate Schedule FPC No. 32

Missouri Public Service Company—Rate Schedule FPC No. 8

The Empire district Electric Company—Rate Schedule FPC No. 73
Kansas Gas and Electric Company—Rate Schedule FPC No. 94
The Kansas Power & Light Company—Rate Schedule FPC No. 7
Centel Corporation-Western Power—Rate Schedule FPC No. 53
St. Joseph Light & Power Company—Rate Schedule FPC No. 17
Midwest energy, Inc.
Sunflower Electric Cooperative, Inc.
Board of Public Utilities of the City of Kansas City, Kansas
City Power & Light Department of the City of Independence, Missouri

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13946 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-523-000]

Kansas Power and Light Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated May 1, 1985, with the City of Marion, Kansas for wholesale service to that community. KPL states that this contract permits the City of Marion to receive service under rate schedule WSM-12 '83 designated Supplement No. 10 to R.S. FERC No. 173. The proposed effective date is July 1, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract.

KPL requests an effective date of July 1, 1985, and therefore requests waiver of the Commission's notice requirements.

KPL states that copies of the filing have been mailed to the City of Marion and the State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, N.E., Washington, D.C. 20246, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13947 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-5-5-000 and TA85-5-5-001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 5, 1985.

Take notice that on May 31, 1985, Midwestern Gas Transmission Company (Midwestern) filed Fourteenth Revised Sheet No. 5 and Ninth Revised Sheet No. 7 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1985.

Midwestern states that the purpose of the filing is to reflect: (1) PGA rate adjustments for its Southern System based on rate changes filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and (2) a change in Midwestern's commodity rate pursuant to the Stipulation and Agreement (May 24, 1983) in Docket No. CP82-397. Midwestern states that Tennessee filed in Docket No. TA85-2-9 alternate tariff sheets and that Midwestern's filing is based on the lower level of Tennessee's rates. Midwestern states that if the Commission or Tennessee places the higher rates into effect, Midwestern may revise its rates accordingly.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13936 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-359-004]

Montana Power Co.; Refund Report

June 5, 1985.

Take notice that on May 20, 1985, Montana Power Company (Montana) submitted for filing a refund report pursuant to the Commission's letter order dated April 3, 1985.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 12, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13948 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-150-000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

June 5, 1985.

Take notice that on May 31, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Second Revised Volume No. 2 to become effective July 1, 1985.

Natural tates that the purpose of the filing is to provide for the level of rates and charges required to recover its increased operating costs. When compared to the settlement rates currently in effect at Docket No. RP83-68, the proposed change in rates shows a revenue increase of approximately $106.5 million.

In addition to reflecting the variations in operating costs, the proposed sales rates reflect the effect of a Modified Fixed-Variable rate design, and a representative level of transportation revenues in lieu of the current procedure for crediting such revenues to the Deferred Purchased Gas Cost Account.

Also included are tariff sheets to incorporate a minimum commodity bill provision, a Stand-by Charge, a transportation cost adjustment mechanism, a tariff provision to recover carrying costs associated with variations in payments for undelivered gas costs, and tariff provisions to provide for onshore and offshore transportation of gas by Natural for any shipper which executes a transportation contract wherein Natural agrees to transport natural gas for such shipper.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13937 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-517-000]

New York State Electric & Gas Corp.; Filing

June 3, 1985.

The filing Company submits the following:

Take notice that on May 17, 1985, New York State Electric & Gas Corporation (NYSEG), tendered for filing proposed changes in its FERC Rate Schedules Nos. 27, 28, 30, 33 and 35. It is estimated that the proposed changes would increase revenues from jurisdictional sales and service by about $29,100 based on the 12 month period ended February 28, 1985.

After extensive hearings in Case No. 28824, "New York State Electric & Gas Corporation Electric Rates", and pursuant to Opinion 85-8 issued by the Public Service Commission of the State of New York on April 9, 1985, NYSEG filed revised leaves to Schedule PSC No. 115—Electricity, which the above Opinion allowed to become effective April 15, 1985. Rate Schedule PSC No. 115 is incorporated in the previously noted FERC schedules.

NYSEG requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13949 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-151-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 5, 1985.

Take notice that Northern Border Pipeline Company (Northern Border) on May 31, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. Northern Border projects that the proposed changes would increase jurisdictional revenues by $26.5 million during the first year that such changes are in effect.

By this filing, Northern Border is proposing to increase its Operation Phase Rate, which is its allowed rate of return on equity, to 16.5 percent from the currently effective rate of 13 percent. In addition, Northern Border is proposing to delete its cash working capital allowance in Rate Base under Subsection 4.83(b) set forth in Rate Schedule T-1.

Northern Border proposes an effective date for this feeling of July 1, 1985. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13938 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-396-002]

Northern Indiana Public Service Co.; Refund Report

June 5, 1985.

Take notice that on May 13, 1985, Northern Indiana Public Service Company submitted for filing a refund report pursuant to the Commission's order dated April 3, 1985.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before June 12, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13950 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-687-002]

Pacific Power & Light Co.; Compliance Filing

June 5, 1985.

Take notice that on May 15, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp submitted for filing a compliance report pursuant to the Commission's order dated April 17, 1985.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 12, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13951 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-6-000 and TA85-2-6-001]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

June 5, 1985.

Take notice that on May 31, 1985, Sea Robin Pipeline Company (Sea Robin) tendered for filing Thirty-Ninth Revised Sheet No. 4, Nineteenth Revised Sheet No. 4-A and Sixth Revised Sheet No. 4-B to its FERC Gas Tariff, Original Volume No. 1. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Cost Adjustment provision set out in Sections 1 and 3 of Sea Robin's Tariff.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to Sea Robin's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13939 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-6-002]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

June 5, 1985.

Take notice that on May 31, 1985, Sea Robin Pipeline Company (Sea Robin) tendered for filing Twenty-Second Revised Sheet Nos. 127-D and 135-C to its FERC Gas Tariff, Original Volume No. 2. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Cost Adjustment provision set out in Sections 4 and 5 of Sea Robin's Tariff.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to Sea Robin's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13940 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-524-000]

Southern California Edison Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Southern California Edison Company ("Edison") tendered for filing an agreement entitled "Edison-Burbank Economy Energy Agreement" (Agreement), which has been executed by Edison and the City of Burbank, California ("Burbank").

Edison states that under the terms and conditions of the Agreement, Edison will purchase/sell economy energy to Burbank to make more efficient use of their respective electrical systems.

Edison requests an effective date of 60 days after the receipt of filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Burbank, California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13952 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-424-000 and ER85-425-000]

Southwestern Electric Power Co.; Order Accepting for Filing and Suspending Rates, Denying Motion to Reject, Denying Waiver of Notice Requirements, Noting Intervention, Consolidating Dockets, and Establishing Hearing Procedures

Issued: June 5, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On April 10, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed increase in rates to Northeast Texas Electric Cooperative, Inc., (NTEC) and the City of Hope, Arkansas (Hope), in Docket Nos. ER85-424-000 and ER85-425-000, respectively.[1] SWEPCO provides service to NTEC and Hope pursuant to firm power agreements which provide for formulary rates. The formula provides for an annual true-up to recompute the prior year's rate based on actual cost data, including SWEPCO's actual earned return. The rate developed under the true-up also becomes the interim rate to be charged until the next true-up. Based on its 1984 Form 1 data, SWEPCO proposes to increase the common equity component of its formulary rates from 15.7% to 18.75% for Hope and 18.71% for NTEC.[2] SWEPCO's filings would increase annual revenues by about $2 million. The agreements provide that the revised rates will become effective on the first day of the month following the commercial operation date of SWEPCO's Pirkey Unit No. 1. SWEPCO states that Pirkey Unit No. 1 was placed into commercial operation on January 3, 1985, and, therefore, requests waiver of the notice

[1] See Attachment for rate schedule designations.

[2] Presumably, the common equity component for NTEC is slightly lower due to a provision in its contract excluding costs associated with SWEPCO's new Pirkey Unit No. 1.

requirements to permit an effective date of February 1, 1985.

Notice of the filings was published in the **Federal Register** [3] with comments due on or before May 6, 1985. Hope filed a timely motion to intervene. Hope requests rejection of the filing on the basis that: (1) The filing improperly recovers costs associated with construction work in progress (CWIP); and (2) the proposed 18.75% equity return is unjust and unreasonable.[4]

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make Hope a party to this proceeding.

Notwithstanding Hope's allegation to the contrary, SWEPCO's formula rate does not include CWIP costs, and the filing substantially complies with the Commission's filing requirements. Therefore, we shall deny Hope's motion to reject SWEPCO's filing.

Our review of SWEPCO's submittal indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶61,189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. We shall therefore suspend SWEPCO's rates for five months.

As mentioned, SWEPCO requests waiver of the notice requirements to permit an effective date of February 1, 1985. In support of its requests, SWEPCO states that it tendered the filing as soon as practicable and that the customers support the proposed waiver. SWEPCO knew at least by January 3, 1985 (the day Pirkey Unit No. 1 became operational) that the agreement permitted a revised equity return. Further, when the formula rates were initially accepted for filing, the company was advised that implementation of a higher equity return would require a timely filing with the Commission.[5] However, SWEPCO did not tender its filing until April 10, 1985. In addition, while SWEPCO included in its filing letters from the customers supporting the proposed revision and requested waivers, Hope has now reversed its position and opposes the proposed equity return revision. Under the circumstances, we do not find that SWEPCO has demonstrated good cause for waiver and, therefore, we shall deny the company's request. Accordingly, we shall suspend SWEPCO's rates for five months from sixty days after filing to become effective on November 10, 1985, subject to refund.

Finally, we find that common questions of law and fact may be presented in Docket Nos. ER85–424–000 and ER85–425–000. As a result, we shall consolidate these dockets for purposes of hearing and decision.

The Commission orders:

(A) Hope's motion to reject SWEPCO's filing is hereby denied.

(B) SWEPCO's request for waiver of the notice requirements is hereby denied.

(C) SWEPCO's rates are hereby accepted for filing and suspended for five months from sixty days after filing, to become effective, subject to refund, on November 10, 1985.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Docket No. ER85–424–000 is hereby consolidated with Docket No. ER85–425–000 for purposes of hearing and decision.

(G) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

SOUTHWESTERN ELECTRIC POWER COMPANY RATE SCHEDULE DESIGNATIONS

Designation	Other party
Docket No. ER85–424–000: (1) Supplement No. 2 to Rate Schedule FERC No. 84	Northeast Texas Electric Co-operative, Inc
Docket No. ER85–425–000: (2) Supplement No. 2 to Rate Schedule FERC No. 86	City of Hope, Arkansas.

[FR Doc. 85–13941 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–2–9–000 and TA85–2–9–001]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

June 5, 1985.

Take notice that on May 29, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1985:

Original Volume No. 1

Fourteenth Revised Sheet No. 21
Eleventh Revised Sheet No. 20
Alternate Fourteenth Revised Sheet No. 21
Ninth Revised Sheet Nos. 23 through 30

Tennessee states that the revised tariff sheets reflect alternative PGA rate adjustments. One adjustment is based on a $2.7002 cents per dth weighted average cost of gas and $0 surcharge for amortizing its unrecovered purchased gas cost account. The alternate adjustment is based on a $2.95 per dth weighted average cost of gas and a 72.12 cents per dth surcharge. Tennessee states that its ability to achieve the lower cost of gas is dependent upon the completion of settlement discussions

[3] 50 FR 18557 (1985).

[4] Hope's motion contradicts a letter dated April 3, 1985, and appended to SWEPCO's filing, in which it supported acceptance of SWEPCO's filing and waiver of the notice requirements.

[5] Letter orders to SWEPCO dated June 11, 1982 (Docket No. ER82–463–000), and December 23, 1982 (Docket No. ER83–167–000).

with its customers and that it will notify the Commission prior to the July 1, 1985, effective date as to which filing is to be made effective. Tennessee states that the filing also reflects reductions in its commodity rates pursuant to the Settlement Agreement (February 5, 1985) in Docket No. RP83–8, *et al.* If that agreement is not approved by July 1, 1985, Tennessee states that it will revise this filing.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13942 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–3–29–000]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

June 5, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 30, 1985 certain substitute tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 31, 1985. The proposed tariff sheets are filed pursuant to Ordering Paragraph (C) of the Order issued April 30, 1985 by the Federal Energy Regulatory Commission (Commission) in the captioned proceedings.

The substitute sheets have a proposed effective date of April 1, 1985 and supersede like-numbered tariff sheets contained in Transco's PGA filing of March 29, 1985 in Docket No. TA85–3–29–000. Transco states that while it is submitting the aforementioned substitute tariff sheets pursuant to the Commission's April 30 Order, it is filing, concurrently with this filing, a motion for clarification of the April 30 Order and a motion for a stay of the effectiveness of these tariff sheets pending Commission action on Transco's Petition for Authority to Institute Direct Billing Procedure For Retroactive Order No. 94 Payments, pending in Docket No. RP85–148–000. Transco's Motion for Clarification and Stay is contained in Appendix B to the instant filing.

Transco further states that in accordance with § 154.16 of the Commission's Regulations, copies of this filing were mailed to all parties to this proceeding and to all persons upon whom the original filing herein was made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13943 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–2–11–000, TA85–2–11–001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 5, 1985.

Take notice that on May 31, 1985, United Gas Pipe Line Company (United) tendered for filing Sixty-Eighth Revised Sheet No. 4, Eleventh Revised Sheet Nos. 4–A and 4–B, and Sixteenth Revised Sheet No. 4C to its FERC Gas Tariff, First Revised Volume No. 1. Tariff Sheets 4, 4–A and 4–B and supporting information are being filed pursuant to Sections 19, 21, 23 and 24 of United's Tariff. Tariff Sheet No. 4–C is submitted pursuant to the letter order issued by the Office of Pipeline and Producer Regulations dated January 27, 1982 in Docket No. CP81–387–00. In addition, United tendered for filing, Second Revised Sheet No. 4–D and First Revised Sheet No. 4–E to reflect a rate reduction resulting from elimination of additional income taxes related to amortization of unfunded tax liability ("South Georgia" method). The rate adjustment is considered on the other Tariff Sheets tendered herewith as appropriate. Also, United tendered First Revised Sheet No. 74–K to comply with paragraph C of FERC Opinion No. 226 issued September 24, 1984 in Docket No. RP84–85. The proposed effective date of each preceding Tariff Sheet is July 1, 1985.

United reports that it mailed copies of the proposed Tariff Sheets and supporting data to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13944 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–528–000]

Wisconsin Power and Light Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Wisconsin Power and Light Company (WPL) tendered for filing a revised wholesale power contract dated November 7, 1984 between the Village of Pardeeville Water and Light Commission and WPL. WPL states that this revised contract is filed, at the Village's request for the purpose of revising and updating the language in the existing agreement.

WPL states that a copy of the revised contract and the filing have been provided to the Village of Pardeeville Water and Light Commission and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13953 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-526-000]

Wisconsin Public Service Corp.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985 Wisconsin Public Service Corporation (WPSC) tendered for filing supplements to the following agreements:

Service Agreement No. 1

June 24, 1977, "Partial Requirements Service Agreement," between Consolidated Water Power Company and Wisconsin Public Service Corporation.

Service Agreement No. 2

June 19, 1978, "Partial Requirements Service Agreement," between the City of Manitowoc, Wisconsin and Wisconsin Public Service Corporation.

Service Agreement No. 3

February 21, 1980, "Partial Requirements Service Agreement," between the City of Marshfield, Wisconsin, and Wisconsin Public Service Corporation.

WPSC states that these supplements will revise the contract demand quantities in accordance with Exhibit 1 of the service agreement, Paragraph 6, *Requirements.*

WPSC requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City of Marshfield, Wisconsin, City of Manitowoc, Wisconsin, and the Consolidated Water Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13954 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $5,615.95 (plus accrued interest) in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving the DOE and Conlo Service, Inc.

DATES AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0053.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by the DOE and Conlo Service, Inc. (Conlo). This Consent Order settled possible pricing violations in Conlo's sales of motor gasoline to its customers during the period April 1, 1979 through September 30, 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the Conlo escrow account. The DOE has tentatively decided that these funds should be distributed to those customers of Conlo who establish that they were injured by the firm's alleged overcharges. Such customers will receive refunds based on the amount they were allegedly overcharged according to DOE audit files. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: May 31, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 31, 1985.

Name of Firm: Conlo Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0053.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205,

Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Conlo Service, Inc. (Conlo) of East Farmingdale, New York.

I. Background

Conlo is a "reseller-retailer" of "motor gasoline" as these terms were defined in 10 CFR 212.31. An ERA audit of Conlo's operations during the period April 1, 1979 through September 30, 1980 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations in the amount of $13,390.34 with respect to the firm's sales of motor gasoline to resellers and retailers. In order to settle all claims and disputes between Conlo and the DOE regarding these sales, Conlo and the DOE entered into a Consent Order on March 20, 1981, in which Conlo agreed to remit $4,854.00 to the DOE. This Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, it states that Conlo does not admit that it committed any such violations. Conlo remitted to the DOE $5,615.95 ($4,854 principal plus $761.95 interest), which is currently being held in an interest-bearing escrow account pending distribution by the DOE.

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Supart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Conlo consent order fund and have determined that it is appropriate to establish such a proceeding. Insofar as possible, the consent order fund should be distributed to those customers of Conlo who were injured by the alleged price violations. The ERA audit file pertaining to the investigation of Conlo's pricing practices lists the names of retailer and reseller customers who purchased motor gasoline from Conlo along with the amounts these customers were allegedly overcharged. This information is listed in the Appendix to this Proposed Decision and Order. In our view, these identified customers are most likely the parties who are eligible for refunds in this proceeding. However, we recognize that there may be other purchasers of refined petroleum products from Conlo who were not listed in the ERA audit files and who may have been injured by the firm's pricing practices during the consent order period.[1] We therefore proposed to accept applications from any party that can show injury resulting from Conlo's alleged overcharges.

The identified Conlo customers are all resellers, i.e., retailers and wholesalers. In Subpart V proceedings, reseller applicants are generally required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers.* In order to quality for a refund, resellers must show that during the consent order period they would have maintained their prices for the product they resold at the same level had the alleged overcharges not occurred. A reseller must also show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintanence of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc., 10 DOE ¶ 85,038 (1982).*

However, as in many prior special refund cases, we propose to adopt a presumption of injury with respect to small claims by resellers. The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). In the present case, we are proposing to adopt a presumption that reseller claimants seeking small refunds were injured by Conlo' pricing practices. This presumption is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase covered products from Conlo and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claim presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream, of that initial impact.

Under the presumption we are proposing to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2] Previous OHA refund decisions

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[1] In the present case, the consent order period is the same as the audit period, April 1, 1979 through September 30, 1980.

[2] We propose that resellers who made only spot purchases from Conlo be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97; *see also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claiminat who was a spot purchaser must

Continued

have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the proposed maximum refund amounts are fairly low and the time period of the Conlo Consent Order is distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.[3] *See id.; Marion Corp.* 12 DOE ¶ 85,014 (1984).

III. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. We propose that the maximum refund for the customers listed in the Appendix be based on the amount they were allegedly overcharged, as indicated by the ERA audit files. Although we recognize that these files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. Specifically, we note that the ERA audit was very narrow in scope, that the portion of the Conlo Consent Order dealt with in this proceeding is limited to the same products and time periods as the audit, and that Conlo had relatively few reseller customers. Because of these factors, the information contained in the ERA audit files can be used for guidance in fashioning a refund plan which is likely to correspond closely to the injuries experienced. *See, e.g., Marion.* To calculate the maximum refund amount for each identified customer listed in the Appendix, we propose to multiply the alleged overcharge amounts for each firm by a pro rata factor, determined by dividing the applicable consent order amount ($5,615.95) by the total alleged overcharges ($13,390.34). This yields a pro rata factor of 0.4194. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to Conlo's customers whose names and addresses are set forth in the Appendix.

In the event that money remains after all first-stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Conlo Service, Inc. pursuant to the Consent Order executed on March 20, 1981, will be distributed in accordance with the foregoing Decision.

Appendix A

Conlo Service, Inc., Conklin St. & Locust Ave., East Farmingdale, NY 11735

Consent Order Period: 4/1/79—9/30/80.

Product Covered: Motor gasoline.

Consent Order Amount: $5,615.95.

Pro Rata Factor ($5.615.95 divided by $13,390.34): .4194.

Identified customers	Alleged overcharges	Potential refunds [1]
Frank's Auto, 661 Burnside Ave., Lawrence, NY 11559	$107 12	$45
Jimmy's 105 Putnam Avenue, 105 Putnam Ave., Atlantic Beach, NJ 11509	8,379.67	3,514
Queen Bee, Veteran's Highway and Long Island Expressway, Holbrook, NY 11741	4,401 97	[redacted]
S&J Service, Hempstead Ave., Hempstead, NY 11552	121.85	51
Malverne Park Service, Ocean Ave., Malvern, NY 11565	877.07	368
John & Kenney's 234 Route 109, West Babylon, NY 11704	772.63	324
Mitex, 1286 Route 110, Farmingdale, NY 11735	378 95	159
Super Car Clinic, Conklin St. and Denton Ave., Farmingdale, NY 11735	253 08	106
W&C 3821 Veterans Hwy., Ronkonkoma, NY 11779	117 83	49
Acme Marine, Lawrence Basin, Lawrence, NY 11559	384 30	161
Nat Park Gulf, Austin Blvd., Island Park, NY 11558	361 54	152
B&W Auto, Route 109, Lindenhurst, NY 11757	234 33	98

[1] Rounded to the nearest dollar.

[FR Doc. 85-13849 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

submit additional evidence to establish that it was unable to exercise considerable discretion as to where and when it made the purchase(s) on which its refund claim is based.

[3] Under the refund methodology proposed in Part III of this Proposed Decision, all of Conlo's identified eligible customers would be below this threshold.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $6,193.20 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with E.M. Bailey Distributing Company, Inc. (EMB) of Paducah, Kentucky. The funds will be available to customers that purchased certain refined petroleum products from EMB during the period November 1, 1973 through March 31, 1974.

DATE AND ADDRESS: Applications for refund of a portion of the EMB consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to E.M. Bailey Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0033.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a Consent Order entered into by E.M. Bailey Distributing Company, Inc. (EMB) of Paducah, Kentucky. That Consent Order settled possible pricing violations with respect to the firm's sales of certain refined petroleum

products during the period November 1, 1973 through March 31, 1974. Under the terms of the Consent Order, $6,193.20 has been remitted by EMB and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the EMB consent order funds. The Proposed Decision and Order discussing the distribution of the EMB consent order funds was issued on March 18, 1985. 50 FR 12397 (March 28, 1985).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the Decision indicates, applications for refund from the consent order funds may not be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased refined petroleum products from EMB during the period November 1, 1973 through March 31, 1974 as members of certain customer categories specified in the Decision and Order. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 21, 1985.

Name of Firm: E.M. Bailey Distributing Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0033.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with a Consent Order entered into with E.M. Bailey Distributing Company, Inc. (EMB). The petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

EMB is a "reseller-retailer" of "refined petroleum products" as those terms were defined at 10 CFR 212.31, and is located in Paducah, Kentucky, with subsidiary operations in Mayfield, Murray, and Benton, Kentucky. An ERA audit of EMB revealed possible violations of the Mandatory Petroleum Price regulations during the period November 1, 1973 through March 31, 1974 (the audit period). Subsequently, on June 21, 1979, EMB entered into a Consent Order with the DOE in order to settle its disputes with the DOE and to resolve potential civil liability with respect to certain sales of refined petroleum products.

The EMB Consent Order covers sales of motor gasoline, kerosene, and diesel fuel during the audit period. The Consent Order refers to the ERA's allegations that EMB sold these covered products in violation of the reseller/retailer price rule at 10 CFR 212.93, but states that in consideration of EMB's implementation of the terms and conditions of the Consent Order, EMB will be deemed to have been in compliance with the price rule during the audit period. Under the terms of the Consent Order, EMB agreed to make direct refunds totalling $30,935.53 to customers who were identified as allegedly overcharged parties. In addition, EMB remitted $6,193.20 to the DOE to provide restitution for unidentified EMB customers in the following categories: (i) Retail dealers of Chevron USA-branded regular or supreme motor gasoline, diesel fuel, or kerosene, (ii) industrial end-users who purchased kerosene not sold under the Chevron USA brand, and (iii) retail customers who purchased premium or regular motor gasoline from EMB retail outlets that did not sell under the Chevron USA brand.[1] This Decision and Order concerns the distribution of the $6,193.20, which is currently held in a DOE escrow account, plus accumulated interest (the consent order funds).

On March 18, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by EMB's alleged overcharges. *See E.M. Bailey Distributing Co.*, Case No. HEF-0033 (March 18, 1985) (proposed decision), 50 FR 12397 (March 28, 1985). In the PDO, we described a two-stage process for distribution of the EMB consent order funds. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by EMB's alleged overcharges during the consent order period. We stated that refunds would be available only for customers who were members of the three categories specified above, and that customers who had already received direct refunds pursuant to the EMB Consent Order would be ineligible for further refunds based upon the same transactions. Finally, we stated that any money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the EMB refund process. This Decision sets forth the information that a purchaser of EMB products should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO. We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9, DOE ¶ 82,508 (1981) (Coline). It would therefore be premature for us to address the issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious first-stage claims have been paid.

II. Jurisdiction and Authority To Fashion Refund Procedures

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons or firms who were injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's or firm's injuries. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the

[1] There appear to have been three outlets operated by EMB that did not sell under the Chevron USA brand: Fredonia Speedway, Jack's Speedway, and Park Avenue Speedway. The Park Avenue Speedway outlet's motor gasoline sales are covered by the Consent Order only through January 1, 1974, since EMB ceased operating that outlet after that date.

authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

On April 29, 1985, EMB filed a document with this Office entitled "Petition of E.M. Bailey Distributing Company, Inc. for Modification or Recision of Proposed Decision and Order of the Office of Hearings and Appeals, Case Number HEF–0033" (hereinafter referred to as "Comments").[2] In these Comments, EMB contends that the PDO should not be issued in final form and that the consent order funds should be "retained in the General Fund of the United States Treasury." *Comments* at 2–3.[3] In support of its contentions, EMB asserts that the implementation of a Subpart V proceeding to distribute the consent order funds violates the terms of the EMB Consent Order which preclude administrative proceedings adjudicating EMB's liability under the petroleum regulations, and will harm the firm's business reputation and good will. For the reasons set forth below, we reject the firm's contentions.

As an initial matter, the PDO is consistent with the language and intent of the EMB Consent Order. Contrary to the firm's assertions, the Subpart V process involves no adjudication of liability under the petroleum regulations and we will not concern ourselves with any aspect of that issue in this proceeding. The PDO expressly recognized that as a result of the settlement, EMB was deemed to have been in compliance with the price regulations during the audit period. *See* PDO at 2. Furthermore, the restitutionary procedures proposed in the PDO are clearly in accord with the language of the EMB Consent Order. The Consent Order states that EMB agrees to "[i]ssue a check payable to the U.S. Department of Energy in the amount of $6,193.20 *to effect refunds to non-identified customers in* [certain] *classes of purchaser.*" EMB Consent Order ¶ 7b (emphasis added). Therefore, contrary to EMB's claims, the DOE did not promise not to attempt to distribute refunds to EMB's customers; instead, the Consent Order specifically earmarks funds for the purpose of providing restitution to specified categories of EMB customers. Accordingly, the implementation of special refund procedures for the disbursement of the EMB consent order funds is consistent with the terms of the EMB Consent Order.

EMB further asserts that our statement in the PDO that its customers were injured by the alleged overcharges constitutes an adjudication of EMB's liability under the DOE regulations without providing EMB due process.[4] This assertion is utterly without merit. As we stated above, this special refund proceeding involves no adjudication of liability. Special refund proceedings are equitable in nature and a determination by this Office that a refund application filed pursuant to Subpart V is meritorious does not represent an adjudication of a consent order firm's liability under the DOE regulations.[5] Both the OHA and the Temporary Emergency Court of Appeals have consistently recognized that it is outside the scope of a special refund proceeding for us to determine whether violations of DOE regulations actually occurred. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 at 88,038 (1984); *Kern Oil & Refining Co. v. Tenneco Oil Co.*, Fed. Energy Guidelines, Court Decisions 1981–1984, ¶ 26,469 (Temp. Emer. Ct. App. 1983). Nothing in this Decision or in any future Decision that may be issued with respect to refund applications in the EMB special refund proceeding should in any way be construed as a finding by the DOE that EMB was in violation of the reseller/retailer price rule during the consent order period.

EMB also expresses concern that the implementation of special refund procedures will harm the firm's business reputation and good will. The firm has provided nothing to substantiate its conjecture, and we find it difficult to believe that EMB's reputation will be harmed by a proceeding in which moneys are made available to limited categories of EMB customers pursuant to a settlement agreement that resolves allegations concerning transactions that took place more than eleven years ago. Moreover, we note that the Subpart V regulations were in effect at the time the EMB Consent Order was executed, and the language of the Consent Order clearly indicates that its purpose is to accomplish restitution for the alleged overcharges. We presume that the terms of the Consent Order were arrived at through careful negotiations by both sides. If EMB wished to place specific conditions upon the disposition of the funds currently held in escrow, such as the prohibition of a Subpart V proceeding or the placement of the consent order funds in the U.S. Treasury, the firm could have attempted to insert such terms into the agreement. We cannot now modify the terms of the Consent Order EMB executed with the DOE merely because the firm is dissatisfied with the provisions to which it voluntarily agreed.[6] *See United States v. Armour & Co.*, 402 U.S. 673, 682 (1971); *Office of Enforcement*, 10 DOE ¶ 85,021 at 88,089 (1982). We therefore reject EMB's claims that the implementation of Subpart V procedures in this proceeding would unlawfully adjudicate the firm's liability under the price regulations and damage the firm's reputation and good will.[7]

In summary, we find no basis for declining to implement a Subpart V proceeding in this case or for ordering the placement of the EMB consent order

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[2] The submission states that it is filed pursuant to 10 CFR Part 205, Subpart J, and in response to the request for comments set forth in the PDO. Subpart J sets forth procedures by which a person may file an application for the modification or rescission of a DOE order upon meeting certain criteria. *See* 10 CFR 205.135(b). Since the PDO is not an order of the DOE, but rather an unsigned proposed decision soliciting comments concerning procedures this Office proposes to adopt, Subpart J is not applicable. We shall therefore treat EMB's submission as comments concerning the procedures we have proposed and address them in that light. No other comments concerning first-stage procedures were received.

[3] The $6,193.20 consent order fund was actually placed in a DOE escrow account established with the U.S. Treasury.

[4] EMB also asserts that, in negotiating the terms of the Consent Order, the ERA assured EMB that there would be no future administrative or judicial procedures involving EMB. EMB has presented no evidence of such an agreement. In any event, this special refund proceeding does not involve EMB, but the distribution of the escrowed funds. EMB is not a party, and was informed of the proceeding only as a matter of courtesy.

[5] EMB cites our statement that we do not have many names of potential applicants in this proceeding as evidence that the DOE never proved any regulatory violations. Since we are not asserting that the DOE ever proved any regulatory violations, this contention is irrelevant. In any event, we fail to see any connection between the number of customer names and addresses we possess and the validity of the refund process. As we noted above, the Subpart V regulations specifically provide that they may be used in cases where the DOE has difficulty in identifying those persons who may be eligible for refunds. *See* 10 CFR 205.260. Moreover, as we have explained, EMB made direct refunds through credit memoranda to many of its identifiable customers. The money EMB remitted to the DOE was specifically earmarked for "non-identified customers." Consent Order ¶ 5b.

[6] As EMB itself acknowledges, the OHA has endorsed the principle that the terms of a consent order can be modified only under extraordinary circumstances. *See* Comments at 16–17; *see also Vickers*, 8 DOE at 85,394.

[7] EMB was requested to assist the refund process by helping us to locate those customers who may be eligible for refunds. In its Comments, EMB construes our request for such assistance as an "attempt to require EMB to assist in refunds." Comments at 9. This is not the case. Our statement was not intended to require EMB to provide assistance. We would continue to welcome cooperation from EMB, however, and believe that EMB's customers would appreciate assistance in receiving the refunds to which they are entitled.

funds in the General Fund of the U.S. Treasury.[8]

III. Determination of Injury and Refund Amounts

As we noted above, three groups of EMB customers are eligible for refunds in this proceeding. They are: (i) Retail dealers of Chevron USA-branded regular or supreme motor gasoline, diesel fuel, or kerosene, (ii) industrial end-users who purchased kerosene not sold under the Chevron USA brand, and (iii) retail customers who purchased premium or regular motor gasoline from three EMB retail outlets that did not sell under the Chevron USA brand. *See* footnote 1. These applicants can be divided into the following two categories: (i) Retailers of the products specified in the EMB Consent Order, and (ii) firms, individuals, or organizations that were consumers of the products covered by the EMB Consent Order.[9] In keeping with the intent of the Consent Order, claimants will be required to make a showing that they fall into one of the EMB customer groups specified above as intended recipients of refunds in this proceeding.[10]

In the PDO, we stated that we intended to adopt certain presumptions in order that refunds might be distributed efficiently and equitably. First, we proposed to adopt a presumption that the alleged overcharges were dispersed equally in all of EMB's sales to the customer groups specified above during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we proposed to adopt a presumption of injury with respect to small claims. Since we have received no comments specifically challenging the adoption of either of these presumptions, we shall adopt them in this proceeding.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective, and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are adopting in this case are used to permit claimants to participate in the EMB refund proceeding without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption we are establishing in this proceeding assumes that alleged overcharges were spread equally over all gallons of product sold by EMB to the categories of customer mentioned earlier. However, as we stated in the PDO, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). To determine the per gallon volumetric amount in the instant proceeding, the $6,193.20 consent order amount will be divided by the estimated total volume of refined petroleum products which EMB sold during the consent order period to the appropriate classes of purchaser.[11] Using the information available to us at the present time, the volumetric amount in this proceeding will be $0.00167 per gallon ($6,193.20 divided by 3,707,541 gallons). Refunds will be calculated by multiplying the volumetric amount by the total amount of the consent order product that an applicant purchased from EMB. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

The second presumption we are establishing involves small claims made be retailers. In general, retailers who file refund claims in Subpart V proceedings are required to establish that they absorbed the alleged overcharges. To make this showing, they must demonstrate that, at the time they purchased refined petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. However, in this case, as in prior special refund proceedings, we will adopt a presumption that retailer claimants for small refunds were injured by EMB's alleged overcharges. *See Midwest Industrial Fuels, Inc.*, 12 DOE ¶ 85.131 (1984). As we have stated in many prior refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding

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[8] EMB also argues that the Subpart V mechanism is inefficient in this case because the costs of such a proceeding allegedly exceed the escrow amount. We are not persuaded by this argument. It must be emphasized that the efficiency and cost-effectiveness of the EMB proceeding cannot be viewed in isolation; it must be seen in the context of a program involving hundreds of consent orders involving varying amounts of money. Because many consent orders are similar, we are often able to combine a number of proceedings into one consolidated Decision and Order. *See, e.g., Texas Oil and Gas Corp. et al.*, 12 DOE ¶ 85,069 (1984) (27 firms); *A. Johnson et al.*, 12 DOE ¶ 85,102 (1984) (194 firms). Even when individual factual circumstances make consolidation unfeasible, we are able to use a number of presumptions which simplify and render more efficient our analysis in refund proceedings. *See* 10 CFR 205.282(e). Finally, we note that the costs involved in implementing the EMB Subpart V proceeding are paid from the funds appropriated for this Office, and not from the EMB consent order fund. In deciding whether to implement a Subpart V proceeding, we consider the importance of providing restitution for alleged or adjudicated overcharges independently of the amount of money in any escrow account. We then weigh this restitutionary goal against the ability of the OHA to carry out its functions in an efficient manner. The Subpart V process as a whole has proven to be extremely efficient and cost-effective. In fact, in fiscal year 1984, the amount distributed by this Office in Subpart V proceedings was more than five times OHA's annual budget for all operations, not just Subpart V proceedings.

[9] EMB asserts that the audit pertained only to wholesale customers and did not involve sales to retail customers and that therefore the PDO erroneously proposed that such consumers be eligible for refunds. EMB is incorrect. It is apparent from the ERA files that the audit covered "retail sales" as that term was defined at 10 CFR 212.31. However, even if EMB's characterization of the audit were correct, this argument is without merit since the scope of the audit is irrelevant for purposes of this proceeding. The content of the Consent Order, not the scope of the audit, must be the focus of this proceeding. In many cases, consent orders negotiated between companies and the DOE encompass matters which are somewhat different than, or in addition to, the specific areas covered by the audits. As indicated above, in fashioning refund procedures in this case, we have been guided primarily by the terms of the Consent Order and the requirements of Subpart V. It is clear from the wording of the EMB Consent Order that retail customers are included within its scope. Accordingly, retail customers of EMB products may be eligible for refunds if (i) they purchased motor gasoline from the EMB salaried stations whose sales were covered by the Consent Order, or (ii) they are industrial end-users who purchased EMB kerosene not sold under the Chevron USA brand.

[10] As we noted in the PDO, any customer who received a direct refund under the terms of the EMB Consent Order shall not be eligible for an additional refund based on purchases for which it has already received a refund.

[11] Pursuant to the EMB Consent Order, one of the retail dealers who purchased Chevron USA-branded motor gasoline from EMB, Joe Douglas, was entitled to a direct refund. Mr. Douglas is therefore not entitled to a refund in this proceeding based on those purchases of motor gasoline and the volumes purchased by him have been deducted from EMB's sales volumes for the purpose of computing the volumetric amount.

the impact of alleged overcharges which in the present case took place more than eleven years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to use its limited resources more efficiently.

Under the small claims presumption we are adopting, a retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes unless its volumetric refund exceeds $5,000.[12] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) and cases cited therein.

We shall also adopt our proposed finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled by the EMB Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983), *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We have therefore concluded that end-users of petroleum products covered by the EMB Consent Order need only document their purchase volumes from EMB in order to make a sufficient showing that they were injured by the alleged overcharges.

Since we have received no comments objecting to it, we shall also adopt our proposal to establish a minimum refund amount of $15 for first-stage claims. In prior special refund cases, we have not approved refunds for less than $15 because the cost to the public of issuing such small refunds exceeds the restitutionary benefits that may achieved. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982); *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

After having considered the comments received concerning the first-stage procedures tentatively adopted in our March 18, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased EMB products during the consent order period and fall within one of the three categories referred to above. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the EMB Consent Order Fund, Case No. HEF-0033.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowldge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: E.M. Bailey Distributing Co., Inc., Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the EMB consent order funds, the following subjects should be covered in applications for refund:

A. Each applicant should state whether it was:

i. A retail dealer of Chevron USA-branded regular or supreme motor gasoline, diesel fuel, or kerosene,

ii. An industrial end-user who purchased kerosene not sold under the Chevron USA brand,

iii. A retail customer who purchased premium or regular motor gasoline from an EMB retail outlet that did not sell under the Chevron USA brand, or

iv. Other (specify whether retailer or end-user and explain why the claimant believes it is entitled to a refund).

B. Each applicant should report its volume of EMB product purchases by month for the period of time for which it is claiming that it was injured by the alleged overcharges.

C. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter: If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by E.M. Bailey Distributing Company, Inc. pursuant to the Consent Order executed on June 21, 1979 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-13850 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

[12] As we noted in the PDO, retailers that were spot purchasers from EMB will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its own customers the full amount of the firm's quoted selling price at the time of purchase. *See Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to e followed in refunding $5,179,933.84 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the Economic Regulatory Administration of the Department of Energy involving the six firms named below. The business operations of these firms included sales of natural gas liquids and petroleum products.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF–0179, *et al.*

FOR FURTHER INFORMATION CONTACT: Virginia A. Lipton, Assistant Director, Office of Hearing and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order relates to consent orders entered into by the DOE and the six firms set out in the Appendix below.

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of escrow accounts funded by these firms pursuant to the consent orders. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals that purchased covered products from any of the six named firms during the relevant consent order period set forth in the Appendix. The Proposed Decision and Order provides that in order to receive a portion of the settlement funds provided by five of the six consent order firms, a claimant must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for covered products charged by the relevant consent order firm. This evidence should include specific documentation concerning the date, price and volume of product purchased, indicate whether the increased costs were absorbed by the claimant or passed through to other purchasers, and state the extent of any injury alleged to have been suffered. However, the Proposed Decision indicates that no separate, detailed showing of injury will be required of end users of the relevant product, or of firms which file refund claims in amounts of $5,000 or less from any single consent order fund. According to the Proposed Decision and Order, the amount of the refund will generally be a pro rata share of the fund made available by the consent order firm. The Proposed Order further points out that the consent order entered into by one firm, Tiger Oil Company, settled DOE allegations that the firm failed to supply four of its customers with the amount of motor gasoline to which they were entitled under DOE regulations. The DOE proposed to divide the Tiger settlement fund of $4,000 equally among the four retail motor gasoline outlets that were identified in DOE audit files as not having received appropriate allocations of motor gasoline from Tiger.

Until a final Decision and Order is issued, no claims for refund can be accepted. Applications for Refund therefore should not be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be given when the submission of claims is authorized. The deadline for filing such claims will be no less than 90 days from publication of such notice in the **Federal Register.**

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties should submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register,** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 21, 1985.

Names of Cases: Thompson Oil Company, *et al.*

Date of Filing: October 13, 1983.

Case Numbers: HEF–0179, *et al.*

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds, in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Proceedings in connection with consent orders entered into with the six firms set forth in the exhibits to the Appendix to this Proposed Decision. An audit of the records of those firms revealed possible pricing violations with respect to their sales of natural gas liquids (NGLs), natural gas liquid products (NGLPs), and refined petroleum products during the periods indicated in the exhibits.[1] In order to settle all claims and disputes with the DOE regarding their sales of these products during their respective audit periods, the firms entered into consent orders. The exhibits to the Appendix indicate the amount of money provided to the DOE by each firm. The total amount of funds made available by those firms that is subject to distribution in this proceeding is $5,179,933.84.

I. Jurisdiction and Authority To Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured as a result of alleged regulatory violations resolved by a DOE consent order or remedial order or where the DOE is unable to readily ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

After reviewing the records developed in the instant cases, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the available funds, because there is a

[1] NGLPs include propane, butane, and natural gasoline. A gas plant operator may sell small quantities of other products, such as condensate.

significant degree of difficulty in identifying and locating the persons who were injured by the alleged overcharges. Further, as a result of decontrol of petroleum products, price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past. *See* Exec. Order No. 12287, 46 FR 9909 (January 30, 1981).

II. Proposed Refund Procedures

In so far as possible the $5,180,000 in consent order funds should be distributed to direct and indirect customers of the consent order firms named in the exhibits. As shown in the exhibits to the Appendix, the operations of the six consent order firms involved in this proceeding included refining, reselling and retailing of petroleum products, NGLs and NGLPs. Therefore, it is likely that customers of these firms, and thus the potential refund applicants in this proceeding, will themselves be engaged in a variety of business operations. For example, potential refund applicants might be resellers, retailers, end-users engaged in businesses unrelated to the petroleum industry, or ultimate consumers that purchased petroleum products for personal use. In view of the wide variety of potential refund claimants from which we may expect to receive applications in this proceeding, we are unable to describe at this time the precise showing that each type of applicant will be expected to make. However, some general principles are set forth below.

A. Calculation of Allocable Shares

We must first determine the proper method for allocating among refund applicants the consent order funds provided by each firm. With respect to applications based on claims of alleged over-charges, it may be difficult for claimants to measure precisely the extent of an alleged overcharge. We have decided to generally follow a volumetric approach to determine the allocable share to which an applicant will be entitled. *Office of Special Counsel*, 9 DOE ¶ 82,545 (1982). Such an approach will permit a claimant to be eligible to receive a pro rata share of the individual consent order fund made available by the relevant consent order firm listed in the Appendix. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). In the absence of a showing by a claimant of a disproportionate impact, we propose that the refund pool made available by each consent order firm, other than Tiger Oil Company (Tiger), be allocated as follows. We will multiply the number of gallons of product purchased by a qualified applicant by the volumetric factor. The volumetric factor is calculated by dividing the total amount of the fund provided by the relevant consent order firm by the total sales in gallons of all products covered by the consent order. Successful claimants will also receive a pro rata share of any interest accrued on the consent order funds made available by the relevant consent order firm. This volumetric approach will enable us to arrive at an appropriate allocable share for most individual refund applicants. The volumetric amount for each consent order firm, except Tiger, is indicated in the Appendix.

With respect to Tiger, we note that the consent order pertained to alleged violations concerning the firm's allocation of motor gasoline to four of its base period customers. See Appendix, Exhibit 2. That is, the consent order settled DOE claims that Tiger failed to supply these four customers with the amount of allocated product to which they were entitled under DOE regulations. The fund provided by Tiger in connection with these alleged violations is $4,000.[2] According to the Tiger audit files we examined, these four customers appear to be independently-owned or operated motor gasoline retail outlets. In view of the relatively small amount of consent order funds made available in connection with this alleged violations and since those customers that allegedly did not receive an appropriate allocation of motor gasoline have been identified in ERA audit papers, we propose that the $4,000 in Tiger consent order funds, plus accrued interest, be divided equally among the four named retail outlets. However, if one of these firms could show a likelihood that it experienced a disproportionate impact resulting from the alleged allocation violation, we would adjust the disbursement of the funds accordingly. In accordance with our normal procedures, we will continue to evaluate refund applications based on allocation violations filed with respect to funds made available by the other consent order firms named in the Appendix by referring to standards such as those set forth in *OKC Corp./Town & County Markets, Inc.*, 12 DOE ¶ 85,094 (1984), and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

B. Proof of Injury

We have also tentatively determined that in order to be eligible to receive all or a portion of its allocable share, an applicant claiming alleged overcharges must establish that it was injured as a result of its purchases from the consent order firm. While there are a variety of ways in which a showing of injury may be made, we propose that applicants that are resellers or retailers show not only that they had banks of unrecovered costs, but also provide evidence that they did not pass through to their own customers the additional costs associated with the alleged overcharges. Such applicants might establish that they absorbed the alleged overcharges by showing, for example, that due to market conditions they could not pass through the additional costs. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

We further propose that a detailed showing of injury not be required of applicants that are ultimate consumers. However, with respect to consumer claimants, the opportunity to make this less-detailed showing will be limited to those applicants that purchased product for their own personal use and to those whose business operations were not subject to DOE regulation. It is evident that applicants that purchased product for their own use would have had no opportunity to pass through additional costs associated with alleged overcharges. With respect to applicants that were consumers of covered product in connection with a business which was not subject to DOE regulation, we have indicated on several occasions that it would be beyond the scope of a Subpart V proceeding to analyze the impact of increased costs of petroleum products on the final prices of these types of businesses. *E.g., Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). Therefore, these types of consumer applicants need only demonstrate that they purchased a specific quantity of product that was sold by one or more of the named consent order firms during the relevant time period.

On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and which purchased petroleum products consumed as fuel or as raw material will

[2] The consent order also settled a separate alleged allocation violation, pursuant to which Tiger made a direct refund of $4,200 to the lessee of a fifth retail gasoline outlet.

not be considered as consumers for purposes of the showing of injury. Since we are better able to analyze the impact of increased costs of petroleum products on their operations, these applicants will be expected to establish injury in accordance with the principles we have proposed in this Decision.

Further, a separate, detailed showing of injury may be complicated and burdensome for firms engaged in the resale of petroleum products that purchased relatively small amounts of covered product, and that are therefore claiming smaller refunds. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. Further, with respect to smaller refund claims, we believe that the costs incident to applications setting forth a detailed demonstration of injury may outweigh the benefits which might be obtained by receiving this additional, detailed data. For example, the high cost of retrieving detailed data demonstrating injury might totally deter firms from filing smaller refund claims. Moreover, the small claims procedure permits the Office of Hearings and Appeals to use its own resources more efficiently. *Peoples Energy Corp.*, 12 DOE ¶ 85,129 (1984). Therefore, we propose that any applicant claiming a refund of $5,000 or less from any single consent order firm identified in the exhibits to the Appendix need not make a separate, detailed showing of injury in order to be eligible to receive a refund. Such an applicant will only be required to submit proof of the amount of product purchased during the consent order period.

A number of the audit files developed with respect to the consent order firms involved in this proceeding specifically identified customers of those firms. Where possible, these identified customers will be served with copies of this Proposed Decision and Order.

Refund applications should not be filed until issuance of a final Decision and Order establishing procedures in this matter. Applicants will be asked to provide all relevant information necessary to establish a claim including specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disbursing any of the funds received as a result of the consent orders set out below, we intend to publicize the distribution process in the **Federal Register** and to provide an opportunity for any affected party to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Order in the **Federal Register**. We will consider at a future date the appropriate disposition of any funds remaining after all successful claims of purchasers have been paid.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms set forth in the exhibits to the attached Appendix will be distributed in accordance with the foregoing Decision.

Proposed Decision and Order

Thompson Oil Company, Inc.

Appendix

Case Names

Firm	Case No.
Thompson Oil Company, Inc	HEF-0179
Tiger Oil Company	HEF-0180
United Oil Company	HEF-0186
Navajo Refining Company	HEF-0217
Petrolane-Lomita Gasoline Company; Petrolane Incorporated	HEF-0269
Plateau, Inc	HEF-0272

Index to Exhibits

Exhibit	Firm	Page
1	Thompson Oil Company, Inc	1
2	Tiger Oil Company	3
3	United Oil Company	4
4	Navajo Refining Company	5
5	Petrolane-Lomita Gasoline Company; Petrolane Incorporated	8
6	Plateau, Inc	10

Exhibit 1

Name of Consent Order Firm: Thompson Oil Company, Inc., Purcellville, VA 22132
Type of Operation: Reseller/retailer of motor gasoline
Consent Order Case Numbers:
ERA: N00H00189
OHA: HEF-0179
Consent Order Period: May 1, 1979–April 30, 1980
Consent Order Fund: $47,908.26
Alleged Overcharges: Motor Gasoline: $171,446.89
Gallons Sold: Motor Gasoline Annual Sales Estimate: 6,400,000
Per Gallon Refund Amount: $.007486
Identified Purchasers: On March 7, 1983, the Economic Regulatory Administration of the Department of Energy tentatively determined that the amounts of alleged overcharges that may have been experienced by some individual Thompson purchasers were as follows:

Purchaser name and address	Alleged over-charge amount
Dick Ballanger (cabin store), Warrenton, VA 22185	$2,996.61
Ray Edwards Enter, Warrenton, VA 22185	333.15
J.R. Croson's Shell, Warrenton, VA 22185	2,596.82
A-1 Country Store, Warrenton, VA 22185	582.47
Stokley's Store, Purcellville, VA 22132	565.94
Pickel's Store, Purcellville, VA 22132	538.87
Leesburg Shell, King & Fairfax St., Leesburg, VA 22075	3,764.54
Water's Grocery, Ranson, WV 25438	85.33
Jackson's Grocery, Summit Point, WV 25446	1,079.13
Bridge's Shell, Purcellville, VA 22132	4,195.37
White Shell, Warrenton, VA 22185	8,158.73
Circle Service Station, Ranson, WV 25438	6,570.76
Company-owned stations	16,440.54
Total escrow	47,908.26

Exhibit 2

Name of Consent Order Firm: Tiger Oil Company, Yakima, WA 98901
Type of Operation: Wholesale purchaser-reseller of refined petroleum products
Consent Order Case Numbers:
ERA: 000H00428
OHA: HEF-0180
Consent Order Period: March 1, 1979–December 31, 1979
Consent Order Fund*: $4,000
Type of Alleged Violation: Misallocation of motor gasoline
Identified Purchasers:
1. Hy's Service, 1219 West Lincoln, Yakima, WA 98902
2. Wenas Feed & Supply, Rt. 3, Box 3290, Selah, WA 98942
3. Reesman's Dairy, 11 S. "B" Street, Toppenish, WA 98948
4. Collin's Service, 519 S. 1st, Selah, WA 98942

Comments: *The consent order also settled a separate alleged allocation violation, pursuant to which Tiger made a direct refund of $4,200 to the lessee of a Tiger motor gasoline retail outlet. Consequently, of the $8,200 remitted by the firm, $4,000 is available for disbursement in this proceeding.

Exhibit 3

Name of Consent Order Firm: United Oil Company, Hillside, NJ 07205
Type of Operation: Reseller/retailer of refined petroleum products
Consent Order Case Numbers:
Bankruptcy No.: B-78-01868
OHA: HEF-0186
Consent Order Period: November 1, 1973–March 31, 1974
Consent Order Fund: $28,025.58*

Alleged Overcharges: $182,817
Product Covered by Consent Order Fund: No. 2 Oil
Gallons Sold:
Consent Order Period Estimate: 1,044,680
Annual Sales Estimate: 2,507,232
Per Gallon Refund Amount: $.026827
Identified Purchasers:
1. A. Tarricone, Inc., 1337 Saw Mill River Road, Yonkers, NY 10710
2. Rockaway Fuel Oil Company, 729 East 140th Street, Bronx, NY 10454
Comments: *United Oil Company agreed to make direct refunds of $22,974.42 to 28 end-users of No. 4 oil. The firm further agreed to pay $28,025.58 in connection with its sales of No. 2 oil. It is this amount that is subject to the present refund proceeding.
Name of Consent Order Firm: Navajo Refining Company, Dallas TX 75201
Type of Operation: Refiner of petroleum products
Consent Order Case Numbers:
ERA: 672S00136
OHA: HEF–0217
Consent Order Period: September 1, 1973–January 27, 1981
Consent Order Fund: $600,000
Alleged Overcharges: $965,218
Gallons Sold: 3,083,140,989
Per Gallon Refund Amount: $.000195
Identified Purchasers:
1. Ray Bell Oil Co.
2. Bolton Oil Co.
3. Mr. Gas, Inc.
4. T.E. Reed & Sons
5. Wood Oil & Dist. Co.
6. Malco Products, Inc.
7. Conoco, Inc., P.O. Box 2197, Houston, TX 77001
8. Brewer Oil Co.
9. Foster Oil Co:
10. Navajo Stations
11. Whitfield Tank Lines
12. Pride Refining, Inc., P.O. Box 3237, Abilene, TX 79604
13. Sav-Mor Oil Company
14. Bonus Oil Co.
15. McKee Oil Company
16. New Mexico Highway Dept.
17. Hutchens Oil Co.
18. U.S. Petroleum/Douglas Oil
19. Hecla Mining Co.
20. Circle K Corp.
21. E-Z Serve, Inc., 1100 Louisiana, Suite 3140, Houston, TX 77002, Attn: Robert D. Jones, Esq.
22. Arizona Petroleum
23. Continental Car Wash
24. F.H. Shepherd
25. Mars Oil Co.
26. Texas Independent
27. Star Service & Petroleum
28. Kelly Oil Co. Inc.
29. Truckstops Corp. of America, P.O. Box 11749, Nashville, TN 37211
30. Southwest Service Stations
31. El Paso Natural Gas Co.
32. Hillger Oil Company
33. Pioneer Oil Company
34. Ernest Raymond
35. Ritter Oil Company
36. Shepherd Oil Company
37. Yearwood Distributing
38. Piggybank Stations, Inc.
39. Carnes Oil Company
40. Caribou Four Corners, Inc., P.O. Box 457, Afton, WY 83110
41. Glover Distributing Co.
42. Seven Elven Stores
43. Famariss Oil & Rfg. Co.
44. Roberts Oil Co., Inc. P.O. Box 11397 Albuquerque, NM 87192
45. Zia Oil Company
46. Tesoro Oil Company, 8700 Tesoro Drive, San Antonio, TX 78286
47. E.B. Law & Sons
48. Horn Oil Co.
49. U.S.A. Petroleum Corp.
50. Dockery & Collins
51. Westland Corp.
52. J.W. Jones Construction
53. Atex
54. King
55. MCR, Inc.
56. Ray's Major
57. Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001
58. Autotronics
59. Wallace Oil Company
60. Steere Tank Lines
61. The Permian Corporation, P.O. Box 1086, Houston, TX 77001
62. Jack Walstad
63. Rancho Oil Company
64. Carberry Distributing
65. Texas Energy Company
66. Sav-O-Mat Inc.
67. Vickers Petroleum Corp., P.O. Box 2240, Wichita, KS 67201
68. Hornet Oil Company
69. Giant Industries, Inc.
70. Salt River Project Agricultural Improvement and Power District
71. Phelps Dodge Corporation

Exhibit 5

Name of Consent Order Firm: Petrolane-Lomita Gasoline Company, Petrolane Incorporated, Long Beach, CA 90801
Type of Operation: Gas plant owner and operator processor of natural gas liquids and reseller of NGLs and NGLPs
Consent Order Case Numbers:
ERA: 940V00195; 930T00281
OHA: HEF–0269
Consent Order Period: August 19, 1973–January 27, 1981
Consent Order Fund: $3,000,000
Names and Locations of Plants:
1. Signal Hill Plant, Signal Hill, CA
2. Harbor Plant, Long Beach, CA
Alleged Overcharges: $3,596,083.71
Products Sold: NGLs, propane and butane, natural gasoline (NGLPs)
Gallons Sold:
Consent Order Period Estimate: 6,526,041,697
Annual Sales Estimate: 875,000,000
Per Gallon Refund Amount: $.000460
Identified Purchasers:
1. Texaco, Inc., 2000 Westchester Avenue, White Plains, NY 10650
2. Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221
3. Chevron USA, Inc., P.O. Box 8643, San Francisco, CA 94120
4. City of Long Beach, City Hall, 333 West Ocean Blvd., Long Beach, CA 90802
5. C.F. Consolidated Freightways, P.O. Box 3301, Portland, OR 97208
6. McIntosh Propane, Box 3, McIntosh, SD 57641, Attn: Joe A. Mollman

Exhibit 6

Name of Consent Order Firm: Plateau, Inc., Albuquerque, NM 87125
Type of Operation: Refiner of petroleum products
Consent Order Case Numbers:
ERA: 733S02013
OHA: HEF–0272
Consent Order Period: December 1, 1973–January 29, 1981
Consent Order Fund: $1,500,000
Gallons Sold:
Consent Order Period Estimate: 1,752,741,396
Annual Sales Estimate: 244,853,280
Per Gallon Refund Amount: $.000856
Identified Purchasers:
1. Chevron USA, Inc., 575 Market Street, San Francisco, CA 94120, Attn: Mr. G.F. Franciscovich, Manager, Marketing Planning and Services
2. Energy Cooperative, Inc., c/o Ginsburg, Feldman, Weil & Bress, 1700 Pennsylvania Avenue, NW., Washington, D.C. 20006

[FR Doc. 85–13851 Filed 6–7–85; 8:45 am]
BILLING CODE 6450–01–M

Busch Distributors Inc.; Issuance of Proposed Decision and Order; Week of May 6 through May 10, 1985

During the week of May 6 through May 10, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations,

the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals

Busch distributors, Inc., Pullman, Washington, HEE–0147, reporting requirements

Busch Distributors, Inc. filed an Application for Exception from the provisions of the EIA reporting requirement. The exception request, if granted, would relieve Busch of its obligation to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 8, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85–13853 Filed 6–7–85; 8:45 am]

BILLING CODE 6450–01–M

Canal Refining Co.; Objection to Proposed Remedial Order Filed; Week of May 13 Through May 17, 1985

During the week of May 13 through May 17, 1985, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 3, 1985.

Canal Refining Co., Tulsa, Oklahoma; HRO–0290, Crude oil

On May 16, 1985, Canal Refining Company, 114 E. 5th Street, Tulsa, Oklahoma 74103, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on April 19, 1985. In the PRO the ERA found that during period from July 1980 to January 1981, Canal improperly reported the tier classification of certain of its crude oil receipts to the DOE Entitlements Program, and sold crude oil at prices in excess of its lawful selling price under the regulations.

According to the PRO the violation resulted in $12,546,305.70 of overcharges.

[FR Doc. 85–13854 Filed 6–7–85; 8:45 am]

BILLING CODE 6450–01–M

Cernak Fuel et al.; Issuance of Proposed Decisions and Orders; Week of May 13 Through May 17, 1985

During the week of May 13 through May 17, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the precedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulation provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in their relations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. except federal holidays.

May 31, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Cernak Fuel, EASTHAMPTON, MASSACHUSETTS: HEE–0134; reporting requirements

On March 26, 1985, Cernak Fuel filed an Application for Exception from the EIA reporting requirements. The exception request, if granted, would permit Cernak to file form EIA–782B based upon estimated data. On May 15, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part

Cooper Petroleum, Inc., LAURINBURG, NORTH CAROLINA; HEE–0146; reporting requirements

Cooper Petroleum, Inc., filed an Application for Exception from the EIA reporting requirements. The exception request, if granted, would relieve Cooper of its obligation to file EIA Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 13, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

People's Oil & Gas Co., Pigeon, MI; HEE–0113
Eastridge Oil Co., English, IN; HEE–0117
Topeka Gas & Fuel, Inc., Topeka, KS; HEE–0128
Jade Petroleum Co., Branson, MO; HEE–0131
Echols Oil Co., Inc., Greenville, SC; HEE–0139; reporting requirements

People's Oil & as Co. and four other firms filed Applications for Exception from the EIA reporting requirements. The exception requests, if granted, would relieve the firms of the requirement that they submit form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 14, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception requests be denied.

Russell Daniel Oil Company, Inc., St. Francisville, LOUISIANA; HEE–0137; reporting requirements

Russell Daniel Oil Company, Inc. filed an Application for Exception from the EIA

reporting requirements. The exception request, if granted, would relieve the form of the requirement that it submit Form EIA–821, entitled "Annual Fuel Oil and Kerosene Sales Report," for calendar year 1984. On May 13, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Dwight Sours, ASHLAND, OHIO; HEE–0145; reporting requirements

On April 17, 1985, Dwight Sours filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy (DOE). The exception request, if granted, would relieve Mr. Sours of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 13, 1985, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85–13852 Filed 6–7–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51572; TSH–FRL 2840–4]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–12594 beginning on page 21498 in the issue of Friday, May 24, 1985, make the following correction:

On page 21502, in the first column, under **P 85–975**, the first line of the *Toxicity Data* paragraph, "<8,000 mg/" should read ">8,000 mg/".

BILLING CODE 1505–01–M

[OPP–50638; FRL–2838–7]

Issuance of Experimental Use Permits

Correction

In FR Doc. 85–12183 beginning on page 21118 in the issue of Wednesday, May 22, 1985, make the following correction:

On page 21118, in the third column, in paragraph *352–EUP–124*, in the seventh line, "amino]" should be inserted after "carbonyl]" and before "sulfonyl]".

BILLING CODE 1505–01–M

[ORD–FRL–2848–4]

Privacy Act of 1974; System of Record; Deletion

AGENCY: Environmental Protection Agency.

ACTION: Privacy Act of 1974, notification of deletion of system of records.

SUMMARY: The Environmental Protection Agency is deleting a system of records, Professional Expertise Inventory System (EPA–11), that is no longer in use.

DATE: Effective June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard E. McMahon, Chief, Administrative Management Staff, Office of Research Program Management, ORD, telephone (202) 382–7462.

SUPPLEMENTARY INFORMATION: On January 25, 1978, and pursuant to the provisions of the Privacy Act of 1974, there was published in the **Federal Register** (43 FR 3505) a notice of the system of records, Professional Expertise Inventory System (EPA–11). This notice deletes this system of records.

Dated: June 3, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 85–13856 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–2703–4]

Assessment of Chlorofluorocarbon-113 as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the results of EPA's assessment of chlorofluorocarbon-113 (CFC–113) as a potentially toxic air pollutant. EPA has determined that available information on health effects from CFC–113 emissions into the atmosphere is not sufficient to warrant regulation at this time under the Clean Air Act (CAA). The Agency in conducting an assessment of the effect of trace gases, including CFR–113, on stratospheric ozone. The findings of this study may lead to a reassessment of this decision and could result in the regulation of CFC–113 under a variety of authorities including section 157 of the CAA.

ADDRESSES: Docket No. A–84–42 contains the information considered in issuing this decision. This docket is available for public inspection between 8:00 A.M. and 4:00 P.M., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW, Washington, D.C. 20460. A reasonable charge may be made for copying.

Availability of related information: The Health Assessment Document (HAD) for CFC–113 is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Additional information on the availability of this document can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS). The document number is EPA 600/8–82–002F.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: 1,1,1-Trichloro-1,2,2-trifluoroethane, also known as chlorofluorocarbon-113 (CFC–113), is a nonflammable volatile liquid that is used primarily as a solvent for cleaning numerous different kinds of materials. The CAS number, which is a widely accepted numerical identification code for chemicals, for CFC–113 is 76–113–1. EPA began studying the effects of CFC–113 emissions in 1979 because of a concern that it may contribute to stratospheric ozone depletion.

Only two manufacturers currently produce CFC–113 in the United States. Production for 1979 is estimated at about 59,000 megagrams (Mg). The principal uses are: Degreasing, cleaning and drying applications, especially in the electronics industry; dry cleaning of fabric; as a refrigerant; and as an agent for blowing of plastic foam. Listed in Table 1 are estimates of U.S. emissions for various source categories for 1980.

Information on the sources, emissions, environmental fate, and effects of CFC–113 on man and the environment is presented in a Health Assessment Document (EPA 600/8–82–002F) which was reviewed at a public meeting by EPA's Science Advisory Board (SAB) on December 8, 1982 and then further discussed on June 10, 1983. The SAB is an independent group of nationally recognized scientists formed to provide advice to the Administrator. The findings of the Health Assessment Document (HAD) and (1) there are no known or expected adverse health effects expected at or anywhere near ambient concentrations observed in the environment, and (2) information is inadequate to assess the carcinogenic potential of CFC–113 due to direct exposure.

Neurological effects have been reported in people exposed to CFC–113 at concentrations in the range of 2,500 to 4,500 parts per million (ppm) for 30 minutes to 1 hour. Cardiovascular

effects in dogs and non-human primates have been reported at concentrations of 2,000 ppm when exposures were for 6 hours. Although there is very little ambient monitoring data in the literature, the reported values are far below the concentrations causing the above effects. The maximum monitored value reported in the literature is 38 parts per billion (0.038 ppm). This was a grab sample and represents an instantaneous reading. The second highest value reported was 4.16 ppb (0.00416 ppm), also an instantaneous peak reading. Based on available information, adverse health effects from short-term exposures occur at concentrations roughly 100,000 times higher than what is expected in the ambient air. Thus, EPA has concluded that the risk of adverse effects from releases of CFC–113 into the ambient air is highly unlikely.

The SAB requested minor changes to the document but agreed with the major findings identified above. Transcripts of the SAB meetings are available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Staff (contact Vicki Bailey), A–101 Room 2515, 401 M Street, SW, Washington, D.C. 20460, telephone (202) 382–5036/382–5036 FTS. The final document incorporates the changes requested by the SAB.

TABLE 1.—CFC–113 EMISSIONS ESTIMATES FOR 1980

Source category	Emissions (megagrams/year)
CFC–113 Production	600
Solvent for Cleaning and Degreasing	41,400
Solvent for Dry Cleaning	1,300
Plastic Foams	[illegible]
Refrigerant	1,500
Other Uses	1,200
Total	46,800

Source: Callahan (1982)

The Agency has initiated a major study assessing any risks from modification of the abundance and distribution of ozone in the upper atmosphere that might be associated with various increases in trace gases, including CFC–113. This risk assessment is being undertaken in accordance with section 154 of the CAA as well as other authorities under which stratospheric perturbants might be regulated. It will examine the potential impact of stratospheric change on public health and welfare. Two different types of changes will be examined: decreases in ozone column abundance that could allow more damaging ultra/violet radiation to reach the earth's surface, causing damage to biological organisms and man-made materials; and changes in the abundance of ozone at different latitudes that could alter climate.

The study will include analyses of significant factors that influence risks to public health and welfare. Analyses will be done to estimate future emissions of a number of chlorocarbons, bromine compounds, and other stratospheric pollutants including CFC–113, that could affect ozone concentrations. These studies will analyze the future need for these substances in various industries, both in the U.S. and abroad. Analyses will also examine the potential for technological change that could increase or decrease emissions, and the possible range of control options and substitutes for reducing emissions of the various gases contributing to stratospheric modification.

Using various combinations of these emissions estimates, studies will be done to determine the potential trends in ozone abundance and distribution through time, including the potential for non-linear increases in ozone depletion. In addition, studies will evaluate the degree to which monitoring can provide an early indication of ozone change. Analyses will also be performed to assess the effects of changes in ultraviolet radiation on human health, crops, animals and natural biosystems, on man-made materials such as polymers, and on climate.

These studies will be used to help the Agency to determine whether there is a basis for regulating trace gases that contribute to stratospheric modification under several legislative authorities, including section 157 of the CAA.

EPA included CFC–113 among the five solvents designated for control under section 111 of the CAA in the proposed New Source Performance Standard for organic solvent cleaners (45 FR 39766, June 11, 1980 and 46 FR 22768, April 21, 1981) because of a concern that CFC–113 may contribute to stratospheric ozone depletion. EPA is addressing the ozone depletion issue through the comprehensive analysis described above, and has not completed its review of the need to further regulate CFC–113 to protect against stratospheric ozone depletion.

It should be noted that CFC–113 is considered by EPA to be a hazardous waste under some conditions as defined by 40 CFR Part 261.31. Wastes including CFC–113 must be managed in accordance with requirements adopted by EPA or States in accordance with the Resource Conservation and Recovery Act (see 40 CFR 260–271). EPA has also regulated CFC–113 under the Toxic Substances Control Act via 40 CFR Part 762. This rule applies to CFC–113 by prohibiting the manufacture, processing, and distribution in commerce of fully halogenated chlorofluorocarbons for those aerosol propellant uses determined "non-essential."

Given the absence of information on adverse effects of CFC–113 at or anywhere near ambient concentrations, EPA has determined that it will not regulate CFC–113 on the basis of direct health effects under the CAA at this time. If studies currently underway or future studies indicate a potential for adverse health or environmental effects from ambient air exposure to CFC–113, EPA will consider further regulation of this substance at that time.

Today's decision is based a judgment that available information on health effects at concentrations measured or estimated to occur in the ambient air as a result of normal operations of the sources is not sufficient to warrant regulation. This is consistent with EPA's general approach to regulation of pollutants under the Clean Air Act which has focused on known or probable effects on public health or welfare resulting from emissions that do, or are reasonably expected to, actually occur.

References

Callahan, Michael, Chairman, TSPC Solvents Work Group #2, Memorandum to Elizabeth Anderson and Arnie Edelman, "Draft Exposure Assessment for TSPC Solvents", Draft Materials Balances Tables from Toxic Substances Priority Committee, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C., February 5, 1982.

U.S. Environmental Protection Agency, (1983). Health Assessment Document for 1,1,2-Trichloro-1,2,2-Trifluoroethane (Chlorofluorocarbon CFC–113). Office of Health and Environmental Assessment, Washington, D.C., EPA 600/8–82–002F.

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–13869 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–2703–5]

Assessment of Methyl Chloroform as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the results of EPA's assessment of methyl chloroform (1,1,1-trichloroethane) as a potentially toxic air pollutant. EPA has

determined that information on health effects from methyl chloroform (MC) is not sufficient to warrant regulation under the Clean Air Act (CAA). The Agency will reevaluate this decision, if new studies indicate a potential health risk to the public from exposure to MC in the ambient air. The Agency is conducting an assessment of the effect of trace gases, including MC, on stratospheric ozone. The findings of this study may lead to a reassessment of this decision and could result in the regulation of MC under a variety of authorities including section 157 of the CAA.

ADDRESSES: Docket No. A–84–41 contains the information considered in issuing this decision. This docket is available for public inspection between 8:00 A.M. and 4:00 P.M., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

Availability of related information: The Health Assessment Document (HAD) for MC is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Additional information on the availability of this document is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (telephone: 513–684–7562 commercial/684–7562 FTS). The document number is EPA 600/8–82–00 3F.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTAL INFORMATION: Methyl chloroform (MC) also known as 1,1,1-trichloroethane, is a volatile chlorinated organic solvent used extensively in the U.S. for metal degreasing and cleaning. It is also used as an ingredient in adhesives and coatings, and as a cleaning agent for electronic circuit boards. The CAS number, a widely accepted numerical code for chemicals, is 71–55–6 for MC.

Three manufacturers produce MC in the United States. Production volume in 1982 (the most recent data) is estimated at about 268,000 megagrams (Mg). That production is distributed approximately as follows: 60 percent used for metal degreasing and cleaning; 20 percent used in coatings, adhesives and aerosols; 8 percent used in the cleaning of electronic circuit boards; and 12 percent exported.

Table 1 lists nationwide emissions estimates for various source categories in 1978 (the most recent comprehensive emissions estimates). Production (and thus emissions) is estimated to have decreased about 5% between 1978 and 1982. Of the MC initially released to the environment, about 87 percent is emitted into the ambient air, about 11 percent is disposed of in solid waste and about 2 percent is released directly into waterways. Growth of MC production is not expected to exceed about 3 percent per year over the long-term.

TABLE 1.—METHYL CHLOROFORM EMISSIONS ESTIMATES FOR 1978

Source category	Emissions (milligrams per year)
Production of MC	600–800
Metal cleaning	157,000–168,000
Aerosols	14,000–18,000
Miscellaneous solvent cleaning and use in adhesives	35,000–61,000
Total	206,600–247,800

Source—Callahan (1982), EPA (1982)

EPA began studying the effects of MC emissions in 1979 because of a concern that it may pose a threat to public health from possible direct carcinogenic effects, and that it may contribute to stratospheric ozone depletion. Information on the effects of MC on man and the environment is presented in a Health Assessment Document (HAD) (EPA 600/882–003F) That was made available for public review and comment on April 26, 1982 (47 FR 17860). The HAD was reviewed at public meetings by EPA's Science Advisory Board (SAB) on September 28–29, December 8, 1982, and June 10, 1983. The SAB is an independent group of nationally recognized scientists formed to provide scientific advice to the Administrator. The findings of the HAD are that (1) the likelihood of adverse health effects resulting from chronic exposure to MC at concentrations encountered in the ambient air are extremely low based on presently available data, and (2) on the basis of animal bioassays performed to date and in the absence of epidemiological information, it is not possible to determine its carcinogenic potential for humans due to direct exposure. The SAB requested minor changes to the document at the second review but agree with the major findings. Transcripts of the SAB meetings are available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Statt (contact Vicki Bailey, A–101, Room 2515, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382–5036/382–5036 (FTS)). The final document incorporates changes requested by the SAB.

MC exposure has been associated with a number of adverse effects at concentrations significantly higher than are expected in the ambient air. Acute effects (disturbances of equilibrium from single short-term exposures (1–2 hours) are not likely to occur until 1000 parts per million (ppm) are reached. Slight changes in perception and the obvious presence of an odor were reported among subjects exposed for less than 4 hours to a range of 350–500 ppm. The apparent odor threshold is 100 ppm. Regarding subchronic exposures, the lowest concentration associated with any measurable effects is 250 ppm, where slight histological and biochemical alterations were reported in livers of mice exposed continuously for 24 weeks. Overt signs of toxicity (liver necrosis) were not observed until concentrations reached 1000 ppm.

The HAD reports a maximum ambient concentration of 84 parts per billion (ppb) in an industrialized area. This value is a point estimate during a 24-hour sampling period, and the average concentration during that sampling time is 32 ppb. The maximum ambient concentration estimated, based on limited dispersion modeling, to which anyone would be exposed within 50 kilometers of sources is about 9 ppb (annual average). Based of available information, adverse health effects from short term exposures occur at concentrations roughly 10,000 times higher than what is expected in the ambient air. Thus, EPA has concluded that the risk of adverse health effects from releases of MC into the ambient air is highly unlikely.

The Agency has initiated a major study assessing any risks from modification of the abundance and distribution of ozone in the upper atmosphere that might be associated with various increases in trace gases, including CFC–113. This risk assessment is being undertaken in accordance with section 154 of the CAA as well as other authorities under which stratospheric perturbants might be regulated. It will examine the potential impact of stratospheric change on public health and welfare. Two different types of changes will be examined: decreases in ozone column abundance that could allow more damaging ultra-violent radiation to reach the earth's surface, causing damage to biological organisms and man-made materials; and changes

in the abundance of ozone at different altitudes that could alter climate.

The study will include analyses of significant factors that influence risks to public health and welfare. Analyses will be done to estimate future emissions of a number of chlorocarbons, bromine compounds, and other stratospheric pollutants including CFC-113, that could affect ozone concentrations. These studies will analyze the future need for these substances in various industries, both in the U.S. and abroad. Analyses will also examine the potential for technological change that could increase or decrease emissions, and the possible range of control options and substitutes for reducing emissions of the various gases contributing to stratospheric modification.

Using various combinations of these emissions estimates, analyses will be done to determine the potential trends in ozone abundance and distribution through time, including the potential for non-linear increases in ozone depletion. In addition, studies will evaluate the degree to which monitoring can provide an early indication of ozone change. Analyses will also be performed to assess the effects of changes in ultraviolet radiation on human health, crops, animals and natural biosystems, on man-made materials, such as polymers, and on climate.

These studies will be used to help the Agency to determine whether there is a basis for regulating trace gases that contribute to stratospheric modification under several legislative authorities, including section 157 of the CAA.

EPA included MC among the five solvents designated for control under section 111 of the CAA in the proposed new source performance standard for organic solvent cleaners (45 FR 39766, June 11, 1980 and 46 FR 22768, April 21, 1981) because of a concern that MC may pose a carcinogenic risk to the public, and that it may contribute to stratospheric ozone depletion. Regarding carcinogenic risk, the proposal identified concern based on "* * * positive as well as negative results in short-term mutagenicity and cell transformation tests" (45 FR 39768). Positive mutagenicity studies are considered screening studies for evaluating potential carcinogens since many chemical carcinogens also cause gene mutations. The proposal further indicated that the findings were preliminary and subject to change following EPA's review process for the HAD. The review process is now complete as indicated earlier in the notice.

Initial concern with positive results from mutagenicity tests has been alleviated in part because of mutagenic substances present as stabilizers in the test substance in a number of studies. The HAD concludes that commercially available MC has been shown to be only weakly mutagenic in *Salmonella* (a genus of bacteria) and toxic to genetic material of mouse liver cells. The overall conclusion of the HAD regarding carcinogenic potential is that on the basis of animal bioassays performed to date and in the absence of epidemiological information, it is not possible to determine its carcinogenic potential in humans due to direct exposure.

EPA is aware of a bioassay for carcinogenicity recently completed by the National Toxicology Program (NTP) whereby rats and mice were administered MC by gavage (oral intubation). The study is currently undergoing audit because of possible data discrepancies. After the audit is complete and the study has been peer reviewed by NTP's Board of Scientific Counselors, EPA will evaluate the results. If further evaluation suggests that the public may be at increased risk of cancer from exposure to MC in the ambient air, EPA will then reconsider this decision not to regulate MC under the CAA.

It should be noted that MC is considered by EPA to be a hazardous waste under some conditions as defined by 40 CFR Parts 261.31 and 261.32. Wastes including MC must be managed in accordance with requirements adopted by EPA or States in accordance with the Resource Conservation and Recovery Act (see 40 CFR 260–271).

In conclusion, given the absence of information on adverse effects of MC at or anywhere near concentrations found or anticipated in the ambient air, EPA has determined that it will not regulate MC on the basis of direct health effects under the CAA at this time. If studies underway or future studies indicate a potential for adverse health or environmental effects from emissions of MC into the ambient air, EPA will consider further regulation of this substance at that time.

Today's decision is based on a judgment that available information on health effects at concentrations measured or estimated to occur in the ambient air as a result of normal operations of the sources is not sufficient to warrant regulation. This is consistent with EPA's general approach to regulation of pollutants under the Clean Air Act which has focused on known or probable effects on public health or welfare resulting from emissions that do, or are reasonably expected to, actually occur.

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–13871 Filed 6–7–85; 8:45 am]

BILLING CODE 4560-50-M

[A-10-FRL-2848-8]

Availability of Draft Report; State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft report.

SUMMARY: By this Notice, EPA announces the availability of the draft report on the technology for the control of lead emissions at the Bunker Limited Partnership combined lead and zinc smelter in Kellogg, Idaho. The public is invited to submit written comments to the record which will be held open for a period of thirty days.

DATE: Comments must be postmarked on or before July 10, 1985.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

ADDRESSES: Copies of the draft report may be examined during normal business hours at:

Air Programs Branch, (10A–84–6), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

Kellogg Library, 16 West Market Avenue, Kellogg, Idaho

EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho

Central Docket Section, 10A–84–6, Environmental Protection Agency, 401 M Street, S.W., West Tower Lobby, Gallery L, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442–4253, FTS 399–4253.

SUPPLEMENTARY INFORMATION: On February 7, 1985 (50 FR 5237), EPA promulgated interim and final emission limits for the control of lead emissions at the Bunker Limited Partnership combined lead and zinc smelter in Kellogg, Idaho. However, in conjunction with that action, EPA reopened the comment period to obtain further information on the availability of the control technology to achieve the final emission limits and to determine, therefore, whether or not an extension

of the attainment date for the national ambient air quality standard for lead is justified under the provisions of Section 110(e) of the Clean Air Act. EPA hired a consulting firm to evaluate the best technology currently available for the control of lead emissions from lead and zinc smelters. EPA has received the draft report on the available control technology and is hereby announcing its availability for review and comment. Interested parties are invited to comment on the draft report. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by July 10, 1985 will be considered in preparing the final report.

Dated: May 31, 1985.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 85-13861 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

[ADL-FRL-2784-4]

Intent To List Chromium or Hexavalent Chromium as a Hazardous Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice describes the results of EPA's preliminary assessment of chromium as a potentially toxic air pollutant. Based on the health and risk assessment described in today's notice, EPA now intends to add either chromium or hexavalent chromium to the section 112(b)(1)(A) list. The EPA will decide whether to add either chromium or hexavalent chromium to the list only after studying possible techniques that might be used to control emissions of chromium compounds and after further assessing the public health risks. The EPA will add chromium or hexavalent chromium to the list if emission standards are warranted.

Through this notice, the Agency is also soliciting information on the potential carcinogenicity of chromium including both the trivalent and hexavalent oxidation states, the potential respiratory non-carcinogenic effects of chromium exposure, the potential for atmospheric transformations between the hexavalent form and the trivalent form, and the sources and emissions of total chromium and hexavalent chromium. This notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of chromium.

ADDRESSES: Submit comments (duplicate copies are preferred) by August 9, 1985 to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-84-43, 401 M Street SW, Washington, DC 20460.

The Central Section is located at the offices of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street SW, Washington, DC. The docket may be inspected between 8:00 and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of related information: The final Health Assessment Document (HAD) for Chromium (EPA-600/8-83-014F, August 1984) is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. When ordering, specify the following number: PB 85-115905. The cost is $28.00.

FOR FURTHER INFORMATION CONTACT: Robert Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (telephone: 919.541-5645 commercial/629-5645 FTS).

SUPPLEMENTARY INFORMATION:

Introduction

Chromium compounds are prevalent in the environment in two oxidation states: hexavalent (Cr^{+6}), which is usually man-made and generally considered more toxic, and trivalent (Cr^{+3}), which is a natural constituent of the earth's crust and is a key component of the glucose tolerance factor, a necessary complex for metabolizing glucose in the body. The major use areas for chromium compounds are: (1) Metallurgical, which accounts for about 57 percent of the chromite consumed, as in making stainless and other alloys; (2) chemical, which accounts for about 27 percent of the chromite ore consumed, as in making pigments, chromic acid, and chemicals for corrosion control; and (3) refractory, which accounts for about 16 percent of the chromite ore consumed, as in linings for high temperature furnaces and kilns.

Because of potential adverse health effects associated with chromium exposure, EPA initiated a review to determine the risks to public health from exposure to chromium in the ambient air. The results of this review would be used to determine if chromium should be regulated under the CAA. As an early step in this review, a comprehensive HAD was prepared that summarizes the scientific literature on health effects of chromium exposure. It was review at a public meeting of the Environmental Health Committee of the Science Advisory Board (SAB) on November 10, 1983. The SAB is an independent group of recognized scientists and technical experts that provide scientific advice to the Administrator. The SAB concurred with the major findings of the HAD, including the finding that there is sufficient evidence from the combined human and animal data to consider at least some (Cr^{+6}) compounds to be carcinogenic in people. A transcript of the SAB meeting is available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Staff (contact Janet Workcuff), A-101, Room 2515, 401 M Street, SW., Washington, DC 20460 (telephone: 202-382-5036 commercial/382-5036 FTS).

Sources and Emissions

Since chromium is found in the earth's crust, it is emitted during processes that utilize ores and during combustion of fossil fuels. It is also emitted during processes that manufacture or use chromium chemicals, during refractory production and during waste incineration. Information is not adquate to specify the form (Cr^{+6} or Cr^{+3}) being emitted from most of these sources or the relative quantities of each. It is likely that most source categories emit a mixture of the two forms, and that there is variability in the relative quantities of the two forms emitted within source categories and in some cases at various points within a facility. Listed in Table 1 are identification of source categories and preliminary estimates of annual emissions. Further study is underway to identify additional source categories and to improve these emissions estimates.

There is great uncertainty in many of these estimates. For example, there is much variability in the chromium content of coal being burned; thus emissions are highly variable. For Table 1, one value was assumed to represent the chromium content of all coal being burned. The EPA has initiated a study to refine many of these estimates. It should be noted that a number of the identified source categories are already reducing emissions of chromium through equipment installed to control total suspended particulate matter. Two of the source categories, chrome plating and cooling towers, are generally not well controlled because they emit chromium in the form of an aerosol mist rather than as solid particulate matter.

TABLE 1.—SUMMARY OF CHROMIUM EMISSIONS

Source category	Estimated number of sources	Estimated emissions (megagrams per year)
Chrome Plating	9,750	50
Refractory Production	35	▪
Chemicals Production	3	450-900
Steel Production	112	2,870
Municipal Incineration	129	25
Sewage Sludge Incineration	141	30
Ferrochrome Production	1	43
Cement Production	163	15
Ore Refining	1	▪
Coal and Oil Combustion:		
Power Plants	1,100	560
Industrial Boilers	165,000	▪
Commercial and Residential Heating	16,800,000	323
Cooling Towers	Many	300-530

Sources—Brooks (1983), Radian (1984a, 1984b), Blanchard (1984)

Risks to Public Health

The HAD describes several adverse health effects associated with chromium exposure. The effects described below are most often associated with Cr^{+6} compounds; however, in many cases people were exposed to mixtures of both Cr^{+6} and Cr^{+3}. The HAD notes that adverse effects are more often associated with Cr^{+6} than Cr^{+3} because Cr^{+6} compounds tend to cross biological membranes fairly easily and thus are usually absorbed more readily than Cr^{+3} compounds. Many Cr^{+6} compounds are strong oxidizers, which explains much of their irritating and toxic properties.

A number of adverse respiratory effects, in addition to lung cancer, have been associated with exposure to chromium by inhalation in the work place. These include perforation of the nasal septum, irritation of the mucosa of the respiratory tract, pneumoconiosis, bronchitis, and asthma-like symptoms. Irritations of the respiratory tract and perforation of the nasal septum are believed to occur after several months' exposure at 100–200 $\mu g/m^3$ when the chromium compound is chromic acid. There is some limited evidence which suggests that these effects may occur at lower concentrations. It is, however, not possible to determine exposure thresholds for these and other respiratory effects due to the lack of adequate data in the literature.

The HAD notes that both Cr^{+6} and Cr^{+3} have been reported to result in birth defects such as cleft palate, hydrocephaly and other skeletal defects in laboratory animals. These findings must, however, be weighed against the fact that such effects were observed when the dose was administered by intravenous and intraperitoneal injection and generally when acute maternal toxicity resulted. These factors introduce considerable uncertainty in determining the relevance to lower environmental exposures.

Studies in laboratory animals also reported testicular degeneration when Cr^{+6} and Cr^{+3} were administered intraperitoneally. The effect was more pronounced with Cr^{+3}. As with teratogenicity studies, the high dose, combined with the unnatural route of exposure, places great uncertainty on the significance of the results for environmental exposures.

Because of the seriousness of the effect and the strength of health evidence, lung cancer via the inhalation route of exposure is the effect of most concern to EPA at this time. A number of epidemiological studies of chromate production workers have demonstrated an association of exposure to chromium compounds with lung cancer. Whether the association implicates Cr^{+6} alone, or Cr^{+3} as well, is not definitively addressed by these studies. The reason that these studies are so convincing is because of the very high risk of lung cancer observed, the consistency of the results by different investigators in different countries, a clear dose-response relationship, and the specificity of the tumor site (i.e., the lung). In addition to chromate production workers, several studies with chrome pigment workers also suggested an association with chromium exposure and lung cancer. It should be noted that although chromium exposure by inhalation has been associated with an increased incidence of lung cancer, there is no current evidence that associates exposure via ingestion with an increased risk of cancer.

Cr^{+6} is believed to be the form responsible for the carcinogenic response because of its generally positive results in a number of animal bioassays and mutagenicity tests. Cr^{+3} compounds have not been as extensively studied and the studies that have been done are inadequate to judge the carcinogenic potential. However, those tests that have been conducted are more often than not negative. The HAD concluded that using the International Agency for Research on Cancer classification scheme, the level of carcinogenic evidence available for the combined animal and human data would take place Cr^{+6} compounds into Group 1, meaning there is sufficient evidence fo the carcinogenicity of these compounds (EPA 1984, IARC 1980). The data are inadequate to classify Cr^{+3} compounds as to their carcionogenicity.

The upper-bound lifetime risk of cancer due to breathing air containing 1 $\mu g/m^3$ of Cr^{+6} chromium compounds is estimated to be 1.2×10^{-2}. This means that if a person were continuously exposed to 1 $\mu g/m^3$ of Cr^{+6} compounds over his or her lifetime (assumed to be 70 years), the chance of getting lung cancer is not likely to exceed 1.2 in 100. If all the chromium emitted into the air from the source categories listed in Table 1 is assumed to be as potent a carcinogen as Cr^{+6}, the number of lung cancer cases associated with chromium exposure is estimated at approximately 285 per year. Based on this assumption, the upper-bound lifetime risk to the most exposed population is estimated at 1.6 chances in 10. In addition to some other conservative assumptions, these estimates are believed to be high because of the assumption that all chromium emitted is Cr^{+6}. The EPA, as stated earlier in the notice, has initiated an extensive study to better understand the amount of Cr^{+6} and the total chromium being emitted from the identified source categories.

Public Exposure

Estimating public exposure to Cr^{+6} is complicated by the fact that EPA is not aware of any reliable ambient air monitoring method currently available that allows distinguishing between the two forms of chromium. Although there are methods available to quantify exposures in the work place, the detection limit is too high for concentrations expected in the ambient air. Dispersion modeling is another method used for estimating exposure; however, there is virtually no information available on the relative quantities of Cr^{+6} and Cr^{+3} being emitted from the various source categories. Therefore, all estimates are based on exposures to total chromium.

Monitoring of the air in some non-source dominated rural and urban areas of the country has shown annual average chromium concentrations to be in the range of 0.0052 to 0.1568 $\mu g/m^3$. The maximum concentration reported during any one 24-hour measurement was 0.6839 $\mu g/m^3$ (EPA 1984). The EPA has also performed dispersion modeling to estimate the maximum concentration likely for people living near large sources. The maximum annual average concentration predicted was 13.5 $\mu g/m^3$.

Call for Information

The EPA seeks information on the following questions:

1. Are there adverse health effects other than cancer associated with exposure to any chromium compounds via inhalation at concentrations below 100 $\mu g/m^3$?

2. Are there adverse health effects associated with exposure to Cr^{+3}?

3. Does Cr^{+3} transform in the atmosphere or in the environment to Cr^{+6} and vice versa?

4. Is there an available ambient air monitoring technique specific for Cr^{+6}?

5. Are there sources other than those listed in Table 1 that are likely to emit chromium into the air?

6. What are the locations, emission rates and control equipment in place on chromium sources?

7. What is the relative quantity of Cr^{+6} and Cr^{+3} being emitted from chromium sources?

8. Would there be serious enforcement or implementation problems (such as measurement of Cr^{+6}) associated with establishing emission standards for $^{+6}$ only?

People with information to submit should either provide this information by [60 days from this date] or notify the Agency by [60 days from this date] that they will be providing this information. Information should be submitted in duplicate to the Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–84–43, 401 M Street, S.W., Washington, D.C. 20460.

Section 112(b)(1)(A) of the Clean Air Act provides that the Administrator shall maintain "* * * a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emissioin standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques [e.g., 49 FR 23522; 23498; 23558 (June 6, 1984) (emission standards for benzene)].

Based on the health and risk assessment described in today's notice, EPA now intends to add either chromium or Cr^{+6} to section 112(b)(1)(A) list. The EPA will decide whether to add either chromium or Cr^{+6} to the list only after studying possible techniques that might be used to control emissions of chromium compounds and after further assessing the public health risks. The EPA will add chromium of Cr^{+6} to the list if emission standards are warranted. The EPA will publish this decision in the **Federal Register.**

Miscellaneous: Chromium and chromium compounds are currently listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 101(14). The statutory Reportable Quantity (RQ) for chromium metal is listed as one (1) pound. Various specific chromium compounds have been assigned a RQ of 1,000 pounds by rulemaking under the authority of section 311 (b)(4) of the Clean Water Act (chromic acetate, chromic acid, chromic acid and calcium salt, chromic sulfate and chromous chloride) [48 FR 23578 and 50 FR 13456–13506]. With regard to chromium metal, no reporting of massive forms of this substance is required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

Pursuant to CERCLA section 103 (a), any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally-permitted release or normal application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the RQ determined in any 24-hour period, immediately notify the National Response Center (NRC); (800–424–8802; in the Washington, DC metropolitan area at, 202–426–2675).

Since chromium and various chromium compounds are already listed specifically by CERCLA authority as hazardous substances which require reporting of such releases equaling or exceeding an RQ to all media, this notice poses no additional burden on the regulated community, the government or the public. However, all parties are given notice here that such a requirement for reporting exists under the authority of CERCLA. For additional information on CERCLA hazardous substance reporting, see 48 FR, 23552, and 50 FR 13456–13522.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

References

Blanchard, Karen L. (1984). Risk Assessment for Chromium Emissions from Fuel Combustion Sources. Memorandum to Files, EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. November 19, 1984

Blanchard, Karen L. (1985). Chromium Exposure and Risk Estimates for Selected Categories of Stationary Sources. Memorandum to Files. EPA. Office of Air Quality Planning and Standards. Research Triangle Park, NC 27711. January 23, 1985

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Environmental Protection Agency [EPA] (1984). Health Assessment Document for Chromium. EPA–600/8–83–014F. Environmental Criteria and Assessment Office, Research Triangle Park, NC 27711. August 1984

International Agency for Research on Cancer (1980). IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans—Some Metals and Metallic Compounds. Vol. 23. World Health Organization, pp. 205–323

Radian Corp. (1984a). Addendum to "Estimates of Population Exposure to Ambient Chromium Emissions," October 1983. Final Report. Prepared for Karen L. Blanchard, Pollutant Assessment Branch, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

Radian Corp. (1984). Methodology for Estimating Exposure to Arsenic, Beryllium, Cadmium, Chromium, and Nickel from Coal and Oil Combustion, Technical Note. EPA Contract No. 68–02–3515, Work Assignment No. 31, Sept. 1984

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–13880 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–2667–8]

Pilot Program on Acrylonitrile

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of pilot program.

SUMMARY: The Environmental Protection Agency has completed a preliminary analysis of acrylonitrile (AN) as a toxic air pollutant. This notice announces that results of that analysis and the Agency's Pilot Program to negotiate with appropriate State and local air pollution control agencies to further analyze certain AN emitting sources to determine if additional controls are warranted.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (Telephone: (919) 541–5645).

SUPPLEMENTARY INFORMATION: Acrylonitrile (AN) is a relatively volatile organic liquid that is used principally as a raw material feedstock in the synthesis of several major synthetic fibers and plastics. Concern about the

safety of AN first surfaced in 1976 during the testing required by the Food and Drug Administration to permit the use of AN in food packaging material. In later 1977, EPA initiated an effort to analyze the carcinogenic potential of acrylonitrile and to evaluate potential health risks to the general population from exposure to concentrations of acrylonitrile in the ambient air. The result of this effort was reviewed by the Subcommittee on Airborne Carcinogens of the Science Advisory Board (SAB) on September 5, 1980. The SAB is an independent group of nationally recognized non-government scientists which provides independent advice and critical review of scientific issues before the Agency.

In response to the comments of the SAB and in order to have the best scientific basis available for regulatory decisions, the assessment of the carcinogenic potential of acrylonitrile was expanded to provide a multi-media assessment consisting of scientific data regarding all health consequences of acrylonitrile, as well as relevant preliminary information on sources of emissions, environmental transport and fate, ambient concentrations, potential public exposures, and human absorption and metabolism. The expanded assessment resulted in a report entitled "Health Assessment Document for Acrylonitrile." This report was made available for public review and was reviewed at public meetings held by the Environmental Health Committee of the SAB on August 3, 1982, December 9, 1982, and June 10, 1983. The Health Assessment Document for Acrylonitrile, October 1983, EPA–600/8–82–007F, is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650. The NTIS publication number and cost are: PB84–149152, $26.50.

The report categorized the animal and human evidence of carcinogenicity according to criteria established by the International Agency for Research on Cancer (IARC), finding that there is "sufficient" evidence that acrylonitrile is carcinogenic in animals, and between "limited" and "sufficient" evidence that acrylonitrile is carcinogenic in humans. Combining the animal and human evidence, acrylonitrile was characterized, using IARC criteria, as "probably carcinogenic in humans." The SAB agreed with the report's findings regarding the carcinogenicity of acrylonitrile.

This characterization is based on: (1) The findings of three positive drinking water rat bioassays and one positive rat gastric intubation study; (2) the statistically significant positive findings of respiratory cancer in four epidemiologic studies; (3) the positive mutagenic evidence in bacteria and sister chromatid exchange tests; (4) the *in vitro* evidence of interactions of acrylonitrile and/or its metabolites with DNA; and (5) acrylonitrile's structural similarity to vinyl chloride, a known animal and human carcinogen. The Health Assessment Document also reports that non-fatal intoxication (e.g., headache, nausea, irritability) by AN has been reported in workers exposed to concentrations as low as 16 ppm for periods of approximately thirty minutes. Other effects have been reported in animals but at concentrations higher than those reported to cause non-fatal intoxication. These data, coupled with the fact that acrylonitrile is emitted to the atmosphere from some plants and that a number of people residing near those sources are exposed to relatively high concentrations of AN, indicate the need to consider controlling acrylonitrile emissions to the ambient air from those plants which could subject individuals to health risks.

Preliminary analyses have been made of the major industries that manufacture or use acrylonitrile. Emission information was provided by these industries and EPA estimated emission levels for each source category associated with current levels of control.

Using the lineraized relative risk model for human data and the linear multistage model for animal data, three unit risk estimates for air have been calculated: one based on a human occupational study, and two based on rat cancer bioassays. Using the risk number from the human data as the most plausible estimate of unit risk (the largest of the three estimates), and current AN emission rates supplied by industry, the lifetime cancer risk to a hypothetical individual exposed to the single highest estimated annual average ambient concentration of AN is estimated to be 3.8 chances in a thousand (3.8×10^{-3}). Three plants pose individual risks greater than 10^{-3}, ten in the 10^{-3} to 10^{-4} range and the remainder less than one chance in ten thousand (1.0×10^{-4}). In addition, less than one cancer incidence every two years is estimated for the industry as a whole at current AN emission levels. The preceeding risk estimates are subject to the same uncertainties accociated with all quantitative risk assessments for toxic air pollutants.

The EPA has also performed a preliminary analysis using a short-term dispersion model to examine the potential for AN emissions to cause ambient concentrations approaching levels associated with non-carcinogenic health effects. For the most part, this analysis employed conservative, worst-case parameters: for example, worst case meteorology was used, and the plant selected for analysis was that facility which had produced the highest estimated annual average concentration to which any individual was exposed, using the Human Exposure Model. The highest 1-hour concentration (12 ppm) estimated using this conservative procedure was approximately equal to that associated with such health effects as headache, nausea, and irritability in workers exposed to AN. Thus, it appears that furher analysis of the potenial for non-cancer health effects to occur in the general population around AN-emitting facilities may be needed. The EPA will encourage the State and local agencies performing evaluations under this program to examine this potential closely, and will provide technical assistance for analyses.

Because the estimated national aggregate cancer risks are relatively low (i.e., one cancer incidence every two years) and because AN emissions appear to be localized and limited, a national regulatory program does not appear to be the best approach to protecting public health. In the Administrator's judgment, the limited and localized nature of AN is more efficiently addressed through State and local controls, with EPA providing technical and scientific assistance to the affected State and local air pollution control agencies. This approach allows tailoring of individual regulations to the degree of any public health problem, builds upon the unique strengths of the Federal and the State and local governments, will likely result in faster regulation of AN sources, and will result in a conservation of EPA resources. Applying this approach on a pilot basis allows EPA to test an approach for handling pollutants which relies upon State/local agencies to evaluate and, if appropriate, regulate AN-emitting sources. In addition, this approach provides for controls more related to plant-specific risks, possibly optimizing costs and benefits more than the traditional approach used by EPA. In many cases, this program will simply build upon regulatory requirements already in place as a result of control designed to attain and maintain the national ambient air quality standard for ozone. Discussions with affected State/local agencies have indicated that they are willing to become more involved with EPA in the control of toxic

air pollutants and welcome support and guidance by EPA on the regulation of AN. Based on these preliminary discussions, several States have already initiated a review of their programs for AN.

The EPA's pilot program involves negotiating with each of the 14 States or local air pollution control agencies with jurisdiction over the area containing plants in any of the four major AN source categories. These four source categories are:

—Acrylonitrile monomer
—Styrene-acrylonitrile and acrylonitrile butadiene-styrene resins
—Acrylic and modacrylic fibers
—Nitrile rubbers and elastomers

The discussions will address the responsibilities of both the State or local agency and EPA to ensure that each AN source in the four major source categories is analyzed to determine if additional emission controls are necessary. It is anticipated that the discussions will be documented in a Memorandum of Understanding (MOU) or letter of intent with each State or local agency involved.

A number of elements will, at a minimum, be required in all MOUs. These elements include such items as the legal authority for any control that may be necessary, a schedule for the evaluation, specification of the kind of technical evaluation that will be performed, as well as the mechanism that will be employed for informing the public of the results of the evaluation. The details of the MOU regarding the authority to control AN sources, the procedures (including public participation) to be followed in analyzing sources, the amount and kind of technical support required from EPA, and the time required for States to investigate and regulate (if appropriate) the AN sources will all be established after discussion with each affected agency.

Under this pilot program the ultimate decision of whether to require additional control as well as the basis for requiring such control will be the responsibility of the State/local air agency and would not be subject to approval/disapproval by EPA, although EPA will negotiate a date certain by which the State/local agency must inform EPA of the results of their evaluation and ensure public disclosure of the results. If a State chooses not to accept the responsibility of evaluating AN sources or if the affected agency fails to fulfill their commitments, EPA will complete the evaluation and determine the need for regulation under the Clean Air Act or other appropriate Federal authority (e.g., Toxic Substances Control Act). Where control is determined to be necessary, appropriate regulations will be developed.

In summary, by negotiating with States to evaluate AN sources through a process involving public participation to determine the need for regulation, and by reserving the use of appropriate Federal authorities in the event the State/local agencies do not accept this responsibility, EPA is implementing a pilot program to protect the public from health risks associated with ambient AN emissions.

Upon completion of the negotiations with the State/local agencies, EPA will summarize and announce in the **Federal Register** the results of the negotiations. Likewise, upon completion of the evaluations, EPA will summarize and publish the findings and future actions resulting from the evaluation of the AN-emitting sources.

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-13865 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 207-009955-002.

Title: Star Shipping A/S Joint Service, Chartering and Management Agreement.

Parties:

A/S Billabong
Westfal-Larsen & Co. A/S
Fred. Olsen & Co.
Star Shipping A/S

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format. The parties have requested a shortened review period.

Agreement No. 224-010764.

Title: Alameda Terminal Agreement.

Parties:

Encinal Terminals (Encinal)
California Stevedore and Ballast Co. (CS&B)

Synopsis: Encinal will lease to CS&B premises situated at Berth 5, in the City of Alameda, California. The premises shall be used and operated by CS&B as a shipping terminal in connection with water-borne commerce. CS&B will use the premises for the docking and mooring of vessels, for the loading, unloading, receipt, handling, storage, transporting and delivery of cargo and for uses incidental thereto. CS&B will perform all terminal services at its sole expense and shall retain all revenue therefrom. The lease shall commence on the first day following the determination of the effective date of the agreement by the Commission. It shall run uninterrupted for five years, and, unless terminated, shall continue thereafter on a year to year basis.

Dated: June 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13887 Filed 6-7-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on March 26, 1985, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $6 billion to $9 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on May 21, 1985.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697, November 27, 1971.

By order of the Federal Open Market Committee, June 4, 1985.

Normand R.V. Bernard,

Assistant Secretary.

[FR Doc. 85-13963 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of March 26, 1985

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on March 26, 1985.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that real GNP is currently expanding at a slower pace than in the fourth quarter, with an increased share of domestic spending apparently being met out of imports. Total retail sales rose considerably for January and February combined and housing starts, though declining in February, were above their fourth-quarter pace. However, information on business capital spending suggests less rapid expansion in early 1985. Business inventory investment continues at a moderate rate. Industrial production declined on balance in January and February and, with employment falling in the manufacturing sector, total nonfarm payroll employment increased at a somewhat reduced pace. The civilian unemployment rate, at 7.3 percent in February, was little changed from its level at year-end. Broad measures of prices and the index of average hourly earnings appear to be continuing to rise at rates close to those recorded in 1984.

Since the Committee's meeting in mid-February, the foreign exchange value of the dollar has fluctuated widely in often volatile market conditions. Most recently, the trade-weighted value of the dollar against major foreign currencies has dropped sharply, more than offsetting its rise earlier in the inter-meeting interval. Monetary authorities sold dollars on a large scale during the period, especially in late February and early March. The merchandise trade deficit increased sharply in January from relatively low December and fourth-quarter rates. The current account deficit for the full year 1984 was more than double that recorded in 1983.

Growth in M1 accelerated in February, following relatively rapid expansion in other recent months, but information available through mid-March indicates a considerable slowing. Growth in the broader aggregates moderated in February and appears to be slowing further in March. In January and February expansion in total domestic nonfinancial debt remained relatively rapid, though somewhat below the pace of previous months. Most interest rates have risen somewhat since the February meeting of the Committee.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at its meeting in February to establish ranges for monetary growth of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9½ percent for M3 for the period from the fourth quarter of 1984 to the fourth quarter of 1985. The associated range for total domestic nonfinancial debt was set at 9 to 12 percent for the year 1985. The Committee agreed that growth in the monetary aggregates in the upper part of their ranges for 1985 may be appropriate, depending on developments with respect to velocity and provided that inflationary pressures remain subdued.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the implementation of policy for the immediate future, taking account of the progress against inflation, uncertainties in the business outlook, and the exchange value of the dollar, the Committee seeks to maintain the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M1, M2, and M3 at annual rates of around 6, 7, and 8 percent respectively during the period from March to June. Somewhat lesser reserve restraint might be acceptable in the event of substantially slower growth of the monetary aggregates while somewhat greater restraint might be acceptable in the event of substantially higher growth. In either case such a change would be considered in the context of appraisals of the strength of the business expansion, progress against inflation, and conditions in domestic credit and foreign exchange markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, June 4, 1985.

Normand R. V. Bernard,

Assistant Secretary.

[FR Doc. 85-13964 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

[1] The Record of policy actions of the Committee for the meeting of March 26, 1985, is filed as part of the original document. Copies are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

First Franklin Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104, Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Franklin Corporation*, Toccoa, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Franklin Bank & Trust, Toccoa, Georgia, a *de novo* bank (formerly First Franklin Savings and Loan Association).

First Franklin Corporation has also applied to acquire First Franklin Financial Corporation, Toccoa, Georgia, thereby indirectly engaging in the activities of making consumer loans, and selling credit life and accident and health insurance in connection with loans written by Applicant's subsidaries. The insurance will be sold by cbmpany's wholly owned subsidiary, Francisco Life Insurance Company, Toccoa, Georgia.

Board of Governors of the Federal Reserve System, June 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13961 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

United Counties Bancorporation et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 28, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Counties Bancorporation*, Cranford, New Jersey; to acquire 22.0 percent of the voting shares of Franklin Bancorp, Somerset, New Jersey, thereby indirectly acquiring Franklin State Bank, Somerset, New Jersey and Hillsborough National Bank, Belle Meade, New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *Linden State Bancorp*, Linden, Indiana; to become a bank holding company by acquiring 80 pecent or more of the voting shares of Linden State Bank, Linden, Indiana.

2. *Second National Corporation*, Richmond, Indiana; to acuire 60.12 percent of the voting shares of Bentomville State Bank, Bentonville, Indiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to acquire through the merger of its wholly owned subsidiary and proposed one-bank holding company, ONB Merger Corps., Evansville, Indiana and Merchants Republic Corp., Terre Haute, Indiana, 100 percent of the voting shares of The Merchants National Bank of Terre Haute, Terre Haute, Indiana.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *USA Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Anna Bancshares, Inc., Anna, Texas, thereby indirectly acquiring 98.6 percent of the voting shares of The First National Bank of Anna, Anna, Texas; 100 percent of the voting shares of Howe Financial Corporation, Howe, Texas, thereby indirectly acquiring Howe State Bank, Howe, Texas; and 100 percent of the voting shares of Plano East National Bank, Plano, Texas.

Board of Governors of the Federal Reserve System, June 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13962 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise a system of records being maintained by GSA. The system of records, Payroll Information Processing System, GSA/PPFM-9, is the revision of Human Resources Files, GSA/PPFM-4. The Human Resources File system of records is being divided into two systems, Personnel Information Resources System (which was published in the **Federal Register** on January 2, 1985) and Payroll Information Processing System. This notice supersedes the related portions of PPFM-4. No additional information or routine uses are created. As no new information is being collected by GSA, the proposed revision is not considered as being within the purview of the provisions of 5 U.S.C. 552a(o) which would require submission of an altered report to Congress and the Office of Management and Budget. PPFM-4 is cancelled when this notice is published.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble information supporting the day to day operating needs associated with payroll oriented program areas.

The revised system of records is as follows:

GSA/PPFM-9

SYSTEM NAME:

Payroll Information Processing System.

SYSTEM LOCATION:

This system of records is located in the General Services Administration Finance Division in Kansas City, MO, commissions, committees, and small agencies serviced by GSA, and administrative offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current and former employees of GSA and of commissions, committees, and small agencies serviced by GSA including applicants for employment and persons in intern, youth employment, and work study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files in this system are payroll records. They consists of information accumulated by operating officials as well as personnel and finance officials in administering their program areas in matters for or about employees. Also, the system has data necessary to process personnel actions, perform detailed accounting distributions, automatically provide for such tasks as mailing checks and bonds, and prepare and mail tax returns and reports. The system has a large number of records which may include:

a. Employee identification and status data such as name, Social Security number, date of birth, sex, work schedule, and type of appointment.

b. Employee date data such as service computation data for leave.

c. Position and pay data such as pay plan, occupational series, grade, step, salary, organization location, and accounting distribution.

d. Award and suggestion amount data.

e. Employment data such as position description.

f. Payroll data such as time; attendence; leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

g. Tables of data for editing, reporting, and processing personnel and pay action which include Nature of Action Codes, Organization Table, and Salary Table.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III is the authority for the system. Specific authority for use of Social Security numbers is in Executive Order 9397, 26 CFR 31.6011(b)2, and 26 CFR 31.6109–1.

PURPOSES:

To assemble in one system information supporting the day to day operating needs associated with payroll oriented program areas. This system is a comprehensive computerized information system which is patently designed to meet payroll statistic needs of all types and sizes of Government organizations and achieve multiple benefits from each data element introduced into the system. To accomplish the above, the system provides a number of outputs. For the payroll office, outputs include a comprehensive payroll; detailed accounting distribution of costs; leave data summary reports; an employee's statement of earnings, deductions, and leave every payday; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; W–2 wage and tax statements; and reports of withholding and contributions. For the Office of Personnel, outputs include data for reports of Federal civilian employment. The system also outputs data to various agency staff and administrative offices to use for management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigation, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to an expert, a consultant, or contractor of the agency in performing a Federal duty.

d. to disclose information to a Federal, State, or local agency keeping civil, criminal, enforcement, or other information to get information relevant in making a decision on hiring or retaining an employee; issuing a security clearance; letting, a contract; or issuing a license, grant or other benefit.

e. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

f. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

g. To disclose information to the Office of Mangement and Budget in connection with reviewing private relief legislation at any state of the coordination and clearance process.

h. To disclose a copy of the Department of the Treasury Form W–2, Wage and Tax Statement to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record is provided by a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520.

i. To disclose copies of executed city tax withholding certificates to a requesting city official from the Comptroller, General Services Administration (B), Washington, DC 20405.

j. To disclose information to the Office of Personnel for reports of Federal civilian employment.

k. To disclose information to various agency administrative offices who may restructure the data for their management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder, card files and cabinets; microfilm records in reels and cabinets; microfiche in cabinets; magnetic tapes and cards in cabinets and storage libraries; and computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed by name and/or social security number at each location.

SAFEGUARDS:

Records stored in lockable containers or secured rooms. Computerized records protected by password system.

RETENTION AND DISPOSAL:

Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, System Staff, Office of Regional Comptroller, General Services Administration (6BCS), 1500 East Bannister Road, Kansas City, MO 64131.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Individuals must furnish their full name, Social Security number, address, telephone number; and approximate dates and place of employment. For indentification requirements, refer to the agency regulations outlined in 41 CFR Part 105–64.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR Part 105–64 of the Code of Federal Regulation.

RECORD SOURCE CATEGORIES:

Individuals, other employees, supervisors, other agencies management officials, non-Federal sources like private firms, and data from the systems of records GSA/HRO–37, OPM/GOVT–1, and EEOC/GOVT–1.

Dated: May 31, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85–13903 Filed 6–7–85; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research on Methods for Studying Mental Health Service Systems

AGENCY: The National Insitute of Mental Health, HHS.

ACTION: Issuance of an announcement for Research on Methods for Studying Mental Health Service Systems, MH–86–06.

SUMMARY: The National Institute of Mental Health announces the availability of an announcement concerning Research on Methods for Studying Mental Health Service Systems. This announcement is to encourage research directed toward the improvement of methods by which to conceptualize, identify, measure, characterize, analyze, and describe features of mental health service systems at local community, State, or national (including comparisons with other nations) levels. Support may be requested for up to 2 years.

Receipt date of applications: Applications will be accepted on the receipt dates of November 1, 1985; March 1, 1986; and July 1, 1986. Thereafter, they will be accepted according to the usual Public Health Service schedule and procedures.

For further information or a copy of the announcement, contact:

James W. Thompson, M.D., M.P.H., Chief, Service System and Economics Research Branch

Charles Windle, Ph.D., Chief, Service System Research Program, or

Armand Checker, M.A., Research Statistician, Service System Research Program

National Institute of Mental Health, Parklawn Building, Room 18C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4233

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–13909 Filed 6–7–85; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department of the Interior clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department of the Interior clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7340.

Title: Natural Resources Damage Scoping Survey

Abstract: Respondents provide information on state natural resource trustee concerns for injuries to natural resources from hazardous substances or oil discharge, categorized as to natural resource type, injury type, hazardous waste site, activity or spill incident, and type of contaminant. This information will aid the Department in the development of regulations under section 301(c) of the Comprehensive, Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 (CERCLA) (commonly known as "Superfund").

Department Form Number: Not applicable—Information requested via letter

Frequency: One time collection

Description of Respondents: State officials responsible for state natural resources and state "Superfund" management.

Annual Responses: 50, one time collection

Annual Burden Hours: 150

Department alternate clearance officer: John Strylowski, 202–343–6191

Mary L. Walker,

Deputy Solicitor.

May 31, 1985.

[FR Doc. 85–13908 Filed 6–7–85; 8:45 am]

BILLING CODE 4310–17–M

Bureau of Land Management

[W–82736]

Coal Lease Offering by Sealed Bid; Carbon County, WY

U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Notice is hereby give that certain coal resources in the lands hereinafter described, located in Carbon County, Wyoming will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency by-pass coal lease application filed by the Medicine Bow Coal Company in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). The sale will be held at 2:00 p.m., July 8, 1985, in the third floor conference room at the above address.

Processing of the Medicine Bow emergency lease application and the related amendment to the Hanna Basin Management Framework Plan have been completed. This included an environmental assessment (EA) of the proposed coal development and plan amendment. The results of these activities were a finding of no significant environmental impacts from the proposed coal development, the amended planning decision that the Federal coal lands involved are acceptable for further leasing consideration and the decision to offer the Federal coal resources for lease. The emergency lease/plan amendment EA and Record of Decision, including mitigation requirements, are on file in the Wyoming State Office.

This tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the tract. The minimum bid is $100 per acre. No bid less than $100 per acre will be considered. The minimum bid is not intended to represent fair market value.

The fair market value will be determined by the Authorized Officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., July 8, 1985, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Bids received after that time will not be considered.

Coal Offered

The coal resource to be offered consists of all the recoverable coal in the following describe lands located in Carbon County, Wyoming:

T. 23 N., R. 83 W., 6th P. M., Wyoming
Sec. 30: Lots 1, 2, E½NW¼.
T. 24 N., R. 83 W., 6th P. M.
Sec. 28: W½NW¼, S½;
Sec. 29: N½NE¼, NE¼NW¼, NE¼SE¼.
T. 23 N., R. 84 W., 6th P. M.
Sec. 1: Lot 2, SW¼NE¼, SW¼NW¼, SW¼;
Sec. 2: SE¼SE¼;
Sec. 11: NW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼;
Sec. 13: SW¼SW¼;
Sec. 14: E½, N½NW¼, SE¼NW¼;
Sec. 24: W½NE¼NE¼, NW¼NE¼, S½NE¼, E½W½, SE¼;
Sec. 25: E½NE¼, N½NW¼;
Sec. 26: E½, E½SW¼;
Sec. 35: E½NW¼.
T. 24 N., R. 84 W., 6th P. M.
Sec. 36: E½SW¼, W½SE¼.

The 2,973.86-acre tract contains an estimated 12.78 million tons of recoverable coal with the following estimated coal quality: BTU—10,468/lb; Sulfur—.479 percent; Ash—8.10 percent; Moisture—12.19 percent. The coal classifies as subbituminous.

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8.0 percent of the value of coal produced by underground methods.

Deferred Bonus

Payment of the bonus bid for this lease shall be on a deferred basis. One-fifth of the bonus will be payable on the day of the sale. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease.

Notice of Availability

Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Wyoming State Office. Case file documents are also available at that office for public inspection. Coal resource information pertaining to this tract is also available for public imspection in the Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Hillary A. Oden,
State Director.

[FR Doc. 85-13906 Filed 6-7-85; 8:45 am]
BILLING CODE 4310-22-M

[M 59615]

Garfield County, MT; Order and Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public land in Garfield County, Montana (M 59615).

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on July 22, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including mining; but not from exchange, by the Notice of Realty Action published in the **Federal Register** on February 23, 1984 (49 FR 6801). The segregation terminated on issuance of the patent.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Pluhar Ranch Co.:

Principal Meridian, Montana

T. 16 N., R. 40 E.,
Sec. 1, lot 1; and
Sec. 2, SW¼SE¼.
T. 16 N., R. 41 E.,
Sec. 6, lots 1, 2 and 3.
Aggregating 160.69 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Garfield County:

Principal Meridian, Montana

T. 16 N., R. 40 E.,
Sec. 2, lots 1, 2, 3, 4, 6.
Containing 156.52 acres.

3. The values of Federal public land and the non-Federal land in the exchange were both appraised at $10,350 each.

4. At 9 a.m. on July 22, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,
Deputy State Director, Division of Lands & Renewable Resources.
May 30, 1985.

[FR Doc. 85-13818 Filed 6-7-85; 8:45 am]
BILLING CODE 4310-DN

[OR-20267]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a land withdrawal for the Vale Reclamation Project continue for an additional 20 years. The lands would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208. (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of December 14, 1926, be continued in part for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located in Northern Malheur County, Oregon, and aggregate 2,707.63 acres.

The purpose of the withdrawal is to protect the Bully Creek Reservoir, Beulah Reservoir, and Vale Main Canal of the Vale Reclamation Project. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection

with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 31, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-13819 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-33-M

[W-94690]

Wyoming; Invitation for Coal Exploration License; Neil Butte Co.

Neil Butte Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 44 N., R. 70 W., 6th Prin. Mer.,
Sec. 2: Lots 3, 4, S½NW¼, N½SW¼, SE¼SW¼;
Sec. 3: Lots 1, 2, 3, 4, S½N½, E½SW¼, SW¼SW¼, SE¼;
Sec. 5: Lots 3, 4, S½NW¼, SW¼;
Sec. 6: Lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8: W½, S½SE¼;
Sec. 9: SE¼SE¼;
Sec. 10: N½, N½SW¼, SW¼SW¼;
Sec. 11: S½NW¼;
Sec. 15: W½W½;
Sec. 17: NE¼, E½SE¼;
Sec. 21: N½N½;
Sec. 22: NW¼NW¼.
T. 45 N., R. 70 W., 6th Prin. Mer.,
Sec. 29: S½S½;
Sec. 30: SE¼SE¼;
Sec. 31: E½SE¼.

Containing 3,514.54 acres.

All of the coal in the above lands consists of unleased Federal Coal within the Powder River Basin known recoverable coal resource area. The purpose of the exploration program is to support Neil Butte Company's interest for Federal coal in all or parts of sections 2, 3, 10 and 11 in T. 44 N., R. 70 W., and verification drilling for reserves in the state lease.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-94690): Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001; The Bureau of Land Management, 951 North Poplar, Casper, Wyoming 82001; and the U.S. Forest Service, Thunder Basin National Grassland, 809 South Ninth Street, Douglas, Wyoming 82633.

This notice of invitation will be published in this newspaper once each week for two consecutive weeks beginning the week of June 10, 1985, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Neil Butte Company no later than 30 days after publication of this invitation in the **Federal Register**.

The written notice should be sent to the following addresses: Neil Butte Company, c/o Mike Elmore, President, P.O. Box 1629, Gillette, Wyoming 82716, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

Hillary A. Oden,

State Director.

[FR Doc. 85-13905 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Reimbursement for Certain Geological and Geophysical Data and Information

Abstract: Section 26 of the Outer Continental Shelf Lands Act requires that certain costs be reimbursed to the parties submitting required geologic and geophysical (G&G) data and information requested by the Minerals Management Service (MMS). Under the law, lessees and permittees can be reimbursed for the costs of reproducing any G&G data required to be submitted. In order for the Government to determine the propriety and level of reimbursement, lessees and permittees are required to send a request for reimbursement to the Director, MMS, where it will be reviewed and evaluated. Reimbursement will be made according to appropriate criteria.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees and permittees

Annual Responses: 4,000

Annual Burden Hours: 8,000

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-13902 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF INTERIOR

National Park Service

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold its regularly scheduled public meeting on Tuesday, June 11, 1985 at 7:30 p.m. at Diamond X Ranch, 26412 Mulholland Drive, Calabasas, California.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California, 91364.

The minutes of the meeting will be available by July 31, 1985.

Dated: May 17, 1985

Daniel R. Kuehn,

Superintendent.

[FR Doc. 85-13412 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River, Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 28, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159, (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: May 27, 1985.

Don H. Castleberry,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85-13958 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-70-M

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending June 1985

The following list of proposed contractual actions supplements the tabulation of pending contractual actions published April 25, 1985, 50 FR 16361, for:

Lower Missouri Region, Bureau of Reclamation, P.O. Box 25247, (Building 20, Denver Federal Center) Denver, CO 80225, telephone (303) 234-3327.

19. New Grattan Ditch Company, Glendo Unit, P-SMBP, Wyoming; Irrigation contract for 250 acre-feet of water.

Upper Colorado Region, Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524-5435.

17. Weber Basin Conservancy District, Weber Basin Project, Utah; Emergency Loan for embankment repairs of the AV Watkins Dam; Estimated cost is $2,800,000.

Dated: June 5, 1985.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 85-13877 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30615]

Columbus & Greenville Railway Co.—Exemption—Issuance of Note

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance of a promissory note in the amount of $143,748.84.

DATES: This exemption is effective on June 7, 1985. Petitions to reopen must be filed by June 27, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30615 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Robert J. Corber, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate.

Decided: May 31, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-13875 Filed 6-7-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 Sub-135]

Seaboard System Railroad, Inc.—Abandonment—in Shelby County, TN; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 12.9 mile line of railroad between the Shell Plant (milepost 210.7) and Memphis, TN (milepost 223.6) in Shelby County, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-13873 Filed 6-7-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-40]

Ronald Dvorkin, M.D., Bronx, NY; Hearing

Notice is hereby given that on August 24, 1984, the Drug Enforcement Administration, Department of Justice, issued to Ronald Dvorkin, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AD3277399, and deny his application, executed on June 18, 1984, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, July 2, 1985, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: June 3, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-13892 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-49]

Jack H. Pincus, M.D., Monroeville, PA; Hearing

Notice is hereby given that on December 3, 1984, the Drug Enforcement Administration, Department of Justice, issued to Jack H. Pincus, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on July 30, 1984, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, June 26, 1985, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: June 3, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-13893 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-45]

Harold Lloyd Wright, M.D.; Revocation of Registration and Denial of Application

On October 1, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Harold Lloyd Wright, M.D., 179-12 Anderson Road, Jamaica, New York 11434, and 87-69 171st Street, Jamaica Estates, New York 11432, the Respondent in this Matter. The Order to Show Cause sought to revoke DEA Certificate of Regisration AW5441287 and to deny an application executed by Respondent on March 25, 1984, for registration with DEA as a practitioner. The statutory predicates for the Order were two felony convictions of Respondent. On June 16, 1982, he was convicted in the Superior Court of New York, County of Nassau of one count of falsifying business records in the first degree. On October 24, 1983, Respondent was convicted in Arizona Superior Court, Pima County of one count of obtaining or attempting to obtain a narcotic drug by fraud or deceit.

Respondent, proceeding *pro se*, requested a hearing on the issues raised by the Order to Show Cause. The Matter was placed on the docket of Administative Law Judge Francis L. Young, who scheduled a hearing before him in Washington, D.C. on May 8, 1985. By telegrams dated May 6, 1985 and May 7, 1985, Respondent explicitly waived his opportunity for a hearing and requested that the decision in this Matter be made on the basis of the information in the possession of the Government and an affidavit of Respondent. On May 7, 1985, Judge Young terminated the proceedings before him in this Matter. Respondent submitted an affidavit which the Acting Administrator has considered in making his decision. The Acting Administrator finds that Respondent has waived his opportunity for a hearing, 21 CFR 1301.54 (e) and enters this final order on the record as it appears. 21 CfR 1301.57.

The Acting Administrator finds that in November, 1981, Respondent approached several physicians in the Tucson, Arizona area with a falsified set of medical records from the University of Texas System Cancer Center. These records described one "Calvin Castle" who met Respondent's physical description. Calvin Castle was described in the reports as suffering from inoperable cancer of the pancreas which had spread to the liver. He was described as being medicated with Dilaudid 4mg. as necessary for pain and having been given one month's supply of the drug. Before he was arrested, Respondent had obtained 3200 Dilaudid 4mg. tablets from unsuspecting physicians in this manner. At the time of his arrest, Respondent had in his possession a list he wrote of Tucson area physicians. Their addresses and telephone numbers. The Acting Administrator finds that Respondent was not suffering form pancreatic cancer in November, 1981. The Acting Administrator further finds that had Respondent continued his sham in the Tuscon area, the Dilaudid he diverted would have found its way into the illegitimate market. The Acting Administrator is not convinced that Respondent was engaged in this operation solely to obtain narcotics to feed his habit, as Respondent had stated in this prehearing statement. The quantities of Dilaudid are too large to support that concluson

The Acting Administrator further finds that Respondent first came to the attention of DEA in New York in 1977 when an investigation of a pharmacy in Hollis, Borough of Queens, revealed that the pharmacy was ordering approximately 1,000 Dilaudid 4 mg. a month. The pharmacist told DEA investigators that Respondent wrote all of the Dilaudid 4 mg. prescriptions and Respondent would often appear at the pharmacy to pick up the drugs. When DEA investigators contacted a "patent in whose name a number of the prescriptions were written, she said that she had not seen Respondent in ten months and that she had not received any medication from the pharmacy.

The Acting Administrator also finds that on May 7, 1981, Respondent attempted to pass a prescription for 120 Dilaudid 4mg. at a pharmacy in Englewood, New Jersey. The prescription was for an "Edna Smith" and was written by a physician whose prescribing habits led to a substantial civil penalty against the physician. Respondent was arrested but the prescription was later suppressed and the criminal charge against him was dismissed. Investigation revealed that Respondent passed prescriptions written by this other physician at pharmacies in Fair Lawn, Glen Rock and Jersey City, New Jersey. Respondent used at least two names coupled with non-existent addresses in passing these prescriptions. Respondent told DEA investigators in August, 1982 that the other physician would write out the body of the prescription and sign it. Respondent filled in the name.

The Acting Administrator finds that prescriptions written by Respondent began appearing in pharmacies in Nassau County, New York in April, 1982. One prescription for 60 Doriden was in the name of "George Pappas", 15 Maple, Levittown, New York. There is no Maple Street, Avenue, Place, Lane, Boulevard, Road or Parkway in Levittown, New York. Further investigation revealed a number of prescriptions written by Respondent for Doriden and Empirin #4 at other Nassau County pharmacies. All of the prescriptions bore fictitious addresses. One address made up by Respondent would have been located in Long Island Sound. Doriden and a codeine-containing compound such as Empirin #4 comprise a heavily abused combination known as "Fours and Dors". This combination was beginning to be seen in Nassau County in the spring of 1982, just when Respondent was passing these prescriptions. Respondent told investigators that he was taking the Doriden and Empirin #4 to combat his alcoholism: The Empirin #4 was for pain and the Doriden helped him sleep. The Acting Administrator completely rejects this explanation. It strains belief that a physician would medicate himself with such a heavily abused combination as "Fours and Dors" when competent, professional treatment was avaiable.

The Acting Administrator has considered the affidavit submitted by Dr. Wright. The affidavit states, *inter alia*, that Respondent has been sober for four years. He points out that he is fully licensed by the State of New York. He also says, "Respondant (sic) continues in community service in a medically under-privilage (sic) of the State of New York."

At several points, Respondent also appears to contest the use of the prescriptions suppressed by the New Jersey court in these proceedings. The holding of the Supreme Court in *Ins* v. *Lopez-Mendoza*, 104 S. Ct. 3479 (1984), in which the Court permitted introduction of otherwise excludable evidence in a deportation hearing, permits the Acting Administrator to consider the prescriptions suppressed by the New Jersery court. The Supreme Court held in *United States* v. *Janis*, 428 U.S. 433, 96 S.Ct. 3021 (1976) that in deciding whether to extend the exclusionary rule to a proceeding the tribunal is to weigh the likely social benefits of excluding the evidence against its likely cost. The Acting Administrator concludes that a DEA administrative registration proceeding is much more like a deportation hearing than a criminal trial. Like a deportation hearing, the purpose of a DEA administrative proceeding is not to punish past transgressions. The purpose of a DEA proceeding is to determine whether a particular practitioner is capable of being responsibly registered with DEA to handle controlled substances.

The Acting Administrator is not convinced that Respondent is capable of meeting the responsibilities of DEA registration. While Respondent's sobriety is praiseworthy in light of his problems with drug and alcohol abuse, Respondent has not met his burden of demonstrating his ability to handle controlled substances in his medical practice.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a) and redelegated by 28 CFR Section 0.100, the Acting Administrator hereby revokes Certificate of Registration AW5441287, and denies the appplication executed on March 25, 1984, for reason that Harold Lloyd Wright, M.D. was convicted of felonies relating to controlled substances. The revocation and denial will be effective July 10, 1985.

Dated: June 4, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85–13890 Filed 6–7–85; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 8, 1985, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (mependine) (9230)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 10, 1985.

Dated: June 4, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–13891 Filed 6–7–85; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 25, 1985, Stepan Chemical Company Natural Products, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 10, 1985.

Dated: June 4, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–13894 Filed 6–7–85; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Meeting) to the National Council on the Arts on June 27–28, 1985, from 9:00 a.m.–5:30 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 28, from 9:00 a.m.–4:00 p.m. Topics for discussion will be the Five-Year Planning Document, the National Theater Project, Theater for Young Audiences Musical Theater, Categories Consolidation and FY 1986 Budget.

The remaining sessions of this meeting on June 27, from 9:00 a.m.–5:30 p.m. and on June 28, from 4:00 a.m.–5:30 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: June 3, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–13899 Filed 6–7–85; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (New Genres Section) to the National Council on the Arts will be held on June 24–28, 1985, from 9:00 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: June 3, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–13900 Filed 6–7–85; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center); Exemption

I

Iowa Electric Light and Power Company, et al. (the licensee) is the holder of Facility Operating License No. DPR–49 which authorizes the operation of the Duane Arnold Energy Center at steady state reactor power levels not in excess of 1658 megawatts thermal. The facility consists of a boiling water reactor located at the licensee's site near Palo in Linn County, Iowa. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.48 of 10 CFR Part 50 requires a licensee to complete, if necessary, the alternative shutdown capability at a nuclear power plant according to the schedule detailed in the rule. The schedule in the rule calls for installation to be complete before startup after the earliest of the following events commencing 180 days or more after NRC approval of the design of the alternative shutdown capability:

(1) The first refueling outage;

(2) A planned outage lasting 60 days or more; or

(3) An unplanned outage lasting 120 days or more.

By letter dated January 3, 1983, the NRC staff transmitted a Safety Evaluation to the licensee which concluded that alternative shutdown capability met the requirements of Sections III.G.3. of Appendix R to 10 CFR 50 in the areas of the control room complex, control buliding heating, ventilating and air conditioning (HVAC) room, and the HVAC heat exchanger and chiller area at the Duane Arnold Energy Center (DAEC) and approved the liecensee's conceptual design of the Alternate Shutdown Capability (ASC).

Currently, DAEC is in a refueling outage to make the modifications for the ASC approved in our January 3, 1983 Safety Evaluation. As a result of the evaluation of the fire protection modifications against the requirements of 10 CFR part 50 Appendix R, the licensee found that fire could cause control power fuses to blow at the motor control center prior to transferring control to the Alternate Sutdown System. This would require the fuses to be replaced prior to operating the associated shutdown equipment. However, replacement of fuses during a hot shutdown maintenance is prohibited by 10 CFR Part 50, Appendix R. Therefore, by a letter dated April 5, 1985, the licensee stated that, currently, the DAEC ASC provides automatic backup fusing for two transfer functions: Main Steam Isolation Valve Control and Safety/Relief Valve Manual Control. This design allows the DAEC to achieve hot shutdown for a short period of time without replacing any control power fuses which may be blown as a result of a Control Room fire. However, a source of makeup water to the Reactor Pressure Vessel is required within a few minutes to maintain hot shutdown and the current design does not provide automatic backup fuses for the water makeup systems.

At this time, ASC procedures are being written by the licensee to direct operators to replace control power fuses if an item of ASC equipment fails to function after control is transferred away from the control room. A complete supply of replacement fuses will be stored at the main ASC panel for ready access. However, the licensee intends to modify the ACS system so that the DAEC can achieve and maintain hot shutdown without replacing control power fuses. This effort will involve adding automatic backup fuses of five transfer circuits: the Division II Core

Spray pump and four motor-operated valves.

Because this problem was recently identified, the licensee has determined that it will not be possible to incorporate these modifications into the ASC during the current refueling outage which is scheduled to end in late May 1985. The design effort is considerable and requires the same engineers who are now dedicated to the installation of the present Alternate Shutdown Capability. The liensee has estimated that the procurement time for the transfer switches is approximately one year and that these modifications can be made most effectively during the Cycle 9 refueling outage.

The licensee has, therefore, requested an exemption from Section III.G.1 of Appendix R to allow the DAEC to operate for one fuel cycle (Cycle 8) with the currently designed ASC which may require the replacement of certain control power fuses to maintain hot shutdown as described above. The licensee states that it is highly unlikely that a control room fire would cause the failure of all fuses required to maintain hot shutdown. The licensee has committed to write procedures to replace blown fuses, if required, and to assure that replacement fuses will be immediately available to operators.

Based on the above, the staff has concluded that the licensee has provided acceptable interim post-fire shutdown capability to support the requested schedular exemption. Therefore, the staff has concluded that schedular exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of April 5, 1985, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completion of alternative shutdown capability at the Duane Arnold Energy Center until the startup of Cycle 9 (estimated March 1987).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 20862).

Dated at Bethesda, Maryland, this 30th day of May, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-13969 Filed 6-7-85; 8:45 am]

BILLING CODE 7590-01-M

Issuance and Availability Draft NUREG-1032, "Evaluation of Station Blackout Accidents at Nuclear Power Plants"

The U.S. Nuclear Regulatory Commission (NRC) staff has issued NUREG-1032, "Evaluation of Station Blackout Accidents at Nuclear Power Plants" in draft form. NUREG-1032 details the technical findings related to the proposed resolution of Unresolved Safety Issue A-44, "Station Blackout." This issue was identified as an Unresolved Safety Issue in the 1978 Annual Report, pursuant to section 210 of the Energy Reorganization Act of 1974.

Station Blackout is the complete loss of alternating current (ac) electrical power in a nuclear power plant. Because many safety systems required for reactor core decay heat removal and containment heat removal depend on ac power, the consequences of a station blackout could be severe. NUREG-1032 documents the findings of technical studies performed as part of the program to resolve this Unresolved Safety Issue.

Comments are being solicited from interested organizations, groups and individuals. The staff will evaluate the comments received, and address them, as appropriate, in the final reports.

Copies of the Draft NUREG-1032 will be available after June 14, 1985. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C.; and the Commission's Local Public Document Rooms located in the vicinity of nuclear power plants. Addresses of these Local Public Document Rooms can be obtained from the Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536. Free single copies of the Draft NUREG-1032 are available as long as supplies last and may requested by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Comments should be forwarded in writing to Mr. Karl Kniel, Division of Safety Technology, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 by October 15, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

Dated at Bethesda, Maryland, this 3rd day of June, 1985.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Director, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85-13967 Filed 6-7-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-528]

Palo Verde Nuclear Generating Station, Unit 1 Arizona Public Service Company, et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-41, (License) to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority. This License authorizes operation of the Palo Verde Nuclear Generating Station, Unit 1 (facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. On December 31, 1984, the Commission issued Facility Operating License No. NPF-34, which authorized operation of Palo Verde Nuclear Generating Station, Unit 1 at power levels not in excess of 190 megawatts thermal. Facility Operating License No NPF-41 supersedes Facility Operating License No. NPF-34.

Palo Verde Nuclear Generating Station, Unit 1 is a pressurized water reactor which utilizes a CESSAR standard plant design and is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The issuance of this License has been authorized by the Atomic Safety and Licensing Board in its Initial Decision, dated December 30, 1982, and by the Commission at its meeting on May 30,

1985. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 11, 1980 (45 FR 46941) as clarified in a notice published July 25, 1980 (45 FR 49732).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see: (1) Facility Operating License No. NPF–41, with Technical Specifications (NUREG–1133) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the Commission's Safety Evaluation Report of Palo Verde dated November 1981; Supplement Nos. 1 through 8, dated February 1982, May 1982, September 1982, March 1983, November 1983, October 1984, December 1984, and May 1985, respectively; (4) the Commission's related Safety Evaluation Report on CESSAR dated November 1981; Supplement No. 1 dated March 1983; Supplement No. 2 dated September 1983; (5) the Final Safety Analysis Reports and amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Draft Environmental Statement dated October 1981; (8) the Final Environmental Statement dated March 1982; and (9) the Initial Decision issued by the Atomic Safety and Licensing Board dated December 30, 1982.

These documents are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C., and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF–41 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1 through 8 (NUREG–0857) and the Final Environmental Statement (NUREG–0841) may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082. All orders should clearly identify the NRC publication number and the requester's CPO deposit account, or VISA or Mastercard number and expiration date. NUREG–0857 may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, the 1st day of June, 1985.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85–13968 Filed 6–7–85; 8:45 am]

BILLING CODE 7590–01–M

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In FR Doc. 85–12223 beginning on page 20969 in the issue of Tuesday, May 21, 1985, make the following corrections:

1. On page 20973, in the second column, under **Connecticut Yankee Atomic Power Company**, the date of amendment request should read "May 18, 1983".

2. On page 20990, in the entry for **Southern California Edison Company**, in the third column, in the first complete paragraph, in the twentieth line insert "of the Appendix B Technical Specifications reflects the current operations of the facility which is not significantly different from the current section 5.6." after "section 5.8".

BILLING CODE 1505–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14553; File No. 812–6063]

Application and Opportunity for Hearing; Great-West Life and Annuity Insurance Co., et al.

June 4, 1985.

Notice is hereby given that Great-West Life and Annuity Insurance Company (the "Company"), the Great-West Life Assurance Company ("Great-West"), and Pinnacle Series Account (the "Account"), at Solarium North Building, 7400 E. Orchard, Englewood, Colorado 80111, filed an application on February 21, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Applicants from certain provisions of sections 9(a), 13(a), 15(a), 15(b), 26(a), and 27(c)(2) of the Act in connection with Applicants' offering of single premium variable life insurance policies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company, a wholly-owned subsidiary of Great-West, is a stock life insurance company organized under the laws of Kansas. Applicants state that the Account will be used to invest monies held under single premium variable life insurance policies, and that it is registering as a unit investment trust under the Act. Applicants state that the Account will invest solely in shares of the Maxim Series Fund (the "Fund"), a diversified, open-end management investment company. Applicants further state that other separate accounts established by the Company to receive and invest premiums under variable annuity contracts invest in the Fund, and in the future shares of the Fund may be sold to other separate accounts established by the Company or an affiliate.

Applicants assert that they are relying on Rule 6e–2 under the Act, and that paragraph (b)(15) of that Rule provides partial exemptions from the eligibility restrictions of section 9(a), and indirectly from section 13(a), 15(a), and 15(b) of the Act to the extent those provisions require "passthrough" voting. Applicants submit that paragraph (b)(15) limits its exemptive relief to a unit investment trust all the assets of which consist of shares of one or more registered management investment companies which offer their shares *exclusively* to variable life insurance separate accounts of the insurer or an affiliate. Because shares of the Fund are offered to variable annuity separate accounts and possibly will be offered to other separate accounts in the future, Applicants assert that this exclusivity requirement may not be satisfied. Accordingly, Applicants request an exemption from sections 9(a), 13(a), 15(a), and 15(b) to the extent necessary to permit Applicants to rely on the relief provided under paragraph (b)(15) even though shares of the Fund will be offered to other separate accounts. Applicants assert that this "mixed funding" will result in significant cost savings and will not compromise the regulatory purposes of the above-cited sections.

Applicants state that they consent to the following conditions to the order granting the exemption, which are summarized as follows: (1) The majority of the Fund's board of directors shall be disinterested, (2) the Fund's board of directors will monitor whether, from the standpoint of variable life insurance policyowners or variable annuity contractowners, mixed funding would create an irreconcilable material conflict, (3) the Company and Great-West shall monitor the Fund and shall promptly provide its board with information regarding any potential or existing irreconcilable material conflict, among other information, and (4) if it is determined by either the Fund's board, a majority of its disinterested directors, or by the Company that an irreconcilable material conflict has occurred, the Company, at its expense shall take whatever steps are necessary to eliminate the conflict, including segregating assets from the variable annuity contracts. Applicants further state that neither the Company nor the Fund shall be required to establish a new funding medium for any variable annuity contract if an offer to do so has been declined by vote of both a majority of the holders of all variable life insurance policies and a majority of the holders of all variable annuity contracts materially adversely affected by the irreconcilable material conflict or (2) to discontinue use of the Fund or any portfolio as the funding medium for any variable life insurance separate account.

Applicants further request an exemption from sections 26(a)(1), 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit Applicant to rely on paragraph (b)(13)(iii) of Rule 6e–2. Applicants submit that paragraph (b)(13)(iii) provides a conditional exemption from the custodian requirements under sections 26(a)(1), 26(a)(2) and 27(c)(2) of the Act if the life insurer complies with all other provisions of section 26 as if it were a trustee, depositor, or custodian for the separate account.

Applicants assert that the Company will comply with Section 26 of the Act and the conditions in paragraph (b)(13)(iii) except that the Account will hold shares of the Fund under an open account arrangement without the use of stock certificates and the Company will not be acting as trustee or custodian pursuant to a trust indenture. Applicants assert that the Commission has codified the relief requested in Rule 26(a)(2) for variable annuity contracts in the Rule 6e–3(T)(b)(13)(iii) for flexible premium variable life insurance policies, subject to conditions substantially identical to those in Rule 6e–2(b)(13)(iii), to which Applicants will be subject. Applicants further assert that it does not appear necessary for the Account's assets to be held pursuant to a trust indenture or similar instrument and that there is no need for a custodian with respect to Fund shares.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–13844 Filed 6–7–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22110; File No. SR–Amex–85–22]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

The American Stock Exchange, Inc. (Amex), submitted on May 31, 1985, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, which governs the use of automatic execution systems placed on the Amex's floor to permit market makers to facilitate the entry of orders for over-the-counter ("OTC") stocks underlying options admitted to trading on the Amex, in conjunction with their activities as options specialists or market-makers and for hedging purposes, but not for the purpose of making markets in such stocks.

Under the proposal, Amex will place computer-communication terminals operated by Institutional Networks Corporation ("Instinet")[3] at the specialists' posts and permit such terminals to be placed in member firm booths. The systems are intended, in part, to facilitate entry of orders for OTC stocks by specialists or market-makers hedging their options positions.

All Commission, exchange, and other self-regulatory organization rules prohibiting manipulative and other improper or unethical practices in the trading of securities, among other rules, will apply to the OTC transactions effected through the automatic execution system.[4] In addition, the Amex will make clear to its members that they will be prohibited from making a two-sided market in OTC stocks from the exchange floor through such systems. Amex will monitor the use of these systems to ensure, among other things, that two-sided markets in OTC stocks are not being made through the system.

In its filing, Amex states that the proposed rule change is consistent with Section 6 of the Act in that it will, among other things, facilitate the efficient execution of securities transactions, and protect the investing public. Accordingly the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Coimmission also finds good cause to approve this proposed rule change prior to the thirtieth day after publication of notice of the proposed rule change because, over thirty days ago, the Commission approved a substantially similar proposed rule change by the Chicago Board Options Exchange, Incorporated ("CBOE").[5] The Commission noticed the CBOE proposal for comment, but received none.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] Instinet is, among other things a vendor of transaction and quotation data and operates, as a broker-dealer, an automated execution system.

[4] Amex will issue an educational memorandum to members emphasizing, among other things, that the use of the systems are subject to all Amex and Commission rules applicable to the trading activity of broker-dealers.

[5] Approval of the CBOE proposal was published in Securities Exchange Act Release No. 21858 (March 18, 1985), 50 FR 11774 (March 25, 1985).

[6] Notice of the CBOE proposal was given in Securities Exchange Act Release No. 21711 (February 4, 1985), 50 FR 5832 (February 12, 1985).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–13843 Filed 6–7–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund 14 of its 39 Small Business Development Centers (SBDC's) for fiscal year 1986. It should be noted that fiscal year 1986 funding is contingent upon legislative reauthorization of the SBDC program. The SBDC's intended to be refunded are located in the following States: Alabama; Connecticut; Delaware; Iowa; Kansas; Kentucky; Louisiana; Massachusetts; Michigan; Mississippi; Missouri; North Carolina; Vermont; and West Virginia. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 30, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the date of refunding of these existent SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 110 days from the date of publication of this notice. The relevant SBDC will make effort to accommodate these comments during the 110 day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives are agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: June 4, 1985.

James C. Sanders,

Administrator.

Dr. Fred Myrick, State Director, University of Alabama in Birmingham, School of Business, 1717 11th Avenue South, Suite 419, Birmingham, Alabama 35294, (205) 934–7260

Mr. John P. O'Connor, State Director, University of Connecticut, Box U–41, Room 422, 368 Fairfield Road, Storrs, Connecticut 06268, (203) 486–4135

Mr. David Park, Acting State Director, University of Delaware, Suite 005-Purnell Hall, Newark, Delaware 19711, (302) 451–2747

Ms. Louise H. Brinkman, State Director, Iowa State University, Center for Industrial Research and Service (CIRAS), Room 205, Engineering Annex, Ames, Iowa 50011, (515) 294–3420

Ms. Susan K. Osborne-Howes, State Director, Wichita State University, College of Business Administration, 1845 Fairmount, Wichita, Kansas 67208, (316) 689–3193

Mr. Jerry Owen, State Director, University of Kentucky, 18 Porter Building, Lexington, Kentucky 40506–0205, (606) 257–1751

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, Massachusetts 01003, (413) 549–4930-Ext. 303

Dr. Norman Schlaffman, Acting State Director, Wayne State University, Metropolitan Center for High Technology, Detroit, Michigan 48201, (313) 577–4848

Dr. Robert D. Smith, State Director, University of Mississippi, School of Business Administration, 3825 Ridgewood Road, Jackson, Mississippi 39211, (601) 982–6760

Mr. Fred O. Hale, State Director, St. Louis University, 3642 Lindell Boulevard, St. Louis, Missouri 63108, (314) 534–7232

Mr. Scott R. Daugherty, Acting State Director, University of North Carolina, 820 Clay Street, Raleigh North Carolina 27605, (919) 733–4643

Mr. Norris Elliott, State Director, University of Vermont, Extension Service, Morrill Hall, Burlington, Vermont 05405, (802) 656–4479

Mr. John Baker, State Director, Northeast Louisiana University, Administration 2–123, Monroe, Louisiana 71209, (318) 342–2464

Mr. Cicil Underwood, State Director, University of Charleston, 2300 MacCorkle Avenue, S.E., Charleston, West Virginia 25304, (304) 357–4800

[FR Doc. 85–13834 Filed 6–7–85: 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in the Virgin Islands during fiscal year 1985. Currently, there are 39 SBDC's in existence. This notice also provides a description of the SBDC

program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 9, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under § 21 of the Small Business Act (15 USC 648). SBDC's operate pursuant to the provisions of § 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In States where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basis small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Address of Proposed SBDC and Proposal Developer

Dr: William H. DeLone, College of the Virgin Islands, Charlotte Amalie, St. Thomas, U.S. Virgin Islands, 00801 (809) 774–1252.

Dated: May 30, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–13742 Filed 6–7–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0030]

Atlas Capital Corp.; License Surrender

Notice is hereby given that Atlas Capital Corporation, 55 Court Street, Boston, Massachusetts 02108, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Atlas Capital Corporation was licensed by the Small Business Administration on September 21, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on March 8, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: May 24, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13838 Filed 6–7–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0018]

Massachusetts Capital Corp.; License Surrender

Notice is hereby given that Massachusetts Capital Corporation, 400 Washington Street, Braintree, Massachusetts 02184 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Massachusetts Capital Corporation was licensed by the Small Business Administration on June 21, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on May 21, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13839 Filed 6–7–85; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area 2193]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 3, 1985, I find that the Counties of Ashtabula, Columbiana, Licking and Trumbull constitute a disaster loan area because of damage from severe storms, high winds, and tornadoes beginning on May 31, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 2, 1985, and for economic injury until March 3, 1986,[1] at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including chantable and religious organizations)	11.125

[1] This time period is subject to change in accordance with the requirements of the Federal budget.

The number assigned to this disaster is 219312 for physical damage and for economic injury the number is 639700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 4, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-13840 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2192]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 3, 1985, I find that the Counties of Beaver, Butler, Crawford, Erie, Forest, Lycoming, McKean, Mercer, Northumberland, Union, Venango, and Warren constitute a disaster loan area because of damage from severe storms, high winds, and tornadoes beginning on May 31, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 2, 1985, and for economic injury until March 3, 1986,[1] at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219212 for physical damage and for economic injury the number is 630600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-13841 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

[1] This time period is subject to change in accordance with the requirements of the Federal budget.

[Declaration of Disaster Loan Area No. 2191]

Puerto Rico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 31, 1985, I find that the municipalities of Adjuntas, Anasco, Arecibo, Barceloneta, Jayuya, Mayaguez, Santa Isabel, Utuado, and Vega Baja within the Commonwealth of Puerto Rico constitute a disaster loan area because of damage from severe storms, landslides, mudslides, and flooding beginning on May 16, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 2, 1985, and for economic injury until February 28, 1986,[1] at: U.S. Small Business Administration, Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00919, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.000

The number assigned to this disaster is 219106 for physical damage and for economic injury the number is 630500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 1985

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-13842 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs will hold a public meeting at 10:30 a.m., on Tuesday, June 25, 1985, at the U.S. Small Business Headquarters, 1441 L Street, NW., Room 1000 Administrator's Conference Room, Washington, D.C. 20416, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Leon J. Bechet, Director (Acting) Office of Veterans Affairs, U.S. Small Business Administration, 1441 L Street, NW., Room 500, Washington, D.C. 20416, (202) 653-8220.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 31, 1985.

[FR Doc. 85-13835 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Cancellation

The U.S. Small Business Administration, Advisory Region VIII Advisory Council, located in the geographical area of Casper, Wyoming, public meeting, scheduled from 8:30 a.m. to 4:30 p.m., on Wednesday, June 12, 1985, at the Dunbar Inn, Highway 30 West, Evanston, Wyoming, is cancelled. Future date to be established.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, 100 East B Street, Room 4001, Casper, Wyoming (307) 261-5761.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 31, 1985.

[FR Doc. 85-13836 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Cancellation

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of The Lower Rio Grande Valley of Texas, public meeting, scheduled at 1:00 p.m., Tuesday, June 4, 1985, U.S. Small Business Administration's Conference Room, 222 E. Van Buren, Suite 500, Harlingen, Texas, is cancelled.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas (512) 423-8933.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 31, 1985.

[FR Doc. 85-13837 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airway Science Demonstration Grants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to solicit Airway Science Demonstration Grant Proposals.

SUMMARY: The Federal Administration (FAA) intends to solicit competitive proposals for Airway Science Demonstration Grants from accredited public or nonprofit private four-year institutions of higher learning committed to the establishment of an Airway Science curriculum. The solicitation is scheduled to be issued in September of this year with awards expected on or before January 1986.

Background

The solicitation noticed by this announcement represents a continuation of the FAA's Airway Science Demonstration Grant Program which funds projects at selected institutions of higher learning which have evidenced a commitment to the agency's Airway Science curriculum program. These grants are authorized by Pub. L. 98–473 (98 Stat. 1837).

The FAA's Airway Science curriculum is intended to develop a cadre of qualified college graduates well-suited to the occupations necessary to support the Nation's future airspace system. The FAA considers the recruitment/hiring of graduates of a four-year Airway Science curriculum vital to its management of a safe and efficient airspace and airway system.

The FAA's Airway Science curriculum, developed with the assistance of the Universtiy Aviation Association, is designed to meet normal university academic and accreditation requirements and allows educational institutions the option of offering any number of five areas of concentration according to their individual resources. The five areas of concentration are: (1) Airway Science Management, (2) Airway Computer Science, (3) Aircraft Systems Management, (4) Airway Electronic Systems, and (5) Aviation Maintenance Management. Graduates will be eligible for recruitment/hiring by the FAA in one of four agency career fields: Air traffic control, electronics technology, aviation safety inspection (general aviation operations and maintenance), and computer sciences.

Discussion

The FAA's Airway Science Demonstration Grant solicitation will provide for multiple grants in support of an Airway Science curriculum with at least one award to a small institution (to be defined based upon student enrollments) and another to a minority institution. See, 49 FR 22903 for a definition of a "minority" institution. The awards will range typically from a minimum of $100,000.00 to a maximum of $1,000,000.00 and will be based upon the likelihood that a given demonstration project proposal will achieve the objectives of the agency's Airway Science program. Proposed cost sharing formulas will be a consideration in the evaluation of all proposals. The agency does not intend to fund all proposed projects or necessarily any specific element of a proposal selected for funding. The agency expects to distribute most, if not all, of the $400,000.00 available. The monies may only be used for the construction, purchase or lease of buildings and associated facilities, instructional materials, or equipment to be used in conjunction with a college's or university's Airway Science curriculum. Monies are not available for salaries, operating expenses or for research and development. In no event will a grant award be made to an institution without an approved Airway Science curriculum.

References

Educational institutions interested in the FAA's previous Airway Science activities may refer to the following **Federal Register** notices: March 18, 1983 (48 FR 11672; FAA's proposed Airway Science Curriculum demonstration project plan), July 15, 1983 (48 FR 32490; Office of Personnel Management's (OPM) approval of FAA's demonstration project plan) and June 1, 1984 (49 FR 22903; FAA's announcement of the first Airway Science Demonstration Project Grant). [The June 1, 1984, notice contains the evaluation criteria initially employed by the agency in selecting its first demonstration grant recipient (a minority institution). Potential applicants are hereby advised that the grants contemplated by the present announcement (for both majority and minority institutions) will employ comparable but not necessarily identical evaluation criteria.]

FOR FURTHER INFORMATION CONTACT: Virginia Hancock, Airway Science Grant Coordinator, or Donald Higgins, Airway Science Curriculum Coordinator, after June 30, 1985, on (202) 426–8678; or write to either at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Attn: APT–200.

Issued in Washington, D.C. on June 3, 1985.

E.V. Curran,

Director of Personnel and Technical Training.

[FR Doc. 85–13815 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held June 12, 1985, from 10:00 a.m.–12:00 noon in Room 600 and from 1:30 p.m. to 3:30 p.m. in Room 800, 301 4th Street, SW., Washington, D.C.

From 10:00 a.m.–11:00 a.m. the Commission will conduct an overseas telephone conference on USIA's television programs with Public Affairs Officers Terrence Catherman (Paris), Robert Korengold (London) and Christopher Snow (Brussels). From 11:00 a.m.–12 noon the Commission will discuss International Visitors program with Mr. Charles H. Ainsworth, President, Board of Directors, National Council for International Visitors (NCIV), Ms. Susan C. Wilkes, NCIV Board Member and Chairman of the NCIV Data Management Committee, and Ms. Diane G. Cook, immediate Past President, NCIV Board of Directors. From 1:30 p.m.–2:30 p.m. the Commission will meet with Mr. Alvin Snyder, Director, Television and Film Service, to discuss USIA's television programs. From 2:30–3:30 the Commission will meet with USIA Director Charles Z. Wick.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: June 4, 1985.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 85–13896 Filed 6–7–85; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Rescheduled Meeting

The meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans originally scheduled for June 13 and 14, 1985 (50 FR 20645, May 17, 1985) has been rescheduled for July 11 and 12, 1985. The sessions will be held in the Omar Bradley Conference

Room, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. All sessions will be open to the public and will be held from 9 a.m. to 4 p.m.

Dated: June 4, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-13878 Filed 6-7-85; 8:45 am]

BILLING CODE 8320-01-M

24342-24360

Sunshine Act Meetings

Federal Register
Vol. 50, No. 111
Monday, June 10, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL RIGHTS COMMISSION

PLACE: Fifth Floor Conference Room, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Wednesday, June 12, 1985, 9:00 a.m.–11:30 a.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Possible Publication of Commission Debate on Comparable Worth
V. Civil Rights Developments in the Mid-Atlantic Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor.
June 5, 1985.

[FR Doc. 85–13994 Filed 6–6–85; 11:17 am]
BILLING CODE 6335–01–M

2

DEPARTMENT OF EDUCATION

AGENCY: National Council on Educational Research.

ACTION: Full Council Meeting of the National Council on Educational Research.

MATTERS TO BE DISCUSSED: Receive committee reports; Report from the Acting Director of the National Institute of Education (reorganization discussion, lab and center discussion). (Discussion of possible resolutions) Closed session—Internal Personnel Matters.

DATE: Monday, July 1, 1985.

ADDRESS: National Institute of Education, 1200 19th St., NW., Washington, D.C. (Room 823).

STATUS:

9:00 a.m.–10:00 a.m.—Closed
10:00 a.m.–12:00 p.m.—Open
12:00 p.m.–1:30 p.m.—Lunch
1:30 p.m.–5:00 p.m.—Open

TIME: 9:00 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: D. Renee Trent, National Council on Educational Research, 2000 L St., NW., Suite 617B Washington, D.C. 20036, 202–254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Provisions Act. The N.C.E.R. meeting will be closed to the public from 9:00 a.m. to 10:00 a.m. to discuss internal personnel matters. The meeting will be closed under the provisions of 34 CFR 705.2(a) (2) and (6) and 5 U.S.C., 552b(c) (2) and (6).

Records are kept of all Council proceedings and are available for public inspection at the office of the National Council on Educational Research at 2000 L St., NW., Suite 617B, Washington, D.C. 20036 between the hours of 8:30 a.m. to 5:00 p.m.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title, 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: June 6, 1985.

D. Renee Trent,
Authorizing Official, National Council on Educational Research.

[FR Doc. 85–14017 Filed 6–6–85; 3:17 pm]
BILLING CODE 4000–01–M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 5, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA v. Kennecott Mineral Co., Utah Copper Division, Docket Nos. WEST 82–155–M, WEST 83–60–M. (Issues include whether 30 CFR 9.22, the berm standard applicable to metal and non-metal open pit mines, is valid.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 85–13999 Filed 6–6–85; 11:46 am]
BILLING CODE 6735–01–M

federal register

Monday
June 10, 1985

Part II

Environmental Protection Agency

40 CFR Part 271

State Hazardous Waste Programs; Procedures for Approving Revisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SWH-FRL-2828-4]

State Hazardous Waste Programs; Procedures for Approving Revisions

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to amend the procedures in 40 CFR 271.21 for processing revisions to State hazardous waste programs. This amendment is designed to streamline and improve the revision process for the States by eliminating the distinction between substantial and non-substantial revisions and making other changes to the approval procedures. The new process will offer increased public participation by providing an opportunity to comment on all, rather than only substantial, program revisions.

DATES: Comments must be submitted on or before July 10, 1985.

ADDRESSES: Comments on these proposed amendments should be addressed to the Docket Clerk (Docket 3006—Streamlining State Revisions), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The public docket for this rulemaking is available at Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA hotline, toll-free at (800) 424-9346 or in Washington, D.C. at (202) 382-3000, or Frank McAlister, State Programs Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Telephone: (202) 382-2210.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926, have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. However, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to the Federal HSWA program. For both the RCRA and HSWA programs, States with final authorization must revise their hazardous waste programs when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 270-271.

40 CFR 271.21(b) requires States to submit their proposed program revisions to EPA for approval. The rule also specifies two types of EPA approval procedures for program revisions. For substantial program revisions, EPA must issue a public notice in the **Federal Register**, in the major newspapers in the State, and via mail to interested persons. The notice must summarize the proposed revisions, provide for a comment period of at least 30 days, and provide for an opportunity for a public hearing if there is significant public interest. After the comment period and a determination by the Agency that the proposed revisions are in compliance with the requirements of the Act, a notice of approval is published in the **Federal Register**.

As provided by the current 40 CFR 271.21(b), the same procedures do not apply to non-substantial program revisions. Rather, notice of approval of non-substantial program revisions currently may be given simply by a letter from the Administrator to the State, Governor, or his designee.

II. Reason and Basis for Today's Amendment

In light of the magnitude of anticipated changes in State hazardous waste programs necessitated by the new statutory and regulatory requirements stemming from HSWA and other changes EPA will be making to the RCRA programs, we foresee reviewing numerous program revisions for the indefinite future. Further, we anticipate that the HSWA program changes and many non-HSWA changes would likely be considered substantial. We are concerned, therefore, that current procedures for processing substantial program revisions may be too time-consuming and resource-intensive for both the States and EPA. The time element is particularly critical; until a State receives authorization to implement a permitting requirement imposed by HSWA, the State cannot issue a RCRA permit to a facility within its borders. Instead, it must issue a joint permit with EPA whereby EPA adds the HSWA requirements that the State is not authorized to implement.

Our experience in the State authorization process has shown that few public comments tend to be received, and those comments usually are supportive of the State's authorization. Generally we believe little public interest has been shown in most EPA decisions granting final authorization to State programs because the State has already provided for public comments when it developed its regulations. The Federal authorization decision seems to attract less public interest since it primarily involves a comparison of the State program against Federal requirements.

Given the experience described above and our desire to expedite the State revision process, we decided to examine alternative rulemaking procedures. At the same time we decided it would be preferable to increase the opportunity for public comment by allowing the public to participate in decisions on non-substantial program revisions. We concluded that the current procedures for approval of State hazardous waste program revisions can be streamlined while not compromising the opportunity for the public to comment. To increase the opportunity for public involvement in all State program revisions while decreasing the time and resources necessary to process revision applications, we are proposing to eliminate the distinction between substantial and non-substantial program revisions and to substitute two alternative procedures.

One alternative would be to use standard rulemaking procedures. A proposed approval or disapproval would be published in the **Federal Register** with at least a 30-day period for public comment. EPA would review the public comments and then publish a final decision approving or disapproving the proposed revision; this final rule would also contain a response to public comments.

In the second alternative, EPA would publish an "immediate final" rule in the **Federal Register**, indicating that the State revision is approved or disapproved and takes effect 45 days after the date of publication unless EPA receives a negative comment within the 30-day public comment period. Were EPA to receive a negative comment pertaining to the State revision discussed in the notice, the Regional Administrator would notify the State that such comment had been received and that the State's authorization will not take effect on the date identified in the published rule. In addition, before

the effective date of the immediate final rule, a new **Federal Register** action would be published, withdrawing the immediate final approval, identifying the objection and proposing the approval or disapproval of the revision with a public comment period. Then the standard rulemaking procedures identified in the first alternative above would be followed until a final decision is reached.

EPA believes that the States will find this new approach beneficial: Many program revisions will be expedited by the use of the immediate final rule approach, thereby reducing the time during which EPA and State responsibilities for program implementation would overlap. Also, today's proposal increases the opportunity for public participation by expanding it to include all Agency authorization actions.

The immediate final procedure has been used successfully for the approval of revisions of State Implementation Plans (SIPs) under the Clean Air Act, and we believe it will work as well for revisions to State RCRA programs. Unlike current procedures, the public will be informed of EPA's approval or disapproval of every State program revision in the **Federal Register** and will have an opportunity to comment. In most cases EPA does not expect to need to publish more than one **Federal Register** notice since experience has shown that few adverse public comments have been received. However, if EPA anticipates public interest or controversy in the approval or disapproval decision or adverse comments are received, the standard rulemaking procedure alternative would be used instead of the immediate final approach.

The proposed new procedures do not provide for public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings, we think the opportunity to provide written comments is adequate. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold one.

III. Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely streamlines procedures for approving State RCRA program revisions. The Office of Management and Budget has exempted this proposed rulemaking from Executive Order 12291.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments proposed here merely streamline the procedures for approving State hazardous waste program revisions and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 271 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2050–0041.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, and Confidential business information.

Dated: May 31, 1985

Lee M. Thomas,

Administrator.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

For the reasons set out in the preamble, 40 CFR Part 271 is proposed to be amended as follows:

1. The authority for Part 271 continues to read as follows:

Authority: Sections 1006, 2002(a), and 3006, Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

2. In § 271.21, paragraphs (b) (2) through (4) are proposed to be revised to read as follows:

§ 271.21 [Amended]

* * * * *

(b) * * *

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (3) or (4) below.

(3) The procedures for an immediate final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of this approval or disapproval of a State program revision:

(A) In the **Federal Register** as an immediate final rule;

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) A State program revision shall become effective 45 days after the date of publication in the **Federal Register** in accordance with paragraph (b)(3)(i) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received within 30 days after the date of publication. If an adverse comment is received, the Administrator shall so notify the State and the immediate final rule shall be withrawn and a proposed approval or denial of the revision shall be initiated in accordance with the procedures in paragraph (b)(4) of this section.

(4) The procedures for proposed and final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his proposed approval or disapproval of a State program revision:

(A) In the **Federal Register** as a proposed rule;

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision and provide for an opportunity to comment for a period of at least 30 days.

(iii) A State program revision shall become effective when the Administrator's final approval is published in the **Federal Register**.

FR Doc. 85–13745 Filed 6–7–85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
June 10, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the Inpatient Prospective Payment System and Fiscal Year 1986 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-315-P]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1986 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to modify the Medicare inpatient hospital prospective payment system in order to implement necessary changes arising from experience with the system and from certain recommendations of the Prospective Payment Assessment Commission provided under section 1886(d)(4)(D) of the Social Security Act (the Act). In addition, this proposal sets forth our first adjustment of the diagnosis-related group weights and classifications as required under section 1886(d)(4)(C) of the Act.

In addition, in the addendum to this proposed rule, we are proposing changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. Changes proposed to the Federal portion of the payment would be applicable to discharges occurring on or after October 1, 1985. Proposed changes to the hospital specific portion would be effective with hospital cost reporting periods beginning on or after October 1, 1985. In effect, these changes would apply to the final year of the three-year transition period for the hospital prospective payment system. The addendum also sets forth our proposal for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by July 10, 1985.

ADDRESS: Address comments in writing to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-315-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-315-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Linda Magno (301) 594-9343—DRG Recalibration, Hospital Wage Index, New Hospital Exemption from Rate of Increase, Payment for Cost Outliers, Referral Centers, Indirect Medical Education, Transfer Policy, Prospective Payment Rates, Excluded Hospitals

Thomas Hoyer (301) 594-9446—DRG Reclassification, GROUPER Program, Alcohol/Drug Hospitals and Units, Review Activities

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Implementation of the Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list currently contains 470 specific categories.

Section 1886(d)(1)(A) of the Act provides for a three-year transition period during which a declining portion of the total prospective payment rate is based on a hospital's historical cost in a given base year, and a gradually increasing portion is based on a Federal rate per discharge. The Federal rate is based in regional average standardized hospital costs in the first year, and a blend of a regional and national Federal rates per discharge in the second and third years. Beginning with the fourth year (that is, October 1, 1986), and continuing thereafter, the Federal portion of the payment for inpatient hospital services will be based entirely on national payment rates.

We published an interim final rule in the **Federal Register** (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections for that were issued on October 19, 1983 (48 FR 48467). In that rule, we established criteria for determining—

- Which hospitals are included in or excluded from the prospective payment system;
- The basis of payment under the prospective payment system;
- The prospective payment rate methodology;
- Additional payment amounts;
- Special treatment of certain hospitals; and
- Other conforming changes.

In particular, we identified the prospective payment rates to be used for the first year of the transition period. We issued a final rule (49 FR 234) on January 3, 1984 to make changes resulting from our consideration of public comments that were received in response to the interim final rule. Technical corrections for that rule were issued on June 1, 1984 (49 FR 23010).

As a result of our first year of experience with the prospective payment system and to accommodate changes resulting from the enactment of the Deficit Reduction Act of 1984 (Pub. L. 98-369) on July 18, 1984, we published a final rule on August 31, 1984 (49 FR 34728) that further revised the prospective payment regulations. In addition, in the addendum to that final rule, we made changes in the methods, amounts, and factors necessary to implement the second year of the payment transition period. Changes in the Federal rates were applicable to discharges occurring on or after October 1, 1984, while changes regarding the hospital specific portion of the payment were effective with hospital cost reporting periods beginning on or after October 1, 1984. Technical corrections on that final rule were issued on October 15, 1984 (49 FR 40167).

On March 29, 1985, we published a final rule (50 FR 12740) that redesignated the prospective payment regulations under a new 42 CFR Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

B. Major Contents of This Proposed Rule

As stated above, this proposed rule would be effective for the third year of operation of the prospective payment system. For the first time, we are proposing to use updated data as the basis for classifying and weighting discharges and are considering the use

of new wage data. The proposed rule would incorporate, in both instances, more current data to replace 1981 data.

As part of our analysis of the most appropriate ways to accomplish the updating, we have been examining approaches that would permit updating the DRG weights or the wage index or both to reflect new data and methodological modifications while minimizing fluctuations in payments to particular hospitals. Examples of the type of approaches we have envisioned include retaining the use of 1981 data for certain factors, phasing in new factors over a two or three year period, combining or blending several data sources, or shifting to a moving average that would reflect the past several years of adjustment factors.

As discussed below and in sections II and III of this preamble, the more current data used in this proposed rule have somewhat different methodological and empirical bases than the DRG weighting factors and the wage index used in the first two years of the prospective payment system. The combination of newer data and modified methodology can be expected to produce somewhat more pronounced increases and decreases in Medicare payments for particular discharges in particular hospitals. As an alternative, updating the data without changing the underlying methodology (for example, shifting from the 1981 Bureau of Labor Statistics (BLS) wage index used in the first two years of the prospective payment system to the 1983 BLS wage index) would, on average, produce somewhat smaller reallocations than the survey-based wage index discussed below. We specifically solicit comments on the merits of these changes and on alternatives consistent with our other policy objectives and concerns.

1. *Changes to the DRG Classifications and Weighting Factors.* As required by section 1886(d)(4)(C) of the Act, we must adjust the classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986. Our proposed changes are set forth in section II of this preamble.

2. *New Wage Index.* We are considering the use of a new wage index for purposes of adjusting for variations in area wage levels. This new wage index would be used both in standardizing hospital costs for purposes of determining the Federal rate and the DRG weights and for adjusting the Federal rate for purposes of determining prospective payments for hospitals. The new wage index is discussed in section III of this preamble.

3. *Regulations Changes.* In section IV of this preamble, we discuss several current provisions of the regulations in 42 CFR Parts 405 and 412, not discussed elsewhere in this rule, and set forth certain proposed changes concerning—

- Exemptions for new hospitals from the rate-of-increase limits;
- Payments for indirect costs of medical education;
- Limitations on charges to beneficiaries for hospitals paid under State cost control systems or demonstration projects;
- Payment for cost outliers; and
- Referral center adjustments.

We are also proposing several conforming changes to the regulations.

4. *Determining Prospective Payment Rates and Rate-of-Increase Limits.* In the addendum to this proposed rule, we set forth proposed changes to methods, amounts and factors for determining the FY 1986 prospective payment rates. We also are the proposing new target rate percentages for determining the rate-of-increase limits for FY 1986 for hospitals excluded from the prospective payment system.

5. *Impact Analysis.* In Appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

6. *Discussion of Prospective Payment Assessment Commission Recommendations.* In section 1886(e)(2) of the Act, enacted by section 601(e) of Pub. L. 98–21, Congress provided for the establishment of the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of section 1886 (e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with Federal fiscal year (FY) 1986. These recommendations are due to the Secretary no later than the April 1 before the beginning of each fiscal year. The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Under section 1886(e)(5) of the Act, we are required to publish the report of the recommendations from ProPAC as a part of this proposed rule. Therefore, we are reprinting the ProPAC report as Appendix C of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble and in the addendum to this proposed rule. Those recommendations that are not specifically relevant to matters presented below are discussed in section V of this preamble. For the benefit of the reader and in order to provide some perspective on the overall nature of the ProPAC recommendations, we briefly summarize them here and indicate generally where they are discussed.

- *Update Factors:*

—Recommendation 1: Amount of the Update Factor. For FY 1986 the standardized amounts should be updated by the projected increase in the hospital market basket, minus a combined adjustment of one percentage point for productivity and scientific and technological advancement goals, plus an allowance for the estimated increase in real case-mix complexity during FY 1985. (Addendum, section II.A.)

- *Hospital Market Basket:*

—Recommendation 2: The Number of Market Baskets. For FY 1986, a single market basket should be continued for those hospitals subject to the prospective payment system. ProPAC plans to study the use of multiple market baskets by region and classes of hospitals within regions. (Preamble, section V.A.)

—Recommendation 3: Market Basket for Psychiatric, Rehabilitation, and Long-Term Care Hospitals. Separate market basket weights should be used for psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units, which are excluded from the prospective payment system but subject to the rate of increase limits. Separate market basket weights need not be developed for children's hospitals. (Addendum, section III.C.)

—Recommendation 4: Market Basket Wage Component—Occupational Groups. The wage component of the market basket should be split into the following three categories, each with separate weights: managers and administrators, professionals and technicians, and other hospital workers. (Preamble, section V.A.)

—Recommendation 5: Employment Cost Index Feasibility Study. The Secretary should work with BLS to study the advantages and feasibility of developing an employment cost index

for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits. (Preamble, section V.A.)

—Recommendation 6: Study Effects of Changes in the Minimum Wage Law on Hospital Workers. ProPAC plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. (Preamble, section V.A.)

—Recommendation 7: Correction of Market Basket Forecast Errors. The update factor should include a correction for substantial errors (that is, those errors that equal at least 0.25 of one percentage point) made in the previous year's forecast of changes in the external price measures used in the hospital market basket. (Addendum, section II.A.)

—Recommendation 8: Statutory Change for Forecast Error Correction. The Secretary should seek a statutory change that would provide that, beginning with fiscal year 1986, the update factor include a correction for market basket forecast errors. (Addendum, section II.A.)

—Recommendation 9: Rebasing of Market Basket Weights. Market basket weights should be rebased at least every five years in order to reflect the most current mix of inputs used by hospitals, and more frequently if significant changes in the weights occur. The market basket weights will also need to be rebased if payment for capital-related or direct medical education costs are included in the prospective payment rates. (Preamble, section V.A.)

• *Discretionary Adjustment Factors:*

—Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals. For the fiscal year 1986 prospective payment rates, the allowance for productivity and scientific and technological advancement goals included in the discretionary adjustment factor should be set at minus one percentage point. (Addendum, section II.A.)

—Recommendation 11: Adjustment for Case-Mix Change. Real changes in case mix should be reflected in the prospective payments to individual hospitals and in the aggregate. Changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be a source of change. (Addendum, section II.A.)

—Recommendation 12: Update Factor for Exempt Hospitals. In addition to the projected increase in the market basket, hospitals and hospital distinct part units excluded from the prospective payment system should receive an adjustment of minus one percentage point in their fiscal year 1986 update factor for productivity improvement and technological and scientific advancement (Addendum, section III.C.)

• *Hospital Labor Market Areas—Area Wage Index:*

—Recommendation 13: Improvement of Labor Market Area Definitions. In order to better reflect hospital labor markets, the Secretary should, as soon as possible, revise the current definition of a hospital labor market area used to adjust the prospective payment rates for area wage differences to take into account variations in wages paid in the inner city compared to suburban areas within a metropolitan area, and variations paid in different rural locations within a state. (Preamble, section V.B.)

• *Disproportionate Share Hospitals:*

—Recommendation 14: Disproportionate Share Adjustment for FY 1986. The Secretary should develop a methodology for adjusting the prospective payment rates for hospitals that have a disproportionate share of low income and Medicare patients and implement the adjustment in FY 1986. The adjustment should be implemented so that it does not change aggregate payments. (Preamble, section V.C.)

—Recommendation 15: Definition of Disproportionate Share Hospitals. The Secretary should complete the development of a definition of a "disproportionate share hospital" in ample time to include adjustments for these hospitals in the FY 1986 prospective payment rates. The Secretary should consider broader definitions of low income than simply the percent of patients who are Medicaid recipients and should determine whether the share of Medicare Part A patients should be excluded from the definition. (Preamble, section V.C.)

• *Standardized Amounts:*

—Recommendation 16: Rebasing the Standardized Amounts. The standardized amounts used to determine hospital payments under the prospective payment system should be recalculated using cost data that reflect hospital behavior under that system. The results of this recalculation, with appropriate modifications, could be used to rebase the standardized amounts. Although recent cost data are not available to recalculate the standardized amounts for FY 1986, the Secretary should implement a process for timely collection of the cost data necessary for future recalculation. (Addendum, section II.A.)

• *DRG Classifications and Relative Weighting Factors:*

—Recommendation 17: Recalibrating the DRG Weights. For FY 1986, all DRG weights should be recalibrated using the 1984 Part A tape bills (PATBILL) data set. The newly recalibrated weights should be: (1) Normalized so that the average case weight is the same as it was at the beginning of FY 1985, thereby incorporating DRG weight adjustments made prior to the start of FY 1985; and (2) adjusted for any demonstrable changes in reported case mix occurring during FY 1985. (Preamble, section II.C.)

—Recommendation 18: Cardiac Pacemaker Implantation. The DRGs involving cardiac pacemakers, DRGs 115 through 118, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981. ProPAC plans to continue studying this issue. (Preamble, section II.B.)

—Recommendation 19: Cataract Extraction and Intraocular Lens Implantation. DRG 39 (Lens Procedures) should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981, including the more frequent implantation of an intraocular lens following cataract removal. ProPAC will continue to monitor this issue. (Preamble, section II.B.)

—Recommendation 20: Percutaneous Transluminal Coronary Angioplasty. Cases in which percutaneous transluminal coronary angioplasty is the principal procedure should be removed from DRG 108 and temporarily assigned to DRG 112 prior to recalibration. The Secretary should immediately implement a mechanism to identify bills for cases in which this procedure is performed in order to provide data for analysis and additional adjustment as appropriate. (Preamble, section II.D.)

—Recommendation 21: No change Recommended for Bone Marrow Transplantation and Infective Endocarditis. ProPAC has examined bone marrow transplantation (DRGs 394 and 403) and treatment for infective endocarditis (DRG 126) and is recommending no changes in DRG classifications or weights at this time, other than those that would occur with recalibration. ProPAC will continue to gather data on this subject. (Preamble, section II.B.)

II. Proposed Changes to DRG Classifications and Weighting Factors

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case (comprised of a hospital-specific portion

and an urban or rural Federal portion adjusted for area wages) and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources per case for the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

Congress recognized that it would be necessary to recalculate periodically the DRG relative weights to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify services and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

Below we set forth DRG reclassification and recalibration changes for discharges occurring on or after October 1, 1985. As discussed in section I.B. of this preamble, we solicit comments on the changes summarized below.

A. Basic Classification System

1. *General Background.* The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician indicates the principal diagnosis, as many as four additional diagnoses, and as many as three surgical procedures performed during the stay. This information is expressed by the hospital in the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM) codes and is reported to the hospital's fiscal intermediary on the hospital bill. Age, sex, and discharge status are also considered in assigning a case to a DRG.

The intermediary then enters the information in its claims system and subjects it to a series of automated screens called the Medicare Code Editor. These screens are designed to identify cases that require further review before classification into a DRG can be accomplished. During this process, cases such as the following are selected for further development:

- Cases that are obviously improperly coded (for example, diagnoses that are inappropriate to the sex of the patient).
- Cases that includes surgical procedures not covered under Medicare (for example, bilateral carotid body resection or cosmetic surgery).
- Cases that require more information (for example, all open biopsies are identified so that the intermediary can determine through development whether the case actually involved an open biopsy (a surgical DRG) or a closed biopsy (a nonsurgical DRG)).
- Cases with principal diagnoses that do not usually justify admission to the hospital (for example, wax in the ear).

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by GROUPER into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into the appropriate DRG on the basis of the diagnosis and procedure codes and demographic information, that is, sex, age, and discharge status. It is used both to classify past cases in order to establish the DRG weights and to classify current cases for payment.

2. *Operating Requirements of the DRG System.* During the initial operating period of the prospective payment system, we learned that the use of the DRG method of classification poses some operational challenges that we needed to address further. Operational experience and technological advances have led us to identify situations that require positive actions to resolve. These cases include the following:

- Cases that can be classified more accurately with revisions to GROUPER.
- Cases in which we discover that there are unintended omissions or inequities in the classification system (for example, mechanical or conceptual flaws).
- Cases in which a change in Medicare coverage requires assignment of a new item, service, or procedure to an existing DRG or to a new DRG, if necessary.

We believe that the necessity of maintaining a workable payment system requires that we have some latitude in establishing and updating the classification system (which, for that reason was exempted by Congress from judicial or administrative review (section 1886(d)(7) of the Act)). In the paragraphs below, we discuss our proposed process for making changes. Specifically, we discuss our proposed method for dealing with changes in our system of classification that, we believe, need to be made in order to correct problems or to recognize new coverage decisions that are made during the course of the Federal fiscal year (after the update notice for that year has been published).

3. *Proposed Changes to GROUPER.* We have identified a number of improvements to the classification system and have included them in a revised GROUPER program that we used to develop the recalibrated DRG weights published in the addendum to this proposed rule (Table 5). This GROUPER program would be used to classify and assign cases to DRGs effective with discharges occurring on or after October 1, 1985.

Although we have listed all the proposed changes made to GROUPER in Table 6 of the addendum to this document, a description of the general categories of changes we would make are as follows:

- *DRG Logic Issues and Technology Changes:* Experience has indicated that some GROUPER logic decisions could be improved and others should be corrected to reflect technological advances that have occurred since the development of the classification system. The following is an example of a logic problem. In Major Diagnostic Category (MDC) 5, the GROUPER logic results in the assignment to DRG 114 (Upper Limb and Toe Amputation for Circulatory System Disorders) of all cases in which a toe or upper limb was amputated, even if a lower limb was also amputated. Amputation of only a lower limb is classified in DRG 113 (Amputations for Circulatory System Disorders Except Upper Limb and Toe). Currently DRG 113 is weighted 2.6522 and DRG 114 is weighted 2.0848. The logic would be revised so that cases in which only an upper limb or toe is amputated would be placed in DRG 114 and all cases that involve lower limbs, either alone or with upper limbs, would be classified in DRG 113.

An example of a technology and coding problem relates to percutaneous transluminal coronary angioplasty. Coding rules have assigned this procedure to the ICD–9–CM code for removal of coronary artery obstruction; however, there is a tremendous difference between the two procedural techniques. Since percutaneous transluminal coronary angioplasty does not have a unique ICD–9–CM code, it cannot be separated easily from cases

that involve other procedures using the same code. Because these types of coronary angioplasties were not widely used and were not covered under Medicare at the time the DRG system was developed, no consideration was given to separating it from thoracotomies (major surgical procedures assigned to DRG 108 (Cardiothoracic Procedures, Except Valve and Coronary Bypass, With Pump), which has a weight of 4.3301). As a result, the advent of Medicare coverage and the increasing use of percutaneous transluminal coronary angioplasty has resulted in many cases involving this procedure being assigned by GROUPER to DRG 108. DRG 108 bears a weight appropriate to major surgery and is not, in fact, the medically appropriate assignment for percutaneous transluminal coronary angioplasty.

As noted in the summary of GROUPER changes in Table 6 of the addendum to this document, we would reassign this procedure to DRG 112 (Vascular Procedures Except Major Reconstruction), which currently has a weight of 2.3256. This DRG contains other procedures that are clinically suited to percutaneous transluminal coronary angioplasty and bears a weight that reflects the range of resources required for this procedure. Our decision is supported by ProPac's Recommendation 20, which recommends moving this procedure to DRG 112 for many of the same reasons that support our choice.

- *Operating Room versus Non-Operating Room Assignment:* The distinction between medical and surgical DRGs is meant to reflect the difference between cases that use operating rooms (a significant additional resource) and cases that do not. However, a few procedures that do not require the use of an operating room are recognized by GROUPER as operating room procedures. These procedures would be deleted from the list of procedures that could result in assignment to a surgical DRG. For example, code 8623, removal of nail, would be deleted from the list of surgical procedures. Therefore, this procedure alone would not result in assignment of a case to a surgical DRG or, if performed during a stay for an unrelated diagnoses, to DRG 468 (Unrelated Operating Room Procedures).
- *Complication and Comorbidity Membership:* In some cases, DRGs are listed in pairs, one with and one without complications or comorbidities, with a higher weight generally assigned to the DRG that includes complication or comorbidity. A number of additional diagnostic and procedural codes (mostly amputation codes) would be added to the list of complications and comorbidities. These changes would allow cases with these additional codes to be classified in DRGs that reflect the additional resources necessary to deal with complications or comorbidities.
- *Surgical Hierarchy Changes:* An examination of length of stay and charge data has led us to propose a reordering in the hierarchy of surgical procedures in a few cases. For example, surgical procedures in MDC 6 (Disease and Disorders of the Digestive System) would be reordered to assure that when several surgical procedures are present in a case in this MDC, the case would be assigned to the DRG within it that reflects the most resource intensive of the procedures.
- *DRG 468 Issues:* A number of MDCs and DRGs would be modified to include ICD–9–CM codes for surgical procedures that may be performed for diagnoses within them but that are not currently reflected in the particular MDC or DRG. Thus, cases in which these procedures are performed would be recognized by GROUPER and properly classified in the appropriate DRG rather than DRG 468, where they are currently classified.

In addition to these revisions, we are proposing a number of clarifying revisions in the documentation that describes how GROUPER works. Anyone interested in obtaining materials that reflect these changes may purchase revised GROUPER software and ICD–9–CM user manuals from:

Health Systems International, 100 Broadway, New Haven, Connecticut 06511.

These materials should be available after publication of the final rule, when all the changes we have discussed have been incorporated into the program. As mentioned above, a listing of the changes also appears in Table 6 at the addendum to this document.

B. Reclassification of DRGs

In addition to the changes already incorporated into the GROUPER program, we are proposing to make changes in the DRG classification system for alcohol and drug abuse DRGs, certain major joint procedures, and kidney transplants for diabetic patients. These changes would be effective for discharges occurring on or after October 1, 1985. We believe that these changes would improve the accuracy of the classification system and, along with the use of FY 1984 claims data, would result in the establishment of more accurate weights. These changes should also strengthen the relationship between the consumption of resources in the cases whose assignments are affected by these changes and the payments made for these cases. These further changes would be incorporated into the GROUPER program by the time we establish the weights that we will publish in the final rule so that our future payments would reflect these changes. These changes are discussed in greater detail below.

ProPAC, in its Recommendations 18, 19, and 21, advised that the following DRGs should not be revised except to the extent that they are recalibrated as are all the other DRGs.

- DRGs 115 through 118, which involve cardiac pacemakers.
- DRG 39, Lens Procedures.
- DRG 126, Acute and Subacute Endocarditis.
- DRGs 394 and 403, which involve bone marrow transplantation.

We agree with ProPAC and have followed its recommendations with respect to these DRGs.

1. *Alcohol and Drug Abuse DRGs.* In the January 3, 1984 final rule on the prospective payment system, we excluded alcohol/drug treatment hospitals and units from the prospective payment system in response to criticism we received concerning the alcohol and drug abuse DRGs (49 FR 241). In that document, we specified that the exclusion would be permitted only until October 1, 1985, and that after that date we intended to include an adjustment to the DRG classification system that would permit prospective payment to be made appropriately for alcohol/drug treatment services. (See section IV of this preamble for a further discussion of the expiration date of this exclusion.)

The specific DRGs that are being considered in this section are the DRGs within MDC 20 (Substance Use and Substance Induced Organic Mental Disorders); that is DRGs 433 through 438. Commenters had claimed that the current weights do not differentiate between rehabilitation and detoxification. In order to investigate this assertion, we issued an instruction to all providers that, effective May 15, 1984, all claims submitted for treatment of alcohol and drug disorders are to be coded to indicate whether detoxification or rehabilitation, or both services, were provided to patients whose claims were classified within DRGs 433 through 438. We analyzed provider claims for inpatient services concerning these disorders after this coding requirement was added, and found that there are significant differences in resource

consumption depending upon whether or not substance dependent patients received detoxification, rehabilitation, or a combination of these services.

In order to properly reclassify these DRGs, we consulted with medical experts of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), and the National Institute of Mental Health. The following is our proposed reclassification of the substance abuse DRGs within MDC 20 (Substance Use and Substance Induced Organic Mental Disorders):

- DRG 433—Substance Use and Substance Induced Organic Mental Disorders, Left Against Medical Advice.
- DRG 434—Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence.
- DRG 435—Substance Dependence, Detoxification and/or other Symptomatic Treatment.
- DRG 436-Substance Dependence, Rehabilitation Therapy.
- DRG 437-Substance Dependence, Combined Rehabilitation and Detoxification Therapy.

This classification is based on two clinical assumptions that are supported by our medical consultants at ADAMHA and NIAAA. Detoxification and rehabilitation therapies are similar regardless of whether alcohol or other drugs are the cause of dependence. For these reasons, the classification of "substance dependence" that combines both alcohol and drug dependence makes the most clinical sense if treatment modalities are considered. The second clinical consideration is that only those patients who are dependent on alcohol or other drugs require detoxification or rehabilitation therapy as these terms are used in our classification.

The case composition of DRG 433 remains unchanged. Proposed DRG 434 contains those cases currently classified in DRG 435 (Drug Use Except Dependence) and DRG 437 (Alcohol Use Except Dependence) and those cases in DRG 438 (Alcohol and Substance Induced Organic Mental Syndrome) except the cases that indicate substance dependence (that is, codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390). Proposed DRGs 435, 436, and 437 contain all those cases currently classified in DRG 434 (Drug Dependence), DRG 436 (Alcohol Dependence) and those cases in DRG 438 that indicate substance dependencies (that is, codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390).

Of this group, those cases of substance dependence in which detoxification or other symptomatic treatment is provided would be classified into proposed DRG 435. Those cases of substance dependence in which rehabilitation treatment is provided would be classified into proposed DRG 436. Those cases of substance dependence in which combined detoxification and rehabilitation therapy is provided would be classified into proposed DRG 437.

In studying the appropriateness of the proposed reconfiguration of the DRGs in MDC 20, we focused on those cases from each hospital with discharge dates occurring after the date the hospital first complied with the May 15 coding instructions. This sample consisted of 5,577 cases from 1,112 different providers nationwide. The relative mix of different institutions (for example, alcohol units, alcohol institutions, general hospitals, psychiatric hospitals and units) represented was approximately proportional to the general mix of provider institutions nationally. A comparison of these data with the larger data set used for recalibration indicated that almost identical relative weights would be obtained from either data set. Hence, in order to treat the DRGs in MDC 20 consistently with other DRGs, the larger recalibration data set was used in deriving the relative weights contained in Table 5 of section IV of the addendum to this rule.

We are proposing to implement this new classification of the DRGs within MDC 20. Alcohol/drug hospitals and units that are currently excluded would be included in the prospective payment period beginning with the first day of a hospital's or unit's cost reporting period that begins on or after October 1, 1985. We recognize that ProPAC's report indicates that this is an issue that requires further study, but we believe that the data we have been able to examine in the past few months do provide a sound basis for making this change at this time.

We believe that these new DRGs provide a better means of distinguishing the many cases in which substance abuse or misuse and other symptoms result in hospitalization and cases in which substance dependence requires both detoxification and rehabilitation. We now have coverage rules in place that clearly describe covered detoxification and rehabilitation care and have already furnished them to the Utilization and Quality Control Peer Review Organizations (PROs). We recognize that these new DRGs will need to be carefully monitored to assure that cases are being properly coded and intend to instruct the PROs to pay special attention to them in admission review and in the course of DRG validation.

2. *Major Joint Procedures (DRG 209).* Hospitals, physicians, and professional societies allege that our current DRG 209 creates a disincentive for performing more than one medically-appropriate major joint procedure of the lower extremity during the same hospital stay. We have learned that some patients may be undergoing two separate hospitalizations when, in fact, the performance of both joint replacements during the same hospital stay might be more appropriate medically. This disincentive results from the high cost of each artificial joint prosthesis as well as the differing clinical course of patients who require this surgery and the nature of the postoperative rehabilitation process associated with lower extremity joint replacement.

Based on consultation with various professional organizations and individual physicians, including the American Academy of Orthopaedic Surgeons and the American College of Surgeons, we conducted a review of all Medicare claims in our 1984 Part A tape bills (PATBILL) file through September 1984 for DRG 209. Our claims data contained 653 cases of bilateral or multiple major joint procedures of the lower extremity including 450 bilateral knee replacements and 203 bilateral hip replacements. They were significantly more resource intensive than single unilateral lower extremity joint replacements. Therefore, for discharges occurring on or after October 1, 1985, we propose to create a DRG for bilateral or multiple major joint procedures of the lower extremity.

We have identified certain combinations of major joint procedures within DRG 209 that may both be performed during the same hospital stay. Each of these procedures requires the implantation of a separate prosthesis. If any two of the listed procedures are performed during the same hospital stay, they would be assigned to a new DRG that contains only those cases in which two major joint procedures, each requiring a separate prosthesis, were performed. Proposed DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity) would contain the following codes: 8141, 8148, 8151, 8159, 8161, 8162, 8163, and 8164.

The original composition of DRG 209 would remain unchanged except that all cases indicating the performance of two major joint procedures during the same

admission would be moved to the new DRG 471 representing multiple major joint procedure of the lower extremity. We expect that this process would reduce any economic incentive to perform major joint procedures in two separate admissions instead of during a single hospital stay if it is medically appropriate for the patient.

ProPAC's report indicated that the data available to it at the time the report was issued were not adequate to support a recommendation. However, we have made the change because our study of Medicare claims data enables us to make an adequate distinction between single and multiple cases. As in all cases, we intend to continue to monitor the resource intensity of multiple and single major joint procedures to assure ourselves that this classification remains appropriate.

3. *Kidney Transplants for Diabetic Patients.* We have learned that an anomaly in the ICD–9–CM coding conventions leads to the classification into DRG 468 of diabetic patients with end stage renal disease (ESRD) who receive kidney transplants. Because these cases obviously require the range of resources and the clinical services described for DRG 302 (Kidney Transplant), which currently has a weight of 4.1840, we propose to change the GROUPER program so that diabetic ESRD patients who receive kidney transplants would be properly classified into DRG 302.

C. Recalibration of DRG Weights

The DRG weights currently used in the prospective payment system are based on operating cost information from hospitals' 1981 cost reports as well as patient characteristics, diagnoses, and charge data from the 1981 Medicare provider analysis and review (MEDPAR) file. The MEDPAR file contains inpatient hospital billing records, coded to indicate principal diagnosis, presence or absence of a secondary diagnosis, and one surgical procedure, for a 20-percent sample of Medicare beneficiaries.

The DRG weights were calculated by a methodology involving both cost and charge data. Each case in the MEDPAR file was assigned to a DRG. Then, the average cost per day for routine and special care days for a hospital (adjusted to remove medical education costs and capital-related costs) was multiplied by the number of routine and special care days, respectively, for each discharge in the DRG. In order to derive ancillary costs associated with each discharge, ancillary cost-to-charge ratios for the ancillary cost departments from the cost report data were multiplied by the ancillary charges from the MEDPAR file. The resultant ancillary costs were adjusted to remove an estimate of direct medical education and capital-related costs.

The sum of the routine, special care, and ancillary costs was adjusted for indirect medical education costs, wage differences, and, in Alaskan and Hawaiian hispitals, cost-of-living differences. Cases were eliminated if the cost was greater or less than 3.0 standard deviations from the mean of the logarithmic distribution of the cost per case for a DRG. The average standardized operating cost for each DRG was then divided by the national average operating cost per case for the average hospital to arrive at the DRG relative weight.

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. It is possible that we could continue to develop cost-based weights using cost data or a combination of cost and charge data. Alternatively, the relative weights could be based solely on hospital charge information, adjusted or unadjusted for capital costs, teaching, and wage costs. Extensive and recent charge information is available from the FY 1984 PATBILL data set. Effective October 1, 1983, PATBILL contains fully coded inpatient hospital bills for 100 percent of Part A beneficiaries (MEDPAR is a 20 percent sample).

There are three significant advantages to using FY 1984 PATBILL information to develop new relative weights:

- Only if we use these data will we be able to classify cases more accurately than was possible in constructing the current weights. The reason is that FY 1984 PATBILL data contain more detailed information on diagnoses, procedures, age, and discharge destination than does MEDPAR.
- Since FY 1984 PATBILL data are derived from 100 percent of FY 1984 Medicare hospital discharges, the weights will be more reliable for all DRGs. Thus, we will be able to reduce significantly the number of low-volume and empty DRGs compared to what is possible using MEDPAR.
- FY 1984 PATBILL data are the most recent data, and therefore are more reflective of current treatment patterns than is MEDPAR.

We believe that these factors consititute a strong case in favor of using FY 1984 PATBILL data for the FY 1986 recalibration.

However, we have also been considering combining FY 1984 PATBILL data with the latest Medicare cost report data. Our most recent cost report data cover periods prior to October 1962. Therefore, the development of cost weights using FY 1984 PATBILL data would require combining cost and charge data from different periods of time. Since the hospital environment has changed significantly in the two or three years involved, we believe that that approach might make the weights less accurate than the use of charges alone.

In order to determine if DRG relative weights based on charges can accurately reflect the relative resource consumption across DRGs, we conducted a study (described below) that compared relative DRG weights computed based on 1981 costs with those computed on 1981 charges.

1. *Analysis of Charge Information.* Charge-based relative weights were calculated exclusively from 1981 MEDPAR information using essentially the same methodology used to calculate the 1981 cost-based weights. The charge-based weights were restricted to the same 358 DRGs for which the 1981 MEDPAR file contains a sufficient number of cases to yield reliable weights. These charge-based weights were then compared to a set of cost-based weights. The only difference between this comparison set of cost-based weights and the weights published in the original September 1, 1983 interim final rule is that these were not renormalized to accommodate external data for the remaining 109 DRGs.

In computing the charge-based weights, we used the same assumptions and procedures as were used in computing the cost-based weights except that capital-related expenses and medical education costs (direct and indirect) were removed from the cost-based weights but not from the charge-based weights.

We found a high degree of similarity between the cost-based weights and the weights based on 1981 charges for the 358 DRGs that were included in the analysis. The difference in the two sets of weights is less than five percent for most DRGs. In addition, the structure of the relative weights across DRGs for each method is also very similar. The Spearman correlation coefficient, which measures the correspondence of the rank ordering of pairs of observations, and the Pearson product moment correlation coefficient, which measures the correspondence of actual values between two sets of observations, are both greater than .99. These results reflect a high degree of correspondence

between the cost-based and charge-based weights.

Based on the results of this analysis, we believe that for this recalibration DRG weights based on charge data would provide an accurate measure of the relative resource consumption across DRGs. In addition, the recalibration of DRG weights based on charge data would permit the use of recent billing data that include case experience under the first year of the prospective payment system. Therefore, at this time, DRG weights based on charges should be more reflective of current technology and treatment patterns. However, we will continue to study this issue and may consider other options as we refine our analysis and in future recalibration efforts.

Recalibration based on charge data is supported by ProPAC's Recommendation 17. ProPAC concludes that, at the present time, charge data are the most recent and detailed data we have available.

2. *Recalibration of DRGs Based on Charge Data.* The recalibrated DRG relative weights were constructed from FY 1984 PATBILL data received by HCFA through December 1984, which contain almost 90 percent of all Medicare discharges occurring in FY 1984, the first year of the prospective payment system. Approximately 40 percent of these discharges were paid under the prospective payment system, and 60 percent on a reasonable cost basis under the rate of increase limits and State demonstration waivers. The PATBILL data include approximately 10.2 million Medicare discharges.

The methodology used to calculate the DRG weights is as follows:

- All the claims were reclassified using the proposed revised GROUPER program.
- The average charge per DRG was calculated by summing the total charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated from the calculation of the average charge per DRG.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average charge per case for the average hospital to determine the weighting factor.
- No adjustments were made to the charges to remove capital-related and medical education costs. However, the charges were standardized for wage differences using the proposed survey-based wage index and for variations in teaching activity.
- Kidney acquisition costs continue to be paid on a reasonable cost basis, but, unlike other excluded costs, kidney acquisition costs are concentrated in a single DRG (DRG 302, Kidney Transplantation). For this reason, it was necessary to make an adjustment to prevent distortion of the relative weight for DRG 302. Kidney acquisition charges were subtracted from the total charges for each case in DRG 302 prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

The weights developed according to the methodology described above were normalized so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This normalization is supported in general by ProPAC's Recommendation 17. ProPAC recommended that this method be used to incorporate DRG weight adjustments made before the start of FY 1985. (See section II. A.3.a. of the addendum for further discussion of Recommendation 17 concerning adjustments for case mix.)

3. *Low Volume and Empty DRGs.* As discussed above, we used data from the 1981 MEDPAR file and 1981 Medicare cost reports to establish the current set of DRG relative weights. However, there were 109 DRGs that either contained no MEDPAR cases or had too few cases to provide a reliable weighting factor. In order to construct a full set of relative weights, we supplemented the MEDPAR file with discharge records from Michigan and Maryland. The combined data sets were then used to calculate the weighting factors for the 109 low volume or empty DRGs.

By using the 1984 PATBILL data set, which contains the entire universe of fully coded Medicare claims, rather than the MEDPAR file, which is a 20 percent sample of claims, the number of low volume and empty DRGs is greatly reduced. In addition, sampling error is no longer a concern, which means that, in theory, a DRG weight could be constructed from a single case. In practice, however, we believe that some minimum number of cases is required to compute reasonable weights. We considered using minimum numbers of cases that ranged from 1 to 50 cases. We are proposing to use a minimum of 10 cases because we believe this to be a reasonable threshold.

In computing weights for the low volume and empty DRGs, we could repeat the process used for the original weighting; that is, using non-Medicare data for other sources. This option is extremely time consuming and complex since it involves obtaining raw data from outside sources and performing extensive data processing to edit and standardize data, compute weights for each data set, and merge those weights with Medicare-based weights. Because this method essentially uses non-Medicare claims to set weights for the Medicare population (and those populations differ in some significant ways), it is not clear how meaningful the results are for our purposes. Therefore, although it was reasonable to use this method for the first weighting, we do not believe it should be repeated because use of the FY 1984 PATBILL data results in a reduction in the number of low volume DRGs from 109 to 30.

We decided to adjust the original weights of the 30 low volume and empty DRGs that would still be present after our proposed recalibration by the percent change in the weight of the average case in the remaining DRGs. Therefore, we would adjust the original weights of the DRGs involved downward by three percent. However, the renormalization of the entire set of relative weights involves adjusting the weights upward by three percent. The combined effect of these adjustments on the 30 low volume and empty DRGs is to leave their relative weights unchanged.

The DRG weights established in this manner for low volume DRGs are appropriate for Medicare discharges, especially in view of the fact that, among the over 10 million Medicare discharges, only 50 discharges were classified into these DRGs. However, State Medicaid agencies and other payors of health care services that may be interested in using a hospital prospective payment system should recognize that DRG classifications and weights developed from Medicare discharges may not be appropriate for use in the payment of non-Medicare cases. For example, if patient populations other than the Medicare population are involved, diseases such as cystic fibrosis may be weighted differently. This is particularly true in the case of low volume DRGS, many of which are for pediatric diagnoses, which are rare among Medicare beneficiaries. Therefore, other payors interested in using the DRG classification system may wish to develop DRG groupings and weights for these types of diagnoses using data more appropriate to their respective beneficiary populations.

D. Procedures for Making Changes During the Year

We plan to make most of the changes we would want to make in the GROUPER program or the DRG classification system at the same time we publish the annual prospective payment rate notices required by § 412.8(b) in order to make the system as predictable as possible during the year. However, as we have noted, we believe that this interest may occasionally be overridden by the need to make certain changes on a more current basis to—

- Account for new items and procedures that become covered under Medicare during the course of the year; and
- Correct omissions or inequities that have a potentially adverse impact on beneficiaries or a significant and unwarranted fiscal impact on the system.

The process by which the need for the changes and the nature of the changes to be made are identified will vary to some extent with the nature of a particular issue. However, we have described below the general process we propose to follow in developing the issues, as well as the procedures we would use for implementing the changes. These procedures would be set forth in a new § 412.10.

1. *New Coverage Decisions.* A decision to provide Medicare coverage of a new item or procedure must, in the interest of fairness to beneficiaries and hospitals, be accompanied promptly by a decision on the appropriate DRG classification of cases including the newly covered item or procedure. In some cases, we may need to establish a new DRG in order to accommodate the new coverage decision.

We have an established process by which we deal with proposals to change coverage under the Medicare program. This process includes review of the issues by a panel of HCFA physicians and, in some cases, referral to the Public Health Service for a recommendation if additional medical expertise is required. We plan to maintain this process and to supplement it, once medical advice is received, by the procedures described below in this section. Individuals and organizations wishing to recommend expansion of coverage to inclued new items or services should continue to follow existing practices.

In making a decision as to payment for newly covered items or procedures under the prospective payment system, we propose to use the clinical, cost, and charge data available to us at the time. In deciding how to assign a new item or procedure to a DRG, create a new DRG, or alter the weight of an existing DRG, we propose to follow the same principles that governed the development of the original DRG system; that is, the cases must have clinical coherence and a relatively similar resource intensity.

2. *Coding Issues.* A new procedure may need to have an ICD–9–CM code assigned to it, and there may be some dispute as to which code is appropriate or there may be no appropriate code. HCFA is working with the National Center for Health Statistics (which is responsible for ICD–9–CM), the American Hospital Association, the American Medical Records Association, and the Commission on Professional and Hospital Activities to establish a task force to deal with these issues. Decisions about coding would be announced by HCFA to all appropriate parties through its issuance system.

3. *Omissions and Inequities.* We may identify cases in which the GROUPER logic works unintended inequities that because of their magnitude require immediate correction. For example, as mentioned earlier, kidney transplants are normally classified into DRG 302 (Kidney Transplant), which has a weight of 4.1840; however, because of an ICD–9–CM coding convention, certain diabetic ESRD patients who are admitted with a principal diagnosis related to diabetes with renal manifestation and who receive a kidney transplant are assigned to DRG 468 (Unrelated Operating Room Procedure), which has a weight of 2.0818.

With one exception, which is described below, we have not corrected this problem or made any significant DRG classification changes until now because we had not stated in previous documents that we would make changes outside of the recalibration and reclassification effort prescribed by section 1886(d)(4)(C) of the Act. However, we believe that when we identify cases such as these, which have a major fiscal impact, it is appropriate to deal with them as soon as possible after they are discovered so that appropriate levels of payment would be made. The one change we have made already is to add coverage for two types of lithotripsy procedures so that Medicare beneficiaries could benefit from the procedures and hospitals could be paid for them. In the case of these procedures, it was possible to incorporate them into the system by identifying the appropriate DRG and assigning an appropriate code.

If the GROUPER program is not capable of assigning cases to the DRG that we have found to be appropriate, the Medicare Code Editor or manual claims review may be considered for use in the interim until GROUPER changes can be made.

We are including below a full discussion of the process by which we determined how to make the lithotripsy change as a example of the approach we plan to take with interim changes. Of course, our decision is subject to comment at this time.

- Extracorporeal Shock Wave Lithotripsy: Extracorporeal shock wave lithotripsy is a new medical technology that permits noninvasive treatment of kidney stones by the nonsurgical fragmentation of stones with focused hydraulic shock waves. We have recently provided Medicare coverage of the treatment of upper urinary tract stones by extracorporeal shock wave lithotripsy. Our decision to provide coverage was based on the recommendations of the Office of Health Technology Assessment of the Public Health Service (PHS), which determined that this treatment is safe and effective for upper urinary tract stones. Our decisions on DRG placement and coding were based on a thorough study of the information available.

Included in our studies were surveys of hospital resource consumption, charges, cost estimates, and characteristics of patients of each of the six medical centers currently performing extracorporeal shock wave lithotripsy. Information based on over 2,000 cases (for procedures performed during trials for Food and Drug Administration premarketing approval) was obtained from the University of Virginia Hospitals, Charlottesville; Cornell University Medical Center, New York Hospital; Massachusetts General Hospital, Boston; Shands Hospital of the University of Florida, Gainesville; Baylor University Medical Center; Houston; and Methodist Hospital, Indianapolis.

Our medical record consultants informed us that ICD–9–CM code 5995 is the most appropriate existing code for extracorporeal shock wave lithotripsy. This code should be used when submitting claims for this procedure. We are proposing to continue this classification, which causes the procedure to be grouped into DRGs 323 and 324 (Urinary Stones).

However, as in all cases, we intend to continue to monitor the resource intensity of extracorporeal shock wave lithotripsy to assure ourselves that this classification remains appropriate.

- *Percutaneous Lithotripsy:* Percutaneous lithotripsy is a method by which urinary stones are fragmented and removed through a small surgically

created passage between the urinary tract and the overlying skin. This is often accomplished by a surgical procedure called a nephrostomy.

We have recently extended Medicare coverage to the treatment of certain urinary stones by percutaneous lithotripsy. Our decision again was based on the findings of PHS that percutaneous lithotripsy is considered safe and effective treatment for certain urinary tract stones. Effective March 15, 1985, we implemented a coverage instruction allowing payment for percutaneous lithotripsy.

Although ultrasonic fragmentation of kidney stones is not recognized as an operating room procedure within GROUPER, this procedure is often performed in conjunction with standard surgical procedures such as a nephrostomy. If these standard surgical procedures are performed during the same hospitalization as an adjunct to the lithotripsy, and are appropriately coded, GROUPER assigns the case to the associated surgical procedure (for example, DRG 304 or 305 for nephrostomy). If no recognized operating room procedure is performed during the same hospitalization as the one in which the lithotripsy is performed, then the case is assigned to DRG 323 or 324 (Urinary Stones). This situation should occur rarely, such as those cases in which lithotripsy is performed through a patient nephrostomy that existed at the time of admission. We believe that these DRG assignments continue to be appropriate for percutaneous lithotripsy.

ProPAC's report recommended deferring action on this issue. However, since this report was issued, we received the recommendation from PHS indicating that this procedure was safe and effective for the applications for which coverage is being extended. Also, we believe that the reasons discussed above fully support the DRG assignment that will be made.

We recognize that our proposal on making changes during the year avoids the rulemaking process and a full discussion of the issues relating to the changes, as well as opportunity for public comment. We believe, however, that our decision to make limited changes in this way is consistent with the view of Congress, which exempted the establishment, methodology, and weighting of diagnosis related groups from judicial review because of their complexity and " * * * the necessity of maintaining a workable payment system." (H.R. Rep. 25, 98th Cong., 1st Sess. 143 (1983).) It is our intent, nonetheless, to correct any errors we may have made as soon as possible and to submit all changes we have made during the year, as well as changes we propose to make during the next year, for comment in the next annual update notice.

Interim changes would be made by means of HCFA's administrative issuance system and would be made effective as soon as is operationally feasible. While we would not delay the implementation of these changes, any information we receive would be considered in determining whether further interim changes should be made.

We would stress, however, that we anticipate few changes would be made during the year. It is necessary to include newly covered items and services as soon as possible so that beneficiaries are protected from liability for them as provided under § 412.42. It is also necessary to make changes when an omission or inequity is discovered which inappropriately disadvantages either the beneficiaries, the hospitals, or the Medicare Trust Fund. For example, we would have preferred to make the change relating to diabetic patients who require kidney transplants (described above) as soon as possible to avoid disadvantage to the patients or providers.

Our approach to these issues reflects our agreements with ProPAC, which suggested a similar approach with respect to percutaneous transluminal coronary angioplasty. The inequity, which in this case was to the Medicare program, resulted because the relative novelty of the procedure at the time the DRG system was developed caused it to be overlooked and the ICD–9–CM code assigned to it caused it to be grouped inappropriately with open heart surgery.

Recommendation 20 from the ProPAC report states that in the case of percutaneous transluminal coronary angioplasty, we should immidiately implement a mechanism to correct the problem and follow-up with a formal change in GROUPER. ProPAC's rationale was that the classification was so clearly inappropriate from both a medical and resource standpoint that an immediate change was warranted. As we have noted, we have not yet made these changes because we believe that a prior notice of our intentions to establish a process for interim changes should be given. However, in the future, for issues such as these, we plan to follow the advice of ProPAC and make changes at the point that the need for change becomes apparent.

While we expect to makle changes during the year infrequently, we believe that situations such as the ones described above warrant this type of action. We recognize that in some cases, some members of the provider community may face a reduction in payment (as would have been the case in the event of a midyear percutaneous transluminal coronary angioplasty change). In other cases, an increase in payment would result (for example, the case of kidney transplants provided to diabetic patients). However, we believe that it is necessary to make corrections and modifications during the year in order to correct anomalous situations or to pay for new procedures. These changes are necessary to assure that proper payment is made and that the diffusion of new and improved medical practices and technology are not retarded by this payment system and that the system remains current.

III. Development of a New Hospital Wage Index

A. Basis of Proposed Wage Index

Section 1886(d)(2)(C)(ii) of the Act requires that we standardize the average cost per case of each hospital used to develop the separate urban and rural standard amounts for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized urban and rural amounts for the nine census regions and the national rates be adjusted for hospital area wage levels as part of the methodology for determining the prospective payments to hospitals.

We used calendar year 1981 hospital wage and employment data obtained from BLS's ES 202 Employment, Wages and Contributions file for hospital workers to construct the wage index, applied under both of the above provisions of the Act, for computing prospective payments to hospitals during FY 1984 and FY 1985. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

We have been aware since the beginning of the prospective payment system of certain limitations of the BLS data, especially with regard to the lack of information on hours of employment or full-time equivalents. The BLS data provide information only on the number of workers employed at a hospital and their aggregate salaries. As a result, area wage indexes produced from these data do not distinguish between part-time and full-time employees. Although we recognized these shortcomings, we believed the disadvantages were outweighed by the advantage of being able to utilize the best national data available.

In response to the September 1, 1983 interim final rule (48 FR 39752), we received many comments concerning the nature and potential impact of limitations in the BLS data. The commenters believed that using these data to construct the hospital wage index resulted in inaccurate and improper geographic variation in prospective payment rates. Because the area wage index can have a substantial impact on the amount of a hospital's payment, the accuracy of the index values is essential. We concluded from these comments that we needed to examine critically those limitations in the wage index that seemed of greatest concern in order to ensure the accuracy of the payment rates and, thereby, to maintain confidence in the equity of the prospective payment system. For this reason, we established a joint workgroup with representatives of the hospital industry from across the country to evaluate alternatives to the current wage index.

This workgroup agreed that the most serious technical limitation of the BLS data was its inability to take into account differing part-time employment practices. The workgroup decided that this problem should be addressed immediately, and to correct this limitation, it was decided that we would collect our own data through a survey of hospitals subject to the prospective payment system. We devised a survey form and instructions for collecting financial data that would permit the analysis of options for the construction of an improved wage index.

This survey provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report for hospital fiscal years ending in calendar year 1982, and for the extraction from hospital records of data on paid hours worked. These survey forms were disseminated through the Medicare fiscal intermediaries on March 16, 1984. A complete description of the survey, as well as the initial survey results, can be found in the proposed rule published on July 3, 1984 (49 FR 27439) and the final rule published on August 31, 1984 (49 FR 34764).

It was our intention to use the information from this survey to calculate a new wage index for the FY 1985 prospective payment rates. However, as explained in the July 3, 1984 proposed rule, we were unable to implement a new wage index developed from the survey because a high proportion of the survey reports as submitted by hospitals were either incorrect or otherwise suspect as to their accuracy. Therefore, the prospective payment rates for FY 1985 were developed from the same 1981 BLS wage indexes previously published on September 1, 1983 (48 FR 39871), updated to reflect the most recent corrections in the 1981 ES 202 data and changes in metropolitan area definitions.

As of December 12, 1984, we had received survey reports from 5,734 non-Federal hospitals. Of these reports, 94 represented data from hospitals that are currently not subject to the prospective payment system (that is, psychiatric, rehabilitation, cancer, and long-term hospitals). These data were excluded from the survey data base. Also, we excluded data from seven hospitals that had changed ownership in 1982 or later and for which validated data could not be obtained. Thirty-eight additional hospitals were excluded because of technical deficiencies in their data. Therefore, records from 5,595 hospitals were included in our survey data base.

As a further check on the accuracy of the reported survey data, we, in conjunction with the Department's Office of the Inspector General, initiated a limited scope audit of the data from a number of surveyed hospitals. This audit was used to verify the key data elements from the survey reports that are used in the computation of the proposed wage index. Approximately two-thirds of the survey reports audited were from hospitals that are located in areas where our analysis indicated that the application of the HCFA gross wage index would have resulted in FY 1984 prospective payment rates per discharge that varied by more than ten percent from payment rates using the BLS wage index. As expected, the greatest number of, as well as most significant, audit adjustments were made to the survey data from hospitals located in the aberrant areas. The corrected records were incorporated into the survey data base.

B. Computation of Proposed Survey-Based Wage Index

We computed two hospital wage indexes using the data from the 5,595 hospitals remaining in the survey data base. One index is derived from gross hospital salaries; the second index is developed from adjusted gross hospital salaries. Adjusted gross salaries are defined as the net of wages for and hours worked by contracted labor, interns and residents, personnel employed in nonhospital cost centers, and hospital-based physicians.

The two indexes were developed from different categories of hospital workers. the index based on gross salaries and wages measures the difference from area to area in gross hospital wages; that is, the wages paid to all hospital workers, including contract labor, interns and residents, provider-based physicians, and workers employed by the hospital but working in areas of the facility other than the hospital inpatient area. The other index is based on adjusted salaries and hours; that is, it eliminates the effect of contract labor, interns and residents, provider-based physicians, and hospital workers in areas of the facility other than the hospital inpatient area.

Both indexes control for regional differences in part-time employment since they are based on the average hourly wage in each urban or rural area. However, because many hospitals have indicated that they had difficulty in determining the wages and salaries and hours worked for the excluded worker categories used to develop the adjusted gross wage index, that index is probably not as accurate as the gross wage index.

The prospective payment system is built upon the concept of averaging. The standardized rates are based on the averages of hospital average inpatient operating costs per discharge in urban and rural areas within the nine census regions and the nation. Similarly, the wage index is constructed using average hospital wages in each urban and rural area compared to a national average wage.

In such a system, the effect of individual differences is mitigated by the inclusion of large numbers of entities. Because the system is comprised of many hospitals and many workers, variations in the practices of individual hospital need not have a pronounced effect on the area average.

In over 90 percent of the urban and rural areas, both the gross and adjusted wage indexes change in the same direction when compared to the BLS index. In effect, using either survey-based wage index would not change the national outcome appreciably, although there would be significant differences in impact between the two indexes in some areas.

Because the precision of the adjusted gross wage index is more problematic, we believe that the gross wage index is the better of the two wage indexes derived from the HCFA wage survey. The gross index we would use is derived from gross hospital salaries and accounts for regional variation in part-time employment and length of work week by using an average hourly wage instead of an average monthly wage, as the basis for measuring local differences in wage levels.

The results of our survey may prove to be unexpected to some. Although the survey-based data, which accounts for geographic differences in the use of part-time workers, was expected to favor rural areas, this did not occur in the aggregate as shown in Appendix A. Nevertheless, it is true that for many rural areas, the survey-based wage index is higher than the current 1981 BLS wage index. In view of these results and since the data series employed in the construction of the survey-based wage index is dissimilar from that used by BLS, we specifically request comments regarding possible alternatives to use of the survey-based gross wage index. In addition to soliciting comments as discussed in section I.B. of the preamble, we would appreciate receiving suggestions on how we should update the HCFA survey-based wage index if that is the index we decide to use. For example, we could do a new survey every two or three years, or we could request that hospitals submit additional data with their cost reports or as a part of some other reporting vehicle.

The method used to compute the proposed wage index (Tables 4a and 4b of the addendum) is as follows:

Step 1—Each of the 5,595 non-Federal acute care hospitals subject to the prospective payment system, for which a properly completed survey form has been received, is classified into its appropriate urban or rural area based on the Executive Office of Management and Budget's (EOMB's) metropolitan statistical area (MSA) definitions that were affective June 30, 1984, with the addition of a change in the St. Louis MSA that became effective after October 1, 1984, and which would be recognized prospective payment purposes beginning October 1, 1985.

Step 2—For each hospital, the total gross hospital salaries (item 4 on the survey report) are inflated from the end of the hospital's cost reporting year through the end of calendar year 1982 using the annual 1982 rate of increase in the wages and salaries portion of the hospital market basket. The annual rate was 11.0 percent. This is done to eliminate any distortion in the data caused by differing hospital cost reporting years.

Step 3—For each hospital, the inflated gross hospital salaries computed in step 2 are divided by the reported number of total paid hours worked (item 12 on the survey report) to yield an average hourly wage.

Step 4—Hospitals with an aberrant average hourly wage, which is defined as an average hourly wage either less than $3.35 (the minimum wage in 1982) or greater than $19.58 (2.5 times the 1982 national average hourly hospital wage as reported in BLS' *Employment and Earnings Bulletin* as of February 1984), are excluded. This results in the elimination of records from 73 hospitals.

Step 5—Within each urban or rural area, the result computed in step 2 is summed for all remaining hospitals to yield the total gross hospital salaries in each area.

Step 6—The total gross hospital salary result computed in step 5 is divided by the corresponding total number of paid hours worked to yield an average hourly wage for each urban or rural area.

Step 7—The arithmetic mean of the result in step 6 is computed across all urban and rural areas to obtain the national average hourly hospital wage based on gross salaries. The national average is $8.03.

Step 8—For each urban or rural area, the hospital wage index is calculated by dividing the average hourly wage computed in step 6 by $8.03, the national average.

The wage index values listed in the addendum may differ slightly from those included in our March 29, 1985 report to Congress on the HCFA wage index. These differences result from a statutory change in the St. Louis MSA definition as well as revised audit adjustments that were made subsequent to the issuance of the report.

C. Retroactive Application of Proposed Wage Index

On July 18, 1984, while we were conducting our survey, Congress enacted section 2316 of Pub. L. 98–369, which requires the Secretary to conduct a study to develop an appropriate wage index that specifically addresses the part-time employment problem. As mentioned above, this study was presented to Congress on March 29, 1985. We are continuing to examine the limitations and advantages of the survey-based and the BLS wage indexes. In addition, section 2316(b) specifies that any changes made in the wage index under that provision of the law are to be retroactive to cost reporting periods beginning on or after October 1, 1983. We specifically request comments on this issue of retroactivity.

We believe that applying the survey-based wage index retroactively would be inconsistent with a major premise of the prospective payment system, which is that hospitals know in advance of each discharge the amount they can expect to be paid by Medicare. We maintain that, under this system, retroactive adjustments would erode the prospective nature of the system.

Despite our concerns about the retroactive application of a new wage index, we must comply with the requirements of section 2316(b) if the survey-based wage index were adopted. Therefore, in such a case, we would make the appropriate payment adjustments to overpaid and underpaid hospitals throughout FY 1986. The survey-based wage index used to determine the amount of a hospital's underpayment or overpayment would be based on the recognized MSA definition in effect for the entire cost reporting period for which the payment adjustment determination is being made.

We believe that spreading the payment adjustments over the course of one year, rather than requiring lump-sum payments, would minimize the negative impact on overpaid hospitals. Therefore, to accomplish these adjustments, we would require that overpaid hospitals make 26 equal payments to us throughout FY 1986. Conversely, we would make 26 equal payments to underpaid hospitals over the same period of time.

IV. Other Proposed Regulations Changes and Current Provisions

A. Rate of Increase Limits (§ 405.463)

Section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) added section 1886 to the Act in an attempt to restrain growth of hospital costs. Specifically, as originally enacted, section 1886(b) of the Act set forth a program of control on hospital cost increases. This provision required that we establish a ceiling target level for the allowable rate of increase of hospitals' inpatient operating costs per case. In addition, the statute provided for incentive payments for hospitals that keep their costs below the target, and penalties for hospitals that incur costs greater than the target.

This target rate system was expected to apply only to hospital cost reporting periods beginning before October 1, 1985 (section 1886(b)(2) of the Act). However, Pub. L. 98–21, which established the prospective payment system, also extended the target rate system indefinitely for all hospitals excluded from the prospective payment system by repealing section 1886(b)(2) of the Act.

1. *Target Rate Percentage.* Each hospital's target amount is increased annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. As set forth in section 1886(b)(3)(B) of the Act as amended by 601(b) of Pub. L. 98–21, the target rate percentage was the estimated hospital

market basket increase factor plus one percentage point.

Section 2310 of Pub. L. 98–369 revised section 1886(b)(3)(B) of the Act to provide that, for cost reporting periods beginning in FY 1985, the annual inflation rate to be applied for updating the target rate is equal to the estimated hospital market basket increase factor plus one-quarter of one percentage point. Beginning in FY 1986 (cost reporting periods beginning on or after October 1, 1985), the target rate percentage will be adjusted by an update factor determined by the Secretary under section 1886(e)(1) of the Act, considering the recommendations of ProPAC under section 1886(e)(2) of the Act.

Currently, § 405.463(c)(3)(i) states that the target rate percentage is equal to the estimated increase in the market basket index plus one percentage point. We are proposing to revise § 405.463(c)(3)(i) to reflect the changes made by Pub. L. 98–369.

2. *Exemption for New Hospitals.* When we published the regulations implementing section 101 of Pub. L. 97–248 on September 30, 1982 (47 FR 43282), we included a provision that exempted new hospitals from the target rate system (§ 405.463(f)(1)). A new hospital is a provider of inpatient hospital services that has operated as the type of provider for which it is certified for Medicare participation under present and previous ownership, for less than three full years. We exempted new hospitals from the rate of increase limits to prevent the distortion inherent in a new hospital's operating cost per case from adversely affecting its target rate reimbursement. This exemption expired at the end of the earliest of—

- The first cost reporting period beginning at least two years after the hospital accepts its first patient; or
- The first cost reporting period beginning on or after October 1, 1985 (that is, the statutory expiration date for the rate of increase limits).

However, when we revised the regulations at § 405.463 in the September 1, 1983 interim final rule with comment period, we inadvertently did not delete the October 1, 1985 date from § 405.463(f)(1). Therefore, under the current regulations, for cost reporting periods beginning on or after October 1, 1985, new hospitals that are excluded from the prospective payment system will be subject to the rate of increase limit.

Since the reasons for providing a new hospital exemption remain as valid today as when the target rate system was first established, and since the statutory termination date of October 1, 1985 has been repealed, we are proposing to revise § 405.463(f)(1) by deleting the October 1, 1985 expiration date for the exemption.

B. Exclusion of Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

In the January 3, 1984 final rule, we developed a set of criteria for the exclusion of hospitals and distinct part units that specialize in alcohol/drug dependency treatment. As provided in §§ 412.23(c) and 412.32, this exclusion terminates on October 1, 1985. However, if the exclusion expires on that date, all excluded alcohol/drug hospitals and units, regardless of their actual cost reporting period, would have to close their books and file cost reports as of September 30, 1985.

Since we originally intended these hospitals and units to be excluded for a full two years from the prospective payment system and because we believe it would be inappropriate to force excluded entities to close their cost reporting periods on September 30, 1985, we are proposing to revise §§ 412.23(c) and 412.32. As revised, the exclusion would expire at the end of the hospital's cost reporting period that began before October 1, 1985. Formerly excluded alcohol/drug hospitals and units would no longer maintain any separately recognized program (for example, a subprovider number or separate cost accounting). These entities would become indistinguishable from other prospective payment hospitals.

C. Review Activities

1. *Responsibility for Medical Review (Subparts C and F of Part 412).* In the January 3, 1984 final rule, we used the term "medical review entity" to describe the various organizations that would be performing inpatient hospital medical review (49 FR 282). We used this term because, at that time, we had not implemented the Utilization and Quality Control Peer Review Organizations (PRO) program. Until the PROs were in place, PSROs and fiscal intermediaries were responsible for determining the medical necessity, appropriateness, and quality of care as well as performing DRG validation. In addition, they were responsible for providing appropriate medical determinations in connection with coverage rules. To avoid confusion, we used the term medical review entity to refer to any of these organizations (that is, PSRO, PRO, or intermediary).

Now that the PROs are fully functioning, they have the responsibility for the medical review of hospital claims. Therefore, in Subparts C and F of Part 412, we are proposing to replace all references to medical review entities, PSROs, and to fiscal intermediaries, as appropriate, with a reference only to PROs.

2. *Limitations on charges to beneficiaries (§ 412.42).* In the January 3, 1984 final rule, we added § 405.472(b)(1)(iii) (since redesignated at § 412.42(c)) to allow hospitals to charge beneficiaries for items and services excluded from coverage on the basis of § 405.310(g) (custodial care) or § 405.310(k) (medically unnecessary services) if certain conditions are met and the services are furnished by the hospital. The conditions are the following:

- The hospital determines, with the concurrence of either the beneficiary's attending physician or the PRO, that the beneficiary no longer requires inpatient hospital care.
- The hospital notifies the beneficiary in writing of that determination.

We provided this mechanism because the prospective payment system did not change Medicare's coverage rules and was not intended to prevent a hospital from charging a beneficiary for a noncovered service that he or she might choose to receive. In order to ensure that beneficiaries are protected from liability for noncovered services about which they had not been informed, we included § 412.42(c)(3), which requires that the written notice contain specific information.

Since implementation of the PRO program, we have received inquiries from some hospitals and hospital associations, in States which either have a State cost control system approved under section 1886(c) of the Act or participate in a demonstration project authorized under section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90–248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), concerning the hospital's authority to charge beneficiaries for custodial or medically unnecessary care. Before the PRO program, many of these hospitals were delegated the PSRO review function; that is, they could review and deny services by issuing denial letters to beneficiaries. Under the PRO program, however, they no longer are delegated this authority.

Hospitals paid under a State cost control system or demonstration project believe that they are at a disadvantage as opposed to prospective payment hospitals. They argue that they may be faced with situations in which they have to provide medically unnecessary or custodial care and there is no administrative mechanism that enables the hospitals to notify the beneficiary of

noncoverage in a manner that the State will find provides a satisfactory basis for Medicaid payment for an ICF level of care in the hospital. The hospitals can give notices of noncoverage under the waiver of liability regulations (§ 405.332). However, these notices, unlike the notices under the stricter requirements of § 412.42(c) applicable to prospective payment hospitals, can be given without the concurrence of either the attending physician or the PRO. Thus, the States operating under a State cost control system or demonstration project are not prepared to accept these notices as a basis of Medicaid payment to the hospital for an ICF level of care. The hospital must wait for Medicaid payment until the PRO makes a retrospective determination regarding the level of care furnished.

We agree with the hospitals and, therefore, propose to amend the regulations by adding a new § 405.308 to provide that the notice requirements of § 412.42(c) rather than § 405.332 would apply when a hospital receiving payment under a State cost control system or demonstration project gives notices that a beneficiary who has been admitted for covered care no longer requires inpatient hospital services.

We have learned that many prospective payment hospitals have inappropriately implemented the notice process required by § 412.42(c), resulting in a detrimental effect on beneficiaries and inappropriate program payments. Some examples of inappropriate practices have included the following:

- Notices that do not contain all of the required elements.
- Notices that do not make it clear that the *hospital*, with the concurrence of the attending physician or the PRO, has determined that the patient no longer requires hospital care. (The language of some notices has implied, in effect, that Medicare will no longer pay for the hospital stay or that Medicare benefits have been exhausted, or the language fails to fix responsibility for the decision on the hospital).
- Notices that give an incorrect date on which the beneficiary will become responsible for charges and sometimes make the beneficiary responsible retroactively to the date of admission. (In some cases, the notice is given after discharge).
- Some hospitals have not given specific notices but rather have required the beneficiary to sign a blanket statement upon admission accepting responsibility for whatever Medicare may not cover. The hospital then charges the beneficiary later if Medicare finds the stay or any part of the stay noncovered.
- Some hospitals "discharge" a beneficiary from Medicare status and "readmit" him or her on a private pay basis without issuing a proper notice and without the beneficiary leaving the hospital bed. The hospital then charges the beneficiary from the point of "readmission".

These practices create financial burdens on beneficiaries that are often inappropriate and that were unintended when the requirements of § 412.42(c)(3) were written. In addition to causing confusion, fear, and frustration for the beneficiaries, these practices lead to inappropriate payments by beneficiaries and the Medicare program. Some of the care in question may well have been covered and, as such, included in the program's payment to the hospital. In other cases, under Medicare law and regulations, liability for the noncovered care might have been assigned to the hospital.

However, we believe that these difficulties may have been due, in part, to misunderstandings by hospitals as to how the prospective payment system operates, and, therefore, we have issued instructions to the PROs on this subject. The instructions (PRO manual, Interim Manual Instruction, Transmittal No. 85–3) specify that the PROs are responsible for monitoring the notices used by hospitals and provide further guidance on the appropriate content of the notices.

We plan to continue to monitor this situation carefully to ensure that inappropriate notices are no longer being provided. If the situation does not improve, we will consider removing this provision from the regulations to preclude hospitals from charging beneficiaries for items and services excluded from coverage on the basis of custodial care or medically unnecessary services. We would be interested in receiving comments about this problem and possible solutions.

Also, we are proposing to revise § 412.42(c)(3)(iv) to allow the attending physician as well as the hospital or the beneficiary to appeal a PRO's decision on the validity of a hospital's finding that a beneficiary's stay is no longer covered care. This change would conform the regulations to the requirements of § 473.12(a)(1), in the PRO regulations that were published April 17, 1985 in the **Federal Register** (50 FR 15364).

We are proposing to make a technical change in §§ 412.42(d) (3) and (4) to indicate that validation of a hospital's findings regarding coverage are made by the intermediary and the PRO (to the extent that there is a medical component to the decision). Reference to the role of the PRO in this activity was inadvertently omitted from the regulations earlier.

3. *Admission Pattern Monitoring (§ 412.45).* Section 412.45 describes the method we use under the prospective payment system to monitor the pattern of admissions in a hospital by reviewing the hospital's discharge rate. We are proposing to delete this section from the regulations because our operating experience with this type of review has led us to begin developing admission pattern monitoring procedures that are more efficient and that use more current data than the data referred to in §412.45.

We are developing a system under which we would require the PRO to respond to admission pattern reports (which often are nearly nine months old) by explaining the basis for the variation using their review experience. If there is no reason for the variance, we would require that the PRO intensify its review of current cases to eliminate any inappropriate admissions. We believe that it is more appropriate to focus actual review efforts on current rather than past cases so that these efforts are expended to produce behavior changes.

Therefore, we propose to delete the detailed regulatory description of the activity so that our simplified and revised system, once developed and tested, can be implemented immediately. We note that § 412.44(a) contains a requirement for admissions pattern monitoring and our only objective in deleting §412.45 is to eliminate the regulatory requirements that deal with procedures and time frames for conducting this function.

D. Payment for Cost Outliers (§ 412.84)

Under the prospective payment system, an additional payment is made to hospitals for atypical cases known as "outliers." These are cases that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG.

A day outlier case is a discharge in which the length of stay exceeds the geometric mean length of stay for discharges in the DRG by the lesser of a fixed number of days or a fixed number of standard deviations. A cost outlier case is a discharge that does not qualify as a day outlier case but in which covered charges adjusted to costs exceed the greater of a fixed dollar amount or a fixed multiple of the Federal prospective payment rate.

Currently, § 412.84 requires that, in the case of a cost outlier, the hospital must request medical review of all services furnished to the beneficiary. This

medical review is performed before the additional amount requested by the hospital can be paid. Of course, if the medical review determines that some of the services are noncovered, the charges for those services will not be considered in determining if the claim meets the cost outlier threshold or the outlier payment amount.

Our experience in this area has demonstrated that the medical review of cost outliers interferes with a hospital's cash flow and the denial rate is relatively low (currently, five percent on a national basis). Therefore, we believe that there is no longer a need to require medical review of these discharges on a prepayment basis. In addition, we believe that it is no longer necessary to review 100 percent of all hospital's cost outlier cases, even after payment is made.

We are proposing to revise § 412.84 to provide that medical review prior to payment of cost outliers would not be required. However, if the PRO finds that a hospital has a pattern of inappropriate billing, the PRO could review all cost outlier cases for these hospitals prior to payment. For cases in which payment is made for a cost outlier prior to medical review, the PRO would review a sample of these cases after payment. (Currently, we require a 50 percent sample on a national basis.) If the PRO determines that any services furnished in these cases are noncovered, the outlier payment for those services would be recovered from the hospital.

In addition to these changes, we would also revise § 412.84 to allow hospitals to request an outlier payment at the time they submit the bill for the discharge. Currently, hospitals cannot make this request until they receive the intermediary's determination of the prospective payment rate for the discharge. We are proposing this change because we believe that it is unfair to require hospitals to wait several weeks to receive cost outlier payments when they are reasonably sure that the claim meets the cost outlier threshold.

E. Referral Centers (§ 412.96)

In the August 31, 1984 final rule, we added an alternative set of criteria to § 412.96 (then § 405.476(g)) that expanded the definition of referral centers to encompass more rural hospitals. We also added a new paragraph to that section that provides for a triennial review of referral centers to determine if they continue to meet the criteria of a referral center. (See 49 FR 34740 for a detailed discussion of these revisions.)

One of the criteria that a hospital must meet is a case-mix index value that demonstrates the comparatively high degree of complexity of cases treated by the hospital. We selected this criterion because we believe that, in the case of rural hospitals, the complexity of cases treated in the facility is one of the principal characteristics that distinguishes between rural referral centers (that is, hospitals that offer a variety of specialized services and are comparable to urban acute care facilities) and typical rural hospitals. In the August 31, 1984 final rule, we set forth in § 412.96(c)(1) four different case-mix index value criteria, one of which a hospital must meet in order to qualify as a referral center for cost reporting periods beginning on or after October 1, 1984. These case-mix criteria are also one of the factors against which a referral center is judged during its triennial review.

We are proposing to update the case-mix index values effective October 1, 1985. These proposed values are updated using the most current data we have available on case-mix. We believe that it is necessary to update the case-mix index values not only to enable new hospitals to qualify as a referral center, but also to provide current criteria against which existing referral centers can be measured to determine if they continue to qualify for special treatment on the basis of their case-mix index.

We believe that the case-mix index criteria should be updated to reflect case-mix index increases that have occurred since the current criteria became effective. In addition, we believe that, rather than entering the actual criteria in regulations text, we should amend the regulations to describe our method for calculating and publishing the criteria. Therefore, we are proposing to revise § 412.96 so that it describes the process we would use to calculate the case-mix indexes and to provide that we will publish the updated case-mix index values in the annual notices of prospective payment rates.

We would determine a national average case-mix index value using claims data from the current fiscal year. Since we would have to calculate this value before the current fiscal year is over in order to include it in the annual proposed and final notices of prospective payment rates, we would be unable to include all the claims data from this year. However, in the proposed notice, we would include at least all data through the midpoint of the current fiscal year (March 31) and we would continue to include new data and make revisions up until publication of the final notice. We would compare the national average case-mix index value to our base year case-mix standard of 1.03. The percentage of change (increase or decrease) would be used to update the 1.03 standard for this year.

We would also update the regional median urban case-mix index values using the same methodology; that is, using the percentage of change to update the 1981 regional standards. The values (both national and regional) would be effective for cost reporting periods beginning on and after the same date the prospective payment rates are effective.

The criteria published for FY 1986 would be used to evaluate hospitals seeking to qualify as referral centers for cost reporting periods beginning during that Federal fiscal year. Thus, if a hospital with a cost reporting period beginning on December 1 and ending November 30 applies for referral center status beginning on December 1, 1985, its case-mix index value for the period December 1, 1984 through November 30, 1985 must meet one of the criteria published effective for October 1, 1985.

In addition, these case-mix criteria would be used during HCFA's triennial review to evaluate hospitals that are currently granted referral center status. As discussed in detail in the August 31, 1984 final rule (49 FR 34746), HCFA will review referral centers every three years to determine if they continue to meet the referral center criteria. A hospital that fails to continue to meet the criteria needed to qualify for referral center status in its first two years of participation will automatically be disqualified after the third year. In other situations, we will evaluate the hospital's performance during the third year in conjunction with experience in the first two years to determine if referral center status should be continued. Therefore, the case-mix index value of a hospital that is a referral center for its cost reporting period beginning in FY 1985 would have to meet the criteria effective on October 1, 1985 during its cost reporting period beginning on or after October 1, 1984 and before October 1, 1985 in order to retain its status. Thus, the case-mix index values and the time periods under review are the same for both hospitals seeking to qualify as referral centers and current referral centers.

Since section 1886(d)(5)(C)(i) of the Act requires that a hospital must submit its request for referral center status during the quarter preceding the start of its cost reporting period, we realize that complete data on a hospital's case-mix index for the current cost reporting period would not be available at the time a determination would be made. However, every effort would be made to include as many claims as possible and

we do not believe the missing data will be significant in most cases. To determine a hospital's case-mix index, we would accept only data maintained by HCFA's central office and, if necessary, data produced by a hospital's fiscal intermediary that is more current than the central office data. However, as noted in the August 31, 1984 final rule (49 FR 39743), we would not accept as a substitute case-mix data produced by the hospital or any outside organization.

We are proposing that to qualify as a referral center for cost reporting periods beginning on or after October 1, 1985, a hospital's case-mix index for its second year under the prospective payment system would have to be at least—

- 1.1172; or
- Equal to the median urban case-mix index values calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Adjusted median urban case mix
1	1.1443
2	1.1616
3	1.1226
4	1.1345
5	1.0955
6	1.1085
7	1.0542
8	1.1454
9	1.1638

For both the national case mix and median urban values, we multiplied the 1981 standards as published in the August 31, 1984 final rule (49 FR 34741) by 9.6 percent. This figure represents the percentage by which the average case-mix index value has increased from 1981 through April 1985. The resulting figure was divided by 1.0105 to account for the reduction in the DRG relative weights for discharges occurring on or after October 1, 1984. (See the August 31, 1984 final rule (49 FR 34770) for a detailed discussion of this matter.) Thus, the proposed national case-mix criterion is computed as follows:

$$\frac{1.03 \times 1.096}{1.0105} = 1.1172$$

The same method was used to update the 1981 regional median urban case-mix index values.

We are also proposing to revise § 412.96(c)(2) to specify that we would publish the criteria for the number of discharges in each year's annual notice of prospective payment rates. Thus, we would be using the same process for discharges as we would for case mix. However, we are not proposing to update the number of discharges criteria for FY 1986 because current data are not available on total inpatient discharges for individual hospitals. Therefore, the criteria published in the August 31, 1984 final rule (49 FR 34741) would be used for FY 1986.

In addition, we are proposing to revise the title of § 412.96(b) to correct an inadvertent error that occurred when the regulation was recodified in the March 29, 1985 final rule. The current title indicates that the criteria set forth in paragraph (b) apply only for cost reporting periods beginning before October 1, 1984. We never intended that these criteria be limited to a particular time period. Therefore, we would revise the title to indicate that these cirteria apply for cost reporting periods that began on or after October 1, 1983 or in the future. We are also making a technical change to § 412.96(f) to clarify the provisions of that paragraph.

F. Indirect Medical Education (§ 412.118)

Section 1886(d)(5)(B) of the Act provides that hospitals subject to the prospective payment system receive an additional payment for the indirect costs of medical education. The amount of this payment is based on a hospital's ratio of full-time equivalent interns and residents to bed size. The regulations governing this provision are found at § 412.118.

In our August 31, 1984 final rule, we revised § 412.118 (then § 405.477) based on the amendment made to section 1886(d)(5)(B) of the Act by section 2307(b) of Pub. L. 98–369. The amendment requires that, in determining the additional payment amount for indirect medical education, we must count interns and residents on the basis of where they furnish services, regardless of which entity (for example, hospital, university, or medical school) employs them. However, no intern or resident is counted as more than one full-time employee for any cost reporting period. (See the August 31, 1984 final rule for a detailed discussion of this revision (49 FR 34747).)

We are proposing to revise § 412.118 to change the way interns and residents are counted for purposes of making payment for indirect medical education costs effective with cost reporting periods beginning on or after October 1, 1984. Currently, § 412.118(e) provides that interns and residents must work 35 hours or more per week to be counted as one full-time employee. All interns and residents who do not meet this criterion are counted as one-half of a full-time employee. At present, we determine the additional payment amount based on the number of interns and residents employed during the last week of a hospital's cost reporting period. Therefore, if an intern or resident works for a hospital at least 35 hours per week for only a few weeks at the end of its cost reporting period, that individual is counted as a full-time employee.

Section 412.118(d)(2) currently requires that hospitals must submit a quarterly report to their fiscal intermediaries that includes, among other information, the actual hours worked by each intern and resident during each month. Since we published these criteria in the August 31, 1984 final rule, we have received numerous comments from hospitals that indicate that their recordkeeping capability does not allow them to determine the "acutal hours" worked by interns and residents at their facilities.

We believe that the 35-hour threshold is not reflective of the normal work week of interns and residents. Furthermore, the use of hours as a measure of intern or resident time requires substantial recordkeeping, and, if interns and residents rotate among several hospitals, a method of apportionment that is not necessarily consistent with reporting and counting for an institution's or program's scheduling purposes.

It is our understanding that nearly all intern and resident programs schedule an intern or resident at one hospital for a period of time, usually whole months, rather than splitting an individual intern's or resident's day or week among several hospitals. Moreover, it appears that most hospitals attempt to maintain fairly even staffing levels of interns and residents over the course of the graduate medical academic year.

Based on the assumption that intern and resident levels are basically constant over the July through June graduate medical education year, we propose that interns and residents be counted on a single day. This method should avoid the potential for overcounting since, except in rare instances, on any given day an intern or resident is not assigned to more than one hospital.

We are proposing that the additional payment for indirect medical education costs for a hospital cost reporting period would be based on the number of interns and residents assigned to the hospital on September 1 during the hospital's cost reporting period. Thus, we would be replacing our current requirement for quarterly reports with

one for an annual report covering only one day of the year.

We are proposing that this method of counting interns and residents on September 1 each year be retroactively applied to all hospital cost reporting periods beginning on or after October 1, 1984. That is the date on which we implemented the system of reporting quarterly on intern and resident time. We believe that our proposed method is far superior to the current method, and because it is far less cumbersome for both hospitals and the intermediaries, we believe that it should replace the current system entirely.

We believe that a count on September 1 would be reflective of intern and resident assignments throughout an academic year (generally July 1 through June 30) and would be the basis for the indirect medical education additional payment for the academic year beginning the previous July. We are not aware of any intern and resident programs that do not conform to this timeframe. However, we are specifically soliciting comments from representatives of any medical education programs with academic years other than July 1 to June 30 as to what impact the September 1 date would have upon their hospitals.

For hospitals with cost reporting periods beginning on July 1, the same date that their graduate medical education programs begin, there would be a relatively stable number of interns and residents throughout the cost reporting period. However, in any other hospital, the cost reporting period would span more than one academic year. Thus, there could be significant fluctuation between the two years in the number of interns and residents to be counted. This fluctuation could result from the addition or deletion of programs or an unusually high or low number or resignations from programs during a particular academic year. In these cases, we would apportion the intern and resident count between the two periods based on counts of two consecutive September 1 dates to minimize the possibility of incorrect levels of payment.

For example, a teaching hospital has a cost reporting period from January 1 through December 31, 1986. For purposes of counting interns and residents, the assigned count on September 1, 1985 would apply to half the cost reporting period (discharges occurring from January 1 through June 30, 1986), since it falls within that academic year. The count taken on September 1, 1986 would apply to discharges occurring from July 1 through December 31, 1986 (the remaining half of the cost reporting period), since it falls within the subsequent academic year. Accordingly, in determining the intern and resident count that would be used in determining the additional payment for indirect medical education for the cost reporting period January 1 through December 31, 1986, we would use a weighted average. If there are 10 interns and residents assigned on September 1, 1985 and 12 on September 1, 1986, the count that would be used for the entire cost reporting period would be 11 as calculated below:

$$\left(\frac{6}{12} \times 10\right) + \left(\frac{6}{12} \times 12\right) = 11$$

Another example is a hospital with a cost reporting period from August 1, 1985 through July 31, 1986. If the intern and resident count on September 1, 1985 is 240 and on Sepetember 1, 1986 is 180, then its count would be calculated as follows:

$$\left(\frac{11}{12} \times 240\right) + \left(\frac{1}{12} \times 180\right) = 235 \text{ interns and residents for the cost reporting period.}$$

Prior to October 1, 1984, hospitals were not required to keep schedules of assigned time or logs of actual time on which to base the intern and resident count. While we believe that most teaching hospitals do have these records, there may be some that do not. Therefore, for cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985, we propose to use April 15, 1985 instead of September 1, 1984 as the uniform reporting date. Since we issued the August 31, 1984 final rule to include this count effective for cost reporting periods on or after October 1, 1984, we believe that these hospitals woud have been keeping the necessary records by April 15, 1985. In subsequent years, all hospitals would use the September 1 date. An example of such a hospital follows: Hospital B has a cost reporting period from January 1 through December 31, 1985. Hospital B has a count of 20 interns and residents on April 15, 1985 and 24 on September 1, 1985. The Count for the cost reporting period is calculated as follows:

$$\left(\frac{6}{12} \times 20\right) + \left(\frac{6}{12} \times 24\right) = 22$$

We believe that this proposed policy would result in levels of payment at final settlement that are reflective of the actual intensity of teaching activity during the portion of the cost reporting period that falls within a particular academic year.

Before selecting this method for reporting the intern and resident count, we considered various alternatives. Other considered methods involved counting actual hours worked, scheduled hours worked, person-months, person-weeks, or some other assigned-time basis. These alternative measures all required sophisticated recordkeeping and, in some instances, substantial programming and administrative costs. We believe that the results of these intensive measurements may not be substantially more precise than the single-day concept. Furthermore, we understand that the American Medical Association and the Association of American Medical Colleges use the September 1 date for their data collection purposes. Therefore, we would not be requiring any new data collection by teaching hospitals.

Many interns and residents are assigned to freestanding family practice centers, hospital outpatient departments, and excluded units, such as psychiatric units. Currently, time spent in freestanding family practice centers and excluded units is not counted for purposes of the indirect medical education payment since these settings are not subject to the prospective payment system. Although we are currently counting time spent in outpatient departments, we are proposing that time spent in these departments would not be counted for purposes of the indirect medical education payment because outpatient departments also are not subject to the prospective payment system.

Interns and residents assigned to excluded areas of the hospital would be counted based on where they are assigned on September 1. Thus, an intern or resident who is assigned to an excluded area on September 1 would not be counted for the indirect medical education payment. However, if an intern or resident is dividing his or her time between these areas and the areas or units of a hospital subject to the prospective payment system, the hospital would have to report to its intermediary the proportion of time spent in or assigned to both the included and excluded areas. Interns and residents in these cases are the only individuals that would be counted as other than one full-time employee and the indirect medical education payment would be computed based on the proportion of time assigned to the areas

of the hospital subject to the prospective payment system.

Instead of requiring hospitals to keep records on number of hours worked, we would instead require them to keep records on assignment of interns and residents by specialty. To the extent that hospitals operate intern and resident programs in certain specialties, we would want to be able to verify that the assignment of interns and residents on September 1 (and during the rest of the year) reflects the hospital's actual circumstances. For example, we would consider it unusual for a hospital to operate a psychiatry residency program and not have any interns or residents assigned to the excluded psychiatric unit.

The additional payment for the indirect medical education costs is computed on the basis of the ratio of interns and residents to hospital bed size. Currently, for determining the intern and resident to bed ratio, as well as for classification purposes, a hospital's bed size has been determined based upon the total number of beds available on the first day of the pertinent cost reporting period. Since a hospital's bed size may increase or decrease, sometimes substantially, over the course of a cost reporting period, we are proposing to base the number of beds on the number of available bed days (excluding beds assigned to newborns and excluded units) during the current cost reporting period divided by the number of days in the cost reporting period. This change would also be effective with cost reporting periods beginning on or after October 1, 1984.

We believe that a hospital's assignment of interns and residents on one day (September 1) would generally be representative of the academic year as a whole. However, it may be necessary at settlement for intermediaries to audit hospital records to verify the documentation of the September 1 assignments as reported to us and to verify that the September 1 count is representative of the count over the entire cost reporting period. This documentation may include residency program assignment schedules, intern and resident contracts, and payroll records. The hospital could submit more comprehensive data, but, as in all other cases, it must furnish verfiable documentation in support of its claim for payment. The intermediaries would match the data to ascertain that no intern or resident is counted more than once. Based on its review of the hospital's documentation, the intermediary may adjust the intern and resident to bed ratio for purposes of the final indirect medical education payment.

G. Transfer Policy (§ 412.4)

Our current policy concerning transfers between prospective payment hospitals provides for transfering hospitals to receive payment on a per diem basis. The discharging hospital receives the full DRG payment. Transferring hospitals may also receive an additional payment for extraordinarily high-cost cases that meet the cost outlier criteria in §§ 412.80 and 412.84; they are not eligible for day outlier payments.

As we have stated in previous prospective payment documents (most recently in the August 31, 1984 final rule (49 FR 34730)), our ultimate goal is to make one payment for the entire course of treatment. Because of the complexities of this issue, we are not proposing any changes in the regulations that would implement a new transfer policy at this time. However, we want to note that we are continuing to study this problem and to collect relevant data so that we can implement a single payment for transfers in the future.

V. Other ProPAC Recommendations

As required by law, we have reviewed the April 1, 1985 report submitted by ProPAC and have given its recommendations careful consideration in conjunction with the formulation of the proposals set forth in this document. The recommendations are discussed throughout this preamble and in the addendum to this proposed rule along with our proposals concerning the same issues. The remainder of the recommendations are discussed below.

A. Hospital Market Basket (Recommendations 2, 4 through 6, and 9)

The hospital market basket represents the most significant component in the update factor used to determine the prospective payment rates. ProPAC devoted considerable attention to this area and made eight specific recommendations. Recommendation 3 concerning the market basket for excluded hospitals is discussed in section III. of the addendum. Recommendations 7 and 8 concerning forecast errors are discussed in section II.A.3 of the addendum to this document.

1. *The Number of Market Baskets (Recommendation 2).* For FY 1986, ProPAC recommends using a single market basket for prospective payment system hospitals. However, it plans to study the appropriateness of developing multiple market baskets by region and class of hospital.

We believe that this is an area that warrants further study and we support ProPAC's research. In the past, we have studied variations in regional market baskets and we plan to continue our research concerning multiple market baskets by region and class of hospital.

2. *Market Basket Wage Component—Occupational Groups (Recommendation 4).* Wages are the largest single component of the hospital market basket, accounting for nearly 60 percent of hospital expenses. Currently, we measure changes in all hospital wages by the Average Hourly Earnings (AHE) in the hospital industry, a data series collected by the BLS. This series does not separate changes in inflation from changes in the skill mix of workers in the hospital industry. As a result, ProPAC suggests that some portion of the growth in the series over time has probably been due to shifts in the type and use of hospital employees (for example, substitution of registered nurses for licensed practical nurses).

ProPAC recommends that separate wage categories by occupational groups should be created to take into account the broad changes in skill mix among managers, professionals, and other hospital workers. ProPAC suggests that changes in wages for these categories should be measured using a combination of internal and external proxy measures as follows:

- Managers and Administrators: The Employment Cost Index (ECI) for Managers and Administrators.
- Professionals and Technicians: A 50–50 blend of the AHE for the hospital industry and the ECI for Professional and Technicians.
- Other Hospital Workers: A 50–50 blend of the AHE for the hospital industry and the ECI for all private industry.

The issue of whether to use only internal proxies as we do in formulating the current single wage component or a combination of internal and external (that is, hospital and nonhospital) proxy measures as ProPAC recommends has been debated for some time. We have opted to use internal proxies, since that position is consistent with our treatment of the wage index, which is also based on internal wage measures. Moreover, as ProPAC notes, the various external measures that might be used (including the ECI) also have certain drawbacks that we believe warrant further examination. We are studying this issue further and plan to develop various market basket models using internal and external proxies, as well as weighted occupational categories, for further consideration.

3. *Employment Cost Index Feasibility Study (Recommendation 5).* ProPAC recommended that the Secretary should work with BLS to study the advantages and feasibility of developing an ECI for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

The basic difference between an ECI and the AHE we currently use to measure increases in hospital workers' salaries is that the ECI controls for occupational mix. Therefore, the ECI would maintain the relative hospital worker skill mix constant over time and would preclude skill mix from affecting the amount of the increase in the hospital wage measure. We agree that this is an area that warrants further study and we plan to examine the merits of establishing an ECI for hospital workers as part of our ongoing analysis of the market basket.

4. *Study Effects of Changes in the Minimum Wage Law on Hospital Workers (Recommendation 6).* ProPAC plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under the prospective payment system, workers who earn more than the minimum wages are differently affected by statutory increases in the minimum wage compared with workers in other industries.

Since it is our desire that the prospective payment system be equitable, we would certainly want to know about any dimension of the system that is found to be unfair. The ProPAC's study results indicate that under this system hospital workers are, in fact, differently affected by changes in the minimum wage laws, we would certainly be interested in any recommendations ProPAC can make concerning corrective action.

5. *Rebasing of Market Basket Weights (Recommendation 9).* ProPAC suggests that the market basket weights should be rebased at least every five years or more frequently if significant changes in the weights occur. We agree that it is appropriate to periodically rebase the market basket weights in order to reflect more current data, especially if significant changes in the mix of inputs used by hospitals occur. We are currently in the process of developing rebased market basket weights. We also recognize that the market basket weights may require further revision to account for payment changes that might occur if additional costs, such as capital-related costs, are included in the prospective payment system.

B. Hospital Labor Market Areas—Area Wage Index: Improvement of Labor Market Area Definitions (Recommendation 13)

The current area wage index used to adjust payments for interarea wage differences does not distinguish separate labor markets within MSAs. ProPAC has recommended that the prospective payment rates be adjusted to take into account variations in wages paid within a metropolitan area and in different rural locations within a State. ProPAC notes that several studies have shown that there is substantial variation in the wages paid in the inner city as compared with suburban areas (that is, "core" areas and "ring" areas) within the same MSA and that similar concern has been expressed regarding rural areas within a State. ProPAC observes that some have contended that hospitals in the inner city often must pay premium wages to attract skilled employees and that higher skill levels may be needed in these hospitals to support greater levels of teaching activity. However, it also notes that it has been suggested that inefficiency may also contribute to the higher wage levels in inner city hospitals.

ProPAC recommends that these differences in hospital labor markets be reflected in the application of the area wage index used to adjust the prospective payment rates for actual variation in area wage levels. While ProPAC recommends that labor market area definitions be improved to better reflect hospital labor market areas, the report does not discuss how specific alternatives to the current MSA/non-MSA definitions might be established.

We have previously acknowledged in various **Federal Register** documents that the current MSA/non-MSA definitions may not adequately recognize widely varying hospital labor market conditions, especially among counties classified as rural. We have been looking into possible alternative classification systems that would better define hospital labor markets. The core-ring concept for splitting MSAs that is addressed in ProPAC's recommendation is one alternative that we have previously considered (see the January 3, 1984 final rule (49 FR 254)). In addition, we are studying other classification systems such as the Department of Commerce's Bureau of Economic Analysis economic areas that are defined based on area ties to economic centers.

However, we believe that extensive research and study will be required before alternative labor market definitions are adopted. As with any classification system in which boundaries must be established, it is impossible to designate boundaries that will be completely satisfactory to all concerned. Therefore, we must be certain that any new classification system is based on objective criteria that will provide more equitable labor market area definitions than the current MSA/non-MSA classifications.

C. Hospitals Serving Disproportionate Shares of Low Income or Medicare Patients (Recommendations 14 and 15)

ProPAC recommends that an adjustment be established for FY 1986 rates for hospitals that serve a disproportionate share of low income or Medicare patients or both and that a definition of these hospitals be established based on a broader concept of low income than simply percentage of Medicaid patients.

As required by section 2315(h) of Pub. L. 98-369, we have been working on the development of the definition. However, our research efforts have been hampered by the lack of data of sufficient quality to permit us to develop a definition with any degrees of confidence.

The source of data used to identify hospitals Medicare costs is the Medicare cost report, which is completed annually by each hospital participating in the Medicare program. The Medicare cost report does not, however, include any information on the income distribution of the hospital's patient population. There is space on the cost report for Medicaid utilization and cost information that would permit computation of the hospital's share of Medicaid discharges, a measure which might be used as a proxy for the percentage of discharges attributable to low income patients. Unfortunately, Medicaid information is frequently missing from the cost reports since it has no bearing on Medicare payments. Moreover, because the Medicare program is prohibited from paying for bad debts other than those specifically attributable to our beneficiaries, data on the hospital's overall bad debt picture is not available as an alternative proxy for low income. (Bad debt would itself be a highly questionable measure since it may reflect idiosyncratic hospital charging and collection procedures as well as patient inability to pay. Moreover, it would not be specifically linked to patient income.)

In light of these deficiencies, we have had to turn to other sources of data. The only national source of data on hospital-specific Medicaid and Medicare utilization available to us at this time is

a survey of 5,323 hospitals conducted by the Department's Office of Civil Rights (OCR). However, because the survey was limited to a two-week period during January 1981, was not designed for payment purposes, and was incomplete for many hospitals, its results may not be a satisfactory basis for determining Medicaid utilization for purposes of a disproportionate share analysis. Several hospitals known to treat large numbers of Medicaid patients failed to be identified as such or reported no Medicaid admissions. Other hospitals, known to furnish extensive charity care, appeared to have average or below-average Medicaid and Medicare utilization.

These aberrations cast doubt not only on the reliability of the OCR data but also on the validity of Medicaid utilization as a proxy for low income. It should be noted that state-by-state variation in Medicaid eligibility, as well as amount, duration and scope of benefits, means that an adjustment based on percent of Medicaid patients may simply reward hospitals in those States that have more generous Medicaid programs, hence, higher shares of Medicaid recipients.

We have also reviewed studies from the American Hospital Association (AHA), the District of Columbia (D.C.) Hospital Association, and the Congressional Budget Office. The AHA used data from approximately 2,500 hospitals because many of its own hospitals do not report charity or bad debt information on the AHA survey form. Therefore, this data base is incomplete. In addition, we have not been able to replicate the study because, for reasons of confidentiality, the AHA does not routinely provide the data to outside organizations or to the Federal government.

The D.C. Hospital Association study used data from only 260 hospitals in five metropolitan areas. We believe that such a limited study is inappropriate as the basis for establishing policy on a national basis. In addition, because the data used for average Medicare allowable cost per case, for the percentage of Medicare or Medicaid patients, and for hospital bed size was not available to us, we could not make a reasonable comparison of the D.C. Hospital Association and our data. There were also a number of technical differences between the statistical measures used in the Association's study and our research that precluded direct comparison of the findings.

Currently, we are reviewing a Senate Finance Committee staff proposal to use Medicare patient origin data and census data on the aged with incomes below the poverty level to assess the impact of low-income Medicare patients on hospital costs. We have found preliminary evidence that the percent of Medicaid admissions relates positively to Medicare costs per Medicare case. The "percent of Medicaid admissions" variable, however, comes from the Office of Civil Rights survey discussed above. Although we are concerned that Medicaid population may not be a reliable proxy for low-income, we also are investigating alternative sources of a "percent Medicaid" measure that will be more reliable than the OCR data previously referenced.

In addition, we are attempting to obtain AHA survey data on hospital revenues by sources of funds, bad debts, and charitable care allowances. These data should be more current and might furnish a more direct measure of a hospital's share of low income patients, thus avoiding the inadequacies of the current proxy measures. Once we obtain accurate data, we will be able to turn our attention to analyzing if, in fact, hospitals serving a significantly disproportionate number of low income or Part A Medicare patients experience higher Medicare costs per case due to the provision of care to these patients or if these additional costs are accounted for by severity, inefficiency, or other factors. We will then determine if these costs are already appropriately recognized in the prospective payment system or if additional payment adjustments should be made.

VI. Summary of Proposed Changes to Regulations

For the convenience of the reader, we are summarizing the changes we are proposing to the regulations. The reader is referred to the detailed discussions above for an explanation of the rationale for these changes.

A. Rate of Increase Limits

We are proposing to revise § 405.463 to—

- Provide that the applicable target rate percentage would be the prospectively determined percentage, published by HCFA, based on the estimated market basket index for the calendar year adjusted by other factors as determined by the Secretary; and
- Delete the October 1, 1985 expiration date for the exemption from the rate of increase limit that is available to new hospitals.

B. Changes in the DRG Classification System

We would add a new § 412.10 that describes the procedures we would use to revise the DRG classification system both at the time of the annual prospective payment rate update notice and during the Federal fiscal year.

C. Exclusion of Alcohol/Drug Hospitals and Units

In §§ 412.23(c) and 412.32, we are proposing to change the expiration date of the exclusion for alcohol/drug hospitals and units from October 1, 1985 to the end of the hospital's cost reporting period beginning before October 1, 1985.

D. Review Activities

We are proposing to make changes in Subparts C and F of Part 412 to replace all references to PSROs and medical review entities with references to PROs since the PROs are now fully operational. In addition, we would delete § 412.45, which describes how we monitor discharge rates under the prospective payment system.

E. Charges to Beneficiaries

We are proposing to add a new §405.308 that would allow hospitals excluded from the prospective payment system because of their participation in a State cost control system or demonstration project to charge beneficiaries for custodial or medically unnecessary care after issuing the proper notices that are currently required in § 412.24(c) for prospective payment hospitals.

F. Payment for Cost Outliers

We are proposing to revise § 412.84 to delete the requirement that all cost outlier cases must be reviewed by the PRO before payment. However, these cases could be subject to prepayment review if the hospital demonstrates a pattern of inappropriate billing. The PRO would also review a sample of the claims that were not reviewed prior to payment. If, as a result of its postpayment review, the PRO determines that any services were noncovered, the outlier payment would be recovered from the hospital. We would also revise § 412.84 to allow hospitals to request cost outlier payment at the time they submit bills for payment, rather than waiting until after the intermediary has notified them of its determination on payment for the discharge.

G. Referral Centers

We would revise § 412.96 as follows:

- The title of paragraph (b) would be changed to indicate that this paragraph is effective for cost reporting periods beginning on or after October 1, 1983.

• Paragraphs (c)(1) and (c)(2) would be revised to provide that the criteria related to case-mix index and discharges for referral centers would be published in the proposed and final annual prospective payment rate notices.

• We would add a new paragraph to describe the method we would use to calculate updated case-mix indexes each year.

H. Indirect Medical Education

We are proposing to revise § 412.118 effective for cost reporting periods beginning on or after October 1, 1984 as follows:

• Change the method used to determine the number of beds in a hospital for purposes of counting interns and residents.

• Delete the requirement of a quarterly report from hospitals on numbers of interns and residents and replace it with an annual report that counts by specialty the number of interns and residents on September 1 (with an additional count on April 15, 1985 for hospitals with cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985).

• Delete the requirement of counting hours of interns and residents to determine full-time equivalents. Instead, all interns and residents assigned to the hospital on September 1 (or April 15, 1985, if applicable) would be counted as full-time except for those individuals splitting their time among one or more areas excluded from the prospective payment system.

• Provide for intermediary review of hospital documentation to verify the hospital's intern and resident to bed ratio.

VII. Other Required Information

A. Responses to Public Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in developing the final rule, we will consider all comments that are received by the end of the comment period and will respond to them in the preamble to that rule.

B. Paperwork Reduction Act

Section 412.118 contains an information collection requirement that is subject to review by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). We have submitted a copy of these requirements to EOMB for its review.

In the January 3, 1984 issue of the **Federal Register** (49 FR 312), we indicated that we intended to seek EOMB approval of the information collection requirements in § 405.471(c)(4)(ii) and (c)(4)(iii)(C) (incorrectly designated as § 405.471(c)(3)(ii) and (c)(3)(iii)(C) and since recodified at §§ 412.27 and 412.29(c), respectively). The information collection requirements in § 412.27 are approved by EOMB under control number 0938–0328. Section 412.29(c) does not contain information collection requirements. Consequently, EOMB approval is not required for this section.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Cancer hospitals, Christian Science Sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

C. Impact Analyses

Appendix A, which is printed immediately following the addendum to this proposed rule, sets forth our analyses of the projected impact and effect on small businesses of the proposals that are set forth in this document.

42 CFR Chapter IV, Subchapter B would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES SUBCHAPTER B—MEDICARE PROGRAMS

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart C is amended as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1154(a)(2)(B), 1815, 1833, 1842, 1862, 1866, 1870, 1871, and 1879, Social Security Act (42 U.S.C. 1302, 1302c–3(a)(2)(B), 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

2. The table of contents of Subpart C is amended by adding the title of a new § 405.308 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

Sec.

405.308 Limitations on charges to beneficiaries.

* * * * *

3. A new § 405.308 is added to read as follows:

§ 405.308 Limitation on charges to beneficiaries.

(a) *Prospective payment hospitals.* A hospital receiving payment under the prospective payment system for a covered hospital stay may charge a beneficiary for items and services excluded from coverage only as described in § 412.42 of this chapter.

(b) *Hospitals participating in State cost control systems or demonstration projects.* A hospital receiving payment for a covered hospital stay under a State cost control system approved under 1886(c) of the Act or in a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)) may charge a beneficiary for noncovered services as follows:

(1) For the custodial care and medically unnecessary services described in § 412.42(c) of this chapter, after the conditions of § 412.42 (c)(1) through (c)(4) are met; and.

(2) For all other services in accordance with the applicable rules described in Part 489 of this chapter.

B. Subpart D is amended as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.463 is amended by revising paragraphs (c)(3)(i) and (f)(1) to read as follows:

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).* * * *

(3) *Target rate percentage.* (i) The applicable target rate percentage will be the prospectively determined percentage, published by HCFA, based on the estimated increase in the market basket index for the calendar year adjusted by other factors as determined by the Secretary.

* * * * *

(f) *Exemptions*—(1) *New hospitals.* New hospitals that receive approval from HCFA are exempt from the rate of increase ceiling imposed under this section. For purposes of this section, a new hospital is a provider of inpatient hospital services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present and previous ownership, for less than three full years. This exemption expires at the end of the first cost reporting period beginning at least two years after the hospital accepts its first patient.

* * * * *

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES.

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

B. The table of contents of part 412 is amended by adding the title of a new § 412.10 to Subpart A and removing the title of § 412.45 from Subpart C to read as follows:

Subpart A—General Provisions

Sec.

* * * * *

412.10 Changes in the DRG classification system.

* * * * *

C. A new § 412.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

* * * * *

§ 412.10 Changes in the DRG classification system.

(a) *General rule.* Except as specified in paragraph (b) of this section, HCFA issues changes to the DRG classification system in the annual notice of prospective rates published in accordance with § 412.8(b). The DRG changes will be effective with discharges occurring on or after the same date the payment rates are effective.

(b) *Interim changes in the DRG classification system.* HCFA may find it necessary to make changes to the DRG classification system during the Federal fiscal year. These changes are limited to those that meet the criteria in paragraph (c) of this section and that need to be made in order to—

(1) Incorporate into the prospective payment system new items and services that become covered under Medicare; or

(2) Correct a serious omission or inequity in the DRG classification system.

(c) *Criteria for interim changes.* HCFA makes interim changes to the DRG classification system as described in paragraph (b)(2) of this section only if failure to make the changes would have—

(1) A potential adverse impact on the health and safety of beneficiaries; or

(2) A significant and unwarranted fiscal impact on hospitals or the Medicare program.

(d) *Publication of interim changes.* For changes that are made during the Federal fiscal year under paragraphs (b) and (c) of this section, HCFA—

(1) Issues the change through its administrative issuance system and makes the change effective as soon as is administratively feasible; and

(2) Publishes the change for public comment in the next annual notice of prospective payment rates in accordance with § 412.8(b)(2).

(e) *Basis for changes in the DRG classification system.* All changes in the DRG classification system are made using the principles established for the DRG system. This means that cases are classified so each DRG is—

(1) Clinically coherent; and

(2) Embraces an acceptable range of resource consumption.

D. Supbart B is amended as follows:

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment System

1. In § 412.23, the introductory text in paragraph (c) is revised to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(c) *Alcohol/drug hospitals.* An alcohol/drug hospital is excluded from the prospective payment system for cost reporting periods beginning before October 1, 1985, if it meets the following requirements:

* * * * *

2. In § 412.32, the introductory text is revised to read as follows:

§ 412.32 Distinct part alcohol/drug units: Additional requirements.

In order to be excluded from the prospective payment system for cost reporting periods beginning before October 1, 1985, a distinct part alcohol/drug unit must meet the following requirements:

* * * * *

E. Subpart C is amended as follows:

Subpart C—Conditions for Payment Under the Prospective Payment System

1. In Subpart C, all occurrences of the phrase "medical review entity" are revised to read "PRO".

2. In § 412.42, paragraphs (c)(2), (c)(3)(iv), (d)(3), and (d)(4) are revised to read as follows:

§ 412.42 Limitations on charges to beneficiaries.

* * * * *

(c) *Custodial care and medically unnecessary inpatient hospital care.* * * *

(2) The attending physician agrees with the hospital's determination in writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the PRO. Concurrence by the PRO in the hospital's determination will serve in lieu of the physician's agreement.

(3) * * *

(iv) The determination of the PRO made after the beneficiary received the purportedly noncovered services will be appealable by the hospital, the attending physician, or the beneficiary under the appeals procedures that apply to PRO determinations affecting Medicare Part A payment; and

* * * * *

(d) *Medically unnecessary diagnostic and therapeutic services.* * * *

(3) If the beneficiary receives the services, a formal determination on the validity of the hospital's finding is made by the intermediary and, to the extent that the decision requires the exercise of medical judgment, the PRO.

(4) The determination is appealable by the hospital, the attending physician, or the beneficiary under the appeals procedure that applies to determinations affecting Medicare Part A payment.

* * * * *

3. In § 412.44, the introductory text is revised to read as follows:

§ 412.44 Medical review requirements: Admissions and quality review.

Beginning on November 15, 1984, a hospital must have an agreement with a PRO to have the PRO review, on an ongoing basis, the following:

* * * * *

§ 412.45 [Removed]

4. Section 412.45 is removed.

5. Section 412.48(b) is revised to read as follows:

§ 412.48 Denial of payment as a result of admissions and quality review.

* * * * *

(b) When payment with respect to admission of an individual patient is denied by a PRO under paragraph (a)(1) of this section, and liability is not waived in accordance with §§ 405.330 through 405.332 of this chapter, notice and appeals are provided under procedures established by HCFA to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

* * * * *

F. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.82, the introductory text of paragraph (b) is revised to read as follows:

§ 412.82 Payment for extended length of stay cases (day outliers).

* * * * *

(b) The PRO must review and approve to the extent required by HCFA—

* * * * *

2. Section 412.84 is amended by revising paragraph (b); adding new paragraphs (c), (d), and (e); redesignating current paragraphs (c), (d), (e), and (f) as paragraphs (f), (g), (h), and (i) respectively; revising the introductory language of newly redesignated paragraph (f); and by revising newly redesignated paragraph (i) to read as follows:

§ 412.84 Payment for extraordinarily high cost cases (cost outliers).

* * * * *

(b) The hospital must request additional payment—

(1) With initial submission of the bill; or

(2) Within 60 days of receipt of the intermediary's initial determination.

(c) Except as specified in paragraph (e) of this section, an additional payment for a cost outlier case is made prior to medical review.

(d) As described in paragraph (f) of this section, the PRO reviews a sample of cost outlier cases after payment. The charges for any services identified as noncovered through this review will be denied and any outlier payment made for these services will be recovered.

(e) If the PRO finds a pattern of inappropriate billing by a hospital, all cost outlier cases from that hospital may be subject to medical review prior to payment until the PRO determines that appropriate corrective actions have been taken.

(f) The PRO reviews the cost outlier cases, using the medical records and itemized charges, to verify the following:

* * * * *

(i) The additional payment amount will be derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amount will then be multiplied by the applicable Federal portion of the blend as indicated in § 412.82(c).

G. In Subpart G, § 412.96 is amended by revising the title of paragraph (b), the title and the introductory text of paragraph (c), and paragraphs (c)(1), (c)(2), and (f), and adding a new paragraph (g) to read as follows:

Subpart G—Special Treatment of Certain Facilities

* * * * *

§ 412.96 Special treatment: Referral centers.

* * * * *

(b) *Criteria for cost reporting periods beginning on or after October 1, 1983.*

* * * * *

(c) *Alternative criteria for cost reporting periods beginning on or after October 1, 1985.* For cost reporting periods beginning on or after October 1, 1985, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located on a rural area (as defined in § 412.62(f)) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(1) *Case-mix index.* The hospital's case-mix index for the cost reporting period prior to the one for which the hospital is seeking referral center status must meet one of two criteria relating to the level of the case mix as described in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (g) of this section.

(2) *Number of discharges.* For the hospital's most recently completed cost reporting period, its number of discharges (excluding discharges from subprovider and newborn units) is at least—

(i) 6,000; or

(ii) Equal to the median number of discharges for urban hospitals for the census region in which the hospital is located as set forth in each year's annual notice of prospective payment rates published under § 412.8(b).

* * * * *

(f) *HCFA review of referral center status.* The status of each hospital that is receiving a referral center adjustment will be reviewed by the HCFA regional office every three years to determine if the hospital continues to meet the criteria set forth in paragraphs (b) or (c) of this section. If the determination is to the effect that the hospital no longer qualifies for a referral center adjustment, the adjustment will be discontinued beginning on the first day of the hospital's next cost reporting period.

(g) *Methodology for calculating case-mix index criteria.* HCFA calculates the national and regional case-mix index value criteria as described in paragraph (g)(1) through (g)(5) of this section.

(1) *National criterion.* HCFA calculates a national case-mix index value for all hospitals that participate in the Medicare program and compares it to the 1981 case-mix criterion of 1.03. The percentage of change between those two figures is used to update the national standard.

(2) *Regional criterion.* HCFA calculates the median urban case-mix index values for each census region by updating the 1981 regional criterion using the percentage of change that is calculated under paragraph (g)(1) of this section.

(3) *Source of data.* In making the calculations described in paragraphs (g)(1) and (g)(2) of this section, HCFA uses all inpatient hospital bills received through at least the midpoint of the Federal fiscal year before the year in which the criteria will be effective.

(4) *Effective date.* HCFA sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are effective for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(5) *Applicability of criteria to HCFA review of referral center status.* For purposes of the triennial HCFA review of a referral center's status, as described in paragraph (f) of this section, the referral center's case-mix index value for a cost reporting period is evaluated

using the updated case-mix index value criteria published for the Federal fiscal year after the one in which that cost reporting period began.

H. In Subpart H, § 412.118, the introductory text of the section is revised; the introductory text of paragraph (a) is reprinted for the convenience of the reader; paragraph (a)(1) is revised; a new paragraph (b) is added; current paragraphs (b) through (e) are redesignated as paragraphs (c) through (f) respectively; and newly redesignated paragraphs (d)(3), (e)(2), (e)(4), and (f) are revised; and a new paragraph (g) is added to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

* * * * *

§ 412.118 Determination of indirect medical education costs.

For cost reporting periods beginning on or after October 1, 1984, to determine the indirect medical education costs, HCFA uses the following procedures:

(a) *Basic data.* HCFA determines for each hospital its—

(1) Ratio of full-time equivalent interns and residents to number of beds (as determined in paragraph (b) of this section), excluding those interns and residents in anesthesiology who are employed to replace anesthetists; and

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds assigned to newborns and excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

* * * * *

(d) *Determination of payment amount.* ***

(3) The education adjustment factor determined under paragraph (c) of this section.

(e) *Count of interns and residents.* ***

(2) The hospital must submit an annual report to its fiscal intermediary. The report must include the following information:

(i) A listing, by specialty, of all interns and residents assigned to the hospital and providing services to the hospital on September 1 of that year. For cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985, the hospital must also report this information for April 15, 1985.

(ii) The social security number of each intern and resident.

(3) No intern or resident will be counted as more than one full-time employee on the date counted, reqardless of the number of hospitals in which he or she is providing services.

(4) Fiscal intermediaries must verify the correct count of interns and residents and may review the hospital's entire cost reporting period.

(f) *Limits on count of interns and residents.* Interns and residents who are assigned to and providing services to both a hospital and either a freestanding family practice center, the outpatient department of the hospital, or an excluded distinct part hospital unit on the day that the count of interns and residents (as described in paragraph (e)(2)(i)) is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system on the day the count is made is used to determine the indirect medical education adjustment.

(g) *Intermediary review.* Based on its review of a hospital's documentation concerning the hospital's count of interns and residents under this section, the intermediary may adjust the interns and residents to beds ratio for purposes of the final indirect medical education payment.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance)

Dated: May 17, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 24, 1985.

Margaret M. Heckler.

Secretary.

Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1985, and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 1985

I. Summary and Background

In this addendum, we are proposing changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the third and final year of the transition period of the prospective payment system. In addition, we are proposing new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

Under the prospective payment system, for hospital cost reporting periods beginning October 1, 1985 through September 30, 1986, except for sole community hospitals, each hospital's payment per discharge will be the sum of a Federal portion that is 75 percent of the Federal rate and a hospital-specific portion that is 25 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act). Sole community hospitals will continue to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate. We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During FY 1986, the Federal rates will be comprised of a blend of 50 percent of the national rate and 50 percent of the appropriate regional rate as required by section 1886(d)(1)(D) of the Act. During the first year of the transition period (that is, FY 1984), the Federal rates were comprised solely of the regional rate. During the second year, FY 1985, the Federal rates are comprised of a blend of 25 percent of the national rate and 75 percent of the regional rate.

As discussed in section II below, we are proposing changes in the determination of the prospective payment rates. The method for determining these rates was published in an interim final rule on September 1, 1983 (48 FR 39752) and modified in final rules published on January 3, 1984 (49 FR 234) and August 31, 1984 (49 FR 34728). The proposed changes, to be made prospectively, would affect the calculation of both the Federal rates (adjusted standardized amounts) and the hospital-specific rates that are used to determine transition period prospective payment rates. As part of these changes, we would incorporate adjustments for the updated market basket index and additional adjustments as authorized under section 1886(e)(4) of the Act.

Section III, below, sets forths our proposed changes in determining the rate-of-increase limits for hospitals excluded from the prospective payment system. Section IV contains the tables referred to throughout the preamble to the proposed rule and this addendum.

II. Proposed Change to prospective Payment Rates and DRG Weighting Factors for FY 1986

The basic methodology for determining Federal regional and national prospective payment rates is set forth at §412.63, and for hospital-specific rates is set forth in §412.73. Below we discuss the manner in which are proposing to change some of the factors or methodology used for determining the prospective payment rates. Note that these proposed changes are supported by new studies and data, and that we plan to consider public comments, further studies and even more recent data before issuing final rates, in order to ensure that the final rates are based on the best information and data available at the time. Modifications in response to comments or inclusion of more recent data in the proposed methodology and adjustment factors may result in changes to these proposed rates, including the wage indexes and DRG weights. The Federal rate changes and revised wage index and DRG weights, once issued as final, would be effective with discharges occurring on or after October 1, 1985. Updated hospital-specific rates would be effective for hospital cost reporting periods beginning on or after October 1, 1985.

In summary, we are proposing to establish the FY 1986 Federal rates (that is, the standardized amounts set forth in Table 1, below) by:

- Restandardizing the base year cost data for revised wage index values (described in section II.A.1.);
- Grouping the standardized amounts by urban/rural averages for the nine census regions and the nation, reflecting the most recent geographic designations (described in section II.A.2.);
- Updating the standardized amounts by zero percent, after considering certain factors that resulted in payment rates for FY 1985 that were overstated by 6.2 percent, the forecasted FY 1986 market basket increase of +4.85 percent, and a policy target adjustment factor of −1.5 percent (described in section II.A.3.); and
- Applying the same adjustment factors for Part B costs, FICA taxes, nonphysician anesthetist costs, and outlier payments as were used for FY 1985 (described in section II.A.4).

Further, we propose, for cost reporting periods beginning in FY 1986, not to increase either the hospital-specific rates, for hospitals under the prospective payment system, or the rate-of-increase limits (target amounts), for hospitals excluded from the prospective payment system. In addition, the proposed rule incorporates the survey-based gross wage index, and new DRG weights and outlier criteria, which are included in the tables in section IV, below.

Although we believe the standardized amounts for FY 1985 were so overstated that a significant reduction could be justified, we are not proposing to reduce them for FY 1986. Rather, we propose to maintain them at the same average level as the FY 1985 payment rates. Thus, the amounts in Table 1 differ from the FY 1985 standardized amounts only as a result of restandardization to reflect the proposed new wage index. Section II.A.3., below, discusses our reasons for maintaining the FY 1986 Federal rates at the FY 1985 level.

We recognize that our proposed FY 1986 standardized amounts are not in accord with ProPAC's Recommendation 1. That recommendation reads as follows:

> For fiscal year 1986, the standardized amounts should be updated by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. The negative one percentage point is a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change.
>
> This recommendation reflects the Commission's collective judgment of the appropriate increase in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed in the fiscal year 1986 payment rates. Further, this recommendation is based on the premise that no net reductions or increases in average per case payments to hospitals will be effected through measures other than the update factor, such as reducing the indirect teaching adjustment, incorporating capital payment under PPS at a budget-saving level, adjusting for coding changes occurring before fiscal year 1985, or any other changes in total payments per discharge under PPS.

Our rationale for differing with this recommendation is set forth below, in the point-by-point discussion of how we are setting the proposed standardized amounts for FY 1986. Basically, our conclusion, like ProPAC's recommendation, is a summary conclusion that depends on resolution of many specific issues in the rate-setting process.

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base Year Costs Per Case Used in Calculation of Federal Rates

Section 1886(d)(2)(A) of the Act requires the establishment of base year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base year cost data are established and how they are used in computing the Federal rates.

Section 1886(d)(2)(C) of the Act requires that the updated base year per discharge costs be standardized in order to remove from the cost data the effects of certain causes of variation in cost among hospitals. These include case-mix, wage levels, cost of living, and indirect medical education costs. We have decided to restandardize the base year costs to reflect the proposed survey-based wage index. However, for the reasons given below, we are not proposing to restandardize for other causes of cost variation.

ProPAC recommends that the standardized amounts be rebased in the future using cost data which reflect hospital behavior under the prospective payment system, and that we implement a process to collect the necessary cost data. This would reduce the need to determine annually whether or not changes made since the base period costs were collected should be reflected through restandardization.

We do not believe that section 1886(d) of the Act contemplates rebasing the standardized amounts. Rather, it directs that the rates be updated annually. However, there has been much discussion concerning the desirability of rebasing the standardized amounts so that they are more reflective of hospital behavior under the prospective payment system. There has been concern that changes in hospital behavior, such as shorter lengths of stay and shifts of services to the outpatient setting, are difficult to quantify as part of the annual update because of the limited amount of data available to estimate the effects of these factors. Since rebasing the standardized amounts would automatically reflect changes in hospital behavior under the prospective payment system, it may be appropriate to consider such rebasing in the future.

If we determine that the standardized amounts should be rebased, we expect appropriate cost data will become

available through our Hospital Cost Report Information System (HCRIS). HCRIS is our national data base for all hospital cost report data. It is an automated data collection, processing, and report generation system that contains hospital financial and statistical data. Currently, HCRIS contains data for cost reporting periods ending on or after January 1, 1982 through periods ending on September 29, 1983, and we are expecting soon to begin including data from cost reporting periods subject to the case-mix adjusted cost limits and rate-of-increase limits imposed by sections 1886 (a) and (b) of the Act. Thus, there will be some lag before prospective payment cost report data are available.

a. *Adjustments for Variation in Hospital Wage Levels.* Section 1886(d)(2)(C)(ii) of the Act requires that the updated amounts be standardized by adjusting for variations among hospitals in the average area hospital wage level. Therefore, the updated average cost per discharge is divided into labor-related and nonlabor-related portions. We established labor and nonlabor portions, based on the labor and nonlabor components of the hospital market basket, and standardized the labor portion of the FY 1984 and FY 1985 standardized amounts using the Bureau of Labor Statistics' (BLS) area wage index. However, adoption of a new wage index (discussed in section III of the preamble of this proposed rule) would require us to restandardize the base year costs used to calculate the standardized amounts. Therefore, we have removed the effect of the previous standardization for each hospital's BLS wage index by multiplying each hospital's average cost per discharge value by the old index and restandardized the amounts by dividing that result by the survey-based gross wage index.

b. *Variations in Case Mix Among Hospitals.* Section 1886(d)(2)(C)(iii) of the Act requires that the updated amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case-mix index) is explained in the September 1, 1983 interim final rule (48 FR 39768–39771). A case-mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case-mix index. Table 3a, section VII of the addendum to the September 1, 1983 interim final rule (48 FR 39847–39870) contains the case-mix index values used for this purpose for the FY 1984 and 1985 rates.

Because we are proposing to use new charge-based DRG weights for discharges occurring in FY 1986, we considered calculating new case-mix indexes based on 1981 charge data, and using these indexes to restandardize the base year costs used to determine the prospective payment rates. This would be technically the most accurate method for restandardizing the 1981 cost data. However, we found that restandardizing with 1981 charge-based case-mix index values would have a negligible effect on the standardized amounts. Therefore, we have decided, for simplicity, not to restandardize.

c. *Indirect Medical Education Costs.* Section 1886(d)(2)(C)(i) of the Act requires that the updated amounts be standardized for indirect medical education costs. Therefore, in establishing the standardized amounts used to determine the FY 1984 and FY 1985 prospective payment rates, after adjusting each hospital's inpatient operating cost per discharge for inflation and case-mix, we divided each cost by 1.0 plus the product of double the education adjustment factor (5.795 percent, which, when doubled, yields 11.59 percent) and the individual hospital's adjusted intern and resident-to-bed ratio. We determined that adjusted ratio by dividing the hospital's number of full-time equivalent interns and residents for the cost reporting period by the hospital's bed size determined at the beginning of the data base period to obtain the hospital's intern and resident-to-bed ratio, and dividing that ratio by 0.1.

If we were to revise the education adjustment factor, we could propose to adjust the standardized amounts by removing the effect of the old factor, and restandardizing them using the revised factors. However, since we are not revising the education factor, there is no need to restandardize.

d. *Cost-of-Living Factor for Alaska and Hawaii.* Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

Generally, these two States have higher levels of cost in comparison to other States in the nation. The high cost of labor is accounted for in the wage index adjustments discussed above. However, the high cost-of-living in these States also affects the cost of nonlabor items (for example, supplies and equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (that is, for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor. The factors used for this adjustment have not changed from FY 1985; therefore, we do not plan to restandardize the base-year cost data for cost-of-living adjustments. If new adjustment factors are issued before we publish the final rates, we will consider whether it is necessary to restandardize using the new factors. The table below presents the most recent cost-of-living adjustment factors.

Table of Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.20
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.10

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

2. Grouping of Urban/Rural Averages Within Geographic Areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts per discharge must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation.

For FY 1986 the Federal rates will be comprised of 50 percent of the national rate and 50 percent of the regional rate (section 1886(d)(1)(D) of the Act). Therefore, Table 1 contains 20 standardized amounts (ten urban amounts and ten rural amounts further divided into labor-related and nonlabor-related portions). The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural groups include hospitals from all urban or rural geographic areas, respectively.

EOMB may announce revised listings of the MSA and New England County Metropolitan Area (NECMA) designations that are used in calculating the standardized amounts. If EOMB makes the announcement before we issue the final rule, we will list the revised MSA/NECMA designations in

the addendum to the final rule. As stated in the January 3, 1984 final rule (49 FR 253), these changes in designation will not be recognized in the prospective payment rates until the beginning of each new Federal fiscal year following the announced changes. It should be noted, however, that Pub. L. 98-473, enacted October 12, 1984, changed the designation of the St. Louis MSA. The proposed wage index (as well as the standardized amounts) included in this proposed rule incorporates this change, which would be effective October 1, 1985 for prospective payment purposes.

3. Updating the Average Standardized Amounts

a. *Legal Requirements.* The basic legal requirements governing the method by which the average standardized amounts are updated are set forth at section 1886(d)(3)(A) of the Act, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for fiscal year 1985 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to adjust the urban and rural average standardized amounts using the applicable percentage as determined by the Secretary in accordance with section 1886(e)(4) of the Act. That section reads as follows:

(4) Taking into consideration the recommendations of the Commission [that is, the Prospective Payment Assessment Commission, or ProPAC], the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary:

shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Section 1886(b) of the Act sets forth the requirements under which a rate of increase limit (target amount) is established for the inpatient operation costs of hospitals excluded from the prospective payment system. Under this section, a target amount is determined annually for each hospital cost reporting period, based on each hospital's base year cost per case, updated by an "applicable percentage increase."

This "applicable percentage increase" is defined in section 1886(b)(3)(B) as:

one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

We have used the hospital market basket index as the measure of the cost of goods and services for determining both prospective payment rates and the target amounts applicable to hospitals and units excluded from the prospective payment system. For FY 1986 and subsequent fiscal years, we are required to use the percentage change determined under section 1886(e)(4) of the Act *in place of* this market basket index plus one quarter of one percentage point. However, section 1886(b)(5)(B) specifies that for FY 1986, the percentage determined under section 1886(e)(4) may not exceed the applicable percentage increase that would otherwise be determined for that period. (Note that, under the statute, from FY 1986 on the percentage determined by the Secretary under section 1886(e)(4) will be applied to *both* the prospective payment rates and the target amounts (rate of increase limits) applicable to hospitals and units excluded from the prospective payment system.)

b. *Factors Considered in Determining the Proposed FY 1986 Update.* As is clear from the discussion of the legal requirements for establishing the FY 1986 update, we must consider at least the following factors in addition to the hospital market basket index: hospital productivity, technological and scientific advances, quality of care, cost-effectiveness, and case-mix data. In addition, we believe we should consider prior years' experience.

Since the standardized amounts for FY 1985 are used as the basis for the determination of rates for later years, the level of the FY 1985 standardized amounts must be corrected for any experience that developed since they were published. We believe that it is necessary, each year, to review the appropriateness of the level of the previous year's prospective payment rates for providing reasonable payment for inpatient hospital services furnished to beneficiaries. Further, this review must include assessment of whether the previous year's propsective payment rates have established adequate incentives for the efficient and effective delivery of needed care.

In addition to this general consideration, the FY 1985 adjusted average standardized amounts (Federal rates) were required by law to be adjusted to achieve budget neutrality, that is, to ensure that aggregate payments for the operating costs of inpatient hospital services would be neither more nor less than we estimated would have been paid under prior legislation for the costs of the same services. (The technical explanation of how this adjustment was made was published at 49 FR 34791, August 31, 1984.) These budget neutrality-adjusted rates for FY 1985 are then to be used as the basis for the determination of rates for later years.

Our FY 1985 budget neutrality adjustment factors were based on data and assumptions that resulted in standardized amounts that were higher than necessary to achieve budget neutrality.

Therefore, we believe that the FY 1986 standardized amounts should be established by a methodology that takes into account the prior year's overstatement. To this end, we have identified several factors, discussed in section II.A.3.c., below, that contributed to the overstatement of the FY 1985 standardized amounts. We have determined an appropriate percent value for each of them, and have combined them into a proposed composite correction factor for FY 1986 which equals −6.2 percent.

In addition, we have developed factors representing productivity, technological advances, and the elimination of ineffective practice patterns, which is necessary to ensure the cost-effective delivery of care. Each of these factors interacts with the

others, to some extent, and has an impact on the quality of care. We have determined an appropriate percent value for each of these factors, making conservative assumptions and with regard to their potential effect on quality, and have combined these values into a proposed composite policy target adjustment factor, as discussed in section II. A.3.e., below. For FY 1986, this factor would equal −1.5 percent.

Since the forecasted hospital market basket increase for FY 1986 is +4.85 percent, it is clear that there is a potential justification of a −2.85 percent decrease in the FY 1986 standardized amounts, as compared to those for FY 1985. We have, however, for the reasons discussed in section II. A.3.f., below, decided that such a decrease is undesirable. Therefore, we are proposing to maintain the FY 1986 standardized amounts at the same average level as FY 1985, in effect applying a zero percent update factor.

c. *Corrections for Prior Years' Experience*—(1) *Case mix.* Using patient bill data received through April 1985, and using the FY 1984 relative DRG weights, we have determined that the average case-mix index for hospitals under the prospective payments system has increased 9.6 percent over the 1981 MEDPAR level. We have previously taken 4.47 percent of this case-mix increase into account by adjusting the original FY 1984 standardized amounts by 3.38 percent and reducing the FY 1985 DRG weights by 1.05 percent. (The relationship of these percent changes is multiplicative, rather than additive; that is 1.0338 x 1.0105=1.0447.) Thus, the observed case-mix increase to date is 4.9 percent greater than the total prior adjustment (1.096 divided by 1.0447=1.049).

Under budget neutrality, these increases in case-mix should not have increased payments to hospitals. The point at issue here is not whether these increases are legitimate or result from "case-mix creep," but whether they would have been recognized under cost reimbursement under prior legislation. As explained in the final rule published August 31, 1984 (49 FR 34770–34775), case-mix increases such as those we have experienced under the prospective payment system would not have resulted in comparable increases in aggregate payments under the case-mix adjusted cost limits and rate of increase limits established under the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248).

Moreover, since real case mix increases result in increased costs per case, we believe that the estimates we made of FY 1984 and FY 1985 cost per case increases for purposes of budget neutrality already incorporated an implicit reognition of the real increase in average case mix that would have occurred regardless of the implementation of the prospective payment system. Hence, we must adjust the standardized amounts downward by 4.9 percent.

Several ProPAC recommendations concerned how increases in case mix should be reflected in determining rates and DRG weights. In Recommendations 1 and 11, ProPAC urged that prospective payments to individual hospitals and in the aggregate should reflect real changes in case mix. In Recommendation 11, it noted that changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be built into future prospective payment rates. In Recommendation 17, which dealt primarily with recalibrating the DRG weights, ProPAC recommended that, for FY 1986, the effects of case mix changes in FY 1985 should be removed from the DRG weights through normalization of the average case weights.

We are in agreement, in principle, that aggregate prospective payments should reflect only "real" changes in case mix but not case mix changes unrelated to actual differences in the types of patients treated. The correction of the standardized amounts discussed above is intended to accomplish this, as well as to preserve the requirement for budget neutrality. However, we do not propose to accept or implement ProPAC's technical recommendation on how to accomplish this.

In particular, we do not agree with ProPAC's position concerning adjustment only for case mix changes occurring during FY 1985. We believe the adjustment should also reflect previously unaccounted for changes in case mix prior to FY 1985. This is because our failure to account for all demonstrable changes in case mix in the development of the budget neutrality adjustment in the prior year resulted in FY 1985 standardized amounts which were overstated. We believe it is essential to adjust the standardized amounts, as the basis for determining the rates for future years, for the amount overstated due to unaccounted for changes in case mix. Therefore, since it is necessary to correct the standardized amounts to the base level that would have achieved budget neutrality, we are proposing to make the case mix correction to the Federal rates rather than through the recalibration of the DRG weights, as recommended by ProPAC.

Our method of normalization of the DRG weights must avoid doubly adjusting for "case-mix creep" in both the rates and the DRG weights, especially in view of the reduction of the FY 1985 DRG weights to take some case-mix increase into account. Since we have adjusted the proposed Federal rates for case-mix increases not previously taken into account, using the most recent available data, we have normalized the proposed DRG weights so that, for the data base used to recalibrate, the weight for the average case using the proposed weights is the same as the weight for the average case using the published FY 1985 weights. Thus, the proposed weights would still reflect the 1.05 percent FY 1985 reduction.

We also agree with ProPAC, in principle that prospective payments should reflect increases in real case mix. However, we do not believe that incorporating an add-on factor to the proposed FY 1986 standardized amounts, as recommended by ProPAC (Recommendations 1 and 17), is necessary to achieve this result. As our billing data show, hospitals have already received the benefit of both real case-mix increases and coding improvements. ProPAC's recommendation is equivalent to proposing an add-on for estimated future case mix increase *in addition to* the increased payments hospitals will continue to receive as a result of assignment of cases in higher weighted DRGs.

RAND Corporation recently did a study for us intended to answer the question: "What percentage of the increase in case mix can be attributed to a truly sicker mix of Medicare inpatients?"

The major conclusions are as follows:

- Total increase in case mix (FY 1984 prospective payment bills over calendar year 1981 MEDPAR) was 8.4 percent, based upon data received through mid-December 1984.
- 2.2 percentage points of the 8.4 percent increase came from medical practice changes composed of 1.6 percentage points for the general trend (technology and a larger share of patients in higher intensity DRGs) and 0.6 percentage points for the shift of many DRG 39 (lens implant) cases to outpatient. The effect of shifting other DRG cases to outpatient sites was negligible.
- There was no increase due to the aging of the Medicare inpatient population over the three-year period.
- 6.1 percentage points of the 8.4 percent increase came from coding

practice changes. 3.4 percentage points of this increase resulted from limitations of the MEDPAR data, and 2.6 percentage points were induced by the payment incentives of the prospective payment system for more accurate coding.

• Even though 2.2 percentage points of the case mix increase resulted from medical practice changes, the amount of the increase in case-mix that should have been passed through in FYs 1984 and 1985, when budget neutrality was in effect, would have been negligible.

Our estimate of total case-mix increase of 9.6 percent is different from RAND's percent for two reasons:

• We have a more recent update and more data.

• Our number includes observed case-mix increases through April 1985, and experience during FY 1985, whereas the RAND study is limited to FY 1984 cases and bills received through mid-December 1984.

We are continuing to study ways to measure real case-mix increases. To the extent that these studies demonstrate real increases in average case mix that would not be reflected in prospective payments otherwise, and enable us to accurately measure and estimate the future magnitude of such increases, we would expect to reflect them in the level of prospective payments for FY 1987 or later.

(2) *Market basket.* The forecasted hospital market basket increase factors used to calculate the FY 1985 standardized amounts were 6.2 percent for 1983, 6.0 percent for 1984, and 6.5 percent for 1985. Our latest hospital market basket factors, as of February 1985, reflect more actual experience than those available at the time the FY 1985 rates were published. The most recent factors are 6.3 percent for 1983, 5.7 percent for 1984, and 4.7 percent for 1985. Using these latest market basket factors for correction of the standardized amounts would reduce them by 1.3 percent. We expect to have even more recent and accurate factors available at the time we publish final FY 1986 standardized amounts, and will use those factors in making corrections to the standardized amounts. This proposal is generally consistent with ProPAC's Recommendation 7.

Eight out of 21 ProPAC recommendations dealt with market basket issues. Recommendation 3 related to excluded hospitals and units, and is discussed in section III of this addendum. Recommendations 2, 4, 5, 6, and 9 are discussed in section V.A. of the preamble to this proposed rule. Recommendations 7 and 8 are discussed in this section.

In their seventh recommendation, ProPAC suggested that we make a correction for market basket forecast errors, as follows:

> The update factor should include a correction for substantial errors made in the previous year's forecast of changes in the external price measures used in the hospital market basket. In the judgment of the Commission, substantial errors are those that equal or exceed 0.25 percentage points (or, when rounded in the published forecasts, 0.3 percentage points). The Commission will undertake a study to determine the extent to which differences between forecasted and actual increases in the internal price change measures are due to factors beyond the hospitals' control. Substantial errors determined after study to be due to factors beyond the hospitals' control should be corrected in the update factor.

As already noted, we are proposing to correct forecast errors. However, ProPAC specifically recommends that we correct only for error related to external price measures, whereas we are proposing to correct for all errors, whether related to external or internal measures. Nearly 58 percent of the market basket relates to internal measures. Correcting only for external measures could adversely affect hospitals if the error was an underestimation of internal price measure increases. At this time, as noted by ProPAC, we cannot differentiate adequately between the effects of forecast error and hospital behavior. We agree with ProPAC that further study should be done to distinguish between them. However, in the absence of such study, to refuse to correct forecast errors related to internal price measures would seem to presume that all of the difference between forecasted and actual increases were attributable to hospital behavior. Therefore, we are proposing to correct for all forecast error.

In Recommendation 8, ProPAC recommends that we seek a statutory change to authorize these forecast error corrections, as follows:

> The Secretary has determined that she does not have the statutory authority to correct for market basket forecast errors. Therefore, the Secretary should seek statutory change to provide explicitly that the update factor include a correction for errors in forecasting the market basket beginning in fiscal year 1986.

We do not agree that the Secretary has determined that she does not have this statutory authority. In the August 31, 1984 final rule we did respond to a related comment as follows:

> *Comment*—One commenter recommended that we adjust the prospective payment rates if our market basket estimates of inflation prove to be inaccurate. In order to preserve the prospective nature of the system, it was suggested that we compensate for market basket forecasting errors by providing for a corresponding adjustment in the rates for the following fiscal year.
>
> *Response*—The main throught of this comment parallels comments raised in previous prospective payment regulations. As we have stated one of the purposes of the prospective payment system is the establishment of known payment rates prospectively.
>
> Therefore we have not adopted the suggestion that the rates be adjusted retroactively. (49 FR 34767)

We still are not proposing to make retroactive adjustments, just as ProPAC has not recommended making retroactive adjustments. We believe that there is ample statutory authority to correct previous market basket forecasting errors *prospectively*. Section 1886(b)(3)(B) of the Act, which sets forth the statutory basis of the market basket index, provides that the index must represent the amount that estimated costs for a given period exceed "the cost of such mix of goods and services" for the preceding period. The point of reference for the projected increase is the *cost* of goods and services, not a previous forecast of the cost of goods and services. We must presume that the Secretary has the authority to consider the most recent measure of that cost, based on the best data available. It would be unreasonable to read the statute as requiring estimation errors to be carried forward indefinitely without adjustment to reflect the actual level of the cost of goods and services. *Not* to correct forecasting errors would risk compounding errors over time, and could result in significant understatement or overstatement of the prospective payment rates. Hence, we believe it is necessary to make corrections of prior years' estimates before proceeding to an estimate of the next year's changes. However, these corrections must be made only to ensure that future rates are set accurately, not to compensate for prior overpayments or underpayments. Thus, we agree with and accept, in general, ProPAC's Recommendation 7.

(3) *Additional causes for the overstatement of FY 1985 Federal rates.* In addition to the factors above, which we believe we must correct, other considerations also contributed significantly to the overstatement of the FY 1985 standardized amounts.

When we set the standardized amounts for FY 1985, we made assumptions on hospital cost per case increases in order to estimate, for purposes of budget neutrality, the

payments that would have been made had prior payment rules continued in effect. These assumed rates of increase in cost per case were 10.9 percent for 1983, 9.8 percent for 1984, and 9.8 percent for 1985. These assumptions were significantly higher than the actuarial estimates. The actuarially estimated rates of increase in cost per case (which ignore any effects of the prospective payment system such as shorter lengths of stay) are 9.8 percent for 1983, 8.1 percent for 1984, and 8.5 percent for 1985. After application of the revised market basket, discussed previously, use of these actuarial estimates would reduce the standardized amounts by an additional 1.3 percent.

For FY 1985, we also used 1981 unaudited, as-submitted cost reports (to get recent data as quickly as possible) to set the Federal rates. The hospital-specific rates were set using later (1982 or 1983) cost reports that were fully audited. The audits adjusted the total cost of these reports downward by $2.2 billion, of which Medicare realized about $900 million in inpatient recoveries. Since the cost data used to set the Federal rates do not reflect audit recoveries, it is likely that they are overstated by a similar amount. We do not know precisely what proportion of this amount applies to capital-related costs and other costs that would not affect the Federal rates. However, approximately 90 percent of hospitals' total inpatient costs are operating costs, and if only 40 percent of the $900 million in audit recoveries is related to Federal payments for inpatient operating costs, there would have been, conservatively estimated, at least a one percent overstatement of allowable costs incorporated into the cost data to determine the FY 1985 standardized amounts.

Both of these causes for the overstatement of the standardized amounts are related to our own procedures and decisions. Thus, they are unlike both the market basket index, which is a technical measure of input prices, and the increases in case-mix, which primarily reflect changes in hospital coding. Further, as discussed below, even without making these corrections we could justify a negative update factor for FY 1986, although we are not proposing one. Since we have decided to propose FY 1986 standardized amounts set at the same level as those for FY 1985, making corrections now to reflect the cost per case assumptions and the audit data would have no practical effect. Therefore, we have decided not to propose at this time to correct the standardized amounts for these factors. We are especially concerned, however, to reexamine in more detail the effects of these problems, particularly of using unaudited data, and their long-term implications for the level of the standardized amounts.

4. Proposed Composite Correction Factor

We are proposing to adjust the standardized amounts as follows to take into consideration the overstatement of the prior year's amounts:

	Percent
Case mix	- 4.9
Market basket	- 1.3
Composite correction factor	- 6.2

d. *Forecast Market Basket Increase.* ProPAC made several recommendations related to the hospital market basket index. Recommendations 7 and 8, which deal with forecasting errors, are discussed above. Their other recommendations are discussed in section V of the preamble to this proposed rule.

We must consider forecasted market basket index increases in determining the percentage increase for both prospective payment rates and rate-of-increase limits (target amounts) for FY 1986 and subsequent fiscal years. However, the percentage change determined under section 1886(e)(4) of the Act does not have to equal the market basket index plus one quarter of one percentage point, although section 1886(b)(3)(B) of the Act does specify that for FY 1986 the percentage determined under section 1886(e)(4) of the Act *may not exceed* the applicable percentage increase that would otherwise be determined for that period.

FORECASTED MARKET BASKET (MB) PERCENT INCREASE PLUS ONE QUARTER OF 1 PERCENTAGE POINT

	MB percentage	MB + 1/4 percentage
Calendar year:		
1985	4.7	4 35
1986	4.9	5 15
1987	5 5	5.75

Based on these calendar year factors, we project a hospital market basket increase factor for FY 1986 (that is, October 1, 1985 to September 30, 1986) of 4.85 percent. Thus, the maximum update factor we could use in updating the FY 1986 standardized amounts, that is, the market basket plus one-quarter of one percentage point, would be 5.1 percent.

e. *Composite Policy Target Adjustment Factor*—(1) *General considerations.* In analyzing the prospective payment system,[1] we must consider the effects of the rates we set on outcomes such as quality of health care, access to care, the financial viability of the hospital industry, and the viability of the Medicare Part A Trust Fund. The annual prospective payment percentage increase factor should be set so that it provides incentives for desired outcomes under the prospective payment system. To achieve incentives for the desired outcome targets, we must ensure that the annual prospective payment update factor takes proper account of variables affecting the cost, efficiency, effectiveness and quality of production of hospital inpatient care. Our objective is to translate the intent of the statutory requirements for updating the prospective payment rates into a methodology for making adjustments to the current update factor that would enable us to express our consideration of these variables as policy targets.

To this end, we have identified three factors that correspond to matters that must be considered under sections 1886 (e)(2) and (e)(4) of the Act. For FY 1986, we are proposing to incorporate into the prospective payment update factor a composite "policy target adjustment factor" that takes account of productivity (efficiency), cost-effective technologies, and cost-ineffective practice patterns. Although, for the purposes of analysis and discussion, we have developed separate values for each of these three factors, we are proposing to combine them into a composite policy target adjustment factor, which would be considered in determining the FY 1986 prospective payment update factor.

As discussed in Appendix B, "quality," which is explicitly cited as one of the factors to be considered under section 1886(e)(2) of the Act, is an outcome factor that must be incorporated in the evaluation of the impacts of input/output factors. Thus, the effect on quality is a consideration in each of the three factors included in the composite policy target adjustment factor. We believe that to the extent that productivity and cost-effective use of technology are increased and cost-ineffectiveness is discouraged, quality of care should be enhanced. The proposed productivity and cost-effectiveness

[1] In determining how to implement the requirements of sections 1886 (e)(2) and (e)(4) of the Act, we have considered an analytic framework developed by the Division of National Cost Estimates of HCFA's Office of the Actuary. A technical explanation of this framework is included as Appendix B of this proposed rule.

offsets, discussed in greater detail below, reflect values that we believe can be and have been achieved with no adverse effects on quality. Productivity and cost-effectiveness not only need not compete with quality, but are often best pursued together with it. For example, practice patterns that minimize the potential for iatrogenic and nonsocomial diseases result in reduction of ineffective practices, eliminate unnecessary costs, and directly contribute to improved health status. Also, under the prospective payment system, a hospital that improves productivity and reduces its per case costs has an opportunity for an improved margin of revenue over costs. This margin may be shared many ways, depending on the choice of the hospital, including expending a portion of it in ways that would improve quality.

As discussed in section L of the impact analysis (Appendix A), there are varied and extensive efforts under way to monitor the effects of the prospective payment system on access to and quality of care. PROs, for example, are setting their own policy targets for reducing risk and improving quality of hospital care. The results of monitoring the quality of hospital services will be incorporated on an ongoing basis in our consideration of the appropriate levels at which to set each of the proposed adjustments included in the composite policy target adjustment factor. Thus, consistent with the analytic approach adopted by ProPAC, we do not believe it is necessary to incorporate a separate quality factor in the composite policy target adjustment.

The term "policy target adjustment factor" includes the effects of productivity, technology, and long-term cost effectiveness on the prospective payment rate per discharge. These factors are policy-determined variables reflecting targets, rather than historical experience, and they are difficult to quantify individually with existing data sources.

We do not think it is currently feasible to make independent and precise empirical estimates for the individual factors of productivity, technology, and ineffective practice patterns. Existing studies sometimes report to have a measure or an indicator for one of these three concepts, but such measures inadvertently have some unknown mixture of all three. Interaction relationships inherent among the three factors suggest that setting individual target values for the three components is suggestive, at best. Given the current data limitations, we feel it is more reasonable to look at all three factors, combined, than to strictly study each factor individually.

With this caveat in mind, we discuss the individual factors below, and propose values for each factor, to be combined into a composite policy target adjustment factor. The conservative values that we propose recognize the probability that available measures will not be able to absolutely separate them.

(2) *Productivity.* Productivity measures output per unit of input. The question, "Could the same output have been accomplished with fewer resources or with a different, less costly, mix of resources?" is answered by productivity measures. Hospitals often hire industrial engineers and management experts to increase productivity (efficiency) in hospital operations. Productivity improvements result in rises in output prices that are less than the rise in the price of inputs (holding profit margin and the nature of the outputs constant). In competitive industries, consumers benefit from the increases in productivity by paying lower prices. Likewise, under the prospective payment system, increases in productivity should be reflected by lower prices (that is, prospective payment rates) than would otherwise be the case.

Although studies of hospital productivity have been done, and some measures of productivity have been devised for specific applications, valid productivity indexes comparable to those for other industries are not currently available for the entire hospital industry. Various economy-wide productivity indexes developed by BLS indicate national productivity increases of approximately three percent annually for the last two years (1983 and 1984). However, long-term average rates of increase show substantial variation depending upon the time period covered, the industries included, and the productivity measure used (multi-factor productivity or labor productivity).

Given the years of retrospective, cost-based reimbursement, with attendant perverse incentives for productivity, we believe hospitals have the potential for substantial improvements in productivity. We expect that a two percent or more annual increase in productivity would not be unreasonable. We propose to incorporate a 1.0 percent productivity offset (reduction) in the FY 1986 policy target adjustment factor. We believe this is a conservative offset that would allow the hospitals to retain more than half of potential productivity gains. We believe sharing the benefits of the prospective payment system in this way provides desirable incentives.

(3) *Cost-effective technologies.* Certain technological changes, especially those related to the adoption of new products (with accompanying labor and nonlabor inputs), increase the operating cost of treating illness but also improve health status commensurately. We believe that the prospective payment rates should recognize new science and technology factors, which are cost-increasing, but also enhance health status. This should provide positive incentives for continued technological and scientific excellence.

The effects of new technologies and scientific advances on operating cost and health status are very complex and are difficult to isolate. Typically, a specific new technology increases cost in some uses and decreases costs in other uses. Concurrently, in some situations, health status is improved while in other situations, it may be unaffected or even worsened using the same technology. Separating out the relative importance of each of these effects for individual technologies and new technologies that are cost-increasing has proven to be elusive from a statistical point of view. Yet, it is important to allow for new technologies and scientific advances. Therefore, we propose to incorporate a 1.5 percent add-on in the FY 1986 policy target adjustment factor. We expect this add-on to promote, within bounds, the development and use of cost-effective new technologies. The 1.5 percent add-on allows significant growth over time in cost-increasing, health-enhancing new technologies and scientific advances, especially when one considers that all capital costs are currently paid on a cost basis and that this affords an additional allowance for accompanying labor and non-labor inputs.

(4) *Elimination of ineffective practice patterns.* Just as cost-effective new technologies and scientific advances are expected to increase a hospital's production of cost-effective outputs, and must be encouraged, existing practice patterns that are ineffective in the production of outputs should be discouraged. We believe the implementation of the prospective payment system has substantially increased the incentive for such changes of behavior, by affording hospitals a clear benefit from pursuing them, rather than the disincentive of potential decreases in cost reimbursement. As a prudent buyer, we want to get value for our money. We desire to share in the benefits accruing from more effective

and economical provision of care. Thus, one of our policy targets in setting the level of the Federal rates is to ensure that those rates afford an opportunity for buyer and provider of services to share the benefits resulting from the elimination of ineffective practice patterns.

Effectiveness compares the objective of improving health status with alternative uses of resources for achieving that objective to determine whether the right, or best available, care is being provided. A hospital can improve the effectiveness with which it delivers health care by:

- Eliminating practices that do not need to be done at all; and
- Ensuring that the only procedures and services furnished in the hospital are those that require a hospital level of care.

Two examples of changes in practice patterns that result in lower inpatient costs with no associated decrease in quality of care are: (1) The elimination of selected diagnostic tests, because their use does not improve health status; and (2) the reduction in length of stay with no decrease or change in health status outcome.

For example, average length of stay for hospitals in States subject to the prospective payment system (that is, excluding hospitals in Maryland, Massachusetts, New Jersey, and New York, which are paid under specially approved State systems) declined 11 percent in FY 1984. Hospitals experience a reduction in costs associated with reductions in length of stay. For purposes of determining additional payments for day outlier cases, we consider the marginal operating cost of an additional day of stay to be equal to 60 percent of the average per diem payment for the applicable DRG, excluding payment for pass-through costs that are not included in the prospective payment rate. (See § 412.82(c).) If we assume that this represents the ratio of marginal cost to average cost, we must conclude that our 11 percent reduction in length of stay would result in about a 6.6 percent reduction in cost per case. Of course, it can be argued that the marginal operating cost of an additional day of care may be significantly less than 60 percent of the average per diem cost. However, even if we assumed marginal costs to be only 40 percent of the average per diem cost, the FY 1984 reduction in length of stay would result in about a 4.4 percent reduction in cost per case. In addition to these considerations, we wish to point out that these probable reductions in costs do not reflect other changes in utilization of ancillary and other services, which have probably generated further reductions in the average cost per case under prospective payment.

We believe that the data on per case costs on which the FY 1984 and FY 1985 standardized amounts were based included a significant component of unnecessarily high costs reflecting ineffective practice patterns. There have since been, and there will presumably continue to be, significant changes in practice patterns, with corresponding reductions in cost per case. We believe that hospitals deserve to accrue benefits from these changes, but, nonetheless, we believe it is reasonable for us to share in them also. Therefore, we propose to incorporate a 2.0 percent offset (reduction) in the policy target adjustment factor for FY 1986.

(5) *ProPAC Recommendations on Discretionary Adjustments.* ProPAC coined the term "discretionary adjustment factor" to refer to the effect of taking into consideration productivity, technology, long-term cost-effectiveness, and changes in product on the payment per discharge under the prospective payment system. They recommended (Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals) that the FY 1986 prospective payment update factor include a discretionary adjustment factor of −1.0 percent. This adjustment would make allowance for "scientific and technological advancement, productivity improvement, and hospital product change."

In its discussion of the basis of this recommendation, ProPAC expressed many of the same issues and concerns as we have. It noted that the implicit judgments necessary in developing quantitative allowances for such variables have little precedent, and that the technical methods and data available upon which to base these judgments yield imprecise estimates. Nonetheless, its analysis and concerns are similar to ours, and it has recommended a −1.0 percent discretionary adjustment factor reflecting the following broad guidelines.

Adjustments	Percentage allowance
Scientific and technological advances	+1.5 to +2.0.
Hospital productivity	−1.5 to −2.0
Changes in the hospital product	−1.0.
Net adjustment	−1.0.

Although these factors and values are not identical to ours, they are comparable, and suggest a very similar combination of offsets and add-ons and very similar magnitudes.

(6) *Proposed Composite Policy Target Adjustment.* For FY 1986 and thereafter, we propose to adjust the average standardized amounts by a percentage composite policy target adjustment factor, as authorized under section 1886(e)(4) of the Act. For FY 1986, this composite policy target adjustment factor is a composite of the offsets and add-ons for productivity, cost-effective technologies, and cost-ineffective practice patterns, as follows:

	[illegible]
Productivity	−1.0
Cost-effective technologies	+1.5
Cost-ineffective practice patterns	2.0
Composite policy target adjustment factor	1.5

(f) *Summary.* The combined effect of the forecasted increase in the hospital market basket, the proposed composite correction factor, and the proposed composite policy target adjustment factor would be a negative FY 1986 prospective payment update factor, as follows:

	[illegible]
Forecasted market basket increase	+4.85
Composite correction factor	−6.2
Composite policy target adjustment factor	1.5
Total	−2.85

Such a negative update factor would result in a significant decrease in the standardized amounts for FY 1986, compared to those for FY 1985, and a corresponding reduction of anticipated revenue for hospitals subject to the prospective payment system. However, although we have substantial technical and legal justification for issuing FY 1986 standardized amounts that would be lower, on the average, than FY 1985 standardized amounts, we do not propose to do so. In addition, because we believe it is important to protect the prospectivity of this payment system, we do not plan to recoup any excessive payments resulting from the overstated FY 1985 standardized amounts.

The prospective payment system was intended, from its inception, to produce significant changes in the hospital industry. However, we do not want to cause these changes to take place too rapidly, because that may result in disruptions and unintended consequences that would adversely affect the industry, its patients, and us. Neither do we want to encourage changes that would compromise the access to quality inpatient hospital care historically enjoyed by Medicare

beneficiaries. Our objective is to set the FY 1986 update factor at a percentage level that takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, in accordance with section 1886(e)(4) of the Act, and we believe that the payment rates should be set no lower than we have proposed in order to assure that this statutory standard is met.

We believe that, in an ideal course of events, the FY 1985 amounts would have been set at a lower level, and the FY 1986 amounts would be increased appropriately. However, the implementation of a new system seldom follows an ideal course. Moreover, we recognize that actually decreasing the standardized amounts would have adverse effects, not only relative to the expectations of affected hospitals, but on the development and acceptance of the prospective payment system. We also recognize that a large portion of the overstatement of the FY 1985 standardized amounts is not attributable to the actions or behavior of the hospital industry. The overstatement is to some extent the result of our desire, shared by Congress, to proceed cautiously with the implementation of the new system. Therefore, it would be inappropriate to set the FY 1986 Federal rates at a level that would appear to be punitive of the hospital industry.

Thus, we are proposing FY 1986 standardized amounts that are set at the same level as those for FY 1985. Because we restandardized the base year costs to reflect the proposed new survey-based wage index, the labor portions of the amounts set forth in Table 1, in section IV. below, are not identical to those of last year. However, the nonlabor portions of the proposed national and regional Federal rates, which are not affected by the wage index, are identical to those for FY 1985. For the reasons given above, we believe that the resulting payments would take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

4. Other Adjustments to the Average Standardized Amounts

a. *Part B Costs.* Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital, or by an entity under arrangements made by the hospital under which Medicare's payment to the hospital discharges the beneficiary's liability to pay for the services furnished. In order to adjust urban and rural regional and national standardized amounts per discharge so that they represent costs previously billed under Part B, we increased the amounts by a 0.13 percentage increase in both FY 1984 and FY 1985. We are proposing to make further adjustments for this factor in FY 1986 or in the future because the appropriate adjustment has been built into the FY 1985 base.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made in the base period costs in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. In FY 1984 and FY 1985, we increased the urban and rural regional and national standardized amounts by 0.18 percent to account for additional costs of payroll taxes for hospitals entering the Social Security system. We are proposing to make no further adjustments for this factor in FY 1986 or in the future because the appropriate adjustment has been built into the FY 1985 base.

c. *Nonphysician anesthetist costs.* In the August 31, 1984, final rule, we implemented section 2312 of Pub. L. 98-369, which provided that hospital costs for the services of nonphysician anesthetists will be paid in full as a reasonable cost pass-through for cost reporting periods beginning before October 1, 1987.

We did not directly reduce the FY 1985 Federal rates to exclude the estimated costs of these services, because any required adjustment would be incorporated in the budget neutrality adjustment factors applied to the national and regional standardized amounts. (See 49 FR 34794; August 31, 1984). Since the FY 1986 standardized amounts are derived from an update of the FY 1985 amounts, which were adjusted for budget neutrality, the rates will automatically include the appropriate adjustment. We do not propose to make any further adjustments to the Federal rates for this factor for either FY 1986 or FY 1987.

d. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(IV) of the act further directs that outlier payments may not be less than five percent or more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 1, 1983 interim final rule (48 FR 39767), we estimated that outlier payments for FY 1984 would be 6.0 percent of total payments (including both standard prospective payment system payments and outlier payments). We made the maximum estimate permitted under the law in order to ensure that we would provide an adequate margin for outlier payments.

In the final rule published August 31, 1984 (49 FR 34728), we reduced the size of the reserve for outliers from 6.0 percent of total payments, which we had established for FY 1984, to 5.0 percent of total payments for FY 1985, while providing proportionately greater payment for typical cases and avoiding any great risk of general disadvantage to hospitals. We believe that it was in the greater interest of hospitals and the program to eliminate some of the reserve for outliers and correspondingly increase the amount in the standardized amounts, thereby providing hospitals with somewhat larger Federal rates for typical cases. We note that this has had the effect of increasing the predictability of total payments for hospitals in that less of the total is attributable to those cases that meet particular qualifications. Therefore, we propose to continue to set the size of the outlier reserve at approximately the five percent level for FY-1986. As indicated in the previous rules on prospective payment, we will pay for any outlier that meets the criteria in § 412.80, even if aggregate outlier payments result in more than five percent (as proposed) of total payments.

The FY 1985 standardized amounts were reduced by means of the budget neutrality methodology to the level necessary to take into account outlier payments of five percent of total payments based on the Federal rates. (See 49 FR 34795.) We do not propose to make any further adjustments to the standardized amounts for FY 1986 or future years, unless we later propose to increase the size of the outlier reserve.

We are proposing to revise the day outlier and cost outlier thresholds, using the most recent length of stay and charge data available, to ensure that total estimated outlier payments for FY 1986 would be 5.0 percent of total payments. We are proposing that a discharge in FY 1986 will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 17 days or 1.94 standard deviations. (For FY 1985 we set the day outlier threshold at the lesser of 22 days or 1.94 standard deviations.) We refer the

reader to Table 5 in this addendum for the proposed DRG day outlier thresholds.

For FY 1986, we are also proposing that a discharge that does not qualify as a day outlier will be considered a high cost outlier if the cost of covered services exceeds the greater of 2.0 times the Federal rate for the DRG, or $13,500. (For FY 1985, we set the cost outlier thresholds at the greater of 2.0 times the Federal rate for the DRG, or $13,000.)

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardization amounts that will be made by the intermediaries in determining the prospective payment rates as described in section D. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as we propose to revise it in this addendum, contains the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(H) of the Act requires that an adjustment be made to the labor-related portion of the national and regional prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amount by the appropriate wage index for the area in which the hospital is located. In section III. of the preamble to this proposed rule, we discuss a new wage index based on our own wage survey data. This index is set forth in Tables 4a and 4b of section IV. of this addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1986, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE.—COST OF LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.20
[illegible]	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.10

Note.—The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM-591 letter series

C. DRG Weighting Factors

As discussed in section II of the preamble to this proposed rule, we have developed a classified system for all hospital discharges, sorting them into Diagnosis-Related Groups (DRGs), and have developed weighting factors for each DRG that are intended to reflect the relative resource consumption associated with each DRG.

Table 5 of section IV of this addendum contains the weighting factors that we propose to use for discharges occurring in FY 1986. These factors have been recalibrated as explained in section II. of the preamble, and reflect the changes in the GROUPER program summarized in Table 6.

To identify certain DRGs more clearly, the titles of the following DRGs would be revised as indicated below. These changes are in addition to those discussed in section II.B. of the preamble.

DRG	Current title	Proposed title
15	Transient Ischemic Attack	Transient Ischemic Attack and Precerebral Occlusions
61	Myringotomy Age >17	Myringotomy with Tube Insertion Age >17
62	Myringotomy Age 0–17	Myringotomy with Tube Insertion Age 0–17
76	O.R. Proc on the Resp System Except Major Chest With C.C.	Other Respiratory System O.R. Procedures with C.C.
77	O.R. Proc on the Resp System Except Major Chest W/O C.C	Other Respiratory System O.R. Procedures W/O C.C
157	Anal Procedures Age >69 and/or C.C.	Anal and Stomal Procedures Age >69 and/or C.C.
158	Anal Procedures Age <70 W/O C.C	Anal and Stomal Procedures Age <70 W/O C.C.
209	Major Joint Procedures.	Major Joint and Limb Reattachment Procedures.
263	Skin Grafts for Skin Ulcer or Cellulitis Age >69 and/or C.C.	Skin Grafts and/or Debridement for Skin Ulcer or Cellulitis Age >69 and/or C.C.
264	Skin Grafts for Skin Ulcer or Cellulitis Age <70 W/O C.C.	Skin Grafts and/or Debridement for Skin Ulcer or Cellulitis Age <70 W/O C.C.
265	Skin Grafts Except for Skin Ulcer or Cellulitis with C.C.	Skin Grafts and/or Debridement Except for Skin Ulcer or Cellulitis with C.C.
266	Skin Grafts Except for Skin Ulcer or Cellulitis with W/O C.C	Skin Grafts and/or Debridement Except for Skin Ulcer or Cellulitis W/O C.C.
285	Amputations for Endocrine, Nutritional + Metabolic Disorders.	Amputations of Lower Limb for Endocrine, Nutritional + Metabolic Disorders
359	Tubal Interruption for Non-malignancy	Incisional Tubal Interruption for Non-malignancy
376	Postpartum Diagnoses W/O O.R. Procedure.	Postpartum and Postabortion Diagnoses W/O O.R. Procedure
377	Postpartum Diagnoses with O.R. Procedure.	Postpartum and Postabortion Diagnoses with O.R. Procedure
381	Abortion with D+C	Abortion with D+C or Aspiration Curettage.
[illegible]	Extreme Immaturity [illegible]	Extreme Immaturity or Respiratory Distress Syndrome, [illegible]
401	Lymphoma or Leukemia with minor O.R. Proc Age >69 and/or C.C.	Lymphoma or Leukemia with other O.R. Proc Age >69 and/or C.C.
402	Lymphoma or Leukemia with minor O.R. Proc Age >70 W/O C.C	Lymphoma or Leukemia with Other O.R. Procedure Age >70 W/O C.C
449	Toxic Effects of Drugs Age >69 and/or C.C.	Poisoning and Toxic Effects of Drugs Age >69 and/or C.C.
450	Toxic Effects of Drugs Age 18–69	Poisoning and Toxic Effects of Drugs Age 18–69 W/O C.C.
451	Toxic Effects of Drugs Age 0–17	Poisoning and Toxic Effects of Drugs Age 0–17

D. Calculation of Prospective Payment Rates for FY 1986

FY 1986 represents the third year of the three-year transition period.

General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1985 and Before October 1, 1986

Prospective Payment Rate = Hospital-Specific Portion + Federal Portion.

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{Base year costs per discharge}}{\text{1981 case-mix index}} \times \text{updating factor} = \text{Hospital-Specific Rate}$$

For the first prospective payment cost reporting period, the hospital-specific portion equaled 75 percent of the hospital-specific rate. For each subsequent transition period cost reporting period, the hospital-specific portion is derived as follows:

Previous Period's Hospital-Specific Rate × Updating Factor × Blending Percentage × DRG Weight

The blending percentage for cost reporting periods beginning in FY 1986 is 25 percent. For a more detailed discussion of the hospital-specific

portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. *Updating the Hospital-Specific Rates for FY 1986 Cost Reporting Periods.* We are proposing to carry forward the hospital-specific rates for FY 1985 cost reporting periods without increasing them for FY 1986. For reasons discussed below, the FY 1985 hospital-specific rates were set too high, just as the FY 1985 Federal rates were. If we were to propose to correct the rates prospectively for the full amount of the overstatement, it would result in a reduction of the hospital-specific rates. For the same reasons that we have decided not to reduce the FY 1986 Federal rates, we have decided that it is preferable to carry the rates forward unchanged for the last year of the transition period.

For cost reporting periods beginning in FY 1985, we determined each hospital's hospital-specific rate (before applying the 50 percent blending percentage for the second year of the prospective payment transition period) by applying the applicable compounded target rate percentage, as adjusted for budget neutrality, to the hospital's previous year's hospital-specific rate. The target rate percentages we used incorporated the same overstated market basket percentages as were used in determining the FY 1985 standardized amounts (Federal rates). In addition, each hospital's base-year costs were adjusted to remove the effect of the hospital's 1981 case-mix index, so that the hospital-specific portion, as well as the Federal portion, could be adjusted by a DRG weight in determining payment. As a result, the unanticipated rate of increase in case mix since the implementation of the prospective payment system, discussed above, has also resulted in overstated hospital-specific rates. Note that these are the same factors for which corrections are being applied in determining the proposed Federal rates, as discussed in section II.A.3., above.

The requirement of budget neutrality (section 1886(e)(1) of the Act), which is discussed in relation to the Federal rates in section II.A.3, above, also governed the level of the target rate percentage increase for hospital-specific rates for cost reporting periods beginning in FY 1985. The intent of Congress was that the hospital-specific rates for FY 1986 be updated from *budget neutral* rates for the previous period. However, the target rate percentages for cost reporting periods beginning in FY 1985 were too high to achieve actual budget neutrality. Therefore, we believe it would be argued that we are required to adjust those hospital-specific rates downward before updating them for cost reporting periods beginning in FY 1986.

The reductions to the hospital-specific rates that would be necessary to correct the FY 1985 overstatement fully are as follows:

	Percent
Case-mix	−4.9
Market basket	−1.3
Combined	−6.2

b. *Calculation of Hospital-Specific Portion.* For hospital cost reporting periods beginning in FY 1986, the hospital-specific portion of a hospital's payment for a given discharge would be calculated by:

Step 1—Multiplying the previous cost reporting period's hospital-specific rate by 25 percent, and

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge. The result is the hospital-specific portion of the FY 1986 prospective payment for a given discharge.

c. *New Providers.* Hospitals that have not completed a 12-month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983 and hospitals that meet the criteria in § 412.74 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed solely on the Federal rates. Thus, new providers are paid a blend of 50 percent of the appropriate Federal regional rate and 50 percent of the Federal national rate for discharges occurring on or after October 1, 1985 and before October 1, 1985 and before October 1, 1986.

2. Federal Portion

For cost reporting period beginning on or after October 1, 1985 and before October 1, 1986, the Federal portion of the hospital's total prospective payment will be 75 percent of the hospital's Federal rate. Beginning with discharges occurring on or after October 1, 1985, the Federal rate is comprised of a blend of the appropriate Federal regional rate (50 percent) and the Federal national rate (50 percent).

III. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established by section 1886(b) of the Act and implemented in § 405.463 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital's own cost experience. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more than that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the differences between the inpatient operating cost per discharge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. For cost reporting periods beginning in FY 1983 and FY 1984, the applicable target rate percentage was the estimated hospital market basket increase factor plus one percentage point. For cost reporting periods beginning in FY 1985, the applicable target rate percentage is the estimated hospital market basket increase factor plus one-quarter of one percentage point, as prescribed by section 1886(b)(3)(B) of the Act. For cost reporting periods beginning in FY 1986 and thereafter (that is, on or after October 1, 1985), the target rate percentage will be adjusted by an update factor determined by the Secretary under section 1886(e)(4) of the Act, considering the recommendations of ProPAC under section 1886(e)(2) of the Act.

B. Proposed Target Amounts for Cost Reporting Periods Beginning in FY 1986

For cost reporting periods beginning in FY 1986, we are proposing to carry forward each hospital's previous year's target amount without increase. This is consistent with the update we are proposing for both Federal rates and hospital-specific rates under the prospective payment system and would comply with the provisions of sections 1886(b)(3)(B) and 1886(e)(4) of the Act, which contemplate a single "percentage change" for all hospitals. In discussing the percentage change, these sections of the Act do not distinguish between hospitals subject to or excluded from the prospective payment system. Thus, we

are required to apply the same update factor to both groups of hospitals and to units excluded from the prospective payment system.

In addition, even if we were not required by law to apply the same update factor to hospitals both included in and excluded from prospective payment, we believe it would be appropriate to do so. Although certain of the adjustments and factors considered in determining the appropriate update under prospective payment may not apply to excluded hospitals and units, there are other considerations that we believe would justify a zero percentage increase for FY 1986.

Hospitals under the prospective payment system have strong incentives for economy and efficiency and have demonstrated their ability to respond to these incentives. However, since hospitals and units excluded from the prospective payment system are still being reimbursed on a reasonable cost basis, their incentives to increase productivity and cost-effectiveness are not as strong. We believe it is desirable to establish stronger incentives for excluded hospitals and units to reduce costs.

This is particularly important in view of the plans we are pursuing to bring these hospitals and units under the prospective payment system as soon as possible. Because of these plans, it would be appropriate at this time to begin providing excluded hospitals and units with incentives comparable to those experienced by hospitals under the prospective payment system. We expect many excluded hospitals and units will be able to achieve greater efficiency and effectiveness in the delivery of needed services as a response to these limits.

Since the rate of increase ceiling is a limit and not a payment rate, excluded hospitals and units that operate efficiently and maintain per case costs below their target amounts would continue to have a margin for increasing costs. In addition, under the provisions of section 1886(b)(4)(A) of the Act and § 405.463(g), a hospital or unit subject to the rate of increase limit may qualify for exceptions to that limit if it demonstrates that a portion of their costs above the limit is attributable to extraordinary circumstances or abrupt changes in patient mix. The availability of such exceptions affords protection for those hospitals that may exceed their target amount ceiling for reasons other than inefficiency.

C. ProPAC Recommendations

ProPAC made two recommendations concerning excluded hospitals and units. In Recommendation 3, it suggested that separate market basket weights should be used for the group of psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units that are exempt from the prospective payment system, but subject to the TEFRA rate of increase limitation. However, it noted tht separate market basket weights need not be developed for children's hospitals.

We have studied this recommendation, and agree that it is possible to develop such a separate market basket for excluded hospitals and units. However, studies to date show there is little difference in market baskets. In addition, as noted above, we have every intention of incorporating excluded hospitals and units in the prospective payment system in the futue. Therefore, we believe there is not sufficient justification for developing a separate market basket for excluded hospitals and units. In addition, since the law contemplates the same percentage update for hospitals both included in and excluded from the prospective payment system, we do not believe it is appropriate to develop separate market baskets.

This requirement in the law also applies to ProPAC's twelfth recommendation, that hospitals and units excluded from the prospective payment system have the same adjustments applied to the market basket increase factor as would be applied to the prospective payment rate update factor to take into account productivity and technological and scientific advancement.

IV. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum.

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Region	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2,358.59	[illegible]	2,133.78	507.22
2. Middle Atlantic (PA, NJ, NY)	2,216.72	660.71	2,168.51	514.40
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,357.90	612.25	1,988.47	427.43
4. East North Central (IL, IN, MI, OH, WI)	2,437.09	712.68	2,017.00	478.79
5. East South Central (AL, KY, MS, TN)	2,234.29	544.93	1,976.60	[illegible]
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,265.11	[illegible]	1,834.32	410.91
7. West South Central (AR, LA, OK, TX)	2,308.17	599.67	1,852.89	398.47
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,225.80	636.52	1,828.36	447.21
9. Pacific (AK, CA, HI, OR, WA)	2,209.24	745.34	1,829.99	521.49
10. National	2,310.05	664.44	1,927.32	438.18

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX (Taylor, TX)	.8929
Akron, OH (Portage, OH; Summit, OH)	1.0996
Albany, GA (Dougherty, GA; Lee, GA)	.8120
Albany-Schenectady-Troy, NY (Albany, NY; Greene, NY; Montgomery, NY; Rensselaer, NY; Saratoga, NY; Schenectady, NY)	.9278
Albuquerque, NM (Bernalillo, NM)	1.0996
Alexandria, LA (Rapides, LA)	.9103
Allentown-Bethlehem, PA-NJ (Warren, NJ; Carbon, PA; Lehigh, PA; Northampton, PA)	1.0374
Altoona, PA (Blair, PA)	[illegible]
Amarillo, TX (Potter, TX; Randall, TX)	.9514
Anaheim-Santa Ana, CA (Orange, CA)	1.2516
Anchorage, AK (Anchorage, AK)	1.5729
Anderson, IN (Madison, IN)	.9178
Anderson, SC (Anderson, SC)	.8306
Ann Arbor, MI (Washtenaw, MI)	1.2503
Anniston, AL (Calhoun, AL)	.8456
Appleton-Oshkosh-Neenah, WI (Calumet, WI; Outagamie, WI; Winnebago, WI)	1.0660
Asheville, NC (Buncombe, NC)	.8780
Athens, GA (Clarke, GA; Jackson, GA; Madison, GA; Oconee, GA)	.8120
Atlanta, GA (Barrow, GA; Butts, GA; Cherokee, GA; Clayton, GA; Cobb, GA; Coweta, GA; De Kalb, GA; Douglas, GA; Fayette, GA; Forsyth, GA; Fulton, GA; Gwinnett, GA; Henry, GA; Newton, GA; Paulding, GA; Rockdale, GA; Spalding, GA; Walton, GA)	.9589
Atlantic City, NJ (Atlantic, NJ; Cape May, NJ)	1.0486
Augusta, GA-SC (Columbia, GA; McDuffie, GA; Richmond, GA; Aiken, SC)	.9527
Aurora-Elgin, IL (Kane, IL; Kendall, IL)	1.0934
Austin, TX (Hays, TX; Travis, TX; Williamson, TX)	1.1096
Bakersfield, CA (Kern, CA)	1.1968

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage [illegible]
Baltimore, MD (Anne Arundel, MD; Baltimore, MD; Baltimore City, MD; Carroll, MD; Harford, MD; Howard, MD; Queen Annes, MD)	1.1059
Bangor, ME (Penobscot, ME)	.9128
Baton Rouge, LA (Ascension, LA; East Baton Rouge, LA; Livingston, LA; West Baton Rouge, LA)	.9751
Battle Creek, MI (Calhoun, MI)	1.0224
Beaumont-Port Arthur, TX (Hardin, TX; Jefferson, TX; Orange, TX)	1.0000
Beaver County, PA (Beaver, PA)	1.0834
Bellingham, WA (Whatcom, WA)	1.1382
Benton Harbor, MI (Berrien, MI)	.8842
Bergen-Passaic, NJ (Bergen, NJ; Passaic, NJ)	1.0735
Billings, MT (Yellowstone, MT)	1.0149
Biloxi-Gulfport, MS (Hancock, MS; Harrison, MS)	.8418
Binghamton, NY (Broome, NY; Tioga, NY)	[illegible]
Birmingham, AL (Blount, AL; Jefferson, AL; Saint Clair, AL; Shelby, AL; Walker, AL)	.9589
Bismarck, ND (Burleigh, ND; Morton, ND)	.9626
Bloomington, IN (Monroe, IN)	[illegible]
Bloomington-Normal, IL (McLean, IL)	.9763
Boise City, ID (Ada, ID)	1.0498
Boston-Lawrence-Salem-Lowell-Brockton, MA (Essex, MA; Middlesex, MA; Norfolk, MA; Plymouth, MA; Suffolk, MA)	1.1482
Boulder-Longmont, CO (Boulder, CO)	1.1233
Bradenton, FL (Manatee, FL)	.9128
Brazoria, TX (Brazoria, TX)	[illegible]
Bremerton, WA (Kitsap, WA)	.9738
Bridgeport-Stamford-Norwalk-Danbury, CT (Fairfield, CT)	1.1756
Brownsville-Harlingen, TX (Cameron, TX)	[illegible]

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bryan-College Station, TX (Brazos, TX)	.9489
Buffalo, NY (Erie, NY)	1.0473
Burlington, NC (Alamance, NC)	.7858
Burlington, VT (Chittenden, VT; Grand Isle, VT)	1.0050
Canton, OH (Carroll, OH; Stark, OH)	1.0000
Casper, WY (Natrona, WY)	1.0971
Cedar Rapids, IA (Linn, IA)	1.0100
Champaign-Urbana-Rantoul, IL (Champaign, IL)	.9686
Charleston, SC (Berkeley, SC; Charleston, SC; Dorchester, SC)	.8842
Charleston, WV (Kanawha, WV; Putnam, WV)	1.0399
Charlotte-Gastonia-Rock Hill, NC-SC (Cabarrus, NC; Gaston, NC; Lincoln, NC; Mecklenburg, NC; Rowan, NC; Union, NC; York, SC)	.8917
Charlottesville, VA (Albemarle, VA; Charlottesville City, VA; Fluvanna, VA; Greene, VA)	[illegible]
Chattanooga, TN-GA (Catoosa, GA; Dade, GA; Walker, GA; Hamilton, TN; Marion, TN; Sequatchie, TN)	1.0025
Chicago, IL (Cook, IL; Du Page, IL; McHenry, IL)	1.2291
Chico, CA (Butte, CA)	1.2366
Cincinnati, OH-KY-IN (Dearborn, IN; Boone, KY; Campbell, KY; Kenton, KY; Clermont, OH; Hamilton, OH; Warren, OH)	1.0959
Clarksville-Hopkinsville, TN-KY (Christian, KY; Montgomery, TN)	.8120
Cleveland, OH (Cuyahoga, OH; Geauga, OH; Lake, OH; Medina, OH)	1.1469
Colorado Springs, CO (El Paso, CO)	1.0361
Columbia, MO (Boone, MO)	1.0934
Columbia, SC (Lexington, SC; Richland, SC)	[illegible]
Columbus, GA-AL (Russell, AL; Chattanoochee, GA; Muscogee, GA)	.7870
Columbus, OH (Delaware, OH; Fairfield, OH; Franklin, OH; Licking, OH; Madison, OH; Pickaway, OH; Union, OH)	.9614
Corpus Christi, TX (Nueces, TX; San Patricio, TX)	.9826
Cumberland, MD-WV (Allegany, MD; Mineral, WV)	[illegible]
Dallas, TX (Collin, TX; Dallas, TX; Denton, TX; Ellis, TX; Kaufman, TX; Rockwall, TX)	1.0672
Danville, VA (Danville City, VA; Pittsylvania, VA)	[illegible]
Davenport-Rock Island-Moline, IA-IL (Scott, IA; Henry, IL; Rock Island, IL)	1.0573
Dayton-Springfield, OH (Clark, OH; Greene, OH; Miami, OH; Montgomery, OH)	1.0859
Daytona Beach, FL (Volusia, FL)	[illegible]
Decatur, IL (Macon, IL)	.9514
Denver, CO (Adams, CO; Arapahoe, CO; Denver, CO; Douglas, CO; Jefferson, CO)	1.2765
Des Moines, IA (Dallas, IA; Polk, IA; Warren, IA)	1.0473
Detroit, MI (Lapeer, MI; Livingston, MI; Macomb, MI; Monroe, MI; Oakland, MI; Saint Clair, MI; Wayne, MI)	1.1631
Dothan, AL (Dale, AL; Houston, AL)	.8394
Dubuque, IA (Dubuque, IA)	1.0511
Duluth, MN-WI (St. Louis, MN; Douglas, WI)	.9851
Eau Claire, WI (Chippewa, WI; Eau Claire, WI)	.9427
El Paso, TX (El Paso, TX)	[illegible]
Elkhart-Goshen, IN (Elkhart, IN)	.9577
Elmira, NY (Chemung, NY)	[illegible]
Enid, OK (Garfield, OK)	.9552
Erie, PA (Erie PA)	.9913
Eugene-Springfield, OR (Lane, OR)	1.1071
Evansville, IN-KY (Posey, IN; Vanderburgh, IN; Warrick, IN; Henderson, KY)	1.0137
Fargo-Moorhead, ND-MN (Clay, MN; Cass, ND)	1.0560
Fayetteville, NC (Cumberland, NC)	[illegible]
Fayetteville-Springdale, AR (Washington, AR)	[illegible]
Flint, MI (Genesee, MI)	1.2005
Florence, AL (Colbert, AL; Lauderdale, AL)	.7833
Florence, SC (Florence, SC)	.7621
Fort Collins-Loveland, CO (Larimer, CO)	1.0760
Fort Lauderdale-Hollywood-Pompano Beach, FL (Broward, FL)	1.1158
Fort Myers-Cape Coral, FL (Lee, FL)	.9465
Fort Pierce, FL (Martin, FL; St. Lucie, FL)	.9178
Fort Smith, AR-OK (Crawford, AR; Sebastian, AR; Sequoyah, OK)	.9166
Fort Walton Beach, FL (Okaloosa, FL)	[illegible]
Fort Wayne, IN (Allen, IN; De Kalb, IN; Whitley, IN)	[illegible]
Fort Worth-Arlington, TX (Johnson, TX; Parker, TX; Tarrant, TX)	.9925
Fresno, CA (Fresno, CA)	1.1395
Gadsden, AL (Etowah, AL)	.8705
Gainesville, FL (Alachua, FL; Bradford FL)	.9564
Galveston-Texas City, TX (Galveston, TX)	1.1320
Gary-Hammond, IN (Lake, IN; Porter, IN)	1.0897
Glens Falls, NY (Warren, NY; Washington, NY)	.9527
Grand Forks, ND (Grand Forks, ND)	.9788

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Grand Rapids, MI (Kent, MI; Ottawa, MI)	1.0585
Great Falls, MT (Cascade, MT)	1.0635
Greeley, CO (Weld, CO)	1.0672
Green Bay, WI (Brown, WI)	1.0249
Greensboro-Winston-Salem-High Point, NC (Davidson, NC; Davie, NC; Forsyth, NC; Guilford, NC; Randolph, NC; Stokes, NC; Yadkin, NC)	.9315
Greenville-Spartanburg, SC (Greenville, SC; Pickens, SC; Spartanburg, SC)	[illegible]
Hagerstown, MD (Washington, MD)	.9514
Hamilton-Middletown, OH (Butler, OH)	1.0137
Harrisburg-Lebanon-Carlisle, PA (Cumberland, PA; Dauphin, PA; Lebanon, PA; Perry, PA)	[illegible]
Hartford-New Middletown-Britain-Bristol, CT (Hartford, CT; Litchfield, CT; Middlesex, CT; Tolland, CT)	1.1370
Hickory, NC (Alexander, NC; Burke, NC; Catawba, NC)	[illegible]
Honolulu, HI (Honolulu, HI)	1.1930
Houma-Thibodaux, LA (Lafourche, LA; Terrebonne, LA)	.9153
Houston, TX (Fort Bend, TX; Harris, TX; Liberty, TX; Montgomery, TX; Waller, TX)	1.0585
Huntington-Ashland, WV-KY-OH (Boyd, KY; Carter, KY; Greenup, KY; Lawrence, OH; Cabell, WV; Wayne, WV)	[illegible]
Huntsville, AL (Madison, AL)	.8593
Indianapolis IN (Boone, IN; Hamilton, IN; Hancock, IN; Hendricks, IN; Johnson, IN; Marion, IN; Morgan, IN; Shelby, IN)	1.0511
Iowa City, IA (Johnson, IA)	1.2976
Jackson, MI (Jackson, MI)	1.0125
Jackson, MS (Hinds, MS; Madison, MS; Rankin, MS)	.9278
Jacksonville, FL (Clay, FL; Duval, FL; Nassau, FL; St. Johns, FL)	[illegible]
Jacksonville, NC (Onslow, NC)	[illegible]
Janesville-Beloit, WI (Rock, WI)	[illegible]
Jersey City, NJ (Hudson, NJ)	1.0523
Johnson City-Kingsport-Bristol, TN-VA (Carter, TN; Hawkins, TN; Sullivan, TN; Unicoi, TN; Washington, TN; Bristol City, VA; Scott, VA; Washington, VA)	.8555
Johnstown, PA (Cambria, PA; Somerset, PA)	.9452
Joliet, IL (Grundy, IL; Will, IL)	1.1171
Joplin, MO (Jasper, MO; Newton, MO)	[illegible]
Kalamazoo, MI (Kalamazoo, MI)	1.2242
Kankakee, IL (Kankakee, IL)	.9440
Kansas City, KS-MO (Johnson, KS; Leavenworth, KS; Miami, KS; Wyandotte, KS; Cass, MO; Clay, MO; Jackson, MO; Lafayette, MO; Platte, MO; Ray, MO)	1.0573
Kenosha, WI (Kenosha, WI)	1.0785
Killeen-Temple, TX (Bell, TX; Coryell, TX)	.8780
Knoxville, TN (Anderson, TN; Blount, TN; Grainger, TN; Jefferson, TN; Knox, TN; Sevier, TN; Union, TN)	.8929
Kokomo, IN (Howard, IN; Tipton, IN)	.9788
LaCrosse, WI (LaCrosse, WI)	1.0087
Lafayette, LA (Lafayette, LA; St. Martin, LA)	1.0037
Lafayette, IN (Tippecanoe, IN)	.9091
Lake Charles, LA (Calcasieu, LA)	.9963
Lake County, IL (Lake, IL)	1.1544
Lakeland-Winter Haven, FL (Polk, FL)	.8780
Lancaster, PA (Lancaster, PA)	1.0311
Lansing-East Lansing, MI (Clinton, MI; Eaton, MI; Ingham, MI)	1.0685
Laredo, TX (Webb, TX)	[illegible]
Las Cruces, NM (Dona Ana, NM)	.8692
Las Vegas, NV (Clark, NV)	1.1171
Lawrence, KS (Douglas, KS)	1.0100
Lawton, OK (Comanche, OK)	.9390
Lewiston-Auburn, ME (Androscoggin ME)	.9352
Lexington-Fayette, KY (Bourbon, KY; Clark, KY; Fayette, KY; Jessamine, KY; Scott, KY; Woodford, KY)	.9801
Lima, OH (Allen, OH; Auglaize, OH)	.9788
Lincoln, NE (Lancaster, NE)	.9639
Little Rock-North Little Rock, AR (Faulkner, AR; Lonoke, AR; Pulaski, AR; Saline, AR)	1.1046
Longview-Marshall, TX (Gregg, TX; Harrison TX)	[illegible]
Lorain-Elyria, OH (Lorain, OH)	1.0199
Los Angeles-Long Beach, CA (Los Angeles CA)	1.3188
Louisville, KY-IN (Clark, IN; Floyd, IN; Harrison, IN; Bullitt, KY; Jefferson, KY; Oldham, KY; Shelby, KY)	1.0000
Lubbock, TX (Lubbock, TX)	1.0050
Lynchburg, VA (Amherst, VA; Campbell, VA; Lynchburg City, VA)	.8194

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Macon-Warner Robins, GA (Bibb, GA; Houston, GA; Jones, GA; Peach, GA)	[illegible]
Madison, WI (Dane, WI)	1.0822
Manchester-Nashua, NH (Hillsboro, NH; Merrimack, NH)	.9502
Mansfield, OH (Richland, OH)	[illegible]
McAllen-Edinburg-Mission, TX (Hidalgo, TX)	[illegible]
Medford, OR (Jackson, OR)	1.0274
Melbourne-Titusville, FL (Brevard, FL)	.9303
Memphis, TN-AR-MS (Crittenden, AR; De Soto, MS; Shelby, TN; Tipton, TN)	1.0573
Miami-Hialeah, FL (Dade, FL)	1.0623
Middlesex-Somerset-Hunterdon, NJ (Hunterdon, NJ; Middlesex, NJ; Somerset, NJ)	[illegible]
Midland, TX (Midland, TX)	1.1220
Milwaukee, WI (Milwaukee, WI; Ozaukee, WI; Washington, WI; Waukesha, WI)	1.1320
Minneapolis-St. Paul, MN-WI (Anoka, MN; Carver, MN; Chisago, MN; Dakota, MN; Hennepin, MN; Isanti, MN; Ramsey, MN; Scott, MN; Washington, MN; Wright, MN; St. Croix, WI)	1.1681
Mobile, AL (Baldwin, AL; Mobile, AL)	[illegible]
Modesto, CA (Stanislaus, CA)	1.2005
Monmouth-Ocean, NJ (Monmouth, NJ; Ocean, NJ)	.9851
Monroe, LA (Ouachita, LA)	.9265
Montgomery, AL (Autauga, AL; Elmore, AL; Montgomery, AL)	[illegible]
Muncie, IN (Delaware, IN)	[illegible]
Muskegon, MI (Muskegon, MI)	[illegible]
Naples, FL (Collier, FL)	.9714
Nashville, TN (Cheatham, TN; Davidson, TN; Dickson, TN; Robertson, TN; Rutherford, TN; Sumner, TN; Williamson, TN; Wilson, TN)	.9340
Nassau-Suffolk, NY (Nassau, NY; Suffolk, NY)	1.3275
New Beford-Fall River-Attleboro, MA (Bristol, MA)	.9714
New Haven-West Haven-Waterbury-Meriden, CT (New Haven, CT)	1.1183
New London-Norwich, CT (New London, CT)	1.1021
New Orleans, LA (Jefferson, LA; Orleans, LA; St. Bernard, LA; St. Charles, LA; St. John The Baptist, LA; St. Tammany, LA)	.9265
New York, NY (Bronx, NY; Kings, NY; New York City, NY; Putnam, NY; Queens, NY; Richmond, NY; Rockland, NY; Westchester, NY)	1.3711
Newark, NJ (Essex, NJ; Morris, NJ; Sussex, NJ; Union, NJ)	1.1320
Niagara Falls, NY (Niagara, NY)	.8892
Norfolk-Virginia Beach-Newport News, VA (Chesapeake City, VA; Gloucester, VA; Hampton City, VA; James City Co., VA; Newport News City, VA; Norfolk City, VA; Poquoson, VA; Portsmouth City, VA; Suffolk City, VA; Virginia Beach City, VA; Williamsburg City, VA; York, VA)	.9614
Oakland, CA (Alameda, CA; Contra Costa, CA)	1.4844
Ocala, FL (Marion, FL)	.8667
Odessa, TX (Ector, TX)	.9539
Oklahoma City, OK (Canadian, OK; Cleveland, OK; Logan, OK; McClain, OK; Oklahoma, OK, Pottawatomie, OK)	1.0847
Olympia, WA (Thurston, WA)	1.0697
Omaha, NE-IA (Pottawattamie, IA; Douglas, NE; Sarpy, NE; Washington, NE)	1.0423
Orange County, NY (Orange, NY)	.9228
Orlando, FL (Orange, FL; Osceola, FL; Seminole, FL)	1.0112
Owensboro, KY (Daviess, KY)	.8182
Oxnard-Ventura, CA (Ventura, CA)	1.2802
Panama City, FL (Bay, FL)	.8294
Parkersburg-Marietta, WV-OH (Washington, OH; Wood, WV)	.9054
Pascagoula, MS (Jackson, MS)	.9601
Pensacola, FL (Escambia, FL; Santa Rosa, FL)	.8667
Peoria, IL (Peoria, IL; Tazewell, IL; Woodford, IL)	1.0498
Philadelphia, PA-NJ (Burlington, NJ; Camden, NJ; Gloucester, NJ; Bucks, PA; Chester, PA; Delaware, PA; Montgomery, PA; Philadelphia, PA)	1.1781
Phoenix, AZ (Maricopa, AZ)	1.0224
Pine Bluff, AR (Jefferson, AR)	.7945
Pittsburgh, PA (Allegheny PA; Fayette, PA; Washington, PA; Westmoreland, PA)	1.0922
Pittsfield, MA (Berkshire, MA)	1.0162
Portland, ME (Cumberland, ME; Sagadahoc, ME; York, ME)	1.0087
Portland, OR (Clackamas, OR; Multnomah, OR; Washington, OR; Yamhill, OR)	1.1980
Portsmouth-Dover-Rochester, NH (Rockingham, NH; Strafford, NH)	.9303
Poughkeepsie, NY (Dutchess, NY)	1.0162

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Providence-Pawtucket-Woonsocket, RI (Bristol, RI; Kent, RI; Newport, RI; Providence, RI; Statewide, RI; Washington, RI)	1.0423
Provo-Orem, UT (Utah, UT)	.9776
Pueblo, CO (Pueblo, CO)	1.1121
Racine, WI (Racine, WI)	.9925
Raleigh-Durham, NC (Durham, NC; Franklin, NC; Orange, NC; Wake, NC)	.9639
Reading, PA (Berks, PA)	1.0162
Redding, CA (Shasta, CA)	1.2304
Reno, NV (Washoe, NV)	1.1743
Richland-Kennewick, WA (Benton, WA; Franklin, WA)	1.0174
Richmond-Petersburg, VA (Charles City Co., VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA)	.9527
Riverside-San Bernardino, CA (Riverside, CA; San Bernardino, CA)	1.2416
Roanoke, VA (Botetourt, VA; Roanoke, VA; Roanoke City, VA; Salem City, VA)	[illegible]
Rochester, MN (Olmsted, MN)	1.0199
Rochester, NY (Livingston, NY; Monroe, NY; Ontano, NY; Orleans, NY; Wayne, NY)	1.0149
Rockford, IL (Boone, IL; Winnebago, IL)	1.1270
Sacramento, CA (Eldorado, CA; Placer, CA; Sacramento, CA; Yolo, CA)	1.2864
Saginaw-Bay City-Midland, MI (Bay, MI; Midland, MI; Saginaw, MI)	1.0984
St Cloud, MN (Benton, MN; Sherburne, MN; Stearns, MN)	.9938
St. Joseph, MO (Buchanan, MO)	.9415
St. Louis, MO–IL (Clinton, IL; Jersey, IL; Madison, IL; Monroe, IL; St. Clair, IL; Franklin, MO; Jefferson, MO; St. Charles, MO; St. Louis, MO; St Louis City, MO)	1.0747
Salem, OR (Marion, OR; Polk, OR)	1.0884
Salinas-Seaside-Monterey, CA (Monterey, CA)	1.2478
Salt Lake City-Ogden, UT (Davis, UT; Salt Lake, UT; Weber, UT)	1.0274
San Angelo, TX (Tom Green, TX)	.8655
San Antonio, TX (Bexar, TX; Comal, TX; Guadalupe, TX)	.8879
San Diego, CA (San Diego, CA)	1.3001
San Francisco, CA (Marin, CA; San Francisco, CA; San Mateo, CA)	1.6376
San Jose, CA (Santa Clara, CA)	1.4695
Santa Barbara-Santa Maria-Lompoc, CA (Santa Barbara, CA)	1.1743
Santa Cruz, CA (Santa Cruz, CA)	1.2341
Santa Fe, NM (Los Alamos, NM; Santa Fe, NM)	.9738
Santa Rosa-Petaluma, CA (Sonoma, CA)	1.3014
Sarasota, FL (Sarasota, FL)	.9564
Savannah, GA (Chatham, GA; Effingham, GA)	[illegible]
Scranton-Wilkes Barre, PA (Columbia, PA; Lackawanna, PA; Luzerne, PA; Monroe, PA; Wyoming, PA)	.9900
Seattle, WA (King, WA; Snohomish, WA)	1.1494
Sharon, PA (Mercer, PA)	.9676
Sheboygan, WI (Sheboygan, WI)	.9813
Sherman-Denison, TX (Grayson, TX)	.8555

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage [illegible]
Shreveport, LA (Bossier, LA; Caddo, LA)	.9539
Sioux City, IA–NE (Woodbury, IA; Dakota, NE)	[illegible]
Sioux Falls, SD (Minnehaha, SD)	1.0137
South Bend-Mishawaka, IN (St. Joseph, IN)	1.0012
Spokane, WA (Spokane, WA)	1.1469
Springfield, IL (Menard, IL; Sangamon, IL)	1.0585
Springfield, MO (Christian, MO; Greene, MO)	.9788
Springfield, MA (Hampden, MA; Hampshire, MA)	[illegible]
State College, PA (Centre, PA)	1.0685
Steubenville-Weirton, OH–WV (Jefferson, OH; Brooke, WV; Hancock, WV)	.9577
Stockton, CA (San Joaquin, CA)	1.2765
Syracuse, NY (Madison, NY; Onondaga, NY; Oswego, NY)	1.0386
Tacoma, WA (Pierce, WA)	1.0971
Tallahassee, FL (Gadsden, FL; Leon, FL)	.9440
Tampa-St. Petersburg-Clearwater, FL (Hernando, FL; Hillsborough, FL; Pasco, FL; Pinellas, FL)	.9751
Terre Haute, IN (Clay, IN; Vigo, IN)	[illegible]
Texarkana-TX-Texarkana, AR (Miller, AR; Bowie, TX)	.8580
Toledo, OH (Fulton, OH; Lucas, OH; Wood, OH)	1.2167
Topeka, KS (Shawnee, KS)	1.0548
Trenton, NJ (Mercer, NJ)	1.0237
Tucson, AZ (Pima, AZ)	1.0012
Tulsa, OK (Creeks, OK; Osage, OK; Rogers, OK; Tulsa, OK; Wagoner, OK)	1.0050
Tuscaloosa, AL (Tuscaloosa, AL)	1.0087
Tyler, TX (Smith, TX)	[illegible]
Utica-Rome, NY (Herkimer, NY; Oneida, NY)	.8667
Vallejo-Fairfield-Napa, CA (Napa, CA; Solano, CA)	1.3288
Vancouver, WA (Clark, WA)	1.1569
Victoria, TX (Victoria, TX)	.8144
Vineland-Millville-Bridgeton, NJ (Cumberland, NJ)	.9851
Visalia-Tulare-Porterville, CA (Tulare, CA)	1.0560
Waco, TX (McLennan, TX)	.9041
Washington, D.C.-MD-VA (District of Columbia, DC; Calvert, MD; Charles, MD; Frederick, MD; Montgomery, MD; Prince Georges, MD; Alexandria City, VA; Arlington, VA; Fairfax, VA; Fairfax City, VA; Falls Church City, VA; Loudoun, VA; Manassas City, VA; Manassas Park City, VA; Prince William, VA; Stafford, VA)	1.1868
Waterloo-Cedar Falls, IA (Black Hawk, IA; Bremer, IA)	.9913
Wausau, WI (Marathon, WI)	.9788
West Palm Beach-Boca Raton-Delray Beach, FL (Palm Beach, FL)	.9900
Wheeling, WV–OH (Belmont, OH; Marshall, WV; Ohio, WV)	.9689
Wichita, KS (Butler, KS; Sedgwich, KS)	1.1494
Wichita Falls, TX (Wichita, TX)	.8705
Williamsport, PA (Lycoming, PA)	.8979
Wilmington, DE-NJ-MD (New Castle, DE; Cecil, MD; Salem, NJ)	1.0511
Wilmington, NC (New Hanover, NC)	.9514
Worcester-Fitchburg-Leominster, MA (Worcester, MA)	.9950
Yakima, WA (Yakima, WA)	1.0311
York, PA (Adams, PA; York, PA)	.9776
Youngstown-Warren, OH (Mahoning, OH; Trumbull, OH)	1.0399

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Yuba City, CA (Sutter, CA; Yuba, CA)	1.0374

TABLE 4b.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage [illegible]
Alabama	.7435
Alaska	1.4869
Arizona	[illegible]
Arkansas	.7646
California	1.1370
Colorado	.9253
Connecticut	1.0374
Delaware	.8580
Florida	.8742
Georgia	.7721
Hawaii	1.0075
Idaho	[illegible]
Illinois	[illegible]
Indiana	.8618
Iowa	.8655
Kansas	[illegible]
Kentucky	.7970
Louisiana	[illegible]
Maine	[illegible]
Maryland	.8705
Massachusetts	.0511
Michigan	.9514
Minnesota	.8717
Mississippi	.7646
Missouri	.8257
Montana	[illegible]
Nebraska	[illegible]
Nevada	1.0710
New Hampshire	.9178
New Jersey*	[illegible]
New Mexico	.9141
New York	.8755
North Carolina	[illegible]
North Dakota	[illegible]
Ohio	[illegible]
Oklahoma	.8418
Oregon	1.0697
Pennsylvania	.9352
Rhode Island*	[illegible]
South Carolina	.7771
South Dakota	[illegible]
Tennessee	.7684
Texas	[illegible]
Utah	.9427
Vermont	.8817
Virginia	.8157
Washington	1.0187
West Virginia	[illegible]
Wisconsin	.8929
Wyoming	[illegible]

*All counties within the State are classified urban.

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS)• RELATIVE WEIGHTING FACTORS• GEOMETRIC MEAN LENGTH OF STAY• AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	1	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.5626	16.0	33
2	1	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.7718	13.4	30
3	1	SURG *	CRANIOTOMY AGE <18	2.5183	12.7	30
4	1	SURG	SPINAL PROCEDURES	2.7355	14.0	32
5	1	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.6572	7.9	25
6	1	SURG	CARPAL TUNNEL RELEASE	.4105	2.3	7
7	1	SURG	PERIPH • CRANIAL NERVE • OTHER NERV SYST PROC AGE >69 •/OR C.C.	1.3087	5.9	23
8	1	SURG	PERIPH • CRANIAL NERVE • OTHER NERV SYST PROC AGE <70 W/O C.C.	.7303	3.6	17
9	1	MED	SPINAL DISORDERS • INJURIES	1.4319	6.3	25
10	1	MED	NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR C.C.	1.1342	7.7	25
11	1	MED	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C.C.	.8333	6.0	23
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.0102	7.8	25
13	1	MED	MULTIPLE SCLEROSIS • CEREBELLAR ATAXIA	.9882	7.8	25
14	1	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3146	8.5	26
15	1	MED	TRANSIENT ISCHEMIC ATTACK AND PRECEREBRAL OCCLUSIONS	.6262	4.6	19
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C.	.9071	6.7	24
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C.	.6341	5.6	23
18	1	MED	CRANIAL • PERIPHERAL NERVE DISORDERS AGE >69 AND/OR C.C.	.7430	5.8	23
19	1	MED	CRANIAL • PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C.	.6347	4.9	22
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.3675	7.7	25
21	1	MED	VIRAL MENINGITIS	1.3032	7.8	25
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	.7075	5.0	20
23	1	MED	NONTRAUMATIC STUPOR • COMA	1.1319	5.2	22
24	1	MED	SEIZURE • HEADACHE AGE >69 AND/OR C.C.	.7615	5.0	22
25	1	MED	SEIZURE • HEADACHE AGE 18-69 W/O C.C.	.5566	4.0	19
26	1	MED	SEIZURE • HEADACHE AGE 0-17	.6624	2.8	15
27	1	MED	TRAUMATIC STUPOR • COMA, COMA >1 HR	1.5041	4.6	22
28	1	MED	TRAUMATIC STUPOR • COMA, COMA <1 HR AGE >69 AND/OR C.C.	.9338	5.0	22
29	1	MED	TRAUMATIC STUPOR • COMA <1 HR AGE 18-69 W/O C.C.	.6469	3.6	21
30	1	MED *	TRAUMATIC STUPOR • COMA <1 HR AGE 0-17	.3539	2.0	8
31	1	MED	CONCUSSION AGE >69 AND/OR C.C.	.5396	3.8	20
32	1	MED	CONCUSSION AGE 18-69 W/O C.C.	.4058	2.8	13
33	1	MED *	CONCUSSION AGE 0-17	.2457	1.6	5
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR C.C.	.9726	6.0	23
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C.	.7453	4.9	22

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	2	SURG	RETINAL PROCEDURES	.7145	4.1	12
37	2	SURG	ORBITAL PROCEDURES	.6645	3.2	12
38	2	SURG	PRIMARY IRIS PROCEDURES	.3992	2.4	8
39	2	SURG	LENS PROCEDURES	.5769	2.1	4
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4150	2.1	6
41	2	SURG	* EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3658	1.6	4
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6579	3.0	10
43	2	MED	HYPHEMA	.3429	3.6	13
44	2	MED	ACUTE MAJOR EYE INFECTIONS	.6466	5.9	21
45	2	MED	NEUROLOGICAL EYE DISORDERS	.5449	3.6	14
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 WITH C.C.	.5009	3.6	21
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O C.C.	.4240	2.5	11
48	2	MED	* OTHER DISORDERS OF THE EYE AGE 0-17	.4018	2.9	13
49	3	SURG	MAJOR HEAD & NECK PROCEDURES	2.8612	12.9	30
50	3	SURG	SIALOADENECTOMY	.7065	3.7	11
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5948	3.3	10
52	3	SURG	CLEFT LIP & PALATE REPAIR	.7110	3.5	13
53	3	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6199	3.0	10
54	3	SURG	* SINUS & MASTOID PROCEDURES AGE 0-17	.6689	3.2	11
55	3	SURG	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	.4354	2.1	6
56	3	SURG	RHINOPLASTY	.4415	2.3	7
57	3	SURG	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.7857	3.6	20
58	3	SURG	* T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3098	1.5	3
59	3	SURG	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17	.4179	2.4	7
60	3	SURG	* TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	.2616	1.5	3
61	3	SURG	MYRINGOTOMY WITH TUBE INSERTION AGE >17	.4335	2.0	[illegible]
62	3	SURG	* MYRINGOTOMY WITH TUBE INSERTION AGE 0-17	.3089	1.3	3
63	3	SURG	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1446	5.0	22
64	3	MED	EAR, NOSE & THROAT MALIGNANCY	.9766	4.7	22
65	3	MED	DYSEQUILIBRIUM	.4527	3.8	14
66	3	MED	EPISTAXIS	.4166	3.3	13
67	3	MED	EPIGLOTTITIS	.9418	4.8	21
68	3	MED	OTITIS MEDIA & URI AGE >69 AND/OR C.C.	.6112	5.1	17
69	3	MED	OTITIS MEDIA & URI AGE 18-69 W/O C.C.	.5059	4.1	14
70	3	MED	OTITIS MEDIA & URI AGE 0-17	.5529	3.5	14

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*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	3	MED	LARYNGOTRACHEITIS	.6405	4.5	17
72	3	MED	NASAL TRAUMA + DEFORMITY	.5286	3.5	19
73	3	MED	OTHER EAR, NOSE + THROAT DIAGNOSES AGE >17	.6025	3.4	17
74	3	MED *	OTHER EAR, NOSE + THROAT DIAGNOSES AGE 0-17	.3427	2.1	9
75	4	SURG	MAJOR CHEST PROCEDURES	2.9497	13.3	30
76	4	SURG	OTHER RESPIRATORY SYSTEM O.R. PROCEDURES WITH C.C.	2.4805	10.1	27
77	4	SURG	OTHER RESPIRATORY SYSTEM O.R. PROCEDURES W/O C.C.	1.6525	6.9	24
78	4	MED	PULMONARY EMBOLISM	1.4904	9.5	27
79	4	MED	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE >69 AND/OR C.C.	1.9337	9.6	27
80	4	MED	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 18-69 W/O C.C.	1.4201	6.4	25
81	4	MED *	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 0-17	.8652	6.1	23
82	4	MED	RESPIRATORY NEOPLASMS	1.1297	6.5	24
83	4	MED	MAJOR CHEST TRAUMA AGE >69 AND/OR C.C.	.8352	6.6	24
84	4	MED	MAJOR CHEST TRAUMA AGE <70 W/O C.C.	.6028	4.7	20
85	4	MED	PLEURAL EFFUSION AGE >69 AND/OR C.C.	1.1227	7.2	24
86	4	MED	PLEURAL EFFUSION AGE <70 W/O C.C.	.9798	5.8	23
87	4	MED	PULMONARY EDEMA + RESPIRATORY FAILURE	1.7961	7.0	24
88	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0806	6.6	24
89	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE >69 AND/OR C.C.	1.1765	7.5	25
90	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE 18-69 W/O C.C.	.8929	6.2	21
91	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE 0-17	.7897	4.5	19
92	4	MED	INTERSTITIAL LUNG DISEASE AGE >69 AND/OR C.C.	1.1037	6.7	24
93	4	MED	INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C.	.8728	5.4	22
94	4	MED	PNEUMOTHORAX AGE >69 AND/OR C.C.	1.3048	7.6	25
95	4	MED	PNEUMOTHORAX AGE <70 W/O C.C.	.8660	5.7	23
96	4	MED	BRONCHITIS + ASTHMA AGE >69 AND/OR C.C.	.9486	6.0	20
97	4	MED	BRONCHITIS + ASTHMA AGE 18-69 W/O C.C.	.7155	5.1	17
98	4	MED	BRONCHITIS + ASTHMA AGE 0-17	.7248	3.7	12
99	4	MED	RESPIRATORY SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.8071	4.6	21
100	4	MED	RESPIRATORY SIGNS + SYMPTOMS AGE <70 W/O C.C.	.6352	3.6	16
101	4	MED	OTHER RESPIRATORY DIAGNOSES AGE >69 AND/OR C.C.	.8448	5.5	23
102	4	MED	OTHER RESPIRATORY DIAGNOSES AGE <70	.6617	4.2	20
103	5	SURG	HEART TRANSPLANT	.0000		
104	5	SURG	CARDIAC VALVE PROCEDURE WITH PUMP + WITH CARDIAC CATH	7.1333	17.6	35
105	5	SURG	CARDIAC VALVE PROCEDURE WITH PUMP + W/O CARDIAC CATH	6.3220	14.9	32

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*** DRGS 463 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	5	SURG	CORONARY BYPASS WITH CARDIAC CATH	5.3018	14.6	32
107	5	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.6824	12.7	30
108	5	SURG	CARDIOTHOR PROC,EXCEPT VALVE + CORONARY BYPASS,WITH PUMP	5.3971	11.2	28
109	5	SURG	CARDIOTHORACIC PROCEDURES W/O PUMP	4.3085	8.9	26
110	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE >69 AND/OR C.C.	3.2807	12.9	30
111	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE <70 W/O C.C.	2.4773	11.1	28
112	5	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION	2.2247	8.1	25
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB + TOE	2.4958	16.8	34
114	5	SURG	UPPER LIMB + TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8814	11.8	29
115	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT WITH AMI OR CHF	4.1754	13.8	31
116	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT W/O AMI OR CHF	2.9808	7.7	25
117	5	SURG	CARDIAC PACEMAKER REPLACE + REVIS EXC PULSE GEN REPL ONLY	1.4698	4.8	20
118	5	SURG	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY	1.8835	3.4	14
119	5	SURG	VEIN LIGATION + STRIPPING	.9238	5.6	23
120	5	SURG	OTHER O.R. PROCEDURES ON THE CIRCULATORY SYSTEM	2.2700	11.2	28
121	5	MED	CIRCULATORY DISORDERS WITH AMI + C.V. COMP. DISCH. ALIVE	1.7771	10.3	27
122	5	MED	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3399	8.8	26
123	5	MED	CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.3549	3.0	20
124	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH + COMPLEX DIAG	1.2509	5.0	22
125	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	.7353	2.9	11
126	5	MED	ACUTE + SUBACUTE ENDOCARDITIS	3.0006	18.2	35
127	5	MED	HEART FAILURE + SHOCK	1.0136	6.7	24
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	.8483	8.6	24
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.7386	3.8	21
130	5	MED	PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR C.C.	.8163	5.6	23
131	5	MED	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C.	.6661	4.4	21
132	5	MED	ATHEROSCLEROSIS AGE >69 AND/OR C.C.	.8090	5.3	22
133	5	MED	ATHEROSCLEROSIS AGE <70 W/O C.C.	.7087	3.8	16
134	5	MED	HYPERTENSION	.6394	5.1	20
135	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE >69 AND/OR C.C.	.8585	5.2	22
136	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 18-69 W/O C.C.	.7360	3.8	17
137	5	MED *	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 0-17	.6315	3.3	20
138	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE >69 AND/OR C.C.	.6174	4.9	21
139	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE <70 W/O C.C.	.6579	3.5	16
140	5	MED	ANGINA PECTORIS	.6951	4.6	16

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	5	MED	SYNCOPE & COLLAPSE AGE >69 AND/OR C.C.	.6226	4.4	17
142	5	MED	SYNCOPE & COLLAPSE AGE <70 W/O C.C.	.5376	3.5	14
143	5	MED	CHEST PAIN	.5543	3.5	13
144	5	MED	OTHER CIRCULATORY DIAGNOSES WITH C.C.	1.1200	6.2	23
145	5	MED	OTHER CIRCULATORY DIAGNOSES W/O C.C.	.8562	5.0	22
146	6	SURG	RECTAL RESECTION AGE >69 AND/OR C.C.	3.0595	16.5	34
147	6	SURG	RECTAL RESECTION AGE <70 W/O C.C.	2.2996	14.0	31
148	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	2.9151	15.1	32
149	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	2.1111	12.6	30
150	6	SURG	PERITONEAL ADHESIOLYSIS AGE >69 AND/OR C.C.	2.3371	12.6	30
151	6	SURG	PERITONEAL ADHESIOLYSIS AGE <70 W/O C.C.	1.6190	10.1	27
152	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	1.4162	8.5	26
153	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	1.1096	7.3	24
154	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >69 AND/OR C.C.	2.6479	11.3	28
155	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 18-69 W/O C.C.	1.7901	8.9	26
156	6	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8382	6.0	20
157	6	SURG	ANAL AND STOMAL PROCEDURES AGE >69 AND/OR C.C.	.7329	4.8	21
158	6	SURG	ANAL AND STOMAL PROCEDURES AGE <70 W/O C.C.	.5571	3.9	14
159	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >69 AND/OR C.C.	1.0035	6.3	22
160	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE 18-69 W/O C.C.	.7345	5.0	16
161	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >69 AND/OR C.C.	.6569	4.4	14
162	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C.	.5304	3.6	10
163	6	SURG	HERNIA PROCEDURES AGE 0-17	.9064	4.1	17
164	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR C.C.	2.0321	10.7	27
165	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.4516	8.4	19
166	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR C.C.	1.3678	7.5	23
167	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	.9005	5.3	14
168	6	SURG	PROCEDURES ON THE MOUTH AGE >69 AND/OR C.C.	.9421	4.1	21
169	6	SURG	PROCEDURES ON THE MOUTH AGE <70 W/O C.C.	.6680	3.0	12
170	6	SURG	OTHER DIGESTIVE SYSTEM PROCEDURES AGE >69 AND/OR C.C.	2.7543	12.2	29
171	6	SURG	OTHER DIGESTIVE SYSTEM PROCEDURES AGE <70 W/O C.C.	2.3060	9.8	27
172	6	MED	DIGESTIVE MALIGNANCY AGE >69 AND/OR C.C.	1.0780	6.7	24
173	6	MED	DIGESTIVE MALIGNANCY AGE <70 W/O C.C.	.8650	5.3	22
174	6	MED	G.I. HEMORRHAGE AGE >69 AND/OR C.C.	.9095	5.8	23
175	6	MED	G.I. HEMORRHAGE AGE <70 W/O C.C.	.7123	4.7	18

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	6	MED	COMPLICATED PEPTIC ULCER	.9333	5.3	23
177	6	MED	UNCOMPLICATED PEPTIC ULCER >69 AND/OR C.C.	.6642	5.4	18
178	6	MED	UNCOMPLICATED PEPTIC ULCER <70 W/O C.C.	.5624	4.6	15
179	6	MED	INFLAMMATORY BOWEL DISEASE	.9856	7.0	24
180	6	MED	G.I. OBSTRUCTION AGE >69 AND/OR C.C.	.7625	5.4	22
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O C.C.	.5872	4.5	18
182	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE >69 +/OR C.C.	.6036	4.7	18
183	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE 18-69 W/O C.C.	.5135	4.0	15
184	6	MED	ESOPHAGITIS, GASTROENTERITIS + MISC. DIGEST. DISORDERS AGE 0-17	.5426	2.8	14
185	6	MED	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE >17	.7160	4.3	21
186	6	MED *	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE 0-17	.4112	2.5	11
187	6	MED	DENTAL EXTRACTIONS + RESTORATIONS	.4225	2.3	7
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR C.C.	.7110	4.3	21
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C.	.5312	3.3	17
190	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.9611	4.5	22
191	7	SURG	MAJOR PANCREAS, LIVER + SHUNT PROCEDURES	4.4168	17.9	35
192	7	SURG	MINOR PANCREAS, LIVER + SHUNT PROCEDURES	3.9294	16.2	33
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 +/OR C.C.	2.8129	15.6	33
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C.C.	2.1151	12.4	29
195	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR C.C.	2.2596	13.1	30
196	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O C.C.	1.6131	10.3	22
197	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR C.C.	1.7061	10.5	26
198	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O C.C.	1.1463	8.0	17
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3479	14.1	31
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5679	10.8	28
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.5367	2.8	26
202	7	MED	CIRRHOSIS + ALCOHOLIC HEPATITIS	1.1653	7.7	25
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0373	6.8	24
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9747	6.4	23
205	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR C.C.	1.0733	6.7	24
206	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O C.C.	.7752	5.0	22
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR C.C.	.7820	5.4	22
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C.	.5851	4.0	16
209	8	SURG	MAJOR JOINT AND LIMB REATTACHMENT PROCEDURES	2.4018	14.4	31
210	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR C.C.	2.0409	14.7	32

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C.	1.7951	12.7	30
212	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6900	8.8	24
213	8	SURG	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM & CONN. TISSUE DISORDERS	2.0969	12.6	30
214	8	SURG	BACK & NECK PROCEDURES AGE >69 AND/OR C.C.	1.6774	13.1	30
215	8	SURG	BACK & NECK PROCEDURES AGE <70 W/O C.C.	1.4374	10.2	27
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5472	8.8	26
217	8	SURG	WND DEBRID & SKN GRFT EXC HAND,FOR MUSCSKELETAL & CONN.TISS.DIS	2.1262	10.3	27
218	8	SURG	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 &/OR C.C.	1.3806	8.8	26
219	8	SURG	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C.	1.0526	6.7	22
220	8	SURG *	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242	5.3	22
221	8	SURG	KNEE PROCEDURES AGE >69 AND/OR C.C.	.9801	4.7	22
222	8	SURG	KNEE PROCEDURES AGE <70 W/O C.C.	.7200	3.4	15
223	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS & HAND AGE >69 AND/OR C.C.	.9703	5.2	22
224	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS & HAND AGE <70 W/O C.C.	.7918	4.1	15
225	8	SURG	FOOT PROCEDURES	.6590	3.3	13
226	8	SURG	SOFT TISSUE PROCEDURES AGE >69 AND/OR C.C.	.9545	5.3	22
227	8	SURG	SOFT TISSUE PROCEDURES AGE <70 W/O C.C.	.6780	3.6	16
228	8	SURG	GANGLION (HAND) PROCEDURES	.3691	1.9	5
229	8	SURG	HAND PROCEDURES EXCEPT GANGLION	.6238	2.9	12
230	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.0405	6.0	23
231	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.7545	3.8	19
232	8	SURG	ARTHROSCOPY	.6640	3.1	14
233	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE >69 &/OR C.C.	1.3734	8.1	25
234	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE <70 W/O C.C.	.9409	5.3	22
235	8	MED	FRACTURES OF FEMUR	1.4357	10.3	27
236	8	MED	FRACTURES OF HIP & PELVIS	1.0823	8.8	26
237	8	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.6133	5.5	23
238	8	MED	OSTEOMYELITIS	1.6319	11.0	28
239	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN.TISS.MALIGNANCY	.8260	7.5	25
240	8	MED	CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR C.C.	.9035	7.2	24
241	8	MED	CONNECTIVE TISSUE DISORDERS AGE <70 W/O C.C.	.7525	6.2	23
242	8	MED	SEPTIC ARTHRITIS	1.4540	9.7	27
243	8	MED	MEDICAL BACK PROBLEMS	.6902	6.2	23
244	8	MED	BONE DISEASES & SEPTIC ARTHROPATHY AGE >69 AND/OR C.C.	.6783	6.1	23
245	8	MED	BONE DISEASES & SEPTIC ARTHROPATHY AGE <70 W/O C.C.	.6532	5.1	22

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	8	MED	NON-SPECIFIC ARTHROPATHIES	.6007	5.4	21
247	8	MED	SIGNS + SYMPTOMS OF MUSCULOSKELETAL SYSTEM + CONN TISSUE	.5817	4.7	21
248	8	MED	TENDONITIS, MYOSITIS + BURSITIS	.5906	4.8	20
249	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.7581	5.5	23
250	8	MED	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE >69 +/OR C.C.	.5186	3.8	20
251	8	MED	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C.	.4042	2.5	11
252	8	MED *	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 0-17	.3496	1.8	7
253	8	MED	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE >69 +/OR C.C.	.6355	5.4	22
254	8	MED	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C.C.	.4953	4.0	20
255	8	MED *	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638	2.9	15
256	8	MED	OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.7107	4.9	22
257	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0809	7.8	19
258	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	.9806	6.9	16
259	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	.8644	4.9	22
260	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70	.6773	3.6	15
261	9	SURG	BREAST PROC FOR NON-MALIG EXCEPT BIOPSY + LOC EXC	.6223	3.4	11
262	9	SURG	BREAST BIOPSY + LOCAL EXCISION FOR NON-MALIGNANCY	.4301	2.4	6
263	9	SURG	SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE >69 AND/OR C.C.	2.3770	16.0	33
264	9	SURG	SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE <70 W/O C.C.	2.1879	14.9	32
265	9	SURG	SKIN-GRAFTS AND/OR DEBRID EXCEPT ULCER OR CELLULITIS WITH C.C.	1.3468	7.3	24
266	9	SURG	SKIN-GRAFTS AND/OR DEBRID EXCEPT ULCER OR CELLULITIS W/O C.C.	.7208	4.0	21
267	9	SURG	PERIANAL + PILONIDAL PROCEDURES	.6270	4.0	16
268	9	SURG	SKIN,SUBCUTANEOUS TISSUE + BREAST PLASTIC PROCEDURES	.5748	2.8	12
269	9	SURG	OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE >69 +/OR C.C.	1.1155	5.4	22
270	9	SURG	OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE <70 W/O C.C.	.7667	3.8	21
271	9	MED	SKIN ULCERS	1.2427	10.0	27
272	9	MED	MAJOR SKIN DISORDERS AGE >69 AND/OR C.C.	.8533	7.2	24
273	9	MED	MAJOR SKIN DISORDERS AGE <70 W/O C.C.	.8029	6.6	24
274	9	MED	MALIGNANT BREAST DISORDERS AGE >69 AND/OR C.C.	1.0429	7.0	24
275	9	MED	MALIGNANT BREAST DISORDERS AGE <70 W/O C.C.	.9784	5.8	23
276	9	MED	NON-MALIGANT BREAST DISORDERS	.5579	3.4	18
277	9	MED	CELLULITIS AGE >69 AND/OR C.C.	.8910	7.3	24
278	9	MED	CELLULITIS AGE 18-69 W/O C.C.	.7630	6.2	23
279	9	MED	CELLULITIS AGE 0-17	1.5397	5.1	22
280	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE >69 +/OR C.C.	.5452	4.6	22

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 18-69 W/O C.C.	.4517	3.4	16
282	9	MED *	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 0-17	.3424	2.2	9
283	9	MED	MINOR SKIN DISORDERS AGE >69 AND/OR C.C.	.6379	5.0	22
284	9	MED	MINOR SKIN DISORDERS AGE <70 W/O C.C.	.5235	3.3	19
285	10	SURG	AMPUTATION OF LOWER LIMB FOR ENDOCRINE,NUTRITIONAL&METABOLIC DIS.	2.6569	19.0	35
286	10	SURG	ADRENAL + PITUITARY PROCEDURES	2.6339	13.2	30
287	10	SURG	SKIN GRAFTS + WOUND DEBRIDE FOR ENDOC,NUTRIT + METAB DISORDERS	2.2793	15.2	32
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1274	9.8	27
289	10	SURG	PARATHYROID PROCEDURES	1.3191	6.3	24
290	10	SURG	THYROID PROCEDURES	.8610	5.0	14
291	10	SURG	THYROGLOSSAL PROCEDURES	.6184	3.4	11
292	10	SURG	OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE > 69 +/OR C.C.	2.4216	11.8	29
293	10	SURG	OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE <70 W/O C.C.	2.0057	9.3	26
294	10	MED	DIABETES AGE =>36	.7636	5.6	24
295	10	MED	DIABETES AGE 0-35	.8231	5.1	22
296	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE >69 AND/OR C.C.	.8240	6.0	23
297	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C.	.7010	4.9	22
298	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 0-17	.8414	3.8	21
299	10	MED	INBORN ERRORS OF METABOLISM	.8007	5.2	22
300	10	MED	ENDOCRINE DISORDERS AGE >69 AND/OR C.C.	.9307	6.8	24
301	10	MED	ENDOCRINE DISORDERS AGE <70 W/O C.C.	.6904	5.1	22
302	11	SURG	KIDNEY TRANSPLANT	4.6235	21.3	38
303	11	SURG	KIDNEY,URETER + MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.7630	14.1	31
304	11	SURG	KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE >69 +/OR C.C.	2.0261	10.7	28
305	11	SURG	KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE <70 W/O C.C.	1.5044	8.4	25
306	11	SURG	PROSTATECTOMY AGE >69 AND/OR C.C.	1.2644	8.1	25
307	11	SURG	PROSTATECTOMY AGE <70 W/O C.C.	.9669	6.4	19
308	11	SURG	MINOR BLADDER PROCEDURES AGE >69 AND/OR C.C.	1.1376	6.0	23
309	11	SURG	MINOR BLADDER PROCEDURES AGE <70 W/O C.C.	.8665	4.6	22
310	11	SURG	TRANSURETHRAL PROCEDURES AGE >69 AND/OR C.C.	.7289	4.2	17
311	11	SURG	TRANSURETHRAL PROCEDURES AGE <70 W/O C.C.	.5608	3.3	11
312	11	SURG	URETHRAL PROCEDURES, AGE >69 AND/OR C.C.	.7350	4.4	18
313	11	SURG	URETHRAL PROCEDURES, AGE 18-69 W/O C.C.	.5975	3.6	14
314	11	SURG *	URETHRAL PROCEDURES, AGE 0-17	.4323	2.3	11
315	11	SURG	OTHER KIDNEY + URINARY TRACT O.R. PROCEDURES	2.7653	9.7	27

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3238	6.4	23
317	11	MED	ADMIT FOR RENAL DIALYSIS	.5573	2.6	12
318	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE >69 AND/OR C.C.	.9238	5.5	23
319	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE <70 W/O C.C.	.7652	3.8	21
320	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE >69 AND/OR C.C.	.8596	6.5	23
321	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 18-69 W/O C.C.	.6773	5.1	19
322	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 0-17	.6764	4.9	19
323	11	MED	URINARY STONES AGE >69 AND/OR C.C.	.5919	3.7	17
324	11	MED	URINARY STONES AGE <70 W/O C.C.	.4127	2.7	11
325	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.6535	4.5	22
326	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 18-69 W/O C.C.	.5238	3.5	16
327	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 0-17	.5288	3.0	20
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR C.C.	.5972	3.9	17
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O C.C.	.4919	3.0	12
330	11	MED *	URETHRAL STRICTURE AGE 0-17	.2788	1.6	5
331	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE >69 AND/OR C.C.	.8177	5.3	22
332	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C.	.6542	3.9	20
333	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 0-17	.8007	3.6	21
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH C.C.	1.8139	12.2	28
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O C.C.	1.4938	11.0	23
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR C.C.	.9937	6.9	17
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C.	.7883	5.7	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8995	4.9	22
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANT AGE >17	.5861	3.4	12
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	.4335	2.4	7
341	12	SURG	PENIS PROCEDURES	1.0574	4.3	14
342	12	SURG	CIRCUMCISION AGE >17	.4315	2.4	8
343	12	SURG *	CIRCUMCISION AGE 0-17	.3788	1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1200	6.3	23
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8158	4.8	21
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR C.C.	.8591	5.6	23
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C.	.6561	3.7	21
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR C.C.	.6333	3.9	19
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C.C.	.4953	2.5	12
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6291	4.8	17

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TABLE 5

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	STERILIZATION, MALE	.3799	1.8	6
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5354	3.3	16
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY + VULVECTOMY	1.8859	10.6	28
354	13	SURG	NON-RADICAL HYSTERECTOMY AGE >69 AND/OR C.C.	1.2409	8.8	19
355	13	SURG	NON-RADICAL HYSTERECTOMY AGE <70 W/O C.C.	.9354	7.4	13
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8589	7.0	15
357	13	SURG	UTERUS + ADNEXA PROCEDURES, FOR MALIGNANCY	2.0984	12.2	29
358	13	SURG	UTERUS + ADNEXA PROC FOR NON-MALIGNANCY EXCEPT TUBAL INTERRUPT	1.1200	6.9	24
359	13	SURG	INCISIONAL TUBAL INTERRUPTION FOR NON-MALIGNANCY	.5122	2.8	9
360	13	SURG	VAGINA, CERVIX + VULVA PROCEDURES	.8007	3.4	15
361	13	SURG	LAPAROSCOPY + ENDOSCOPY (FEMALE) EXCEPT TUBAL INTERRUPTION	.7150	3.2	17
362	13	SURG	LAPAROSCOPIC TUBAL INTERRUPTION	.3625	1.8	4
363	13	SURG	D+C,CONIZATION + RADIO-IMPLANT, FOR MALIGNANCY	.6196	3.6	15
364	13	SURG	D+C,CONIZATION EXCEPT FOR MALIGNANCY	.3960	2.2	7
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9273	10.9	28
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR C.C.	.8644	4.9	22
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C.	.5430	2.8	16
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7569	5.9	23
369	13	MED	MENSTRUAL + OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5571	3.9	20
370	14	SURG	CESAREAN SECTION WITH C.C.	1.1047	7.1	17
371	14	SURG	CESAREAN SECTION W/O C.C.	.7569	5.5	11
372	14	MED	VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.6060	4.1	15
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3575	2.8	7
374	14	SURG	VAGINAL DELIVERY WITH STERILIZATION AND/OR D+C	.5671	3.3	7
375	14	SURG *	VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D+C	.6917	4.4	15
376	14	MED	POSTPARTUM AND POSTABORTION DIAGNOSES W/O O.R. PROCEDURE	.4620	3.3	16
377	14	SURG	POSTPARTUM AND POSTABORTION DIAGNOSES WITH O.R. PROCEDURE	.6999	3.0	14
378	14	MED	ECTOPIC PREGNANCY	.7667	4.5	13
379	14	MED	THREATENED ABORTION	.2202	1.5	7
380	14	MED	ABORTION W/O D+C	.3322	1.8	8
381	14	MED	ABORTION WITH D+C OR ASPIRATION CURETTAGE	.3749	1.7	5
382	14	MED	FALSE LABOR	.1132	1.2	3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4512	3.4	16
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.4588	2.6	16
385	15		NEONATES, DIED OR TRANSFERRED	3.0262	9.0	26

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TABLE 5

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15		EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	1.4695	8.7	26
387	15	*	PREMATURITY WITH MAJOR PROBLEMS	1.8267	13.3	30
388	15	*	PREMATURITY W/O MAJOR PROBLEMS	1.1571	8.6	26
389	15		FULL TERM NEONATE WITH MAJOR PROBLEMS	1.7703	9.2	26
390	15		NEONATES WITH OTHER SIGNIFICANT PROBLEMS	1.3101	6.3	23
391	15		NORMAL NEWBORNS	1.6163	7.8	25
392	16	SURG	SPLENECTOMY AGE >17	3.0989	13.3	30
393	16	SURG *	SPLENECTOMY AGE 0-17	1.5206	9.1	26
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD + BLOOD FORMING ORGANS	1.0978	5.0	22
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7240	4.7	22
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.2375	1.3	3
397	16	MED	COAGULATION DISORDERS	.9956	6.0	23
398	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE >69 AND/OR C.C.	.9782	5.5	23
399	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE <70 W/O C.C.	.7425	4.3	21
400	17	SURG	LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE	2.6350	12.6	30
401	17	SURG	LYMPHOMA OR LEUKEMIA WITH OTHER O.R. PROC AGE >69 AND/OR C.C.	1.5680	9.1	25
402	17	SURG	LYMPHOMA OR LEUKEMIA WITH OTHER O.R. PROCEDURE AGE <70 W/O C.C.	1.0696	5.6	23
403	17	MED	LYMPHOMA OR LEUKEMIA AGE >69 AND/OR C.C.	1.3325	6.7	24
404	17	MED	LYMPHOMA OR LEUKEMIA AGE 18-69 W/O C.C.	1.0484	5.0	22
405	17	MED *	LYMPHOMA OR LEUKEMIA AGE 0-17	1.0408	4.9	22
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC + C.C.	2.5280	12.8	30
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O C.C.	1.7146	8.6	26
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH MINOR O.R.PROC	1.0572	5.3	22
409	17	MED	RADIOTHERAPY	.9650	6.8	24
410	17	MED	CHEMOTHERAPY	.4351	2.4	9
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.6107	3.9	21
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3412	1.9	5
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 +/OR C.C	1.0497	6.9	24
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C.C.	.9109	5.4	22
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS + PARASITIC DISEASES	3.2501	14.4	31
416	18	MED	SEPTICEMIA AGE >17	1.6163	8.4	25
417	18	MED	SEPTICEMIA AGE 0-17	1.2536	5.9	23
418	18	MED	POSTOPERATIVE + POST-TRAUMATIC INFECTIONS	1.0054	7.5	25
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR C.C.	.9341	6.1	23
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C.	.8491	5.6	23

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.5687	4.6	15
422	18	MED	VIRAL ILLNESS + FEVER OF UNKNOWN ORIGIN AGE 0-17	.5645	3.6	16
423	18	MED	OTHER INFECTIOUS + PARASITIC DISEASES DIAGNOSES	1.2972	7.9	25
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.2040	14.8	32
425	19	MED	ACUTE ADJUST REACT + DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6115	4.8	22
426	19	MED	DEPRESSIVE NEUROSES	.9417	7.8	25
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7170	6.5	24
428	19	MED	DISORDERS OF PERSONALITY + IMPULSE CONTROL	.8618	7.6	25
429	19	MED	ORGANIC DISTURBANCES + MENTAL RETARDATION	.8435	7.6	25
430	19	MED	PSYCHOSES	1.0372	10.6	28
431	19	MED	CHILDHOOD MENTAL DISORDERS	.8385	6.3	24
432	19	MED	OTHER DIAGNOSES OF MENTAL DISORDERS	.6970	4.8	22
433	20		SUBSTANCE USE AND INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.3852	2.9	16
434	20		SUBSTANCE ABUSE,INTOX. OR INDUCED MENTAL SYNDROME EXC DEPENDENCE	.7150	5.4	22
435	20		SUBSTANCE DEPENDENCE, DETOX. AND/OR OTHER SYMPTOMATIC TREATMENT	.8076	6.8	24
436	20		SUBSTANCE DEPENDENCE WITH REHABILITATION THERAPY	1.0181	10.1	27
437	20		SUBSTANCE DEPENDENCE, COMBINED REHABILITATION AND DETOX. THERAPY	1.3339	14.6	32
438			NO LONGER VALID	.0000		
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7246	8.7	26
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9956	9.0	26
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7408	2.7	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR C.C.	1.7366	6.0	23
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O C.C.	1.4827	5.5	23
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR C.C.	.7118	5.3	22
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O C.C.	.5983	4.0	21
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796	2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4444	2.9	13
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3469	2.5	9
449	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE >69 AND/OR C.C.	.6968	4.7	22
450	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C.	.5452	3.3	18
451	21	MED	* POISONING AND TOXIC EFFECTS OF DRUGS AGE 0-17	.2882	2.1	8
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR C.C.	.8044	4.6	22
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O C.C.	.7473	4.2	21
454	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE >69 AND/OR C.C.	.8121	4.6	22
455	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE <70 W/O C.C.	.5922	3.5	21

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.6998	5.5	23
457	22		EXTENSIVE BURNS	7.0781	8.5	26
458	22	SURG	NON-EXTENSIVE BURNS WITH SKIN GRAFTS	3.8935	16.7	36
459	22	SURG	NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT + OTHER O.R. PROC	3.1496	13.7	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.1651	7.5	25
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.3863	5.1	22
462	23	MED	REHABILITATION	2.1050	17.5	35
463	23	MED	SIGNS + SYMPTOMS WITH C.C.	.7971	5.9	23
464	23	MED	SIGNS + SYMPTOMS W/O C.C.	.7052	5.0	22
465	23	MED	AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2889	1.7	5
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.4135	2.7	15
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.6242	3.4	20
468			UNRELATED OR PROCEDURE	2.4340	11.5	29
469			***PDX INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470			***UNGROUPABLE	.0000	.0	0
471	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCEDURES OF THE LOWER EXTREMI	3.9026	20.9	36

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TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
A. DRG LOGIC ISSUES	
1. In MDC 5 (Diseases and Disorders of the Circulatory System), GROUPER assigns a patient who has had a toe or upper limb amputation to DRG 114 (Upper Limb and Toe Amputation for Circ. Sys. Disorders) - weight 2.0848. If this same patient also has a leg amputated during the same hospital episode, the patient is still assigned to DRG 114, rather than to DRG 113(Amputations for Circ. Sys. Disorders Except Upper Limb and Toe) weight 2.6522.	Assign a patient to DRG 114 if only a toe or upper limb has been amputated. If the patient also had a leg amputation or any amputation for circulatory disorders other than a toe or upper limb, the assignment is DRG 113.
2. In MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), GROUPER assigns a patient who does not have a principal diagnosis of malignancy and who has had an open breast biopsy to DRG 262 (Breast Biopsy and Local Excision for Non-malignancy) - weight .4569. If the patient also has, for example, a unilateral simple mastectomy during the same hospital episode, the patient is still assigned to DRG 262 rather than DRG 261 (Breast Proc. for Non-malignancy Except Biopsy and Loc. Excision) - weight .7253.	Change the initial search from "Principal Diagnosis of Malignancy" to "Any Diagnosis of Malignancy" and assign those patients who do not have any diagnosis of a breast malignancy and who have a biopsy and local excision only to DRG 262. If the patient also has a breast procedure for nonmalignancy other than a biopsy or local excision, the assignment is DRG 261.
3. Most of the congenital anomaly diagnosis codes are included in the MDC associated with the organ system affected. There are, however, four congenital anomaly codes in MDC 15 (Newborns and Neonates with Conditions Originating in the Perinatal Period) that would be more appropriately included in another MDC as they are not solely used as newborn or neonate diagnoses.	Move diagnosis code 7583 (Autosmal Deletion Snyd.) to MDC 19 (Mental Diseases and Disorders); DRG 429 (Organic Disturbances and Mental Retardation). Move diagnosis code 7584 (Balance Autosom. Transloc.) and diagnosis code 7585 (Autosomal Anomolies NEC) to MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services); DRG 467 (Other Factors Influencing Health Status). Move diagnosis code 7586 (Gonadal Dsygenesis) to MDC 12 (Diseases and Disorders of the Male Reproductive System); DRG 352 (Other Male Reproductive System Diagnoses); and MDC 13 (Diseases and Disorders of the Female Reproduction System); DRG 369 (Other Female Reproductive System Procedures). The MDC assignment is dependent on the sex of the patient.
4. MDC 17 (Myeloproliferative Diseases and Disorders, Poorly Differentiated Neoplasms) differs from all other MDCs with a surgical hierarchy because patients cannot be assigned to DRG 468 (Unrelated O.R. Procedure). That is, patients who had selected O.R. procedures are assigned to certain DRGs and patients who had an O.R. procedure not in the selected list are assigned to the medical DRGs (403-405, 409-414) and not to DRG 468.	Assign patients who have any surgical procedure, other than those listed as major procedures (DRGs 400, 406, and 407), in MDC 17 to DRGs 401, 402, and 408, rather than to the medical DRGs.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
5. DRG 243 (Medical Back Problems) includes diagnosis codes for all type of back pain except code 7241 (Pain in Thoracic Spine), which is assigned to DRG 247 (Signs and Symptoms of Musculoskeletal System and Connective Tissues).	Add diagnosis code 7241 to DRG 243 and remove it from DRG 247.
6. DRG 108 and DRG 109 include cardiothoracic procedures. The distinction is that procedures in DRG 108 (Cardiothoracic Proc., Except Valve and Coronary Bypass, with Pump) are performed with a heart pump and procedures in DRG 109 (Cardiothoracic Procedures Without Pump) are performed without a heart pump. Currently, however, not all procedures in DRG 108 always require the use of a heart pump and procedures in DRG 109 are not always performed without a heart pump.	Combine the O.R. procedures in DRG 108 and DRG 109. The presence of procedure code 3961 (Extracoporeal Circulation) determines whether or not a heart pump was used. If code 3961 is present on the record, assign the patient to DRG 108; if code 3961 is not present, assign to DRG 109.
7.. Procedure code 36.0 (Remove Coronary Artery Obstruction) is now used almost exclusively to code percutaneous transluminal coronary angioplasty. Code 36.0 is currently assigned to DRG 108 (Cardiothoracic Proc., Except Valve and Coronary Bypass, With Pump) - weight 4.3301, which is considered to be major cardiac surgery with heart pump. However, percutaneous transluminal coronary angioplasty is not done with heart pump.	Move procedure code 36.0 to DRG 112 (Vascular Procedures Except Major Reconstruction) - weight 2.3256 and remove it from DRG 108.
8a. Presently, diagnosis code 7746 (Fetal/Neonatal Jaundice, NOS) is on the list of complications and comorbidities (CC). It is also listed in MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period); DRG 391 (Normal Newborns) as an incidental problem.	Remove code 7746 from the list of CCs and continue to treat it as an incidental problem for DRG 391.
b. In the past, there have been problems with the assignment of patients to DRG 391 (Normal Newborns) in MDC 15.	A patient is assigned to DRG 391 if the principal diagnosis and the only secondary diagnoses are from the following list: V300 Single liveborn-in hosp V301 Singl livebrn-before adm V310 Twin, mate lb-in hosp V311 Twin, mate lb-before adm V320 Twin, mate sb-in hosp V321 Twin, mate sb-before adm V330 Twin NOS-in hospital V331 Twin NOS-before admissn V340 Oth multiple nb-in hosp V341 Oth mult nb-before adm V350 Oth multiple sb-in hosp V351 Oth mult sb-before adm V360 Multiple nb/sb-in hosp V361 Mult nb/sb-before adm V773 Screen-phenylketonuria 605 Redun prepuce phimosis 6869 Local skin infection NOS 6910 Diaper or napkin rash 7624 Prolapsed cord aff nb 7625 Oth umbil cord compress 7626 Umbil cord NEC aff nb 7630 Breech del/extrac aff nb 7631 Malpos/dispro NEC aff nb 7632 Forceps delivery aff nb 7633 Vacuum extrac del aff nb 7636 Precipitate del aff nb 7639 Compl deliv NOS aff nb 7660 Exceptionally large baby

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	V370 Mult birth NOS-in hosp; 7661 Heavy-for-date infan NEC V371 Mult brth NOS-before adm; 7662 Post-term infant NOS V390 Liveborn NOS-in hosp; 7671 Scalp injury at birth V391 Liveborn NOS-before adm; 7686 Mild/mod birth asphyxia V502 Routine circumcision; 7746 Fetal/neonatal jaund NOS V703 Med exam NEC-admin purposes; 7788 Nb integument cond NEC Therefore, the branching criteria on the tree diagram in MDC 15 changes from "Normal Newborns Without Significant Secondary Diagnosis" to "Normal Newborns With Any Significant Diagnosis."
9. Diagnosis codes 1946 (Malig. Neopl. Paraganglia NEC), 2276 (Benign neopl. paraganglia), and 2373 (Unc. Behav. Neo. Paragang.) are in MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) while other related diagnoses are in MDC 1 (Diseases and Disorders of the Nervous System).	Add diagnosis codes 1946, 2276, and 2373 to MDC 1 (DRGs 10 and 11) and remove from MDC 10.
10. Diagnosis code 9968 (Complication Transplanted Organ) is assigned to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs). Since this code relates to <u>any</u> transplanted organ, it cannot be assigned to an organ specific MDC. Currently, codes 5051 (Ancillary Liver Transplant) and 5059 (Liver Transplant) are allowed with MDC 21 and assigned to DRG 442 and DRG 443 (Other O.R. Procedures for Injuries). Payment for these DRGs is inadequate for the procedure. All other transplant procedures associated with rejected organs are assigned to MDC 21, DRG 468.	Remove procedure codes 5051 and 5059 from MDC 21 (DRG 442 and DRG 443) and allow assignment to DRG 468.
11. Procedure code 5494 (Create Peritoneal Vascular Shunt) is a major shunt procedure, yet it is DRG 201 (Other Hepatobiliary or Pancreas O.R. Procedures) and not in DRG 191 (Major Pancreas, Liver and Shunt Procedures).	Add procedure code 5494 to DRG 191 and remove it from DRG 201.
12. Diagnosis code 4565 (Pelvic Varices) is assigned only to MDC 13 (Diseases and Disorders of the Female Reproductive System. This diagnosis code is also applicable to MDC 12 (Diseases and Disorders of the Male Reproductive System).	Add diagnosis code 4565 (Pelvic Varices) to MDC 12, DRG 352 (Other Male Reproductive System Diagnoses). Code is left as is on MDC 13.
13. Procedure code 031 (Division Intraspinal Nerve Root) is applicable to neck and back procedures and therefore should also be assigned to MDC 8 (Disease and Disorder of the Musculosketetal Sep. and Connective Ties.)	Add procedure code 031 (Division Intraspinal Nerve Root) to MDC 8, DRGS 214 and 215 (Back and Neck Procedures).

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
14. DRG 209 (Major Joint Procedures) does not adequately distinguish multiple joint procedures from single joint procedures.	Create DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity) to include any combination of two of the following procedure codes: 8141, 8148, 8151, 8159, 8161, 8162, 8163, and 8164.
15. DRGs 434 through 438 do not adequately reflect substance dependence detoxification and rehabilitation treatment.	Revise DRGs 434 through 438 as follows: Move all diagnosis codes in DRGs 435, 437, and 438 (except diagnosis codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390) to DRG 434 (Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence). Move all diagnosis codes in DRGs 434 and 436 and diagnosis codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390 to DRGs 435, 436, and 437. Diagnosis procedure code V57.89 must be present for a case to be assigned to DRG 436. Diagnosis procedure codes V57.89 and 94.25 must be present for a case to ba assigned to DRG 437. Delete DRG 438.
16. Patients with a principal diagnosis of diabetes mellitus who receive. kidney transplants are assigned to DRG 468 (Unrelated O.R. Procedure) rather than DRG 302 (Kidney Transplant).	Move procedure code 5569 (Kidney transplant) to DRG 302 even if code 25040 or 25041 (Diabetes) is present.
B. OPERATING ROOM vs NON-OPERATING ROOM ASSIGNMENT 1. Procedure code 3786 (Remove Cardiac Pacemaker) is used for the removal of both a temporary pacemaker and a permanent pacemaker. Presently, this code appears on the list of operating room procedures and, when coded, results in assignment to one of the operative pacemaker DRGs. In general, the removal of a temporary pacemaker is not performed in the operating room. If a permanent pacemaker is removed, then usually a replacement pacemaker is inserted. In that case, the reinsertion is coded and the patient is assigned to the appropriate DRG. The current operating room procedures, listed below, are also considered to be procedures not generally performed in the operating room. 8623 (Removal of nail) 5499 (Abdomen region operation, NEC) 3996 (Total body perfusion) 5196 Percutaneous Extraction of common duct stones)	Remove codes 3786, 8623, 5499, 3996, and 5196 from the list of operating room procedures and from the DRGs to which they are currently assigned.
2. Procedure codes 6813 (Uterine Biopsy) and 7076 (Hymenorrhaphy) are generally performed in an operating room and therefore should be assigned to the list of O.R. procedures.	Add procedure codes 6813 (Uterine biopsy) and 7076 (Hymenorrhaphy) to the list of O.R. procedures and to MDC 13, DRG 360 (Vagina, cervix and vulva procedures).

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
C. COMPLICATION AND COMORBIDITY MEMBERSHIP A number of diagnostic and procedural codes (mostly amputation codes) should be added to the list of complications and comorbidities.	Add the following diagnosis codes to the list of complications and comorbidities: 25090 Diab w compl NOS adult 25091 Diab w compl NOS juven 87272 Open wnd ossicles-comp 87273 Open wnd eustach tb-comp 87274 Open wound cochlea-comp 87333 Open wnd nas sinus-compl 8743 Open wound thyroid-compl 8745 Open wound pharynx-compl 8870 Amput below elb, unilat 8871 Amp below elb, unil-comp 8872 Amput abv elbow, unilat 8873 Amput abv elb, unil-comp 8874 Amputat arm, unilat NOS 8875 Amput arm, unil NOS-comp 8876 Amputation arm, bilat 8877 Amputat arm, bilat-compl 8960 Amputation foot, unilat 8961 Amput foot, unilat-compl 8962 Amput foot, bilat 8963 Amputat foot, bilat-comp 8970 Amput below knee, unilat 8971 Amputat bk, unilat-compl 8972 Amput above knee, unilat 8973 Amput abv kn, unil-compl 8974 Amputat leg, unilat NOS 8975 Amput leg, unil NOS-comp 8976 Amputation leg, bilat 8977 Amputat leg, bilat-compl
D. SURGICAL HIERARCHY AND WEIGHT ISSUES 1. When a cataract operation is performed, the patient is assigned to DRG 39 (Lens Procedure) - weight .4958. If a vitrectomy or anterior chamber injection or evacuation is performed during the cataract operation, and coded accordingly, the patient is assigned to DRG 42 (Intraocular Procedures Except Retina, Iris and Lens) - weight .5845. This is because vitrectomies and anterior chamber procedures are higher than lens procedures in the surgical hierarchy. However, the process of removing a small amount of vitreous or an injection or evacuation from the anterior chamber during a cataract operation is incidental to the lens extraction and the DRG assignment, therefore, should be for the lens extraction, not for the higher weighted vitrectomy or anterior chamber.	If a lens procedure only or a lens procedure and one of the following procedures is performed, assign DRG 39. 1291 Therapeut Evac Ant Chamber) 1292 Anterior Chamber Inject. 1471 Anterior Remóval Vitreous 1472 Vitreous Removal NEC 1473 Anterior Mechan Vitrect. 1474 Mechan Vitrectomy 1475 Vitreous Substitut Inject. 1479 Vitreous Operation NEC If any of the procedures listed above are performed without a lens procedure, assign DRG 42.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
2. There has been concern regarding the DRG surgical hierarchy in MDC 6 (Diseases and Disorders of the Digestive System). The position of Peritoneal Adhesiolysis, DRG 150-151, in relation to Minor Small and Large Bowel Procedures, DRG 152-153, and Hernia Procedures, DRG 159-163 is of particular concern. Analysis of HCFA average LOS and average charge data for the surgical DRGs in MDC 6 supports modification of the surgical hierarchy for MDC 6.	Change MDC 6 surgical hierarchy as follows: MDC 6-Diseases and Disorders of the Digestive System DRG 146-147 Rectal Resection DRG 148-149 Major Small and Large Bowel Procedures DRG 154-156 Stomach, Esophageal and Duodenal Procedures DRG 150-151 Peritoneal Adhesiolysis DRG 152-153 Minor Small and Large Bowel Procedures DRG 164-167 Appendectomy DRG 159-163 Hernia Procedures DRG 157-158 Anal Procedures DRG 168-169 Procedures in the Mouth DRG 170-171 Other Digestive System O.R. Procedures
E. DRG 468 Patients are assigned to DRG 468 (Unrelated O.R. Procedure) when all the operating room procedures are unrelated to the MDC of the patients' principal diagnosis. There appears to be a need to update certain DRGs by including O.R. procedures that could possibly be performed for diagnoses within the MDC, so patients would no longer be assigned to DRG 468.	Add the following list of O.R. procedures, listed by MDC, to the DRG specified: MDC 01 - Diseases and Disorders of the Nervous System DRG 4 (Spinal procedures) 7781 Oth chest cage ostectomy 7791 Tot chest cage ostectomy DRG 5 (Extracranial vascular procedures) 3832 Head/neck ves resec-anas 3929 Vasc shunt and bypass NEC 3930 Suture of vessel NOS 3931 Suture of artery 3932 Suture of vein 3956 Repair vess w tis patch 3957 Rep vess w synth patch 3958 Repair vess w patch NOS 3959 Repair of vessel NEC 398 Vascular body operations 3992 Vein inject-scleros agnt DRGs 7 and 8 (Peripheral and cranial nerve and other nervous sys. procs.)

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	0719 Endocrine dx proc NEC
	0780 Thymectomy NOS
	0781 Part excision of thymus
	0782 Total excision of thymus
	0851 Canthotomy
	0852 Blepharorrhaphy
	0859 Adjust lid position NEC
	8131 Foot arthroplas w prosth
	8139 Foot/toe arthroplast NEC
	8171 Hand arthroplas w prosth
	8179 Hand arthroplasty NEC
	8186 Carpal arthropl-syn pros
	8187 Wrist arthroplasty NEC
	8313 Other tenotomy
	8314 Fasciotomy
	8319 Soft tissue division NEC
	8321 Soft tissue biopsy
	8341 Tendon excision for grft
	8343 Musc/fasc excis for grft
	8345 Other myectomy
	8349 Other soft tissue excis
	8681 Repair facial weakness
	MDC 02 - Diseases and Disorders of the Eye
	DRG 37 (Orbital procedures)
	7679 Open reduct face fx NEC
	7691 Bone graft to face bone
	7692 Syn implant to face bone
	7646 Facial bone reconstr NEC
	DRG 38 (Primary iris procedures)
	1273 Cyclophotocoagulation
	DRG 39 (Lens Procedures)
	1301 Removal of foreign body from lens with magnet
	DRGs 40 and DRG 41 (Extraocular procedures except orbit)
	864 Radical excis skin les
	MDC 03 - Diseases and Disorders of the Ear, Nose and Throat
	DRG 55 (Miscellaneous ear, nose and throat procs.)
	0609 Incis thyroid field NEC
	0912 Lacrimal sac biopsy
	0919 Lacrimal sys dx proc NEC
	0981 Dacryocystorhinostomy
	0999 Lacrimal system op NEC
	DRG 63 (Other ear, nose and throat O.R. procs.)
	0474 Periph nerv anastom NEC
	0475 Postop revis per nerv op

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	0476 Late repair per nerve inj
	1652 Orbit exent w bone remov
	1665 2ndry exent cavity graft
	1666 Revis exenter cavity NEC
	1698 Operation on orbit NEC
	7779 Excise bone for gft NEC
	MDC 04 - Diseases and Disorders of the Respiratory System
	DRGs 76 and 77 (O.R. proc. on the resp. sys. except major chest with O.R.)
	5012 Liver biopsy NEC
	8321 Soft tissue biopsy
	MDC 05 - Diseases and Disorders of the Circulatory System
	DRG 120 (Other O.R. procedures)
	251 Destruction tongue les
	863 Other local destruc skin
	5591 Renal decapsulation
	MDC 06 - Diseases and Disorders of the Digestive System
	DRGs 152 and 153 (Minor small and large bowel procs.)
	5684 Close ureter fistula NEC
	5783 Repair rectovesical fistula
	6942 Closure uterine fistula
	7075 Repair vag fistula NEC
	7172 Repair vulvar fistula
	DRGs 154, 155, and 156 (Stomach, esophaegeal and duodenal procs.)
	3173 Trachea fistula clos NEC
	3805 Thoracic vessel resect/anast
	3835 Thor vessel resec/anast
	3845 Thor ves resect w replac
	3865 Thoracic vessel excision
	3885 Occlude thoracic ves NEC
	5183 Pancreat sphincteroplas
	527 Rad pancreaticoduodenect
	DRGs 168 and 169 (Procedures on the mouth)
	293 Ex. or destr. of lesion or tissue of pharynx
	DRGs 170 and 171 (Other digestive procedures)
	3804 Incision of aorta
	3949 Vasc. proc revision NEC
	3991 Freeing of vessel
	MDC 08 - Diseases and Disorders of the Musculoskeletal Sys. and Connective Tiss.
	DRG 217 (Wound debridement and skin graft exc. hand)
	8665 Heterograft to skin
	8666 Hemograft to skin
	8671 Cut. prep. ped graft
	8672 Pedicle graft advancement
	DRGs 233 and 234 (Other musculoskel. sys. and connect. tiss. O.R. procs.)
	1651 Radical orbitomaxillect

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	1659 Orbital exenteration NEC
	2172 Open reduction nasal fx
	2262 Exc max sinus lesion NEC
	3481 Excise diaphragm lesion
	4051 Rad dissec axillary node
	4052 Rad dissec periaort node
	4053 Rad dissect iliac nodes
	4054 Radical groin dissection
	4059 Rad node dissection NEC
	5900 Retroperit dissect NOS
	6241 Remove both testes
	DRGs 226 and 227 (Soft tissue procedures)
	8681 Repair facial weakness
	MDC 09 - Diseases and Disorders of the Skin, Subcutaneous Tissue & Breast
	DRG 268 (Skin, subcutaneous tissue and breast plastic procs.)
	0838 Correct lid retraction
	2755 Full-thick grft to mouth
	2756 Skin graft to mouth NEC
	2769 Oth plastic repair palat
	8289 Hand plastic op NEC
	DRGs 269 and 270 (Other skin, subcutaneous tissue and breast O.R. procs.)
	0609 Incis thyroid field NEC
	0722 Unitateral adrenalectomy
	073 Bilateral adrenalectomy
	0763 Part excis pituitary NOS
	0764 Tot exc pituit-transfron
	0765 Tot exc pituit-transsphen
	0768 Total exc pituitary NEC
	0769 Total exc pituitary NOS
	0772 Pituitary gland incision
	0779 Pituitary operation NEC
	0823 Exc major les lid, part-thick
	6561 Remove both tubes and ovar
	6711 Endocervical biopsy
	6712 Cervical biopsy NEC
	6719 Cervical dx procedur NEC
	6739 Cervical les destruc NEC
	7024 Vaginal biopsy
	7111 Vulvar biopsy
	7119 Vulvar diagnos proc NEC
	713 Local vulvar excis NEC
	MDC 10 - Endocrine, Nutritional and Metabolic Diseases and Disorders
	DRGs 292 and 293 (Other endocrine, nutritional and metabolic O.R. procs.)
	3426 Other mediastinal biopsy
	3802 Head/neck ves incis NEC

TABLE 6 - PROPOSED CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	3829 Blood vessel dx proc NEC
	3830 Vessel resect/anest NOS
	3833 Arm vessel resect/anast
	3838 Leg artery resect/anast
	3843 Arm ves resect w replace
	3848 Leg artery resec w repla
	3855 Thorac var v lig-strip
	3863 Arm vessel excision
	3868 Leg artery excision
	3883 Occlude arm vessel NEC
	3888 Occlude arm vessel NEC
	3925 Aorta-iliac-femor bypass
	3931 Suture of artery
	3941 Postop vasc op hem contr
	3949 Vasc proc revision NEC
	3956 Repair vess w tis patch
	3957 Rep vess w snyth patch
	3958 Repair vess w patch NOS
	3959 Repair of vessel NEC
	3991 Freeing of vessel
	544 Destruct peritoneal tiss
	MDC 11 - Diseases and Disorders of the Kidney and Urinary Tract
	DRG 315 (Other kidney and urinary tract O.R. procs.)
	0689 Other parathyroidectomy
	3806 Abdomen artery incision
	3807 Abdominal vein incision
	3816 Abdominal endarterectmy
	3836 Abd vessel resect/anast
	3837 Abd vein resect and anast
	3846 Abd artery resc w repla
	3847 Abd vein resect w replac
	3866 Abdominal artery excis
	3867 Abdominal vein excision
	3886 Occlude abd artery NEC
	3887 Occlude abd vein NEC
	3956 Repair vess w tis patch
	3957 Repair vess w synth patch
	3958 Repair vess w patch NOS
	3959 Repair of vessel NEC
	5493 Create cutaneoperiton fist
	8622 Wound debridement
	MDC 12 - Diseases and Disorders of the Male Reproductive System
	DRGs 334 and 335 (Major male pelvic procs.)
	4869 Rectal resection NEC
	5411 Exploratory laparotomy
	5751 Excision of urachus

TABLE 6 - PROPOSED CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	MDC 13 - Diseases and Disorders of the Female Reproductive System
	DRG 360 (Vagina, cervix and vulva-procedures)
	4873 Closure of other rect fistula
	7023 Cul-de-sac biopsy
	7029 Vagin/cul-de-sac dx NEC
	7119 Vulvar diagnos proc NEC
	DRG 365 (Other female reproductive system O.R. procs.)
	5734 Bladder biopsy NEC
	5751 Excision of urachus
	5759 Open Ex or dest oth les ortis of blad
	5902 Oth lys of periter adhes
	5919 Oth incis of perives tiss
	7012 Culdotomy
	MDC 14 - Pregnancy, Childbirth and the Puerperium
	DRG 374 (Vaginal delivery with sterilization and/or C.C.)
	6697 Bury fimbriae in uterus
	DRG 375 (Gaginal delivery with O.R. proc. except steril. and/or D.C.)
	387 Plication of vena cava
	4024 Excise inguinal node
	403 Regional lymph node exc
	5411 Exploratory laparotomy
	5421 Laparoscopy
	680 Hysterotomy
	MDC 16 - Blood, Blood Forming Organs and Immunological Diseases and Disorders
	DRG 394 (Other O.R. procs. of the blood and blood forming organs)
	400 Incis lymphatic structur
	MDC 17 - Myeloproliferative Diseases and Poorly Differentiated Neoplasms
	DRG 400 (Lymphoma or leukemia with major O.R. proc.) and
	DRGs 406 and 407 (Myeloprolif, disord. or poorly diff. neopl. with maj. O.R. With C.C.)
	3229 Destroy loc lung les NEC
	343 Destruct mediastin les
	0371 Spin subarach-peritoneal shunt
	0372 Spin subarach-ureteral shunt
	0379 Other shunt spinal theca
	410 Bone marrow transplant
	DRGs 401 and 402 (Lymphoma or leukemia with minor O.R. proc.) and
	DRG 408 (Myeloprolif. disord. or poorly diff. neopl. with minor O.R. proc.)
	3421 Transpleura thoracoscopy
	4415 Gastric biopsy NEC
	4515 Small bowel biopsy NEC
	4526 Large bowel biopsy NEC
	5733 Transureth bladd biopsy
	8321 Soft tissue biopsy
	8339 Exc les soft tissue NEC

TABLE 6 - PROPOSED CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	MDC 21 - Injury, Poisoning and Toxic Effects of Drugs
	DRGs 442 and 443 (Other O.R. procedures for injuries)
	0141 Thalamus operations
	0201 Linear craniectomy
	0444 Tarsal tunnel release
	0780 Thymectomy NOS
	0781 Part excision of thymus
	0782 Total excision of thymus
	0791 Thymus field exploration
	0792 Incision of thymus
	0793 Repair of thymus
	100 Remov embed FB conjunct w incis
	110 Magnet remov embed FB cornea
	111 Corneal incision
	1200 Remov. intraoc FY anter seg eye NOS
	1372 Secondary insert lens
	138 Implanted lens removal
	139 Other operations on lens
	1839 Excis external ear NEC
	214 Resection of nose
	2169 Turbinectomy NEC
	245 Alveoloplasty
	2792 Mouth incision NOS
	2799 Oral cavity ops NEC
	287 Hemorr contrl post T and A
	2891 Incis to remov tonsil FB
	290 Pharyngotomy
	294 Plastic op on pharynx
	2953 Closure pharynx fistula NEC
	2959 Pharyngeal repair NEC
	2999 Pharyngeal operation NEC
	301 Hemilaryngectomy
	3021 Epiglottidectomy
	3022 Vocal cordectomy
	3029 Other part laryngectomy
	303 Complete laryngectomy
	3173 Trachea fistula clos NEC
	3199 Other tracheal operation
	321 Other bronchial excision
	330 Incision of bronchus
	331 Incision of lung
	3392 Bronchial ligation
	3398 Bronchial operation NEC
	3399 Lung operation NEC
	341 Incision of mediastinum
	3421 Transpleura thoracoscopy
	3489 Diaphragm operation NEC

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM		PROPOSED GROUPER MODIFICATION
	3499	Thoracic operation NEC
	3711	Cardiotomy
	3949	Vasc proc revision NEC
	537	Abd repair-diaphr hernia
	5380	Thor rep-diaph hern NOS
	5381	Diaphragmatic plication
	5382	Parastern hernia repair
	5553	Rejected kidney nephrect
	5554	Bilateral nephrectomy
	576	Partial cystectomy
	5779	Total cystectomy NEC

F. DOCUMENTATION ISSUES

Some of the language in the DRG documentation is not completely descriptive of the classification of cases.

Make the following changes to the DRG documentation:

- Update MDC tree diagrams to reflect the surgical hierarchy of each MDC. The tree diagrams have each surgical group ordered from left to right in hierarchical order. Since DRG numbers are not changed, the trees no longer increase in numerical order from left to right.
- In the medical partitioning section of MDC 5 (Diseases and Disorders of the Circulatory System), change the labels on pp. 187-189 to better define the list of "Cardiovascular Complications" and "Complex Cardiovascular Diagnoses."
- Remove procedure codes 431 (Temporary Gastrostomy) and 7022 (Culdoscopy) from the list of operating room procedures in MDC 3 and MDC 14, respectively. These codes do not appear in Appendix B (Operating Room Procedures) and are not considered by GROUPER to be operating procedures.
- The title of the branching criteria in the tree diagram for DRG 115 (Permanent Cardiac Pacemaker Inplant with AMI or CHF) is changed from "Principal Diagnoses of AMI or CHF" to "Principal Diagnoses of AMI, Heart Failure or Shock."
- The title of the branching criteria in the tree diagram for DRGs 164 and 165 (Appendectomy With a Complicated Principal Diagnoses) is changed from "Complicated Diagnosis" to "Complicated Principal Diagnosis."
- The title of the branching criteria in the tree diagram for DRG 303 (Kidney, Ureter and Major Bladder Proc. for Neoplasm) is changed from "Principal Diagnosis of Malignancy" to "Principal Diagnois of Neoplasm.

These changes are editorial in nature and do not affect in any way the classification of cases.

Appendix A—Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Several provisions proposed in this document would exceed the $100 million threshold under E.O. 12291. Therefore, we are including an impact analysis that contains a discussion of each significant proposed change. In our summary, we discuss the expected net effects resulting from these changes.

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities.

Under the RFA, we treat all hospitals as small entities. It is clear that these proposed changes would affect a substantial number of hospitals and the effects on some would be significant. Therefore, we are providing an initial regulatory flexibility analysis.

The discussion below, in combination with the rest of this preamble, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Objectives

We expect these proposed changes to further our original objectives in implementing the prospective payment system, which include:

- Restructuring hospitals economic incentives;
- Basing payment on a system that identifies the product being purchased more accurately than cost reimbursement;
- Reinforcing the role of the Federal Government as a prudent buyer of services; and
- Restraining the rate of hospital cost increase, thus moderating the outflow of expenditures from the Medicare trust fund.

In addition, we recognize national goals of deficit reduction and restraints on government spending, in general. We believe these proposals will further our goals while maintaining the financial viability of the hospital industry, and assuring access to high quality care for beneficiaries.

We expect these proposed changes to further those objectives while avoiding or minimizing unintended adverse consequences and ensuring that outcomes of this payment system, in general, are reasonable and equitable. Thus, the intent is to refine further the prospective payment system without undercutting our objectives.

C. Problems of Impact Quantification and Attributing Causality

In previously published interim and final rules, we discussed the objectives and impacts of the rules largely in general conceptual terms. We did not always have adequate data, analytic resources, or time to perform a detailed quantitative impact analysis of particular provisions for publication with these previous rules. However, we did solicit comments and information that would enable us to describe and quantify better the anticipated effects of the Medicare prospective payments system.

At present, we still have no adequate way to model potential behavioral changes on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Much of the available Medicare program data reflect only patterns and trends of utilization and payment under cost reimbursement. Where it is feasible and appropriate, we have used this data to model and analyze the effects of particular proposals. Nonetheless, any of the quantitative estimates given below should be received with a qualified recognition of the limitations of the data on which they are based.

We continue to study many aspects of the prospective payment system with the intent of obtaining more adequate data for the purpose of better quantifying the effects of and behavioral changes caused by the payment system. Examples of these initiatives include various reports to Congress, as required by section 603 of Pub. L. 98–21. These studies will examine many issues, including the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates and the feasibility and desirability of applying the payment methodology to payment by all payors for inpatient hospital services. We are also required, under section 603(a)(2)(A) of Pub. L. 98–21, to study and report annually to the Congress on the impact of the prospective payment system.

In addition to these initiatives, we and others are undertaking a variety of external studies on the effects of the prospective payment system. One recent external study examined the relationship of severity-of-illness and operating cost differences, and payment inequities, among hospitals. We also are examining selected aspects of hospital management behavior under the prospective payment system, to be able to predict better certain effects and outcomes from the system.

As these studies and reports are completed, and especially as we receive a greater amount of audited cost report data for prospective payment cost reporting periods, we should be able to analyze the dynamics of the prospective payment system better. In turn, the data and information should contribute to establishing an adequate data base to model potential behavioral changes on the part of hospitals, hospital employees, physicians, suppliers and beneficiaries.

A second problem that limits our ability to quantify the effects of this proposed rule is attributing the causation of particular changes in the hospital industry directly to particular proposed regulation provisions. This is made particularly difficult by the changing nature of the health care sector. The prospective payment system is but one of numerous efforts aimed at controlling rapidly rising health care costs. In many cases, then, it may be difficult to determine the extent that the prospective payment system, or some other initiative, caused the result, or whether two (or more) initiatives caused the result interactively.

Apart from the more easily identifiable initiatives that are affecting the health care market, especially on the demand side, changes also have been occurring on the supply side. Most notable of these changes is the increase in the supply of physicians, which enhances the competition for patients among providers. There has also been a significant growth of facilities furnishing out-of-hospital treatment. For example, since 1973, two thousand ambulatory care clinics have opened. We have also certified 265 ambulatory surgicenters, with another hundred awaiting certification. In addition, home health services are the fastest growing component of the Medicare program.

The multiple changes in the health care system require the use of caution in attributing positive or adverse effects to one or another initiative or policy change. However, we can point to the

fact that prospective payment has the advantage of being implemented on a precise schedule, applying to a readily identifiable group of beneficiaries, and at different times for different provisions. Furthermore, the incentives provided by prospective payment are readily identifiable. Thus, to the extent feasible, and as our data resources permit, it is possible to attribute some of the effects resulting from this payment system to the system itself and to proposed changes to its structure.

In view of the problems we have experienced in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the best feasible. In some cases we have included quantitative estimates of program savings. However, since it is not possible to develop a reliable quantitative analysis and comparison of the costs and benefits of all the provisions to the various affected parties, we have primarily focused on explaining the kinds of interactions, and the decisions, which those parties will have to consider. As with previous impact analyses, we are soliciting comments and information about the anticipated effects of these proposed changes to the prospective payment system.

D. Hospitals Included in and Excluded From the Prospective Payment System

Since October 1983, hospitals operating under prospective payment have been phasing-in to the system according to their own accounting year starting dates. As of September 1984, 5,045 hospitals (81 percent of all hospitals) were operating under the prospective payment system. This represents virtually 100 percent of all hospitals currently subject to the new payment system. As of March 1985, more than 1,200 hospitals were excluded from the prospective payment system and continue to be paid on the basis of reasonable cost reimbursement. Examples of these hospitals include short-stay hospitals in waiver States, long-term care hospitals, and children's hospitals. Another 1,246 psychiatric rehabilitation and alcohol/drug units of hospitals included in the prospective payment system, are excluded from prospective payment as of the same date.

More than four hundred hospitals were being paid on a special basis under the prospective payment system. They included hospitals accorded special treatment under our regulations at 42 CFR Part 412, Subpart G, such as sole community hospitals and cancer treatment and research hospitals. Also included in this group receiving payment on a special basis are referral centers and hospitals that previously allowed extensive direct billing under Part B.

E. DRG Classification and Weights

1. Recalibration

We are proposing to make certain changes in the DRG classification system and to recalibrate the DRG weights based on 1984 PATBILL charge data. The changes we are proposing are discussed in detail in section II of the preamble.

The advantages of using newer and more complete data from the PATBILL file outweigh both the potential disadvantages of using charges, and the advantages of using currently available cost report data. Charges appear to be a valid measure of relative resource use, at least on the basis of historical data, the existing DRG classifications, and the current methodology for deriving DRG weights. Use of 1984 charge information would also explicitly incorporate the effects of changes in hospital behavior, whereas the 1981 cost data would not.

Since its implementation in October 1983, the prospective payment system has used DRG relative weights calculated by a complex methodology using data from the 1981 MEDPAR file, a 1981 Medicare Cost Report abstract file, and a 1981 hospital wage index based on hospital wage information collected by BLS. These cost-based relative weights were used in the Medicare prospective payment system on the assumption that they would better reflect differences in true resource costs among DRGs than would relative weights derived from charges. However, as discussed in section II of the preamble, charge data have some potential advantages compared to operating cost data. Weights based on charges could be constructed without cost report data, which is typically two to three years old before it becomes available for analysis. Charge-based relative weights are also simpler to compute, since complex adjustments are not required to convert charges to costs and to remove capital and medical education costs. Because of these potential advantages of charge-based weights, we initiated a study to determine whether it would be feasible to recalibrate the DRG relative weights on the basis of charges rather than costs.*

Using the 1981 data upon which the prospective payment system was based, this study investigated the extent to which relative weights based on costs differ from relative weights derived exclusively from charge data. The study also assessed the validity of a case-mix index developed from charge-based relative weights as a measure of the relative costliness of a hospital's Medicare cases. The main findings of the analysis indicate that charge-based and operating cost relative weights, based on 1981 MEDPAR data, are very similar, as follows:

- The difference between relative weights based on operating costs and relative weights based on total charges is less than five percent for most of the DRGs.
- The structure of the relative weights across DRGs for each method are also very similar. The Spearman and Pearson correlation coefficients are greater than .99.
- The relative dispersion of costs or charges within a DRG are also very similar, although for most DRGs the coefficients of variation are slightly higher using charge data than the coefficients of variation using cost data.
- The dispersion of average costs or charges across DRGs are also very similar. However, DRGs with high (low) relative weights tend to have slightly higher (lower) relative weights if computed using charge data rather than cost data.
- Large, urban hospitals and teaching hospitals tend to have slightly higher case-mix index values using charge-based weights rather than cost-based weights, whereas small, rural hospitals and nonteaching hospitals tend to have slightly lower case-mix index values using charge-based weights.

The results of the analysis support the use of charge data in constructing DRG relative weights. We believe that differences among hospitals in cost-to-charge ratios do not result in large, arbitrary differences between charge-based and operating cost weights, but we seek comments on this issue.

Whether the data are standardized for differences in capital and medical education costs also appears to make little difference. These inter-hospital differences would only affect the DRG relative weights if there were a high degree of specialization among hospitals in different groups of DRGs they treat. Our results indicate that, in 1981, hospitals' case mixes were similar enough that most inter-hospital effects disappear when the data are partitioned by DRG.

*Philip Cotterill, Joel Bobula, and Rose Connerton, "A Comparison of Alternative DRG Relative Weights for the Medicare Prospective Payment System," HCFA internal working paper, February 1985.

In addition, we analyzed the relationship between hospitals' case-mix index values constructed from the charge-based relative weights and average Medicare cost per case based on multivariate regression analysis of hospitals' 1981 operating costs per case. The charge-based case-mix index was found to be approximately proportional to the expected costliness of an individual hospital's Medicare patient mix. This result further supports the study's major finding that there do not appear to be large differences between charge-based and cost-based weights, or between case-mix indexes constructed from charge-based or cost-based weights.

2. Proposed New Weight Values

Table 5 in section IV of the Addendum to this proposed rule sets forth the proposed recalibrated DRG weights. This table reflects all the reclassifications and GROUPER changes discussed in section II of the preamble. The proposed DRG weights are highly correlated with the published FY 1985 DRG weights. The Pearson correlation coefficient for the two sets of relative weights is 95.

The changes in values for particular DRGs are affected by a number of factors other than the use of charge data. In fact, we believe that the use of charge data accounts for a smaller portion of the change in weights than some of the other factors. The changes are accounted for largely by GROUPER changes and behavioral changes that are reflected in the more recent data base.

Approximately 82 percent of FY 1984 discharges fall into DRGs for which the proposed weights would differ from the current FY 1985 weights by less than 15 percent. Nonetheless, 128 DRGs have proposed weights that would differ from their current weights by 15 percent or more. Of these, 61 would increase and 67 decrease. Only about 4 percent of all FY 1984 discharges occured in DRGs with weights that would decrease more than 15 percent, whereas about 10 percent occurred in DRGs with more than a 15 percent increase.

Many of the DRGs that show weight changes of more than 15 percent have relatively low Medicare case frequencies. Thirty-nine of the DRGs that would go up more than 15 percent are DRGs for which non/Medicare data was used to calculate their previous weights. These 39 DRGs account for only about 2.5 percent of the cases that fall into the 61 DRGs that would increase by more than 15 percent. More than half of the cases in the 61 high-increase DRGs are in only 2 DRGs: DRG 39 (lens procedures) would increase 16.4 percent and DRG 468 (unrelated OR procedure) would increase 16.9 percent. Nonetheless, only 3 of the 25 most common DRGs (including DRGs 39 and 468) would increase by 10 percent or more.

Each hospital will have to assess the effect of the proposed DRG weights for itself. As noted elsewhere, the general tendency of the recalibration is to decompress both charge weights and case mix indexes, so that the higher ones are on the average, a little higher, and the lower ones are, on the average a little lower. However, the degree to which this may occur will vary from case to case. Further, changes in the DRG weights would interact with changes in Federal rates, wage indexes, and the blending of Federal and hospital-specific portions. (See additional discussion in section I below.)

3. Alcohol and Drug-Related DRG Reclassificaiton

As of March 1985, 28 hospitals and 28 units that furnish alcohol and drug services have been excluded from the propsective payment system under §§ 412.23 and 412.32 of our regulations. Exclusion was afforded these hospitals and units on a temporary basis because of difficulties associated with implementation of DRGs for the major diagnostic category (MDC) related to alcohol and drug-related services. We are proposing to reclassify these DRGs to better reflect the patterns of practice in alcohol and drug detoxification and rehabilitation services. As a result, these hospitals and units would no longer be excluded from the prospective payment system effective with cost reporting periods beginning on or after October 1, 1985.

We are proposing to replace the six DRGs in the previous classification for this MDC with five DRGs. The proposed weights for DRGs 436 and 437 (rehabilitation therapy and combined detoxification and rehabilitation treatment) are higher than the weights for treatment without rehabilitation. However, there are many more cases in the DRGs for treatment without rehabilitation (DRGs 433 to 435). As a result, the average weight for the cases in the proposed alcohol and drug-related MDC, taken as a whole, would decline about 4.8 percent.

The proposed DRG weights would be applied to alcohol and drug-related services furnished by hospitals currently under the prospective payment system, as well as to currently excluded hospitals and units as they reenter the system.

F. Wage Index

1. Background

As discussed in section III of the preamble, the proposed rule incorporates a new wage index based on our own survey data rather than on the hospital wage and employment data obtained from the ES 202 reporting system of BLS. The new survey-based wage index wold be applied in two ways:

- Prospectively, to adjust the Federal rates (adjusted average standardized amounts) to account for differences between area wage levels; and
- Retrospectively, to determine overpayments and underpayments resulting form the use of a wage index based on BLS data since the implementation of the prospective payment system for cost reporting periods beginning on or after October 1, 1983.

The proposed wage index is discussed in detail in the *Report on Hosptial Wage Index Required by Section 2316(a) of Public Law 98–369*, submitted to Congress by the Department on March 29, 1985. That report includes detailed estimates of the effects of implementing the proposed index and an alternative wage index that we considered using, based on certain adjustments to the survey data to exclude wages and salaries for certain classes of hospital employees.

2. Comparison of the BLS Index and the Proposed Index

Despite some rather significant differences between the BLS index currently used under the prospective payment system and the proposed survey-based wage index, the proposed index correlated highly with the BLS index. That is, both indexes appear to measure similar activity and demonstrate similar variability. (Specifically, the proposed wage index, when correlated with the current index, produced a Pearson correlation coefficient of 0.85.)

The table below presents a summary of the changes in the survey wage index values compared to those developed from 1981 BLS ES 202 hospital data. Note that this analysis was taken from the Wage Index Report to Congress, which was developed before the St. Louis MSA was consolidated with two other MSAs. Therefore, the analysis reflects 363 urban/rural areas, rather than the current 361 areas.

As expected, use of survey data rather than BLS data produces both increases and decreases across the 363 urban and rural areas; that is, the index for some

areas goes up relative to the BLS index, and the index goes down for other areas. For the 363 urban/rural areas, the proposed new wage index is *lower* than the current wage index for 166 urban areas and for the rural areas of 21 States. In those areas where the proposed index decreased, the amount of the decrease averaged 5.23 percent in urban areas and 4.70 percent in rural areas. The proposed new wage index increased in 149 urban and 27 rural areas, as compared with the current index.

COMPARISON OF SURVEY-BASED AND CURRENTLY USED BLS HOSPITAL WAGE INDEXES

[Number of areas affected]

	Proposed index higher	Avg percent change	Proposed index lower	Avg. percent change
Urban	149	5.08	166	5.23
Rural	27	6.04	21	4.70
Overall	176	5.18	187	5.17

There are a number of reasons that could be presented for the changes that occurred in the proposed survey-based index compared to the current BLS index. Certain of these changes most likely are due to the fact that the proposed index corrects the part-time employment problem of the BLS data. Intuitively, one would expect that the incidence of the use of part-time employees in more common in rural areas than in urban areas, although not all rural and urban areas react the same way to this need. Rural hospitals are more susceptible to small-scale changes in their occupancy levels, and using part-time employees likely gives these hospitals more managerial control. Thus, it is not surprising to note that for rural Nebraska, the proposed index value is higher than the BLS index value. A similar situation holds for rural Iowa.

Conversely, if urban hospitals are more likely to employ full-time workers, then a BLS wage index that essentially counts all employees as full-time would tend to advantage urban over rural hospitals. Once part-time employees are recognized, one would expect that a number of urban wage indexes would decline as compared to the BLS index. In fact, this is what happens in a significant number of urban areas.

3. Prospective Impact of the Proposed New Index

Implementation of the survey-based gross wage index prospectively for cost reporting periods beginning on or after October 1, 1985 would have several effects. Of course, each hospital would be relatively advantaged or disadvantaged according to whether the index value for its geographic area increased or decreased. (Note, however, that a number of other factors would affect whether a hospital's actual total prospective payment revenue increased or decreased.) In addition, the new index would be used to restandardize the standardized amounts on which the Federal national and regional rates are based. This should have a negligible effect on the national urban and rural rates, but would affect the relative level of regional rates significantly.

Since FY 1986 is the last year during which regional rates will be included in the blended Federal rates, this secondary impact of the new index would be time-limited. Nonetheless, for FY 1986, some regional rates would go up and others would go down, with concomitant advantages and disadvantages for affected hospitals.

All hospitals under the prospective payment system would be affected, although some only slightly. For FY 1986, affected hospitals would fall into four groups, as follows:

- Those doubly advantaged by increases to both their wage index values and their regional rates;
- Those doubly disadvantaged by decreases to both their wage index values and their regional rates;
- Those advantaged by an increased wage index value and relatively disadvantaged by a revised regional rate; and
- Those disadvantaged by a decreased wage index value and relatively advantaged by a revised regional rate.

In addition, the changes to the wage index would interact with proposed changes to the DRG weights, the effects of the increased proportion of the national rate in the Federal rate, and the change in blending proportions between Federal and hospital-specific portions. (For further discussion, see section J, below, especially the table summarizing the anticipated percent payment changes for FY 1986.

4. Retroactive Impact of the Proposed New Index

Under section 2316(b) of Public Law 98–369, any new wage index that is adopted as a result of the study conducted in accordance with section 2316(a) must be implemented retroactively for hospital cost reporting periods beginning on or after October 1, 1983.

Assuming that a revised wage index is implemented effective October 1, 1985, some hospitals (that is, those whose reporting periods began October 1, 1983) will have been paid using the BLS index for two full years. If a hospital's payments based on a revised wage index would have been higher than its payments using the current index, the Medicare program would have to compensate the hospital for the underpayments. Conversely, where a hospital has been overpaid using the current index compared to what it would have been paid if a revised index had been used, the program would have to recoup the overpayments that have been made.

Section 2316(b) of Public Law 98–369 provides that any resulting overpayments or underpayments "for the first cost reporting period" for which a hospital is subject to the prospective payment system shall be adjusted "in the succeeding cost reporting period." This language would appear to have originated from Congress' expectation that a revised wage index would be in place in time for the FY 1985 update of the system. Under these circumstances, payment adjustments only would have been required for that portion of a hospital's first fiscal year under the prospective payment system and could have been implemented effective with the succeeding cost reporting period. However, the need to follow-up on the wage index survey due to unsatisfactory initial results has delayed the development of a revised index. The prospective payment rates effective October 1, 1984 presently incorporate a wage index derived from BLS data. Therefore, retroactive application of a revised wage index, effective Octoter 1, 1983 would result in the creation of overpayments/underpayments for more than one year.

In order to assess the financial consequences for hospitals subject to the prospective payment system if the proposed new wage index were implemented retroactively to October 1, 1983, we prepared estimates of impact for each urban/rural locale using the index values developed from the survey. These area impact estimates assume a new wage index would be adopted October 1, 1985, retroactive to October 1, 1983. Thus, overpayments and underpayments are estimated for the period October 1, 1983 through September 30, 1985. These impact estimates and the assumptions underlying them are included in the above-cited report to Congress. The report to Congress did not include estimates of the effects of the proposed wage index on FY 1986 payments because at that time we had not yet developed the applicable Federal rates and proposed DRG weights. Now such estimates are possible, and section J of this appendix includes a table summarizing, by census region, urban/

rural location, and bed size, the projected percent change that would result from the proposed DRG weights and wage index. Because we would collect overpayments and pay underpayments resulting from retroactive application of the wage index in FY 1986, that table also includes our estimate of the effect that retroactive application would have on total payments for affected groups of hospitals.

To illustrate the impact on hospitals in a given locale, we have focused on the Charlottesville, Virginia MSA, an area that would incur a substantial reduction in prospective payments were the proposed wage index implemented. The wage index for the Charlottesville, Virginia MSA would decline from the 1.2899 BLS index to a survey-based index of .9287. Over the period from October 1, 1983 through September 30, 1985, hospitals in that MSA, assuming an average case mix (that is, a case-mix index of 1.0), and without regard to any teaching activity, would have been overpaid an estimated $3,670,977. The average reductions in the Federal rates over all discharges in that MSA for the first two years under the prospective payment system through September 30, 1985 are 21.95 and 22.08 percent, respectively.

Before proceeding further, it should be noted here what these overpayment figures actually represent. While the difference that would occur in the Federal rates in the Charlottesville MSA using the new index compared to the BLS index is $768 in the first year of the prospective payment system and $794 in the second year, the actual dollar amount of the overpayment for these two years is less than what would result from simply multiplying the dollar difference by the number of discharges. This is because the wage index is applied *only* to the Federal rate, and the Federal rates comprised only 25 percent of a hospital's prospective payment rate for a cost reporting period that began in FY 1984, and 50 percent for a cost reporting period that began in FY 1985. When analyzing these figures, it should also be noted that not all hospitals use the Federal fiscal year as their own fiscal year. Therefore, if a new index were implemented and applied retroactively beginning October 1, 1985, only those hospitals that have the same fiscal year as the Federal government would have had two full years using the BLS index. Other hospitals would have had one full first year and varying proportions of a second year, depending upon their individual fiscal years. Because of hospital specific differences in case mix and teaching activity, the actual dollar impact within an area will also differ from hospital to hospital depending upon the magnitude of the case mix index and the degree of teaching activity.

Example

Hospital A is the only hospital in the hypothetical Simpsonville MSA. Because of the size of the decline in the Simpsonville survey-based wage index compared to the current BLS index, hospital A's estimated reduction in prospective payments during the period October 1, 1983 through September 30, 1985, without regard to case mix and teaching activity, is $1,000,000. Hospital A, however, has a case-mix index value of 1.2 and an indirect medical education adjustment factor of 1.1. The actual decrease in hospital A's prospective payments is equal to:

$1,000,000×1.2×1.1=$1,320,000

If hospital A were not a teaching institution and had a case-mix index value of .9, the estimated impact would be equal to $1,000,000×.9, or $900,000.

We point out that while the actual impact of implementing the proposed wage index would be affected by a facility's case mix and degree of commitment to teaching, the percentage change in the Federal rates is unaffected when these two variables are considered. This is so because the effects of case mix and teaching activity on the Federal rates computed using the BLS and proposed new wage indexes are presumed to be constant for each hospital's fiscal year.

While there are areas that would incur substantial overpayments if the proposed wage index were implemented, there are others, of course, that would benefit because of underpayments due. For example, rural hospitals in North Dakota would receive $823,049 or $31 per discharge, if the proposed wage index were applied to all discharges under the prospective payment system since October 1, 1983.

Retroactive application of the revised wage index would require reconciliation of any overpayments/underpayments that occurred from use of the BLS wage index. This could be accomplished in a variety of ways. As discussed in section III of the preamble, our preference is to have all overpayment and underpayments repaid in 26 equal payments during FY 1986. This would ensure that payments made by HCFA to repay underpayments would be roughly balanced by receipt of payments by hospitals repaying overpayments. The symmetrical flow of these payments would protect the Part A Trust Fund from undue fiscal stress. However, we recognize other methods are feasible, and have solicited comments and suggestions.

For discharges occurring after implementation of the new index (that is, after October 1, 1985), the per-discharge payment could be decreased or increased so as to accomplish full reconciliation of the previously overpaid/underpaid amounts within one year. Of course, implementation of a new wage index would also have a prospective impact on discharges occurring after implementation. Thus, hospitals in an area whose new wage index results in lower prospective payments than the one used to make payment for discharges occurring during the first two years of the prospective payment system would receive *lower* reimbursement for future discharges than would have occurred using the previous BLS index values. This would occur *at the same time* that payments are adjusted lower still to recoup previously overpaid amounts. An alternative to the above reconciliation procedure would be lump-sum recoupment/payment of previously overpaid/underpaid amounts.

For example, assuming that, under current law, the Medicare program would be required to collect the Charlottesville overpayment of $3,670,977 during the 12-month period beginning October 1, 1985 (that is, the assumed implementation date of a revised index), we estimate that the per-discharge impact due to the revised wage index would be approximately $392 per discharge (that is $3,670,977 divided by 9,359, the reported Medicare discharges for the Charlottesville MSA for calendar year 1983). (This figure takes into account *only* the differences due to the wage index and the difference in the regional/national blend between the first and second years of the system. The actual amount of the overpayment in the Charlottesville MSA would be different from this figure due to the multiplicative effect of other adjustments, such as the case-mix index. To the extent the average case-mix index value for a Charlottesville hospital is above one (1) the overpayment would be greater than stated here. The converse would be true if the average case-mix index value were less than one (1).)

G. Excluded Hospitals

As discussed in section III. of the Addendum, we are proposing to increase the target amounts for hospitals and units excluded from the prospective payment system by a target-rate percentage of 0.0 percent. In effect, this means that for cost reporting periods beginning in FY 1986, each hospital or unit, subject to the rate-of-increase

limits (§ 405.463) would have a ceiling equal to the ceiling for its previous cost reporting period. We estimate that this would result in $20 million in savings for FY 1986 Medicare Part A expenditures, compared to the maximum level of expenditures allowable under law.

The effect this proposal would have on affected hospitals and units would vary depending on each one's existing relationship of costs per discharge to its target amount for FY 1985, the increase in inpatient costs, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that continue to achieve per discharge costs lower than their target amounts, the primary impact would be a reduction of the level of additional payments made under § 405.463(d)(2) proportional to the increase in per-discharge costs. For hospitals and units whose costs are currently in excess of their target amounts, we would expect FY 1986 excess costs to increase, unless the hospitals are able to achieve significant productivity improvements.

In general, we expect this proposal to increase existing incentives for economy and efficiency experienced by excluded hospitals and units. We do not believe that even these proposed limits would achieve incentives comparable to those produced by the prospective payment system. Therefore, we will, as required under the law, continue to study means for establishing an appropriate prospective payment methodology for those hospitals and units that are currently excluded from the prospective payment system. Nonetheless, we believe this proposal would ensure that services furnished to beneficiaries by affected hospitals and units would, for the most part, be paid for at a level no higher than necessary for the efficient delivery of needed health services.

H. Indirect Medical Education Costs

The changes we are proposing to make in the regulation governing payment for the indirect costs of medical education would have only a slight effect on the level of those payments.

We considered making other changes in the methodology for calculating the indirect medical education cost adjustment factor. We are concerned that the current factor, when doubled as required by section 1886(d)(5)(B) of the Act, results in substantial overpayments to teaching hospitals, exceeding significantly their probable real indirect costs for their medical education programs. We estimate that eliminating the doubling of the education adjustment factor would save $695 million in FY 1986 and more in each later year.

The President's FY 1986 budget includes a proposal that, if enacted, would return the formula for calculating the indirect costs of medical education to the previous level. If this proposal is enacted timely enough, we plan to implement the change for discharges beginning October 1, 1985.

I. Referral Centers

As discussed in section IV. E. of the preamble to this proposed rule, we are proposing to update the case-mix criteria for hospitals to qualify as referral centers under our regulations at § 412.96(c). Currently, there are about 135 referral centers, all of them rural hospitals that are paid, under the prospective payment system, on the basis of urban standardized amounts as a result of their referral center status. We continue to identify more referral centers and expect more to meet the criteria effective for FY 1985 before October 1, 1985.

More than 95 percent of the referral centers are eligible for higher payment because they meet the criteria of § 412.96(c) rather than those of § 412.96(b). These criteria refer to case-mix index, number of discharges, medical staff, source of inpatients, and volume of referrals. Each qualifying hospital must meet both the case-mix and discharge criteria, and at least one of the other criteria. Thus, the level at which the case-mix criterion is set could often be the deciding factor in whether a specific hospital can demonstrate that it has met the criteria two out of three years at the time of its triennial review.

We expect that a substantial number of the current referral centers would not meet the proposed case-mix criterion for FY 1986. Assuming that all current referral centers have met the criteria for FY 1985, the continuation of their special payment status would then depend on whether they met the FY 1987 criteria. If a rural hospital that had been treated as a referral center met neither the FY 1986 nor the FY 1987 criteria, it would be paid on the basis of the Federal rural rate for its FY 1988 cost reporting period.

At this time, we are unable to determine how many hospitals may eventually lose their referral center status as a result of the proposed FY 1986 case-mix criterion. However, we believe the proposed criterion will afford us a reasonable measure of the degree to which hospitals seeking special treatment under this provision differ from the average rural hospital.

J. Updated Payment Rates and Resulting FY 1986 Payment Amounts

One of the primary functions of this document is to publish updated prospective payment rates in accordance with requirements in the law and regulations (section 1886(d) of the Act and § 412.8 of the regulations). Accordingly, the Addendum to this document, which is printed after the text of the propopsed changes in the regulations, sets forth tables of new Federal national and regional rates, new DRG relative weights and outlier thresholds, and new factors for calculating hospital-specific rates. In accordance with section 1886(d)(1)(D) of the Act, the Federal rate for FY 1986 will be a blend set at 50 percent of the Federal regional rate plus 50 percent of the Federal national rate. This blend will take effect for all Federal rates for all discharges occurring on or after October 1, 1985. Further, as each hospital begins its third year under prospective payment, with its cost reporting period beginning on or after October 1, 1985, the relative proportions of hospital-specific and Federal portions will change from 50 percent and 50 percent, respectively, to 25 percent hospital-specific and 75 percent Federal.

In FY 1986, for the first time, the updated Federal rates (that is, the adjusted average standardized amounts) will not be adjusted to achieve "budget neutrality". Under section 1886(e)(1) of the Act, for FYs 1984 and 1985, the rates were adjusted so that estimated aggregate payments for inpatient hospital services would be the same as they would have been had the Medicare payment system in effect at the time of the prospective payment legislation continued in effect. This requirement for budget neutrality does not apply to rates for FY 1986 and thereafter.

In determining the level of the payments and the adjustment factors to be applied to them, such as DRG weights and wage indexes, two issues of impact are paramount: the size of the prospective payment pie, which may be expressed in terms of either the average payment per case or the estimated total expenditures, and how that pie will be cut, that is, how payments will be distributed among DRGs or hospitals. Under budget neutrality, the size of the pie, expressed as average payment per case, was, to the extent it could be predicted and controlled, prescribed by law. As a result, in assessing the impacts of the proposed rates, adjustments, and special treatment provisions of previous proposed rules, we focused primarily on the distributive

effects of our proposals. This year, however, our primary concern is the proper level of payments, and the major alternatives we considered in setting the proposed payment rates were assessed in light of this concern.

By the end of 1984, we realized that, despite our best efforts to achieve budget neutrality, the FY 1985 prospective payment rates were too high. As a result, in preparing the President's budget, we assumed that the FY 1986 payment rates would be maintained at the FY 1985 level.* At that time, we did not realize that later data and experience would show that we would have substantial legal and technical justification to actually reduce the rates.

In the end, we had to choose among a fairly wide range of potential percentage changes. The hypothetical upper end was constrained by the legal requirement, under section 1886(b)(3)(B) of the Act, that rates for FY 1986 be increased by no more than the forecasted market basket increase plus one quarter of one percentage point. Thus, the highest conceivable increase for the FY 1986 prospective payment rates was +5.1 percent.

On the other hand, as explained in section II.A.3. of the Addendum to the proposed rule, we had a number of reasons for finding the FY 1985 prospective payment rates too high. Considering the combined effect of case-mix increases, market basket forecasting error, inaccurate cost per case assumptions, and the consequences of using unaudited cost data as a basis for rate-setting, the FY 1985 rates are probably overstated by at least 8.5 percent.

ProPAC's first recommendation was a major alternative that had to be considered. It recommended increasing the FY 1985 rates by the forecasted market basket increase, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. It described the negative one percentage point, or "discretionary adjustment factor," as a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change. It also recommended that we make corrections for market basket forecasting error. In essence, by identifying a number of factors to be considered in determining an update percentage, including both negative and positive values, ProPAC performed an analysis very similar to ours.

In considering the same kinds of things as ProPAC did in developing its proposed discretionary adjustment factor, we developed categories and allowances with some analytic differences, but nonetheless arrived at a proposed policy target adjustment factor of −1.5 percentage points, in lieu of their −1.0 percentage point factor.

In theory, it would be possible to choose to combine the various corrections, adjustments, and inflation factors in a variety of combinations, yielding nearly any percentage change between +5.1 percent and −8.5 percent. However, we believe the preponderance of the evidence, including recent industry reports on hospital profitability margins, shows that current payments are already set at levels that are at least adequate. Accordingly, in section II.A.3. of the Addendum, we set forth the factors we believe are best, and show that these factors, in combination, would result in a −2.85 percent reduction of the FY 1986 prospective payment rates. For the reasons given in the Addendum, we are proposing to maintain FY 1986 Federal rates at the same level as FY 1985.

The proposed Federal rates would change only as a result of restandardization of the base data to reflect the survey-based gross wage index. Further, as explained in section II. D. of the Addendum, we are not proposing to increase the hospital-specific rates for cost reporting periods beginning in FY 1986. As a result, the amounts a hospital would expect to receive from prospective payments for FY 1986 discharges would change as a result of the effects of the proposed new wage index, the proposed new DRG weights, and the statutorily required changes in blending of Federal and hospital-specific portions.

We have projected the separate and combined expected effects of these changes on payments of census regions, urban/rural status, and bed-size. This estimate of payment changes is based on 4962 hospitals with Medicare discharges in the PATBILL file and for which hospital-specific information (hospital-specific rates, resident/bed ratios, rural referral center status, and so forth) was provided by the fiscal intermediaries. We did not include any hospitals from waiver States (Maryland, Massachusetts, New Jersey, New York) or hospitals excluded from the prospective payment system. This projection also reflects the impact of the statutorily required retroactive application of the survey-based wage index. (As explained in section III of the preamble to this proposed rule, we are deeply concerned about the effects of such retroactive application, which are discussed in section F.4. of this appendix.) The following table summarizes our findings.

U.S. Budget in Brief, Fiscal Year 1986. Executive Office of the President, Office of Management and Budget, Washington, D.C. February 4, 1985. Page 45.

TABLE--ESTIMATED IMPACT OF PROPOSED CHARGE WEIGHTS, THE PROPOSED SURVEY-BASED WAGE INDEX, AND THE FY 1986 PAYMENT BLEND ON FY 1986 OPERATING PAYMENTS

	Percent Change in Total Payments for FY 1986 Due to:					
	Proposed DRG Weights	Proposed Wage Index 1/	FY 1986 HSP-FED Blend 2/	Combined Prospective Effects	Retroactive Wage Index Application	Total Combined Effects
All Hospitals	0.11%	-0.03%	0.01%	0.07%	-0.03%	0.04%
By Census Regions						
New England	0.49	0.38	1.38	2.83	0.49	3.32
Mid Atlantic	0.53	-0.48	0.86	0.42	-0.56	-0.14
South Atlantic	-0.12	-0.44	0.91	-0.32	-0.54	-0.86
East North Central	-0.03	-0.14	-0.26	-0.44	-0.16	-0.60
East South Central	-0.33	0.12	1.86	0.88	0.31	1.19
West North Central	0.26	-0.23	-1.02	0.14	0.24	0.38
West South Central	-0.19	-0.13	-0.31	-1.04	-0.11	-1.15
Mountain	0.17	-0.07	-0.41	-0.43	-0.07	-0.50
Pacific	0.49	0.48	-0.95	0.90	0.54	1.44
Urban Hospitals	0.26	0.00	0.08	0.37	0.01	0.38
0-99 Beds	-0.33	0.17	2.43	2.47	0.23	2.70
100-404 Beds	0.15	0.06	-0.29	0.02	0.07	0.09
405-684 Beds	0.38	0.04	0.36	0.81	0.05	0.86
685 + Beds	0.66	-0.39	0.00	-0.04	-0.51	-0.55
Rural Hospitals	-0.60	-0.20	-0.32	-1.34	-0.23	-1.57
0-99 Beds	-0.11	-0.03	0.02	-1.18	-0.03	-1.21
100-169 Beds	-0.44	-0.15	-1.33	-2.14	-0.16	-2.30
170 + Beds	-0.05	-0.45	0.08	-0.88	-0.54	-1.42

1/ Prospective application only.

2/ The effect of the change in blend combines two effects. The new Federal rate blend (50 percent national rate and 50 percent regional rate) is effective for all discharges occurring on or after October 1, 1985, and therefore affects all FY 1986 payments. The new blend of the hospital-specific portion (HSP) and the Federal rate (FEP) will take effect as each hospital begins its FY 1986 cost reporting period.

Note that the magnitude of the changes is generally small and that changes to DRG weights and wage indexes would often offset each other. Nevertheless, it is clear that some groups would be advantaged and others disadvantaged. Generally, large urban hospitals in New England or on the Pacific coast would be benefited most by these changes. Small rural hospitals, especially those in the South, would be disadvantaged most.

The change in blending gives more effect to the Federal national rates and less to hospital-specific rates. Thus, a hospital's payments would be affected by the relation between its Federal national rate and its hospital-specific rate. If the applicable Federal rate is higher, a hospital would benefit; if lower, it would be disadvantaged. Even if the payment rates are maintained at the same level for FY 1986, we expect the average payment per case to increase, because many FY 1985 discharges were for hospitals with cost reporting periods beginning in FY 1984, and thus were paid for using a lower hospital-specific rate.

K. Conforming and Minor Proposed Regulation Changes

We are proposing several other regulations changes that would have relatively minor impacts.

- The revisions to the medical review regulations to conform to the recently published PRO regulations would not have a significant effect on provider revenues.
- The elimination of the prepayment review requirement for all cost outlier payment claims would be administratively simpler for us and for the hospitals, and would give the hospitals quicker payment, but would not effect aggregate revenues significantly.
- The clarification of when hospitals may send denial notices to beneficiaries does not represent a change of policy. It may benefit beneficiaries who might otherwise be sent an inappropriate notice, or hospitals who may not have sent an appropriate notice.

L. Quality of and Access to Care

As we have stated on other occasions, the prospective payment system endeavors to change hospital behavior through financial incentives. While our goals are essentially economic, we are also acutely concerned that for some hospitals economic incentives might, in some cases, overshadow concerns for the quality of care delivered and access to appropriate services and levels of services.

There are a number of public and private programs involved in evaluating the quality of hospital care. Utilization and Quality Control Peer Review Organizations (PROs) have, under contract with the Health Care Financing Administration, responsibility for evaluating whether the quality of services meets professionally recognized standards of health care and may intervene to correct various patient care problems. In addition, we survey

hospitals for compliance with the health and safety requirements of the conditions of participation for hospitals participating in the Medicare program (42 CFR Subpart J). (Accredited hospitals are deemed to meet almost all of those requirements.) There are additional Federal programs involved in review of specific areas such as radiation safety and infectious diseases. Voluntary second-opinion programs and the efforts of PROs appear to have contributed to a decline in unnecessary surgery.

On the State level, health departments enforce a variety of facility and professional licensure requirements aimed at reducing health care risks and ensuring that only appropriately trained personnel provide services.

Numerous private programs are involved in quality issues. The Joint Commission on Accreditation of Hospitals and the American Osteopathic Association accredit facilities meeting their high standards of care. Almost all of the health professions themselves have and review professional standards of practice. Finally, health care literature suggests that a large number of special research projects are underway, publicly and privately financed, and aimed at measuring various aspects of the quality of hospital care.

We do not at the present time have objective data demonstrating that the quality of or access to care has declined. We have noted a significant decrease in average length-of-stay, a slight decrease in admissions, and an increase in average case mix. The hospital delivery system seems to be adjusting to prospective payment generally as we anticipated, at least as measured by utilization and consumption of resources.

To date, there is no systematic evidence linking the behavioral changes that have taken place to any of the potential problems in quality that some expected to result from the changed incentives (for example, shift of acutely ill patients to lower-level providers unable to furnish necessary care, or inappropriate reductions of diagnostic testing or support services). Moderate shifting of patients to less expensive environments has occurred, but the extent of such shifting is not yet conclusive. However, we have seen no data showing an increased number of deaths or complications as a result. Simply stated, a shorter stay in the hospital has not equated to lower quality care. There may be reason to believe that, in many instances, shorter stays expose patients to fewer risks.

Ensuring proper access to care is of great concern to us. It is possible that the prospective payment system may in time create incentives for hospitals to establish more outreach programs, expand outpatient services, and form delivery systems to reach populations that were once ignored. To some extent, this seems to be occurring. The hospital industry's literature encourages hospitals to develop outreach programs and frequently suggests that these will strengthen a hospital's financial picture.

The issues of quality and access are particularly important to certain subgroups of enrollees. Disabled enrollees (especially aged and disabled), ESRD enrollees, and those dually entitled to Medicare and Medicaid coverage ("crossovers") have certain health and socio-economic characteristecs that make them particularly vulnerable to changes in health care programs. For example, ESRD enrollees are hospitalized at a rate three times as often as other enrollees. Also, we know that the dually eligible are characterized by higher hospital utilization and cost relative to other aged enrollees. In 1983, this group represented 2.6 million beneficiaries, or about 11 percent of an estimated 23.5 million noninstitutionalized aged persons covered by Medicare. Thus, a significant portion of the Medicare beneficiary population is particularly sensitive to changes in health care programs and we must ensure that their health care needs are met.

We believe that growth in health care expenditures can be restrained without harming patients. In the short-term, we have proper safeguards in place to protect patients. On a long-term basis, there are mechanisms (both public and private) that will enable us to recognize potential problem areas and respond through appropriate changes in policy. The changes proposed in this document essentially represent further refinement of the basic prospective payment system. We do not believe any of these changes will create new problems in quality or alter the incentives that might add risks to patient care.

M. Alternatives Considered

Throughout the discussions in the preamble and this analysis, we have explained why we are proposing to do one thing rather than another. As noted in section I.B. of the preamble, as part of our analysis we have been considering various approaches to updating DRG weights and wage indexes while trying to minimize fluctuations of payments. Many interrelated decisions are involved in this process, and the number of possible combinations of different wage indexes, different DRG weights, and different update factors, is large. Further, there are additional alternatives that had to be considered within each of the key technical methodologies for deriving the proposed wage index, DRG weights, and Federal rates. Altogether, there are a potentially enormous number of permutations.

Nonetheless, we have been particularly concerned with the impact of certain main options, and we have reviewed them in the light of how they would interact with each other. These include, for example, using unstandardized DRG weights, rather than weights standardized for geographic wage differences. This would have had the effect of "decompressing" average case mix relative to standardized weights, and would have disadvantaged rural hospitals. We also considered all the ProPAC recommendations. Each of the factors taken into consideration in the development of the proposed FY 1986 standardized amounts was challenged and debated both individually and in combination with other factors.

N. Summary and Conclusions

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in impact analyses, and show that the potential benefits outweigh the potential cost to society. In addition, we must discuss alternative methods of achieving the objectives we propose in our regulations. Throughout the preamble, addendum, and other sections of this impact analysis, such alternatives are discussed. In this summary, we assess the overall costs of the proposals we are making, the overall benefits, and the resulting net benefits.

For the most part, the costs and disadvantages that could result from these proposals would take the form of reductions in anticipated revenue to affected hospitals. Most of the proposals would have their major effect through their influence on the level of FY 1986 prospective payments. The only significant exception would be the retroactive application of the proposed wage index.

As we have said before, the primary benefit expected to result from this proposed rule is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economy and efficiency of operation of participating hospitals, and as improvements in trends of the health

care marketplace as a whole. As noted earlier, the objective of these proposals is to refine the prospective payment system. Whereas the system as a whole has had a large and dramatic impact, the proposed refinements are of a marginal nature, rather than large-scale adjustments.

We believe that, from this perspective, the overall benefits to society, including the substantial benefit of improved budgetary control, more than offset any resulting liabilities. For the above reasons, we believe that this analysis meets the objectives of E.O. 12291 and the Regulatory Flexibility Act as noted in the Introduction to the Regulatory Impact Analysis.

Appendix B—A Framework for Analyzing Rate Increase Factors*

A. Overview

Section 1886(e)(4) of the Act requires the Secretary to update individual DRG rates beginning in FY 1986, taking into account the recommendations of the Prospective Payment Assessment Commission (ProPAC). Section 1886(e)(4) of the Act reads as follows:

> (4) Taking into consideration the recommendations of the Commission (that is, the Prospective Payment Assessment Commission, or ProPAC) the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for the purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary, "shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Four of the above factors (market basket productivity, new technological and scientific advances, and long-term cost-effectiveness) are related to inputs and outputs in the production of hospital inpatient care. For purposes of this conceptual framework, we have defined another set of variables as *outcomes*. Quality and intensity of all factors (including the quality and intensity (skill level) of professional nursing services) is reflected in the four input/output factors. Outcomes are a result of the four input/output factors. Outcome factors include quality of health care, access to care, financial viability of the hospital industry, and Medicare Part A Trust Fund viability. The DRG rate percent increase factor should be set so that it provides incentives for favorable outcomes under the prospective payment system. HCFA is aware of the importance of these outcome variables. A management information system has been designed to monitor outcomes under the prospective payment system. Data generated by this monitoring system will be used to assist in improving the overall design of the prospective payment system, including the setting of the rate increase factors.

B. Analytical Framework

We have developed factors for productivity, new technology, scientific advances, and the elimination of ineffective practice patterns, which are necessary to insure the cost-effective delivery of care. Each of these factors interact with the others, to some extent, and have an impact on the quality of care. We have determined an aggregate percent increase value for each of these factors, making conservative assumptions and considering the potential effect on the quality of inputs and the attendant impact on quality of care as an outcome. We have combined these values into a proposed composite policy target adjustment factor.

This section attempts to translate the intent of the prospective payment system rate increase regulations into an algebraic accounting identity for the four input/output factors. As mentioned above, quality of hospital care is considered to be an outcome variable that results from the four input/output factors.

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* Prepared by Ross H. Arnett, III, Carolyn Cocotas, Mark Freeland, and George Kowalczyk, of HCFA's Divison of National Cost Estimates, Office of the Actuary, May 2, 1985

Accounting Identity

	A		B		C		D
o	$\frac{\text{Cost}}{\text{Number of discharges}}$	≡	$\left(\frac{\text{Cost}}{\text{Real input}}\right)$		$\left(\frac{\text{Real input}}{\text{Real output}}\right)$		$\left(\frac{\text{Real output}}{\text{Number of discharges}}\right)$

In Words

o	Average cost per discharge	≡	(Average cost per unit of input)		(Average relationship between inputs and outputs, that is, the inverse of productivity)		(Average real output per discharge)

Term A is the average cost per discharge for a typical DRG.

Term B (cost/real input) is nominal cost divided by real input (inflation-adjusted input). The hospital market basket is used to adjust for input price inflation specific to the hospital industry. Term B is an expression of the hospital market basket index, that is,

$$\frac{\text{Cost}}{\text{real input}} = \text{market basket index}$$

or with algebraic manipulation

$$\frac{\text{cost}}{\text{market basket index}} = \text{real input.}$$

Alternatively, cost is the product of quantity of inputs times their respective factor prices. Thus, when cost is divided by the quantity of inputs, the result is price (the inputs cancel), or the HCFA market basket.

$$\text{Term C} \left(\frac{\text{real input}}{\text{real output}}\right)$$

expresses the average relationship between the quantity of input and the quantity of output and reflects productivity. The inverse of the standard productivity relationship (output per unit of input) is used because productivity is an offset factor; that is, positive productivity gains should be associated with reductions in the rate of increase in the DRG rate. The term *productivity* is used interchangeably with the term *efficiency*.

$$\text{Term D} \left(\frac{\text{real output}}{\text{number of discharges}}\right)$$

is inflation-adjusted output per discharge or output intensity per discharge.

In this framework, the intent of the regulation is interpreted as a need to classify hospital outputs per discharge into two categories: cost-effective outputs and cost-ineffective outputs. Cost-effective outputs per discharge are effective in two senses: (1) The outputs are appropriate to hospital inpatient settings, rather than some lower cost setting such as ambulatory care (for example, preadmission testing), skilled nursing home care, or home health care; and (2) There is a value for the money expended (in terms of enhanced health status compared to cost). Outputs per discharge associated with cost-effective new technologies and scientific advances are expected to add to the current base of cost-effective outputs per discharge. Thus, cost-effective outputs per discharge are an add-on factor.

Cost-ineffective outputs per discharge are ineffective in two senses: (1) the outputs are more appropriate to cost settings less expensive than inpatient hospital, and/or (2) there is not value for money expended (in terms of enhanced health status compared to cost.) Cost-ineffective outputs per discharge are an offset factor, since hospitals are reducing the use of ineffective outputs incorporated in base period practice patterns.

Thus, real output per discharge (Term D) in the accounting identity needs to be partitioned into two categories: effective and ineffective outputs per discharge.

$$\underbrace{\frac{\text{Cost}}{\text{Number of discharges}}}_{A} = \underbrace{\left(\frac{\text{Cost}}{\text{Real input}}\right)}_{B}\underbrace{\left(\frac{\text{Real input}}{\text{Real output}}\right)}_{C}\underbrace{\left[a\left(\frac{\text{Real output}}{\text{Number of discharges}}\right)\right.}_{D1} + \underbrace{(1-a)\left(\frac{\text{Real output}}{\text{Number of discharges}}\right)\Bigg]}_{D2}$$

The proportion of real output per discharge in the base DRG rate that is cost-effective (value for money expended) is reflected by the term "a." Likewise, the proportion of real output in the base DRG rate that is cost-ineffective is reflected by the term "(1-a)". Together, a + (1-a) totals 100 percent of real output per discharge.

It is important to understand the difference between the concepts of effectiveness and productivity (efficiency) and how they relate to prospective payment system incentives and the DRG percent increase factor.

Productivity measures output per unit of input and gets at the question, "Could the same output have been accomplished with fewer resources or with a different mix of resources?" [1] Effectiveness compares a hospital's objectives, such as improving health status, with its accomplishments and gets at the question, "Are we doing the right things?" [2] The elimination of selected diagnostic tests because their use does not improve health status and reductions in length of stay with no decrease in health status are two examples of changes in practice patterns to improve effectiveness.

There are four combinations of productivity and effectiveness:

TYPOLOGY FOR EFFICIENCY AND EFFECTIVENESS

	Cost effective outputs	Cost ineffective outputs
Efficiently produced outputs per discharge.	A—Cost-effective and efficient.	B—Cost-ineffective but efficient.
Inefficiently produced outputs per discharge.	C—Cost-effective but inefficient.	D—Cost-ineffective and inefficient.

Some outputs per discharge can be cost-ineffective (certain outputs per discharge are more appropriately provided in lower costs settings and/or there is not value for money expended) and produced inefficiently (excessive inputs per unit of output), as reflected in quadrant D of the typology. Quadrant C combines cost-effective outputs with inefficiency in production (that is, the right care is delivered inefficiently). In quadrant B, there is ineffectiveness, but the production is efficient (that is, less effective care is delivered, but efficiently). In quadrant A, outputs are cost-effective (appropriate to hospital inpatient setting and value for money expended), and the outputs are produced efficiently (low ratio of inputs to outputs).

A major objective of the prospective payment system is to provide incentives for hospitals to move a higher proportion of outputs per discharge from quadrants B, C, and D to quadrant A. Positive incentives are given by the add-on for effective new technology and science. Normative standards or policy goals are used to set the productivity and the cost-ineffective practice pattern offsets. When these shifts to efficient and effective care are made judiciously, it should result in enhanced quality of care while concurrently reducing the rate of increase in hospital costs.[3] Increasing productivity and eliminating cost-ineffective practice patterns allows hospitals to shift the mix of services provided to enhance quality of care and/or to increase profit margins. The latter improves hospital financial viability, improving access to and lowering the cost of capital.[4]

The framework for analyzing the DRG rate percent increase factor can be summarized as: Percent change in DRG rate = f(+MB, −P, +CEO, −CIO).

+MB = Market basket, a weighted average of the prices of inputs used to produce a *constant* quantity and quality of hospital care (holding all other factors constant). It is an add-on factor.

−P = Productivity (efficiency), measures output per unit of input. The question, "Could the same output have been accomplished with fewer resources or with a different mix of resources?" is answered by productivity measures. It is an offset factor.

+CEO = Cost effective outputs per discharge associated with new technologies and scientific advances. It is an add-on factor and is associated with enhanced quality of care.

−CIO = Cost ineffective outputs per discharge. This factor is an offset, since hospitals are expected to reduce the use of ineffective outputs.

Outcome variables such as quality of care, access to care, financial viability of hospital industry, and Medicare Part A Trust Fund viability are being monitored under the prospective payment management information system. One example of such monitoring is review by PROs, which are setting policy targets for reducing risk and improving quality of hospital care. In addition, distributional impacts by hospital type and geographical location are being monitored.

C. Cost-increasing Dynamics Under Retrospective Cost-based Medicare Reimbursement, FY 1967–83

Under cost-based reimbursement, Medicare costs per discharge rose substantially in excess of economy-wide inflation. This result could be expected from the incentives inherent in cost-based reimbursement.

The market basket rose faster than economy-wide prices and wages. There was not a strong incentive to be a prudent buyer of labor or other inputs. The higher the wages or prices paid by the hospital, the more Medicare paid the individual hospital. Also, the more expensive the skill-mix of employees, the more Medicare paid the hospital.

There were incentives for negative productivity or efficiency, since the more efficient the hospital, the less HCFA would reimburse.

Cost-based reimbursement did not have incentives to specifically encourage cost-effective outputs per discharge, nor did it have incentives to discharge cost-ineffective outputs per discharge. The incentive under cost-based reimbursement was to increase

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[1] James Suver and Bruce R. Neumann. *Management for Health Care Organizations*. Oak Brook, Illinois: Hospital Financial Management Association. 1981. Also see, Marvin E. Mundel. *Improving Productivity and Effectiveness*. Englewood Cliffs, New Jersey: Prentice Hall, 1983.

[2] Ibid.

[3] Everett E. Adam, Jr., James C. Hershauer, and William A. Ruch, *Productivity and Quality: Measurement as a Basis for Improvement*, Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1981.

Avedis Donabedian, *The Definition of Quality and Approaches to its Assessment*, Ann Arbor, Michigan: Health Administration Press, 1980.

Steven P. Gray and Wilbert Steffy, *Hospital Cost Containment Through Productivity Management*, New York: Van Nostrand Reinhold Company, 1983.

John W. Williamson, *Assessing and Improving Health Care Outcomes: The Health Accounting Approach to Quality Assurance*, Cambridge, Massachusetts: Ballinger Publishing Company, 1978.

James W. Williamson, James I. Hudson, and Madeline M. Nevins, *Principles of Quality Assurance and Cost Containment in Health Care*, San Francisco: Jossey-Bass Publishers, 1982.

[4] Donald R. Cohodes and Brian Kinkead, *Hospital Capital Formation in the 1980's: Is There a Crisis?*, Baltimore: Johns Hopkins University Press, 1984.

all outputs per discharge, regardless of effectiveness—as long as no harm was done to the patient. Consequently, due to generous cost-based inpatient reimbursement, ineffective outputs are believed to have proliferated. Service outputs that could have been provided in other, more cost-effective settings were often provided in an inpatient setting. Outputs whose costs exceeded benefits in enhanced health status were also encouraged, since Medicare cost-based reimbursement formulas provided "open-ended spending. In this regard, the Medicare reimbursement system was similar to private health insurers.

D. Cost-decreasing Dynamics Under the Prospective Payment System

The prospective payment system tends to reverse the incentives of retrospective, cost-based reimbursement, but with a lag due to uncertainties and costs of adjustment. During the 3-year cumulative period of FY 1984–86, there should be a tendency to reduce the rate of increase of costs per discharge.

Under the prospective payment system, there is an incentive for hospitals to be prudent buyers of labor and nonlabor inputs. There is an incentive to pay labor at the "going" wage and to have an efficient skill-mix. Revenues not spent for labor costs can be used to purchase other goods and services which generate profits, increase competitive position, enhance quality of care, etc.

Hospitals are rewarded for productivity increases, since hospitals receive a fixed price per DRG. If a hospital is efficient and produces care at costs below the DRG rate, it retains resulting profits. Likewise, inefficiency is penalized, since costs above the DRG rate are not reimbursed. Productivity improvements during the FY 1984–86 period could be substantial, given that there were 17 years of negative incentives for productivity improvements during the FY 1967–83 period.

Under the prospective payment system, with fixed prices by DRG, there is an incentive to search out cost-effective outputs, that is, outputs whose value exceeds money expended, and the service output is appropriate for the hospital inpatient setting. Hospitals are likely to be more careful in adopting new cost-increasing technologies under the prospective payment system. Peer review and peer pressure, competition, threats of potential malpractice suits, and professional ethics will likely provide incentives to adopt new cost-increasing technologies when such technologies have a proven value in terms of increased health status compared to money expended. Thus, even with decreases in costs per discharge, hospitals have incentives to add certain new cost-increasing, health-enhancing technologies. This, of course, occurs by increasing productivity and by reducing cost-ineffective outputs. By reallocating inputs and outputs toward the more cost-effective practice patterns, cost per discharge can decrease in real terms, while quality of care can be potentially improved. When cost-ineffective outputs are eliminated, the inputs associated with these outputs must also be eliminated. Costs will not decline proportionately if the inputs are not eliminated, and negative productivity will result.

D. AN ILLUSTRATION OF THE USE OF THE FRAMEWORK FOR THE FY 1986 DRG RATE PERCENT CHANGE [1]

Annual DRG increase factors	Percent changes	Brief rationale
1. Hospital Market Basket	+4.85	This is the percent increase forecast for FY 1986. It reflects a complete passthrough for hospital input price inflation. Because hospital industry wage rates are used in the market basket, shifts in occupational and skill mix are automatically included in the market basket.
2. Policy Target Adjustment Factors.	-1.5	
a. Productivity (Efficiency) Offset	-1.0	Valid productivity indexes are not currently available for the aggregate hospital industry. Various economy-wide productivity indexes developed by the Bureau of Labor Statistics indicate productivity increases of approximately 3 percent annually for the last 2 historical years (1983 and 1984). However, long-term average rates of increase show substantial variation depending upon the time period covered, the industries included, and the productivity measure used (multifactor productivity or labor productivity). Given the years of retrospective, cost-based reimbursement with attendant, negative incentives for productivity, a 1.0 percent productivity offset is conservative. It allows for most of productivity gains to accrue to the hospital industry.
b. Cost-effective Technologies Add-on.	+1.5	This is a target rate of increase that allows significant growth over time in cost-increasing, health-enhancing new technologies and scientific advances (as they affect operating expenses). This target rate of increase recognizes that long run historical intensity increases are not compatible with Medicare HI Trust Fund viability. By increasing productivity and eliminating ineffective practice patterns at rates higher than shown in this table, hospitals free up additional revenues. These revenues can be used to purchase additional technologies at a rate in excess of the 1.5 percent target rate of increase and/or to increase profit margins. Capital costs associated with new technologies continue to be reimbursed on a retrospective cost basis.
c. Ineffective Practice Patterns Offset.	-2.0	Ineffective practice patterns includes services which are more appropriately provided in lower cost settings and/or services that do not give value for money expended. Average length of stay for Medicare patients decreased 11.0 percent for hospitals in States with prospective payment in FY 1984. Physicians reduced outputs associated with this decline in average length presumably because they deemed that such outputs would not give value for the money expended and/or the outputs could more effectively be provided in a lower cost setting. If marginal cost is assumed to be 40 percent of average cost, then costs would be reduced 4.4 percent.
3. Composite Increase	+3.35	

[1] The annual increase factors are added and subtracted to get the composite percent increase. The algebraic framework discussed earlier is multiplicative, rather than additive. The difference (due to interaction terms) is small. Since the additive framework is easier to understand for percent changes, it is suggested for use in this framework. The algebraic framework is presented in terms of costs per DRG, while this table shows percent changes for the various factors relative to the 1985 fiscal year DRG rate levels. The basic concepts inherent in the algebraic framework apply to this table of percent change factors.

E. Policy Target Adjustment Factors

Policy target adjustment factors include the effects of productivity, technology, and effectiveness on the DRG rate per discharge. They are termed policy target adjustment factors for two reasons: (1) they are extremely difficult, or perhaps impossible, to quantify individually with existing data sources, and (2) they are likely to be policy-determined variables reflecting targets, rather than historical experience.

Due to the extreme difficulty, or perhaps impossibility, of quantifying aggregate inputs and outputs in a conceptually meaningful way, we believe it is not currently possible to make precise empirical estimates for the individual factors of productivity, technology, and ineffective practice patterns. Existing studies sometimes report to have a measure or indicator for one of these three concepts, but inadvertently have some unknown mixture of all three. Interaction relationships inherent among the three factors suggest that individually setting target values for the three components is suggestive, at best, given current data limitations. Each individual hospital can best determine the mix of productivity increases, cost-effective technology add-ons, and ineffective practice pattern offsets to reach the desired target for the sum of the three factors. With this caveat in mind, we will now discuss the individual factors.

1. Productivity (Efficiency) Offset

Productivity improvements result in increases in output prices which are less than increases in the price of inputs (assuming constant profit margins and no change in the nature of outputs). In competitive industries, consumers benefit from increases in productivity by paying lower prices. Likewise, under the prospective payment system, increases in productivity should be reflected by lower DRG prices than would otherwise be the case. Sharing the cost savings from increased productivity provides desirable incentives for the prospective payment system.

While there does not appear to be a meaningful hospital industry-wide composite measure of hospital productivity, there have been numerous studies indicating that substantial gains can be made in hospital productivity.[5]

Process innovative technologies, which are associated with increased productivity and decreased operating cost, are included with the productivity offset factor—not with the technology add-on factor. Capital costs associated with the purchase of cost-decreasing technologies continue to be reimbursed on a retrospective cost basis. Decreased operating costs associated with the use of such cost-decreasing technologies can be used to finance quality-enhancing services.

2. Cost-Effective Technologies Add-on

Certain product innovative technologies and scientific advances (with accompanying labor and nonlabor inputs) are believed to increase the operating cost of treating illness, but result in a favorable ratio of benefits (improved health status) to operating costs. Such cost-effectiveness can be subjective and difficult (or, perhaps, impossible) to quantify in the aggregate.[6] It is the intent of the Federal regulations to include an add-on factor for such technologies and scientific advances. This cost-increasing, health-enhancing technology factor recognizes that, within bounds, HCFA should continue to provide positive incentives for technical and scientific excellence.

The impact of new technologies and scientific advances on operating cost and health status is very complex to isolate. Typically, a specific new technology increases operating costs in some uses and decreases operating costs in others. Concurrently, in some situations, health status is substantially improved, while in others it may have no affect or worsen health status. Separating out the relative importance of each of these effects for individual technologies and in the aggregate has proven to be illusive from a statistical point of view.[7] As mentioned previously, capital costs associated with the cost-effective technologies add-on currently covered by retrospective cost-based reimbursement.

3. Reduction of Ineffective Practice Patterns Offset

Some outputs per discharge are cost-ineffective in the sense that these outputs are more appropriately provided in lower cost settings and/or there is not value for monies expended.

Effectiveness compares a hospital's objective of improving health status with cost effective use of resources and gets at the question, "Are we doing the right things?" The elimination of selected diagnostic tests because their use does not improve health status and reductions in length of stay with no decrease in health status, are two examples of changes in practice patterns to improve cost effectiveness. Based on articles in the Summer 1984 *Health Affairs* journal, the experience under the prospective payment system, and other studies, retrospective, cost-based reimbursement encouraged the growth of ineffective practice patterns. Substantial savings can be achieved by reducing them.

For example, average length of stay for hospitals in States subject to the prospective payment system (that is, excluding hospitals in Maryland, Massachusetts, New Jersey, and New York which are paid under specially approved State systems) declined 11 percent in FY 1984.[8] Hospitals experience a reduction in costs associated with reductions in length of stay. For purposes of determining additional payments for day outlier cases, we have projected the marginal cost of an additional day of stay to be equal to 60 percent of the average per diem payment for the applicable DRG. (See § 412.82(c).) Assuming that this represents the ratio of marginal cost to average cost, the 11 percent reduction in length of stay would result in about a 6.6 percent reduction in cost per case. Of course, it can be argued that the marginal cost of an additional day of care may be significantly less than 60 percent of the average per diem cost. However, even if we assumed marginal costs to be only 40 percent of the average per diem cost, the FY 1984 reduction in length of stay would result in about a 4.4 percent reduction in cost per case. In addition to these considerations, we wish to point out that these probable reductions in costs do not reflect other changes in utilization of ancillary services, which have probably generated further reductions in the average cost per case under prospective payment.

4. Conclusion

We have set reasonable target rates of decrease or increase for each of the three factors (productivity, cost-effective outputs associated with new technologies and scientific advances, and cost-ineffective practice patterns). These target rates of change reflect a need to obtain a composite increase for the sum of three components that is reasonable and will provide incentives for desirable outcomes relating to quality of care, access to care, financial viability of hospital industry, and financial viability of Medicare Part A Trust Fund. The target rates of increase are intended to reflect judicious policy goals, rather than historical patterns.

The prospective payment system was intended to produce significant changes in the hospital industry. These forces of change need not conflict with each other. For example, productivity and cost-effectiveness need not compete with quality. Usually they are best pursued together. For example, practice patterns that minimize the potential for iatrogenic and nosocomial diseases

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[5] See, for example, Stuart Altman and Joseph Eichenholz, "Control of Hospital Costs Under the Economic Stabilization Program," **Federal Register**, January 23, 1974, p. 2696; Applied Management Sciences, Inc., *Hospital Productivity—A Synopsis of the Literature*, Silver Spring, Maryland: Applied Management Sciences, DHHS Publication No. (HRA) 80-14026, August 1980; Applied Management Sciences, Inc., *Hospital Productivity—An Anotated Bibliography*, Silver Spring, Maryland: Applied Management Sciences, DHHS Publication No. (HRA) 80-14027, August 1980; Jerry Cromwell, "Productivity Trends in Short-Term General Non-teaching Hospitals," *Inquiry*, Vol. II, No. 3, September 1974, pp. 161-187; Paul L. Grimaldi and Julie A. Micheletti, *Prospective Payments: The Definitive Guide to Reimbursement*, Chicago, Illinois: Pluribus Press, Inc., 1985; David Sherman, "Hospital Efficiency Measurement and Evaluation: Empirical Test of a New Technique," *Medical Care*, October 1984, pp. 922-938.

[6] Kenneth E. Warner and Bryan R. Luce, *Cost-Benefit and Cost Effectiveness Analysis in Health Care: Principles, Practice, and Potential*, Ann Arbor, Michigan: Health Administration Press, 1982.

[7] Stuart Altman and Robert Blendon, Editors, *Medical Technology: The Culprit Behind Health Care Costs?* DHEW Publication No. (PHS) 79-3216, 1979; Office of Technology Assessment, *Diagnosis Related Groups (DRGs) and the Medicare Program: Implications for Medical Technology*, July 1983; Office of Technology Assessment, *Medical Technology and Costs of the Medicare Program*, July 1984.

[8] Bureau of Data Management and Strategy, "Short-Stay Hospital Admission Rates and Length of Stay Decreased Sharply in Fiscal Year 1984", *Health Care Spending Bulletin*, Health Care Financing Administration, No. 85-02, April 1985.

result in reduction of ineffective practice patterns, eliminate unnecessary costs, and directly contribute to improved health status. Also, under the prospective payment system, a hospital that improves productivity and reduces its costs per case has an opportunity for an improved margin of revenue over cost. This margin may be shared many ways, depending on the choice of the hospital, including expending a portion of it in ways that would improve quality.

As the concepts in our framework are modified to reflect improved understanding of the factors contributing to the DRG percent increase, and as relevant data become available, the DRG percent increase methodology will evolve to incorporate such changes.

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APPENDIX C

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

APRIL 1, 1985

—ProPAC—

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* The Report Appendix is not reprinted in the Federal Register

Executive Summary

In 1983 Congress enacted the most far reaching changes in the Medicare program since its establishment in 1965. Left behind was a cost reimbursement system that by general agreement had produced unacceptable hospital cost inflation. Congress mandated that the inpatient hospital care rendered Medicare beneficiaries would henceforth be paid on the basis of a prospective payment per case, using diagnosis-related groups (DRGs) to classify and label the hospital product being purchased.

This report is the product of the congressionally-established Prospective Payment Assessment Commission, fifteen individuals knowledgeable about the health industry who were vested with the responsibility of analyzing the new prospective payment system (PPS) and advising the Secretary of the Department of Health and Human Services and the Congress on ways of improving it. The recommendations emanate from a profound concern that the fundamental changes introduced October 1, 1983 be implemented in as fair, cost-effective, and quality-enhancing a manner as possible.

The Commission, which began meeting in December 1983, has focused its attention on two major questions:

1. By what percentage should Medicare's payments for hospital discharges in fiscal year 1986 increase or decrease (the "Update Factor")?
2. What changes, if any, should be made concerning payments to hospitals for specific treatments or procedures by the Medicare program (adjustments of DRG classifications and weights)?

The body of this report and accompanying technical appendixes explain the Commission's actions and decisions in substantial and technical detail. For purposes of this summary, six major points should be emphasized:

- The Commission's unanimous recommendations reflect five major priorities: maintaining access to high-quality health care; encouraging hospital productivity and long-term cost-effectiveness; facilitating innovation and appropriate technological change; maintaining stability for providers, consumers, and other payers; and basing decisions upon reliable and timely data and information.
- The Commission recommends that next year's Medicare hospital payments incorporate inflation in hospital input prices and higher costs due to treating sicker patients, minus one percentage point. This recommendation would result in payment increases significantly less than those of recent years. The inflation minus one percentage point represents the Commission's best judgment as to the net change in payments needed to provide scientific and technological advances in the hospital industry, balanced by changes in hospital productivity and in the hospital product. In particular, the Commission's calculations reflect a judgment and belief that appropriate, sustained, and necessary technological growth in the health care industry can be achieved in part by savings generated through improvements in hospital productivity.
- The Commission recommends action on two problems arising from PPS implementation. Specifically, the Commission urges the Secretary of the Department of Health and Human Services to move quickly to improve the current definition of hospital labor market areas, in order to better adjust PPS rates for area wage differences. The Commission also urges the Secretary to institute adjustments for hospitals that incur higher Medicare costs per case associated with treating a greater proportion of low income patients ("disproportionate share hospitals").
- For fiscal year 1986, the Commission recommends adjusting all of the DRG weights using newer, more complete, and more accurate data. Such adjustment or "recalibration" is intended to enable PPS to reflect changes in hospital practice during recent years. As part of the recalibration process, the weights should also be adjusted to avoid building changes in coding practice into future PPS

payments. The Commission's recommendations incorporate its review of a number of specific medical practices and technologies. Additional data collection and analysis regarding other such practices and technologies are required in order to reach well-informed conclusions.

- While making no recommendation at this time on the pace of transition to national payment rates, the Commission is aware of concerns that have arisen regarding the impact of that transition on different hospitals and regions. The transition issue involves weighing the desirability of continued implementation of a system already clearly yielding positive results, against the possible harms of delaying that transition to correct PPS inequities and shortcomings. The Commission will continue to analyze this important issue.
- The Commission offers its analysis and recommendations in an environment of debate concerning future directions in health care delivery and financing. The recommendations themselves are predicated on continued implementation of the current PPS system. They seek to address as sensibly as possible the tension among several compelling and competing considerations: Federal budgetary constraints; maintenance of Medicare beneficiaries' access to high-quality care; and changes in the hospital industry. Should any health policy proposals affecting PPS be adopted, the Commission will respond with appropriate analytical work.

The report that follows is by design and necessity a technical document. The Commission issuing it, however, remains mindful of the fact that the report's analysis, discussion, and recommendations will directly affect millions of Medicare beneficiaries—individuals for whom the pluses and minuses of the "Update Factor" will translate into a significant impact on the kind of life-giving treatment they receive.

OVERVIEW OF THE COMMISSION'S RECOMMENDATIONS

The Commission's 21 recommendations fall into two major categories: recommendations regarding the update factor and recommendations regarding adjustments of DRG classifications and weights.

The first 16 recommendations address the update factor. In recommendation 1, the Commission proposes updating the standardized amount by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. Several of the first 16 recommendations involve specific market basket issues, including the desirable number of such market baskets, wage components, and correction of forecast errors.

Recommendations 13 through 15 address distributional concerns. The Commission selected the definition of hospital labor market areas and disproportionate share hospitals as two problem areas of PPS deserving immediate attention in the establishment of the fiscal year 1986 payment rates. This does not imply that other problem areas are not also of great importance, but the Commission believes that the distributional consequences of these two problems are sufficiently severe, and the potential for finding workable solutions is sufficiently high, that immediate attention is warranted.

Recommendation 17 recommends recalibration of the DRG weights with a data base that is newer, more complete, and more accurate than the 1981 data used to create the current DRG weights. The Commission's recommendation reflects its belief that, because of potential inaccuracies in the data originally used to establish the DRG weights and changes in hospital practice patterns since 1981, a full recalibration for the 1986 rates is advisable.

Recommendations 18 through 20 pertain to specific DRG weight, classification, and assignment issues concerning three procedures: pacemaker implantation; cataract extraction and intraocular

lens impiantation; and percutaneous transluminal coronary angioplasty. Recommendation 21 concludes that two additional procedures, bone marrow transplantation and treatment of infective endocarditis, do not require in-depth analysis at this time.

The Commission will make future recommendations concerning these and many other DRG weight, classification, and assignment issues, as new information becomes available.

THE COMMISSION'S FUTURE AGENDA

While much has been accomplished during the Commission's first year, many important PPS-related issues require further evaluation. The Commission looks forward to analyzing a variety of complex matters including:

- The measurement of case mix used for PPS and evaluation of alternative case-mix systems.
- Improvement in the methods used to account for resources consumed during specific types of hospital stays. Special emphasis will be placed on analyzing the allocation of nursing costs to DRGs.
- PPS payment policies, with emphasis on adjustments for differing costs of hospitals serving large numbers of low income patients, definitions of hospital market areas, and effects of the transition to national payment rates.
- System responsiveness to changes in practice patterns, focusing on payment mechanisms for new or changing technologies. In addition, a number of specific diagnostic and therapeutic practices are currently being examined:
  - —Cyclosporine used in renal transplantation
  - —Magnetic resonance imaging
  - —Dual joint procedures in one hospitalization
  - —Treatment for alcohol dependence
  - —Cochlear implants
  - —Extracorporeal shock wave lithotripsy
  - —Dermatologic disorders
- The effects of PPS on health care delivery, such as changes in quality of care and health outcomes, changes in types of patients treated in hospitals, changes in the hospital product, and regional practice pattern variations.

STRUCTURE OF THE REPORT AND APPENDIXES

The Commission's report consists of two volumes. In this volume, the Commission's first chapter presents background information concerning establishment of the prospective payment system. Chapter 2 identifies the major priorities and approaches underlying the Commission's recommendations. The recommendations themselves, along with explanatory material, appear in Chapter 3. The fourth and final chapter of the first volume explores areas and issues requiring substantial Commission attention in the year and years to come.

In developing its recommendations the Commission considered staff analyses and the views of numerous technical experts. The purpose of volume 2—the Technical Appendixes—is to present much of this background material to afford greater insight into the Commission's decisions.

The appendixes consist of both descriptive and analytical pieces covering the origins of the prospective payment system, the determination of prospective payments, the update factor, and DRG recalibration. They underscore many of the dilemmas and issues confronting the Commission during its deliberations.

LIST OF RECOMMENDATIONS

The Update Factor

Recommendation 1: Amount of the Update Factor

For fiscal year 1986, the standardized amounts should be updated by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. The negative one percentage point is a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change.

This recommendation reflects the Commission's collective judgment of the appropriate increase in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed in the fiscal year 1986 payment rates. Further, this recommendation is based on the premise that no net reductions or increases in average per case payments to hospitals will be effected through measures other than the update factor, such as reducing the indirect teaching adjustment, incorporating capital payment under PPS at a budget-saving level, adjusting for coding changes occurring before fiscal year 1985, or any other changes in total payments per discharge under PPS.

The Hospital Market Basket

Recommendation 2: The Number of Market Baskets

For fiscal year 1986, a single market basket should be continued for those hospitals under PPS. The Commission will undertake a study to determine the appropriateness of developing market basket measures that reflect variation in economic factors across hospitals. The use of multiple market baskets by region and classes of hospitals within regions will be examined. If the analysis indicates that multiple market baskets are appropriate, the study will also include an assessment of the data required for implementation.

Recommendation 3: Market Basket for Psychiatric, Rehabilitation, and Long-Term Care Hospitals

Separate market basket weights should be used for the group of psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units that are exempt from PPS, but subject to the TEFRA rate of increase limitation. Separate market basket weights need not be developed for children's hospitals.

Recommendation 4: Market Basket Wage Component—Occupational Groups

The wage component of the market basket should be split into three categories, each with separate weights: Managers and Administrators, Professionals and Technicians, and Other Hospital Workers. Changes in wages for these categories should be measured as follows:

- Managers and Administrators: the Employment Cost Index (ECI) for Managers and Administrators.
- Professionals and Technicians: a 50-50 blend of the Average Hourly Earnings (AHE) for the hospital industry and the ECI for Professionals and Technicians.
- Other Hospital Workers: a 50-50 blend of the AHE for the hospital industry and the ECI for all private industry.

Recommendation 5: Employment Cost Index Feasibility Study

For the long run, the Secretary should work with the Bureau of Labor Statistics to study the advantages and feasibility of developing an Employment Cost Index for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

Recommendation 6: Study Effects of Changes in the Minimum Wage Law on Hospital Workers

The Commission plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under PPS, workers who earn more than the minimum

wage are differentially affected by statutory increases in the minimum wage compared with workers in other industries. If a differential effect is found to exist, the Commission will consider requesting the Secretary to take appropriate action.

Recommendation 7: Correction of Market Basket Forecast Errors

The update factor should include a correction for substantial errors made in the previous year's forecast of changes in the external price measures used in the hospital market basket. In the judgment of the Commission, substantial errors are those that equal or exceed 0.25 percentage points (or, when rounded in the published forecasts, 0.3 percentage points). The Commission will undertake a study to determine the extent to which differences between forecasted and actual increases in the internal price change measures are due to factors beyond the hospitals' control. Substantial errors determined after study to be due to factors beyond the hospitals' control should be corrected in the update factor.

Recommendation 8: Statutory Change for Forecast Error Correction

The Secretary has determined that she does not have the statutory authority to correct for market basket forecast errors. Therefore, the Secretary should seek statutory change to provide explicitly that the update factor include a correction for errors in forecasting the market basket beginning in fiscal year 1986.

Recommendation 9: Rebasing of Market Basket Weights

Market basket weights should be rebased at least every five years. Rebasing should be performed more frequently if significant changes in the weights occur. In addition, the market basket weights will need to be rebased if payment for capital or direct medical education is included in the PPS rates.

Discretionary Adjustment Factor

Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals

For the fiscal year 1986 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and hospital product change should be set at minus one percentage point.

Recommendation 11: Adjustment for Case-Mix Change

Prospective payments to individual hospitals and in the aggregate should reflect real changes in case mix. Changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be built into future PPS payments.

Recommendation 12: Update Factor for Exempt Hospitals

In addition to the projected increase in the market basket, hospitals and hospital distinct-part units exempt from PPS should receive a minus one percentage point adjustment in their fiscal year 1986 update factor for productivity improvement and scientific and technological advancement.

Hospital Labor Market Areas—Area Wage Index

Recommendation 13: Improvement of Labor Market Area Definitions

In order to better reflect hospital labor markets, the Secretary should improve, as soon as possible, the current definition of a hospital labor market area used to adjust PPS rates for area wage differences, taking into account variations in wages paid in the inner city compared with suburban areas within a metropolitan area, and variations paid in different rural locations within a state. Implementation of this recommendation should not result in any change in aggregate payments.

Disproportionate Share Hospitals

Recommendation 14: Disproportionate Share Adjustment for Fiscal Year 1986

The Secretary should develop a methodology for adjusting PPS rates for disproportionate share hospitals and implement the adjustment in fiscal year 1986. The adjustment should be implemented so that it does not change aggregate payments.

8

Recommendation 15: Definition of Disproportionate Share Hospitals

The Secretary should complete the development of a definition of disproportionate share hospitals in ample time to include adjustments for these hospitals in the fiscal year 1986 PPS payment rates. The Secretary should consider broader definitions of low income than simply the percentage of patients who are Medicaid recipients and should determine whether the share of Medicare Part A patients should be excluded from the definition.

Rebasing the Standardized Amounts

Recommendation 16: Rebasing the Standardized Amounts

The standardized amounts used to determine hospital payments under PPS should be recalculated using cost data that reflect hospital behavior under PPS. The results of such a recalculation, with appropriate modifications, could be used to rebase the standardized amounts. Although recent cost data are not available to recalculate the standardized amounts for the fiscal year 1986 payment rates, the Secretary should implement a process for timely collection of the cost data necessary for future recalculation. The Commission will later consider more specific recommendations regarding the timing, data sources, and process for rebasing the standardized amounts.

DRG Classifications and Relative Weighting Factors

Recommendation 17: Recalibrating the DRG Weights

For fiscal year 1986, all DRG weights should be recalibrated using the 1984 PATBILL data set. The newly recalibrated weights should be:

(1) Normalized so that the average case weight is the same as it was at the beginning of fiscal year 1985, thereby incorporating DRG weight adjustments made before the start of fiscal year 1985

(2) Adjusted for any demonstrable changes in reported case mix occurring during fiscal year 1985

Recommendation 18: Cardiac Pacemaker Implantation

The DRGs involving cardiac pacemakers, DRGs 115, 116, 117, and 118, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981. The Commission will continue to analyze diagnosis and procedure coding and DRG classification related to pacemaker implantation and replacement; the distribution of costs and payments across discharges, hospitals, and DRGs; and the impact of PPS on the quality of patient care.

Recommendation 19: Cataract Extraction and Intraocular Lens Implantation

DRG 39, Lens Procedures, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981, including the more frequent implantation of an intraocular lens following cataract removal. The Commission will continue to monitor resource use in this DRG to determine whether the types of patients treated as hospital inpatients change with increased outpatient surgery for cataract removal.

Recommendation 20: Percutaneous Transluminal Coronary Angioplasty

Cases in which Percutaneous Transluminal Coronary Angioplasty (PTCA) is the principal procedure should be removed from DRG 108 and temporarily assigned to DRG 112 before recalibration. The Secretary should immediately implement a mechanism to identify bills for cases in which PTCA is performed in order to provide data for analysis and additional adjustments as appropriate.

Recommendation 21: No Change Recommended for Bone Marrow Transplantation and Infective Endocarditis

The Commission has examined Bone Marrow Transplantation and Treatment for Infective Endocarditis and is recommending no changes in DRG classification or weights at this time, other than those that would occur with recalibration. Information will continue to be gathered and the subjects reconsidered at an appropriate time.

Chapter 1

Introduction and Background

The Medicare prospective payment system (PPS) for payment of inpatient hospital services was enacted by the Social Security Amendments of 1983 (Pub. L. 98-21). Accompanying this new payment system, the Congress created the Prospective Payment Assessment Commission (ProPAC) to advise the executive and legislative branches on maintaining and updating PPS.

This report contains the Prospective Payment Assessment Commission's recommendations to the Secretary of the Department of Health and Human Services (HHS) for updating and modifying Medicare's prospective payment system for inpatient hospital care. This chapter describes the Commission's role and responsibilities and summarizes historical trends in national health care expenditures that preceded the adoption of PPS. It also explains measures adopted to restrain the growth of Medicare hospital expenditures, including the development and operation of PPS. Chapter 2 states the priorities that guided the Commission in reaching its recommendations and that will be considered by the Commission in the future. The Commission's recommendations are presented in Chapter 3, and Chapter 4 specifies areas for further study and consideration.

THE PROSPECTIVE PAYMENT ASSESSMENT COMMISSION: ITS ROLE AND RESPONSIBILITIES

The prospective payment system significantly changed the Medicare program's method of payment for inpatient hospital care provided to Medicare beneficiaries. At the time of enactment, the Congress created a permanent, independent commission with responsibilities related to maintaining and updating this new system. The Prospective Payment Assessment Commission was established with 15 members appointed by the Director of the Office of Technology Assessment, Congress of the United States. Members are selected, as required by the law, to provide independent expertise and experience in health care delivery, financing, and research. (Biographies of current Commission members appear in this report's appendix.)

Commission Mandate

The Congress intends the Commission to be a highly knowledgeable, independent panel. The Commission's role is to advise the executive and legislative branches on PPS and to provide analysis necessary to maintain and update the system. This report fulfills the Commission's two primary responsibilities mandated by Pub. L. 98-21. These are to:

- Recommend annually to the Secretary of the Department of Health and Human Services the appropriate percentage change in the Medicare payments for inpatient hospital care, called the "update factor," which is applied to the previous year's payment rates.
- Consult with and recommend to the Secretary of the Department of Health and Human Services necessary changes in diagnosis-related groups (DRGs), including advice about establishing new DRGs, modifying existing DRGs, and changing the relative weights of the DRGs.

In addition, the Commission will report to the Congress its evaluation of adjustments made by the Secretary of the Department of Health and Human Services to DRG classifications and weights, as required by Pub. L. 98-21. The Secretary is required to make such adjustments at least every four years, beginning with fiscal year 1986.

The Commission will prepare reports to the Congress appropriate and necessary to meet its mandate to update PPS and to analyze and evaluate adjustments to the system. Finally, the Commission will annually report to the Congress on the overall effects of PPS on the delivery and financing of the nation's health care and prepare other reports that the Congress may request. The Commission's review of inpatient hospital payments for pacemaker implantation, required by the Deficit Reduction Act of 1984, was transmitted to the Senate Finance Committee and the House Ways and Means Committtee on March 1, 1985 (see Technical Appendix D).

Commission Processes and Policies

The Commission has a policy of open meetings and solicits comment and involvement from groups or people with information relevant to its responsibilities. A notice describing the process for interested parties to submit information to the Commission has been published in the *Federal Register* (50 Fed. Reg. 1657 [1985]). The policies and procedures adopted by the Commission for conducting business in a manner consistent with the law appear in this report's appendix.

The Commission members were appointed in November 1983 and held their initial meeting in December 1983. Early in 1984, the Commission selected an Executive Director who began hiring staff, securing office space and supplies, establishing liaison with governmental and private sector organizations, and developing analytic systems to support the work of the Commission. Partial year funding of $1.5 million was appropriated for the Commission's work during the period covering fiscal year 1984. A full-funding request of $3.2 million (including unexpended carryover funds from fiscal year 1984) was appropriated by the Congress for ProPAC's first full year of operation, fiscal year 1985.

The Commission prepared this initial report while hospitals were in the early phases of payment under PPS. While the report contains specific recommendations for immediate consideration and implementation, the Commission views its role and responsibilities in a long-term context. The Commission's priorities and activities, as described in the remaining chapters, are intended to both correct technical deficiencies in the system and develop more fundamental improvements.

THE CHANGING HEALTH CARE ENVIRONMENT

The Commission undertakes its responsibilities at a time of significant change in the organization, delivery, and financing of health care services. Medicare's prospective payment system parallels private-sector efforts to increase efficiency in the delivery of health care. New financial incentives encourage providers to reduce costs by curtailing the provision of services with limited benefit and delivering services in lower-cost settings. At the same time, advances in technology have made it possible to shift services from hospitals to ambulatory settings and patients' homes.

Significant change in the delivery of health care services was motivated, in part, by rapidly growing health care expenditures during the last two decades. The increase in national health care spending followed the expansion of public and private health insurance coverage. In general, the policies of third-party payers emphasized inpatient hospital care and frequently reimbursed providers on the basis of their costs. Increased financial access to health care, especially hospital care, and greater use of services for large numbers of persons inevitably resulted in increased public and private spending. Further, cost-based reimbursement lacked incentives to provide care in the most efficient manner or balance the cost of additional care with expected improvements in health status.

National Health Care Expenditure Growth

National health care expenditures rose from $35.9 billion in 1965 to $355.4 billion in 1983. This tenfold rise in health care spending outpaced the

growth of the general economy. As a result, national health expenditures accounted for 10.8 percent of gross national product (GNP) in 1983, whereas in 1965, they accounted for only about 3.9 percent of GNP.

The increased spending between 1965 and 1983 can be attributed to three interacting factors:

- Increased input prices, the higher prices paid for the resources used to produce medical care services, account for about 62 percent of the increased spending.
- Greater use of services, for example more physician visits per capita, and greater intensity, such as additional diagnostic tests per hospital admission, together explain about 30 percent of the increase.
- Increased population accounts for about 8 percent of the increase.

Medicare expenditures rose from $7.1 billion in fiscal year 1970 to $65.0 billion in fiscal year 1984, reflecting overall health care spending growth. Outlays from the hospital insurance (HI) Trust Fund for inpatient hospital care increased from $4.2 billion in fiscal year 1970 to $39.7 billion in fiscal year 1984. In the same period, expenditures for supplemental medical insurance (SMI), which pays for physicians' services and other outpatient services, rose from $2.2 billion to $20.4 billion.

Responses to Increased Health Care Spending

Faced with unprecedented deficits in recent years, the Federal government has attempted to purchase services more prudently and has encouraged greater competition in the health sector. In addition to hospital prospective payment, Medicare expanded availability of coverage for care in risk-based competitive medical plans (CMPs) and health maintenance organizations (HMOs). New ambulatory surgery and hospice benefits were added and changes were made in payment policy for dialysis, clinical laboratories, and other services. Many states also have implemented changes, including adopting their own prospective payment systems and contracting with providers for services in their Medicaid programs.

In addition to governmental efforts, business and labor have become active participants in controlling health care costs. They often have cooperated in the redesign of health benefits, emphasizing ambulatory over inpatient care, effective hospital utilization review, preadmission certification of necessity, and surgical second-opinion programs. Many employers have increased employee cost-sharing and others have become cost-conscious health care buyers, often choosing to self-insure the risk of providing health benefits for employees.

Both the public and private sector have supported alternative delivery and financing arrangements. The portion of the population enrolled in HMOs rose from 3 to 6 percent between 1975 and 1984; enrollment increased by more than 20 percent between 1983 and 1984. The interest in alternative delivery systems also led to the development of new arrangements, such as preferred provider organizations (PPOs). Through PPOs, firms and business coalitions have negotiated discounts for health care provided to their employees.

In addition to changes in financial incentives, other significant changes will influence the direction of health care spending in the next decade. For example, the supply of active physicians has risen substantially during the 1970s and will continue to expand rapidly. By 1990, the nation's supply of active physicians will be one-third larger than it was in 1980. Increases in numbers of physicians have encouraged the development of new forms of health care financing and delivery, but the effect of the increased physician supply on total health care expenditures over the next decade is uncertain.

There are also subtle changes in public attitudes toward health maintenance and health care, with increasing numbers of people taking a more active role in maintaining and improving their state of health through "wellness" programs that include changes in life-style, such as increased physical exercise, reduced cigarette smoking, and modified diet. Faced with a growing amount of cost-sharing, consumers are also beginning to seek out

less costly, more convenient, and often more personal alternative health care providers. The movement from the hospital to ambulatory settings for surgery and other services has been generally accepted. Nevertheless, the public places a priority on high-quality health care, including access to sophisticated diagnostic and treatment services usually available only in the hospital.

MEDICARE HOSPITAL REIMBURSEMENT AND THE DEVELOPMENT OF PROSPECTIVE PAYMENT

The adoption of the prospective payment system followed the recognition that retrospective, cost-based reimbursement did not sufficiently encourage efficiency and concern for costs. In the years preceding enactment of PPS, prospective limits were applied to routine inpatient hospital costs to restrain increasing Medicare outlays. In the year immediately prior to enactment of PPS, limits were extended to all inpatient operating costs. As an incentive for efficient delivery of health care, hospitals were rewarded if their costs were below these limits.

Reasonable Cost Reimbursement

The Congress balanced many political, structural, and policy interests in the enactment of Medicare in 1965. In the area of payment for inpatient hospital care, the choice was between paying hospital charges or the "reasonable costs" associated with care for beneficiaries. The Congress selected the latter approach because it was considered fair to hospitals and ensured access to hospital services for beneficiaries.

Extensive administrative regulations and operating instructions defined reasonable costs and detailed methods for determining them. These regulations and instructions changed many times over the years in an attempt to keep them current with hospital practices and to more accurately reflect reasonable costs. Cost determination was retrospective and used complex allocation formulas to separate the costs of Medicare beneficiaries' care from a hospital's total costs. Despite this complexity, however, the system responded to hospital cost increases simply by providing increased reimbursement—the greater a hospital's costs, the greater was its Medicare reimbursement.

Development of Prospective Reimbursement Approaches

As early as 1967, the Congress recognized that the retrospective, reasonable cost reimbursement system lacked incentives for hospitals to hold down costs. The Social Security Amendments of 1967 directed Medicare to experiment with different reimbursement methods and, in particular, called for "incentive reimbursement" studies. These studies had limited usefulness, however, because hospital participation was voluntary.

In the 1972 Social Security Act Amendments, the Congress enacted much broader experimental authority directing Medicare to proceed with prospective payment experiments and demonstrations. The amendments encouraged states to develop alternative hospital reimbursement methods by allowing Medicare to grant waivers that permitted Medicare's hospital reimbursement to be governed by a state's rate-setting program. In describing this new authority, congressional committee reports stressed the need for incentives in the system to moderate health expenditure growth.

The foundation for prospective hospital reimbursement was broadened by Section 223 of the Social Security Amendments of 1972, which authorized HHS to set prospective limits on costs. Under this authority, the Department set limits on routine per-diem hospital inpatient operating costs. At that time, the absence of good case-mix measures prevented applying limits to special care and ancillary costs. The Congress continued to move toward prospective payment for Medicare services in the 1978 End Stage Renal Disease Amendments which, for the first time, prospec-

tively set payment rates for a Medicare service, outpatient dialysis. The 1978-79 debate over hospital cost containment increased understanding of the problems of hospital payment and fostered a consensus that retrospective cost reimbursement should be replaced.

During this period, HHS began a comprehensive program of research, experimentation, analysis, and evaluation of prospective hospital reimbursement methods to support Medicare cost control measures. A key element in the research and experimental work was the recognition that any prospective system would require recognition of a hospital's case mix. Because different hospitals treat different kinds of patients and cases, a major equity issue was how to compensate hospitals adequately when the resources required differed for the care of patients with different conditions. The development of a technically acceptable case-mix measure was, therefore, a critical step in the development of approaches to prospective payment.

In the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Congress expanded the existing prospective cost limits from routine to total inpatient operating costs and required that these costs be adjusted by a case-mix measure. The use of total cost per-case limits was possible because a workable case-mix measure was developed in the late 1970s following work at Yale University in the development and refinement of diagnosis-related groups. Although the system remained retrospective and based on costs, it established additional cost-limitation incentives. Payment for inpatient hospital services was based on the relationship between a hospital's costs and a ceiling determined by a target rate of increase in operating costs per case. If a hospital incurred allowable costs per case below the target amount, it was paid its costs plus a certain percentage of the difference. If a hospital incurred allowable costs per case above the target amount, however, it was to have been paid the target amount plus, in 1983 and 1984 only, one-quarter of the excess cost.

The penalty and bonus concept embodied in TEFRA, designed to encourage hospital efficiency, represented a significant step toward the system of prospective payment eventually adopted. The Congress required the Department of Health and Human Services to develop a full prospective payment proposal for congressional consideration by the end of 1982. This deadline was met, and the resulting proposal, as modified by the Congress, became the current PPS.

MEDICARE'S PROSPECTIVE PAYMENT SYSTEM

Medicare's prospective payment system, enacted in April 1983, incorporated several objectives:

- Ease of understanding and simplicity of administration and implementation,
- Predictability of payment for hospitals and the Federal government,
- Establishment of the Federal government as a prudent purchaser of services,
- Reduction of administrative burdens on hospitals,
- Provision of rewards for efficient operation, and
- Limitation on beneficiary liability only to those coinsurance and deductible amounts previously mandated by the Congress.

Development of Diagnosis-Related Groups for Case-Mix Measurement

The DRGs used in PPS were developed at Yale University to measure case mix and were modified and refined over a period of more than 12 years. There were several constraints on developing the case-mix measure eventually used in PPS. The most important was the complete reliance on the limited information contained on the uniform hospital discharge data set (UHDDS).

DRGs measure the output of a hospital by classifying patients into 23 groups, called major diagnostic categories (MDCs). These groups are based on the major human body systems. The 23 MDCs are further divided by other factors, including diagnostic or surgical procedure used and the patient's age, sex, and other clinical service information. This results in 467 individual DRGs. (One additional DRG, number 468, is used in PPS for payment purposes for cases in which the principal diagnosis and the principal surgical treatment procedure do not logically "match.")

Development of Payment Amounts

Following a congressionally mandated outline, the Health Care Financing Administration (HCFA) established initial payment levels for each DRG based on 1981 cost and charge data. The initial year rates, for fiscal year 1984, were updated for fiscal year 1985 in a final regulation published August 31, 1984. ProPAC is required to make recommendations for updating payment levels for fiscal year 1986 and beyond.

Although several additional factors affect the final payment amount, the prospective payment for each discharge can be generally described by the following formula:

Standardized Amount × DRG Weight = Payment Per Discharge

There are eight primary features of hospital payments:

1. There are 20 standardized amounts, one urban and one rural amount for each of the nine Census Divisions and for the U.S. as a whole. These standardized amounts are adjusted for area wages, outlier payments, and indirect medical education payments. The current standardized amounts and the DRG weights were constructed from 1981 hospital cost report data and from Medicare inpatient bill charge data.

2. Certain hospital costs continue to be reimbursed on a cost basis and, thus, were excluded from the costs that were used as the basis for the prospective payments. These excluded costs include:
   - Direct medical education costs,
   - Capital-related costs,
   - Kidney acquisition costs,
   - Services of nonphysician anesthetists (for fiscal years 1985-1987), and
   - Medicare bad debt.

3. Additional payments are made under certain circumstances for:
   - Indirect medical education,
   - Unusually costly or long-stay (outlier) cases, and
   - Hospitals serving a high proportion of dialysis patients (starting in fiscal year 1985).

4. Payment amounts are adjusted annually by an update factor composed of the market basket (the price of goods and services purchased by hospitals) and an additional "discretionary adjustment factor" (DAF). The DAF accounts for changes in hospital productivity, technological and scientific advances, quality of health care, and long-term cost-effectiveness of services provided. Originally, the Congress set the DAF at one percentage point. Subsequently, the Deficit Reduction Act of 1984 limited the DAF to .025 percent in fiscal year 1985 and not more than .025 percent in fiscal year 1986.

5. In fiscal years 1984 and 1985, there was a statutory constraint that payments under the prospective payment system must equal the payments that would have been made if prospective payment had not been enacted. This requirement is referred to as "budget neutrality."

6. The prospective payment system is to be phased in over three years. During the first year, three-quarters of the hospital's payment is based on its own cost experience. In the subsequent two years, this percentage falls to one-half, and then one-quarter. The "Federal standardized amount " is based on Census Division averages in fiscal year 1984 and a blend of Census Division and national payments in the next two years. Separate payment amounts are used for rural and urban hospitals. In the fourth year, the entire payment will be based on national urban or rural standardized amounts.

7. To determine the amount each hospital is paid, the regional and national standardized

amounts are adjusted by a wage index to reflect differences in hospital wage levels around the country. Each urban area has its own wage index, and all rural areas in a state use a single wage index.

8. The prospective payment law provides for a number of exemptions, exceptions, and adjustments for groups of hospitals. Exemptions are provided for children's hospitals, long-term care hospitals, rehabilitation hospitals and units, psychiatric hospitals and units, Federal hospitals, alcohol and drug abuse hospitals and units (for fiscal years 1984 and 1985), and hospitals in states with approved alternate hospital reimbursement systems. Exceptions and adjustments are provided for sole community hospitals, hospitals devoted primarily to cancer treatment and research, and rural referral centers.

Adjustments for Changes in Case Mix

As one of the adjustments used to satisfy the requirement of budget neutrality, the initial PPS standardized amounts were lowered to account for the increases in case-mix complexity which were expected to occur under PPS. The HCFA actuaries used data compiled by the Professional Standards Review Organizations (PSROs) across the nation to estimate this expected change. These data indicated that DRG weights would be 3.38 percent higher when more complete diagnosis and procedure information was submitted. As a result, the standardized amounts for the first year of PPS were lowered to reflect the expected increase.

Experience during the first year of PPS (fiscal year 1984) indicated that DRG weights had increased considerably more than the 3.38 percent predicted by the PSRO data. Under the requirement of budget neutrality, the PPS payments for fiscal year 1985 needed to be lowered to offset this increase by either again lowering the standardized amounts or lowering all the DRG weights. A decision was made to lower all DRG weights for fiscal year 1985 by 1.05 percent (described in Technical Appendix A).

Chapter 2

Overall Approaches and Priorities of the Commission

The Commission believes that the Medicare prospective payment system will have an impact on hospitals and the American health care system that extends beyond the impact on Medicare beneficiaries. Thus, the Commission's recommendations should be viewed in the context of a rapidly evolving health care system with PPS one significant part of the change.

In moving from cost-based reimbursement to the setting of a price in advance for the care of an individual patient, the prospective payment system significantly alters the incentives to hospitals. The Commission supports the incentives in PPS to increase hospital productivity and cost-effectiveness. The Commission also believes, however, that access to high-quality care must be maintained for Medicare patients.

Preliminary evidence suggests that hospitals are responding to PPS incentives, but it is too early to draw unequivocal conclusions regarding the overall positive or negative impact on the health care of Medicare beneficiaries. Nevertheless, the Commission is optimistic about the success of PPS and its recommendations are directed to improvements necessary to ensure continued success. Ongoing analysis and monitoring using more complete information is also necessary.

The following set of cross-cutting priorities has guided the Commission in the development of the recommendations in this first report. The Commission anticipates that in the future these priorities will continue to govern its recommendations concerning updating the payment rates and modification of the DRG classifications and weights.

MAINTAINING ACCESS TO HIGH-QUALITY HEALTH CARE

The maintenance of quality of care is a paramount concern of the Commission. The Commission is keenly aware that the financial incentives of the prospective payment system may lead hospitals to lower their costs of providing services in a variety of ways, some of which may potentially compromise the quality of care provided to Medicare beneficiaries. With its altered financial incentives for hospitals, the system creates the challenge of maintaining quality health care while restraining health care costs. Hospitals which are paid a fixed amount per type of case by Medicare and other payers (who adopt PPS or use other competitive strategies such as preferred provider organizations) can no longer be indifferent to the resources expended in patient care. PPS encourages a reduction of hospital inputs—tests, special procedures, supplies, equipment, personnel time, and hospital days—because hospitals can lower their costs only by controlling resources devoted to inpatient stays. Clearly, as the increase in hospital spending is slowed and cost savings are realized, the need to develop methods to detect adverse effects on quality and access is intensified.

The Commission strongly perceives its role as supporting the establishment of payment rates that will enable hospitals to continue to deliver high-quality health care. The DRG classifications and weights must be modified appropriately to reflect changes in medical practice. Similarly, the update factor must be adequate to enable hospitals to expend the resources required to maintain the appropriate amount and type of care.

The Commission believes that it would be unacceptable for quality to be assessed only in terms of maintaining past practices. Innovation and the adoption of new technologies shown to be safe

and effective must not be constrained inappropriately by PPS, for this would also constitute an erosion of quality. The Commission recognizes, however, that the resources that can be devoted to health care are finite and that changes in practice patterns must be carefully weighed against the costs of care.

The Commission will remain informed about the quality of care given under the prospective payment system. Recognizing that the Peer Review Organizations (PROs) have been given primary responsibility to monitor Medicare quality of care, the Commission will follow the PROs' progress in performing this crucial task. The Commission will also review and use the studies on quality of care being conducted by the Health Care Financing Administration, as well as studies by other government agencies and the private sector. Finally, the Commission will devote a portion of its own extramural and analytic resources to improving data bases and methods for measuring changes in quality of care and health outcomes. The Commission welcomes information from all sources dealing with the effect of PPS on quality of care.

ENCOURAGING HOSPITAL PRODUCTIVITY AND LONG-TERM COST-EFFECTIVENESS

The Commission's concern for maintaining quality under PPS is accompanied by a parallel concern for promoting productivity and long-term cost-effectiveness of the health care system. Increases in payments for hospital care can be limited while maintaining a high level of quality when productivity is improved. Productivity is improved when fewer or less costly resources are used to yield a product of given quality; the cost of the product is reduced by the cost of the resources no longer used.

PPS uses the DRGs to classify patients and define the hospital product. Hospital care is only one of many "products" which contribute to improvement in the health status of an individual. Self care, ambulatory care, and home health services are examples of other modes of care within the health care system that contribute to improved health. Thus, the Commission will be looking beyond the hospital setting in assessing and measuring productivity in the context of PPS. The policies of other payers, the effect of competing incentives, and the subsequent impact on productivity will also be considered in the Commission's analysis.

The Commission believes that cost-based reimbursement encouraged hospitals to use additional services, sometimes with inadequate consideration about whether the benefits were worth the costs. PPS provides incentives for improving productivity and cost-effectiveness of services. PPS also creates incentives to move services to other settings. If these services can be provided at lower cost and equal quality in other settings, such a move should be encouraged. Adjustments will need to be made in hospital payments to reflect the movement of services to alternative sites, however, to avoid paying for services twice—once in the hospital DRG payment and again in payment for outpatient services.

The Commission is aware that the emphasis on reducing costs may deter the adoption of new services which may initially increase costs, even though in the long-run they may improve patient care, productivity, and cost-effectiveness. The Commission will closely monitor the system and, if necessary, develop recommendations to encourage the adoption of such services.

FACILITATING INNOVATION AND APPROPRIATE TECHNOLOGICAL CHANGE

The Commission believes the Medicare prospective payment system should have an unbiased effect on technological advancement. PPS payment levels should not inhibit the development or diffusion of new technologies and practices, nor should payment levels result in their inappropriate adoption. Instead, technology and practices should be examined in light of both long- and short-term potential effects on quality and productivity.

In reviewing the potential effects of PPS on the adoption of new technologies and practices, the Commission must consider whether payment policies and amounts are sufficient to enable hospitals to adopt such services. Current PPS financial incentives encourage the adoption of cost-saving technologies. Adjustments may be necessary to encourage the adoption of more costly but quality-enhancing new technologies. The Commission also believes that adjustments may be necessary to encourage the adoption of technologies and practices that are more costly when examined in the context of a single hospital admission, but may be cost-effective when considered from a broader health care system perspective over a longer period of time.

The Commission has taken the first steps toward addressing these concerns by examining a series of options for adjustments to PPS that could help foster the appropriate adoption of new technologies. Continued analysis of these options is a high priority for the Commission. One approach is to adjust the current DRG classifications and weights to reflect changes in technology and practice patterns. In addition, the Commission has considered and will continue to explicitly consider scientific and technological advances as part of recommendations related to the update factor.

In addition, the Commission believes that the current capital pass-through may potentially distort PPS incentives by encouraging investment in capital-intensive technologies with inadequate regard to their true cost-effectiveness or alternative approaches for providing needed services. For this reason, the Commission believes that a decision should be made about payment for capital costs as soon as possible.

MAINTAINING STABILITY FOR PROVIDERS, CONSUMERS, AND OTHER PAYERS

The Commission believes that in a rapidly changing health care delivery and financing environment, its recommendations should provide as much predictability and stability as possible. The Commission has identified many problems during its deliberations, and these are described throughout this report. Equitable and workable solutions are much more difficult to identify. Moreover, as this report is submitted, a large proportion of hospitals have been paid under PPS for less than one year. Thus, the Commission is making only those recommendations it considers most important and amenable to well-informed decision-making.

The Commission's philosophy in decision-making has been to act where there is immediate need for change and to allow the new PPS to become fully mature and operational—and stable—before suggesting new approaches or significant alterations. Therefore, if several solutions were suggested for resolving a particular problem, the Commission has often chosen the direction least disruptive to the originally structured PPS—and

to the hospitals, consumers, and other payers affected by it. Similarly, if there is doubt about the need for or impact of a change, the Commission has chosen to leave the subject for future analysis and discussion, when more data, information, and experience will be available.

DECISION-MAKING BASED ON RELIABLE AND TIMELY DATA AND INFORMATION

The Commission believes that its major contribution to the maintenance and evolution of the maturing PPS is the development of recommendations grounded in quantitative data and analytic reasoning. The availability and use of accurate and timely data and information, analyzed and presented without bias as a basis for decision-making, is a critical priority of the Commission and its staff. Analytic information must, of course, be tempered with judgment and experience, but the Commission will continue to strive to fulfill a role in which its approach is always to inform itself with the best and most timely information available before making recommendations.

The Commission has examined the data systems and reviewed the information that formed the basis for development of standardized amounts, DRG weights, and adjustments in PPS. The Commission is aware of a number of deficiencies in this base. Many of these deficiencies are unavoidable during this initial stage of PPS; over time they must be corrected. The Commission will continue to place a high priority on examining existing data and, where appropriate, developing new data. The Commission believes its recommendations, as well as the future work and research agenda described in Chapter 4, clearly reflect an orientation toward decision-making which is based upon an analytic and quantitative approach, using the most timely and appropriate data available.

Chapter 3

Recommendations

The Commission's priorities and concerns described in Chapter 2 were evident throughout its first year and are reflected in the recommendations that follow. The recommendations are in two parts, following the Commission's statutory requirements: First are recommendations concerning the fiscal year 1986 "percentage change" or update factor which determines the overall change in the PPS standardized amounts, exclusive of any other adjustments. Second are recommendations concerning adjustments to the "classifications and weighting factors" which determine relative changes in DRG payments. Discussion of these two types of recommendations is followed by a statement on the context in which these recommendations are made.

The major part of Chapter 3 consists of the Commission's 21 recommendations, each followed by a brief discussion of the rationale underlying the Commission's decisions. Details on background information, statistical analyses, and alternative options are contained in the Technical Appendixes.

The Update Factor

The statute requires the Commission to "...take into account changes in the hospital market basket..., hospital productivity, technological and scientific advances, the quality of care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services," in making its recommendations on the annual update factor. The Commission is required to report its recommendations to the Secretary of Health and Human Services no later than April first of each year, and "...Taking into consideration the recommendations of the Commission, the Secretary shall determine ...the percentage change... which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality."

The Commission has considered both aggregate payment amounts and the distributional effects of payment decisions on beneficiaries and hospitals in the belief that these effects are as important to the maintenance of high-quality care and to the achievement of other system goals as the level of the update factor. The Commission is concerned that an update factor which may be adequate on the average may be inadequate for certain types of hospitals and the Medicare beneficiaries who depend on these hospitals. Thus, some of the Commission's recommendations address the distributional consequences of the update factor and others the determination of the level of the update factor.

The first recommendation reflects the Commission's overall judgment of the appropriate level of the update factor for fiscal year 1986. The Commission believes its responsibility under the statute is to be as specific as possible in making its recommendation on this factor. The recommendation would require estimates for the hospital market basket and for "real" case-mix change to be developed by the Secretary. The Commission is recommending a specific amount for the remaining components of the "discretionary adjustment factor" which, in addition to the market basket increase, would comprise the update factor.

The actual percentage change in the average payment per DRG for fiscal year 1986 may differ from the update factor. The update factor is applied to the standardized amounts, but the overall increase would also be affected by across-the-board adjustments to the DRG weights. The Commission proposes adjusting the DRG weights to remove the effects of any reported case-mix change that will have occurred during fiscal year 1985 so that changes in coding occurring this year would not be built into future PPS payments (Recommendation 17).

In Recommendations 2 through 9, the Commission proposes changes in the hospital market basket, the component of the update factor that re-

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flects inflation in the prices that hospitals pay for inputs. Inflation in prices of inputs, the goods and services that hospitals purchase and use in the provision of hospital care, is generally thought to be beyond the control of hospitals and therefore appropriate adjustments should be reflected in hospital payment amounts when such prices are predicted to increase from one year to the next. Detailed information pertaining to the market basket recommendations is in Technical Appendix B.

Recommendations 10 through 12 concern the discretionary adjustment factor, which is the portion of the update factor that reflects considerations other than the market basket of hospital input prices. The Commission decided that the DAF should be set to reflect goals for the attainment of productivity gains and for scientific and technological advancement. The Commission also identified a third consideration for the DAF, an allowance for "real" changes in the mix of Medicare inpatients (contrasted with changes that arise only from altered coding practices). The Commission selected a specific numerical adjustment for productivity and scientific and technological advancement in Recommendation 10 but proposes that the Secretary develop the allowance for real case-mix change in Recommendation 11. Recommendation 12 satisfies the Commission's statutory obligation to recommend an update factor for hospitals and distinct parts of hospitals excluded from PPS.

In concept, the discretionary adjustment to the update might be positive, zero, or negative depending on judgments regarding the relative importance of the components that comprise the DAF. The Commission's recommendations reflect its best collective judgment regarding a discretionary adjustment for fiscal year 1986. It should not be assumed that the Commission's recommendation in subsequent years will be for the same amount. Detailed information on the DAF is in Technical Appendix B.

Recommendations 13 through 15 address the distributional concerns expressed above. The Commission selected the definition of hospital labor market areas and disproportionate share hospitals as two problem areas of PPS deserving immediate attention in the establishment of the fiscal year 1986 payment rates. This does not imply that other problem areas are not also of great importance, but the Commission believes that the distributional consequences of these two problems are sufficiently severe, and the potential for finding workable solutions is sufficiently high, that immediate attention is warranted. Detailed information on these distributional issues is in Technical Appendix B.

Recommendation 16 pertains to the issue of rebasing the standardized amounts. The Commission goes on record in favor of rebasing, but recognizes that doing so for the fiscal year 1986 rates would be inadvisable due to the lack of suitable data. It is expected that rebasing concerns, including the identification of suitable data and methods of calculation, and the development of policy options for establishing new levels of the standardized amounts, will receive considerable attention from the Commission during the coming year.

Classifications and Weighting Factors

The Commission is required to "...consult with and make recommendations to the Secretary with respect to the need for adjustments [in classifications and weighting factors]...based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities." These adjustments refer to the system for "...classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups," and to the assignment of "...an appropriate weighting factor [to each diagnosis-related group] which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups." The Secretary is required to "...adjust the classifications and weighting factors...for discharges in fiscal year 1986 and at least every four fiscal years thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources." The Congress has directed the Commission to make recommendations regarding the DRGs ". . . for such groups to reflect appropriate differences

in resource consumption in delivering safe, efficacious, and cost-effective care."

Recommendation 17 concerns recalibration of the DRG weights with a data base that is newer, more complete, and more accurate than the 1981 data on which the current DRG weights are based. The Commission's recommendation reflects its belief that, because of potential inaccuracies in the data originally used to establish the DRG weights and changes in hospital practice patterns since 1981, a full recalibration for the 1986 rates is advisable.

Two important features of the Commission's treatment of recalibration are, first, that it includes a recommendation for normalizing DRG weights so that the average weight of all PPS discharges is the same as it was at the beginning of fiscal year 1985 and, second, that it includes a recommendation to adjust DRG weights across the board for any change in reported case mix occurring during fiscal year 1985. The reduction in DRG weights implied by this adjustment would be offset, in part, by the positive allowance for real case-mix change described above as part of the recommended update factor.

This recommendation does not imply, nor should it be inferred, that the Commission will propose a recalibration or normalization next year or any specific subsequent year, nor does it suggest that the Commission will recommend the same type of data or approach for recalibration in the future. Further information on recalibration and related adjustments is in Technical Appendix C.

Recommendations 18 through 20 pertain to specific weighting, classification, and assignment issues concerning three procedures: pacemaker implantation, cataract extraction and intraocular lens implantation, and percutaneous transluminal coronary angioplasty. Two additional procedures, bone marrow transplantation and treatment of infective endocarditis, were determined not to require in-depth analysis at this time, as indicated in Recommendation 21. Detailed information concerning pacemaker implantation (Recommendation 18) is in Technical Appendix D; information pertaining to Recommendations 19 through 21 is in Technical Appendix C.

The Commission may make additional recommendations concerning these issues in the future, if new information becomes available. Furthermore, the majority of DRG weighting, classification, and assignment issues undertaken for review by the Commission in its first year require additional data and analysis. A summary of the issues currently under review is provided in Chapter 4. The Commission will supplement this report with additional recommendations as appropriate.

The Context for These Recommendations

The Commission firmly believes that adoption of these recommendations will result in substantial improvements in PPS and will maintain the essentially positive experience that implementation of PPS has achieved to date. Nevertheless, because these recommendations necessarily are made in a rapidly changing health care environment, both in Federal health policy and in the private health sector, the Commission is concerned that the context in which its decisions were made be recognized. Changes in this context may lead the Commission to reconsider some of its recommendations. Such changes will also influence the Commission's choices of issues to address in future reports.

The Commission's recommendations are made under the assumption that current law and its interpretation will remain in force during fiscal year 1986. The Commission decided early in its deliberations that it would not attempt to predict policy changes arising from actions of the Executive Branch or the Congress. Nevertheless, if important policy changes occur, the Commission may wish to reconsider some of its recommendations.

The Commission also recognizes that its recommendations are made at a time when hospitals are in either the first or second year of experience with PPS and only a fraction of their payments are based on Federal DRG payment rates. During its deliberations, the Commission has learned about several demonstrated and potential problems of PPS which, if not corrected, may result in unwarranted hardships for some hospitals and Medicare beneficiaries. The Commission has made specific recommendations con-

cerning two of these problem areas and has committed its resources to the study of several others.

The Commission believes that, as the transition to a fully implemented prospective payment system proceeds, serious problems must be identified and corrected. The Commission considered the possibility of specifically proposing a delay in the transition to allow additional time for problem solving but did not do so because it did not wish to interfere with the momentum of PPS. Nevertheless, the Commission has asked its staff to continue the analysis of the effects of the transition. If problems exacerbated by the transition are sufficiently severe and not correctable by other policy measures, a recommendation for delay in the transition will be considered. Further information on the transition issue is in Technical Appendix B.

Finally, the Commission does not wish to imply, nor should it be inferred, that issues not addressed in its 21 recomendations are unimportant. The Commission recognizes that there are many other important issues deserving serious attention and has already scheduled several of these issues for analysis in coming months. Chapter 4 presents a summary of these issues.

RECOMMENDATIONS REGARDING THE UPDATE FACTOR

Recommendation 1: Amount of the Update Factor

For fiscal year 1986, the standardized amounts should be updated by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. The negative one percentage point is a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change.

This recommendation reflects the Commission's collective judgment of the appropriate increase in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed in the fiscal year 1986 payment rates. Further, this recommendation is based on the premise that no net reductions or increases in average per case payments to hospitals will be effected through measures other than the update factor, such as reducing the indirect teaching adjustment, incorporating capital payment under PPS at a budget-saving level, adjusting for coding changes occurring before fiscal year 1985, or any other change in total payments per discharge under PPS.

The rationale for this recommendation is provided in the discussions accompanying Recommendations 2 through 16. The Secretary should estimate the projected increase in the hospital market basket and the increase in real case-mix complexity using the most current data available at the time the payment rates are determined. These estimates, combined with the one percentage point net reduction for scientific and technological advancement, productivity improvement, and hospital product change, would determine the increase in average payments per discharge under PPS for fiscal year 1986.

The Hospital Market Basket

Recommendation 2: The Number of Market Baskets

For fiscal year 1986, a single market basket should be continued for those hospitals under PPS. The Commission will undertake a study to determine the appropriateness of developing market basket measures that reflect variation in economic factors across hospitals. The use of multiple market baskets by region and classes of hospitals within regions will be examined. If the analysis indicates that multiple market baskets are appropriate, the study will also include an assessment of the data required for implementation.

The effects of inflation on a hospital or group of hospitals can differ from those measured by a single national hospital market basket for a number of reasons. First, increases in the prices of some items—most notably wages—vary across

regions. Second, regional differences in price levels may affect the market basket weights, which represent the share of total hospital expenditures going to a component. Market basket weights may also differ if hospitals purchase different amounts of an input than the average (e.g., hospitals in colder climates may need to purchase more fuel). Finally, a single national market basket may not be an appropriate measure of inflation for hospitals that use a different mix of inputs than the average because they provide different services.

Since past analysis has shown that differences in hospital input price increases across regions and certain hospital types are not statistically significant, the Commission has decided not to recommend that separate market baskets be developed at this time. But because the analysis is limited, further study should be undertaken to evaluate the extent to which prospective payment rates might be affected if variation were allowed in market basket weights, or regional inflation rates. Examination of the possible overlap between the adjustment for area wage differences already included in PPS payments and the development of regional market baskets should be included. Future consideration of multiple market baskets will require a trade-off between the benefits of improvements in equity and the costs of increasing the complexity of the payment system.

Recommendation 3: Market Basket for Psychiatric, Rehabilitation, and Long-Term Care Hospitals

Separate market basket weights should be used for the group of psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units that are exempt from PPS, but subject to the TEFRA rate of increase limitation. Separate market basket weights need not be developed for children's hospitals.

Due to the nature of the services they provide, the labor share of total expenses in psychiatric, rehabilitation, and long-term care hospitals is substantially higher than in other hospitals. To best reflect the effects of inflation, the market basket weights used to set the target rate of increase for these hospitals should take into account this differing use of inputs, and any others that may exist. Although children's hospitals are also exempt from PPS, the current market basket weights are more appropriate for this group, since the labor share of total expenses in these hospitals is very close to the overall average on which the current weights are based.

Recommendation 4: Market Basket Wage Component—Occupational Groups

The wage component of the market basket should be split into three categories, each with separate weights: Managers and Administrators, Professionals and Technicians, and Other Hospital Workers. Changes in wages for these categories should be measured as follows:

- **Managers and Administrators: the Employment Cost Index (ECI) for Managers and Administrators.**
- **Professionals and Technicians: a 50-50 blend of the Average Hourly Earnings (AHE) for the hospital industry and the ECI for Professionals and Technicians.**
- **Other Hospital Workers: a 50-50 blend of the AHE for the hospital industry and the ECI for all private industry.**

(The discussion for all three of the Commission's recommendations regarding the treatment of wages in the hospital market basket follows Recommendation 6.)

Recommendation 5: Employment Cost Index Feasibility Study

For the long run, the Secretary should work with the Bureau of Labor Statistics to study the advantages and feasibility of developing an Employment Cost Index for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

Recommendation 6: Study Effects of Changes in the Minimum Wage Law on Hospital Workers.

The Commission plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under PPS, workers who earn more than the minimum wage are differentially affected by statutory increases in the minimum wage compared with

workers in other industries. If a differential effect is found to exist, the Commission will consider requesting the Secretary to take appropriate action.

Wages are the largest single component of the hospital market basket, accounting for nearly 60 percent of hospital expenses. Currently, HCFA measures changes in all hospital wages by the AHE in the hospital industry, a data series collected by the Bureau of Labor Statistics.

Recommendations 4 through 6 address two major problems with the current treatment of wages in the market basket. First, the AHE series does not separate changes in inflation from changes in the skill mix of workers in the hospital industry. As a result, some portion of the growth in the series over time has probably been due to shifts in the type and use of hospital employees (e.g., substitution of RNs for LPNs).

Creating separate wage categories by occupational groups as the Commission recommends would take account of broad changes in skill mix among managers, professionals, and other hospital workers. Weights for the recommended categories could be developed using 1980 Census data. In addition, differences in wage growth among these groups would also be addressed. In particular, a separate measure of wage change would be included for managers and administrators, who are excluded from the AHE series currently used.

The second major problem addressed by the recommendations is that use of a price change measure specific to the hospital industry allows hospital behavior—including the response to PPS incentives—to influence the increase in the market basket. Since the AHE series has risen in the past at a relatively high rate compared with other industries, there has been concern that exclusive use of a hospital industry series would allow hospitals to increase wages faster than other industries even when a differential was not warranted. More recently, however, growth in the AHE hospital series has slowed more rapidly relative to wages in other industries. If hospital wage growth is slowed in response to PPS incentives for cost containment, the market basket forecasts will reflect this, and hospital workers could be limited to wage increases lower than that of other workers.

Blending the AHE with the ECI, which includes workers outside the hospital industry, would mitigate these effects, yet still partially reflect any unique circumstances in the labor markets for hospital employees. To the extent that the hospital labor market is unique, exclusive use of the ECI or other broader industry measures might fail to adequately portray the economic forces beyond the control of hospitals.

For the long run, an ECI should be developed for the hospital industry. Although it would not be used to replace the ECI measures recommended above, a hospital industry ECI might be preferred to the AHE series since the ECI measures skill-mix differences and hourly wages directly. If developed, this series could be used to measure changes in hospital industry wages and may or may not be used in the market basket.

Recommendation 7: Correction of Market Basket Forecast Errors

The update factor should include a correction for substantial errors made in the previous year's forecast of changes in the external price measures used in the hospital market basket. In the judgment of the Commission, substantial errors are those that equal or exceed 0.25 percentage points (or, when rounded in the published forecasts, 0.3 percentage points). The Commission will undertake a study to determine the extent to which differences between forecasted and actual increases in the internal price change measures are due to factors beyond the hospitals' control. Substantial errors determined after study to be due to factors beyond the hospitals' control should be corrected in the update factor.

(The discussion for both the Commission's recommendations regarding correction of market basket forecast errors follows Recommendation 8.)

Recommendation 8: Statutory Change for Forecast Error Correction

The Secretary has determined that she does not have the statutory authority to correct for market basket forecast errors. Therefore, the Secretary should seek statutory change to provide explicitly that the update factor include a correction for errors in forecasting the market basket beginning in fiscal year 1986.

Regardless of the method of forecasting inflation in the hospital market basket, errors are bound to occur that might have substantial financial consequences for hospitals or the Federal government. A correction need not be made, however, when the forecast error is small, since both the Federal government and hospitals should be able to manage within a margin of error. The prospective nature of payment rates is not compromised when the correction is made by adjusting the increase in the following year's rates.

The recommendation, however, distinguishes between internal and external price change measures (or price proxies). External proxies are those that measure price changes that extend beyond the hospital industry. For example, inflation in food prices is measured in the hospital market basket by a combination of food components of the Consumer Price Index and the Producer Price Index. Changes in these measures are beyond the control of the hospital industry, and therefore differences between actual and forecasted changes in the price proxy can be attributed to forecast error alone. Alternatively, internal proxies are those that apply solely to the hospital industry (e.g., wages as measured by the AHE series for the hospital industry). In this case, behavior of the hospital industry affects the actual increase in the price proxy. If the difference between forecasted and actual increases in internal proxies were automatically adjusted, hospital incentives to limit price increases in those categories would be reduced. Until further study can distinguish between the effects of forecast error and hospital behavior, no correction should be made for the differences between forecasted and actual changes in internal price proxies.

The Secretary has interpreted the statute to prohibit an adjustment for correcting market basket forecast errors. Because of this, the statute should be clarified by the Congress to explicitly require correction of forecast errors in the update factor.

Recommendation 9: Rebasing of Market Basket Weights

Market basket weights should be rebased at least every five years. Rebasing should be performed more frequently if significant changes in the weights occur. In addition, the market basket weights will need to be rebased if payment for capital or direct medical education is included in the PPS rates.

The current HCFA staff plan to update market basket weights every five years seems reasonable, but more frequent rebasing might be necessary if hospitals change—perhaps in response to the PPS—the mix of inputs they use to provide services. In addition, if policy changes are made to include capital or direct medical education costs in the overall PPS rates, the market basket weights will need to be recalculated.

Discretionary Adjustment Factor

Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals

For the fiscal year 1986 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and hospital product change should be set at minus one percentage point.

The discretionary adjustment factor (DAF) is based on a policy decision regarding the rate at which the Medicare standardized amount should change beyond increases in the hospital market basket. For the fiscal year 1986, the Commission has included in the DAF three broad allowances: one for technological and scientific advances; one for productivity; and one for changes in the hospital product. An additional allowance for real case-mix change should also be added by the Secretary. In future years, the Commission may choose to expand the elements in the DAF to reflect other factors.

This recommendation addresses the quantitative allowance for productivity, product change, and technological and scientific advances. The fiscal year 1986 adjustment for real case-mix change is addressed in Recommendation 11 and its accompanying discussion.

The update factor should encourage hospitals to seek productivity gains while, at the same time, ensure that sufficient funds are available to finance the adoption of quality-enhancing technologies after balancing the medical benefits against the

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costs of such technologies. Together, these allowances in the DAF constitute a judgment about how much of the desired growth in technology can be funded out of productivity gains or other resources already in the payment system.

In developing quantitative allowances for this portion of the DAF, the Commission was required to make implicit judgments for which there is little precedence. Moreover, the technical methods and data available upon which to base these judgments yield imprecise estimates.

The Commission's recommendation for the DAF reflects the following broad guidelines:

Adjustments	*Percentage Allowance*
Scientific And Technological Advances	+1.5 to +2.0
Hospital Productivity	−1.5 to −2.0
Changes In The Hospital Product	−1.0
Net Adjustment (Before Inclusion Of The Allowance For Real Case Mix Change)	−1.0

By recommending a small negative aggregate allowance for these elements of the DAF in fiscal year 1986, the Commission does not imply that there should be no allowance for technological growth. Rather, it is reasonable to expect that, at least for one year, any requirements for new technology can be funded from potential gains in productivity and changes in the types of services produced in an inpatient setting. Moreover, the DAF allowance is not the only method to finance technology adoption. In particular, the capital costs associated with new technologies are currently reimbursed on a retrospective cost basis under PPS.

The adjustment for technology reflects the Commission's view that the hospital industry will not continue to experience the same rate of growth as in the past decade. Future expenditures should reflect a balance between long-term growth in the hospital industry and growth in the remainder of the economy.

In the hospital industry, productivity is difficult to measure due to problems in defining an appropriate output or product. In the simplest terms, the hospital product under PPS is a discharge, as classified and labeled by the DRG system. The Medicare PPS provides significant incentives to change the nature of this product, including incentives to shift services from an inpatient to an outpatient setting or to move patients out of the hospital more quickly. As a result, the output previously produced during an inpatient stay can be produced by using a mix of inpatient and outpatient services.

It is difficult to separate changes in the hospital product from changes in productivity. The potential for productivity gains was examined from a variety of perspectives. These included analyses of staffing patterns and changes in average length of stay as well as the development of a specific productivity target for the industry. Based on these analyses, the Commission adopted an overall productivity guideline between minus 1.5 and minus 2.0 percent.

Changes in the hospital product can result from a shift of services from inpatient to other care settings. This shift would reduce the cost to the hospital of DRG production without necessarily achieving any reduction in total costs. Under these circumstances, the Medicare program could be overpaying for services since the cost base for the DRG rates includes the costs of services that have subsequently been removed from the inpatient setting.

Quantitative evidence regarding changes in the hospital product is limited to changes in average length of stay. Changes in length of stay, however, reflect both changes in productivity and changes in the hospital product. The most recent data available from the American Hospital Association's Panel Survey indicate a 7.8 percent decline in length of stay for patients 65 years of age and older in the first nine months of 1984 compared with the same period in 1983. Although it cannot be assumed that all of this change is related to PPS, the declines in length of stay are consistent with the incentives established by the Federal cost containment initiatives under TEFRA and PPS.

While the shorter lengths of stay cannot be directly or immediately translated into a 7.8 percent reduction in costs, the Commission believes that for fiscal year 1986 such a decline would result in at least a 3.7 percent reduction in costs due to productivity gains and a 1 percent reduction due to changes in the hospital product. In order

to continue sharing gains from improved efficiency, approximately half of the productivity cost savings should be retained by the hospital industry. In addition to providing support for investment in new technology and services, these funds would be available to develop hospital programs to assist patients who may have difficulty gaining access to care, and to help displaced hospital employees locate other employment or vocational retraining.

The recommendation for the DAF is based on the assumption that the Commission's other recommendations in this report are implemented. Taken together, these recommendations are intended to ensure that the Medicare program continues to pay a reasonable price for inpatient hospital services. The Commission is concerned that, while an update factor significantly less than the historical amounts is adequate on the average, it may be inadequate for certain types of hospitals and the Medicare beneficiaries they serve. This concern is evidenced in the Commission's recommendations regarding disproportionate share hospitals and hospital labor market areas (Recommendations 13 through 15). Implementation of these recommendations will materially affect the maintenance of equity under increasingly constrained PPS expenditures.

Further, the Commission made this recommendation under the explicit assumption that no adjustments affecting the level of average PPS payments per case would be made other than those it recommended.

The Commission believes the recommended level of the DAF adequately meets the costs of treating Medicare patients. It is not appropriate or expected that hospitals use other sources of revenue to absorb the costs of treating Medicare patients (e.g., raising charges to other payers or using reserve funds). To expect other sources to fund Medicare patients is an inappropriate policy that eventually would compromise the access of Medicare beneficiaries to quality care.

Recommendation 11:
Adjustment for Case-Mix Change

Prospective payments to individual hospitals and in the aggregate should reflect real changes in case mix. Changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be built into future PPS payments.

Over time, changes in the distribution of patients across DRGs would be expected to increase the average PPS discharge weight for two reasons. First, real changes in the types of Medicare admissions may occur due to shifts in patterns of service delivery, the aging of the population, or other factors. In particular, the mix of hospital inpatients across DRGs may become more complex as patients with less complicated diagnoses are more often treated on an ambulatory basis. For the same reason, the mix of patients within DRGs might also become more complex, although this would not be reflected in the average payment per discharge. Prospective payment should include compensation for these types of case-mix change, which are due to changes in patient characteristics.

Second, the average PPS discharge weight might increase as hospitals code a higher proportion of patients into more complex DRGs. This would be expected particularly in the initial years of PPS, since hospitals now have incentive to improve the completeness and accuracy of the diagnostic information reported on Medicare bills. This type of case-mix change should not be built into PPS payment amounts, because changes in coding practices do not reflect an increase in the resources required to treat patients.

Since PPS payments automatically reflect all changes in reported case mix as they occur, an adjustment is necessary periodically to pay only for real case-mix change. The adjustment should also include an allowance for the overall increasing complexity in the mix of patients within DRGs.

For fiscal year 1986, the Commission recommends that, through recalibration, normalization, and adjustment of the DRG weights as described in Recommendation 17, the effects of case-mix change occurring in fiscal year 1985 should be removed from the DRG weights so that changes in coding would not be built into future PPS payments. Along with this, an adjustment for case-mix change occurring during fiscal year 1985 estimated to be caused by real shifts in the mix of patients should be included in the update factor. If adopted, the combined effect of these recommendations would be to allow PPS per-discharge payments to rise as a result of increasing complexity in the Medicare cases hospitals treat, if such increases occur, but not as a result of past changes in coding.

In determining the adjustment for real case-mix change, the Secretary should analyze the most recent data available when the fiscal year 1986 payment rates are set. The Commission will review the findings of this analysis when they are available, and may recommend a specific adjustment at that time.

Recommendation 12:
Update Factor for Exempt Hospitals

In addition to the projected increase in the market basket, hospitals and hospital distinct-part units exempt from PPS should receive a minus one percentage point adjustment in their fiscal year 1986 update factor for productivity improvement and scientific and technological advancement.

In addition to a full allowance for inflation, the Commission has emphasized that the update factor should incorporate policy goals for productivity and scientific and technological advancement. These concepts are as difficult to quantify with precision for exempt hospitals and distinct part units as they are for hospitals included in PPS. Nevertheless, the Commission believes that the update factor for both sets of hospitals should include an adjustment for these elements.

The Commission recognizes that differences exist between PPS hospitals and exempt hospitals and units, as illustrated in the recommendation for different market basket weights related to different mixes of inputs. It is possible that these hospitals differ from PPS hospitals in other ways that would suggest differing allowances for productivity and scientific and technological advancement. Data are not currently available, however, to substantiate such differences.

Moreover, unlike PPS hospitals, exempt hospitals currently are not paid on a case-mix adjusted basis, and would not be subject to an adjustment for observed coding change in the recalibration process. Therefore, the Commission recommends that a minus one percentage point adjustment be adopted for exempt hospitals, with no additional adjustments for case-mix change. A separate update factor for exempt hospitals and units may be considered in the future.

Studies are being considered or conducted to gather and evaluate data specific to exempt hospitals to determine whether they can be phased into PPS, or if their specific products and processes cannot be fairly dealt with under PPS. Information from these studies will provide guidance upon which to base recommendations in future years regarding the appropriateness of a separate adjustment for different kinds of hospitals.

Hospital Labor Market Areas—Area Wage Index

Recommendation 13:
Improvement of Labor Market Area Definitions

In order to better reflect hospital labor markets, the Secretary should improve, as soon as possible, the current definition of a hospital labor market area used to adjust PPS rates for area wage differences, taking into account variations in wages paid in the inner city compared with suburban areas within a metropolitan area, and variations paid in different rural locations within a state. Implementation of this recommendation should not result in any change in aggregate payments.

The current wage index used to adjust payments for inter-area wage differences does not distinguish separate labor markets within Metropolitan Statistical Areas (MSAs). This inadequacy

raises serious equity concerns. Several studies have shown that there is substantial variation in the wages paid in inner city as compared with suburban areas within the same MSA. Similar concern has been expressed regarding rural areas within a state. If PPS payments are to adjust for actual variations in area wage levels, the differences in hospital labor markets need to be reflected in the application of the area wage index.

The greatest difficulty faced in implementing the Commission's recommendation will be drawing the boundaries delineating hospital labor market areas. This is in part a problem generic to defining any labor market. The appropriate boundary definition is highly dependent on how the wage index is to be used. For the purposes of PPS, the boundaries for a hospital labor market area should be drawn so that the impact of the behavior of any single hospital on the wage index used to adjust that hospital's payment would be negligible. In small MSAs, there may be too few hospitals to designate more refined market areas. Thus, while it might be desirable to develop separate core and ring designations for each MSA and more refined designations for rural areas within states, it may not be possible to do so in every area.

The Commission clearly recognizes that there are substantial difficulties in developing new area wage indexes based on revised market areas. Nevertheless, the Commission believes the payment inequities engendered by the current system are sufficiently severe to warrant immediate correction. HCFA has better data on hospital labor markets than ever before, and the Secretary plans to revise the index for fiscal year 1986. To ensure the stability and predictability of PPS rates for hospitals in the future, it would be highly desirable to revise the wage index only once during this period. Thus, the Commission urges the Secretary to implement this recommendation in conjunction with any other revisions planned for the area wage index.

Disproportionate Share Hospitals

Recommendation 14: Disproportionate Share Adjustment for Fiscal Year 1986

The Secretary should develop a methodology for adjusting PPS rates for disproportionate share hospitals and implement the adjustment in fiscal year 1986. The adjustment should be implemented so that it does not change aggregate payments.

The Congress has clearly stated its concern that specific adjustments should be made for hospitals incurring higher Medicare costs per case associated with treating a high proportion of low income or Medicare Part A patients if such costs are not already accounted for in the PPS methodology.

According to both the House Ways and Means Committee and the Senate Finance Committee Reports that accompanied the Social Security Amendments, the disproportionate share provision reflected congressional concern that "public and other hospitals that serve a large number of low income and Part A Medicare beneficiaries" may serve patients "more severely ill than average and that the DRG payment system may not adequately take into account such factors."

The Commission, having reviewed a number of studies, is convinced that hospitals serving a high volume of low income patients (as measured by a variety of definitions) do incur higher Medicare costs per case. For example, these studies (including those conducted by HCFA) indicate that there is a consistent and significant positive relationship between Medicaid volume and Medicare costs per case.

The precise reasons for these higher costs are unknown. Based on its studies, however, the Commission is also convinced that these higher costs per case are substantially due to factors beyond the control of these hospitals. Therefore,

the Commission believes that a specific adjustment for these hospitals should be made in the fiscal year 1986 payment rates.

Development of a specific adjustment will require a reasonable definition of "disproportionate share." (Definitional problems are discussed under Recommendation 15.)

To develop an appropriate adjustment, it will be necessary to separate the effects of serving a low income population from other factors already reflected in the current PPS rates. The indirect teaching adjustment, for example, may adequately compensate some hospitals for the additional costs of serving a disproportionate share of low income patients over and above the indirect costs of having interns and residents on the premises. If the indirect teaching adjustment were reduced on the grounds that the indirect costs of teaching are actually lower than the adjustment provides for, this would have the effect of undercompensating some teaching hospitals which serve a disproportionate share of low income patients.

Similarly, part—but not all—of the undercompensation of some disproportionate share hospitals is attributable to the current methodology used to define labor market areas. If this problem were ameliorated, as the Commission recommends in Recommendation 13, it would reduce but not eliminate the extent of this undercompensation. In addition, to the extent that disproportionate share hospitals incur higher costs related to a mix of patients more severely ill than average, improvements in case mix measurement may subsequently alter the disproportionate share adjustment necessary for these hospitals.

Because of these interactions, calculation of the disproportionate share adjustment should take into account the calculation of other adjustments in order to achieve the appropriate levels and distributions of payments to all hospitals.

The Commission recognizes that determining the magnitude of a disproportionate share adjustment will not be a simple task. It will require careful analysis of the interactions among hospital characteristics to ensure that hospitals are not over- or undercompensated by the mix of adjustments chosen. Given the work already conducted by HCFA on this issue, the Commission believes that a reasonable adjustment is feasible for incorporation in the fiscal year 1986 rates.

In the development of a disproportionate share adjustment, the Secretary should explore the feasibility of a graduated schedule of adjustments (with perhaps a minimum threshold, below which no adjustment would be made), rather than a single adjustment for hospitals that are above a single cutoff point. Such a schedule is likely to be far more equitable than a single adjustment which may provide windfall gains for those just above the cutoff point and unfair losses to those just below that point. California, for example, uses a graduated schedule as a part of its implementation of the Medicaid disproportionate share provision for its noncontracting hospitals.

Recommendation 15:
Definition of Disproportionate Share Hospitals

The Secretary should complete the development of a definition of disproportionate share hospitals in ample time to include adjustments for these hospitals in the fiscal year 1986 PPS payment rates. The Secretary should consider broader definitions of low income than simply the percentage of patients who are Medicaid recipients and should determine whether the share of Medicare Part A patients should be excluded from the definition.

No adjustment to PPS rates for disproportionate share hospitals can be specified and implemented until a reasonable definition of disproportionate share is developed. The Deficit Reduction Act of 1984 requires the Secretary to develop and publish a definition of a disproportionate share hospital and to provide Congress with a list of hospitals which meet this definition. As of late March 1985, the results of the Secretary's study had not been made public.

The Commission clearly recognizes the difficulty in defining disproportionate share hospitals. Problems arise in both the identification of a proxy measure for low income patients and in the relevance of including Medicare Part A patients in that definition.

The majority of studies to date indicate that the volume of Medicaid patients is positively associated with Medicare costs per case. Thus, Medicaid volume has been suggested as a reasonable proxy for low income. Medicaid eligibility criteria, however, vary considerably among the states and regions of the country. Consequently, the proportion of Medicaid patients may not be a consistent measure of low income patients. If the percent of Medicaid patients were used as a proxy measure of low income, then the Commission would urge that this measure be adjusted to reflect variations in state Medicaid eligibility requirements and variations in income levels across states.

The relevance of including Medicare patients in the definition of disproportionate share is questionable if the disproportionate share adjustment is to reflect higher Medicare costs per case associated with serving a given population. First, Medicare patients tend to be evenly distributed among types of hospitals. Second, almost all the studies to date have found no evidence that a higher proportion of Medicare patients contributes to higher costs per case when PPS variables are controlled. A recent American Hospital Association study, however, brings this conclusion into question.

According to this study, higher Medicare costs per case are associated with hospitals having a higher precentage of Medicare revenues or patient days. The findings for Medicare admissions, however, were inconsistent for the two years studied (1980 and 1981). In 1980, the study found that the greater the proportion of a hospital's admissions which were Medicare, the higher the Medicare costs per case. In 1981, a higher proportion of Medicare admissions was not found to be significantly associated with higher Medicare costs per case.

The Commission concludes that a number of key issues concerning the definition of disproportionate share hospital have not been settled. Therefore, the Commission urges the Secretary to perform the necessary analyses to resolve these issues as expeditiously as possible so that an equitable adjustment for disproportionate share hospitals can be developed.

Rebasing the Standardized Amounts

Recommendation 16:
Rebasing the Standardized Amounts

The standardized amounts used to determine hospital payments under PPS should be recalculated using cost data that reflect hospital behavior under PPS. The results of such a recalculation, with appropriate modifications, could be used to rebase the standardized amounts. Although recent cost data are not available to recalculate the standardized amounts for the fiscal year 1986 payment rates, the Secretary should implement a process for timely collection of the cost data necessary for future recalculation. The Commission will later consider more specific recommendations regarding the timing, data sources, and process for rebasing the standardized amounts.

Periodic rebasing of the PPS standardized amounts—that is, use of more recent data to recalculate the average cost per case that, after adjustment and updating, is multiplied by the DRG weight to determine payment for a Medicare discharge—would maintain a relationship between hospital costs and PPS payments that might be eroded by indefinite use of an update factor alone. Under rebasing, payment rates would automatically reflect changes in length of stay, shifts to outpatient services, and the number and types of ancillary services and technologies used to treat hospital inpatients. Taking these changes into account using an update factor alone would require estimating their effects with very limited information.

Rebasing the fiscal year 1986 standardized amounts is not recommended since the most recent cost data available (from fiscal year 1982) are only one year more recent than the data used to set the current rates. Therefore, these data would not yet reflect hospital response to the cost-reducing incentives present under PPS or even under the TEFRA reimbursement limits.

Rebasing requires making specific decisions regarding the data sources used, possible adjustments—including sharing of savings between pro-

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viders and the program—and the frequency and timing of rebasing. The Commission will consider these issues in the future.

Data Used to Rebase the Standardized Amounts. Timing of at least the first rebasing of the standardized amounts would be affected by the availability of data. Currently, the standardized amounts are calculated based on data included in the 1981 Medicare cost reports. Because of the lag in submitting and reviewing the cost reports, data from settled cost reports from the first year of PPS will probably not be available until 1987. Rebasing might be possible before then (perhaps for the fiscal year 1987 payment rates) by using cost reports as submitted or final reports from a sample of hospitals. The extent to which using data from a representative sample of hospitals might be a long-run way to implement periodic rebasing, yet still reduce the burden of cost reporting on the hospital industry, should also be considered.

Possible Adjustment to the Rebasing Calculation. Rather than simply using the outcome of a recalculation of the standardized amounts, rebasing could involve recalculating the standardized amounts, and then applying an adjustment. In this way, the effects of rebasing on the payment rates—and ultimately on hospital revenue—could be limited and made more predictable. For example, the change in the standardized amounts resulting from rebasing could be limited to no more than 10 percent of the previous amount. The recalculated standardized amounts might be lower, reflecting hospital response to the cost-reducing incentives of PPS. On the other hand, the recalculated amounts might be higher, due to the restrictions of the budget neutrality provision in effect for the first two years of PPS or to stringent update factors after that.

Frequency and Timing of Rebasing. Rebasing could be done annually, on a predetermined multiyear cycle (such as every four years) or on an ad-hoc basis. Annual rebasing would keep the relationship between payment rates and hospital costs as current as possible. It might be, however, that system changes would not occur rapidly enough to require annual repetition of the rebasing process. A carefully developed update factor might successfully predict trends in the hospital product and productivity, with rebasing necessary only over a longer period or when more dramatic changes occur. In addition, an argument often made against annual rebasing is that hospitals should share in productivity gains for some period before the gains are reduced by lower prices. Economic theory predicts that, even in a competitive market, there is lag time between the achievement of productivity gains and the market's automatic downward adjustment in prices. On the other hand, if costs were rising faster than payment amounts, more frequent rebasing would finance the increases with a short lag.

Short-run decisions about the frequency of rebasing could be made differently than long-run decisions. It may be reasonable to assume, for example, that the greatest changes in hospital behavior will occur in the initial years of PPS and that rebasing should be done more frequently in the early years than over the longer run.

Along with frequency, the timing of rebasing is also an issue to be considered. One choice would be to rebase the standardized amounts whenever the DRG weights are recalculated. In this way, the whole system would be adjusted at once. Alternatively, rebasing might be done on a different schedule than recalibration so that system changes occur more gradually. In addition, rebasing would be appropriate when other changes, such as the addition of capital to the PPS rates, are made in the system.

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RECOMMENDATIONS REGARDING DRG CLASSIFICATIONS AND RELATIVE WEIGHTING FACTORS

Recommendation 17:
Recalibrating the DRG Weights

For fiscal year 1986, all DRG weights should be recalibrated using the 1984 PATBILL data set. The newly recalibrated weights should be:

(1) Normalized so that the average case weight is the same as it was at the beginning of fiscal year 1985, thereby incorporating DRG weight adjustments made before the start of fiscal year 1985

(2) Adjusted for any demonstrable changes in reported case mix occurring during fiscal year 1985

Recalibration of the DRG weights is one way to adjust PPS payments periodically to reflect changes in hospital technologies and practice patterns that alter the relative resources used across DRGs to treat Medicare patients. Recalibration, which adjusts *all* DRG weights, should be contrasted with reweighting, which adjusts only certain DRG weights.

The original approach used to create the DRG weights (i.e., combining charge data from Medicare patient bills with cost information from the hospital's Medicare Cost Report) would probably be preferred for recalibration this year as well, were it not for data lags. The most recent complete data base available for a 1986 recalibration using this methodology is the 1982 MEDPAR file of patient bill records and cost report data for the 1982 hospital accounting year—the year before TEFRA was implemented. These data are only one year more recent than the 1981 data used to establish the current weights, and would not reflect hospital response to cost-control incentives under PPS or even under TEFRA.

Rather than continuing to use older cost data or delaying recalibration until more recent cost data are available, the Commission recommends that recalibration be carried out for fiscal year 1986 using charge data from the Medicare PATBILL file for fiscal year 1984. This recommendation does not imply, nor should it be inferred, that the Commission will continue to recommend recalibration with charge data alone in the future.

DRG weights based on PATBILL data would offer two important advantages over the current DRG weights. First, the PATBILL file contains the most recent data available, including discharges for the first year of PPS. Second, the PATBILL file includes much more detailed diagnostic information than the 1981 MEDPAR file.

A possible disadvantage of using the PATBILL file alone is that it contains data on hospital charges, but not costs. Costs are generally thought to be more reflective of real resource use than charges, since charges can be distorted by hospitals' patterns of subsidization and revenue generation.

The Commission's analysis of the 1981 MEDPAR and Medicare Cost Report data indicates, however, that there is very little difference between weights constructed using the original methodology and weights constructed using charge data alone. Of the 358 DRGs for which weights can be constructed using Medicare data alone, 327 DRGs (representing about 96 percent of discharges) have a weight difference of only between zero and 5 percent.

The Commission also recommends that, after the DRG weights are recalibrated, the new weights should be normalized so that the average weight of all PPS discharges is the same as it was at the be-

ginning of fiscal year 1985. By normalizing in this way, the recalibration would affect only the distribution of payments across DRGs. It would not affect the overall average payment per discharge. A further adjustment to the weights should also be made for any demonstrable change in the average weight of a PPS discharge during fiscal year 1985. Such changes in reported case-mix could be estimated using the most recent fiscal year 1985 patient billing data available when the payment rates are set. If these steps are not taken, the average discharge weight—and therefore the average PPS payment—would change, in part due to shifts in the types of patients treated, and in part due to improvements in hospitals' diagnostic coding.

Adjusting to remove the effects of coding change during fiscal year 1985 from the DRG weights would not take away additional payments already received by hospitals, but it would prevent these coding changes from being built into future PPS payments.

Along with normalizing and adjusting the DRG weights, the Commission recommends that an adjustment reflecting shifts in the types of patients treated be included as part of the update factor for fiscal year 1986 (Recommendations 1 and 11). If these recommendations were adopted, payments would be allowed to rise as a result of increasing complexity in the Medicare cases hospitals treat, if such increases occur, but not as a result of past changes in coding.

The recommendation to recalibrate using charge data alone and to normalize and adjust the DRG weights is made specifically for fiscal year 1986. Concern has been raised that since hospitals have complete control over charges, they may be able to manipulate future charge-based recalibrations. Control of the DRG weights through charge-setting practices would be particularly possible for those DRGs common to only a few hospitals. This issue is not a concern for fiscal year 1986, since the 1984 charge data are already collected, but will be considered by the Commission in future recalibration decisions.

In upcoming reports, the Commission will address the frequency and timing of future recalibrations. This will be done as part of an analysis of long-run options for the development of a PPS data base and the timing of a number of system changes, including rebasing of the standardized amounts, overall reconstruction of the DRGs, and reweighting of individual DRGs as well as recalibration.

Recommendation 18:
Cardiac Pacemaker Implantation

The DRGs involving cardiac pacemakers, DRGs 115, 116, 117, and 118, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981. The Commission will continue to analyze diagnosis and procedure coding and DRG classification related to pacemaker implantation and replacement; the distribution of costs and payments across discharges, hospitals, and DRGs; and the impact of PPS on the quality of patient care.

The Commission reviewed the appropriateness of Medicare hospital payments for pacemaker implantation. Problems in the 1981 MEDPAR and Cost Report files were identified that could have affected the weights for the pacemaker DRGs. With currently available data, however, it was impossible to estimate the magnitude and direction of these errors. Furthermore, many of the problems identified are not unique to pacemaker implantation and are likely to be corrected with changing hospital incentives under prospective payment.

Several methodologies were used to compare costs in the pacemaker DRGs with payments under PPS. On average, current payments appear to be as appropriate as for other DRGs. Recalibration of all the DRGs will adjust the pacemaker DRGs to reflect changing patterns of resource use related to advances in pacemaker technology (see Recommendation 17).

Several other issues concerning Medicare payments for pacemaker implantation require further evaluation in the future. There is a lack of specificity in the diagnosis and procedure coding for pacemaker recipients and in the grouping of the discharges into DRGs. The pacemaker DRGs have very high medical supply costs, which appear to be similar across all hospitals. However, since PPS adjusts payments to reflect average cost differences among hospitals related to differences in

location, area wage levels, and medical education, payment differences across institutions in the pacemaker DRGs may not correspond closely to cost differences. In addition, the financial incentives of PPS may lead some institutions to limit certain pacemaker-related services. If this occurs, quality of patient care could be adversely affected. Furthermore, hospitals may make decisions that lower the cost of care at the time of implantation but result in higher net costs for Medicare in the long-term care of the patient. The Commission plans to continue its analyses of these issues in the future.

Recommendation 19: Cataract Extraction and Intraocular Lens Implantation

DRG 39, Lens Procedures, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981, including the more frequent implantation of an intraocular lens following cataract removal. The Commission will continue to monitor resource use in this DRG to determine whether the types of patients treated as hospital inpatients change with increased outpatient surgery for cataract removal.

Changes in practice patterns since 1981 were examined in cases assigned to DRG 39 because of the significant increase in the implantation of an intraocular lens (IOLs) following the removal of a cataract. Cataract extraction and/or IOL implantation represented 98 percent of the DRG 39 cases in the 1981 data used to construct DRG weights, but the data are insufficient to determine the percentage of these cases receiving intraocular lenses after removal of cataracts.

Other data indicate that the frequency of IOL implantation following cataract extraction has increased substantially. A national sample of hospital discharges indicated 58 percent of cataract extractions in patients 65 and over were accompanied by implantation of an IOL in 1981. This frequency increased to 85 percent in 1983.

Other changes in practice since 1981 that may have affected resource use for patients in DRG 39 are the increased use of posterior chamber lenses, sodium hyaluronate (Healon, a product used during surgery), and extracapsular rather than intracapsular surgery. Also, the length of hospital stays in DRG 39 decreased.

Since all of these practice changes are likely to be reflected in the hospital charges, the Commission recommends that the adjustments to the weight of DRG 39 be made in the process of overall recalibration (see Recommendation 17).

The Commission notes that future changes in practice resulting from the shift in cataract cases to outpatient settings may affect the type of patients treated as hospital inpatients. The Commission will monitor for evidence of this potential change.

Recommendation 20: Percutaneous Transluminal Coronary Angioplasty

Cases in which Percutaneous Transluminal Coronary Angioplasty (PTCA) is the principal procedure should be removed from DRG 108 and temporarily assigned to DRG 112 before recalibration. The Secretary should immediately implement a mechanism to identify bills for cases in which PTCA is performed in order to provide data for analysis and additional adjustments as appropriate.

PTCA is a new procedure that was not covered for Medicare beneficiaries when DRGs were created or when DRG weights were calculated. PTCA does not have a unique ICD-9-CM procedure code, so that cases in which PTCA was performed cannot be separated from cases involving other procedures given the same code. The procedure code used for PTCA is also used for removal of coronary artery obstruction by thoracotomy. As a result of this deficiency in procedure coding, cases in which PTCA is the principal procedure are assigned to DRG 108. This DRG, created for major surgical procedures that usually require significantly greater resources than PTCA, has a weight of 4.3756. Bills for inpatient hospital discharges during fiscal year 1984 show that PPS payments (excluding cost pass-throughs and indirect medical education payments) for DRG 108 were 155.5 percent of total charges for the services even though comparable PPS pay-

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ments for all DRGs averaged 71.4 percent of total charges.

Reassignment of cases to alternative DRGs in the absence of complete information should be done only when available evidence indicates good cause for such action. The Commission considered leaving PTCA in DRG 108 until coding deficiencies could be corrected and cases could be identified for analysis of the resources consumed or moving it temporarily to a DRG that is more appropriate but reasonably clinically meaningful. DRG 112, Vascular Procedures except Major Reconstruction, with a weight of 2.3500 was selected based on the limited indirect evidence available concerning the costs of PTCA. This shift in the DRG assignment should be done before the recalibration for the fiscal year 1986 payments, so that the new weights for DRG 108 and DRG 112 will reflect the revised assignment.

The Commission is aware that PTCA is an alternative to coronary artery bypass graft surgery and that, in certain cases, PTCA is a cost-effective and preferred method of treatment. The recommendation to reassign PTCA from DRG 108 to DRG 112 is based on the Commission's analysis indicating that the original assignment was erroneous due to the deficiencies in procedure coding noted above. The temporary assignment of PTCA cases to DRG 112 results in more appropriate payment for the service, while maintaining the incentive to use this procedure when it is indicated for an individual patient. Further, reassigning PTCA will remove financial incentives that may have existed to perform PTCA when an alternative therapy, either medical or surgical, was preferable.

The Commission chose to recommend reassigning PTCA to a lower-weighted DRG because the original assignment was clearly erroneous. The Commission believes it is inappropriate to allow incorrectly categorized technologies to subsidize other types of cases or to allow other cases to subsidize incorrectly categorized technologies. The Commission also will not hesitate to recommend changes that increase payment for an incorrectly categorized technologies when they are identified.

The Secretary should immediately implement a mechanism to identify PTCA, such as manual review of cases in which procedure code 36.0 is used. Once a sufficient number of PTCA cases have been identified, these data can be used to evaluate the resources consumed and to make additional adjustments as indicated.

Recommendation 21: No Change Recommended for Bone Marrow Transplantation and Infective Endocarditis

The Commission has examined Bone Marrow Transplantation and Treatment for Infective Endocarditis and is recommending no changes in DRG classification or weights at this time, other than those that would occur with recalibration. Information will continue to be gathered and the subjects reconsidered at an appropriate time.

Bone Marrow Transplantation is an established treatment for certain conditions. Experience with this technology is limited and it is currently available in only a few centers in the U.S. Although patients over 65 years of age are not considered candidates for this procedure, Medicare patients eligible due to disability may be potential recipients. No specific procedure code exists for bone marrow transplantation. The procedure would currently be classified on the basis of patient diagnosis into DRGs where conventional treatment may require very different use of hospital resources. The Commission recommends that no action be taken on this issue at this time although it will be reevaluated as it becomes more widely adopted.

Infective Endocarditis was examined because of questions concerning the appropriateness of the reported geometric mean length of stay for DRG 126 and the generally recommended length of stay for treatment of this condition. When the differences between geometric and arithmetic averaging are considered, the geometric mean lengths of stay do not appear to be inappropriate for this DRG. For this reason, as well as the relatively small number of Medicare patients hospitalized with infective endocarditis each year, the Commission recommends that no further action be taken on the issue of infective endocarditis at this time.

Chapter 4

Areas for Further Study and Consideration

The Commission's recommendations focus on achieving both technical and general improvements in PPS within the context of today's changing health care environment. Beyond its recommendations, the Commission believes other issues require serious consideration in the future.

Areas for further study and possible future recommendations are presented in this chapter. The first major area discussed is measurement of case mix. Next, plans for analyzing the data and methods used to calculate the payment amounts are outlined. A number of other issues on the Commission's analytic and research agenda, such as measuring changes in quality of care and in the hospital product, are also described.

The legislative and executive branches are considering several health policy proposals. If these proposals are adopted, the Commission will reexamine its recommendations and proceed with additional analytic work. Some of these proposed policy changes are highlighted at the end of this chapter.

IMPROVING THE MEASUREMENT OF CASE MIX

The DRG patient classification system describes and measures hospital case mix and serves as the basis for payment under PPS. The system uses the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) coding system to categorize discharges into 468 DRGs. The strengths and limitations of ICD-9-CM as a disease and procedure coding system and DRGs as a measure of case mix, resource consumption, and hospital output need to be assessed further. The Commission has identified some of the potential weaknesses of DRGs as a case-mix measurement tool, as well as several issues relating to DRG classification and the setting of weights. Other issues have been raised by concerned individuals or groups and by Commission staff.

This section summarizes the general problems and specific diagnostic and therapeutic practices that will be the basis of a significant portion of the Commission's work. (For further discussion, see Technical Appendix C.)

General Areas for Further Analysis

There are several problems in using DRGs as a case-mix measure. These problems are organized into three basic topics:

- DRG construction and classification,
- PPS implementation policies, and
- Changes in medical practices and technologies.

DRG Construction and Classification

The Commission will evaluate the original data and methods used to construct DRGs to develop recommendations for improving case-mix measurement.

Data Bases Used for DRG Construction and Classification.—The DRG patient classification system was constructed using data bases intended to represent a national sample of hospitals. Some of these data may not have been precise enough to classify and group hospitals and patients accurately. In addition, the data bases may not have adequately represented certain types of hospitals or patient groups, and the construction and classification of DRGs may not appropriately reflect the national distribution of hospital and patient types.

Diagnosis and Procedure Codes.—DRGs are based on ICD-9-CM codes developed almost a decade ago. The codes are not scheduled for revision until the 1990s. Infrequent updating of diagnostic and procedure codes may be adequate for

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the statistical uses of ICD-9-CM but inadequate for PPS. The Commission may want to consider an appropriate mechanism to add new codes reflecting changes in medical technologies, practices, and procedures before the scheduled revision of ICD-9-CM.

DRG Assignment Criteria.—Initial DRG partitioning is based on principal diagnosis and operative procedure. Further partitioning may be based on age, secondary diagnoses (complications and comorbidities), and disposition. There are several issues relating to the use of these variables in DRG construction and assignment and their potential effects when used for PPS.

- *Principal Diagnosis:* The initial partitioning in DRG assignment is based on the principal diagnosis for the discharge described by an ICD-9-CM code. When no single condition causes the patient's admission, there may be ambiguities in determining the principal diagnosis and in selecting an appropriate code. In addition, the principal diagnosis may not always be the most resource-intensive condition.

- *Operating Room Procedures:* In DRG assignment, discharges are initially categorized into one of 23 Major Diagnostic Categories (MDCs), according to the principal diagnosis. Then the MDCs are divided into 468 DRGs, depending upon the presence or absence of an operating room (OR) procedure and other factors. Several issues relating to the use of OR procedures in DRG assignment will be explored, including: (1) completeness, consistency, and accuracy of the list of OR procedures; (2) inclusion of new procedures; and (3) undesirable incentives that may result from the current use of OR procedures in DRG assignment.

- *DRG 468:* Performance of a procedure considered unrelated to the principal diagnosis generally places a discharge into DRG 468. This may lead to inappropriate DRG assignment and may result in DRG 468 being heterogeneous, both clinically and in terms of resource consumption. The assumptions used in relating specific procedures to particular MDCs and DRGs may warrant evaluation to ensure correct assignment of cases to DRG 468.

- *Secondary Diagnoses:* The DRG patient classification system uses secondary diagnoses to determine the presence of complications and/or comorbidities (CCs) in about 200 DRGs. Further analysis is required to determine: (1) completeness, consistency, and accuracy of the list of CCs; (2) how the sequence or combination of these secondary diagnoses affect DRG assignment; and (3) the ability of CCs to explain differences in resource consumption within DRGs.

- *Multiple Procedures or Multiple Diseases During One Admission:* Some patients may undergo several procedures or present multiple diagnoses during one hospitalization. PPS generally provides higher payments for separate admissions than for treating all existing conditions in one admission. This may create inappropriate incentives for some cases. Additionally, international coding rules dictate that some conditions or procedures are more accurately described by combinations of codes. The present use of one diagnosis and/or procedure code at any of the partitions in DRG assignment, rather than combinations of codes, requires further examination.

- *Patient Age:* In a number of DRGs, age is used for DRG assignment. The age breaks are generally 0 to 17 years, 18 to 69 years, and 70 years and more. Other age breaks may be more appropriate for determining DRG assignment for the Medicare population because they would create more homogeneous patient groups, clinically and in terms of consumption of resources.

- *Disposition:* Some DRG assignments include patient disposition such as transferred, left against medical advice, or died. For example, a few DRGs use death during hospitalization in the assignment criteria. Similarly, some DRGs use case transfer from one hospital to another in DRG assignment. The use of disposition in DRG assignment may warrant further analysis.

Homogeneity Within DRGs.—Cases grouped into a DRG may be dissimilar clinically or in terms of resource consumption. The data and methods used to estimate resource consumption may have been imprecise, resulting in inappropriate grouping of low resource- and high resource-consuming cases into certain DRGs. Some DRGs appear more clinically heterogeneous than others. The implications that varying degrees of heterogeneity may have for payment purposes require examination. Mechanisms for further minimizing differences within DRGs, such as stage or severity of illness distinctions, should be assessed.

Case-Mix Distribution Among Hospitals.—Certain institutions may treat a subset of cases within a DRG. Thus, their cases are substantially different than the distribution of cases typically in that DRG, making an average payment inappropriate. For example, hospitals offering very specialized services are more likely to treat cases using these services, which may skew the distribution of their cases within a DRG. Because resource consumption of cases may differ by type of institution, current payments may not be appropriate for all types of institutions.

Implementation Policies

Some problems in the use of DRGs are due to policies governing payment for certain types of cases. The Commission will examine these policies to determine whether changes would result in more accurate and appropriate payments.

Outlier Policy.—Problems may exist in both the criteria used to determine outlier status and the payment amount for these cases. Current payments for outlier cases may not accurately reflect increased consumption of hospital resources by these patients. This may be a particular problem for hospitals that treat many of these cases.

Indirect Medical Education.—An additional allowance is paid on the Federal portion of each PPS payment for discharges from hospitals with approved medical education programs. This allowance for indirect medical education costs serves as a proxy for a number of factors that may increase the cost of care in teaching institutions but that are not otherwise adequately recognized under PPS. The Administration has proposed reducing this allowance to half of its current level. Others argue that the indirect medical education allowance should be continued at its current rate until adjustments are made for the other factors, such as severity of illness, which were the basis for creating the indirect allowance. The Commission will continue to monitor the work in this area.

Transfer Policy.—In the data bases used to create DRGs, a transfer of a patient between two hospitals was recorded as two stays. These two stays were averaged with all other stays to set DRG weights. To the extent that transfers involved a very short initial stay and a longer stay at the discharging hospital, averaging may result in inappropriate payment for certain cases.

Use of DRGs by Other Third Party Payers.—The DRG categories were created using data from acute care hospitals generally. The standardized amounts and DRG weights, however, were set primarily using data from the Medicare program and reflect the costs of caring for Medicare beneficiaries. Several other private and public third-party payers have begun to use DRGs for payment. Because of its statutory mandate, the Commission will focus on changes in DRGs which serve the needs of the Medicare program. As a result, the changes recommended by the Commission may not necessarily be appropriate for the other payers. The extent to which the Commission will respond to the needs and problems of other payers is still unresolved.

Changes in Medical Practices or Technologies

Incorporating new or changing technologies and practices into an existing case-mix measurement system requires improved data and timely updating of the system. A mechanism may be necessary to determine DRG classifications and weights (prices) in the absence of historical data, so that diffusion of new devices or practices is not inappropriately retarded.

Coding of New Technologies or Practices.—When a new technology is adopted or a practice pattern changes which cannot be adequately identified by an existing ICD-9-CM code, new diagnosis or procedure codes may need to be created and incorporated into existing or new DRGs. An

expedited timetable for incorporating codes for new technologies or practices may also be desirable.

Distribution of New Technologies and Procedures.—A new and expensive device or procedure may be adopted by only a small number of hospitals. Thus, it may be inappropriate for the payment to all hospitals to reflect the cost of this device or procedure. The Commission is examining payment mechanisms that would not overcompensate or undercompensate hospitals for using these new technologies or procedures.

DRGs with High Device Costs.—DRG weights are based on resource consumption, including the use of sometimes costly devices. Hospital payments are adjusted to reflect differences in location, wage rates, medical education, and outlier cases. The Commission will examine the appropriateness of applying these adjustments to DRGs where the cost of the device is a substantial proportion of total patient care costs.

Diagnostic and Therapeutic Practices for Further Analysis

The Commission discussed the following specific issues illustrating the general areas described previously. Although information was insufficient to develop recommendations, the Commission intends to continue its analysis of these issues. In the future, the Commission will discuss and analyze additional issues as well.

Cyclosporine Used in Renal Transplantation

- Cyclosporine is a new drug that may improve outcomes for many organ transplantation recipients. It was approved by the Food and Drug Administration (FDA) in late 1983.
- Cyclosporine may alter the hospital resources required for patients undergoing transplantation, for both the initial length of stay and over the long term by preventing or lessening rejection episodes.

The Commission is primarily concerned about the impact of cyclosporine use on treatment of renal transplant patients. A Federal Task Force on Organ Transplantation was appointed in early 1985 to examine all issues related to organ transplantation including payment for transplantation and immunosuppressive medications. The Commission is monitoring work by the Task Force, as well as the Health Care Financing Administration (HCFA) and the American Council on Transplantation, as part of its continuing analysis.

Magnetic Resonance Imaging

- Magnetic resonance imaging (MRI) is a new diagnostic technology with many potential applications. Widespread use of this technology may alter resource consumption in many DRGs.
- MRI involves very large capital expenditures and generates high operating costs. It may substitute for other imaging technologies in some instances and, in others, may be added to the procedures now used.

MRI is the subject of ongoing research related to design, clinical applications, and cost. The Commission is continuing its analysis of the clinical applications, capital and operating costs, and the impact of this technology on quality of care. Alternative payment mechanisms for new technologies, particularly those involving multiple DRGs, will be examined as a general issue using MRI and other technologies as case studies.

Dual Joint Procedures in One Hospitalization

- Bilateral total hip replacements and other dual joint replacement procedures may be performed in two hospital stays or in one hospitalization for a subset of patients. A single hospitalization may involve two operations or one operation when both joints are replaced.
- DRG assignment and payment are the same whether one joint or two are replaced during a stay, although the resource inputs may be quite different.
- There are differing opinions in the medical community regarding patient selection and the efficacy of performing two joint replacements in one hospitalization. Available data bases contain little information on the extent of this practice and its associated costs.

Current payment policies may create incentives for two hospitalizations when one would be more appropriate. The Commission will examine the appropriateness of current payment mechanisms for admissions involving multiple procedures during one hospitalization. More current and complete data are being gathered by the Commission and by HCFA. The Commission will continue to consult with HCFA, review the data and methodologies, and make recommendations at an appropriate time when data are available.

Alcohol Dependence DRG

- The alcohol dependence DRG includes both detoxification and rehabilitation services. These treatments may require different hospital resource inputs in terms of both length of stay and type of services.
- Several studies are under way to furnish information on services provided for detoxification and rehabilitation, alternative classification systems for alcohol dependence, and effects PPS may have on services provided to patients.
- Alcohol and drug abuse hospitals and units are exempt from PPS until October 1985.

The current DRG classification may create inappropriately heterogeneous groups, clinically and in terms of resource consumption. The Commission recognizes that HCFA and others are conducting research on this issue. The Commission will consult with HCFA and other groups and use available data in making any recommendations regarding more appropriate DRG classifications or weights for patients undergoing treatment for alcohol dependence.

Cochlear Implants

- The cochlear implant is a new prosthesis that assists persons with certain hearing impairments. A single channel device was conditionally approved by the FDA in November 1984. A multichannel device is currently under review by the FDA for premarketing approval.
- This procedure has no specific ICD-9-CM code. Once the code is determined, it could potentially be assigned to the DRG for miscellaneous ear, nose, and throat surgery or the DRG for major head and neck surgery. The other procedures in these DRGs may involve very different use of hospital resources.
- When the Commission considered this technology, the single channel device had not received marketing approval from the FDA. To date, experience with this device has been limited.

The Commission will continue to examine the specific issues this topic raises as well as the general issue of payment for new technologies where cost and charge data are insufficient for appropriate DRG assignment and calculation of weights.

Extracorporeal Shock Wave Lithotripsy

- Extracorporeal shock wave lithotripsy (ESWL) is a new, noninvasive procedure that substitutes for invasive surgery for certain types of kidney stones.
- ESWL is a capital-intensive technology with high operating costs.
- This procedure has no unique ICD-9-CM code. To group cases involving ESWL into a DRG, a procedure code needs to be assigned, and ESWL has to be designated as either a medical or surgical procedure.
- When the Commission considered this technology in 1984, it had not received marketing approval from the FDA. In late 1984 the FDA approved ESWL for marketing, although only a few centers currently have units. Data concerning patient outcomes and the resources consumed by patients treated with ESWL are preliminary.

The Commission will continue to examine ESWL, in consultation with HCFA, and make recommendations when more data are available. The Commission will view ESWL as one of several illustrations of the general issue of payment for new technologies where cost and charge data may not be sufficient for determining appropriate DRG assignment and calculation of weights.

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Dermatologic Disorders

- Cases classified into one of five DRGs related to dermatologic disorders may comprise inappropriately heterogeneous patient populations, clinically and in terms of resources required for their care.
- Cases with differing levels of severity of illness may not be evenly distributed among all types of hospitals, since certain institutions may treat more severe, resource-intensive dermatologic cases than others.

The Commission will examine potentially inappropriate classification of cases in these DRGs. In addition, it will examine the issue of unequal distribution of resource-intensive cases among different types of hospitals.

Cystic Fibrosis

- Cystic fibrosis (CF) patients may be inappropriately classified into DRGs with patients having less resource-intensive conditions.
- The data bases used to create DRG classifications and weights may have underrepresented certain patient and hospital groups.

Although the issue of CF is not of direct relevance for Medicare due to the small number of Medicare patients involved, the Commission will examine the general issues this topic raises.

Alternative Approaches to Case-Mix Measurement

The potential problems noted in using DRGs for PPS indicate the need to improve the case-mix measurement tool. The Commission will examine three broad approaches to improving case-mix measurement: (1) retain the current DRG system based on ICD-9-CM coding, but revise it in an incremental fashion as continued experience reveals problem areas; (2) retain the current system in principle, but reconstruct it using a newer and more complete data base; and (3) consider an alternative case-mix measurement system, either in conjunction with DRGs or to replace DRGs.

Incremental Change

Many problems could be corrected in an incremental fashion leaving the basic construction, classification, and weighting of the DRG system intact. Incremental change could involve improvements such as: splitting DRGs to create more homogeneous groupings; combining DRGs; examining different age breaks to find the ones that minimize variance in resource consumption; and incorporating new ICD-9-CM codes into the DRG system.

The Commission is concerned that changes be made only when they can be validated using the best available data. The incremental approach makes each of these changes somewhat separate and iterative. The cumulative effect of such changes may be a case-mix measurement tool that differs in many important respects from the current DRG system.

Reconstruction of DRGs

The Commission also will examine the possibility of reconstructing the DRG system using more current, accurate, and complete data. Improved data might resolve many of the problems noted such as identification of cases involving multiple procedures or diagnoses. DRGs could be reconstructed so that such cases are explicitly identified and grouped. When weights are calculated, payment would more accurately reflect the resource consumption of these cases.

Reconstruction could also facilitate certain health policy changes. For example, improved data would permit better identification of transfer patients and their consumption of resources. Based on this information, appropriate changes could be made in transfer policy.

The Commission recognizes that each time a change is made, there is a certain degree of administrative burden, for both HCFA and the hospital industry. Reconstructing the entire system, while involving major changes, might in the long run reduce the administrative burden more than an incremental approach. Reconstructing the sys-

tem need not preclude minor incremental changes that may be necessary over time, such as inclusion of new codes to identify new technologies.

Alternative Case-Mix Measurement Systems

The Commission will examine several case-mix measurement systems currently in various stages of research and development. They include disease staging, severity of illness, patient management categories, and systems based on physiological measurements in conjunction with other patient characteristics. These systems differ by type and number of variables used to group patients. The systems were developed for utilization review, reimbursement, quality assurance, and patient management. Such systems generally use either patient medical records or discharge abstracts as their main data source. For prospective payment purposes, such systems appear to fall into two groups: those that could be applied in conjunction with DRGs and those that could substitute for DRGs.

Systems Designed to Be Used in Conjunction with DRGs.—Several systems under development might improve DRGs. For example, systems that outline several stages of disease or severity of illness levels could segregate cases further to increase homogeneity. The underlying assumption of these systems is that patients in more advanced stages of disease require more hospital resources than patients who are less severely ill. Application of such a system in conjunction with DRGs might eliminate some of the flaws previously identified, although it would not necessarily address other DRG problems, since the existing system is modified but left essentially intact. This does not preclude the option of performing a reconstruction of the system at the same time.

Systems to Replace DRGs.—Rather than modifying the existing DRG system, alternative systems are under development that could replace DRGs entirely. It may be advantageous to implement a new, presumably better system that would not contain many of the flaws identified in DRGs. Any new system, however, might contain other deficiencies. While DRGs present certain problems, the benefits of this system are uncertain because it has been in effect for a relatively short time, initial flaws have not yet been corrected, and the transition to fully implemented PPS is not complete. The Commission is concerned that the momentum initiated by PPS not be interrupted. A major change, such as a new case-mix measurement system, should only be undertaken if it groups cases for payment purposes more accurately than the current system. This cannot be determined until the benefits and the problems of the DRG system are more fully assessed.

The Commission will examine the more fully developed alternative systems, both those that replace and those that complement DRGs. The ability of such systems to produce groups that are medically meaningful, statistically homogeneous, and reflective of resource consumption will be assessed.

IMPROVING THE CALCULATION OF PAYMENT AMOUNTS

Problems related to the lack of timely, accurate, and consistent data for setting payment amounts have been repeatedly discussed throughout this report. The Commission is concerned with these problems and plans to examine them more fully in the future.

The following section identifies specific problems associated with the data used to set the standardized amounts and to determine the DRG weights. In addition, this section outlines approaches the Commission will consider that are directed toward improving the calculation of the payment amounts.

Setting the Standardized Amounts

The standardized amounts are derived from data supplied on hospitals' Medicare Cost Reports. On the cost report, hospitals are required to record extensive information including ag-

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gregate charges and aggregate costs by department and Medicare charges in each department.

The Commission has identified several problems associated with using aggregate cost information in calculating payment amounts for individual cases. Specifically, cost per case estimates generated from cost report data may not accurately reflect the cost of resources necessary to treat Medicare patients. This inaccuracy results from cost reporting practices such as:

- Lack of uniformity in reporting cost data,
- Limitations in the cost allocation process,
- Opportunities for manipulation of cost data, and
- Problems caused by the incentives of cost-reimbursement.

Furthermore, the most recent audited cost report data available at any given time are generally three years old.

In addition to the problems noted above, practices employed by the hospital industry to set the charges used in the calculation of cost-to-charge ratios included on the cost report do not necessarily correspond to actual resource costs. For example, many hospitals charge for operating room services based on an hourly rate (or some fraction of an hour). This method assumes that each hour of service consumes the same amount of resources. In actuality, however, different operating room procedures require varying amounts of personnel and equipment. Therefore, use of hourly rates results in underpricing and overpricing of services. (For further discussion, see Technical Appendix C.)

In setting payment, the process of standardization adjusts each hospital's average cost-per-case to place hospitals on a comparable basis. The Commission believes that improvements in the adjustments to account for differences in area wages, costs related to caring for a disproportionate share of low-income patients, and other costs related to the characteristics of hospitals and their patients, are necessary to make PPS payments more equitable.

During the next year, the Commission intends to examine in greater detail the limitations and inaccuracies of the data used to calculate and adjust the standardized amounts. Analysis will focus on the reliability of cost data as an indicator of resource consumption, the refinement of adjustments, and the collection of comparable data from all PPS hospitals. Moreover, the Commission will be developing options for future recalculation of the standardized amounts based on more recent data, as described in Recommendation 16 in Chapter 3.

Determining the DRG Weights

Establishing DRG weights involves the following data: (1) per-diem costs for routine and special care units (including nursing and other services); and (2) ancillary service costs and charges for revenue-producing departments of the hospital. Limitations of these data are described below. (For further discussion, see Technical Appendix C.)

Per-Diem Costs—Nursing Services

The method used to allocate nursing costs assumes that every patient uses the same amount of nursing resources per day, regardless of the patient's clinical condition and need for nursing care. The Commission has examined evidence suggesting that this method may have introduced significant inaccuracies in the DRG weights. Recalibration using charge data as recommended by the Commission for fiscal year 1986 would not correct this problem since the same assumption is made using per-diem charges. (For further discussion, see Technical Appendix C.)

The Commission's first concern regarding allocation of nursing costs relates to equity of PPS for Medicare beneficiaries and hospitals. If the DRG weights do not accurately reflect resource use, overpayment or underpayment for certain diagnoses may result. This issue is important because nursing costs represent a significant portion of a hospital's operating budget and an even larger share of its labor expenses. Depending on the case mix served, some hospitals may not be adequately compensated for services provided while others may receive payments in excess of their costs. Faced with these inequities in payment, hospitals may limit admissions or reduce services for patients requiring intensive nursing care. As a result, Medicare beneficiaries may receive lower quality care or have less access to services.

The Commission's second concern relates to the ability of the DRG patient classification system to account adequately for the severity of the patient's illness. It has been argued that more severely ill patients usually require a higher intensity of nursing care, resulting in higher hospital costs. Therefore, a more precise measure of nursing resource use may improve the DRG system's ability to reflect more accurately the variation in resource use among cases. If DRG weights were adjusted to reflect variations in nursing intensity among types of patients, payments would, presumably, be more equitable among hospitals. In addition, the perceived need for modifying the DRG system for illness severity may be diminished.

The Commission will analyze the current per-diem method for allocating routine and special care nursing costs to each DRG to determine whether the DRG weights accurately reflect the cost of nursing services. If not, alternative methods for allocating nursing costs on a diagnosis-specific basis will be explored. The Commission will also examine whether improvements in measuring nursing resource use may minimize the need perceived by some to adjust the system otherwise for severity of illness.

The Commission regards allocation of nursing costs as a sufficiently important issue to suggest that the Secretary of the Department of Health and Human Services also examine this topic. The Commission will collaborate with the Secretary to ensure that its efforts in this area are coordinated and mutually productive.

Per-Diem Costs—Other Services

Per-diem costs and charges also include housekeeping, dietary, laundry, and similar resources used by the patient during a stay. Therefore, the method for allocating these costs to DRGs may introduce some of the problems noted for nursing costs. In addition, the change in reimbursement policies may affect the accuracy of these costs. The previous cost reimbursement system provided the incentive to assign costs to inpatient services rather than to outpatient services in order to maximize reimbursement. The routine (Section 223) cost limits, however, restricted the hospitals' ability to attribute these costs to inpatient routine services. Prospective payment provides further incentives to assign costs to outpatient services.

The Commission will examine the methods used to derive per-diem costs and charges for other services to determine whether they are accurately reflected in the DRG weights. The Commission will also evaluate alternative approaches for allocating other service costs to DRGs if necessary.

Ancillary Service Costs

The limitations of Medicare Cost Report data and hospital charge-setting practices also affect the accuracy of allocating costs of ancillary services to DRGs. The cost-to-charge ratios used to assign costs for ancillary services may introduce errors in the calculation of the DRG weights and the payment amounts. This methodology, intended to provide a correction for interdepartmental variation in markups due to hospital price setting, may introduce overpricing and underpricing of DRG payment amounts.

The estimate of ancillary costs is derived by multiplying Medicare charges by the hospital departmental cost-to-charge ratio. For the six departments listed on the Medicare claim form, the actual cost-to-charge ratio is used. All remaining ancillary charges are aggregated into one "department," and an average cost-to-charge ratio is used. If the cases in a DRG have a significant number of ancillary services which are aggregated, this averaging process may lead to an inaccurate DRG weight.

Under the Commission's recommendation for recalibration using charge data, cost-to-charge ratios would not be used. However, hospital charge-setting practices might still distort relative DRG weights.

The Commission plans to examine the impact of hospital charge-setting practices and the cost-to-charge methodology on the assignment of ancillary service costs to DRG weights.

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Approaches to Modifying DRG Weights

The Commission will continue to examine two general approaches to modifying the payment amounts: recalibration/reweighting and pricing.

Recalibration/Reweighting

The Commission considered several options for recalculating the entire set of DRG weights (recalibration) or a subset of the DRG weights (reweighting). For fiscal year 1986, the Commission recommends recalibration using the most recent charge data available. In the future, three alternative sets of data could be used for recalibration or reweighting: (1) costs and charges from the same year; (2) costs and charges from different years; or (3) charges only.

Ideally, cost and charge data from corresponding years should be used; the data should be as current as possible to reflect patterns of care and technology usage. Using data from different years results in applying the costs of services to charges for a different set of services and possibly introducing a new type of error into the rates. In addition, the Commission is concerned that the continued use of charge data alone to set DRG weights might offer opportunities for hospitals to manipulate the weights of some DRGs. It may be possible to continue to recalibrate using only charges if the incentives of PPS, data reporting requirements, or processing methods result in charges that more accurately reflect resource costs. If, however, evidence shows that significant cross-subsidization or other bias in setting charges still exists, an alternative method for determining DRG weights will be necessary.

During the next year, the Commission will examine this issue further to determine an equitable, accurate, and timely approach to recalibration and reweighting of the DRGs.

Pricing

As noted previously, there may be times when adjustments to individual DRG weights will be necessary in the absence of appropriate Medicare cost or charge data. In such cases, the Commission will explore the feasiblility of establishing prices for individual DRGs to support, or replace, the recalculation of one or more DRG weights. This method might be particularly useful in determining payment amounts for new medical practices or technologies in the absence of adequate cost and charge data.

DRG weights could be calculated by using information from manufacturers, professional groups, hospitals, and others to estimate the cost of care for a particular DRG. This cost estimate could then be converted to a DRG weight for payment. The pricing technique offers the advantage of using information from a variety of sources in addition to, or in place of, Medicare cost and charge data. Thus, this technique eliminates the problems previously outlined relating to the limitations of the Medicare data.

In summary, the Commission will examine the limitations of cost and charge information and the use of this information in setting the standardized amounts and the DRG weights. For example, to reduce lag time, the Commission may consider using information from cost reports as submitted (rather than waiting for auditing to be completed) or final reports from a sample of hospitals. Alternatively, the standardized amounts might be set by systematically developing uniform cost information from a sample of hospitals. The Commission plans to study these and other options to reduce the problems associated with the quality of cost and charge data and to improve the timeliness, accuracy, and equity of payments under PPS.

OTHER ISSUES TO BE CONSIDERED BY THE COMMISSION

Further analysis in the areas described previously is directed toward developing recommendations regarding specific improvements in case-mix measurement and the calculation of payment amounts. Other issues requiring further study are briefly discussed below.

Measuring Quality of Care and Health Outcomes

The Commission recognizes its statutory responsibility to monitor changes in the quality of care and health outcomes for Medicare beneficiaries. The assessment of these changes in terms of past and current practices will influence the Commission's future recommendations regarding DRG classifications and weights and the update factor for payments. In the formation of its analytic agenda, the Commission has placed high priority on assessing existing information, developing new data bases to make quality assessments, and improving current measures of quality of care and health outcomes. The Commission's data development and analysis will supplement the evidence gathered by Peer Review Organizations and the studies of quality of care by others in government and in the private sector.

Measuring Real Case-Mix Change

The Commission has recommended that the Secretary of the Department of Health and Human Services estimate and incorporate an allowance for real case-mix change occurring during fiscal year 1985 in the update factor for fiscal year 1986. The Commission recognizes that distinguishing changes in real case mix from those arising from altered coding practices is a difficult but important task. Therefore, it plans to monitor HHS's activities and to continue to consult with and make recommendations to the Secretary on this subject.

Measuring Change in the Hospital Product

PPS may contain incentives for changing the hospital product. Faced with these incentives, hospitals may substitute inpatient services with services provided in outpatient settings or other alternative sites of care. The Commission recognizes the importance of these hospital product changes in updating payment amounts, changing DRG classifications and weights, and affecting the health outcomes of Medicare beneficiaries. The Commission plans to develop methods for measuring changes in the hospital product and to monitor the effects of such changes.

Regional Practice Pattern Variations

The statute identifies regional variation in medical practice as an important consideration in making recommendations for updating and creating DRGs and establishing relative weights that accurately reflect appropriate differences in resources consumed. In addition, practice pattern variations contribute to the problems of defining the hospital product and measuring quality of care. The Commission will collect and assess information on these subjects with emphasis on variations involving costly or potentially inappropriate services.

Disproportionate Share Hospitals

The Commission has identified the need for specific adjustments for hospitals serving a high number of low-income patients to offset the higher costs of treating them. In its recommendations, the Commission has requested that HHS develop an appropriate definition of disproportionate share hospitals and a methodology for implementing an adjustment for such hospitals. The Commission will examine decisions made by the Secretary regarding the definition and treatment of disproportionate share hospitals. It will work cooperatively with HHS to develop appropriate definitions and methods of calculating adjustments to payment amounts.

Hospital Market Area Definitions and Wage Indexes

The Commission has recommended that the Secretary correct inadequacies in the current hospital market area definitions. The purpose of this correction is to better reflect hospital labor markets in the application of the hospital wage index adjustment to the payment amounts. In particular, the Commission has identified the need to distinguish between inner city and suburban areas within an MSA and between different rural areas within a state. The Commission will review the decisions made by the Secretary regarding this recommendation. In addition, the Commission will participate in studies regarding the magnitude of labor market differences in these areas and methodologies for drawing boundaries.

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Effects of the Transition

The Commission recognizes the importance of the transition from payments based on hospitals' past costs to payments based on national averages. Over the next few months, the Commission plans to further analyze the impact of the transition on various types of hospitals. The effect of the transition will be assessed in light of concerns with the method currently used to determine the prospective payments as well as other policy changes. The analysis will use information that reflects, to the extent possible, changes in hospital behavior since PPS was developed.

Additional Analytic and Data Development Activities

The Commission will conduct and support research, as needed, to augment staff analyses regarding improvements in case-mix measurement and the updating of payment amounts. This may include, for example, further analysis of issues concerning the construction of the hospital market basket.

Finally, the Commission will consider other research topics that provide a broad view of the effects of PPS. A major effort will be a synthesis of data and anecdotal evidence on the effects of PPS on the health care system. This study will focus on changes in overall Medicare expenditures under PPS, for both inpatient and outpatient services. In addition, the study will include the effects of PPS on hospital behavior, operating structure, management strategies, and delivery of health care services.

The Commission is authorized by statute to collect and assess information to support the analytic agenda described above. To the extent possible, the Commission will carry out this responsibility using existing information, collected and assessed by its own staff, as well as analysis of others. It is also necessary for the Commission to award grants and contracts to support its data development, analysis, and research activity. Most Commission expenditures in these areas will be through open competition in response to grant solicitations or requests for proposals in a variety of areas relevant to PPS. Some portion of the budget will be for smaller projects obtained through limited competition or sole-source arrangements.

In forming its analytic agenda, the Commission identified a range of research issues and topics and established priorities among them. This process was guided by congressional statements of the role and responsibilities of the Commission. Two additional criteria will be used for defining the content and scope of each research effort. The first is the extent to which other organizations within the government and in the private sector are conducting research relating to each topic. Studies relevant to PPS will be monitored in the process of carrying out the research agenda to avoid duplication of efforts. The second is a consideration of the feasibility of each topic to ensure that analytic results contribute to the decision-making process of the Commission in terms of the content and timeliness of the research and the feasibility of completing the study at a reasonable cost.

The Commission's current extramural research agenda includes studies that focus on the specific topics previously identified. Data acquisition and data base construction are ongoing and will continue to be governed by the analytic priorities of the Commission.

OTHER POLICY CHANGES THAT MAY AFFECT PPS

The Commission's recommendations were developed in light of current PPS policies. There are a number of emerging issues in Federal health policy that may affect PPS hospitals and Medicare beneficiaries. The Commission recognizes its responsibility to respond to health policy changes; therefore, it is likely that additional issues will occupy its attention during the next year.

The Commission wants to note specific issues currently under discussion in the executive and legislative branches of the government and reported in the media. Many of these issues may have a profound effect on the overall impact and functioning of PPS.

In the Administration's fiscal year 1986 budget, it has proposed several actions which would significantly affect PPS. A major initiative would "maintain reimbursement under the prospective payment system" for fiscal year 1986 with rates at the level of those in effect for fiscal year 1985. Savings of $1.8 billion for fiscal year 1986 are associated with this proposal, which the Department of Health and Human Services anticipates implementing under current law. The Department further states that new legislation "will be sought if an application of current law does not achieve this level of savings."

Another Administration proposal having a major effect on PPS would "eliminate doubling of indirect medical education payments," with an anticipated savings of $695 million in fiscal year 1986. This proposal requires legislative change.

A final budget proposal submitted to the Congress would "freeze payment for direct medical education," with a savings estimate of $150 million for fiscal year 1986.

In addition to the Administration's budget proposals, Public Laws 98-21 and 98-369 contained provisions for further policy changes in PPS in the future. Although capital costs are passed through under current law, Pub. L. 98-21 requested a report by October 1984 on "methods and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts." Although this report has not yet been submitted, the Commission anticipates that the inclusion of capital within PPS will be a topic of extensive policy debate in the coming months.

The Congress also requested that the Secretary report and prepare legislative recommendations by July 1, 1985, "on the advisability and feasibility of providing for the determination of payments based on a DRG-type classification for physicians' services furnished to hospital inpatients." The inclusion of physician payments within a DRG-based system will be a critical topic for future policy debate.

Pub. L. 98-369 requires the Secretary to adjust the prospective payment wage index "taking into account wage differences of full time and part time workers," with such adjustments considering overpayments and underpayments retroactive to October 1, 1983. Potentially this would have a major impact on hospital payments under PPS.

These or other health policy changes may require the Commission to modify its analytic plans or reconsider certain recommendations. The Commission will consider policy changes in the context of its role, responsibilities, and priorities; the overall goals of PPS; and the distributional consequences of the alternatives.

The Commission believes it has a long-term role related to maintaining and updating PPS. In the future, significant changes will continue to occur that will influence the direction of health care delivery and financing. As these changes develop, additional items will be placed on the Commission's analytic agenda. These items will be examined and recommendations will be made, where appropriate, to the Secretary of the Department of Health and Human Services.

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Part IV

Department of Health and Human Services

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, PHS, HHS.

ACTION: Notice.

SUMMARY: This is to announce the availability of grant funds for the Adolescent Family Life Demonstration Grants Program for the following States and territories: Alabama, Alaska, Arizona, Arkansas, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. These States and territories have been designated as eligible to apply for funding because they will have no more than one Adolescent Family Life demonstration grant or performance site of an Adolescent Family Life national demonstration grant as of October 1, 1985.

These grants are for demonstration projects which test new approaches to providing care services for pregnant adolescents and adolescent parents or prevention services to reach adolescents before they become sexually active as authorized by Title XX of the Public Health Service Act (42 U.S.C. 300z. *et seq.*).

The Office will also accept competing renewal applications from current Adolescent Family Life grantees in the above States and territories whose demonstration grants are ending September 30, 1985.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Adolescent Pregnancy Programs, OPA, Room 1351, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

DATE: Applications must be postmarked or received at the above address no later than July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245–0146 or Program Office at area code 202/245–7473. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Assistance Number 13.995.) This notice announces the availability of approximately $1.5 million in funding for demonstration projects for care or prevention services in certain designated States and areas as specified in the above Summary. It is anticipated that 8–10 projects can be funded, with an average award of $150,000 and a range of between $75,000 and $250,000. Grants may be approved for project periods of up to five years. Priority will be given to those projects that can be completed in three years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, adequate stewardship of Federal funds and availability of funds. A grant award may not exceed 70% of the total costs of the project for the first and second years, 60% of the total costs for the third year, 50% for the fourth year and 40% for the fifth year. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment, or services. We summarize below the statutory background of the grant program and describe the procedures for applying for grants pursuant to this notice.

Statutory Background

Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (i.e., services for the provision of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide "prevention services" only (i.e., services to prevent adolescent premarital sexual relations), and (3) projects which provide a combination of care and prevention services. However, in this program notice we do not propose to consider or fund any combination projects.

The specific services which may be funded under Title XX are the following:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations, including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of parents as the provider of sex education; and,

(d) Assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Referral to licensed residential care or maternity home services;

(10) Mental health services and referral to mental health services and to other appropriate physical health services;

(11) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(12) Consumer education and homemaking;

(13) Counseling for the immediate and extended family members of the eligible person;

(14) Transportation;

(15) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; (and)

(16) Family planning services. See (Sec. 2002(a)(4) of Title XX of the Public Health Service Act.

No funds provided for a demonstration project for services under Title XX may be used for the provision of family planning services (other than counseling and referral services) to adolescents unless appropriate family planning services are not otherwise available in the community. Maximum use of available Title X family planning monies must be utilized.

Applicants for care projects are required to provide, either directly or by referral, 10 core services which together comprise a comprehensive program of health, education and social services. The services described in subparagraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) are core services. The services described in (16) are permissible services only when

appropriate family planning services are not otherwise available in the community. In all other cases, no funds under this Title may be used for the provision of family planning services. However, counseling and referral for family planning services must be provided as a core service.

Applicants for prevention projects are not required to provide any specific number of services. Under the statute, the services described in subparagraphs (1), (4), (5), (7), (8), (13), (14), and (15) are prevention services. Applicants may request funding for any one or more, as appropriate for the proposal.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, as specified in the above Summary, only entities from Alabama, Alaska, Arizona, Arkansas, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific will be eligible to apply under this announcement.

Grants are awarded only to those organizations or agencies which demonstrate the capability of providing the proposed services.

Application Requirements

Applications must be submitted on the forms supplied and in the manner prescribed in the application kits available from the Office of Adolescent Pregnancy Programs (OAPP). Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

A copy of the legislation governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation to guide them in developing their applications. All applicants should review and must comply with the requirements for applications in 2006(a).

Awards will be made only to those applicants who have met all applicable statutory requirements for care or prevention projects. OAPP will consider applications providing care or prevention services only but not a combination of care and prevention services.

It should be noted that grantees must not teach or promote religion in the Adolescent Family Life Title XX program. Each program shall be designed so as to be, to the extent possible, accessible to the public generally.

Care Programs—Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents, with primary emphasis on unmarried adolescents who are 17 years of age or under, and for adolescent parents and their families, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to:

(A) Enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) Assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.

Within the context of providing the required care plus necessary supplemental services and developing evaluation strategies, applicants should pay particular attention to these aspects of Title XX:

- The promotion of adoption as an alternative to early parenting
- Involvement of the families of pregnant adolescents and adolescent parents, including the adolescent father
- Provision of services after delivery. (This is the continuation of necessary services to clients until adolescent parents have become or are well on their way to becoming "productive independent contributors to family and community life", and their children are developing normally physically, intellectually, and emotionally. Proposals should specify the services to be provided, the means of identifying clients' need for services, and the system for tracking clients for a period of at least two years following delivery.)
- Supporting parents as primary sex educators.

Prevention Programs—The purpose of preventing programs is to find an effective means within the context of the family of reaching adolescents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self-discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnancy.

Evaluation

Section 2006(b)(1) requires each grantee to expend at least one percent but not more than five percent of the funds received under Title XX on evaluation of the project. While the statute allows waiver of the five percent limit on evaluation (see section 2006(b)(1)), waivers are rarely granted. Therefore, applicants who anticipate evaluation costs in excess of the limit should exhaust all possible alternative sources of funds before considering requesting a waiver for an evaluation amount in excess of five percent. Sec. 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. Applicants should provide evidence of their working arrangements with a college or university located in the applicant's State to meet this statutory requirement. Applicants should also describe in detail measures of program performance, data collection methods, and a plan for analyzing the data.

Additional Requirements

In addition to the above, applicants for grants must meet the following requirements:

(1) Requirements for Review of an Application by the Governor

Section 2006(e) of the Public Health Service Act requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this Title. The Governor shall submit to the applicant comments on any such application within the period of 60 days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application. The Governor has 60 days in which to provide comments to the applicant.

The applicant must provide a copy of the comments or verification that there were no comments to the above address by September 23, 1985.

(2) Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, Room 1351, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. Such comments must be received by the Office of Population Affairs by September 23, 1985 to be considered. In the event that an application is submitted to the Office of Population Affairs without notification to the SPOC, the SPOC will be notified of the submission.

(3) Health Systems Agency (HSA) Review

In order to comply with the HSA review requirements under section 1513(e) of the Public Health Service Act, 42 U.S.C. 3001–2(e), as amended, applicants must contact the HSA responsible for the area to be served by the proposed project to determine whether or not the HSA desires to review the application. If so, a copy of the application must be submitted to each HSA for review no later than July 8, 1985. Applicants are advised to contact the local HSA as soon as a decision is made to apply for a grant for detailed information on meeting this review requirement. Applications will not receive a formal review by OAPP without satisfying this requirement.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned.

All other applications will be subjected to a competitive review and assessment by qualified persons. The results of this review will assist the Director of the Office of Adolescent Pregnancy Programs in considering competing applications and in making the final funding decisions.

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The applicant's provision for the requirements set forth in section 2006(a) of Title XX of the Public Health Service Act (10 points).

2. The capacity of the proposed applicant organization and staff to provide the appropriate services and to evaluate the results (15 points).

3. The applicant's presentation of the project's objectives, the methods for achieving project objectives, the workplan and the results or benefits expected (25 points).

4. The applicant's documentation of the innovativeness of the program approach, its worth for testing and replication. (25 points).

5. The estimated cost of the project to the government is reasonable considering the anticipated results (5 points).

6. The applicant's detailed evaluation plan indicates an understanding of program evaluation methods and reflects a practical, technically sound approach to assessing the project's achievement of program objectives. A workplan should be included to indicate the extent and nature of the involvement of a local State college or university in this effort (20 points).

In making grant award decisions the Director of OAPP will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country taking into consideration such things as the following factors:

1. The priorities in section 2005(a) of Title XX of the Public Health Service Act.

2. The geographic area to be served.

3. The community commitment to and involvement in the planning and implementation of the demonstration project.

4. The nature of the organization applying.

5. The population to be served.

6. The organizational models for delivery of service.

7. The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing AFL demonstration models.

8. Where projects are of approximate equal quality and there are insufficient funds to fund both, priority will be given to those that can be completed in three years.

When final funding decisions have been made, all applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, the budget period for which support is being given, and the amount of funding to be contributed by the grantee to project costs.

Dated: June 4, 1985.

Jo Ann Gasper,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 85–14000 Filed 6–7–85; 8:45 am]

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federal register

Tuesday
June 11, 1985

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For information on briefings in Chicago, IL, New York, NY and Washington, DC, see announcement on the inside cover of this issue.

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Animal Drugs
Food and Drug Administration

Aviation Safety
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Biologics
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Commodity Futures
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Securities and Exchange Commission

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Veterans Administration

Marketing Agreements
Agricultural Marketing Service

National Parks
National Park Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Radio
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Radio Broadcasting
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Surface Mining
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Telephones
Federal Communications Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W 24th and W 25th Streets), New York, NY

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2430S]

General Administrative Regulations; Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (Corporation) hereby issues a new Subpart J in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Reinsurance Agreement. The intended effect of this rule is to prescribe procedures applicable to operations under a Reinsurance Agreement with the Corporation. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local government, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this rule applies are: Title — Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibilty Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Federal Crop Insurance Corporation, an agency of the United States Department of Agriculture, is authorized by the Federal Crop Insurance Act, as amended (Act) (7 U.S.C. 1501 *et seq.*), to offer programs of crop insurance to American farmers, the regulations for which are found in Title 7 of the Code of Federal Regulations (7 CFR 400 *et seq.*).

Section 508(a) of the Federal Crop Insurance Act, as amended by Pub. L. 80–320, August 1, 1947, provided, commencing with crops planted for harvest in 1948, for reinsurance of insurers of producers of agricultural commodities and that such reinsurance be limited to contracts covering farms in not more than 20 counties. (7 U.S.C. 1508(a)).

On July 23, 1957, Pub. L. 85–111 added a new subsection 508(f) to the Act providing for reinsurance of crop insurance in Puerto Rico written by an agency of the Puerto Rican Government on any crop or plantation should private reinsurance become unavailable. (7 U.S.C. 1508(f)).

Amendments to the Act in 1980, contained in Pub. L. 96–365, dated September 26, 1980, provided in Subsection 508(e) that, to the maximum extent possible, consistent with Subsections (a) and (b) of Section 508 and with sound reinsurance principles, reinsurance be offered to insurers including private insurance companies or pools of such companies, and reinsurers of such companies that insure producers of any agricultural commodity under any plan acceptable to the Corporation. (7 U.S.C. 1508(e)).

Section 508(f) was also amended by Pub. L. 96–365 to provide reinsurance for production of agricultural commodities in the Commonwealth of Puerto Rico, Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, in the same manner as provided for agricultural products in the United States. (7 U.S.C. 1508(f)).

There has been a steady increase in the volume of crop insurance sold through commercial channels since the passage of the 1980 amendments to the Act. Since 1981, premium income on reinsured paper has gone from $12.8 million to an estimated $378 million for crop year 1985, an increase of 2,900 percent. During the same period, the share of business written by reinsured companies compared with government operations, including agents and private insurance companies under Agency Sales and Service Agreements, rose from 3 percent to 70 percent by available estimates.

The Reinsurance Agreement sets forth the terms and conditions under which the Corporation will reinsure all eligible crop insurance policies sold or reinsured by insurance companies. All such policies must be written on terms, including premium rates, approved by the Corporation, and may only be issued on crops and in areas approved by the Corporation. All participating insurance companies must submit a plan of operation for the Corporation's approval.

The policies must be made available to all eligible producers by the participating insurance companies. In the administration of the Agreement, the Corporation must be provided all

relevant information, including a list of all applicants refused coverage and all producers cancelled from insurance, along with the reason for such action. All loss adjustment methods will be prescribed by the Corporation and only licensed agents or brokers may sell policies covered by the Agreement. The Corporation may, at any time, suspend its obligation to accept additional liability by providing written notice to that effect.

Interested parties may obtain a copy of the Reinsurance Agreement for the 1985–87 reinsurance years by contacting the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

On Friday, April 26, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 16502, issuing a new Subpart J in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Reinsurance Agreement. The intended effect of this rule is to prescribe procedures applicable to operations under a Reinsurance Agreement with the Corporation.

The public was given 30 days in which to submit written comments, data, and opinions on the rule.

One response was received from the American Farm Bureau (AFB) in Washington, D.C., commenting on subsection 400.79(b) which provides that policies for insurance must be made available to all eligible producers by the participating companies.

The AFB expressed concern that State Farm Bureau Insurance Companies would be required to insure eligible producers who are not members of the associated membership organization.

The suggestion was made that this provision be changed to include a requirement of valid membership in any organization wherein membership is a requirement for purchase or renewal of insurance coverage.

FCIC considered this suggestion, since it could apply to other types of organizations and the potential effect on producers, and determined that the effect of this requirement on such organizations is minimal.

The Reinsurance Agreement requires that participating companies advise FCIC of any producer who is denied insurance coverage, and the reason for such denial so that other participating companies or FCIC may determine if the producer is eligible and provide insurance.

Another was received from the American Association of Crop Insurers (AACI) outlining modifications to two provisions in the rule, and recommendations for four additional provisions to the rule. These recommendations were discussed at length in early May in a meeting between AACI company and legal representatives, FCIC management officials, and Office of General Counsel (USDA) representatives. The determination was made that such recommendations would not be included in the rule. FCIC has accepted the submission for future consideration only.

Therefore, the proposed rule as published is hereby adopted as a final rule.

List of Subjects in 7 CFR 400, Subpart J

Crop insurance, Reinsurance agreement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Subpart J to Part 400 of Title 7 of the Code of Federal Regulations, to be known as 7 CFR 400, Subpart J—General Administrative Regulations; Reinsurance Agreement, containing procedures applicable to insurance companies under a reinsurance agreement with the Corporation, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart J—Reinsurance Agreement

Sec.

400.75 Availability of Reinsurance Agreements
400.76 Eligibility for Reinsurance Agreements
400.77 Obligations of the Corporation
400.78 Limitations on Corporation's Obligations
400.79 Obligations of Participating Insurance Company
400.80 Disputes
400.81 OMB Control Numbers

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

Subpart J—Reinsurance Agreement

§ 400.75 Availability of reinsurance agreements.

The Federal Crop Insurance Corporation ("Corporation") will offer Reinsurance Agreements (Agreement) to eligible companies under which the Corporation will reinsure policies which the companies issue to producers of agricultural commodities. The Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations.

§ 400.76 Eligibility for reinsurance agreements.

A company will be eligible to participate in an Agreement if the Corporation determines the company meets the financial standards and financial reporting requirements at Subpart G of Part 400 of Title 7 of the Code of Federal Regulations (7 CFR Part 400.50 *et seq.*).

§ 400.77 Obligations of the Corporation.

The Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

§ 400.78 Limitations on Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the company to a producer after the date the company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.79 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The company shall follow all Corporation procedures in its administration of the crop insurance policies reinsured.

(b) The company shall make available to all eligible producers crop insurance for the crops and in the areas which are stated in its plan of operation which is approved by the Corporation.

(c) The company shall provide the Corporation, on forms approved by the Corporation, all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants refused coverage and all insured producers

canceled from insurance, along with the reason for such action, the crop program and the amount of coverage for each.

(d) The company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex, age, handicap, or national origin.

§ 400.80 Disputes.

All disputes arising under this Subpart and the Agreement entered into by the company and the Corporation must be submitted for decision to the Manager of the Corporation. The decision of the Manager shall be final unless the company requests reconsideration in writing within 30 days of the receipt of the decision. Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the company will proceed diligently with the performance of the Agreement, as required by the Corporation.

§ 400.81 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 to Title 7 CFR.

Done in Washington, D.C., on May 24, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: June 6, 1985.

[FR Doc. 85-14060 Filed 6-10-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASO-32]

Alteration of VOR Federal Airway V-51—FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Federal Airway V-51 from Alma, GA, direct to Jacksonville, FL. This action improves flight planning and reduces the flight time between Macon, GA, and Jacksonville, FL.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Indpendence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On April 16, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-51 in the vicinity of Jacksonville, FL (50 FR 14939). Traffic between Jacksonville and Macon is normally routed V-267 and operates without radar coverage and with opposite direction traffic. In order to avoid this situation, when possible, controllers routinely route southbound traffic over Alma, GA, direct to Jacksonville. The action would provide an airway in an area where aircraft are vectored. This action aids flight planning, reduces controller workload and improves safety. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns VOR Federal Airway V-51 from Alma, GA, direct to Jacksonville, FL. This action improves flight planning and reduces the flight time between Macon, GA, and Jacksonville, FL, terminal areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

2. Section 71.123 is amended as follows:

By removing the words "Waycross, GA; Alma, GA;" and substituting the words "Alma, GA;"

Issued in Washington, D.C., on June 3, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-13971 Filed 6-10-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 85-ANM-11]

Revocation of Restricted Area R-2604, Platteville, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the existing Restricted Area R-2604 in the state of Colorado. This action is necessary since the Department of Commerce no longer uses the airspace and has no plans for anticipated use in the future. This action restores for public use previously restricted airspace.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Andy Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3128.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations is to revoke the restricted area at Platteville, CO. The Department of Commerce, National Telecommunications and Information Administration, which is the using agency, has informed the FAA that the field site is inactive and that no activities are anticipated. The Department of Commerce has, therefore, requested that Restricted Area R-2604 be eliminated. Because the purpose of

the area no longer exists, and because this action would simply restore the airspace to public use, I find that notice or public procedure under 5 U.S.C. 533(b) is unnecessary because the action is a minor amendment in which the public would not be particularly interested.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, and 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

2. Section 73.26 is amended as follows:

R-2604 Platteville, CO [Revoked]

Issued in Washington, D.C., on June 4, 1985.

James Burns, Jr.,

Acting Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 85-13970 Filed 6-10-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-14556]

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Extension of compliance date.

SUMMARY: The date by which investment companies must conform existing foreign custody arrangements to the provisions of rule 17f-5 or exemptive orders as amended is extended until September 1, 1985. The three-month extension is intended to give investment company directors sufficient time to approve any modified arrangements.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Staff Attorney, Office of Regulatory Policy (202) 272-2084 or Brion R. Thompson, Special Counsel, Office of Investment Company Regulation (202) 272-3016, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Investment Company Act Release No. 14132, dated September 7, 1984 (49 FR 36080), the Commission adopted rule 17f-5 (17 CFR 270.17f-5) and notified investment companies with existing foreign custody arrangements made in reliance upon exemptive orders or no-action positions that the companies would have until March 1, 1985 to conform those arrangements to the orders as amended or to rule 17f-5. In Investment Company Act Release No. 14347, dated February 4, 1985 (50 FR 5234), the Commission extended that compliance date until June 1, 1985. The Commission has received three requests to postpone the compliance date again and believes that further extension until September 1, 1985 will give investment company boards of directors sufficient time to approve any modified arrangements. This is, however, the final extension of time that will be granted.

Dated: May 31, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-14010 Filed 6-10-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, and 630

Job Training Partnership Act and Targeted Jobs Tax Credit Programs: Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of Lower Living Standard Income Level.

SUMMARY: The Job Training Partnership Act and the Targeted Jobs Tax Credit Program provide that the definition of the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible for determining the LLSIL, the Department of Labor is issuing revised figures for the LLSIL.

DATE: This notice is effective on June 26, 1985.

ADDRESS: Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo. Telephone: 202-376-6093.

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those *economically disadvantaged* individuals . . ., who are in special need of such training to obtain productive employment." [Emphasis added.] JTPA Section 2. See 20 CFR 626.1(a)(2). JTPA Section 4(8) defines, for the purposes of JTPA, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4. Similar definitions of "economically disadvantaged", which also include references to the LLSIL, are provided at JTPA Sections 201(b)(3) and 202(a)(3) for JTPA Title II allotment and within-State allocation purposes. See 29 CFR 629.39 and 630.1. Internal Revenue Code (I.R.C.) Sections 44B and 51 establish a Targeted Jobs Tax Credit (TJTC) Program for a portion of the wages paid by employers hiring workers from "targeted" groups. Certain of the targeted groups require that the worker be a member of "an economically disadvantaged family". See, *e.g.*, I.R.C. Section 51(d)(3)(A)(ii), (4)(C), (7)(B), (8)(A)(iv), and (12)(A)(iv). For the purposes of TJTC,

(a) an individual is a member of an economically disadvantaged family if the designated local agency determines that such an individual was a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard. Any such determination shall be valid for the 45-day period beginning on the date such determination is made. Any such determination with respect to an individual who is a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to any employer shall also apply for purposes of determining whether such individual is a

member of another targeted group with respect to such employer.

[I.R.C. Section 51(d)(11).]

For the above reasons, the LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA and TJTC purposes.

JTPA Section 4(16) defines LLSIL as follows:

The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent "lower living family budget" issued by the Secretary.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act (CETA). The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for employment and training program operators. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA) published its first update to the LLSIL in the **Federal Register** of August 8, 1984. 49 FR 31664. ETA has again updated the LLSIL to reflect cost of living increases, by applying the percentage change in the December 1984 consumer price index (CPI), compared with the December 1983 CPI, to each of the August 8, 1984, LLSIL figures. Those updated figures are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas.

(Metropolitan levels apply to residents living within metropolitan statistical areas (MSAs), as defined by the Office of Management and Budget (OMB) in its Press Release, OMB–23–20 dated June 27, 1983. (Nonmetropolitan levels apply to places with populations under 50,000 for purposes of these determinations.) Since eligibility is determined by family income for a family of four at 70 percent of the LLSIL, pursuant to Section 4(8) of JTPA, those figures are listed as well.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

Region	Updated 1985 LLSIL	70 percent of LLSIL
Northeast:		
Metropolitan	$17,720	$12,400
Nonmetropolitan	17,260	12,080
North Central		
Metropolitan	17,330	12,130
Nonmetropolitan	16,970	11,880
South:		
Metropolitan	16,550	11,590
Nonmetropolitan	15,670	10,970
West		
Metropolitan	17,890	12,520
Nonmetropolitan	18,350	12,850

[1] For ease of calculation, these figures have been rounded to the nearest tenth

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

North Central

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Kentucky
Louisiana
Maryland
Mississippi
North Carolina
Northern Marianas
Oklahoma
Puerto Rico
South Carolina
Tenneasee
Texas
Trust Territories
Virginia
West Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii and Guam as indicated in Table 2 below.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII AND GUAM [1]

	Updated 1985 LLSIL	70 percent of LLSIL
Alaska:		
Metropolitan	$25,190	$17,630
Nonmetropolitan	23,930	16,750
Hawaii and Guam:		
Metropolitan	22,730	15,910
Nonmetropolitan	21,180	14,830

[1] Rounded to the nearest tenth

Data on 25 selected MSAs are also available, although the timeframes used for the updated data are not exactly the same. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the nearest tenth, are set forth in Table 3 below.

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL—25 SMSAS

SMSA	Updated LLSIL	70 Percent of LLSIL
Anchorage, AK	$25,190	$17,630
Atlanta, GA	16,300	11,410
Baltimore, MD	17,380	12,170
Boston, MA	18,530	12,970
Buffalo, NY	17,020	11,910
Chicago, IL/Northwestern, IN	17,740	12,420
Cincinnati, OH/KY/IN	17,890	12,520
Cleveland, OH	18,230	12,760
Dallas, Forth Worth, TX	16,270	11,390
Denver-Boulder, CO	17,880	12,520
Detroit, MI	16,590	11,610
Honolulu, HI	22,730	15,910
Houston, TX	16,470	11,530
Kansas City, MO/KS	17,180	12,030
Los Angeles/Long Beach/Anaheim, CA	18,380	12,870
Milwaukee, WI	17,580	12,310
Minneapolis-St. Paul, MN	17,010	11,910
New York, NY/Northeastern, NJ	18,060	12,640
Philadelphia, PA/NJ	17,320	12,120
Pittsburgh, PA	17,550	12,290
San Diego, CA	18,650	13,060
San Francisco-Oakland, CA	18,740	13,120
Seattle-Everett, WA	19,090	13,360
St. Louis, MO/IL	17,140	12,000
Washington, DC/MD/VA	19,400	13,580

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1985 LLSIL for family sizes of one to six persons. Where the poverty level for a particular family size is greater than the corresponding LLSIL figures, the figure is indicated in parentheses.

Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. Poverty level guidelines were transmitted to the States on April 19, 1985.

Table 4 below provides figures for family sizes up to six persons. For families larger than six persons, an amount equal to the difference between the six and the five person family income levels should be added to the six

person family income level for each additional person in the family.

TABLE 4.—70 PERCENT OF UPDATED 1985 LLSIL, BY FAMILY SIZE

Family size					
One	Two	Three	Four [1]	Five	Six
$6,350	$10,400	$14,280	$17,630	$20,800	$24,330
6,030	9,880	13,570	16,750	19,770	23,120
5,730	9,390	12,890	15,910	18,770	21,960
5,590	9,160	12,570	15,520	18,310	21,420
5,340	8,740	12,000	14,820	17,490	20,450
(4,900)	8,030	11,020	13,610	16,060	18,780
(4,890)	8,010	11,000	13,580	16,020	18,740
(4,720)	7,740	10,630	13,120	15,480	18,110
(4,700)	7,710	10,580	13,060	15,410	18,020
(4,670)	7,650	10,510	12,970	15,300	17,900
(4,630)	7,590	10,420	12,870	15,190	17,760
(4,630)	7,580	10,410	12,850	15,160	17,730
(4,590)	7,530	10,340	12,760	15,060	17,610
(4,550)	7,460	10,240	12,640	14,920	17,440
(4,510)	7,390	10,140	12,520	14,770	17,280
(4,470)	7,330	10,060	12,420	14,660	17,140
(4,430)	7,260	9,970	12,310	14,530	16,990
(4,420)	7,250	9,950	12,290	14,500	16,960
(4,380)	7,180	9,860	12,170	14,360	16,790
(4,370)	7,160	9,830	12,130	14,310	16,740
(4,360)	7,150	9,820	12,120	14,300	16,730
(4,350)	7,130	9,780	12,080	14,250	16,670
(4,330)	7,100	9,740	12,030	14,200	16,600
(4,320)	7,080	9,720	12,000	14,160	16,560
(4,290)	7,030	9,650	11,910	14,050	16,440
(4,280)	7,010	9,620	11,880	14,020	16,390
(4,180)	6,850	9,400	11,610	13,700	16,020
(4,170)	6,840	9,390	11,590	13,680	15,990
(4,150)	6,800	9,340	11,530	13,610	15,910
(4,110)	6,730	9,240	11,410	13,460	15,750
(4,100)	6,720	9,230	11,390	13,440	15,720
(3,950)	6,470	8,880	10,970	12,940	15,140

[1] Figures provided above in this notice are for a family size of four persons. To use this table, the appropriate figure should be found in the family size of four column. Then one may read across the row for family size other than four in the appropriate column.

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs) and State Employment Security Agencies (SESAs) and employers in their States to use in determining eligibility for JTPA and TJTC programs. Information may be provided by disseminating information to MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which figure is to be used. Pursuant to the JTPA regulation at 20 CFR Section 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary if not contrary to the Act and its regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for JTPA and TJTC programs. BLS not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI. Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under JTPA and TJTC.

Signed at Washington, D.C., this 5th day of June, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

[FR Doc. 85-14051 Filed 6-10-85; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Butorphanol Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Bristol Laboratories, Division of Bristol-Myers Co., providing for safe and effective use of butorphanol tartrate injection for the treatment of horses and yearlings for relief of pain associated with colic, and for postpartum pain.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 657, Syracuse, NY 13201, filed NADA 135-780 providing for intravenous use of butorphanol tartrate solution (Torbugesic ™) for the treatment of adult horses and yearlings for the relief of pain associated with colic, and for postpartum pain. The basis for approval is discussed in the freedom of information summary. Based on the data and information submitted, the NADA is approved and the regulations are amended accordingly.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 522.246 by revising paragraphs (a) and (c) to read as follows:

§ 522.246 Butorphanol tartrate injection.

(a) *Specifications.* Each milliliter of aqueous solution contains either 0.5 or 10 milligrams of butorphanol (as butorphanol tartrate).

* * * * *

(c) *Conditions of use.* (1) *Dogs.* (i) *Amount.* 0.025 milligram of butorphanol base activity per pound of body weight (equivalent to 0.5 milliliter per 10 pounds), using 0.5 milligram per milliliter solution.

(ii) *Indications for use.* For the relief of chronic nonproductive cough associated with tracheo-bronchitis, tracheitis, tonsillitis, laryngitis, and pharyngitis associated with

inflammatory conditions of the upper respiratory tract.

(iii) *Limitations.* For subcutaneous injection in dogs only. Repeat at intervals of 6 to 12 hours as required. If necessary, increase dose to maximum of 0.05 milligram per pound of body weight. Treatment should not normally be required for longer than 7 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses.* (i) *Amount.* 0.05 milligram of butorphanol base activity per pound of body weight (0.1 milligram/kilogram) using 10 milligrams per milliliter solution.

(ii) *Indications for use.* For the relief of pain associated with colic and postpartum pain in adult horses and yearlings.

(iii) *Limitations.* For intravenous use in horses only. Dose may be repeated within 3 to 4 hours. Treatment should not exceed 48 hours. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–13980 Filed 6–10–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Feed Service Co., Inc., providing for manufacturing premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Feed Service Co., Inc., 303 Lundin Blvd., P.O. Box 698, Mankato, MN 56001, is sponsor of NADA 138–342 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(10) by inserting numerically the number "030841."

Dated: June 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–13981 Filed 6–10–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Extension of Deadline for Submission of Program Amendment to the Oklahoma Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Oklahoma (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On April 5, 1985, Oklahoma requested an extension until August 5, 1985, for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension until August 5, 1985, to submit a proposed blaster certification program.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103; Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each state with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Oklahoma's

program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On April 11, 1984, the State of Oklahoma submitted to OSM a draft proposed amendment to its permanent regulatory program intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. As a result of OSM's preliminary review, deficiencies were identified in Oklahoma's draft proposal. After reviewing OSM's concerns in light of available staff resources and existing workload commitments, it became apparent that additional time would be needed; therefore, the State on April 5, 1985, requested a four month extension of time, until August 5, 1985, to submit to OSM a comprehensive and complete proposed program amendment concerning the development and adoption of a blaster certification program in Oklahoma.

In the April 26, 1985 **Federal Register** (50 FR 165 16518), OSM proposed an extension until August 5, 1985, for Oklahoma to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending May 28, 1985. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the dealine for Oklahoma to submit a proposed blaster training program until August 5, 1985. This extension will allow the Oklahoma Department of Mines to hire and train additional staff and complete previously committed to projects with critical completion dates.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 4, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 936—OKLAHOMA

30 CFR Part 936 is amended as follows:

1. The authority citation for Part 936 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 936.16 is added to read as follows:

§ 936.16 Required program amendments.

Pursuant to 30 CFR 732.17, Oklahoma is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By August 5, 1985 Oklahoma shall submit for OSM's approval

(i) Rules governing the training, examination and certification of blasters and

(ii) A program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

(b) [Reserved]

[FR Doc. 85–13845 Filed 6–10–85; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

Fire Island National Seashore; Seaplane Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is deleting the community of Robbins Rest from designation as a seaplane access area on Fire Island National Seashore because of public safety problems that occurred during the 1983 and 1984 summer seasons, and for the purpose of assuring the continued safety of the community. The current regulation allows for seaplane landings at Robbins Rest. With this deletion, six communities remain designated as seaplane access areas on Fire Island.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Hauptman, Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, Telephone: (516) 289–4810.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1979, the National Park Service promulgated final regulations to control seaplane and amphibious aircraft operations within Fire Island National Seashore (FR 44492). This rule established zones for take-offs and landings and designated areas where taxiing could take place. These regulations were developed to promote public safety, to minimize the conflicts among the various users, and to protect the resources of the seashore.

The designation of these taxi routes was based on public comment received during the public involvement phase of the rulemaking process. Twelve island communities indicated a desire to permit seaplane and amphibious aircraft access.

After the promulgation of this regulation in July 1979 there continued to be a conflict between the property owners and visitors in three of the island communities—Fair Harbor, Ocean Bay Park and Cherry Grove. Due to the fact that these three communities have bayside swimming beaches and mooring access, interaction between seaplanes and persons pursuing water recreation activities continued and created numerous public safety problems. From July 22 to September 9, 1979, 50 complaints were filed with the National Park Service. These complaints cited such incidents as near-collisions between seaplanes and boats, and seaplanes taxiing among swimmers.

As a result of these complaints and the potential threat to life and property indicated, the representatives of the Fair Harbor, Ocean Bay Park and Cherry Grove communities approached the National Park Service and asked that their communities no longer be designated as access points for seaplane use. Notarized letters to this effect were received by the Superintendent indicating that community referenda were held and a majority favored the removal of seaplane access designation.

An amendment to these regulations (45 FR 49549; July 25, 1980) removed these three communities from designation as seaplane access points, as requested by the community leaders.

During the 1980 summer season, the residents and visitors in the communities of Dunewood and Point O' Woods experienced similar problems and likewise forwarded notarized letters indicating the need for greater protection from seaplane use and showing the results of referenda indicating the majority desire to restrict seaplane access from the lands and waters within their community boundaries. An amendment to these regulations (47 FR 11011, March 25, 1982) removed these two additional communities from the list of approved seaplane access points.

During the summers of 1982 and 1983 the Property Owners Association of Robbins Rest-Ocean View expressed concern about the safety of continuing seaplane service to these communities. In the fall of 1983, the Superintendent received an official request from the Property Owners Association of Robbins Rest that this community be removed from the list of approved seaplane access points. This rule reflects the results of this official request and removes this additional community from the list of approved seaplane access points.

Public Participation

A proposed rule was published in the **Federal Register** on December 21, 1984 (49 FR 49647). No written comments, suggestions, or objections were received during the 30-day comment period following publication.

Drafting Information

The author of this regulation is Donald Weir, Fire Island National Seashore.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Service has determined that the regulation in this rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service prepared an Environmental Assessment in 1978 and received extensive public comment during 1978 and 1979 regarding seaplane and amphibious aircraft operations at Fire Island National Seashore. This assessment is on file and available for review at the park headquarters.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, 36 CFR Ch. I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

§ 7.20 [Amended]

2. In § 7.20, by removing paragraph (b)(3)(iv) and redesignating paragraphs (b)(3)(v) as (b)(3)(iv), (b)(3)(vi) as (b)(3)(v), and (b)(3)(vii) as (b)(3)(vi).

Dated: May 8, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-14054 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate

adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: June 4, 1985.

Harry N. Walters,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charge the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective June 5, 1985, 14 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective June 5, 1985, 13½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective June 5, 1985, 13½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 11½ per centum per annum, effective June 5, 1985, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 11¾ per centum per annum, effective June 5, 1985, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 11¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective June 5, 1985, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 13 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 11½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repair shall bear interest at the rate of 13 percent per annum. (38 U.S.C. 1811(d) (1) and (2)(A))

* * * * *

[FR Doc. 85-14008 Filed 6-10-85; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 83-325; RM-4062; RM-4075; FCC 85-277]

Amendment of the Rules To Add New Interim Provisions for Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC is amending its rules for cordless telephones to require a label to be carried on the package in which the device is marketed, notifying the prospective purchaser that some cordless telephones may respond to other nearby units or radio noise, resulting in calls being dialed without the owner's knowledge. The label will list the features which the unit possesses to protect against such occurrences. This action is necessary to bring the subject problem to the consumer's attention so that he or she can make an informed choice when purchasing a cordless telephone. The intended effect of this requirement is to reduce the likelihood of unintentional calls, thereby minimizing possible problems for consumers and telephone companies.

EFFECTIVE DATE: June 10, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp, Office of Science and Technology, Technical Standards Branch, Washington, D.C. 20554, (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, Reporting requirements.

Second Report and Order

In the matter of amendment of Part 15 to add new interim provisions for cordless

telephones; General Docket No. 83-325; RM-4062, RM-4075.

Adopted: May 20, 1985.
Released: June 5, 1985.

By the Commission.

1. A *Report and Order* in this docket was adopted on December 22, 1984,[1] establishing interim provisions for cordless telephones in 47 CFR 15.231-7. On May 17, 1984, the Commission adopted a *Further Notice of Proposed Rulemaking* (hereinafter Further NPRM) in this proceeding,[2] proposing an additional labelling requirement for cordless telephones to inform consumers of the features designed to prevent others from dialing calls through their unit. A list of the parties that filed comments in response to the Further NPRM can be found in the attached Appendix A. This Second Report and Order establishes such a labelling requirement. This document also addresses a petition filed by GTE Service Corporation requesting clarification of certain technical requirements pertaining to cordless telephone transmitters.

2. Cordless telephones utilize a two-way radio link in place of the wire utilized by conventional telephone handsets. This allows the user freedom of movement when talking on the telephone. Each cordless telephone in fact consists of two pieces of equipment: A portable handset and a base unit that connects to the telephone line. In the initial Notice of Proposed Rulemaking in this docket, the Commission proposed a requirement that all cordless telephones have some minimal means of preventing the base unit from either being engaged by an outside party or unintentionally going off-hook and seizing local telephone network loops. Cordless telephone manufacturers generally refer to such features as "security" features.[3] The proposal stemmed from a concern expressed by GTE, which operates telephone systems, about the possibility of cordless telephones responding to signals other than those from the associated handset, resulting in calls being dialed or the telephone going off-hook without the owner's intention. This could occur as a result of intentional theft of service, inadvertent interaction with another nearby cordless telephone, or inadvertent responses to radio noise. Consequently, the owner of the cordless telephone may be charged for calls that were made without his knowledge. GTE contended that this situation posed a potential problem for telephone companies, both because of the potential lost revenue from unpaid bills and because of telephone switching equipment being tied up by cordless telephones in the off-hook condition.

3. In the *Report and Order* in this docket, the Commission stated that it had found insufficient evidence that a minimal design requirement for cordless telephone security features was needed. The decision was based on a number of factors, as detailed in paragraphs 25 through 27 of the *Report and Order*. Chief among them were the following: marketplace forces had already brought about security features on most cordless telephones; little evidence had been submitted of actual costs to telephone companies caused by inadequate cordless telephone security features; and, the degree of security protection needed varies for each consumer depending, among other things, on whether the cordless telephone will be used in an area of high or low population density. The Commission found it preferable to allow the consumer to decide the degree of security protection he requires and cost he is willing to pay rather than prescribing minimal design requirements for cordless telephone security systems, which would provide insufficient security in high density urban environments and unneeded security in low density rural environments. In addition, the Commission was concerned that consumers might be misled into believing they were buying a telephone that was immune to security problems because it met FCC standards, when in fact the minimal security obtained would not have alleviated security problems in many circumstances.

4. In the Further NPRM, the Commission proposed a labelling requirement whereby the consumer would be informed of the security features possessed by the cordless telephone he or she plans to purchase. The proposed requirement called for the box or other package in which the cordless telephone was marketed to carry a statement in a prominent location which reads as follows:

Caution: The base unit in this cordless telephone may respond to other nearby units or radio noise, resulting in telephone calls being dialed through this unit without your knowledge and, possibly, calls being misbilled. In order to protect against such occurrences this cordless telephone is provided with the following features: [to be completed by the manufacturer].

The complete text of the label along with where, specifically, it would appear on the package, were to be stated in the application for certification of the cordless telephone.

5. Electronic Industries Association (EIA), representing cordless telephone manufacturers, as well as General Electric, and Dynascan, question the need for the labelling requirement, noting that the proposal stemmed from experiences with cordless telephones produced prior to the adoption of the new interim provisions for cordless telephones. Manufacturers provide no specific information as to how security features have changed since the adoption of the new rules. If the Commission should choose to move forward with the requirement, the manufacturers suggest some minor modifications of the text of the label to make it less harsh.

6. The other respondents generally support the proposal. However, the New York City Department of Consumer Affairs and Associated Public-Safety Communications Officers, Inc. (APCO), indicate that they believe stronger action may be needed. The New York City Dept. of Consumer Affairs suggests that protection against theft of service should be viewed as the consumer's fundamental right, and therefore, the Commission should move forward with a minimum design standard. APCO is concerned about the potential effects of inadequate cordless telephone security on 9-1-1 emergency response networks. APCO is a national association representing the interests of the public safety land mobile radio community. Its almost 5,000 members are drawn from police, fire, emergency medical, highway maintenance, forestry conservation, local government, and defense and disaster agencies throughout the country. APCO explains that for the past 2 years 9-1-1 systems have been plagued with an increasing number of "drop offs," unexplained telephone calls where no one is on the other end when the call is answered. Through the use of enhanced 9-1-1 systems, which automatically return the incoming call for confirmation purposes, APCO has found the source of many of the calls to be cordless telephones.

7. As a result of its growing awareness of this problem, the APCO 9-1-1 Emergency Number Committee has begun a process of alerting public safety

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[1] The *Report and Order* in General Docket 83-325 was adopted on December 22, 1983, released January 10, 1984, 49 FR 1512, January 12, 1984.

[2] The *Further Notice of Proposed Rulemaking* in General Docket 83-325 was adopted on May 17, 1984, released May 23, 1984, 49 FR 23397 June 6, 1984.

[3] The term "security," as used here, does not refer to the ability to prevent someone from monitoring conversations. Privacy of conversation is not ensured when using a cordless telephone. Section 15.236, 47 CFR 15.236, requires that each cordless telephone base unit carry a label to this effect. See paragraphs 33 and 34 of the *Report and Order* in this docket.

agencies with 9–1–1 systems of possible problems caused by cordless telephones. The Committee is attempting to collect more information from agencies experiencing "drop offs" so that the scope and causes of the problem can be accurately assessed. Until this is accomplished, APCO states that it is not in a position to recommend a specific course of action to the Commission. However, APCO urges the Commission to immediately expand the scope of this proceeding to thoroughly study the emerging problem of cordless telephone interference to the nation's 9–1–1 systems.[4]

8. Some of the commenters oppose or raise questions about various details of the proposal. Bellsouth states that it takes orders over the telephone and ships in unmarked cartons to prevent theft. It therefore suggests that the manufacturer be permitted to put the required statement in the instruction manual or in the shipping carton. AT&T replies that the problem alleged by Bellsouth can easily be overcome by using wrapping paper. Noting that the proposal did not address the question of how much time would be allowed before the new requirement became mandatory, several commenters urge that the requirement apply only to cordless telephones manufactured at least 120 days after the rule is adopted. EIA opposes review of the manufacturer description of the cordless phone's security features as part of the certification process. Also, EIA requests that no supplemental filing be required for cordless telephone which have already been certificated.

Commission Decision Regarding Cordless Telephone Security

9. We believe that the public interest would be served by adopting the proposed labelling requirement, with some modifications in line with the comments. Based upon our review of the literature on the cordless telephones submitted for equipment authorization, it appears that, indeed, a greater proportion of the new generation of cordless telephones include improved security features. Nevertheless, new units continue to be introduced with security features which are inadequate for high density environments. We believe the consumer should be informed as to the potential problem of inadequate cordless telephone security and the means employed by a specific product to deal with this potential problem. In our view, the best means of accomplishing this objective is with an information label. With this information, consumers will be able to make an informed choice. As a consequence, the marketplace should work to provide appropriate security features best suited to the individual consumer's needs.

10. New York City Department of Consumer Affairs' recommendation to move forward with a design requirement fails to address the question of how any design requirement, no matter how well intended, could provide complete assurance against theft of service. APCO may or may not be correct that cordless telephones are unintentionally dialing 9–1–1; however, insufficient information has been submitted to draw a conclusion one way or the other. If, in the future, APCO or others submit statistics showing that cordless telephones are inadvertently dialing 9–1–1, we will revisit this matter.

11. Accordingly, we are amending the rules in Part 15, as shown in the attached Appendix, to require an information label about cordless telephone security to be carried on the box or other package in which the cordless telephone is marketed. The requirement does not pertain to shipping cartons, so this should not pose a problem for those wishing to ship in unmarked cartons. In order to ensure that the requirement will in fact be met, we are requiring that a description of the label and its placement be included with the application for certification. We plan to review this information only to the extent that the requirement for the label is met and that the description is reasonably consistent with the actual features of the cordless telephone. As for cordless telephones which have already been certificated, they will be required to carry the label, but submittal of supplemental information for our certification files is not mandatory. With regard to implementation of the labelling requirement, we are requiring the label for all cordless telephones manufactured after November 1, 1985.

GTE Request for Clarification of Technical Requirements

12. GTE submitted a "Petition for Clarification" of the *Report and Order* in this docket with regard to the requirements of § 15.233 concerning transmitter frequency tolerance and emission bandwidth. GTE contends that the regulations are vague with regard to the center point of the bandwidth of the transmitter frequency. Section 15.232 specifies the carrier frequencies for cordless telephones; paragraph (a) of § 15.233 places a 0.01% tolerance (plus or minus) on the carrier frequency; § 15.233(b) defines the bandwidth of a channel as 20 kHz "centered on the authorized carrier frequency." GTE states that the term "authorized carrier frequency" could be construed to include the 0.01% tolerance. With 15 kHz spacing between some cordless telephone frequencies, GTE claims there could be considerable overlap between the signals of two cordless telephones in adjacent channels if one unit is operating at the high end of its permitted band and the other is operating at the low end. To alleviate this alleged problem, GTE suggests that § 15.233(b) be revised to read "Emission, including frequency tolerance, shall be confined within a 20 kHz band centered on the carrier frequency specified in § 15.232." No comments were submitted on the GTE petition.

13. GTE's analysis of the potential risk of adjacent channel interference is incomplete. GTE fails to account for the fact that with the low power levels involved, there will be very little energy falling into adjacent channels. Also, the likelihood of two cordless telephones being located near each other, in adjacent bands, with one being at the high end of its channel and the other low, seems unlikely. GTE's suggestion, although seemingly minor in nature, would be tantamount to a severe tightening of the bandwidth requirement. This would likely require redesign of most cordless telephones at considerable cost, if they could even be made to operate. We do not believe the change requested by GTE is warranted and therefore reject GTE's proposition. To avoid any further confusion, we are amending § 15.233 (b) to reference the bandwidth requirement to the actual carrier frequency and not the "authorized" carrier frequency. We are also making some editorial changes to simplify this paragraph. These changes make the requirement consistent with those for other Part 15 devices and reflects the original intent. These amendments are not expected to have any impact on the design of cordless telephones.

Final Regulatory Analysis

14. Pursuant to 5 U.S.C. 601 et seq. an Initial Regulatory Flexibility Analysis was incorporated in paragraph 6 of the *Notice of Proposed Rule Making*. In paragraph 8 of this *NPRM*, written

[4] One telephone company contacted the Commission staff to advise that it has been experiencing a rash of complaints from people with low digit telephone numbers who are receiving calls where no one is on the other end of the line. The company has been advising the complainants that it speculates the problem is being caused by cordless telephones and the only remedy is to change telephone numbers. However, nothing has been submitted by the company to substantiate the problem.

comments on this Analysis were solicited with the same filing deadlines as comments on the rest of the Notice. No comments in response to this request were received.

A. Need for and Objective of Rule

15. This action is a follow-up to the Commission's *Report and Order* in this docket whereby interim rule provisions for cordless telephones were established. The requirement the Commission is adopting herein calls for a label to be carried on the package in which a cordless telephone is marketed, to alert consumers that in certain environments cordless telephones may require features to preclude others from dialing calls via their telephone line. It is expected that the consumer can then purchase a unit with appropriate "security" features. The requirement is needed to address the concerns of telephone companies about misbilling of calls and other potential problems.

B. Summary of Issues Raised in Comments on Initial Analysis.

16. No comments were received specifically concerned with the Initial Regulatory Flexibility Analysis in the Notice in this proceeding. While manufacturers question the need for the label, it appears to be the least burdensome approach to the potential problem of inadequate cordless telephone security. The requirement for the label and for describing the label in the application for equipment certification is considered to be of minimal burden and should not pose a hardship for small manufacturers.

C. Significant Alternatives

17. Two other significant alternatives are apparent. One is to move forward with a design requirement for cordless telephone security features as considered earlier in this proceeding. This alternative holds a number of disadvantages as discussed above and would be more costly for the public. The second alternative is to not adopt any requirement whatsover pertaining to cordless telephone security. While marketplace forces are at work to alleviate the potential problem of inadequate cordless telephone security, evidence thus far suggests that the matter must be brought to the attention of the consumer in order for these forces to be focused on the problem.

Ordering Clauses

18. Pursuant to the above and under the authority of Sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, it is ordered that Part 15 is amended as set out in the attached Appendix B. This amendment shall become effective June 10, 1985. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number is 3060–0324.

19. It is further ordered that this proceeding is terminated.

20. For further information concerning this Order contact Mr. Julius P. Knapp, Office of Science and Technology, telephone (202) 653–8247.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

The following parties submitted comments in response to the Further NPRM in General Docket 83–325:

Name	Acronym
American Telephone & Telegraph Co.	AT&T.
Associated Public-Safety Communications Officers, Inc.	APCO
Bellsouth Corporation	Bellsouth.
Central Telephone Co.	Central Telephone.
City of New York, Dept. of Consumer Affairs	City of NY
Communication Certification Laboratory	CCL
Dynascan Corporation	Dynascan
Electronics Industries Association, Personal Communications Section.	EIA.
GTE Service Corporation	GTE.
Reply comments were submitted by:	
American Telephone & Telegraph Co.	AT&T
General Electric Co.	GE.

Appendix B

Part 15 of the FCC Rules, 47 CFR Part 15, is amended as follows:

The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

1. Section 15.233 paragraph (b) is revised to read as follows:

§ 15.233 Technical specifications.

* * * * *

(b) The emission shall be confined within a 20 kHz band centered on the actual carrier frequency. Modulation products shall be attenuated at least 26 dB below the level of the unmodulated carrier. Tests to determine compliance with this requirement shall be performed using an appropriate input signal as prescribed in § 2.989 of this chapter.

* * * * *

2. Section 15.236 is amended by designating the present text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 15.236 Labelling and identification requirements for a cordless telephone.

* * * * *

(b) For cordless telephones manufactured after November 1, 1985, the box or other package in which the individual cordless telephone is to be marketed must carry a statement in a prominent location, visible from the exterior, which reads as follows:

Notice: The base units of some cordless telephones may respond to other nearby units or radio noise, resulting in telephone calls being dialed through this unit without your knowledge and, possibly, calls being misbilled. In order to protect against such occurrences this cordless telephone is provided with the following features: (to be completed by the manufacturer).

Applications for certification of cordless telephones submitted on or after November 1, 1985, shall specify the complete text of the statement that will be carried on the package and indicate where, specifically, it will be located.

[FR Doc. 85–13976 Filed 6–10–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–281; FCC 85–224]

Nighttime Operations on Canadian, Mexican, and Bahamian AM Clear Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules to provide for nighttime operations by U.S. class II AM stations on fourteen Canadian, Mexican, and Bahamian Clear Channels. This action is intended to reflect new international agreements which have been or are being negotiated. It can be expected to provide an important expansion of nighttime AM service.

EFFECTIVE DATE: June 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

Jonathan David, Mass Media Bureau, (202) 632–7792

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for 47 CFR Part 73 continues to read as follows:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Report and Order (Proceeding Terminated)

In the matter of Nighttime Operations on Canadian, Mexican, and Bahamian AM Clear Channels.

Adopted: April 26, 1985.

Released: May 7, 1985

By the Commission: Commissioner Rivera dissenting in part.

Background

1. The Commission has before it the comments and reply comments [1] filed in response to the March 15, 1984, *Notice of Proposed Rule Making* in this proceeding (49 FR 18567, published May 1, 1984) proposing to permit additional nighttime operations on channels designated as Canadian, Mexican, and Bahamian Class I–A Clear Channels.[2]

2. As the subject *Notice* indicated, international agreements have imposed restrictions on the nighttime use of these 14 channels in the United States. Thus, under the North American Regional Broadcasting Agreement ("NARBA"), the Canadian Clear Channels could not be used at night anywhere within 650 miles of the border with Canada, and the Bahamian Clear Channel could not be used within 650 miles of any point in the Bahamas. The 1968 Bilateral AM Agreement with Mexico is even more restrictive. It precludes nighttime use of the Mexican Clear Channels anywhere in the United States. This situation was expected to change as a result of new international agreements which had been or were being negotiated. Unlike these older agreements, the new agreements were not expected to contain such restrictions.

3. The United States and Canada have signed a new bilateral AM agreement which has replaced NARBA insofar as their mutual dealings are concerned. Under this new agreement, there is no prohibition on the establishment of nighttime operations in the border area on what had been clear channels. Likewise, there is no such restriction in the Final Acts of the Region 2 Administrative Conference (Rio de Janeiro, 1981) to which the Commonwealth of the Bahamas is a signatory. As soon as the Bahamas has implemented its intention to denounce NARBA and to be bound by the Rio Agreement, the same situation will obtain in regard to the Bahamian Clear Channel. In subsequent bilateral discussions with the U.S., the Bahamas has confirmed this intention to take the necessary steps in this regard. Finally, considerable progress has been made in negotiations with Mexico in the development of a new AM agreement which, among other things, is expected to permit new nighttime operations throughout the United States on the seven affected channels.

4. With the above developments in mind, the Commission issued the *Notice* to obtain comments on the standards to be used in establishing nighttime operations on these channels. Specific reference was made to the criteria adopted by the Commission in its 1980 Clear Channel decision.[3] In that proceeding the Commission made it possible for additional Class II stations to be established on the 25 U.S. I–A Clear Channels and set forth the technical and eligibility rules governing applications for these new Class II stations. In issuing the present *Notice*, the Commission noted the relatively short time that had elapsed since adoption of the 1980 *Report and Order* and asked commenting parties to express their views on whether the relevant portion of the § 73.37(e) standards adopted in that proceeding should also be adopted here. Generally, under § 73.37(e) of the Commission's rules, in order to be acceptable for filing, applications must propose service to unserved or underserved areas or to communities lacking sufficient local service.[4] In addition, on the U.S. I–A Clear Channels, that section permits the acceptance of applications proposing minority-owned stations or one that would provide noncommercial radio service.

5. Recently, the Commission issued a *Notice of Proposed Rule Making* in MM Docket No. 85–39 proposing to delete the go/no-go provisions of § 73.37(e) which impose these acceptance criteria in addition to interference protection standards. In that proceeding the Commission is exploring whether these provisions continue to serve any useful purpose in view of the fact that they block the establishment of many otherwise acceptable applications on currently available spectrum merely because they do not meet these criteria.

6. The *Notice* also directed attention to the technical characteristics applicable to Class II–B proposals on the U.S. Clear Channels. Applicants proposing to provide a first nighttime primary service to at least 25 percent of the area or population they would serve were permitted to operate at night at a maximum power of 50 kW. These operations are protected at night to the limit imposed by the co-channel Class I–A station or the higher limit, if any, imposed by other previously authorized co-channel stations. On the other hand, Class II–B applicants not able to meet this standard were limited to 1 kW nighttime power and were normally protected at night only to their 10 mV/m contour. Because of its experience in the prior proceeding, the Commission proposed a maximum nighttime power of 1 kW on the foreign clear channels except where an applicant proposes to provide a first nighttime primary service to at least 25 percent of its coverage area, in which case the maximum nighttime power would be 50 kW. As with the U.S. clear channels, nighttime protection normally would be to the 10 mV/m and 2.5 mV/m contours, respectively. However, unlike the action in Docket No. 20642, the Commission did not here propose to protect any Class II station at night to a contour of less than 2.5 mV/m.[5]

7. Finally, although the Commission, in Docket No. 20642, did not separately designate Class II stations based on power limitations and protection standards, in the *Notice* in this proceeding it proposed to amend the Rules by designating those Class II stations operating at 1 kW and protected to their 10 mV/m contours as "Class II–C." All other new full-time Class II stations, *i.e.*, those providing wider area service, would be designated "Class II–B." These designations would be applicable to all the Class II full-time stations that had been or would be authorized on the domestic Class I–A clear channels and to the new stations to be established on the newly available foreign clear channels that are the subject of this proceeding.

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[1] A total of 34 parties submitted comments, and four parties submitted reply comments. These parties are listed in Appendix B.

[2] The North American Regional Broadcasting Agreement designates seven frequencies (540 kHz, 690 kHz, 740 kHz, 860 kHz, 990 kHz, 1010 kHz, and 1580 kHz) as Canadian Clear Channels and one frequency (1540 kHz) as a Bahamian Clear Channel. The United States/Mexican Bilateral AM Agreement designates seven frequencies (540 kHz, 730 kHz, 800 kHz, 900 kHz, 1050 kHz, 1220 kHz, and 1570 kHz) as Mexican Clear Channels. Because the frequency of 540 kHz appears on both the Canadian and Mexican lists, the total number of frequencies involved is 14.

[3] Report and Order in Docket No. 20642, *Clear Channel Broadcasting in the AM Broadcast Band*, 78 F.C.C. 2d 1345 (1980), *recon. denied*, 83 F.C.C. 2d 218 (1980).

[4] Subparagraph (i) of § 73.37(e) specifies that at least 25 percent of the area or population to receive interference-free primary nighttime service does not receive such service from an existing AM station or from any FM station with a signal strength of 1 mV/m or greater; subparagraph (ii) specifies that the community designated in the application must be provided with a first or second aural nighttime service and no FM channel is available for use in the community, and subparagraph (iii) specifies that at least 20 percent of the area or population of the designated community receives fewer than two aural services at night and no FM channel is available for use in the community.

[5] The Commission indicated in the *Notice* that, as a practical matter, it did not expect that this would significantly affect the ability to provide wide-area service, as few new stations were anticipated to be able to achieve nighttime limits less than 2.5 mV/m due to the large number of foreign stations that are already operating on the channels involved.

Comments

8. By far, the majority of comments in response to the *Notice* were submitted by or on behalf of daytime-only stations. They argued that the Commission should use this opportunity to authorize nighttime service by existing daytime-only stations on the affected foreign clear channels. They opposed use of the acceptance criteria which had been proposed, as this would deny the opportunity for full-time operation for many daytime-only stations. Several of these commenters point out that daytime-only stations suffer a competitive disadvantage vis-a-vis full-time AM and FM facilities and, due to their limited operating hours, have difficulty providing effective service to their communities. Although they acknowledge the efforts of the Commission to alleviate their plight through post-sunset operation, they continue to face serious problems. Daytime-only stations are said to render valuable service to their communities despite being unable to reap the benefits of full-time operation. Thus, they are seen as appropriate beneficiaries of the newly available spectrum.

9. Proponents for daytime-only stations note that unlike the situation relating to domestic clear channels in Docket No. 20642, many daytime-only stations already operate on the affected foreign clear channels. As a result, these frequencies cannot be used to any significant degree to respond to the need for new stations. They also contend that application of the proposed acceptance criteria would not accomplish the desired results, as there are few unserved areas which would be able to support a station. Moreover, the Associated Communications Corporation and United Broadcasting Company contend that there will be a way of meeting these needs through new FM stations to be authorized as a result of Commission action in BC Docket No. 80–90.[6]

10. Other comments took a different view, asserting that not enough new stations had been created as the result of the Commission's Clear Channel decision in Docket No. 20642. For example, the National Black Media Coalition ("NBMC") argues that few minority stations were created and that the need for minority stations has remained unmet. Moreover, NBMC notes that many of the stations created as a result of new FM assignments in BC Docket No. 80–90 will be in small communities with little minority populations. Finally, a few commenters suggest that preferential treatment should be afforded to stations which filed expressions of interest in the course of bilateral negotiations with Canada. National Radio Broadcasters Association ("NRBA") would eliminate all threshold criteria and replace them with standards based solely on interference considerations. The Association for Broadcast Engineering Standards suggests adoption of an additional alternative acceptance criteria for daytime-only stations in order to encourage full-time service.

11. In addition to alternative procedures to implement night service by existing daytime-only stations on the Canadian, Mexican, and Bahamian Clear Channels, various parties offered suggestions on the power levels which should be permitted. Some believe that nighttime operating powers of up to 5 kW are warranted in order to provide improved service. In this regard, WGSM Radio, Inc., points to the example of Canada and Mexico, both of which permit greater power than was proposed in the *Notice*. Others would allow nighttime operation at a power up to that authorized for daytime hours, while the NAB would allow any power that is consistent with the Region 2 Agreement. NAB criticizes the 1 kW proposal as wasteful of spectrum resources and as failing to take full advantage of international agreements authorizing nighttime operation. Finally, various suggestions related to establishment of the normally protected contour ranged from 2.0 mV/m to 10 mV/m. Necessarily, the higher the protection level, the fewer the services that would be possible.

Discussion

12. In order to evaluate the various possible uses of these frequencies, it was necessary to perform intensive and wide-ranging studies to examine the potential value these frequencies could have in responding to various types of requirements.[7] They were designed to determine whether these frequencies lend themselves to the establishment of new full-time operations, or could be better used to make it possible for daytime-only stations to operate at night. It also was important to see if it would be possible to harmonize these two apparently conflicting goals. As these studies were completed, several points became clear. In much of the country, particularly the populous areas, these frequencies could not be used to create new stations, full-time or otherwise, without causing destructive interference to the existing daytime-only and full-time stations on the channel.[8] In these areas, the only choice is permitting the channels to be used at night by the daytime-only stations or to allow the frequencies to lie fallow in major portions of the country. Obviously, the latter course would serve no useful purpose. Moreover, it would unnecessarily limit daytime-only stations in their efforts to compete more effectively in the marketplace and thereby enhance their ability to serve the public.

13. Although the above situation applies in much of the country, there are areas where new full-time stations could be established.[9] Here, too, no purpose would be served by imposing acceptance criteria. Because the areas in which these new stations would be located are concentrated in the unserved or underserved portions of the country, acceptance criteria are not needed to funnel growth toward areas of greatest need. Moreover, these frequencies would continue to be available for minority or public radio applicants.

14. Having decided that the frequencies can be used to establish new stations as well as give nighttime operation to daytime stations, the Commission needs to decide how best to accomplish these purposes. This requires consideration of the interrelated matters of the power to be used and the interference protection to be afforded. In addition, consideration must be given to the administrative mechanisms to be employed to bring about the desired result. Each of these points requires separate treatment. The

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[6] *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 94 F.C.C. 2d 152 (1983), *recon. denied*, FCC 84–65, March 1, 1984.

[7] The following studies were initially performed by the Commission on sample foreign clear channels: (1) Daytime service and interfering contours of existing daytime-only and full-time stations were plotted (using the M3 map of ground conductivity). This showed the extent to which the channel already was used; (2) this, in turn, made it possible to identify areas where existing operations do not prelcude addition of new stations daytime; (3) to determine the potential for nighttime operation, the nighttime RSS limits of daytime-only stations on the sample frequencies which result from existing domestic and foreign stations were calculated, and (4) the potential for new stations was examined by selecting for study hypothetical locations in the open areas determined in (2), above, and RSS limits at such points were computed. The summary results of these studies are set forth in Appendix C.

[8] Appendix C illustrates the limited areas in which new AM stations could be established on the frequencies without causing such interference.

[9] Although it would be possible to create new daytime-only stations in these areas, such a result would only perpetuate the problem of stations that are unable to compete effectively because of limits on their hours of operation. As a result, the rules will make it clear that new daytime proposals on these frequencies will not be accepted for filing.

arrangements to be applied to daytime-only stations will be described first. Then, it will be possible in the subsequent discussion to contrast the treatment to be afforded proposals for new stations on these channels.

Technical Criteria

15. Only in limited areas would it be possible to establish new full-time stations. Even in such locations, protection requirements to existing foreign and domestic fulltime stations preclude use of the frequencies for higher powered stations. Allowing such higher power also would not provide for an efficient distribution of facilities because the typically high limits on these channels preclude effective wide-area service. Further, allowing these stations to seek higher power is not feasible in view of their proximity to one another and could have the effect of precluding otherwise possible nighttime operations by other daytime-only stations. This has led the Commission to conclude that stations operating on the affected foreign clear channels should be permitted to operate at night, ultimately with maximum power of 1 kW, if consistent with applicable nighttime protection requirements. However, as described below, during a five-year transitional period, a 500-watt limit would apply.

16. The next point to consider is the signal level to protect after the transitional period comes to an end. Considering the existing channel loading and the limited potential for use of these frequencies makes it clear that it would be inappropriate to protect low nighttime signal levels. Moreover, such protection is not possible if daytime-only stations are to be able to operate at night. Protecting low limits is equally infeasible in other areas as well. Our studies have indicated that interference from existing foreign and domestic full-time stations would typically limit nighttime service from existing daytime-only stations (as well as new full-time stations) to their 10 mV/m contours or higher. Accordingly, we have concluded that these stations should be normally protected at night to their 10 mV/m contours. Also, we believe that a minimum power of 250 watts is required in order to be entitled to protection. The nighttime power limits being adopted here are the same as the Commission generally made applicable to stations seeking to operate on the 25 domestic Class I–A channels which were the subject of Commission action in Docket No. 20642.[10] Further, the 10 mV/m contour that Class II stations here must protect each other to is identical to that which the Commission determined in Docket No. 20642 to be the optimal balance between adequate service areas and maximum number of stations.

17. In establishing these standards we were mindful of the fact that there will be two categories of stations operating at night on these frequencies. Some will come from the new full-time operations made possible by the changed status of these frequencies. By far, the larger portion will be former daytime-only stations which will be operating at night for the first time. In fact, all of these stations will be able to operate at night if they choose to do so. Necessarily, there will be restrictions imposed on these stations by virtue of their need to protect existing full-time stations on the channel, both foreign and domestic. There would be additional effects if these daytime-only stations were required to protect one another at night. However, that would produce major complications and delays in implementing the new rules. Considerable cost would be involved for each station in determining just what protection to provide, and this protection could change with each grant that was made. Finally, as appendix C indicates, in most cases this is an unnecessary matter in any event because of existing elevated levels of interference.

18. For some daytime-only stations, the need to provide protection at night to full-time stations will have little or no effect. For others, it can mean that a substantial reduction in power would be needed when using existing antenna systems, often to a level well below the 250 watt minimum power specified by the Commission's rules. Whatever view we might take in regard to authorizing such low power for new stations, the fact is that for these daytime-only stations, such nighttime power can be justified in terms of the channel loading that already exists and the service these stations can be expected to provide. While that service may indeed be limited, the only other choice is to preclude such service entirely, and that would unfairly deprive these stations and their communities of needed service at night. Thus, during the implementation described below, daytime stations can be authorized nighttime operation and new fulltime stations can be established, but in both cases, nighttime protection to one another will not be required. Thereafter, protection to at least some of the nighttime operations would be warranted. Although it is feasible to allow low power operation, the studies have shown that it would not be feasible to protect these operations having less than 250 watts. As a result, stations that operate with 250 watts or more at night will become protected under the procedures described below, but those that operate with lesser power levels will not be protected now or in the future. In order to obtain such protection, these stations will need to follow the prescribed procedures for increasing power and acquiring protection thereby. Alternatively, they can continue to operate at lower power levels without protection.

19. From now on, neither the new fulltime stations or the daytime-only stations obtaining nighttime operation by virtue of the procedures outlined below will be subject to the requirements of § 73.24(j) of the rules regarding city grade coverage at night. To apply these provisions to the daytime-only stations would be impractical in light of the reduced nighttime power required to protect the full-time foreign and domestic co-channel stations and the limited flexibility that many daytime-only stations will have in designing new antenna systems. In addition, it is possible that daytime-only stations will receive high limits and for that reason may be unable to serve their entire community. Although it is appropriate to require new stations to comply with city coverage requirements daytime, it is not possible to do so at night without creating conflicts with other applications. The absence of a city coverage requirement at night does not represent an ideal situation. Nonetheless, as with the matter of authorized power, insisting on compliance with the Commission's coverage rules at night will defeat the opportunity for new nighttime services.

Implementation

20. There can be no question that the expeditious authorization of nighttime service on the foreign clear channels here is in the public interest. Accordingly, the Commission has devoted considerable effort to the formulation of a procedure which can effectuate such service in the most efficient manner. Two points became clear immediately. Implementation would be delayed considerably if it had to be handled entirely by traditional application processes. Perhaps even more important, the initial step for

[10] *See:* Section 73.21(a)(ii) (C) and (D) of the Rules Stations providing wide area service to underserved areas as provided in § 73.37(e)(i) were allowed to operate at higher nighttime power levels.

permitting nighttime operation by daytime-only stations requires engineering calculations of great complexity. Requiring each party to perform these calculations would impose an enormous burden on applicants. Then, the Commission would be faced with verifying these calculations before granting the necessary authorization. The problem can be overcome if the Commission performs the calculations itself using the existing daytime or Canadian restricted antenna system and notifies each station of the power it can use. Such a procedure would parallel the one utilized by the Commission in its post-sunset power calculations for these same stations.[11]

21. Likewise, there is no need for the Commission to insist on the filing of applications to acquire this nighttime authorization. Instead, it can follow the same Show Cause Order approach that was used to bring about the Class IV AM nighttime power increases. In the present case, this involves the issuance of a Show Cause Order to each affected daytime-only station telling it that, absent objection, its license will be modified to specify nighttime operation with the power specified. Some stations may not choose to utilize this opportunity because they consider the power to be below their needs or because they do not wish to comply with the minimum operating requirements which will apply to these nighttime operations. Other stations may wish to use this authority but may need a delay before operation could begin. To deal with these problems the following procedure will be used. Stations will have one year from the date of the Show Cause Order in which to begin operation at night. Although it is under no obligation to operate under this authority, it will expire under its own terms if not used by then. In addition, before such operation can begin, the licensee will have to indicate its intention to do so and to provide limited engineering data about the operation. Then, operation can begin immediately upon sending this information to the Commission.

22. During a five-year period after the issuance of the Show Cause Orders, the station may continue to operate at night with the power set forth in the Show Cause Order. It also may file an application to increase that power up to a maximum of 500 watts but not to exceed its authorized daytime power.[12] In doing so it will be necessary to protect the fulltime domestic and foreign stations now operating. However, it will not be necessary to provide nighttime protection to the new stations to be authorized or to the nighttime operations of other former daytime-only stations. Likewise, a newly authorized station seeking a subsequent increase in nighttime power to 500 watts is subject to the same interference protection requirements. This situation will continue for five years to provide ample opportunity for any desired increases in power. Instead of making a change on its current channel, it may conclude that it is preferable to propose operation on another channel. Such applications will be acceptable for filing, and will be treated in the same fashion as applications for new stations on those channels. Finally, as noted earlier, only stations that initially obtain operation with 250 watts or more or subsequently increase to that level will be entitled to protection after this five-year period ends.

23. After this five year period ends, two basic changes will occur. First, the maximum nighttime power will be increased to 1 kW, and existing stations will be able to propose increasing their power to this level. However, all existing nighttime operations of 250 watts or more will be protected from additional interference. This includes the former daytime-only stations. In addition, applications for new stations can continue to be filed, and they will be subject to the same requirements as to power level and interference protection.

24. The Commission intends that nighttime operations on the affected foreign clear channels be effectuated as soon as practicable. Since an appropriate bilateral agreement with Canada has been reached, the amendments to the Rules as they apply to the Canadian Clear Channels herein will be effective as of the date indicated below.[13] However, since bilateral negotiations with Mexico and with The Bahamas are in progress, the effective date of the amendments as they apply to the Mexican[14] and Bahamian Clear Channels will be as announced subsequently.

25. *Class II–C Designations.* There is one final matter to consider. Consistent with the Commission's proposal as set forth in the *Notice*, the Class II stations operating on the 25 domestic clear channels which were the subject of Commission action in Docket No. 20642 will be redesignated as either "Class II–B" or "Class II–C", as the case may be. Specifically, those Class II stations operating at up to 50 kW and accepted in accordance with § 73.21(a)(ii)(D) of the rules will be designated "Class II–B,"[15] while those accepted on the basis of § 73.21(a)(ii)(C) of the rules will be designated "Class II–C." Although this specific proposal to redesignate these channels was not addressed in the comments, it appears, as it did previously, prudent to do so in the interest of clarity. Further, all daytime-only stations that elect to operate nighttime and new fulltime stations that are granted on these foreign Clear Channels will be designated as "Class II–C" stations if they utilize 250 watts or more at night. Those using a lower nighttime power will be designated as "Class II–S" stations.

Paperwork Reduction Act

26. The action contained herein has been analyzed with respect to the paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Analysis

I. Need and Purpose of the Rules

These rules are designed to permit daytime-only AM broadcast stations operating on Canadian, Mexican, and Bahamian Clear Channels to provide nighttime service. Additionally, these rules provide power and protection standards as well as a procedure for implementing such service and standards. Finally, Class II stations operating on both domestic and foreign clear channels are designated according to their operating powers. The new rules can be expected to benefit many small entities, particularly daytime-only stations which will obtain nighttime operating authority for the first time.

[11] It will be possible for Class II–S stations to continue to utilize these secondary authorizations which were calculated based on full protection.

[12] Because of the special circumstances presented by this case, it is appropriate to provide a partial exception to the requirement that power increase applications must specify an increase of a specific percentage. A former daytime station may seek a lesser increase so long as that increase is sufficient to bring it to the protected level of 250 watts or more.

[13] This does not include 540 kHz.

[14] This includes 540 kHz.

[15] This includes applications on file as of the effective date of the rules being adopted in this proceeding, to which the current standards would continue to be applied.

II. Summary of Issues, Raised by Public Comment in Response to the Initial Notice of Proposed Rule Making

No issues of significance were raised in addition to those set forth above.

III. Significant Alternatives Considered and Rejected

Alternative procedures regarding implementation of nighttime service on the foreign clear channels here, including application of the threshold criteria provided in § 73.37(e) of the Commission's Rules, have been considered and rejected for the reasons set forth above. Similarly, alternative technical standards regarding power limitations and protection have been found to be inappropriate for the reasons indicated.

27. Accordingly, it is ordered, that Part 73 of the Commission's rules is amended effective June 3, 1985, as set forth in Appendix A.

28. It is further ordered, that this proceeding is terminated.

29. Authority for this action is contained in sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended.

30. For further information concerning this proceeding, please contact Joel Rosenberg, (202) 634–6530, or Jonathan David (202) 632–7792, both of the Policy and Rules Division, Mass Media Bureau.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Appendices B (List of Commenters) and C (Domestic Assignments) will not be printed herein due to the ongoing effort to minimize publishing costs. However, these appendices may be reviewed in the FCC Library, Rm. 639, and the FCC Dockets Branch, Rm. 239, both located at 1919 M St. NW., Washington, D.C. 20554. Copies of the entire text of this Report and Order may be obtained from the International Transcription Services, also located at 1919 M St. (202) 296–7322.

Appendix A

PART 73—[AMENDED]

1. 47 CFR Part 73 is amended by revising paragraphs (a)(2) introductory text, (ii) introductory text and (ii) (A) and (B), revising (a)(2)(iii), and by adding (a)(2) (iv) and (v) of § 73.21 to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) * * *

* * * * * *

(2) *Class II station.* A class II station is a secondary station which operates on a clear channel (see § 73.25) and is designed to render service over a primary service area which is limited by and subject to such interference as may be received from Class I stations. Whenever necessary a Class II station shall use a directional antenna or other means to avoid interference with Class I stations and with other Class II stations, in accordance with § 73.182 (and § 73.22 in the case of Class II–A stations). Class II stations are divided into five groups:

(i) * * *

(ii) *Class II–B station.* A Class II–B station is an unlimited time Class II station other than those included in Class II–A, II–C, and II–S. Except as subparagraphs (a)(2)(ii) (A) and (B) of this section provide otherwise, a Class II–B station shall operate with a power not less than 0.25 kW nor more than 50 kW.

(A) Class II–B stations authorized before June 1, 1980, to operate on any of the 25 Class I channels listed in § 73.25(a) shall operate with the powers authorized as of June 1, 1980, or such other power as the Commission may subsequently authorize. Class II–B stations on these channels authorized after June 1, 1980, in the contiguous 48 states, must meet the requirements for primary service set out in § 73.37(d)(2)(i).

(B) Class II–B stations authorized before June 3, 1985, to operate on any of the 14 channels listed in § 73.25(c) shall operate with the powers authorized as of June 3, 1985, or such other power as the Commission may subsequently authorize.

* * * * * *

(iii) *Class II–C station.* A Class II–C station is an unlimited time Class II station which operates with a daytime power of not less than 0.25 kW nor more than 50 kW and a nighttime power of not less than 0.25 kW nor more than 1 kW as follows:

(A) Class II–C stations authorized after June 1, 1980, on the 25 channels listed in § 73.25(a) are those which do not meet the requirements for primary service set out in § 73.37(e)(2)(i).

(B) Class II–C stations authorized after June 3, 1985, on the 14 channels listed in § 73.25(c).

(iv) *Class II–D stations.* A Class II–D station is a Class II station operating daytime or limited time. A Class II–D station shall operate with power not less than 0.25 kW nor more than 50 kW.

(v) *Class II–S stations.* Class II–S stations are former Class II–D stations which have been authorized limited power operation during nighttime on the 14 channels listed in § 73.25(c). Class II–S stations operate with power less than 250 watts nighttime without protection from interference.

* * * * * *

2. 47 CFR Part 73 is amended by revising paragraph (j) of § 73.24 to read as follows:

73.24 Broadcast facilities; showing required.

* * * * * *

(j) That the 5 mV/m contour (or, at night, the interference-free contour, if of a higher field strength) encompasses the entire principal community to be served. For Class II–C and II–S stations on the 14 frequencies listed in § 73.24 (c) it is not necessary to demonstrate the ability to provide such coverage during nighttime operation.

* * * * * *

3. 47 CFR Part 73 is amended by revising paragraphs (a)(2)(ii) and note 2 to paragraph (a), revising paragraph (c) of § 73.25 and by removing paragraphs (d) and (e) of that section, to read as follows:

§ 73.25 Clear channels: Classes I and II stations.

* * * * * *

(a) * * *

(2) * * *

(i) * * *

(ii) Additional unlimited time Class II–B and II–C stations authorized after June 1, 1980.

(iii) * * *

Note 1. * * *

Note 2.—See the U.S./Mexican Agreement concerning Mexican use of 660, 760, 830, 1020, 1030, and 1180 kHz.

* * * * * *

(b) * * *

Note.—Until superseded by a new agreement, protection of the Bahama Islands shall be in accordance with NARBA. Accordingly, Class I and Class II stations on 1540 kHz shall deliver not over 4 uV/m groundwave or 25 uV/m skywave at any point of land in the Bahama Islands and such stations operating nighttime (i.e., sunset to sunrise at the location of the U.S. station) shall be located not less than 650 miles from the nearest point of land in the Bahama Islands. Also see paragraph (c) for additional provisions relating to Class II stations on this frequency.

(c) For Class II stations on 540, 690, 730, 740, 800, 860, 900, 990, 1010, 1050, 1220, 1540, 1570, and 1580 kHz. Effective June 1, 1985, no applications for new Class II–D stations will be accepted on these channels.

Note 1.—The U.S./Mexican Agreement is undergoing renegotiation. Until the new Agreement is completed, no applications involving new nighttime operation or major change in existing nighttime operation on 540 kHz except for Alaska, or on 730, 800, 900,

1050, 1220, and 1570 kHz will be accepted for filing. Also, pending completion of negotiations with the Commonwealth of the Bahamas, 1540 kHz is subject to the same restrictions.

4. 47 CFR Part 73 is amended by revising paragraphs (a), (e) introductory text and (e)(2) (iv) and (v) and adding a Note to paragraph (e) of § 73.37 to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

(a) Except as indicated in other paragraphs of this section, no application will be accepted for a new station (or change in frequency of an existing station) if the proposed operation would involve overlap of signal strength contours with any other station as set forth below in this paragraph; and no application will be accepted for a change (other than a change in frequency) of the facilities of an existing station (including the daytime facilities of an existing Class II–A station) if the proposed change would involve such overlap where there is not already such overlap between the stations involved:

Frequency separation	Contour of proposed new station (classes II–B, II–C, II–D, II–S, III, and IV) mV/m	Contour of any other station
Co channel	0.005	0.1 mV/m (Class I).
	0.025	0.5 mV/m (other classes)
	0.5	0.025 mV/m (All classes)
10 kHz	0.5	0.5 mV/m (All classes)
20 kHz	2	25 mV/m (All classes)
	25	2 mV/m (All classes)
30 kHz	25	25 mV/m (All classes)

* * * * *

(e) In addition to a demonstration of compliance with the requirements of paragraphs (a), and as appropriate, (b), (c) and (d) of this section, an application for a new AM broadcast station, or for a major change (see § 73.3571(a)(1) of this chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class III station is proposed, that objectionable interference will not result to an authorized station as determined pursuant to § 73.182(o) of this chapter. Separate interference requirements are applicable to Class II–C and Class II–D stations on the 14 frequencies listed in § 73.25(c). In addition, for all classes of stations on these 14 frequencies, except Class II–C or II–S, a satisfactory showing is required as indicated below for the kind of application submitted.

(1) * * *

(2) * * *

(iv) That minority persons hold over 50% of the ownership interests in the applicant for a Class II–B or Class II–C station on one of the 25 Class I channels listed in § 73.25(a), or;

(v) That the applicant proposes to operate a Class II–B or Class II–C station noncommercially on one of the 25 Class I channels listed in § 73.25(a).

Note.—Applications for new Class II–D or Class II–S stations on the 14 frequencies listed in § 73.25(c) are not acceptable for filing. However, applications for changes in the facilities of existing Class II–D or Class II–S are acceptable for filing, subject to the limitations specified in § 73.3571 of this chapter.

* * * * *

5. 47 CFR Part 73 is amended by redesignating paragraph (f)(2)(iii) of § 73.51 as (f)(2)(ii) and by revising the text of this paragraph to read as follows:

§ 73.51 Determining operating power.

* * * * *

(f) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) The value determined by reference to the following table:

Factor(F)	Method of modulation	Maximum rated carrier power	Class of amplifier
0.70	Plate	1 kW or less	
.80	Plate	2.5 kW and over	
.35	Low level	0.25 kW and over	B.
.65	Low level	0.25 kW and over	BC[1]
.35	Grid	0.25 kW and over	

[1] All linear amplifier operation where efficiency approaches that of class C operation.

6. 47 CFR Part 73 is amended by revising paragraph (c)(1) of § 73.99 to read as follows:

§ 73.99 Presunrise service authorization (PSRA) and Postsunset service authorization (PSSA).

* * * * *

(c) * * *

(1) Class II–D stations located on Mexican, Bahamian, and Canadian Class I–A and I–B Clear Channels to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times. In addition, Class II–S stations may operate pursuant to their Post-Sunset authority in lieu of their licensed nighttime power.

* * * * *

7. 47 CFR Part 73 is amended by revising paragraphs (a)(2) introductory text and (a)(2)(iii) of § 73.182, and by adding new paragraph (a)(2)(iv) and a note to (a)(2) read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(2) Class II stations are secondary stations which operate on clear channels with powers not less than 0.25 kW nor more than 50 kW, except that Class II–A stations shall not operate nighttime with less than 10 kW; Class II–C stations shall not operate nighttime with more than 1 kW, and Class II–S stations shall operate nighttime with less than 250 watts. Class II stations are required to use directional antennas or other means to avoid causing interference with the normally protected service areas of Class I stations or other Class II stations. (For special rules concerning Class II–A stations, see § 73.22.) These stations normally render primary service only, the area of which depends on the geographical location, power, and frequency. This may be relatively large but is limited by and subject to such interference as may be received from Class I stations. However, it is recommended that Class II stations be so located that the interference received from other stations will not limit the service area to greater than 2.5 mV/m groundwave contour nighttime and 0.5 mV/m groundwave contour daytime, which are the values for the mutual protection of this class of stations with other stations of the same class. There four exceptions:

* * * * *

(iii) Class II–C stations are normally protected at nighttime to their 10 mV/m groundwave contour, or the higher limit if any imposed by previously authorized facilities of other stations.

(iv) Class II–S stations are not protected from interference during nighttime.

Note.—There are additional restrictions in the use of the 14 channels listed in § 73.25(c). These restrictions are set forth in § 73.3571.

* * * * *

8. 47 CFR Part 73 is amended by revising paragraph (o)(1) of § 73.182 to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(o) * * *

(1) With respect to the root-sum-square values of interfering field strengths referred to in this section (except in the case of Class IV stations on local channels and interfering signals to Class II–S stations) calculation is accomplished by considering the signals in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum, excluding those signals which are less than 50% of the RSS values of the higher signals already included.

* * * * *

9. 47 CFR Part 73 is amended by revising paragraph (v) of § 73.182 to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(v) Protected service contours and permissible interference signals for broadcast stations are as follows (for Class I and Class II–A stations, see paragraph (a) of this section):

Class of station	Class of channel used	Permissible power	Signal strength contour of area protected from objectionable interference[1]		Permissible interfering signal on same channel[2]	
			Day[3]	Night	Day	Night[4]
I–A	Clear	50 kW	SC 100 μV/m AC 500 μV/m	SC 500 μV/m (50 percent skywave)[7]. AC 500 μV/m[5]	5 μV/m	25 μV/m[7].
I–B	do	10 kW to 50 kW	SC 100 μV/m AC 500 μV/m	SC 500 μV/m (50 percent skywave). AC 500 μV/m[5]	5 μV/m	25 μV/m.
II–A	do	0.25 kW to 50 kW (daytime) 10 kW to 50 kW (nighttime)	500 μV/m	500 μV/m[5]	25 μV/m	Do.
II–B	do	0.25 kW to 50 kW	500 μV/m	2500 μV/m[5 6]	do	125 μV/m.
II–C	do	0.25 kW to 1 kW	do	10,000 μV/m[8]	do	500 μV/m.
II–D	do	0.25 kW to 50 kW (daytime)	do	Not prescribed	do	Do.
II–S	do	0.25 kW to 50 kW (daytime) Less than 0.25 (nighttime)	do	Not prescribed	do	Not prescribed. Do.
III–A	Regional	1 kW to 5 kW	do	2500 μV/m[5]	do	125 μV/m.
III–B	do	0.5 to 1 kW (night)	do	4000 μV/m[5]	do	200 μV/m.
IV	Local	0.25 to 1 kW	do	Not prescribed[6]	do	Not prescribed.

[1] When a station is already limited by interference from other stations to a contour of higher values than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.
[2] For adjacent channel, see paragraph (w) of this section.
[3] Groundwave
[4] Skywave field strength for 10 percent or more of the time.
[5] These values are with respect to interference from all stations except Class I–B, which stations may cause interference to a field strength contour of higher value. However, it is recommended that Class II stations be so located that the interference received from Class I–B stations will not exceed these values. If the Class II stations are limited by Class I–B stations to higher values, then such values shall be the established standard with respect to protection from all other stations.
[6] See paragraph (a)(4) of this section.
[7] Class I–A stations on channels reserved for the exclusive use of one station during nighttime hours are protected from co-channel interference on that basis.
[8] Applies only to nighttime operations of Class II–C stations coming within § 73.21(a)(iii), and to the operation of limited-time Class II–D stations during nighttime hours other than those during which they are authorized to operate as of June 1, 1980.

SC = Same channel.
AC = Adjacent channel

10. 47 CFR Part 73 is amended by revising the note to § 73.183(b) to read as follows:

§ 73.183 Groundwave signals.

* * * * *

(b) * * *

Note.—International agreement in the matter of standards for good engineering practice concerning determination of ground conductivity by field strength measurements has not been arrived at as contemplated by NARBA, and the United States has no established procedures for reciprocal consideration of such measurements with any country except Canada. Therefore, groundwave field strength measurements will not be accepted or considered for the purpose of establishing that interference to a station in a foreign country other than Canada, or that the signal strength at the border thereof, would be less than indicated by the application of the ground conductivity maps and engineering standard contained in this part and applicable international agreements. Satisfactory groundwave measurements offered for the purpose of demonstrating values of conductivity other than those shown by Figure M3 in problems involving protection of Canadian stations will be considered only if, after review thereof, the appropriate agency of the Canadian government notifies the Commission that they are acceptable for such purpose.

* * * * *

11. 40 CFR Part 73 is amended by revising paragraphs (d)(1), and adding (d)(4) of § 73.3571 to read as follows:

§ 73.3571 Processing of AM broadcasting station applications.

* * * * *

(d) * * *

(1) In order to be acceptable for filing, any application other than those filed under paragraph (d)(4) of this section which does not involve a change in site and which is filed before June 3, 1988, must propose at least a 50% increase in the station's nominal power. However, applications proposing at least a 20% increase and which are in conflict with an application proposing a 50% increase are acceptable for filing.

* * * * *

(4) Special procedures apply to the 14 frequencies listed in § 73.25(c). The same procedures will be applied to each of the three frequencies or groups of frequencies which are included in the above category. There are three stages to these procedures. In the first Stage, each Class II–D station will receive an Order to Show Cause why its license should not be modified to specify operation at night with the power calculated by the Commission and as shown on said Order. Stations accepting this modification will be redesignated as Class II–C if the nighttime power is 250 watts or more or as Class II–S if that power is below 250 watts. During Stage two, stations in both groups will be given five years within which to file an application to increase this power to a

maximum of 500 watts or their daytime power, whichever is lower. During this period, applications for new Class II–C stations also can be filed and will be granted without regard to the nighttime interference caused to other Class II–C or to Class II–S stations but new Class II–C stations will be required to protect foreign and domestic Class II–B full-time stations on these frequencies. Finally, in Stage 3, which occurs when the five-year period above comes to an end, Class II–C and II–S stations will be able to file applications to increase their nighttime power to 1 kW or their daytime power, whichever is lower. Applications for new Class II–C stations can also be filed specifying a maximum nighttime power of 1 kW. However, any applications in either category must protect existing Class II–C stations (including Class II–S stations that increased power during Stage 2 and were redesignated as Class II–C during this period). The five-year periods of Stage 2, applicable to the three groups of frequencies, are set forth below:

(i) 690 kHz, 740 kHz, 860 kHz, 990 kHz, 1010 kHz and 1590 kHz: Stage 2 begins on June 3, 1985 and ends on May 31, 1990; Stage 3 begins on June 1, 1990.

(ii) 1540 kHz [to be established].

(iii) 540 kHz, 730 kHz, 800 kHz, 900 kHz, 1050 kHz, 1220 kHz and 1580 kHz: [to be established].

[FR Doc. 85–13956 Filed 6–10–85; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[APD 2800.12 CHGE 11]

General Services Administration; Service Contract Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 is amended to incorporate the contents of Acquisition Circular AC–84–2, Labor Standards for Federal Service Contracts, into the regulation and to revise § 522.1007 to provide instructions on the use of the Service Contract Act Directory of Occupations. The intended effect is to update and maintain the regulation for the benefit of GSA contracting activities.

EFFECTIVE DATE: June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4754.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC–84–2 was originally issued, the General Services Administration certified under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) that the document was implementing the revised Department of Labor (DOL) Service Contract Act regulations in GSA procurements of services and that it would have a significant beneficial economic impact on many small entities. The GSA certification was based on DOL's final regulatory impact and flexibility analysis on its revised regulations at 48 FR 49758, October 27, 1983. All of the information collection requirements contained in the change stem from DOL requirements which have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). This change was not published for public comment because it merely implements and supplements the DOL regulations which were published for public comment and will not have an affect beyond the internal operating procedures of the agency.

List of Subjects in 48 CFR Parts 522 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 522 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Part 522, Table of Contents is amended to read as follows:

Sec.

* * * * *

522.1005 Clause for contracts of $2,500 or less.

* * * * *

3. Subpart 522.10 is amended by revising Sections 522.1003, 522.1005,

522.1006, 522.1008, and 522.1011 to permanently incorporate the language currently contained in Acquisition Circular AC–84–2 and by revising Section 522.1007 to add a reference to the use of the DOL Service Contract Act Directory of Occupations.

Subpart 522.10 is revised to read as follows:

Subpart 522.10—Service Contract Act of 1965

522.1003 Applicability.

(a) *General.* Pending the issuance of the revised Federal Acquisition Regulation (FAR) coverage of the Service Contract Act of 1965, the policies and procedures in the Federal Procurement Regulations (FPR) Subpart 1–12.9 Service Contract Act of 1965, as amended by the FPR Temporary Regulation 76, revision of labor standards for Federal service contracts, February 23, 1984, must be followed. This Subpart 522.10 contains the essential elements of the FPR Temporary Regulation 76 and includes the major changes to the Department of Labor (DOL) regulations, dated October 19, 1983.

(b) *Request for determinations and exemptions.* Request for determinations regarding the applicability of the Service Contract Act and requests for exemptions from the Act must be submitted to the Wage and Hour Administrator by the head of the contracting activity.

522.1005 Clause for contracts of $2,500 or less.

The contracting officer must insert the clause at GSAR 552.222–83, Service Contract Act of 1965—Contracts of $2.500 or Less, in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

522.1006 Clauses for contracts over $2,500.

(a) The contracting officer must insert the clause at GSAR 552.222–84, Service Contract Act of 1965 (as amended), in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is: (1) For over $2,500; or (2) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

(b) *Price-adjustment clauses.*

(1) Except as required by paragraph (b)(2) below, the contracting officer must insert the clause at GSAR 552.222–86, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiyear and Option Contracts), in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at GSAR 552.222–84, Service Contract Act of 1965 (as amended), and is a multiyear contract or is a contract with options to renew.

(2) The contracting officer must insert one of the clauses at GSAR 552.222–43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Option Contract/Multiyear Contract), as appropriate, in solicitations and contracts for building services when the contract is expected to be a fixed price service contract containing the clause at GSAR 552.222–83 or 84, Service Contract Act of 1965, and is a multiyear contract or is a contract with options to renew. The clauses at GSAR 552.222–43, must be used in building service contracts in lieu of the clause at GSAR 552.222–86 except when the contract is negotiated based on certified cost and pricing data.

(3) The contracting officer must insert the clause at GSAR 552.222–85, Fair Labor Standards Act and Service Contract Act-Price Adjustment, in solicitations and contracts when the contract is expected to be a fixed price service contract containing the clause at GSAR 552.222–84, Service Contract Act of 1965, (as amended), and is not a multiyear contract or is not a contract with options to renew.

(4) The clauses prescribed in this paragraph GSAR 522.1006(b) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination before: (i) Exercise of a contract option; or (ii) extension of a multiyear contract into a new program year. The clauses do not cover situations in which the economic price adjustment clauses prescribed in FAR 16.203(d) are used. When the coverage authorized by FAR 16.203(d) is desired, it must not conflict with, or overlap, the clauses prescribed in this paragraph GSAR 522.1006(b).

522.1007 Notice of intention to make a service contract.

(a) The Department of Labor (DOL) has issued a Service Contract Act Directory of Occupations for use in determining the job classifications used in the procurement of services. The directory includes the commonly used occupational titles and descriptions which contracting activities must use when listing on the SF–98a those classes of service employees to be employed. When contracting activities are unable to locate an appropriate title or description in the directory, the contracting activity must develop and submit an appropriate occupational title and description for such work to DOL with the SF 98 request. The Service Contract Act Directory of Occupations is published as Appendix C in the GSAR looseleaf.

(b) Requests to expedite wage determinations or to check the status of a particular request may be made by the contracting officer directly to the Wage and Hour Administrator.

522.1008 Wage determinations and collective bargaining agreements.

For the purposes of this subpart, the agency labor advisor will be legal counsel.

522.1011 Hearings.

Requests for hearings under 29 CFR 4.11, will be made by the contracting officer through the head of the contracting activity to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. All such requests shall be coordinated with the appropriate legal counsel.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 552, Table of Contents is amended by adding sections 552.222–83, 552.222–84, 552.222–85, and 552.222–86 to read as follows:

Sec.

* * * * *

552.222–83 Labor Standards Clause for Federal Service Contracts Not Exceeding $2,500.

552.222–84 Service Contract Act of 1965 (as amended).

552.222–85 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

552.222–86 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

* * * * *

5. Section 552.222–43 is amended by revising the introductory text of paragraph (a) and Alternate I, by revising the introductory text of paragraph (b) and Alternate I, and by revising the titles of both clauses to read as follows:

552.222–43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

(a) As prescribed in 522.1006(b)(2), insert the following clause in solicitations and contracts for building services unless the contract is being negotiated based on certified cost and pricing data.

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Option Contract) (May 1984)

* * * * *

Alternate I

When it is necessary to provide for an adjustment in the option price for material as well as labor, the clause in paragraph (a) above, may be modified to add the following as paragraph (f).

* * * * *

(b) As prescribed in GSAR 522.1006(b)(2), insert the following clause in solicitations and contracts for building services unless the contract is being negotiated based on certified cost and pricing data.

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear Contract) (May 1984)

* * * * *

Alternate I

When it is necessary to provide for an adjustment in the contract price for materials as well as labor, the clause in paragraph (b) above, may be modified to add the following as paragraph (e).

* * * * *

6. Sections 552.222–83, 552.222–84, 552.222–85, and 552.222–86 are added to read as follows:

552.222–83 Labor standards clause for Federal service contracts not exceeding $2,500.

As prescribed in GSAR 522.1005, insert the following clause in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

Service Contract Act (May 1984)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(End of Clause)

552.222–84 Service Contract Act of 1965 (as amended)

As prescribed in GSAR 522.1006(a), insert the Service Contract Act of 1965 clause contained on the April 1984 edition of the GSA Form 2166, Service Contract Act of 1965 (as amended) in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is (a) for over $2,500 or (b) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. The GSA Form 2166 may be used or its contents repeated verbatim in solicitations and contracts. With respect to Blanket Purchase Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

552.222–85 Fair Labor Standards Act and Service Contract Act—price adjustment.

As prescribed in GSAR 522.1006(b)(3) insert the following clause in solicitations and contracts when the contract is expected to be fixed-price service contract containing the clause at GSAR 552.222–84, Service Contract Act of 1965 (as amended), and is not a multiyear contract or is not a contract with options to renew:

Fair Labor Standards Act and Service Contract Act-Price Adjustment (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

552.222–86 Fair Labor Standards Act and Service Contract Act—price adjustment (multiyear and option contracts).

As prescribed in GSAR 552.1006(b)(1) insert the following clause in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at GSAR 552.222–84, Service Contract Act of 1965 (as amended), and is a multiyear contract or is a contract with options to renew (note that the adjustments under subparagraphs (c) (2) and (3) of the clause may apply to the base period as well as to subsequent periods):

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351–358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

Dated: May 31, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 13907 Filed 6-10-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitat for the Modoc Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Modoc sucker (*Catostomus microps*) to be an endangered species. Critical habitat is also designated for this fish. This action is being taken because the species has been extirpated from a significant portion of its limited range due to habitat loss from overgrazing, siltation, and channelization. Furthermore, habitat degradation has removed natural instream barriers and allowed hybridization with a related species of *Catostomus*. The Modoc sucker historically occurred in small tributaries of the upper Pit River in Lassen and Modoc Counties, California, but is now found only in portions of two small drainage systems in Modoc County. A determination that the Modoc sucker is an endangered species and designation of its critical habitat will implement protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: July 11, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Modoc sucker (*Catostomus microps*) is a dwarf species of the family Catostomidae. Individuals begin to mature at 70 to 85 mm standard length (SL) with few adults exceeding 160 mm SL (Boccone and Mills 1979). Martin (1972) described the colors of the Modoc sucker as greenish-brown to deep gray-olive above, lighter-colored on the sides with some light yellowish pigment below, cream-colored to white ventrally, and with the caudal, pelvic and pectoral fins light yellowish-orange. A bright orange band appears on the sides during spawning season. The original description of the species was based on specimens from Rush Creek (Rutter 1908).

The historic range of the Modoc sucker included small streams tributary to the Pit River in Modoc and Lassen Counties, California. Presently, the species is restricted to portions of Turner and Rush Creeks, two small drainage systems in Modoc County, California. Land ownership of the species' present range is approximately 50 percent Federal (U.S. Forest Service) and 50 percent private.

Preferred habitat of the species consists of small streams characterized by large shallow pools with cover, soft sediments, and clear water. Food of the Modoc sucker consists of benthic invertebrates, algae, and detritus (Moyle and Marciochi 1975). During spring spawning runs, the species ascends creeks or tributaries that may be dry during summer months. Spawning streams and spawning characteristics were described by Boccone and Mills (1979).

The recent decline of the Modoc sucker has been dramatic. A 1978 California Department of Fish and Game survey reported the species from eight creeks: Washington, Hulbert, Turner, Willow, Ash, Dutch Flat, Johnson, and Rush. Additional streams were inhabited by the species historically, but its small, often intermittent stream habitat indicates that Modoc suckers may never have been common. Recent information (Mills 1980) indicates that genetically pure Modoc suckers are restricted to Turner Creek and its tributaries, Washington and Hulbert Creeks; Johnson Creek, a tributary of Rush Creek; and smaller unnamed tributaries of Turner and Rush Creeks. An estimated 1,300 individuals now inhabit these creek systems. The decline can largely be attributed to habitat destruction and hybridization of the Modoc sucker with the Sacramento sucker (*Catostomus occidentalis*), a species that occupies larger streams in the region (Cooper 1983, Mills 1980, Moyle and Marciochi 1975). Hybridization has occured due to the elimination of waterfalls and other natural instream barriers to fish movement by erosion, sedimentation, and channelization

The precarious status of the Modoc sucker has been widely recognized. The American Fisheries Society lists the species as endangered (Deacon et al. 1979). The State of California has recently changed its classification of the species to endangered (California Department of Fish and Game 1980). The Modoc sucker was included in the Service's December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454). In this review, the Modoc sucker was listed as a category 1 species, indicating that the Service had substantial information on hand to support a proposed rule to list the species as endangered or threatened. On April 19, 1983, the Desert Fishes Council petitioned the Service to list the Modoc sucker. Upon evaluation of this petition, the Service found that the petitioned action was warranted and published this finding on June 14, 1983 (48 FR 27273). The proposed rule to list the Modoc sucker as an endangered species and designate its critical habitat was published by the Service on January 31, 1984 (49 FR 3892), in accordance with

section 4(b)(3)(B)(ii) of the Endangered Species Act of 1973, as amended.

A cooperative effort by the California Department of Fish and Game, U.S. Forest Service, and U.S. Fish and Wildlife Service to reestablish the Modoc sucker in its historic streams has been initiated. The Department of Fish and Game reintroduced the species into Turner Creek, but the success of this effort has not been determined at this time. Most suckers found in Rush Creek in the past five years have been hybrids, although historically the Modoc sucker was collected from this creek. Plans have been developed to rehabilitate this creek and reintroduce the Modoc sucker. Despite the present precarious status of the species, reintroduction and stream rehabilitation efforts may result in the survival and eventual recovery of this unique species of the native California ichthyofauna.

Summary of Comments and Recommendations

In the January 31, 1984, proposed rule (49 FR 3892) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Red Bluff Daily News, Redding Record, Lassen Advocate,* and *Modoc Record,* which invited general public comment. These notices were published on March 1, 1984, except for the *Lassen Advocate* notice, which was published one day later.

Eleven written comments were received by the Service in response to the original notifications and newspaper notices. Seven replies offered support for the proposed listing and four provided comments and information but were non-committal concerning support or opposition of the proposal. The seven supportive replies were from the U.S. Forest Service, a University of California professor who has studied the species for many years, the Director of the California Department of Fish and Game, the International Union for Conservation of Nature and Natural Resources (IUCN), the Deputy State Director of the U.S. Bureau of Land Management, the California Wilderness Coalition, and a private citizen. The private citizen stressed the adverse impacts of overgrazing and stated that without grazing pressures, some intermittent streams presently inhabited by the Modoc sucker would no doubt be perennial. The California Wilderness Coalition suggested that the Big Canyon roadless area and the Pit River Canyon wilderness study area should be examined for potential habitat.

One of the comments received provided additional information but neither supported nor opposed the proposed rule. The Sacramento Office of the U.S. Bureau of Reclamation provided information on a dam project that is being considered in the Allen Camp area on the Pit River. It suggested various alternatives to the proposed dam on the Pit River, but no new data on the status of the species were presented.

Based on the cooperative efforts of the Service with the U.S. Forest Service concerning reestablishment of the sucker in historic streams, Service personnel continued field inspection of areas proposed as critical habitat. As a result of these surveys, a refinement of the critical habitat boundaries was warranted. See the "Critical Habitat" section for specific details.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Modoc sucker (*Catostomus microps*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified in 50 CFR Part 424; proposal 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Modoc sucker (*Catostomus microps*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Overgrazing by cattle, channelization, and other activities that cause erosion and siltation have dramatically degraded Modoc sucker habitat. Cattle grazing has compacted and denuded several meadow areas causing severe erosion and stream incision (Mills 1980). In some streams, erosional cutting of stream banks has exposed as much as 10 vertical feet of earth. These changes to the species' habitat have decreased the distribution and abundance of the Modoc sucker to a point where only 1,300 genetically pure individuals are thought to remain (Mills 1980).

In addition to loss of suitable habitat, erosion and channelization within the species habitat have removed natural barriers separating the Modoc sucker from the Sacramento sucker (Moyle 1976a). Sacramento suckers inhabit large streams and reservoirs in the Pit River system, but ascend small tributaries to spawn. Historically, natural instream barriers, such as falls or steep gradients, prevented the movement of spawning Sacramento suckers into Modoc sucker habitat (Mills 1980, Moyle and Marciochi 1975). With the removal of these barriers hybridization between the two species has occurred. Destruction of natural instream barriers has also allowed entrance of predacious fish into Modoc sucker habitat.

Recent efforts by the U.S. Forest Service to fence riparian habitats to eliminate cattle grazing have improved Modoc sucker habitat. For example, severely eroded areas of Washington Creek that were fenced three years ago have regained much of their original riparian vegetation cover since the exclusion of cattle. Siltation and erosion have ceased along this creek.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Modoc sucker is not known to be overutilized for any purposes.

C. *Disease or predation.* In the past, the brown trout (*Salmo trutta*) was introduced into the Pit River and its tributaries, including some which are inhabited by the Modoc sucker. Introduction of the brown trout reduced Modoc sucker numbers by predation (Moyle 1976b).

D. *The inadequacy of existing regulatory mechanisms.* The State of California now classifies the Modoc sucker as endangered. State legislation protects the species from taking, but does not provide for habitat protection or for Federal assistance with recovery actions.

E. *Other natural or manmade factors affecting its continued existence.* The genetic integrity of the Modoc sucker is threatened by hybridization with the Sacramento sucker. Genetically pure Modoc suckers have been replaced in Rush, Ash, Dutch Flat, and Willow Creeks by hybrid Modoc and Sacramento suckers. Further habitat degradation can destroy additional natural instream barriers and allow Sacramento suckers access to remaining genetically pure Modoc sucker populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the

preferred action is to list the Modoc sucker as endangered with critical habitat. The Service finds that the Modoc sucker has come precariously close to extinction. During the past two years, efforts by the U.S. Forest Service and California Department of Fish and Game has improved sections of remaining habitat and increased the possibility for survival of the species. However, further recovery actions that include protection of remaining populations and reintroductions of Modoc suckers into secure, historic habitat are necessary before the species could be considered for reclassification to threatened status or for removal from the List of Endangered and Threatened Wildlife. The need for designation of critical habitat is discussed in the "Critical Habitat" section.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Modoc sucker in Modoc County, California to include a total of approximately 26 miles of the following streams and a 50 foot riparian zone on either side of the steam channel: (1) Turner Creek, (2) Washington Creek (including its tributary Coffee Mill Gulch), (3) Hulbert Creek (including its tributary Cedar Creek), (4) Johnson Creek (including its tributaries Rice Flat and Higgins Flat), and (5) Rush Creek. Know constituent elements include intermittent and permanent-water creeks, and surrounding land areas that provide vegetation for cover and protection from erosion.

Additional information resulting from field work conducted during the comment period resulted in the following changes to critical habitat from that proposed on January 31, 1984: addition of Cedar Creek (a tributary of Hulbert Creek), addition of Coffee Mill Gulch (a tributary of Washington Creek), deletion of the upstream portion of Hulbert Creek, and deletion of the upstream portion of Johnson Creek. These changes were based on field work conducted by U.S. Fish and Wildlife Service Sacramento Field Office personnel in coordination with the U.S. Forest Service.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that may adversely modify critical habitat for the Modoc sucker are as follows:

(1) Overgrazing by livestock in areas adjacent to streams that causes compacting and denuding of soils, leading to erosion and stream incision (this is presently occurring and poses a serious threat);

(2) Channelization, impoundment, and water diversion activities along streams that would reduce available habitat allowing Sacramento suckers access to headwater areas;

(3) Introduction of additional exotic species that would compete with or prey on Modoc suckers poses a serious threat;

(4) Application of herbicides or insecticides toxic to Modoc suckers or their food sources along stream courses;

(5) Pollution of streams by silt or other pollutants that would reduce the suitability of the stream environment for Modoc suckers; and

(6) Removal of trees or bushes along streams which, would reduce cover and shade, thereby reducing the suitability of the stream environment for the species.

Timber sales and cattle grazing, activities which occur on the Modoc National Forest, may be affected by the designation of critical habitat through section 7 consultation requirements. The Forest Service has begun implementation of recovery actions on its lands. These actions include modifications of timber sales and exclusion of cattle from some stream areas. In addition, channelization, impoundment, and water diversion activities in these stream systems would require section 7 consultation to ensure that the critical habitat is not adversely modified.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the potential economic impacts of reduced cattle grazing and modifications to timber sales and concluded that these effects are minor. The Forest Service has voluntarily eliminated cattle grazing in some riparian areas and has modified timber sales along Hulbert and Cedar Creeks to protect the Modoc sucker.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to the Modoc sucker, consultations with the U.S. Forest Service are anticipated for actions involving timber harvest or grazing leases along streams designated as critical habitat. Informal Section 7 consultations and conferences have been held recently concerning timber sales along Cedar and Hulbert Creeks. In addition to timber sales and grazing leases, forest management plans would require consultation if their implementation would affect the Modoc sucker. A dam project on the Pit River was proposed prior to 1980 at Allen Camp. On December 16, 1980, the Bureau of Reclamation informed the Fish and Wildlife Service that this project was not under consideration at that time. A comment letter was

received from the Bureau of Reclamation (Bureau) on April 2, 1984, indicating that alternatives to the Allen Camp were being considered. Should the Bureau decide to continue with an alternative water project on the Pit River, it will be required to consult with the Service to ensure that the Modoc sucker and its habitat are not adversely affected.

The California Department of Fish and Game, the Forest Service, and the Service have been involved in developing an action plan for the Modoc sucker since 1981. The action plan was revised in 1983 and approved by the three agencies in 1984. The purpose of the plan is to provide direction and assign responsibilities for the recovery of the Modoc sucker. The immediate objective of the plan is to provide enough suitable, secure habitat in both the Turner-Hulbert-Washington Creeks drainage and the Rush-Johnson Creeks drainage to ensure viable populations of the Modoc sucker in these areas. This action plan is compatible with the critical habitat designation.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidential take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The critical habitat designation as defined in the proposed rule for the Modoc sucker (*Catostomus microps*) did not bring forth economic or other impacts to warrant consideration of revising the critical habitat designation due to such impacts. The critical habitat is located in portions of two small drainages in Modoc County, California. The Forest Service owns approximately 50 percent of the critical habitat. The remaining critical habitat area is privately owned. Based on current Forest Service management, the Bureau's consideration of alternative water projects on the Pit River, and the joint action plan for the recovery of the Modoc sucker, it is not expected that significant economic impacts will result from the designation of critical habitat on Federal land. In addition, there is no known involvement of Federal funds or permits for the private lands within the critical habitat designation. No direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects that is available at the Regional Office, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

Literature Cited

Boccone, V.M., and T.J. Mills. 1979. Spawning behavior and spawning substrate preference of the Modoc sucker, *Catostomus microps* (Rutter). California Department of Fish and Game, Inland Fish. Endangered Species Program Spec. Publ. 79–2.

California Department of Fish and Game. 1980. At the crossroads: a report on the status of California's endangered and rare fish and wildlife. State of California Resources Agency. Sacramento, California 147 pp.

Cooper, J.J. 1983. Distributional ecology of native and introduced fishes of the Pit River system, northeastern California, with notes on the Modoc sucker. California Fish and Game 69:39–53.

Deacon, J.E., G. Kobetich, J.D. Williams, S. Contreras et al. 1979. Fishes of North America endangered, threatened, or of special concern: 1979. Fisheries (Bull., Am. Fish. Soc.) 4:29–44.

Martin, M. 1972. Morphology and variation of the Modoc sucker, *Catostomus microps* Rutter, with notes on feeding adaptations. California Fish and Game 58:277–284.

Mills, T.J. 1980. Life history, status, and management of the Modoc sucker, *Catostomus microps* (Rutter) in California, with a recommendation for endangered classification. California Department of Fish and Game, Inland Fish. Endangered Species Program Spec. Publ. 80–6.

Moyle, P.B. 1976a. Some effects of channelization on the fishes and invertebrates of Rush Creek, Modoc County, California. California Fish and Game 62:179–186.

Moyle, P.B. 1976b. Fish introductions in California: history and impact on native fishes. Biol. Conserv. 9:101–118.

Moyle, P.B., and A. Marciochi. 1975. Biology of the Modoc sucker, *Catostomus microps*, in northern California. Copeia 1975:556–560.

Rutter, C. 1908. The fishes of the Sacramento-San Joaquin basin, with a study of their distribution and variation. Bull. U.S. Bur. Fish. 27:103–152.

Author

The primary author of this final rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/484–4935 or FTS 468–4935).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

. . . . . .

(h) * * *

Species								
Common name	Scientific name	Historic range	Vertebrate population where endangered ■ threatened	Status	When ■	Critical habitat	Special rules
FISHES							
Sucker, Modoc	*Catostomus microps*	U.S.A. (CA)	Entire	E		17.95(e)	NA

3. Amend § 17.95(e) by adding critical habitat of the Modoc sucker as follows: The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

MODOC SUCKER (*Catostomus microps*)

California, Modoc County.

1. Turner Creek. Approximately 4.5 stream miles and 50 feet on either side of the stream channel from the juncture of Turner Creek with the Pit River upstream to T42N, R8E, Section 20; including those areas of the stream channel in T41N, R8E, Sections 1 and 2; and in T42N, R8E, Sections 21, 27, 28, 34, and 35.

2. Washington Creek. Approximately 4 stream miles and 50 feet on either side of the stream channel from the juncture of Washington Creek with Turner Creek to T42N, R8E, Section 11; including those areas of the stream channel in T42N, R8E, Sections 14, 23, 24, 25, 26, and 35. Also Coffee Mill Gulch, a tributary of Washington Creek, for approximately 1.5 miles and 50 feet on either side of the stream channel from the juncture of this tributary with Washington Creek upstream to T42N, R8E, Section 22; including those areas of the stream channel in T42N, R8E, Sections 22, 23, and 26.

3. Hulbert Creek. Approximately 3.5 stream miles and 50 feet on either side of the stream channel from the juncture of Hulbert Creek with Turner Creek upstream to T42N, R8E, Section 31; including those areas of the stream channel in T42N, R8E, Sections 29, 30, 32, 33, 34, and 35; and Cedar Creek, a tributary of Hulbert Creek, for approximately 1.5 stream miles and 50 feet on either side of the stream channel from the juncture of Cedar Creek with Hulbert Creek upstream to Cedar Spring; including those areas of the stream channel in T41N, R8E, Section 4; and in T42N, R8E, Section 33.



4. Johnson Creek. Approximately 4 stream miles and 50 feet on either side of the stream channel from the juncture of Johnson Creek with Rush Creek upstream to T40N, R10E, Section 6; including those areas of the stream channel in T40N, R9E, Sections 1, 11, 12, 14, 23, and 24. Also in unnamed tributary of Johnson Creek in Rice Flat, for approximately 1 stream mile and 50 feet on either side of the stream channel from the juncture of this tributary with Johnson Creek upstream to T40N, R9E, Section 10; including those areas of the stream channel in T40N, R9E, Sections 11 and 14. Also in unnamed tributary of Johnson Creek in Higgins Flat, for approximately 1 stream mile and 50 feet on either side of the stream channel from the juncture of this tributary with Johnson Creek upstream to T40N, R9E, Section 10; including those areas of the stream channel in T40N, R9E, Sections 14 and 15.

5. Rush Creek. Approximately 5 stream miles and 50 feet on either side of the stream channel from the gauging station at the State Route 299 crossing upstream to T40N, R10E, Section 16; including those areas of the stream channel in T40N, R9E, Sections 24, 25, 26, 35, and 36; and in T40N, R10E, Sections 17, 18, and 19.



Known constituent elements include intermittent and permanent-water creeks, and adjacent land areas that provide vegetation for cover and protection from soil erosion.

* * * * *

Dated: May 15, 1985.

Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-13992 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 112
Tuesday, June 11, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO-99-A5]

Winter Pear Marketing Order; Hearing on Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rule.

SUMMARY: This provides notice of a public hearing to be held to consider a proposed amendment to the Winter Pear marketing order (hereinafter called the "order"). The proposals were submitted by the Winter Pear Control Committee, the industry organization administering the order. The principal changes would revise the size and composition of the control committee, establish a limit on the tenure of control committee members, add authority for public advisors, add authority to establish and fund research and development programs for individual varieties and subvarieties of pears and provide for periodic referenda on the order. The text of the proposals to be considered is set forth below.

DATE: The hearing is scheduled for June 20, 1985, at 9:00 a.m.

ADDRESS: The hearing will be held in the Sheraton Inn, 8235 NE. Airport Way, Portland, Oregon 97218.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, phone (202) 447-5975.

SUPPLEMENTARY INFORMATION: The amendment was proposed and the hearing requested by the Winter Pear Control Committee established under the marketing agreement and order program regulating the handling of winter pears grown in the States of Oregon, California, and Washington. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from this hearing.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposed amendment of the marketing agreement and order has not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendment of the marketing agreement and order; (ii) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (iii) determining whether the proposed amendment or appropriate modification of it will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Oregon, State of Washington, California.

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

Proposal No. 1

Revise § 927.4 to read:

§ 927.4 Pears.

"Pears" means and includes any and all of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, and Doyenne du Comice varieties of pears grown in Oregon, Washington, and California and the Forelle and Seckel varieties of pears grown in the States of Oregon and Washington, and any mutations, sports, or other derivations of the varieties named.

Proposal No. 2

Revise § 927.9 to read:

§ 927.9 Fiscal period.

"Fiscal period" means the period beginning July 1 of any year and ending June 30 of the following year or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations by the Control Committee.

Proposal No. 3

Amend § 927.11 by removing paragraph (f) and by amending paragraph (e) to read:

§ 927.11 District

* * * * *

(e) California District shall include all of the State of California.

Proposal No. 4

Add a new § 927.13 to read:

§ 927.13 Subvariety.

"Subvariety" means and includes any mutation, sport, or other derivation of any of the varieties named in § 927.4 which is recognized by the Control Committee. Recognition of a subvariety by the Control Committee shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

Proposal No. 5

Revise § 927.20 to read:

§ 927.20 Establishment and membership.

A Control Committee, consisting of 14 individual persons as its members, is hereby established to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35. There shall be two alternates, designated as the "first alternate" and the "second alternate,"

respectively, for each member of the committee. Seven members of the Control Committee and their respective alternates shall be growers of pears, and seven members and their respective alternates shall be handlers of pears. Each district shall be represented on the Control Committee by one grower member and one handler member except that the Hood River-White Salmon-Underwood District and the Wenatchee District shall be represented on the committee by two grower members and two handler members.

Proposal No. 6

Revise § 927.26 to read:

§ 927.26 Qualifications.

Any person prior to or after selection as a member or as an alternate for a member of the Control Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

Proposal No. 7

Revise § 927.27 to read:

§ 927.27 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending June 30: *Provided,* That the terms of office of one-half the initial members and alternates shall end June 30, 1987; and that beginning with the 1986–87 marketing year, no member shall serve more than three consecutive terms. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

Proposal No. 8

Revise paragraph (a) of § 927.33 to read:

§ 927.33 Procedure of Control Committee.

(a) Quorum and voting. A quorum at a meeting of the Control Committee shall consist of ten members, or alternates then serving in the place of any members. Except as otherwise provided in § 927.52, all decisions of the Control Committee at any meeting shall require the following: (1) The concurring vote of at least 80 percent of those members, or alternates then serving in the place of any members, and (2) not less than ten concurring votes

* * * * *

Proposal No. 9

Add a new § 927.36 to read:

§ 927.36 Public advisors.

The Control Committee may appoint such public advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

Proposal No. 10

Revise § 927.41 to read:

§ 927.41 Assessments.

(a) Assessments will be levied only upon the handler who first handles pears which subsequently are shipped from the State of Oregon, the State of Washington, or the State of California. Each handler shall pay, upon demand, assessments on all pears handled by such handler as the prorata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Based upon a recommendation of the Control Committee or other available data, the Secretary shall fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all pears or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal year. Any Control Committee recommendation to the Secretary to establish or modify a supplemental rate of assessment for an individual variety or subvariety shall require an affirmative vote of not less than 80 percent of the applicable total number of votes of that variety, or the variety of which the subvariety is a member of, as computed in the manner prescribed in § 927.52.

(c) The Control Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Control Committee may impose an additional charge in the form of interest on such outstanding amount. The rate of such charges shall be prescribed by the Control Committee, with the approval of the Secretary.

(d) In order to provide funds to carry out the functions of the Control Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety of pears handled by such handlers during such season.

Proposal No. 11

Revise § 927.47 to read:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 927.41. Expenditures for a particular variety of pears should approximate the amount of assessments collected for that variety of pears.

Proposal No. 12

Revise paragraph (a) of § 927.52 to read:

§ 927.52 Prerequisites to committee recommendations.

(a) Decisions of the Control Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety of pears or pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all committee members.

Proposal No. 13

Revise paragraph (c) of § 927.78 to read:

§ 927.78 Termination

* * * * *

(c) The committee shall recommend to the Secretary within every six-year

period beginning on the date the language in this section becomes effective that a referenda be conducted to ascertain whether continuance of this subpart is favored by producers. The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of the growers of pears who, during such fiscal period, have been engaged in the area in the production of pears for market: *Provided,* That such majority have produced for market during such period more than 50 percent of the volume of pears produced for market in the area; but such termination shall be effective only if announced on or before June 30 of the fiscal period.

* * * * *

Proposal No. 14

Make such other changes as may be necessary to make the entire order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from Kurt J. Kimmel, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, or from Joseph C. Perrin, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, 1220 SW. Third Avenue, Room 369, Portland, Oregon 97204, phone (503) 221–2724.

From the time this hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;

Office of the Administrator, Agricultural Marketing Service;

Office of the General Counsel, except Regional Attorneys;

Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on June 4, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–13997 Filed 6–10–85; 8:45 am]

BILLING CODE 3410–02–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Activities of Self-Regulatory Organization Employees and Governing Members Who Possess Material, Nonpublic Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing a new regulation § 1.59 which, generally, would make it unlawful for employees of self-regulatory organizations to disclose material, nonpublic information obtained as a result of their employment at the self-regulatory organization. Regulation § 1.59 would also require self-regulatory organizations to adopt their own rules, subject to the standards contained in the regulation, that prohibit their employees from trading in any commodity interest on a contract market or linked exchange and from disclosing material, nonpublic information obtained as a result of their employment. Finally, proposed regulation § 1.59 would directly prohibit members of contract market or clearing organization governing boards or committees from trading in certain markets prior to the announcement of regulatory decisions made by such bodies affecting those markets, and from disclosing information relating to those regulatory decisions. The rule would also require contract markets and clearing organizations to adopt conforming rules which prohibit the same activity.

DATE: Comments must be received on or before August 12, 1985.

ADDRESS: Comments on the proposed regulation should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: De'Ana J. Hamilton, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, the Commission's regulations place no direct restrictions on the participation of employees or governing members of self-regulatory organizations in futures, options or cash transactions on designated contract markets.[1] In general, those contract markets which currently have rules in this area either prohibit their employees from participating in commodity interests which are traded on the employing contract market or prohibit their members from accepting employees' orders without prior authorization from the employing contract market.[2]

In light of the rapid industry growth in the years since the establishment of the Commission and the expanding self-regulatory responsibilities attendant thereto, an increasing number of employees of the self-regulatory organizations often have access to books and records of members of those organizations. Furthermore, governing members are called upon to make emergency decisions affecting the markets. As a result and as recently indicated in its report, "A Study of the Nature, Extent, and Effects of Futures Trading by Persons Possessing Material, Nonpublic Information" (September 1984) ("Insider Trading Study"), the Commission is increasingly concerned about the potential for abuse and the appearance of impropriety when employees and governing members of self-regulatory organizations are permitted to trade while possessing or having access to material, nonpublic information. The Commission has stated in the past in connection with a previously proposed regulation that if employees or governing members are permitted to trade without any limitation, they could use the confidential information "obtained in their official capacity for their personal benefit. The Commission believes that such conduct, or even the potential for such conduct, seriously undermines the concept of self-regulation and reduces public confidence in contract markets and their clearing organizations as regulators of their respective marketplaces." 45 FR 84084 (December 22, 1980). In the main, the Commission's proposal is intended to require that self-regulatory organizations' internal compliance programs reduce, if not

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[1] In this connection, however, the Commission notes that the Division of Trading and Markets' Financial and Segregation Interpretation Number 4 states that in all matters relating to a financial compliance program an independent attitude must be maintained. CCH Comm. Fut. L. Rep. ¶ 7114.

[2] *See* Commodity Exchange, Inc. Rule 3.03, Chicago Mercantile Exchange Rule 254, New York Cotton Exchange Rule 9.07(b), Chicago Board of Trade Rule 141.00(10), New York Mercantile Exchange Rule 41.13, New York Futures Exchange Rule 210, MidAmerica Commodity Exchange Rule 230 and Coffee, Sugar and Cocoa Exchange Rule 1.13(12).

eliminate, the possibilities for such conduct.

II. Background

A. Staff Interpretation

In December of 1980, the Commission proposed a regulation (§ 1.57) which would have made it unlawful for contract market or clearing organization officers, staff members, employees or other persons occupying a similar status or performing similar functions to participate, directly or indirectly, in commodity futures or option transactions, or investment transactions in actual commodities. In addition, § 1.57 would have required each contract market to adopt and enforce rules, subject to Commission approval, prohibiting such conduct. Finally, the proposed regulation would have authorized contract markets to provide an exemption whereby certain employees could trade those commodities for which the exchange had not been designated as a contract market. The Commission's decision to publish the regulation for public comment was based upon the Commission's belief that the increasingly important responsibilities of self-regulatory organizations' compliance personnel and their access to sensitive, nonpublic information made the adoption of certain industry-wide standards necessary. 45 FR 84084 (December 22, 1980). The Commission subsequently decided, however, not to adopt the proposed regulation, but instead to give guidance to the contract markets by publishing the interpretative position of the Commission's Division of Trading and Markets. 47 FR 7300 (February 18, 1982).[3]

Specifically, the Staff interpretative position stated that employees who are involved in compliance, audit or market surveillance activities and who have routine access to confidential information generally should be barred from all commodity transactions, and should be disciplined, suspended or terminated for violation of exchange policy in this area. Further, it was stated that contract markets should consider the following factors in determining what types of commodity investments should be permitted: (i) The employee's degree of control over the investment; (ii) whether the employee could make use of confidential information for personal benefit; and (iii) whether such investment activity would interfere with the employee's job performance. Finally, the interpretative statement provided that the rule enforcement responsibilities of a contract market include having suitable staff whose interests do not conflict with their employment responsibilities and who do not misuse confidential information obtained by virtue of their employment.

A review of the current exchange rules in this area reveals, however, that these rules have not been amended since February of 1982 to take into consideration the staff interpretative position.[4] Moreover, NFA has not formally adopted rules which reflect the guidelines established in the staff position paper. Thus, publication of the staff interpretative position has had no apparent effect on the self-regulatory organizations' rules which relate to trading activities of all employees.

B. Insider Trading Study

Subsequently, during the Commission's most recent reauthorization, the Commodity Exchange Act ("Act") was amended to require the Commission to examine the nature, extent and effects of trading in representative markets by persons possessing material information not generally available to the public regarding present or anticipated cash or future transactions, and the adequacy of the Commission's authority to prevent market and customer abuses resulting from the possession of such nonpublic information.[5] That legislation further directed the Commission to prepare and transmit to its Congressional oversight committees a report describing the results of the Commission's study and including any recommendations for legislative action.

Upon assessment of the adequacy of the Commission's authority to prevent abuses resulting from the possession of material, nonpublic information, the Commission made the following recommendations in the Insider Trading Study. First, with respect to employees of self-regulatory organizations, the Commission stated its intent to propose a rule which would require all self-regulatory organizations to adopt rules that meet specified standards concerning trading by persons employed on a salaried or contract basis. The Commission noted that many self-regulatory organizations have recognized the potential problems attendent to employees' trading and have adopted various restrictions concerning such trading. Nevertheless, the Commission stated in the Insider Trading Study that it believes it is necessary to require self-regulatory organizations to adopt specific rules in order "to assure continued adherence to basic standards related to such trading."[6]

The Commission further indicated in the Insider Trading Study that it intended to propose a rule requiring contract markets and clearing organizations to restrict trading by their governing members until decisions by the governing boards are publicly known. The Commission again noted that some self-regulatory organizations have adopted measures to decrease the likelihood that governing members would abuse information obtained in connection with self-regulatory deliberations, but stated that "the advent of longer trading hours through the establishment of international

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[3] Prior to publication of the staff interpretative statement, the Commission had also requested public comment on contract market rules and practices governing conflicts of interest of the members of their governing bodies. *See* 47 FR 31703 (July 22, 1982). The Commission noted the lack of uniformity with respect to existing exchange rules in this area and stated that it was "not convinced that current exchange rules and procedures are the most effective means of assuring the public that exchange actions affecting the markets will be consistent with the exchanges' obligations to maintain the integrity of these public marketplaces." The Division of Trading and Markets, which had examined issues relating to conflicts of interest in rule enforcement reviews of three exchanges, had suggested that it would be appropriate for the Commission to provide the exchanges with the first opportunity to institute necessary procedural reforms, in accordance with their self-regulatory responsibilities. The Division of Trading and Markets had also suggested procedures by which exchanges could seek to reduce the possibility that potential or actual conflicts of interest would be present in the voting process and invited each exchange to tailor its suggestions to specific circumstances on that exchange. Generally, the contract markets responding to the Commission's request for comment stated that their policies, rules and procedures in this area provided sufficient safeguards against conflicts of interest, and further noted that there had been no instances of impropriety involving their governing members. The National Futures Association ("NFA") stated that any standards adopted by the Commission should not apply to a registered futures association, but if so, the NFA should be given the first opportunity to institute the standards. One industry commentator separately stated that the exchanges should take the initiative to ensure against conflicts of interest and the Commission should encourage exchanges to do so and suggest possible guidelines.

[4] This is not to say that some exchanges have not adopted policies with regard to employee trading activities that affect certain offices within those exchanges. For example, since the staff interpretation was issued the Division, in the course of auditing exchange financial programs, consistently has recommended that exchanges prohibit financial surveillance compliance staff from trading commodity futures and option contracts. In response to those recommendations, the exchanges have made progress in incorporating such a prohibition into their financial audit compliance programs.

[5] The term "insider trading" as used in the Commission's Insider Trading Study included and herein refers to trading by exchange personnel or governing members while in possession of material, nonpublic information. *See* "Insider Trading Study" at p. 1, n. 1.

[6] *Id.* at 9.

linkages for futures trading," in particular, necessitated the adoption of further procedural safeguards.[7]

Finally, the Commission determined that provisions of existing law are adequate to discourage abuse of material, nonpublic information as a result of government employment. Among other things, the Commission and its employees are prohibited from participating, directly or indirectly, in futures or related markets, or from disclosing information obtained by virtue of their employment which may tend to affect prices, pursuant to sections 9(d) and 9(e) of the Act (7 U.S.C. 13(d) and 13(e)). Further, section 8(a) of the Act (7 U.S.C. 12(a)), prohibits the Commission, except in specifically authorized cases, from publishing data and information which would separately disclose the business transactions, market positions, trade secrets or the names of customers of any person. These provisions of the Act were intended to prevent the abuse of confidential information obtained by a Commissioner or Commission employee in that person's capacity as a government official and, thus, to ensure public confidence in the regulatory activities of the Commission.[8] The Commission previously stated its belief that this concept should apply with equal force to employees and governing members of self-regulatory organizations. 45 FR 84084 (December 22, 1980).

III. Proposed § 1.59—Activities of Self-Regulatory Organization Employees and Governing Members Who Possess Material, Nonpublic Information

The Commission believes, and has previously articulated its belief, that self-regulatory organizations owe a duty to the public and to their members to prevent their employees and governing members from participating in commodity transactions on contract markets where such employees and governing members have access to material, nonpublic information,[9] and also to prevent such persons from otherwise abusing their access to information in their positions at the self-regulatory organization. *See* 45 FR 84084 (December 22, 1980). Because of the Commission's concern about the potential for abuse in this area and the corresponding duty owed to the public to prevent such abuse, the Commission is proposing a new regulation which would address these concerns.

Under proposed § 1.59 it would be a violation of Commission regulations for employees (*i.e.*, persons employed on a salaried or contract basis by a self-regulatory organization) to disclose (other than in the authorized course of their duties) [10] any material, nonpublic information obtained as a result of employment if that employee has or should have a reasonable expectation that the information disclosed may assist another person in trading a future, an option, or a cash commodity traded at a board of trade. The Commission intends that this provision would prohibit the disclosing of information under certain circumstances by employees of self-regulatory organizations, such as compliance, audit, and market surveillance personnel, who have acces to the books and records of contract market members.

Employees so engaged can be expected to have access to information which relates to cash, futures or option positions, trading strategies, and the financial condition of members or their customers, among other things. The Commission believes that this type of information, which is not ususally available to the public, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest and, thus, would be considered material, nonpublic information for purposes of this regulation.

The regulation would also require each self-regulatory organization to adopt rules that prohibit employees from disclosing material, nonpublic information obtained as a result of their employment to any other person with certain specified exceptions, such as disclosures to another self-regulatory organization, linked exchange, court of competent jurisdiction or to a representative of any agency or department of the federal or a state government.[11] By requiring each self-regulatory organization to adopt such rules, the Commission intends that the self-regulatory organization be responsible in the first instance for enforcing these standards.

Further, proposed § 1.59 would require each self-regulatory organization to adopt rules that prohibit its employees, as well as their spouses and dependent children [12] from trading in futures or option contracts which are traded on a contract market or a linked exchange, or cash commodities which are traded on a board of trade which has been designated as a contract market. These transactions are defined as "commodity interests" for purposes of this regulation.

Proposed § 1.59, however, would permit self-regulatory organizations to provide exemptions, subject to Commission review, whereby certain employees and their spouses and dependent children could trade commodity interests under certain circumstances. The Commission contemplates that if a self-regulatory organization were to propose exemptions from the general trading prohibition the self-regulatory organization would be required to set forth in its proposed rule the procedures to be followed in granting such an exemption, including the documentation to be submitted to the self-regulatory organization and the officer or

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[7] *Id.*

[8] *See* H.R. Rep. 93-975, 93rd Cong., 2nd Sess. 30-31 (1974).

[9] The Commission has defined "material information" in proposed Regulation § 1.59 as "information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market." The Commission has used terminology consistent with that in securities case law relating to insider trading. *See Securities and Exchange Commission v. Texas Gulf Sulfur Co.*, 401 F.2d 833, 849, *cert. denied*, 404 U.S. 1005 (1968). *See also TSC Industries, Inc. et al. v. Northway, Inc.*, 426 U.S. 438, 445 (1975). The Commission does not anticipate that in proving information is "material" positive proof of reliance on that information would be necessary, only that a reasonable man or woman would have thought the information important in deciding whether to trade a certain commodity interest. The Commission has defined "nonpublic information" as "information which has not been disseminated in a manner which makes it generally available to the trading public through recognized channels or distribution." Here too, the Commission has used terminology consistent with securities case law. *See In re Faberge, Inc.*, 45 SEC 249, 256 (1973). The Commission requests comment on the appropriateness and specificity of its definition of "nonpublic information."

[10] The language "in the authorized course of their duties" would, in effect, permit employees to disclose information as necessary to assist in the self-regulatory process. Furthermore, employees would be specificially permitted to disclose information to other self-regulatory organizations, linked exchanges, courts of competent jurisdiction, or representatives of a department or agency of the federal or a state government, regardless of whether employees are so authorized. Thus, employees would not be prohibited from "whistle-blowing" activities by the proposed regulation.

[11] The Commission has proposed to include state government departments and agencies in this exception given that the NFA frequently coordinates its regulatory activities with state officials and that other self-regulatory organizations may also cooperate with state governments from time to time.

[12] The Commission would view the term "dependent" here as that term is defined in the Internal Revenue Code, 26 U.S.C. 152 (1982); however, the Commission solicits comments on the appropriateness of that definition. Furthermore, the Commission realizes that there may be more persons within an employee's immediate household, and thus more persons who may have access to the employee's knowledge of material, non-public information, than the employee's spouse and dependent children. Accordingly, the Commission solicits comments on whether this group should be expanded to include such other persons.

committee which would be authorized to grant the exemption and oversee the enforcement of those rules.

The proposed regulation sets forth a non-exclusive list of circumstances under which an exemption could be granted on a case-by-case basis. Specifically, an exemption could be granted under the following circumstances: (a) Trading by an employee's spouse and dependent children in commodity interests not traded on or cleared by the employing self-regulatory organization or related to such commodity interests (related commodity interests),[13] provided such trading is not controlled by the employee; (b) trading by an employee's spouse which is required by the spouse's employment, where such trading is not controlled by the employee; (c) trading by an employee in commodity interests on or subject to the rules of self-regulatory organizations other than the employee's employer, provided such commodity interests are not related to those traded on the employing self-regulatory organization (related commotity interests) and provided such employee is not permitted access to material, nonpublic information in the course of employment; and (d) trading by an employee, or the spouse of dependent children thereof which otherwise is not contrary to the purposes of proposed regulation § 1.59, the pubic interest, or just and equitable principles of trade.[14] The Commission believes that the availability of these exemptions will effectively prevent unnecessary hardships. Nevertheless, the Commission invites comment on the appropriateness and scope of the proposed exemptions and on whether there should be other categories of exemptions.

Proposed § 1.59 also would prohibit members of governing boards and committees of contract markets and clearing organizations having knowledge of a final decision which would alter rules affecting trading in a futures or option contract, or a reasonable expectation that such a final decision is imminent,[15] from trading the affected contract or a related contract on that contract market, or a similar or related contract on any other exchange prior to publication of that decision.[16] The Commission's proposal similarly would prohibit those individuals from disclosing information concerning the impending rule change to any person except to the staff of the contract market, clearing organization, or linked exchange; court of competent jurisdiction; or representative of the Federal or a State government prior to publication of that decision. This provision is designed to prevent abuse of information concerning changes in the futures trading environment obtained by virtue of a person's decision-making activity with the contract market or clearing organization. This category of information would include decisions by governing members to revise margin levels, limit trading to liquidation only, shorten delivery periods, or any other rule change which could be implemented immediately and which could affect the prices of particular futures or option contracts, *e.g.*, actions taken pursuant to contract market emergency authority. In addition, knowledge of an impending disciplinary action against a major market participant also may be valuable to governing members if that action could affect the price of a commodity interest, *e.g.*, forcing such a participant to liquidate a large position during or shortly before the delivery month. The Commission, however, is specifically interested in comments on whether knowledge of such disciplinary actions should be subject to the same restrictions as information of a broader nature, *e.g.*, changes in margin rates or trading for liquidation only orders which affect all market participants.

The Commission believes that knowledge of such pending changes prior to their public announcement may provide an unfair trading advantage. Further, the Commission is concerned that the advent of extended trading hours through international exchange linkages could increase the potential for insider trading by members of governing boards. With extended trading hours through linked exchanges, a board decision reached after trading has closed in the United States and which would not be announced until the following morning could provide board members an opportunity to use their knowledge of the unpublicized exchange action by trading overnight on a linked exchange.

Proposed § 1.59 would further require each contract market to adopt rules which require that a final decision of a governing board or committee[17] which would alter rules affecting trading be announced publicly before the opening of the next trading session in the affected contract on that contract market or on any linked exchange. However, if a contract market or clearning organization were to decide that market disruption may result from such publication, the contract market or clearing organization could delay publication by a two-thirds vote of its governing board or committee. In such cases, the contract market or clearing organization would also be required to notify the Commission by the fastest

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By "related" commodity interests, the Commission means any commodity interest or option contracts traded on other contract markets, linked exchanges, or other boards of trade exchanges, or markets whose price movements correlate with the price movements of a commodity interest traded on or subject to the rules of the employer self-regulatory organization to such a degree that intermarkets spread margins or special margin treatment is recognized or established by the employer self-regulatory organization between the commodity interest or option contract in question and a commodity interest traded on or subject to the rules of the employer self-regulatory organization. The Commission intends the term "related commodity interests" to include instruments which are traded on securities and option exchanges, such as options on stock indices, financial instruments, or currencies, if spreads involving these options are accorded such margin treatment. In this connection, the Commission requests that contract markets and clearing organizations commenting on this proposed regulation provide information on the intermarket spreads for which they have established or recognized spread margins or other special margin treatment.

[14] With this proposed regulation the Commission does not intend to prohibit employees, their spouses, or dependent children from participating in pension funds covered under Title 1 of the Employee Retirement Income Security Program, 29 U.S.C. 1001 *et seq.* (1982), or mutual funds which use commodity instruments for hedging purposes, or from benefiting from a trust which may invest in commodity interests, as long as the employee does not control, directly or indirectly, the pension fund, mutual fund, or trust. The Commission believes that participation in such vehicles is appropriate for treatment in the last exemption category listed above. The Commission realizes that under the proposed regulation the prohibition on trading cash commodities is limited. Exchanges may, however, prohibit trading in all cash commodity transactions by their employees if they so choose. Nevertheless, the Commission requests comment on the breadth of its prohibition on the trading of cash commodities.

[15] By "imminent" the Commission means a member of a governing board or committee must have a reasonable expectation of a final decision within 24 hours. The Commission believes that an expectation of such a decision more than 24 hours into the future would be significantly more speculative, considering the speed with which events can change in the futures and options markets. Nevertheless, the Commission solicits comments on this interpretation of the term "imminent."

[16] For purposes of proposed § 1.59, the term "linked exchange" means any board of trade, exchange or market outside the United States, its territories or possessions which has an agreement with a contract market that permits futures and/or option positions which have been established on one of the two markets to be liquidated on the other market. The Commission is inviting comment on whether the proposed definition of "linked exchange" is appropriate.

[17] For purposes of proposed § 1.59, "final decision" is defined as a decision made by the governing board or a committee of the contract market or clearing organization of the contract market or clearing organization and which, without further action, *e.g.*, Commission approval, alters the rules of the contract market or clearing organization.

available means of communication of the decision to delay publication and to promptly provide written justification citing the reasons for such delay. Proposed § 1.59 does not require contract markets or clearing organizations to adopt specific rules providing the exceptions to the immediate publication provision as described above. However, the Commission invites comment on whether such exceptions would be appropriate.

The Commission is proposing § 1.59, pursuant to sections 5(g) and 8a(5) of the Act, among others, in order to assure public confidence in the integrity of the self-regulatory process. Section 5(g) of the Act, 7 U.S.C. 7(g) (1982), requires that transactions for future delivery in the commodity for which a designation is sought not be contrary to the public interest. Section 8a(5) of the Act, 7 U.S.C. 12a(5) (1982), authorizes the Commission "to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act. * * *" The Commission believes that the Act and the regulations adopted thereunder place responsibilities on contract markets to act in a manner which is consistent with the public interest in viable futures markets, which provide hedging opportunities for producers and users of commodities, as well as a means of price discovery. These market functions are significant in their impact upon many segments of interstate and international commerce. The Commission believes that if employees and governing members who could otherwise engage in commodity transactions based on material, nonpublic information obtained by virtue of their positions with self-regulatory organizations are not generally precluded from doing so by self-regulatory organization rule, public confidence in contract markets could at some point be seriously undermined. A faltering public confidence in turn could damage, if not destroy, the hedging and price discovery functions of the markets if such a lack of confidence were to result in a reluctance on the part of hedgers and speculators to trade on a particular market. The Commission believes that even the possibility of such an event is inconsistent with the public interest expressed by Congress in sections 3 and 5(g) of the Act,[18] and that the best means of addressing such a potential problem is to propose that the self-regulatory organizations develop standards within a framework established by the Commission which must be followed by those who have access to sensitive information.[19]

The Commission notes that when it proposed a regulation in December 1980 which was, in many respects, similar to the presently-proposed 1.59 and which ultimately resulted in the publication of the staff interpretation in February 1982, the Commission received a number of public comments which may be pertinent here.[20] In smmmary, these comments were that:

(i) The proposed rule was unnecessary because neither contract market nor clearing organization personnel have ever been accused of trading in a manner which would violate the proposed regulation;

(ii) It was not clear whether any exchange employee would have access to information which would provide an advantage unavailable to a brokerage firm employee;

(iii) The Commission lacked the statutory authority to promulgate the formerly proposed regulation;

(iv) Contract market rules apply only to contract market members and are an inappropriate means of addressing the problem of commodity trading or the abuse of sensitive, nonpublic information by employees, *i.e.*, this subject should be treated as a personnel matter;

(v) The proposed regulation was too broad;

(vi) The regulation as proposed would be discriminatory in that certain contract market and clearing organization officers are also members of governing boards, and as officers would be barred from trading under the proposed rule, while non-officer board members would not be so barred (the formerly proposed regulation placed restrictions on contract market and clearing organization employees and officers, but not members);

(vii) The proposed rule should be limited to in-house, full-time paid employees and should specifically exclude any officer principally employed outside of the contract market or clearing organization and whose only compensation from the contract market or clearing organization consists of director's fees;

(viii) There should be no restrictions on employees who do not have access to confidential data; and

(ix) Certain types of trading activity should be excluded from the ban, *i.e.*, hedging transactions, participation in commodity pools, and managed commodity accounts.

With regard to the first comment—that the formerly proposed rule was unnecessary because neither contract market nor clearing organization personnel ever have been accused of trading in an abusive manner—the Commission believes that although such conduct has not been detected in the past, there is nonetheless an increasing potential for abuse in this area. With the continuing growth in the futures and options markets and the number of employees with access to sensitive information, the potential for abusing material, non-public information has increased commensurately. Furthermore, if employees are not engaging in such conduct, the adoption of such rules should not present a problem and would have the effect of fostering public confidence in the markets. Considering the potential adverse effects if such information were abused, the Commission believes that the prudent course of action is to take reasonable precautions to prevent any such abuses before they occur.[21]

Commentators also stated as an objection to the formerly proposed regulation that it was unlikely that exchange employees would have access to information that was not available to brokerage firm employees. Although there may be some kinds of information to which both of these types of employees have access, a far greater quantity and scope of information is available to exchange employees. Brokerage firm employees may have access to information relating to the positions of customers of that firm; however, contract market and clearing house employees potentially have access to trading information of all participants in a particular contract market as well as to other market-related data. Thus, there are material differences between these two

[18] 7 U.S.C. 5, 7(g) (1982).

[19] The Commission notes with respect to registered futures associations such as NFA that section 17(b)(1) of the Act provides that a futures association is not to be registered with the Commission unless the association is found by the Commission to be in the public interest. *See also* Commission regulation § 170.9.

[20] The formerly proposed regulation only pertained to contract market and clearing organization personnel. In contrast, the present regulation pertains to those personnel, as well as to the employees and governing members of registered futures associations.

[21] In this regard, the Commission believes there would be little hardship resulting from the adoption of regulation § 1.59, for the Commission understands that employees of self-regulatory organizations generally do not engage in significant trading activities. The Commission, however, requests comments on this particular subject.

situations. It should be noted, however, that at this time the Commission is not addressing the issue of whether such prohibitions are appropriate for brokerage firm employees.

Commentators stated, as reflected in point number three above, that the Commission lacked statutory authority to promulgate the formerly proposed regulation. The Commission believes the statutory justification stated above addresses this comment.

As indicated in item four above, commentators stated that contract market rules applied only to the members of those contract markets and that they were an inappropriate means of addressing abuses by employees of sensitive information. The Commission believes that self-regulatory organizations can make their rules apply to employees as well as members. In fact, a number of contract markets do so now.[22] Although the most severe sanction that could be imposed on an employee would appear to be dismissal—by comparison, members of self-regulatory organizations can be fined or expelled—that factor alone does not present a reason for failing to make contract market rules apply to the employees thereof.

Some of the commentators argued, as indicated in point five above, that the formerly proposed regulation was too broad. The Commission believes that proposed regulation § 1.59, which specifically provides for each self-regulatory organization to detail permitted exemptions from the general restrictions as described above, is not unnecessarily broad. The Commission, nonetheless requests further particularized comments with respect to the breadth of the proposed rule.

As indicated in point six, commentators maintained with regard to the formerly proposed rule that it would be discriminatory in that it would place restrictions on officers of contract markets who might be members of governing boards, while non-officer board members would not be so restricted. The Commission believes that the restrictions in proposed regulation 1.59 have been appropriately tailored so that all employees in similar circumstances who have access to material non-public information will be treated equally. All members of governing boards in similar circumstances who have access to such information would also be treated equally under the proposed regulation. The Commission does not believe, however, that it is necessary to treat governing members and employees identically with respect to the restrictions placed on their activities due to the very different nature of their responsibilities and their degree of access to material, non-public information. First, members of contract markets and clearing organizations usually make their livings by trading futures and options contracts, whereas this is not the case for employees of those organizations. Second, the Commission believes contract market and clearing organization employees are more likely to have access to material, non-public information on a daily basis than are the members of governing boards. Thus, by the very different nature of their situations, the Commission believes that these two groups of individuals need not be treated equally, and that in light of their different circumstances, the different trading restrictions proposed in regulation § 1.59 are appropriate.

Commentators state with regard to the previously proposed rule, as reflected in point seven above, that the trading prohibition should be limited to in-house, full-time paid employees and should specifically exclude any officer principally employed outside the contract market or clearing organization and whose only compensation from the contract market or clearing organization consisted of director's fees. The Commission believes that this comment is addressed in part by the fact that proposed regulation § 1.59 distinguishes between the restrictions that apply to employees and members of governing boards, *i.e.*, the restrictions on governing members are much narrower than the restrictions on employees of self-regulatory organizations. The Commission does not, however, believe that the restrictions on employees proposed in regulation § 1.59 should be limited to in-house, full-time paid employees. Furthermore, the Commission does not believe that persons who are principally employed outside that contract market or clearing organization and who receive only directors' fees from the contract market or clearing organization should be excluded from the proposed restrictions. In the case of employees, the Commission believes the critical factor is whether an employee has access to material, non-public information, not whether the employee is employed in-house or hired on a contract basis, or whether the employee is working on a full-time or part-time basis. However, the Commission requests further comment on this issue. As for members of governing boards, the Commission here again believes the critical factor is not whether the person earns a living by trading futures or options contracts which are traded on the contract market or cleared by the clearing organization in question, but whether that person may have access to material, non-public information as a result of his or her position. Nevertheless, the Commission requests further comment on whether the proposed restrictions are appropriate.

As indicated in point eight above, a commentator stated that there should not be restrictions on employees who do not access to confidential data. The Commission notes that under proposed regulation § 1.59, self-regulatory organizations could adopt rules, subject to Commission review, which would permit such employees to trade commodity interests other than those traded on the employing contract market or cleared by the employing clearing organization, or related commodity interests which are traded on or cleared by another contract market or clearing organization. Furthermore, as stated above, employees could be permitted, under the appropriate exemption, to participate in certain pension funds or mutual funds, or to be the beneficiary of a trust if the employee does not control such fund or trust. Thus, the Commission is not proposing an absolute prohibition on futures and option trading by employees of self-regulatory organizations.

Finally, a commentator stated that certain types of trading activity, *i.e.*, hedging transactions and participation in commodity pools and managed accounts, should be excluded from the ban. As already noted, under proposed regulation § 1.59 these types of activities may be addressed by rules of a self-regulatory organization which can permit exemption from the general prohibition on trading. Of course, such rules would be subject to Commission review and would be subject to the same kinds of restrictions that apply to pension funds and trusts stated above.

Regulatory Flexibility Act

The Commission has previously determined that contract markets are not "small entities" for purpose of the Regultory Flexibility Act (5 U.S.C. 605) and that the requirements of the Act do not, therefore, apply to contract markets. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission has previously certified on behalf of the Commission that comparable rule proposals would not, if

[22] *See* MidAmerica Commodity Exchange Rule 230, Chicago Mercantile Exchange Rule 254, New York Future Exchange Rule 210, and Chicago Rice and Cotton Exchange Rule 600.02

adopted, have a significant economic impact on a substantial number of small entities. *See, e.g.*, 48 FR 32835, 32836 (July 19, 1983).

For the reasons set forth above, and pursuant to Secton 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the following proposed § 1.59 will not, if adopted, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 *et seq.* ("PRA"), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, 44 U.S.C. 3501 *et seq.* The Commission does not believe that proposed § 1.59 will materially change the amount of information the Commission will collect from self-regulatory organizations. Any information required by the self-regulatory organization rules would be submitted pursuant to Section 5a(12) of the Act and § 1.41 or section 17(j) of the Act for review, or otherwise submitted under § 1.31. The Commission has previously notified and received approval of the Office of Management and Budget for the number of rules which could be expected under these provisions this year. The Commission does not expect proposed § 1.59 to significantly alter this expectation.

List of Subjects in 17 CFR Part 1

Self-regulatory organizations, contract markets, clearing organizations, registered futures associations, contract market members, exchange employees, directors of contract markets and clearing organizations.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is amended by adding the following citations:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a–1, 19, and 21 * * *; § 1.59 also issued under 3, 4b, 5, 5a, 8a, 9, 17 and 23(b).

2. Section 1.59 is proposed to be added and, as added, would read as follows:

§ 1.59 Activities of self-regulatory organization employees and governing members who posses material, nonpublic information.

(a) *Definitions.* For purposes of this section:

(1) "Self-regulatory organization" means "self-regulatory organization," as defined in Commission regulation § 1.3(ee), and includes the term "clearing organization," as defined in Commission regulation § 1.3(d).

(2) "Employee" means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization.

(3) "Material information" means information which, if such information were publicily known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market. As used in this section, "material information" includes, but is not limited to, information relating to present or anticipated cash, futures, or option positions, trading strategies, the financial condition of members of self-regulatory organizations or their customers or option customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization.

(4) "Nonpublic information" means information which has not been disseminated in a manner which makes it generally available to the trading public through recognized channels of distribution.

(5) "Linked exchange" means any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a contract market that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market.

(6) "Final decision of a contract market or clearing organization" means a decision made by the governing board or a committee of the contract market or clearing organization of the contract market which cannot be appealed to another body within the contract market or clearing organization and which, without further action, alters the rules of the contract market or clearing organization, or results in a member responsibility action under Commission regulation § 8.25.

(7) "Commodity interest" means any commodity futures or commodity option contract traded on or subject to the rules of a contract market or linked exchange or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market.

(8) "Related commodity" interest means any commodity interest or option contract which is traded on or subject to the rules of a contract market, linked exchange, or other board of trade, exchange or market, other than the self-regulatory organization by which a person is employed or for which a person serves as a member of a governing board, and with respect to which such self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest or option contract and a commodity interest which is traded on or subject to the rules of the self-regulatory organization.

(b) *Employees of self-regulatory organizations.* (1) No employee of a self-regulatory organization may disclose to any other person any material, nonpublic information which such employee obtains as a result of his or her employment at the self-regulatory organization where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest; *Provided, however,* That this provision shall not prohibit disclosures made in the authorized course of an employee's duties or disclosures made to another self-regulatory organization, linked exchange, court of competent jurisdiction or a representative of any agency or department of the federal or state government.

(2)(i) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission regulation § 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association) that prohibit:

(A) Employees of the self-regulatory organization and the spouses and dependent children of such employees from trading, directly or indirectly, in any commodity interest; and

(B) Employees of the self-regulatory organization from engaging in the conduct described in paragraph (b)(1) of this section.

(ii) Each self-regulatory organization may adopt rules, which must be submitted to the Commission pursuant to section 5a(12) of the Act and Commission regulation § 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association) which provide for exemptions, on a case-by-case basis, from the trading prohibition contained in paragraph (b)(2)(i)(A) of this section under certain circumstances. Specifically, such circumstances may include, but need not be limited to:

(A) Trading by an employee's spouse and dependent children in commodity interested on or subject to the rules of contract markets other than the

employing self-regulatory organization, provided that such commodity interests are not traded on or cleared by the employing contract market or clearing organization and that such commodity interests are not related commodity interests, and provided further that such trading is not controlled, directly or indirectly, by the employee;

(B) Trading by an employee's spouse which is required in the course of the spouse's employment, where such trading is not controlled, directly or indirectly, by the employee;

(C) Trading by an employee in commodity interests on or subject to the rules of a contract market other than the employing self-regulatory organization, provided such employee does not trade related commodity interests and provided further that such employee does not obtain access to material, nonpublic information in the course of his or her employment; and

(D) Trading by an employee, or the spouse or dependent children thereof, under circumstances enumerated by the self-regulated organization in rules submitted to the Commission which the self-regulatory organization determines, subject to Commission review, is not contrary to the purposes of this regulation, the public interest, or just and equitable principles of trade.

(c) *Members of governing boards and committees of contract markets and clearing organizations.* (1) No member of the governing board or a committee of a contract market or clearing organization who has knowledge of a final decision of the contract market or clearing organization or a reasonable expectation that a final decision is imminent, shall trade, directly or indirectly, in the affected commodity interest, any other commodity interest on that contract market for which the contract market or its clearing organization recognizes or has established intermarket spread margins or other special margin treatment in connection with the affected commodity interest, or a related commodity interest, nor shall such member disclose information relating to the final decision to any other person other than to the staff of the contract market or clearing organization, or to any linked exchange, court of competent jurisdiction or to a representative of any agency or department of the federal or a state government prior to publication of that decision.

(2) Each contract market and clearing organization of a contract market must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission regulation § 1.41 which:

(i) Require that a final decision of a contract market or clearing organization governing board or a committee be announced publicly before the opening of the next trading session in the affected contract on that contract market and before the opening of the next trading session in a contract based on the same commodity as that contract is traded on any linked exchange if such decision is made prior to the opening of trading on the linked exchange;

(ii) Require that when a contract market or clearing organization decides that immediate publication of a rule change in the manner described in paragraph (c)(2)(i) above may disrupt the market, the contract market or clearing organization may delay such publication: *Provided, however,* That such decision to delay publication must be made by a two-third vote of the governing board or the committee, as provided in Commission regulation § 1.41(a)(6), and the contract market or clearing organization must notify the Commission at its Washington, D.C. headquarters of the decision by the fastest available means of communication and promptly thereafter provide a written justification to the Commission, citing the reasons for such delay; and

(iii) Prohibit any member of a governing board or committee from engaging in the conduct described in paragraph (c)(1) of this section.

Issued in Washington, D.C., on May 31, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-13571 Filed 6-10-85; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Released No. IC-14548]

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission is proposing amendments to clarify a rule that gives investment companies exemptive relief to maintain their assets outside the United States under certain circumstances.

DATE: Comments on the proposed amendments must be received on or before July 11, 1985.

ADDRESS: Send comments in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 (Reference to File No. S7-25-85). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Staff Attorney, Office of Regulatory Policy (202) 272-2048, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to rule 17f-5 (17 CFR 270. 17f-5) under section 17(f) (15 U.S.C. 80a-17(f)) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq).* Rule 17f-5 makes exemptive relief from section 17(f) available to management investment companies to maintain their assets outside the United States under certain circumstances. The proposed amendments would clarify the rule with respect to: (i) How the eligibility of certain foreign custodians should be determined: (ii) the extent to which an investment company must monitor the eligibility of its foreign custodians; and (iii) the length of time which an investment company may have to make alternative arrangements after the company's board of directors had determined that an existing arrangement no longer complies with the rule.

Discussion:

Rule 17f-5 gives registered management investment companies exemptive relief to place and maintain their assets in the care of eligible foreign custodians under certain circumstances. The rule defines eligible foreign custodians to include foreign banking institutions and trust companies that have at least $200 million in shareholders' equity (U.S.$ or the equivalent of U.S.$). Under the rule, a majority-owned foreign subsidiary of a qualified [1] U.S. bank or bank-holding company is considered an eligible foreign custodian if it has at least $100 million in shareholders' equity (U.S.$ or the equivalent of U.S.$). An investment company may place and maintain assets

[1] The term "Qualified U.S. Bank" is defined in rule 17f-5(c)(3) and generally tracks the definition of "bank" contained in section 2(a)(5) of the Act (15 U.S.C. 80a-2(a)(5)) and the qualifications prescribed in paragraph (1) of section 26(a) of the Act (15 U.S.C. 80a-26(a)) for the trustees of unit investment trusts.

in the care of eligible foreign custodians so long as a majority of the company's board of directors has approved each custody arrangement as consistent with the best interests of the company and its shareholders and so long as the directors re-evaluate those arrangements at least once a year.[2]

The amendments proposed today would resolve several issues related to the interpretation of these rule provisions. First, several investment companies and their U.S. bank representatives have asked whether the shareholders' equity of foreign banking institutions and trust companies and of majority-owned foreign subsidiaries of U.S. banks or bank-holding companies ("foreign banks") should be calculated in accordance with U.S. generally accepted accounting principles ("GAAP"). Apparently, the shareholders' equity of foreign banks may be calculated in a variety of different ways, depending on the country where the bank is located and depending on the particular bank's accounting practices. To provide a uniform method of measurement, the Commission is proposing that the rule be amended to state explicitly that the shareholders' equity of foreign banks should be calculated in accordance with U.S. GAAP for purposes of determing whether those foreign banks would be considered eligible foreign custodians under the rule.

The second issue which has arisen is the extent to which investment company must monitor the eligibility of their foreign custodians. The existing rule could be interpreted to mean that a foreign custodian would become ineligible if at any time its shareholders' equity drops below the rule's minimum equity requirements. This may require investment companies to monitor continuously changes in shareholders' equity caused by currency rate fluctuations or other temporary conditions. Under the proposed amendments, a foreign bank would have to meet the rule's minimum eligibility requirements as of the close of the bank's fiscal year immediately preceding the date when an investment company's directors initially evaluate the use of that bank as a custodian of the company's assets and thereafter, as of the close of the fiscal year immediately preceding the directors' re-evaluation of the custodial arrangement. In determining whether the shareholders' equity requirements of the rule have been satisfied, the fund's directors would be able to rely on information obtained from a financial institution's annual report or the institution's chief financial officer.

Finally, several investment companies and their U.S. bank representatives have asked how much time an investment company will have to make alternative foreign custody arrangements if an existing arrangement no longer complies with the rule. For example, in re-evaluating the arrangement, the directors may find that a foreign bank no longer meets the rule's minimum equity requirements. Or, the directors may find that continuance of the arrangement is no longer in the best interests of the company and its shareholders for other reasons. Under the proposed rule amendments, the company would have ninety days in which to make alternative arrangements.[3]

In addition to the proposed amendments, the Commission is also granting a second three-month extension of the date by which investment companies must conform existing foreign custody arrangements to rule 17f–5 or to prior exemptive orders, as amended.[4] The Division of Investment Management has taken the position that this time extension applies to foreign custody arrangements made after the rule's adoption as well as to foreign custody arrangements existing at the time of the rule's adoption.[5]

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54 Stat 841, 842, 15 U.S.C. 80a–37, 80c–89 * * *

2. By adding paragraph (b)(4) and revising paragraphs (c)(2)(i) and (c)(2)(iii) of § 270.17f–5 as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

* * * * *

(b) * * *

(4) Where a foreign custodian would not longer be considered eligible under the rule or where a majority of directors have determined that continuance of the arrangement would not otherwise be consistent with the best interests of the company and its shareholders, the company must withdraw its assets from the care of that custodian as soon as reasonably practicable, and in any event within ninety days of the date when the directors made the determination.

(c) * * *

(2) * * *

(i) A banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity (as calculated according to U.S. generally accepted accounting principles) in excess of $200,000,000 (U.S. $ or the equivalent of U.S. $) as of the close of its fiscal year most recently completed prior to the date when the directors approve the written contract as provided in (a)(1)(iii), and thereafter, as of the close of its fiscal year most recently completed prior to the date when the directors review and approve the continuance of those arrangements as provided in (a)(3); or

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[2] The Chase and BONY exemptive orders were amended to require investment companies relying on the orders to conform to these requirements. *See* Investment Company Act Release Nos. 14133 and 14134 cited *supra*.

[3] If the proposed amendments are adopted, the Commission would not propose to modify the Chase and BONY orders again to reflect the amendments. However, the clarifications contained in the proposed amendments would be equally applicable to the rule requirements as incorporated in the amended orders.

[4] *See* Investment Company Act Release 14556 (May 31, 1985). *See also* Investment Company Act Release No. 14132 (September 7, 1984; 49 FR 36080), adopting the final rule and Investment Company Act Release Nos. 14133 and 14134 (October 9, 1984; 49 FR 36183 & 36182), amending the exemptive orders of The Chase Manhattan Bank ("Chase") and The Bank of New York ("BONY"), respectively. These releases gave investment companies until March 1, 1985, to conform their foreign custody arrangements to the final rule or to the amended orders. That compliance date was extended until June 1, 1985, in Investment Company Act Release No. 14347 (February 4, 1985; 50 FR 5234).

[5] *See* letter from the Division of Investment Management to IDS International Fund, Inc. (Publicly available May 10, 1985).

(ii) A majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity (as calculated according to U.S. generally accepted accounting principles) in excess of $100,000,000 (U.S. $ or the equivalent of U.S. $) as of the close of its fiscal year most recently completed prior to the date when the directors approve the written contract as provided in (a)(1)(iii), and thereafter, as of the close of its fiscal year most recently completed prior to the date when the directors review the continuance of those arrangements as provided in (a)(3); or

. . . . . .

Statutory Basis:

The proposed amendments to rule 17f–5 would be adopted by the Commission pursuant to the authority granted the Commission in sections 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (25 U.S.C. 80a–38(a)) of the Act.

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the proposed amendments to rule 17f–5 will not, if adopted have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Date: May 31, 1985.

By the Commission.

John Wheeler,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rule 17f–5 (17 CFR § 270.17f–5) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a–1,) set forth in Investment Company Act Release No. IC–14548, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that it does not appear that a substantial number of small investment companies are or would be relying on rule 17f–5 as amended.

Dated: May 30, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–14011, Filed 6–10–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 610 and 660

[Docket No. 84N–0205]

Additional Standards for Diagnostic Substances for Laboratory Tests; Proposed Amendment of Additional Standards for Reagent Red Blood Cells

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its additional standards for Reagent Red Blood Cells as part of the agency's retrospective review of current regulations. FDA is revising the regulations to reflect more recent scientific knowledge and experience in the use of Reagent Red Blood Cells. The agency is responding to revisions suggested by industry and the public to provide flexibility in the regulatory requirements without adversely affecting the purity, reactivity, or effectiveness of the Reagent Red Blood Cells.

DATES: Comments by August 12, 1985. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**, except that labeling requirements would be effective 1 year after the date of publication.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: Reagent Red Blood Cells is a licensed biological product prepared from human red blood cells and is used to detect or identify human blood group antibodies.

Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products, including Reagent Red Blood Cells, offered for sale in interstate commerce must be licensed and meet certain standards that ensure their continued safety, purity, and potency. The additional standards for Reagent Red Blood Cells now codified under 21 CFR 660.30 through 660.36 were published in the **Federal Register** of March 14, 1978 (43 FR 10554).

Before a transfusion is given, blood bank personnel must ensure that the blood of a donor and that of the recipient are compatible, i.e., that there are no unexpected and unwanted antibodies in the serum or the recipient that are reactive with corresponding antigens on the donor's red blood cells. Reagent Red Blood Cells are used as an in vitro diagnostic reagent to detect and identify antibodies in human serum of plasma through reactions that occur when antibodies react with corresponding antigens on the red blood cells contained in the reagent. The product may be prepared and packaged in the form of a cell panel, which is a group of vials of red blood cell suspensions with each vial containing a distinctive cell phenotype.

In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA announced its plan for undertaking a systematic review of its existing rules in accordance with the requirements of the Regulatory Flexibility Act and Executive Order 12291. The notice also solicited data, information, and views from the public to assist the agency in identifying unduly burdensome regulations and in establishing an appropriate review schedule. In the **Federal Register** of July 2, 1982 (47 FR 29004), FDA announced its priorities for reviewing the agency's existing rules. Among the regulations listed as high priorities for review was Part 660—Additional Standards for Diagnostic Substances for Laboratory Tests, including Subpart D—Reagent Red Blood Cells.

To gather information on which blood and blood product regulations should be changed, FDA held public meetings on April 12, 13, 20, and 21, 1982. The regulated industry and other interested persons were invited to present views on how the regulations should be revised to relieve the regulatory burden or to increase flexibility (see 47 FR 12358; March 23, 1982). Those recommendations that were considered most controversial or scientifically significant were presented to the Blood Products Advisory Committee in a June 3 and 4, 1982, open meeting for the committee's consideration and comment. The written minutes of the advisory committee's June 1982 meeting are on file with FDA's Dockets Management Branch.

The agency now proposes to amend the additional standards for Reagent Red Blood Cells based on the completion of the retrospective review process for this type of blood product. Through issuance of the proposed rule, FDA intends to relieve, where possible, unnecessary regulatory burdens and increase the flexibility of the regulations without adversely affecting the purity, reactivity, or effectiveness of Reagent

Red Blood Cells. The proposed amendments follow:

1. The agency is proposing to amend § 660.30(b) concerning the source and preparation of Reagent Red Blood Cells by deleting the requirement that Reagent Red Blood Cells prepared from human umbilical cord blood comply with donor suitability and blood collection requirements referenced in §§ 660.31 and 660.32, repectively. The method of collection and the source of umbilical cord blood are different from the method of collection and source of blood routinely collected from whole blood donors. For this reason, the donor suitability and blood collection requirements for whole blood donors do not apply to umbilical cord blood. The agency is, therefore, proposing that the collection of unbilical cord blood be regulated by including collection procedures in the product license applications for Reagent Red Blood Cells manufactured from umbilical cord blood.

2. The agency is proposing to delete the last sentence of § 660.32 *Collection of source material.* Section 660.32 currently requires that all procedures for the collection of umbilical cord blood for use in manufacture of Reagent Red Blood Cells be approved in writing by the Director, Office of Biologics Research and Review. The agency believes that it is not necessary to codify this specific requirement because, as stated in paragraph 1, under proposed § 660.30(b) reagent red blood cell manufacturers must submit procedures for the collection of umbilical cord blood in their product license submissions to FDA. Under § 601.20 of the biologics regulations, the product license will not be issued unless the agency determines that the product meets the prescribed standards.

3. The agency is proposing to clarify § 660.33 *Testing of source material.* The regulation currently requires that at least two donor sources of each antibody specificity be used to identify all blood group antigens listed in the labeling as being present or absent. The agency is aware that in certain instances only one donor source of a particular antibody specificity may be available and proposes to amend § 660.33 to permit testing of the reagent red blood cell source material with a single donor source of specific antibody if approved by the Director, Office of Biologics Research and Review.

4. The agency is proposing to amend § 660.34 *Processing* in paragraph (a) by adding the words "all alloantibodies" to replace the phrase "hemolyzing, agglutinating, or coating antibodies." Alloantibodies are antibodies produced by an individual that react with antigens of another individual of the same species. The term "alloantibodies" would include hemolyzing, agglutinating, and coating antibodies. The agency believes that this wording change is more appropriate and consistent with current scientific language used for Reagent Red Blood Cells and other biologic in vitro reagents.

5. The agency also is proposing to amend § 660.34 by removing paragraph (b) and redesignating current paragraphs (c) through (g) as paragraphs (b) through (f). Section 660.34(b) currently requires that final product Reagent Blood Cell preparations have a red blood cell concentration of at least 2 percent. Recent advances in biotechnology, such as changes in testing methodology, may result in Reagent Red Blood Cell products that are safe, reactive, and effective in concentrations of less than 2 percent. For this reason, the agency believes that existing § 660.34(b) is too restrictive and should be removed. The agency will continue to assure the safety, reactivity, and effectiveness of Reagent Red Blood Cells at appropriate concentrations through the licensing requirements of the Public Health Service Act and 21 CFR Parts 600 and 601.

6. The agency is proposing to amend current § 660.34(c) (redesignated as § 660.34(b)) to restrict the use of Reagent Red Blood Cells prepared from pooled red blood cells to tests that do not determine compatibility for transfusions. The restriction is necessary because weakly reacting antigens in a reagent red blood cell preparation may fail to react if the reagent red blood cells have been pooled. Pooled reagent red blood cell preparations may fail to detect antibodies in the blood of a patient who may require a blood transfusion. The agency believes that in such instances a more sensitive test is desirable and therefore will require use of red blood cells from an individual donor rather than pooled red blood cells from two donors. For consistency, the agency also proposes to amend current § 660.35(d) to include this restriction as a labeling requirement for pooled red blood cell preparations.

The agency notes that in the past there have been some problems with reagent red blood cell preparations that have been contaminated with detectable amounts of anti-A and anti-B antibodies. For this reason, the agency also is proposing to clarify current § 660.34(d) (redesignated as § 660.34(c)) by adding the phrase "including anti-A and anti-B" in the first sentence of the paragraph.

7. The agency is proposing to amend current § 660.34(e) (redesignated as § 660.34(d)) concerning final container requirements for Reagent Red Blood Cells. The agency is proposing to deleted the phrase "colorless and transparent" and to substitute the phrase "and permit observation of the contents for hemolysis or a change in color." This proposed change would allow for the potential future use of plastic containers instead of glass containers.

The agency also is proposing to remove color coding restrictions for product labels, container caps, and dropper bulbs for Reagent Red Blood Cells by deleting the second sentence of this paragraph. The agency believes that a manufacturer should be allowed the flexibility to color code its product lines, provided that colors chosen by the manufacturers are approved by the Director, Office of Biologics Research and Review.

8. The agency is proposing to amend current § 660.34(f) (redesignated as § 660.34(e)). The agency is proposing to permit manufacturers to store reagent red blood cell source material upon receipt for an indefinite period of time in the frozen state before manufacture into a final product. Such storage does not compromise the reactivity or effectiveness of the final product, provided that the cells are immediately frozen after collection and are kept in the frozen state at −65°C or colder. The dating period would begin as soon as the manufacturer thaws the reagent red blood cell source material. For consistency, the agency is proposing to amend the dating period instructions for Reagent Red Blood Cells in § 610.53(a) to permit manufacturers to store reagent red blood cell source material indefinitely at −65 °C.

9. The agency is proposing to amend § 660.35 concerning labeling for Reagent Red Blood Cells as follows:

a. In § 660.35(b), by clarifying a required labeling statement to read "FOR USE IN DETECTION OF UNEXPECTED ANTIBODIES" or "FOR USE IN IDENTIFICATION OF UNEXPECTED ANTIBODIES" or "NOT FOR USE IN DETECTION OR IDENTIFICATION OR UNEXPECTED ANTIBODIES," whichever is appropriate. The proposed changes in wording in the cautionary labeling statements are intended to differentiate between detection and identification of unexpected antibodies. Certain Reagent Red Blood Cell products are capable to detection but not identification of unexpected antibodies.

b. In § 660.35(e), by substituting the word "or" in place of the word "and" in the phrase "detection and

identification" to make a distinction between detection and identification of unexpected antibodies.

c. In § 660.35(g), by clarifying that the package insert or constitution matrix must list each red blood cell antigen that was tested with only one source of antibody.

d. By redesignating current § 660.35 (i) through (l) as § 660.35 (j) through (m), and by adding a new paragraph (i) to require that the package insert list red blood cell antigens which are most likely to decrease in reactivity, and note that loss of reactivity partially depends on individual red blood cell donor characteristics that can be neither controlled nor predicted by the manufacturer. The agency believes that this information is important enough to be listed in the package insert to inform adequately product users of potential loss in product reactivity for certain red blood cell antigens.

e. The agency also is proposing to amend § 660.35(l) (formerly § 660.35(k)) to allow manufacturers the option of listing either the date of manufacture or the length of the dating period for Reagent Red Blood Cell products in the accompanying package insert or constitution matrix. Either method is equally informative to users of the product. Manufacturers often reprint package inserts every few weeks with new dates of manufacture. By listing the dating period for the product rather than the date of manufacture, manufacturers would reduce their printing costs because there would be no need to reprint package inserts every few weeks.

10. The agency is proposing to amend § 660.36 concerning samples and protocols for Reagent Red Blood Cells in response to manufacturers' requests for clarification of the requirements on sample and protocol submissions. The agency is proposing to amend § 660.36 by listing the specific requirements for protocol and sample submissions to FDA which the agency considers the minimum necessary to assure a safe, reactive, and effective product.

11. In the **Federal Register** of June 7, 1983 (48 FR 26313), the agency amended the general biologic regulations in 21 CFR 600.21 to require inspections of all licensed biological establishments and their additional location(s) at least once every 2 years. Formerly, the regulations required annual inspections. For consistency, the agency proposes to delete the word "annual" from the phrase "after each annual inspection" in § 660.36(a), and substitute the words "routine establishment" before the word "inspection."

In addition to the changes proposed above, the agency is proposing to make minor typographical changes. For easier review, FDA has included in the proposed codified language both the proposed revisions to the regulations and any current codified language FDA proposes to continue without revision.

Environmental and Economic Assessments

The agency has determined under 21 CFR 25.24(c)(10) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Sections 660.34, 660.35, and 660.36 of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed amendments to the additional standards are expected to benefit manufacturers of Reagent Red Blood Cells, because the proposed changes relieve certain burdens on the industry, such as removing restrictions on color coding of products and relaxing requirements regarding containers. Other proposed changes in the current biologic regulations are intended to allow manufacturers of these products more flexibility and discretion in manufacturing and marketing their products while maintaining the same level of consumer protection. There are five licensed manufacturers of Reagent Red Blood Cells. The agency estimates that annual sales of Reagent Red Blood Cells are within the range of $15 to $20 million. The proposed amendments to the additional standards will offer important, but difficult to measure, cost savings to manufacturers of these products. The agency concludes that the proposed rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

The agency is aware that manufacturers of these products often prepare final printed labeling as much as 1 year before using it. To preclude any unnecessary costs to manufacturers, the agency is proposing that any final rule based on this proposal be effective 30 days after its date of publication in the **Federal Register**, except that labeling requirements would be effective 1 year after the date of publication.

List of Subjects in 21 CFR Parts 610 and 660

Biologics, Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 610 and 660 be amended as follows:

1. The authority citation for 21 CFR Parts 610 and 660 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended; 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

2. In Part 610, in § 610.53 in the table in paragraph (a) by revising the item "Reagent Red Blood Cells" to read as follows:

§ 610.53 Dating periods for specific products.

(a) * * *

Reagent Red Blood Cell.	Thirty-five days from earliest date of collection if kept in liquid form (indefinite storage of reagent red blood cell source material at −65° C)

* * * * *

3. In Part 660, by revising Subpart D, consisting of §§ 660.30 through 660.36, to read as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

Subpart D—Reagent Red Blood Cells

Sec.

660.33 Reagent red blood cells.
660.31 Suitability of the donor.
660.32 Collection of source material.
660.33 Testing of source material.

Sec.
660.34 Processing.
660.35 Labeling.
660.36 Samples and protocols.

Subpart D—Reagent Red Blood Cells

§ 660.30 Reagent red blood cells.

(a) *Proper name and definition.* The proper name of the product shall be Reagent Red Blood Cells, which shall consist of a preparation of human red blood cells used to detect or identify human blood-group antibodies.

(b) *Source.* Reagent Red Blood Cells shall be prepared from human peripheral blood meeting the criteria of §§ 660.31 and 660.32, or from umbilical cord cells which shall be collected and prepared according to the manufacturer's product license application.

§ 660.331 Suitability of the donor.

Donors of peripheral blood for Reagent Red Blood Cells shall meet the criteria for donor suitability under § 640.3 of this chapter, except that paragraphs (b)(5) and (6), (d), and (e) of § 640.3 shall not apply.

§ 660.32 Collection of source material.

Blood for Reagent Red Blood Cells from donors of peripheral blood shall be collected as prescribed under § 640.4 of this chapter, except that paragraphs (c), (d), (g), and (h) of § 640.4 shall not apply.

§ 660.33 Testing of source material.

Except as provided in this section, a sample of each blood incorporated into the Reagent Red Blood Cell product shall be individually tested, with no fewer than two donor sources of each antibody specificity employed, to confirm the identification of all blood group antigens specified in the labeling as present or absent. The manufacturer shall perform at least one of the required tests for each factor. The Reagent Red Blood Cell product may be tested with a single donor source of antibody specificity if only one source of antibody is available, and the Director, Office of Biologics Research and Review, has approved the use of a single donor source of antiserum. Each of these tests shall be conducted and interpreted independently, and any discrepancy between the results of these two tests shall be resolved by testing with at least one additional antiserum before concluding that the antigen is present or absent. Group O Reagent Red Blood Cells used in the detection and identification of unexpected antibodies shall include the following common antigens in each lot of the product: D, C, E, c, e, K, k, Fy^a, Fy^b, Jk^a, Jk^b, Le^a, Le^b, P_1, M, N, S, and s.

§ 660.34 Processing.

(a) *Processing method.* The processing method shall be one that has been shown consistently to yield a product that is capable of detecting all alloantibodies corresponding to all required blood group antigens specified in the labeling as present throughout the dating period.

(b) *Products prepared from pooled red blood cells.* If the product is recommended for the detection or identification of unexpected antibodies, the pool shall be prepared by combining equal amounts of cells from no more than two donors. Pooled cells shall not be recommended for pretransfusion tests to detect unexpected antibodies in patients' samples. Umbilical cord cells are exempt from this requirement.

(c) *Absence of antibodies.* Each lot of final product shall be free of demonstrable antibodies, including anti-A and anti-B, unless the package insert and container label include instructions to wash the cells before use. The final product shall also be direct antiglobulin test negative when tested with polyspecific anti-human serum.

(d) *Final container.* The final containers used for each lot of product shall be sterile and permit observation of the contents for hemolysis or a change in color. The final container label, container cap, and dropper bulb of a Reagent Red Blood Cell product may be color-coded with a visual match to a specific color approved by the Director, Office of Biologics Research and Review.

(e) *Date of manufacture.* The date of manufacture of the product shall be the date that the blood is withdrawn from the donor or obtained from umbilical cords. The period during which the reagent red blood cell source material is kept by the manufacturer in storage in a frozen state at −65 °C or colder is excluded from the dating period. If the product consists of red blood cells from two or more donors, the date of manufacture of the final product shall be the date of withdrawal of blood from the donor of the oldest constituent blood, when a product consists of more than one container, e.g., cell panel, the date of manufacture of each container of the product shall be the earliest date that blood was withdrawn from a donor for any container in the product.

(f) *Retention samples.* Retention samples shall be maintained as required by § 600.13 of this chapter, except that samples must be retained only throughout the dating period of the product which is listed in § 610.53(a) of this chapter.

§ 660.35 Labeling.

In addition to the items required by § 809.10 of this chapter and other applicable labeling provisions of this chapter, the following information shall be included in the labeling:

(a) If washing the cells is required by the manufacturer, the container label shall contain appropriate instructions; if the cells should not be washed before use, e.g., if washing will adversely affect the product, the package insert shall explain.

(b) The container label of Group O cells shall state: "FOR USE IN DETECTION OF UNEXPECTED ANTIBODIES" or "FOR USE IN IDENTIFICATION OF UNEXPECTED ANTIBODIES" or "NOT FOR USE IN DETECTION OR IDENTIFICATION OF UNEXPECTED ANTIBODIES".

(c) The container and package labels shall state the percentage of red blood cells in the suspension either as a discrete figure with a variance of no more than ±1 percentage unit or as a range the extremes of which differ by no more than 2 percentage units.

(d) The words "pooled cells" shall appear on the container and package labels of products prepared from pooled cells. The package label or package insert shall state that pooled cells shall not be recommended for pretransfusion tests to detect unexpected antibodies in patients' samples.

(e) The package insert of a pooled product intended for detection or identification of unexpected antibodies shall identify the number of donors contributing to the pool. Products designed exclusively for ABO Serum Grouping and umbilical cord cells need not identify the number of donors in the pool.

(f) When the product is a multicontainer product, e.g., a cell panel, the container label and package label shall be assigned the same identifying lot number, and shall also bear a number or symbol to distinguish one container from another. Such number or symbol shall also appear on the antigenic constitution matrix.

(g) The package label or package insert shall state the phenotype of blood group antigens that have been tested for and found present or absent on the cells of each donor, or refer to such information in an accompanying antigenic constitution matrix. Cells for ABO Serum Grouping are exempt from this requirement. The package insert or antigen constitution matrix shall list each of the antigens tested with only one source of antibody.

(h) The package label or package insert shall bear the cautionary

statement: "The reactivity of the product may decrease during the dating period."

(i) The package insert of a product intended for the detection or identification of unexpected antibodies shall identify those antigens that are most likely to decrease in reactivity during storage. The insert also shall note that the rate at which reactivity (agglutinability) is lost is partially dependent upon individual donor characteristics that are neither controlled nor predicted by the manufacturer.

(j) The package insert shall provide adequate directions for use.

(k) The package insert shall bear the statement: "CAUTION: SOURCE MATERIAL FROM WHICH THIS PRODUCT WAS DERIVED WAS FOUND NONREACTIVE FOR HB_sAg WHEN TESTED WITH LICENSED REAGENTS. NO KNOWN TEST METHOD CAN OFFER ASSURANCE THAT PRODUCTS DERIVED FROM HUMAN BLOOD WILL NOT TRANSMIT HEPATITIS."

(l) The package insert or the antigenic constitution matrix for each lot of product shall specify the date of manufacture or the length of the dating period.

(m) Manufacturers shall identify with a permanent donor code in the product labeling each donor of peripheral blood contributing to products used for detection or identification of unexpected antibodies.

§ 660.36 Samples and protocols.

(a) The following shall be submitted to the Director, Office of Biologics Research and Review, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, within 30 days after each routine establishment inspection by FDA.

(1) From a lot of final product, a sample containing a complete cell panel intended for identification of unexpected antibodies. The sample shall be packaged as for distribution and shall have at least 14 days remaining in the dating period when shipped to the Office of Biologics Research and Review.

(2) A protocol which shall include the following:

(i) Complete test records of at least two donors in the lot, including original and confirmation phenotyping records.

(ii) Bleeding records or receipt records which indicate collection date, volume, and HB_sAg test results.

(iii) Manufacturing records which document all steps involved in the preparation of the product.

(iv) Test results which verify that the final product meets specifications.

(v) Identity test results.

(b) A copy of the antigenic constitution matrix specifying the antigens present or absent shall be submitted to the Director, Office of Biologics Research and Review, at the time of initial distribution of each lot of Reagent Red Blood Cells for detection and identification of unexpected antibodies. Products designed exclusively to identify Anti-A, Anti-A_1, and Anti-B, as well as products composed entirely of umbilical cord cells, are excluded from this requirement.

(c) Whenever a new donor is used, a sample of red blood cells from each new donor used in a cell panel shall be submitted by the manufacturer to the Director, Office of Biologics Research and Review. The sample should contain a minimum volume of 0.5 milliliter of red blood cells.

Interested persons may, on or before August 12, 1985, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 5, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–13979 Filed 6–10–85; 8:45 am]

BILLING CODE 4160–01

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Proposed Rule would amend the regulations to provide an 8-year primary term for leases in the Outer Continental Shelf (OCS) in water depths of 400 to 900 meters. Under the proposal, the lessees would be required to commence an exploratory well within the first 5 years of the term. The longer term is needed to accommodate deeper-water leases.

DATE: Comments must be hand-delivered or postmarked no later than July 11, 1985.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Room 6A110, Reston, Virginia 22091, Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone: (703) 860–7916, (FTS) 928–7916.

SUPPLEMENTARY INFORMATION: Section 8(b)(2) of the OCS Lands Act states that an oil and gas lease shall "be for an initial period of five years; or not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water * * *." Currently, 10-year terms are offered for leases in water depths of 900 meters or more; however, provision needs to be made for leases in water depths of 400 to 900 meters.

The primary term provides the right to explore, develop, and produce the lease. If production is commenced within the primary term, the lease continues for as long as production continues. If the primary term is not long enough to allow for exploration, development, and commencement of production because of unusual circumstances such as deep water, the lessee risks losing a lease through no fault of its own. The law requires diligence by a lessee in exploring and developing a lease, but 5 years may not be adequate time in which to explore and develop a lease even while exercising diligence.

On April 24, 1984, the Minerals Management Service (MMS) published an Interim Final Rule (49 FR 17449) providing for a mandatory suspension of operations for leases in the Gulf of Mexico in 400 to 900 meters of water. The suspension is granted for a period of time necessary to complete the activities leading to production scheduled in an approved development and production plan. Comments received from industry in response to the Interim Final Rule were unanimous in the assertion that the suspension procedure was inadequate because the 5-year term for leases in deeper water often did not provide enough time to adequately explore and prepare and obtain approval of a development and production plan.

The MMS continued to study the water-depth problem. On March 22,

1985, the Secretary of the Interior decided to offer blocks in 400 to 900 meters of water with an 8-year term and a requirement to commence an exploratory well within the first 5 years which should be adequate to plan for and commence exploration in deeper water. The lease will be continued beyond the initial 8 years by the same mechanisms as current 5-year leases, i.e., production, drilling or well reworking at least every 90 days, or a suspension of operations granted under 30 CFR 250.12. Required commencement of the exploratory well could also be delayed beyond the fifth year by an approved suspension of operations under circumstances identified in 30 CFR 250.12. Furthermore, under the current unitization rules, an exploratory well commenced under an approved unit exploration plan would meet the requirements for all leases included in the unit. Pending final promulgation of this proposal, 8-year terms will be offered by a stipulation in Notices of Sale beginning with Sale 98 in the central Gulf of Mexico.

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. Industry may realize an estimated $2,400,000 per year in additional profit on marginal leases that might not otherwise have been bid upon and developed with 5-year terms.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct offshore activities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: The document was prepared by Jane A. Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects:

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting requirements.

30 CFR Part 256

Administrative practice and procedures, Continental shelf, Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Pipelines, Public lands/mineral resources, Public lands/rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: April 29, 1985.

Wm. D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, the proposal to amend 30 CFR Parts 250 and 256 is as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

2. Section 250.34–1 is amended by renumbering (a)(3) to (a)(3)(i) and adding (a)(3)(ii) to read as follows:

§ 250.34–1 Exploration plan.

(a)(1) * * *

(2) * * *

(3)(i) * * *

(ii) For leases in 400 to 900 meters of water issued with an initial term of 8 years, no deadline is specified for submittal of an exploration plan; however, an exploratory well must be commenced before the end of the fifth year of the initial term.

* * * * *

PART 256—[AMENDED]

3. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and to the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

4. Section 256.37 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 256.37 Lease terms.

(a)(1) * * *

(2) Oil and gas leases shall be issued for an initial period of 8 years when the leases or any part thereof are in water depths of 400 to 900 meters. Commencement of an exploratory well is required within the first 5 years of the initial 8-year term.

* * * * *

[FR Doc. 85–13904 Filed 6–10–85; 8:45 am]

BILLING CODE 4310–MR–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket Nos. 78–196 and 79–105]

Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies and; Detariffing the Installation and Maintenance of Inside Wiring

AGENCY: Federal Communication Commission.

ACTION: Order Revising Service List.

SUMMARY: This action revises the service lists for CC Docket No. 78–196, "Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies" and CC Docket No. 79–105, "Detariffing the Installation and Maintenance of Inside Wiring." This action is being taken because both of these Dockets contain service lists which have become outdated. The Commission is revising the service lists for each of these Dockets to consist of those parties who filed comments in response to our most recent notices of proposed rulemaking in each of the respective Dockets.

EFFECTIVE DATE: June 11, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry or Ken Ackerman, Accounting and Audits Divisions, Common Carrier Bureau, (202) 634–1813.

Order

In the matter of revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B telephone companies (Parts 31, 33, 42 and 43 of the FCC's Rules); and detariffing the installation and maintenance of inside wiring, CC Docket No. 78–196; CC Docket No. 79–105.

Adopted: May 24, 1985

Released: June 4, 1985.

By the Chief, Common Carrier Bureau:

1. On January 3, 1985, the Commission released a Further Notice of Proposed Rulemaking in CC Docket No. 78–196, (January 11, 1985; 50 FR 1590) "Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone

Companies." On April 5, 1985, (April 9, 1985; 50 FR 13991) the Commission also released a Further Notice of Proposed Rulemaking in CC Docket No. 79–105, "Detariffing the Installation and Maintenance of Inside Wiring." Both of these dockets contain service lists which have become outdated.

2. Instead of requiring parties to serve copies of their comments to those parties named on our outdated service lists, we have decided to establish revised service lists for both CC Docket No. 78–196 and CC Docket No. 79–105 which will consist of those parties who filed recent comments in each of the respective Dockets. Thus, parties filing reply comments in CC Docket No. 78–196 are required to serve copies of their reply comments to all parties who filed comments in response to our January 3, 1985, Further Notice of Proposed Rulemaking in that Docket. Likewise, parties filing comments in CC Docket No. 79–105 are required to serve copies of their reply comments to all parties who filed comments in response to our April 5, 1985, Further Notice of Proposed Rulemaking in that Docket.

3. Accordingly, it is ordered, that the service lists for CC Docket No. 78–196 and CC Docket No. 79–105 are revised to consist of those parties who filed comments in response to our most recent notices of proposed rulemakings in each of the respective Dockets.

Federal Communications Commission.

William F. Adler,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 85–13974 Filed 6–10–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84–902; RM–3975]

Allocation of Additional Channels in the 470–512 MHz band for Public Safety and Other Land Mobile Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document makes certain corrections to the Proposed Rule published in this proceeding concerning the allocation of additional channels in the band 470–512 MHz for the Public Safety and other Land Mobile Services (50 FR 19956, May 13, 1985).

FOR FURTHER INFORMATION CONTACT: Don Precure (202) 653–8170.

Erratum

In the matter of amendment of Part 90 and Part 73 of the Commission's rules and regulations to allocate additional channels in the Band 470–512 MHz for Public Safety and other Land Mobile Services; General Docket 84–902, RM–3975.

Released: May 30, 1985.

The Commission's *Further Notice of Proposed Rule Making,* in General Docket 84–902, FCC 85–236, released May 7, 1985, is corrected by (1) changing "Docket 84–209" to "Docket 84–902" in footnote 1, FR pg. 19957, and (2) changing "We will consider the tests underway in Los Angeles . . ." to read "We will consider the tests made for Los Angeles County . . ." in paragraph 27, FR page 19960.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–13973 Filed 6–10–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 97

[PR Docket No. 85–168; RM–4880; FCC 85–282]

Proposed Amendment of the Amateur Radio Service Rules To Permit an Additional Emission in the 29.5–29.7 MHz Repeater Subband

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Amateur Radio Service Rules to allow amateur radio operators to use F2A emission when transmitting on frequencies in the 29.5–29.7 MHz repeater subband. The proposed rule is necessary so that frequency modulated (FM) repeater technology can develop more rapidly. The effect of the proposed rule is to provide for FM telegraphy as a means of identification for repeaters in this subband.

DATES: Comments are due by August 14, 1985 and replies by September 16, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio, Repeaters.

Notice of Proposed Rulemaking

In a matter of amendment of § 97.61(a) of the Amateur Radio Service Rules to permit F2A emission in the 29.5–29.7 MHz repeater subband: PR Docket No. 85–168, RM–4880, FCC 85–282.

Adopted: May 23, 1985.
Released: May 31, 1985.

By the Commission.

1. Notice of Proposed Rule Making in the above-captioned matter is hereby given.

2. The American Radio Relay League, Inc. (ARRL) has filed a petition (RM–4880) requesting that Section 97–61(a) of the Amateur Radio Service Rules be amended to permit the use of F2A emission (telegraphy for aural reception) [1] on frequencies between 29.5 and 29.7 MHz. The subband 29.5–29.7 MHz (10 meters) is available for frequency modulated (FM) repeater operation and is substantially used for that purpose. The ARRL states that FM repeater technology can be developed more rapidly by authorizing the additional emission. To this end, we propose to allow F2A emission. We believe that the state of the art has provided the means to amateur operators to engage in the type of emission that we propose herein. We know of no valid reason which would militate against its use. Nevertheless, we invite comments from interested persons about any adverse effects on amateur communications that would occur by allowing this additional emission in the 10-meter repeater subband.

3. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which

[1] The prior emission designator for this emission was F2.

addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed comments in the proceeding, must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule making is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

4. Authority for issuance of this Notice is contained in Sections 4(i) and 303 (e) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (e) and (r). Pursuant to applicable procedures set forth in § 1.415, 47 CFR 1.415, of the Commission's Rules, interested persons may file comments on or before August 14, 1985, and reply comments on or before September 16, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided further that the fact of the Commission's reliance on such information is noted in the Report and Order.

5. In accordance with § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

6. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities because these entities may not use the Amateur Radio Service for commercial radio communication (see 47 CFR 97.3(b)). In addition, because use by amateur radio licensees of the proposed additional emission for the 10-meter repeater subband is optional rather than mandatory, there would be no significant impact on the manufacturers of amateur radio equipment.

7. In view of the foregoing, rule making petition RM–4880 filed by the ARRL is Granted.

8. It is ordered, That the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

9. For information concerning this proceeding, contact Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. The authority citation for Part 97 would continue to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 97.61 [Amended]

2. The table in § 97.61(a) would be amended by adding a line entry after 28300–29700 as follows:

§ 97.61 Authorized emissions.

(a) Emissions table:

Frequency band	Emissions	Limitations (see paragraph (b))
• • • • •		
29500-29700	F2A	
• • • • •		

* * * * *

[FR Doc. 85–13975 Filed 6–10–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Docket No. MC–115; Notice No. 85–7]

Splash/Spray Suppression Devices; Extension of Public Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of public docket.

SUMMARY: The document reopens the public docket for comments on the notice of proposed rulemaking (NPRM) published on April 12, 1985 (50 FR 14630) requesting comments by May 28, 1985, on splash/spray suppression devices. The comment period is being extended to August 12, 1985.

DATE: Comments must be received on or before August 12, 1985.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755–1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: There were several petitions filed with the FHWA requestng an extension of the comment period for the NPRM on Splash/Spray Suppression Devices. The extension of the comment period will not only provide interested parties additional time to respond to the NPRM, but will also allow consideration of new data being developed by the Motor Vehicle Manufacturer's Association (MVMA) which is conducting new and extensive tests on the effectiveness of the proposed splash/spray suppression devices. Elsewhere in today's Federal Register is published a similar notice providing an additional 60 days for interested parties to comment on the NPRM published by the National

Highway Traffic Safety Administration (NHTSA) on April 12, 1985 (50 FR 14632).

(49 U.S.C. 2314 and 3102; 49 CFR 1.48)

Issued on: June 7, 1985.

W.R. Fiste,

Deputy Director, Bureau of Motor Carrier Safety.

[FR Doc. 85-14128 Filed 6-7-85; 3:34 pm]

BILLING CODE 15-4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 584

[Docket No. 83-05; Notice 2]

Splash and Spray Suppression Devices; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period on a notice of proposed rulemaking published April 12, 1985 regarding splash and spray suppression devices. The comment period was scheduled to close on June 11, 1985. NHTSA received two petitions asking that the comment period be extended to allow commenters more time to analyze the available data on splash and spray suppression devices. NHTSA has concluded that a new round of testing being conducted by a private group could yield useful data and believes that NHTSA should have the opportunity to consider such data before proceeding with this rulemaking. Accordingly, the comment period for the notice of proposed rulemaking is extended for 60 days.

DATE: The comment period for Docket No. 83-05; Notice 1 is extended so that it closes (enter date 60 days from the date this notice is published in the **Federal Register.**

ADDRESS: Comments should refer to Docket No. 83-05 and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590 (Docket hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Authur H. Neill, Jr., Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding the installation of splash and spray suppression devices on truck tractors, trailers, and semitrailers at 50 FR 14632, April 12, 1985. The comment period for that proposal was scheduled to close June 11, 1985.

NHTSA received two petitions asking that the comment period be extended beyond June 11. The first petition, filed by the Private Truck Council of America, asked that the comment period be extended for 120 days. The two reasons offered in support of the extension were a new round of testing on the devices by the Motor Vehicle Manufacturers Association (MVMA) and petitioner's summer meeting of its members. The MVMA testing will test more combinations of vehicles over more runs than has heretofore been done by either the agency or any private group.

The second petition, filed on behalf of the Effective Spray Control Organization, asked that the comment period be extended for 180 days. Three reasons were offered in support of this request. First, this group wanted to provide new information and analyses about the spray suppression devices, second, the new testing by MVMA, and third, the group needed more time to analyze the data already in the docket.

NHTSA carefully considered these requests, bearing in mind that it is under a statutory mandate to proceed expeditiously with this rulemaking. The new testing by MVMA might well yield some significant new data, and NHTSA wants to have an opportunity to examine those data before proceeding with this rulemaking. To give the agency this opportunity, and to allow the interested public more time to analyze the data which are currently available, NHTSA has decided to extend the comment period for this rulemaking for an additional 60 days. Elsewhere in today's edition of the **Federal Register**, the Federal Highway Administration has published a notice reopening the comment period of their proposal to require splash and spray suppression devices on vehicles in use on the Interstate system for an additional 60 days.

Authority: 49 U.S.C. 2314; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on June 7, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-14127 Filed 6-7-85; 3:33 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 112
Tuesday, June 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 15–85]

Foreign-Trade Zone 98—Birmingham, AL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, to expand its zone in Birmingham, within the Birmingham Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 29, 1985.

On April 27, 1984, the City received authority from the Board to establish a zone within the 116-acre Airport Industrial Park adjacent to Birmingham Municipal Airport (Board Order 247, 49 FR 19367, 5/7/84). The proposed expansion would involve several existing warehouses on 10.3 acres at 2700 Second Avenue South in Birmingham. The facilities are owned and operated by Shaw Warehouse Company.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Harvey Perry, District Director, U.S. Customs Service, South Central Region, 250 N. Water St., P.O. Box 2248, Mobile, Al 36601; and Colonel Patrick J. Kelly, District Engineer, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, AL 36628.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 12, 1985.

A copy of the application is available for public inspection at each of the following locations.

U.S. Department of Commerce District Office, 908 S. 20th St., Suite 200, Birmingham, AL 35205

Offie of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: June 5, 1985.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85–14014 Filed 6–10–85; 8:45 am]
BILLING CODE 3510–DS–M

[Docket No. 17–85]

Foreign-Trade Zone 64—Jacksonville, FL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Jacksonville Port Authority (the Port Authority), grantee of Foreign-Trade Zone 64, to expand its zone in Jacksonville, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act (19 USC 81a-81u), and the Board's regulations (15 CFR Part 400). It was formally filed on May 31, 1985.

On December 29, 1980, the Port Authority was authorized by the Board to establish a zone at the Jacksonville International Airport (Board Order 170, 46 FR 1330). On September 23, 1983, the Board authorized a temporary expansion of the zone to include existing warehouse facilities on a 12 acre site located at 2001–2155 Ellis Road, Jacksonville (Board Order 198, 47 FR 43102). Zone status at this site is due to expire in September 1985. This application requests permanent zone status for the Ellis Road site, based on its past use in providing general-purpose zone space unavailable at the airport site.

Comments concerning the proposal are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked no later than July 12.

A copy of the application is available for public inspection at each of the following locations:

U.S. Customs Service, Port Director's Office, 2831 Talleyrand Avenue, Jacksonville, FL 32206

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, D.C. 20230

Dated: June 5, 1985.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85–14016 Filed 6–10–85; 8:45 am]
BILLING CODE 3510–DS–M

[Docket No. 16–85]

Foreign-Trade Zone 28—New Bedford, MA; Application for Subzone at Surgical Instruments Plants of Codman & Shurtleff, Inc.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of New Bedford, Massachusetts, grantee of Foreign-Trade Zone 28, for special-purpose subzone status at four plants of Codman & Shurtleff, Inc., (Codman), located in Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 30, 1985.

Codman, a subsidiary of Johnson & Johnson, Inc., is a producer of specialty, surgical instruments and supplies. The proposed subzone would involve four of the company's plants in New Bedford, Southbridge, Avon and Randolph. The New Bedford plant, covering 30 acres within the New Bedford Industrial Park, is the company's primary production and repair facility. The Southbridge plant, located on 3 acres at 15 Sandersdale Rd., is a new facility for production of fiber optics and electronic assemblies. The 3-acre Avon plant, located on Tracy Dr. in the Avon Industrial Park, is Codman's international distribution facility. The Randolph plant, covering 10 acres on Pacela Park Dr. in the Randolph Industrial Park, is the company's headquarters as well as a facility for producing and receiving disposable surgical products and supplies.

In addition to the instruments it manufactures, the company imports finished items for worldwide distribution. The plants are used for operations ranging from production to storage, inspection, testing, repair, and packaging. Zone procedures would be used to avoid duties on reexports. On domestic sales the company would benefit from deferred duty payments. This project is related to Codman's efforts to increase its exports.

In accordance with the Board's regulations, an examiner's committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Carl B. Sciple, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Rd., Waltham, MA 02254.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 12, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Customs Service, Port Director's Office, 37 Second St., U.S. Customhouse, New Bedford, MA 02740

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, N.W., Washington, D.C. 20230.

Dated: June 5, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-14015 Filed 6-10-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; U.S. Geological Survey et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-172. Applicant: U.S. Geological Survey, Water Resources Division, 1950 Constant Avenue, Campus West, University of Kansas, Lawrence, KS 66046. Instrument: Terrain Conductivity Meter, Model EM 34. Manufacturer: Geonics Limited, Canada. Intended use: Studies of large concentrations of hydrocarbons at shallow depths in the subsurface. Experiments will be conducted to determine if electromagnetic induction geophysical techniques may be used to effectively locate large concentrations of hydrocarbons (oil sludge) in the shallow subsurface. Application received by Commissioner of Customs: April 30, 1985.

Docket No. 85-177. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: Mass Spectrometer, Model VG 3001A with Accessories. Manufacturer: VG Instruments, Inc., United Kingdom. Intended use: Study of mass spectra of gas mixtures, some of which are very complex, in order to determine the composition of these mixtures. The analyses to be performed will include the following:

(a) Studies of complex gas mixtures in order to quantitatively determine the composition of the sample with state-of-the-art accuracy and precision.

(b) Anaysis of ppm quantities and isotopic composition of noble gases in concentrated gas samples.

(c) Development of techniques to study outgassing experiments in support of the Nuclear Weapons Program at LLNL.

(d) Studies to further improve accuracy and precision in the quantitative analysis of complex gas mixtures produced by LLNL program.

The objectives of these analyses are high accuracy, high sensitivity measurements of compositions of the materials analyzed in order to provide analytical support for LLNL research programs. Application received by commissioner of Customs: May 1, 1985.

Docket No. 85-178. Applicant: The Rockefeller University, 1230 York Avenue, New York, NY 10021. Instrument: Micromanipulators, Model 520137 and 520138. Manufacturer: Leitz, West Germany. Intended use: Study of brain function in experimental animals, using physiological techniques. Experiments will consist of intracellular injection of dyes to outline intrinsic circuitry of the visual cortex for examination of the relationships between brain circuitry, chemistry, and functional architecture, and the study of functional properties of neurons in visual cortex. Application received by Commissioner of Customs: May 3, 1985.

Docket No. 85-179. Applicant: George Washington University Medical Center, Department of Anatomy, 2300 I St. NW., Washington, DC 20037. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. INTENDED USE: Studies of the large and small intestine, peripheral blood, hepatic and nervous tissues while conducting the following experiments:

(a) Sickle cell-endothelial interaction,

(b) Eythropoietic iron transport in iron deficiency and anemia of chronic diseases,

(c) Reticulocyte maturation,

(d) Lymphocyte surface markers and their distribution,

(e) Dietary Tryptophan in controlling protein synthesis,

(f) Dietary magnesium calicum and myocardial resistance to injury,

(g) Gene expression in nutritionally promoted cancer,

(h) Neural transplants: Interactions with developing brain,

(i) Regeneration in the central nervous system,

(j) Dietary fibers and structural-functional correlates in large and small intestine.

Application received by Commissioner of Customs: May 6, 1985.

Docket No. 85-180. Applicant: University of Southern California, University Park, Los Angeles, CA 90089-1141. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Basic research requiring ultrastructural analysis of experimental samples. The materials under investigation are of biological origin: tissues from experimental animals, tissue culture, and human patients. Studies include: (1) The regional distribution of myelin-specific proteins; (b) the effects of melatonin on motor neuron function; (c) the localization of molecules specific to photoreceptor cells and synapses in the vertebrate retina; (d) the expression of surface antigens during preimplantation of mammalian embryos; and (e) the mechanism of skeletal muscle adaptation to exercise. Application Received by Commissioner of Customs: May 6, 1985.

Docket No. 85–181. Applicant: Carnegie-Mellon University, Schenley Park, Pittsburgh, PA 15213. Instrument: Rotating Anode X-Ray Generator, Model GX21 with Accessories. Manufacturer: Marconi Avionics Limited, United Kingdom. Intended use: The instrument will be used to obtain basic structural information at the atomic level on physical and biological systems. The materials to be studied will include: weakly scattering systems such as are found in surface adsorbed layers; bulk phases of low total volume formed as a result of interfacial reactions of phase transitions at interfaces; metastable and glassy phases of small total volume; nearly defect-free perfect crystals such as are used in the fabrication of semiconductor devices; adsorbed large molecular lipids and surfactants and intercalated species. Application Received by Commissioner of Customs: May 6, 1986.

Docket No. 85–183. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Excimer Laser with Magnetic Switch Control, Model HE–420. Manufacturer: Lumonics Inc., Canada. Intended use: The instrument will be used for experiments to be conducted which include the two photon ionization of pure hydrocarbons and hydrocarbons containing additives to promote light absorption. The nature of the ionization process is investigated by measuring the conductivity of the resulting ions as a function of time after a pulse of light from the Excimer Laser. Also the instrument will be used to create excited states and free radicals whose reactivities can be measured using techniques of absorption or emission spectroscopy. Application Received by Commissioner of Customs: May 7, 1985.

Docket No. 85–185. Applicant: University of Michigan, 1620 School of Public Health, 109 S. Observatory, Ann Arbor, MI 48109–2029. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: The instrument is intended to be used to conduct the following research projects:

(1) Mechanisms for Retinoid Neutralization of Tumor Promotion,

(2) Neoplastic and Hyperplastic Epidermal Metabolism,

(3) Chemical Blistering: Cellular and Macromolecular Components,

(4) Environmental Biology: Epidermal Neo- and Hyperplasia,

(5) Research and Development of Percutaneous Energy Transmission Systems,

(6) Hepatotoxicity Quantitative Microscopy,

(7) Suppressor Cells in Cancer and Immunodeficiencies,

(8) Vaccine Parameters of *Schistosoma Mansoni* Irradiated Schistosomula,

(9) Macrophage Function in Pulmonary Granulomatous Inflammation,

(10) Studies on Cold-Adapted Influenza Virus Vaccine Candidates and

(11) Reye's Syndrome: Metabolic, Virologic Study in Ferrets.

Application Received by Commissioner of Customs: May 9, 1985.

Docket No. 85–186. Applicant: The Pennsylvania State University, 276 Materials Research Laboratory, University Park, PA 16802. Instrument: Spectroscopic Ellipsometer, Model ESZG. Manufacturer: SOPRA, France. Intended use: Spectroscopic ellipsometry measurements on solid/liquid interfaces as well as of ion implanted semiconductors in the UV-Visible-near IR spectra range and analyze the data using modelling and regression analysis techniques with the help of a computer. Application Received by Commissioner of Customs: May 9, 1985.

Docket No. 85–187. Applicant: University of Minnesota, Department of Chemistry, 207 Pleasant Street, SE., Minneapolis, MN 55455. Instrument: Gas Chromatograph/Mass Spectrometer Data System, Model MM7070 EHF and Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: The instrument is intended to be used for the following research projects:

(1) Application of mass spectrometry to protecting group chemistry and peptide synthesis,

(2) Mass spectrometric characterization of antibiotic-DNA adducts,

(3) Reactive intermediates in organic chemistry,

(4) A new chemical/GC–MS method for polysaccharide structure determination,

(5) Application of mass spectrometry to surface modified materials,

(6) Transition metals in organic synthesis,

(7) High-nuclearity nitrosyl, nitrido and isocyanato carbonyl clusters and

(8) Synthesis and catalytic chemistry of mixed-metal gold cluster compounds.

Graduate students will have use of the instrument with operator assistance for their graduate training.

Application Received by Commissioner of Customs: May 10, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–14029 Filed 6–10–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–429–403]

Postponement of Final Antidumping Duty Determination; Carbon Steel Wire Rod From the German Democratic Republic

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of carbon steel wire rod (wire rod) from the German Democratic Republic (GDR) have occurred at less than fair value until not later than July 25, 1985.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2830.

SUPPLEMENTARY INFORMATION: On October 24, 1984, we published a notice in the **Federal Register** (49 FR 42773) that we were initiating, under section 732(b) of the Act, (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether wire rod from the GDR was being, or was likely to be, sold at less than fair value. On November 13, 1984, the International Trade Commission determined that there is a reasonable indication that imports of wire rod are materially injuring a U.S. industry. On March 12, 1985, we published a preliminary determination of sales of less than fair value with respect to this merchandise (50 FR 9815). The notice stated that if the investigation proceeded normally, we would make our final determination by May 20, 1985. Pursuant to section 735(a)(2) of the Act, the respondent requested an extension of the final determination date until July 1, 1985. On

April 4, 1985, we extended the time for the final determination until July 1, 1985 (50 FR 14408). On May 30, 1985, counsel for respondent requested that the Department again extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination. The respondent is qualified to make such a request because it accounts for a significant proportion of the exports of the merchandise. If an exporter who accounts for a significant proportion of exports of the merchandise under investigation properly requests an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are granting the request and postponing our final determination until not later than July 25, 1985.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

Comments

In order to have any comments considered for our final determination, parties must submit them by June 17, 1985. All written views should be filed at the U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 5, 1985.

[FR Doc. 85-14028 Filed 6-10-85: 8:45 am]

BILLING CODE 3510-05-M

[A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 19, 1985.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann Jr. or John Love, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1778.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that cellular mobile telephones and subassemblies from Japan are being, or likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by August 19, 1985.

Case History

On November 5, 1984, we received a petition from counsel for Motorola, Inc. (Motorola) on behalf of the cellular mobile telephone and subassembly industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on November 26, 1984 (49 FR 47076). The ITC subsequently found, on December 29, 1984, that there is a reasonable indication that imports of cellular mobile telephones and subassemblies from Japan are materially injuring or threatening to materially injure a United States industry. The petitioner alleged that at least nine Japanese companies produce the subject merchandise for export to the United States. We identified six producers and exporters which account for at least 60 percent of the subject merchandise exported to the United States for Japan during the period of investigation. These companies are: Hitachi, Ltd. of Japan (Hitachi); Mitsubishi Electric Corporation (MELCO); OKI Electric Industry Company, Ltd. (OKI); Toshiba Corporation (Toshiba); NEC: Corporation (NEC); and Matsushita Communication Industrial Co., Ltd. (Matsushita). We presented a questionnaire to counsel for Hitachi, MELCO, OKI, Toshiba and Matsushita on February 1, 1985, and to counsel for NEC on February 13, 1985. We subsequently received responses from all companies except Matsushita, which on March 18 advised the Department of Commerce (the Department) that it had decided not to file a response to the February 1 questionnaire.

On March 14, 1985, counsel for the petitioner requested the Department to extend the preliminary determination until not later than June 4, 1985. On March 21, 1985, we granted the request (50 FR 12599).

Scope of Investigation

The products covered by this investigation are cellular mobile telephones (CMTs), CMT transceivers, CMT control units, and subassemblies dedicated for use in CMTs. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation.

Subassemblies are any completed or partially completed circuit boards, circuit modules and/or any packaged assemblage of electronic components, the value of which is equal to or greater than five dollars, and which are dedicated for use in CMT transceivers or control units. Examples of such subassemblies are circuit boards and/or modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF,

IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter.

The following merchandise has been excluded from this investigation: Pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

Cellular mobile telephones are currently classified under item number 685.29 of the *Tariff Schedules of the United States* (TSUS). Subassemblies can be classified under item numbers 685.23, 685.24, and 685.29, as well as other possible tariff classifications.

We investigated sales of the cellular mobile telephones and subassemblies during the period June 1 through November 30, 1984.

Scope of Investigation Issues

We have defined the products covered by this investigation as CMTs, CMT transceivers, CMT control units and major subassemblies dedicated for use in CMT's. The determination to include subassemblies within the scope of the investigation was based on the need to prevent circumvention of any antidumping order on CMTs through the importation of major CMT subassemblies, and the Department's broader conclusion that the investigation properly should include subassemblies. In this regard, Motorola's petition requested that we include "kits of components and subassemblies" in the investigation.

Two of the companies investigated export CMT subassemblies to the United States to related companies which subsequently perform some form of further manufacture or assembly before selling the completed CMTs to unrelated parties. If the investigation were limited to completed CMTs alone, none of these importations would be subject to an antidumping order, even if all of the subassemblies were of Japanese origin and were being sold at less than fair value, and the complete CMT was "substantially" of Japanese origin.

A number of the respondents have argued that the Department has no authority to include discrete subassemblies (that is, subassemblies that are imported separately rather than in kits) within the scope of this investigation. The crux of their argument is (1) that discrete CMT subassemblies are not of the same "class or kind" as complete CMTs or CMT kits, (2) that Motorola's petition only included complete CMTs and CMT kits, defined as sets of CMT subassemblies, and (3) that antidumping investigations may only encompass products that are the same "class or kind of merchandise" as those covered in the petition. We address each of respondents' arguments in turn.

First, the Department takes the position that CMT subassemblies are the same "class or kind" of merchandise as complete CMTs. This determination is based on a consideration of the following factors: (1) General physical characteristics, (2) the expectations of the ultimate purchaser, (3) the ultimate use of the merchandise in question, and (4) the channels of trade in which the merchandise moves. Since the scope of this investigation only includes those subassemblies that are "dedicated for use" in complete CMTs, both the ultimate use and the ultimate purchaser of the CMT subassemblies are the same as for the complete CMTs. Thus, the second and the third criteria outlined above are met. Similarly, based on the evidence in the record, the Department determines that CMT subassemblies, as defined in this investigation and complete CMTs move in the same channel of trade. Indeed, this is the very reason the Department feels it necessary to include CMT subassemblies within the scope of this investigation since otherwise any resulting order could easily be circumvented. With respect to the first criterion, the Department does not think that the fact that CMT subassemblies have, in some respect, different physical characteristics from complete CMTs should be controlling in this instance. As a result, the Department concludes that CMT subassemblies which are dedicated for use in CMTs are within the same "class or kind" of merchandise as complete CMTs. See, *Antidumping Order; Cell Site Transceivers from Japan*, 50 FR 307.

Second, the Department's view is that respondents are taking an unduly narrow reading of the petition and that the Department's definition of scope is simply a clarification of what was set forth in the petition. Petitionerss definition of kits referred to collections of "key" compoenents, which we have taken to mean "major" subassemblies. The whole purpose of including subassemblies in this investigation is to prevent evasion of the antidumping law. It would be illogical to make a distinction between those subassemblies that are shipped discretely in separate containers and those that are shipped together in one box. Limitations as to packaging would simply be an invitation to evade the antidumping law through changes in packaging.

Third, whether or not Motorola's petition explicitly covers discrete subassemblies is not dispositive, since the Department has an inherent power to establish the parameters of the investigation so as to carry out its mandate to administer the law effectively and in accordance with its intent. See, 19 CFR 353.37(b). Nor do any of the legal decisions the respondents cite support their argument that the Department is bound by the petition in initially defining the scope of the investigation. The issue in *Royal Business Machines, Inc.* v. *United States*, 1 CIT 80, 507 F. Supp. 1007, 1014 (1980), *aff'd*, 669 F. 2d 692 (C.C.P.A. 1982), was whether the Department could modify the scope of the investigation after the final antidumping order had been issued. *Tapered Roller Bearings and Certain Components Thereof From Japan*, (46 FR 40550), is equally irrelevant since, in that case, the only reason the Department concluded "unfinished" tapered roller bearings were not the same "class or kind" of merchandise as "finished" roller bearings was that "[n]either the petition nor the fair value investigation was directed at transactions involving partially manufactured merchandise" (46 FR 40551). Here, by contrast, at the outset the Department has defined the investigation as including subassemblies.

Respondent's contention that the petition does not contain sufficient allegations or evidence of dumping with respect to subassemblies is equally without merit. Since complete CMTs and subassemblies are in the same "class or kind" of merchandise, there was no need for the petitioner to present evidence of dumping with respect to subassemblies. As the Department has previously recognized, there is no need to conduct price comparisons on all types of merchandise within the class that is subject to an investigation.

Furthermore, Motorola did provide sufficient evidence of dumping with respect to CMT subassemblies. Motorola's petition contains allegations of dumping by Japanese companies that export CMT subassemblies for further assembly and processing by related companies in the United States. Where a related company is the importer, the basis for determining U.S. sales price is the first sale to an unrelated customer, rather than any transfer prices between related parties (section 772(c) of the Act)). This is true even where some final finishing or assembly steps are performed on the merchandise by the U.S. affiliate. Thus, since there were no sales of subassemblies to unrelated

parties, the best information regarding dumping of subassemblies is the price at which the complete CMTs were sold to unrelated purchasers. This is exactly the evidence Motorola provided.

Finally, the Department has considered respondents' (principally Matsushita's and OKI's) suggestion that the order be designed so as to exclude importations of subassemblies that are incorporated into CMTs by U.S. facilities that add more than a nominal value. It was proposed, for example, that each respondent be given an opportunity to make an affirmative showing that the value it adds in the United States to imported CMT subassemblies is so substantial that it ought to be removed from the scope of the order. The Department feels that this approach is not feasible from an administrative standpoint, and that it would result in a discriminatory application of the antidumping law.

Accordingly, the Department has included CMT subassemblies as defined above within the scope of the investigation.

Fair Value Comparison

To determine whether sales of the subject merhandise in the United States by OKI, Hitachi, Toshiba and MELCO were made at less than fair value, we compared the United States price with the foreign market value. To determine whether sales of the subject merchandise in the United States by Matsushita and NEC were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used information in the petition as the best information available for Matsushita as required by section 776(b) of the Act because it did not submit a response to our antidumping duty questionnaire.

We also used the best information available for NEC because it did not provide a full and complete response to our antidumping duty questionnarie. While NEC did respond to selected sections of the questionnaire, it did not provide the home market sales data requested by the Department. NEC refused to provide the requested data on the grounds that these data were not relevant because its home market sales of CMTs were not "such or similar" merchandise to its U.S. sales as defined in section 771(16) of the Act. Thus, NEC argued that the Department must calculate foreign market value based on third country sales as provided for in section 773(a)(1)(B) of the Act.

During the course of this investigation, the Department repeatedly advised NEC that if NEC failed to provide home market sales data and the Department determined that NEC's home market sales did constitute "such or similar merchandise" the Department would have to use best information available. Based on information presented by NEC and an analysis of the data submitted by a technical consultant retained by the Department, we have determined that the CMT sold by NEC in the home market is such or similar merchandise within the meaning of section 771(16) of the Act. As a result, the Department calculated both United States price and foreign market value using information in the petition as the best information available.

United States Price

As provided in section 772 of the Act, we used both the purchase price and exporter's sales price of the subject merchandise to represent the United States price for sales by the Japanese producers.

Purchase price was used for Toshiba, Hitachi and Mitsubishi since the merchandise was sold to unrelated purchasers prior to its importation into the United States or sold to a purchaser outside the United States when it was known at the time of sale that the merchandise was destined for the United States. We calculated the purchase price based on either the f.o.b. or c.i.f., duty paid, packed price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, marine insurance, U.S. customs duties, and U.S. inland freight and brokerage.

For OKI, we used exporter's sales price (ESP) to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, U.S. Customs duties, U.S. inland freight and brokerage, and other selling expenses incurred in the United States. In calculating the ESP for OKI, we also deducted the value added to the imported units through further manufacture prior to sale in the United States.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value for OKI, Hitachi and Toshiba as there were not sufficient home market or third country sales of such or similar merchandise for the purpose of comparison. In determining constructed value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The amounts added for general expenses were calculated from data provided in the responses and in certain cases from data obtained through verification of the responses. In all instances the amounts used for general expenses were higher than the statutory minimum of 10 percent of the sum of material and fabrication costs. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses, or the actual profit, whichever was higher. We are seeking additional information concerning the profit made by producers on home market sales of the same general class or kind as the merchandise under consideration.

As Mitsubishi had no reported sales or offers for sale of such or similar merchandise in the home market, we calculated foreign market value based on third country sales of such or similar merchandise, as provided for in section 773(a)(1)(B) of the Act. Comparisons were made using sales to the same level of trade as the U.S. sales. Calculations for Mitsubishi's foreign market value were based on delivered or ex-factory, unpacked prices to unrelated purchasers in Sweden. Deductions were made, as appropriate, for air and inland freight. We also made adjustments for differences in advertising expenses. U.S. export packing was added to the third country market prices used. We also adjusted for physical differences in the merchandise in accordance with § 353.16 of the Commerce Regulations.

In calculating foreign market value, we made currency conversions in accordance with § 353.56(a)(1) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

We have verified a portion of the data used in reaching the preliminary determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents. In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the United States Customs Service to suspend liquidation of the products covered by

this investigation from Japan which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price.

This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
OKI	18.51
Hitachi	20.90
Toshiba	4.77
MELCO	21.94
NEC	95.57
Matsushita	106.60
All other manufacturers/producers/exporters	32.77

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order,without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on July 23, 1985, at the U.S. Department of Commerce, Room 4830, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by July 16, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 4, 1985.

[FR Doc. 85–15031 Filed 6–10–85; 8:45 am]

BILLING CODE 3510–05–M

[A–351–402]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 31, 1985, Lone Star Steel Company and CF&I Steel Corporation withdrew their antidumping petition, filed on June 13, 1984, on oil country tubular goods from Brazil. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–0186.

SUPPLEMENTARY INFORMATION:

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Company filed on behalf of the U.S. industry producing oil country tubular goods.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on July 22, 1984 (49 FR 28085). On July 30, 1984, the ITC found that there was a reasonable indication that imports of OCTG from Brazil materially injure, or threaten material injury to, a United States industry. On August 3, 1984, LTV Steel Company became an additional petitioner. On January 9, 1985, we made a preliminary determination that OCTG from Brazil were being, or were likely to be, sold in the United States at less than fair value (50 FR 2309).

Scope of Investigation

The products under investigation are oil country tubular goods (OCTG). OCTG are extension hollow steel products of circular cross section intended for use in the drilling of oil or gas. OCTG includes oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are finished and unfinished.

Withdrawal of Petition

On May 31, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Brazil to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-14030 Filed 6-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 663]

Josef Forstner, Forson Elektronische Geraete GmbH: Order Modifying Temporary Denial Order

In the matter of Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH Breitenfurterstrasse 183, A-1120 Vienna, Austria.

The U.S. Department of Commerce (Department) has moved for a Modification of the Temporary Denial Order issued on April 10, 1985 (50 FR 15206, April 17, 1985) against respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, by adding the formal trade name for Fuchs GmbH, named as a related party in the Temporary Denial Order. The Temporary Denial Order denies the respondents and any related party, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Part, 368-399 (1985)), all privileges of participating, in any manner or capacity, in any export-related transaction involving U.S.-origin commodities or technical data.

The Department presented information showing that the formal trade name for Fuchs GmbH is F.F. Elektronishe Geraete GmbH, located at the same address. The Department additionally stated that the same persons who operated Fuchs GmbH are operating F.F. Elektronische Geraete GmbH. Based on the Department's presentation, I find that its requested motion is justified.

Accordingly, it is hereby ordered that, effective immediately, the Temporary Denial Order is modified as follows:

Every reference in the Temporary Denial Order to Fuchs GmbH, including such reference as "related party," shall also mean F.F. Elektronische Geraete GmbH as set forth below:

F.F. Elektronische Geraete GmbH, Schoenbrunnerstrasse 237, A-1120, Vienna, Austria.

A copy of this Modification of the Temporary Denial Order shall be served upon respondent Josef Forstner and upon the related party named in paragraph III of the Temporary Denial Order, and this Modification of the Temporary Denial Order shall be publish in the **Federal Register**.

Dated: June 4, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-14027 Filed 6-10-85; 8:45 am]

BILLING CODE 3510-DT-M

National Bureau of Standards

[Docket No. 50574-5074]

Approved FIPS Minimal BASIC Interpretation 1

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Approved FIPS Minimal BASIC Interpretation 1.

SUMMARY: Under the provisions of Pub. L. 89-306 (79 Stat. 1127); 40 U.S.C. 759(f) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. FIPS PUB 29-1 defines procedures to be followed in providing solutions to questions of interpretation of FIPS languages. Accordingly, in the October 30, 1984 issue of the **Federal Register** (49 FR 43578), and the correction in the November 16, 1984 issue of the **Federal Register** (49 FR 45470), the National Bureau of Standards published a notice of proposed interpretation of FIPS Minimal BASIC as pertains to exception reporting and handling. All comments submitted about the proposed interpretation have been duly considered.

The following approved interpretation contains a definition of the problem, discussion of the issues, approved interpretation, supporting justification, necessary clarifications to FIPS Minimal BASIC, and the effective date of the interpretation. The approved interpretation, as of the effective date, becomes an integral part of FIPS Minimal BASIC and, as such, is considered to be included whenever reference is made to FIPS Minimal BASIC.

DATE: This interpretation is effective on July 11, 1985.

ADDRESS: Written comments concerning interpretations of FIPS languages should be submitted to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, ATTN: FIPS Languages.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Cugini, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301-921-2431).

Dated: June 5, 1985.

Ernest Ambler,

Director.

FIPS Minimal BASIC

Interpretation NO. 1—Exception Reporting and Handling

Problem: In order to conform to the standard for Minimal BASIC, under what conditions must implementations report exceptions and what information must the report contain?

Issues: Given program sections such as the following:

1. 100 LET X=0
2. 110 LET Y=5/X

1. 100 LET X= −3
2. 110 LET Y=A(X)

The first is classified as a nonfatal exception by the standard, the second as fatal. Must an exception be reported in both cases? What sort of action constitutes a valid report? What information must the report contain and in what format must it appear?

Interpretation: This interpretation applies to American National Standard for Minimal BASIC X3.60-1978, as it has been adopted as FIPS Minimal BASIC, FIPS PUB 68. All exceptions described in the Minimal BASIC standard must be reported, unless an implementor-defined syntactic enhancement provides for another means of processing. An exception report must be understandable by a reasonably well-informed user, either because its meaning is self-evident (in English) or because documentation accompanying the implementation explains the format and interpretation of the report. At a minimum, the report must correctly identify the type of exception which has occurred in terms of the Minimal BASIC standard. Information supplied in the report must be correct. For instance, if the line number of the source program statement which caused the exception is reported, it must be accurate.

Supporting Justification: The following references in the American National Standard for Minimal BASIC, X3.60-1978, pertain to the issue involved in this interpretation:

1. Page 7, 1. Introduction, 1.1 Scope, 1.1.1 Inclusions: "This standard establishes: . . . (5) The errors and exceptional circumstances that must be detected and also the manner in which such errors and exceptional circumstances shall be handled."

2. Page 8, 1. Introduction, 1.4 Conformance, 1.4.2. Conformance by an Implementation: "An implementation is said to conform to this standard only under the following conditions: . . . (3) It detects and processes exceptional

circumstances according to the specifications of this standard."

3. Page 8–9, 2. Organization of the Standard, 2.6 Subsection 5: Exceptions: ". . . All exceptions described in this subsection must be reported unless some explicit mechanisms provided in an enhancement to this standard has been invoked by the user to handle an exception . . . Where indicated, certain exceptions may be handled by specified procedures; if no procedure is given, or if restrictions imposed by the hardware or operating environment make it impossible to follow the given procedures, then the exception must be handled by terminating the program. Enhancements to this standard may describe mechanisms for controlling the manner in which exceptions are reported and handled, but no such mechanisms are specified in this standard."

Two points emerge from the above references. First, all exceptions described in the subsection on exceptions (subsection 5 of each section) must be reported whether or not a recovery procedure is specified (i.e., whether fatal or not). The presence or absence of a recovery procedure affects the handling of the exception, but not the fact that it is reported. "Handling and exception" refers to such actions as supplying machine infinity and continuing or terminating the program.

The second point is that the standard specifies the description of exceptions and the report must be couched in terms of this classification.

Clarification of FIPS Minimal BASIC: None necessary.

[FR Doc. 85–13991 Filed 6–10–85; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Permits; Marine Mammals; California Department of Fish and Game

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name California Department of Fish and Game (P191C).

b. Address 1416 Ninth Street, Sacramento, CA 95814.

2. Type of Permit: Scientific Research

3. Name and Number of Marine Mammals: California sea lions (*Zalophus californianus*), 300. Harbor seals (*Phoca vitulina richardii*), 150.

4. Type of Take: The animals will be offered fish that have been injected with a taste aversion agent (LiCl) as part of an effort to identify marine mammal/fisheries conflicts and develop mitigative techniques of reducing or eliminating the conflicts.

5. Location of Activity: California coastal waters.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or request for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731.

Dated: June 5, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–14059 Filed 6–10–85; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

The Mid-Atlantic Fishery Management Council will convene a public meeting, June 26–27, 1985, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600), to discuss the Squid, Mackerel and Butterfish Fishery Management Plan (FMP); the Billfish, Swordfish, and Lobster FMPs, as well as discuss other fishery management and administrative matters.

The Council may also convene a closed session to discuss personnel and/or national security matters and the meeting may be lengthened or shortened depending upon progress on agenda items. A detailed agenda will be made available to the public around June 17, 1985. For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: June 5, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–14009 Filed 6–10–85; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Meeting

This is to give notice pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, D.C. headquarters located at Room 532, 2033 K Street, NW., Washington, D.C. 20581, on June 28, 1985, beginning at 9:30 a.m. and lasting until 3:00 p.m. The agenda will consist of:

(1) Welcoming Remarks, Introduction of Commissioners Hineman, West and Seale—Susan M. Phillips, Chairman, CFTC;

(2) Introduction of Committee Members and Statement of Committee purposes—Robert R. Davis, Chairman of the Advisory Committee and Commissioner, CFTC;

(3) Briefing on the functions of the CFTC—Staff of CFTC, Divisions of Economic Analysis, Trading and Markets, Enforcement;

(4) Discussion of Institutional and Regulatory Constraints on the Commercial Use of the Derivative Financial Products Markets;

(5) Discussion of the Impact of Improved Audit Trail Systems on Derivative Financial Products Markets;

(6) Discussion of Objectives, Agenda Items and Scheduling for Future Committee Meetings.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on

financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth at 50 FR 21332, (May 23, 1985).

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Robert R Davis, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission's Financial Products Advisory Committee c/o Robert T. Bernat or Becky J. Baker, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Robert T. Bernat or Becky J. Baker in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on June 7, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-14085 Filed 6-10-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: June 24-26, 1985.

Time: 0800-1600 hours daily (Open).

Place: June 24, 1985—Ft. Hunter-Liggett, CA. June 25-26, 1985—Ft. Ord, CA.

Agenda: Selected members of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will visit Ft. Hunter-Liggett and Ft. Ord, CA sites to observe National Guard Training and receive orientation on projects and training programs at the Combat Developments Experimentation Command and the 7th Infantry Division. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-14006 Filed 6-6-85; 2:32 pm]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 11, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Office, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Exectuve Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available for Margaret Webster at the address specified above.

Dated: June 6, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: Special Condition Application for Federal Student Aid
Agency Form Number: ED 255-2
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden: Responses: 236,000; Burden Hours: 271,400
Recordkeeping Burden: Responses: 236,000; Burden Hours: 4,720

Abstract: This form collects the data necessary to determine student eligibility for Federal student aid when a student's family financial situation changes. A Student Aid Index for the distribution of Pell Grants and a uniform methodology number are calculated for the use of financial aid administrators.

[FR Doc. 85-14038 Filed 6-10-85; 8:45 am]

BILLING CODE 400-01-M

Secretary's Discretionary Program—Field Initiated Grants

AGENCY: Education.

ACTION: Application Notice for New Awards under the Secretary's Discretionary Program for Fiscal Year 1985.

SUMMARY: The Secretary of Education (the Secretary), under the Secretary's Discretionary Program for Fiscal Year (FY) 1985, announces a grant competition and invites applications for projects on field-initiated topics. The Secretary especially invites applications for projects in the areas of content, character, and choice.

To be eligible for funding under this program, a project must relate to one or more of the following purposes of the Education Consolidation and Improvement Act of 1981 (ECIA): gathering and disseminating information; evaluation of the effectiveness of programs or projects; research, demonstration; training of teachers or other instructional personnel; or technical assistance to a State educational agency (SEA) or a local educational agency (LEA). The ECIA generally addresses meeting the

special educational needs of educationally deprived children and improving elementary and secondary education for children.

Authority for this program is contained in section 583 of the ECIA.

(20 U.S.C. 3851)

Invitations

The Secretary has challenged the American people to consider three essential aspects of educational excellence: *content*—teaching what is most important for students to know in order to function as informed and educated citizens; *character*—instilling fundamental qualities of mind and heart that form the basis for sound judgment; and *choice*—allowing parents greater opportunity to select educational services they deem most appropriate for their children. To encorage improvement in education, the Secretary invites applications for projects to: (1) Stimulate improvement in the content of textbooks and other instructional materials; (2) foster student character development; and (3) expand parental choice in education. The Secretary invites applications that propose activities in the areas of evaluation, research, demonstration, planning, and dissemination.

Activities suggested under these areas include, but are not limited to, the following:

Evaluation projects that assess the effectiveness of texbooks and other instructional materials, or determine the factors that promote or impede the development of wholesome student character or parental choice;

Research projects that analyze the content of instructional materials, the effects of school policies on student discipline, or community attitudes toward education vouchers and other vehicles for parental choice;

Demonstration projects that develop practices or procedures that others can adopt for their own use in order to stimulate improvement in the content of textbooks and other instructional materials, foster character development, or expand parental choice;

Planning projects for efforts to stimulate improvement in the content of textbooks and other instructional materials, foster the development of wholesome student character, or increase parental choice; and

Dissemination projects that widely distribute information concerning improvement in the content of textbooks and other instructional materials, fostering of character development, or expanison of parental choice. The dissemination could take the form of regional or national conferences, a newsletter, or an information clearinghouse.

The Secretary's specific interests under Content, Character, and Choice are described below:

1. Stimulating Improvement in the Content of Textbooks and Other Instructional Materials

The Secretary encourages a wide range of approaches to stimulate the upgrading of textbooks and other educational materials, especially those that will lead to greater knowledge and understanding of such basic academic subjects as history, literature, languages, philosophy, mathematics, and science. The Secretary particularly welcomes applications for projects that propose ways to use American historical documents, literary classics, and other works central to the development of western thought and civilization in textbooks and other instructional materials. The Secretary invites the public and private sector, including publishers, university scholars, scientists, teachers, administrators, and parents, to work together to accomplish this task.

Applicants are advised that the Secretary discourages the use of these funds for the development of instructional materials.

Activities

Projects may involve evaluation, research, demonstration, planning, or dissemination activities within the scope of the ECIA and related to one or a combination of the following examples:

- The systematic review of textbooks to identify specific weaknesses such as limited coverage of important topics, inadequate scholarship, biased presentation, poor writing, or a lack of challenging material.
- The development of guidelines or criteria to be used by teachers, parents, and educational groups in reviewing textbooks.
- The establishment of consortia or task forces to promote the development of quality instructional materials in order to address persistent inadequacies.
- The identification and dissemination of information on superior teaching materials.
- The assessment and/or development of efforts at the State, local, and non-public levels to address problems affecting textbooks and other instructional materials.
- The development of projects that allow the public to identify essential knowledge, e.g., literary works or historical events, that should be familiar to every student.

The above examples are only suggestions. Applicants are encouraged to expand upon, combine, or consider ideas other than these examples.

2. Fostering Student Character Development

The Secretary also invites applications for projects concerning the fostering of student character development in the Nation's elementary and secondary schools. Applications should propose ways schools and parents can encourage such qualities as thoughtfulness, kindness, honesty, respect for the law, knowing right from wrong, respect for parents and teachers, diligence, self-sacrifice, hard work, fairness, self-discipline, and love of country.

Activities

Applicants may consider proposing evaluation, research, demonstration, planning, and dissemination activities within the scope of the ECIA and related to one or a combination of the following examples:

- The use of history literature, or other subjects to encourage character development.
- Clearly defined school goals and policies and the communication of these goals and policies to teachers and students.
- A clean, orderly, and drug-free school environment.
- A consistent and fair policy on student discipline.
- Practices to encourage the development of self-discipline.
- School policies and practices that respect and support values from the student's home.
- The establishment of a positive policy to encourage increased rates of attendance and graduation.
- School policies on the behavior of the school staff with respect to providing positive role models for students.

The above examples are only suggestions. Applicants are encouraged to expand upon, combine, or consider ideas other than these examples.

3. Expanding Parental Choice in Education

The Secretary invites applications for projects that propose ways in which parents can be afforded more choice and greater involvement in defining and selecting the most appropriate educational services for their children.

Activities

Applicants may propose evaluation, research, demonstration, planning, and dissemination activities within the scope of the ECIA and related to one or a combination of the following examples:

- Vouchers to parents for alternative educational services for their children.
- State and local tuition tax credits or tax deductions for parents who choose alternative educational services.
- Special transportation services designed to facilitate student attendance in schools chosen by their parents.
- A program to inform parents of choices available to them, such as curricular strengths of individual schools or special services offered.
- A survey of parents, the community, and school staff concerning such questions as: What educational climate should the schools have? What kinds of curricula should be offered? Would greater choice increase parental involvement and parental satisfaction? Would greater parental choice decrease community conflict?
- Workable administrative procedures for disbursing payments to other providers of educational services.
- Greater equity for the economically disadvantaged through greater choice.
- Alternative providers for educational services, such as supplementary basic skills instruction.
- Alternative instructional services to educate high school dropouts and other high-risk students.

The above examples are only suggestions. Applicants are encouraged to expand upon, combine, or consider ideas other than these examples.

Closing Date for the Transmittal of Applications

Applications for new awards must be mailed or hand delivered by August 5, 1985.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84:122B), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that the application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. 20202.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

Program Information

The ECIA (20 U.S.C. 3801 *et seq.*) was enacted as Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The ECIA has two principal purposes: Chapter 1 provides financial assistance to SEAs and LEAs to meet the special needs of educationally deprived children, and Chapter 2 consolidates 29 elementary and secondary level education grant programs funded in fiscal year 1981 into a single authorization of grants to States for the same purposes contained in the programs consolidated.

Section 583(a) of Chapter 2 authorizes the Secretary to carry out directly, or through grants or contracts, programs and projects that: (1) Provide a national source for gathering and disseminating information on the effectiveness of programs designed to meet the special educational needs of educationally deprived children and others served by the ECIA, and for assessing the needs of such individuals; (2) carry out research and demonstrations related to the purposes of the ECIA; (3) are designed to improve the training of teachers and other instructional personnel needed to carry out the purposes of ECIA; or (4) provide technical assistance to SEAs and LEAs in the implementation of programs under the ECIA.

Eligible Applicants

SEAs and LEAs, institutions of higher education, and other public and private agencies, organizations, and institutions may apply for a grant. An applicant may apply singly or jointly with another eligible applicant, as provided in 34 CFR 75.127 through 75.129.

Selection Criteria

(a) In evaluating applications, the Secretary will use the selection criteria contained in s760.31 of the regulations. The maximum possible number of points for all the criteria is 85, and the value assigned by the regulations for each criterion is as follows:

(1) Plan of operation. (20 points)

(2) Quality of key personnel. (15 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (5 points)

(6) Improving elementary and secondary education. (10 points)

(7) National significance. (15 points)

(8) Applicant's commitment and capacity. (10 points)

(b) Furthermore, the regulations authorize the Secretary to distribute an additional 15 points among the criteria listed in the regulations to bring the total to a maximum of 100 points. The Secretary will distribute these additional points as follows:

(6) Improving elementary and secondary education. Fifteen (15) additional points will be added for a possible total of 25 points.

(c) The Secretary uses the procedures contained in s760.32 of the regulations to select applications for funding.

Private School Children Participation

To receive a grant under the competition described in this notice, an LEA must comply with the provisions of section 586 of the ECIA, governing equitable participation of private school children in the purposes and benefits of Chapter 2. Applicants are referred to the regulations implementing Chapter 2 of the ECIA codified at 34 CFR Part 298 (47 FR 52368, November 19, 1982) as a guide to the extent and nature of the required consultation with private school officials and the required provisions of benefits to private school children.

Length of Project Period

Projects supported under this program will be for a period of up to 12 months in duration.

Available Funds

The Secretary urges applicants to limit the amount of assistance requested

since resources available under this announcement are limited. For example, it is estimated that appropriate planning activities may be conducted for amounts up to $25,000; evaluation, research, and dissemination activities may be conducted for amounts up to $75,000; and demonstration activities could be carried out for amounts up to $150,000.

Under 34 CFR 760.10(b), funds may not be used as general operating revenue to meet local needs of any applicant.

It is estimated that 10 to 20 awards will be made. The Secretary encourages applicants to propose projects that show a thorough knowledge of previous work in the area of the project and its relationship to the proposed project and that use existing materials to the fullest extent possible. Also, because of the limited available resources, the Secretary encourages applicants to propose projects that would use the funds awarded for this competition to supplement other sources of funding.

The above estimates assume that applications of satisfactory quality will be received. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applicants should be aware that funds for Fiscal Year 1985 projects are not available at this time. Under a Congressional directive in the conference report accompanying the Department's FY 1985 appropriation act, the Department used fiscal year 1985 Secretary's Discretionary Program funds to support FY 1984 projects that did not receive the full amount of their funding commitments due to the freeze on FY 1984 funds imposed by the United States District Court for the Northern District of Illinois, Eastern Division, in United States v. Board of Education of the City of Chicago. At such time as the FY 1984 funds are released by the District Court, accounting adjustments will be made so that FY 1985 grants can be awarded using FY 1985 funds.

Application Forms

Application forms and program information packages may be obtained by writing to: Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4181, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length and that the total application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by OMB under control number 1880–0505.)

Applicable Regulations

The following regulations apply to this program:

(a) Regulations governing the Secretary's Discretionary Program in 34 CFR Part 760, published October 26, 1984 (49 FR 43226).

(b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78.

For Further Information Contact:

Thomas E. Enderlein, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue S.W., Room 4181, Washington, D.C. 20202. Telephone: (202) 472–1762.

(20 U.S.C. 3851).

(Catalog of Federal Domestic Assistance Number 84.122, Secretary's Discretionary Program)

Dated: June 7, 1985

William J. Bennett,

Secretary of Education.

[FR Doc. 85–14135 Filed 6–10–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–155–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1985

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 31, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1985:

First Revised Sheet No. 45
First Revised Sheet No. 45A
First Revised Sheet No. 45B
First Revised Sheet No. 45C
First Revised Sheet No. 45D
First Revised Sheet No. 45E
First Revised Sheet No. 45F

This filing will replace and expand Columbia's present TS–1 and TS–2 Rate Schedules, which will expire on June 30, 1985. It also implements a number of changes in Columbia's transportation policies and procedures, as more fully described in the letter of transmittal accompanying this filing.

Copies of the filing were served upon the Company's jurisdictional customers, interested state commissions and all parties in Docket No. RP84–11.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14041 Filed 6–10–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–2–12–000 and TA85–2–12–001]

Distrigas Corp., Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

June 6, 1985.

Take notice that Distrigas Corporation (Distrigas) on May 31, 1985 tendered for filing Seventeenth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC) on the above date tendered for filing Seventeenth Revised Sheet No. 3A.

Seventeenth Revised Sheet No. 1 and Seventeenth Revised Sheet No. 3A are being filed pursuant to Distrigas' and DOMAC's purchased LNG cost adjustment provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (decrease) of the price paid for the purchase of LNG from its supplier SONATRACH in accordance with the Distrigas-SONATRACH Agreement for Sale and Purchase of Liquefied Natural Gas, together with and amortization over the six-month period, July 1, 1985

through December 31, 1985, of the balance of the unrecovered purchased LNG cost account.

The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC's rates for resale to its distribution customer companies and the amortization over the six-month period, July 1, 1985 through December 31, 1985, of the balance in DOMAC's unrecovered purchased LNG cost account and the GRI Surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effective July 1, 1985, to coincide with the change in LNG costs from SONATRACH.

A copy of this filing is being served on all affected parties and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14042 Filed 6-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-154-000]

Gas Research Institute; Annual Application

June 5, 1985.

Take notice that on June 3, 1985, Gas Research Institute (GRI) filed herein an application requesting advance approval of its 1986-1990 Five-Year R&D Plan and 1986 R&D Program and the funding of its R&D activities for 1986 pursuant to the Natural Gas Act and the Commission's Regulations thereunder, particularly 18 CFR 154.38(d)(5).

GRI states that its application demonstrates compliance with the Commission's Regulations, the requirements of Opinion No. 226, Opinion and Order Amending and Approving Gas Research Institute's 1985 Research Development Program, Docket No. RP84-85-000, issued September 28, 1984, and the ongoing provisions of a Stipulation and Agreement reached by the parties to the proceedings in Docket No. RM77-14 and approved by the Commission in Opinion No. 11, Opinion and Order Approving the Initial Research Development and Demonstration Program of Gas Research Institute, Docket No. RM77-14, issued March 28, 1978. GRI's application seeks approval of its 1986 R&D Program and approval for its jurisdictional members to collect an R&D Funding Unit of 1.35 cents per Mcf during the twelve months ending December 31, 1986 to support GRI's 1986 R&D program. Applicant states that its application was filed in accordance with the provision of Order No. 566 which requires "RD&D organizations" to submit, annually, a five-year program plan at least 180 days prior to the commencement of the five-year period of the plan, which is scheduled to commence on January 1, 1986.

GRI states its Annualized Funding Requirement for 1986 is $143,916,000 and Estimated Funding Services are 10.643 Bcf. This results in a funding unit of 1.35 cents per Mcf.

GRI proposes a 1986 total GRI obligations budget of $164.0 million including R&D obligations of $137.8 million; and project management and general expenses and capital asset purchases of $26.2 million. GRI proposes to fund 260 projects in 1986. GRI states about 85 percent of the R&D obligations budget will fund continuing projects. GRI proposes to fund $21.4 million in new activities. GRI projects its 1986 total obligations budget will increase from $164.0 million in 1986 to $219.8 million (in 1986 dollars) in 1990. GRI states the required funding unit would increase from 1.35 cents in 1986 to 2.00 cents (in 1986 dollars) in 1990.

GRI's filing was accomplished by workpapers providing detail about its application. These workpapers are available for inspection in the Commission's Division of Public Information.

An appendix to the application contains a list of GRI members and state regulatory commissions which were served with a copy of GRI's application on June 3, 1985. Such members and commissions are hereby permitted to participate in this proceeding as intervenors and need not file formal petition to intervene or notices of intervention.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1985 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All comments or protest with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein, other than those listed in the appendix who are automatically entitled to participate, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that a Commission staff report on GRI's filing will be served on all parties and filed with the Commission as a public document by July 31, 1985. Comments on the staff report by all parties except GRI should be filed with the Commission on or before August 16, 1985. GRI's reply comments should be filed on or before September 2, 1985. It should also be noted that the Commission's Regulations (18 CFR § 381.206) provide that the fee for a petition seeking advance Commission approval of rate treatment of RD&D expenditures will be determined and billed according to the procedures for direct billing set forth under 18 CFR 318.107.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14043 Filed 6-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-225-000]

Mid Louisiana Gas Company; Informal Technical Conference

June 5, 1985.

Take notice that on June 18, 1985, at 10:00 a.m., an informal, technical conference will be convened in the above-captioned matter to discuss various aspects of the proposals submitted by Mid Louisiana Gas Company. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested parties and the Commission staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion To Intervene or Notice of Intervention in accordance with the Rule 214 of the

Commission's Rules of Practice and Procedure. (18 CFR 385.214).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14044 Filed 6-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-132-003]

North Penn Gas Company; Proposed Changes in FERC Gas Tariff

June 6, 1985.

Take notice that on May 31, 1985, North Penn Gas Company (North Penn) filed a proposed change to the base tariff rates, FERC Gas Tariff, First Revised Volume No. 1, to become effective July 1, 1985.

The proposed rate change would decrease North Penn's base tariff rates $.00830.

North Penn states that the decrease in base tariff rates reflects, in accordance with the settlement agreement in Docket No. RP82-132 and the Commission's Order of September 20, 1983, approving such settlement, termination as of June 30, 1985, of allowances for amortization and return on the average unamortized balance of a storage gas loss included in the settlement cost of service.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective July 1, 1985, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14045 Filed 6-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-37-002 et al.]

Oasis Pipe Line Co. et al.; Extension Reports

June 7, 1985.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before June 27, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 Subpart	Effective date	Expiration date [1]
ST79-37-002	Oasis Pipeline Line Co., P.O Box 1188, Houston, TX 77001	El Paso Natural Gas Co.	05-09-85	C	08-14-85	
ST79-39-002	Houston Pipe Line Co., P.O Box 1188, Houston, TX 77001	El Paso Natural Gas Co.	05-09-85	C	08-14-85	
ST81-381-002	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71309	Southern Natural Gas Co.	05-06-85	C	08-24-85	
ST81-446-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Florida Gas Transmission Co.	05-09-85	C	08-18-85	
ST83-383-001	Western Gas Supply Co., 1050 17th St., Denver, CO 80265	Northwest Pipeline Corp.	05-02-85	G(HT)	05-12-85	07-31-85
ST83-491-001 [2]	United Gas Pipe Line Co., P.O Box 1478, Houston, TX 77001	Natural Gas Pipeline Co of America	05-15-85	G	05-24-85	08-13-85
ST83-574-001	Natural Gas Pipeline Co., of America, P.O. Box 1208, Lombard, IL 60148.	Bridgeline Gas Distribution Co.	05-03-85	B	06-02-85	
ST83-630-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Gulfside Gas Corp	05-13-85	■	08-15-85	
ST83-641-001 [3]	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001	Kansas Power and Light Co	05-03-85	■	07-06-85	08-01-85
ST83-645-001	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	United Gas Pipe Line Co.	05-01-85	C	08-01-85	
ST83-646-001	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co.	05-01-85	C	08-04-85	
ST83-651-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Natural Gas Pipeline Co. of America	05-09-85	G	08-08-85	
ST83-660-001	Acadian Gas Pipeline System, 1200 Milam, Houston, TX 77002	Florida Gas Transmission Co.	05-13-85	C	08-26-85	
ST83-663-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Monterey Pipeline Co.	05-13-85	B	08-29-85	
ST83-664-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Cajun Natural Gas Co.	05-13-85	■	08-29-85	
ST83-668-001 [2]	Red River Pipeline, 1700 Pacific Ave., Dallas, TX 75201	El Paso Natural Gas Co.	05-08-85	C	08-04-85	08-06-85
ST83-677-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Delhi Gas Pipeline Corp	05-09-85	■	08-17-85	
ST83-692-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	West Texas Gas, Inc.	05-09-85	B	08-19-85	
ST84-1052-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Cincinnati Gas & Electric Co.	05-02-85	■	08-01-85	
ST85-25-001 [4]	Columbia Gas Transmission Corp., P.O Box 1273, Charleston, WV 25325	Columbia Gas of Kentucky, Inc.	05-08-85	B	08-01-85	08-06-85

Docket No	Transporter/seller	Recipient	Date filed	Part 284 Subpart	Effective date	Expiration date [1]
ST85-91-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Union Light Heat & Power Co.	05-02-85	E	08-01-85	
ST85-133-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Columbia Gas of Virginia, Inc.	05-02-85	B	08-01-85	
ST85-135-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Columbia Gas of Ohio, Inc.	05-02-85	B	08-01-85	
ST85-136-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Columbia Gas of New York, Inc.	05-02-85	B	08-01-85	
ST85-137-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Columbia Gas of Maryland, Inc.	05-02-85	B	08-01-85	
ST85-139-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Maryland, Inc.	05-02-85	B	08-01-85	
ST85-143-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Columbia Gas of Virginia, Inc.	05-02-85	[2]	08-01-85	
ST85-145-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Columbia Gas of Ohio, Inc.	05-02-85	[2]	08-01-85	
ST85-146-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Columbia Gas of New York, Inc.	05-02-85	[2]	08-01-85	
ST85-314-001	Columbia Gas Transmission Corp., P.O. Box 683, Houston, TX 77001	Columbia Gas of Pennsylvania, Inc.	05-02-85	B	08-01-85	
ST85-318-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Columbia Gas of Pennsylvania, Inc.	05-02-85	[2]	08-01-85	
ST85-729-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Mountaineer Gas Co.	05-02-85	B	08-01-85	
ST85-731-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Baltimore Gas & Electric Co.	05-02-85	B	08-01-85	
ST85-732-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Mountaineer Gas Co.	05-02-85	B	08-01-85	
ST85-733-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325	Baltimore Gas & Electric Co.	05-02-85	B	08-01-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order
NOTE.—The noticing of these filings does not constitute a Determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-14046 Filed 6-10-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. SA85-36-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Petition for Adjustment

June 7, 1985.

Take notice that on May 22, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed a petition in Docket No. SA85-36-000 for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978, wherein Petitioner seeks an exemption from the filing requirements of the essential agriculture use regulations as promulgated by Order No. 29 of the Commission, as amended, (Docket No. RM79-15, issued May 2, 1979), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that the exemption is sought because the annual collection and review of essential agricultural use data and the annual update required by § 281.204(b)(2) of the Commission's Regulations involves a substantial amount of time and expense for the parties involved. Petitioner also states that it would be able to meet the full requirements of its customers in the near term as indicated in Petitioner's FERC Form No. 16 filed on May 15, 1985, and its FERC Form No. 15 for the year ended December 31, 1984. Therefore, Petitioner alleges that compliance with the filing requirements of § 281.204(b)(2) of the Commission's Regulations is currently unnecessary and would result in a special hardship and an unfair distribution of burdens to the Petitioner's customers, as well as to the Petitioner. It is indicated that the Petitioner would make the appropriate tariff filings to comply with the Commission's Regulations implementing Section 401 of the Natural Gas Policy Act of 1978, if Petitioner determines, at a future date, that it would not be able to meet its full customer requirements or should its FERC No. 16 projections indicate a supply deficiency.

The procedures applicable to the conduct of this adjustment are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in the adjustment proceding shall file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication in the **Federal Register**.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-14047 Filed 6-10-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-157-000]

United Gas Pipe Line Company; Filing

June 6, 1985.

Take notice that on May 31, 1985, United Gas Pipe Line Company (United) tendered for filing the following proposed tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Thirteenth Revised Sheet No. 5
Fourteenth Revised Sheet No. 10
Twenty-Third Revised Sheet No. 21

The proposed tariff sheets clarify the applicability of United's existing Rate Schedules DG, G and PL where a customer's service agreement has terminated but authorization to abandon service has not been granted.

United requests any waivers necessary so that the proposed tariff sheets may become effective on June 1, 1985. United states that copies of this filing were mailed to all its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-14048 Filed 6-10-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-156-000]

Valero Interstate Transmission Co.; Filing

June 6, 1985.

Take notice that on May 31, 1985, Valero Interstate Transmission Company ("Vitco") tendered pursuant to § 154.38(d)(4)(vi)(a) the following tariff sheets for filing to establish new Base Tariff Rates under Vitco's FERC Gas Tariff:

2nd Revised Sheet No. 6, Superseding 1st Revised Sheet No. 6, to FERC Gas Tariff, Original Volume No. 2,
8th Revised Sheet No. 14, Superseding 7th Revised Sheet No. 14 to FERC Gas Tariff, Original Volume No. 1.

Vitco states that the rates set out on the 2nd Revised Sheet No. 6 and the 8th Revised Sheet No. 14 reflect new Base Tariff Rates based on the supporting documents therewith. Vitco proposes to establish a new purchased gas cost component of its Base Tariff Rates equivalent to the sum of its existing current and cumulative adjustment amounts. However, for reasons more fully explained in its filing, Vitco does not propose to change the gathering and transmission cost component of its present Base Tariff Rates at this time, and Vitco requests a waiver of any requirement under § 154.38(d)(4)(vi)(a) to do so.

The proposed effective date of the above filings is July 1, 1985. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by July 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14049 Filed 6-10-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53072; TSH-FRL 2849-4]

Premanufacture Notices; Monthly Status Report for March 1985

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for March 1985.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53072]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previously and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March and (e) PMNs for which the review period has been suspended. Therefore, the March 1985 PMN Status Report is being published.

Dated: May 31, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, March 1985

I. 117 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P85-613	Generic name: Dialkylamine substituted aryl-n-arylnitrone	50 FR 10536(10537) (3-15-85)	May 29, 1985
P85-614	Generic name: Dialkylamine substituted aryl-n-arylnitrone	50 FR 10536(10537) (3-15-85)	Do
P85-615	Generic name: Nitrobenzoic acid ester	50 FR 10536(10537) (3-15-85)	Do
P85-616	Generic name: Brominated propanoic acid derivative	50 FR 10536(10537) (3-15-85)	Do
P85-617	Generic name: Substituted-phenylazo-substituted-naphthalenedisulfonic acid, sodium salt	50 FR 10536(10537) (3-15-85)	Do
P85-618	Generic name: Substituted-phenylazo-substituted-naphthalenesulfonic acid, sodium salt	50 FR 10536(10537) (3-15-85)	Do
P85-621	Generic name: A cyclopenten substituted alcohol	50 FR 10536(10537) (3-15-85)	June 1, 1985.
P85-622	Generic name: Poly[alkyl sulfonic acid, ammonium salt]	50 FR 10536(10538) (3-15-85)	Do.
P85-623	Generic name: Substituted benzene sulfonic acid,-[chloro-[(substituted phenyl)amino]-triazinyl amino]-[[amino carbonyl-ethyl-hydroxy-methyl-oxo-pyndinyl]hydroxy- methyl-oxo-pyridine]azo]-, alkali metal salt.	50 FR 10536(10538) (3-15-85)	Do
P85-624	Generic name: Amino-hyroxy-naphthalene disulfonic acid,-[(dichloro-triazinyl)amino] substituted phenyl azo]-[(substituted phenyl)azo]-, alkali metal salt.	50 FR 10536(10538) (3-15-85)	Do.
P85-625	Generic name: Copper phthalocyanine, [[(chloro-substituted-triazinyl) amino] substituted sulfonyl sulfo derivatives alkali metal salt.	50 FR 10536(10538) (3-15-85)	Do
P85-626	3-Acetyl-7-(diethylamino)-2H-1-benzopyran-2-one	50 FR 10536(10538) (3-15-85)	Do
P85-627	Generic name: Alkenyloxysilane	50 FR 10536(10538) (3-15-85)	June 2, 1985
P85-628	Generic name: Synthetic oil	50 FR 10536(10538) (3-15-85)	Do
P85-629	Potassium, 1-n-octyl sulfonate	50 FR 10536(10538) (3-15-85)	Do
P85-630	Ammonium, 1-n-tetradecyl sulfonate	50 FR 10536(10538) (3-15-85)	Do
P85-631	Sodium, 1-n-tetradecyl sulfonate	50 FR 10536(10538) (3-15-85)	Do
P85-632	Ammonium, 1-n-hexadecyl sulfonate	50 FR 10536(10538) (3-15-85)	Do
P85-633	Generic name: Aminoalkanoic acid	50 FR 10536(10538) (3-15-85)	Do
P85-634	Generic name: Butyltin alkyl thio-glycolate	50 FR 10536(10538) (3-15-85)	Do

I. 117 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P85-635	Polymer of Methylmethacrylate, butyl acrylate; dimethylaminoethyl methacrylate, and methacrylic acid	50 FR 10536(10539) (3-15-85)	Do
[illegible]	Generic name Substituted epoxy resin	50 FR 10536(10539) (3-15-85)	Do
P85-637	Generic name Phosphonomethylated amine	50 FR 10536(10539) (3-15-85)	June 3, 1985
P85-638	Generic name Substituted polyglycol	50 FR 10536(10539) (3-15-85)	Do
[illegible]	Generic name Substituted polyglycol	50 FR 10536(10539) (3-15-85)	Do.
P85-640	Generic name Substituted propenamide	50 FR 10536(10539) (3-15-85)	Do
P85-641	Generic name Substituted amino carbox-amide	50 FR 10536(10539) (3-15-85)	June 4, 1985
P85-642	2-Nonynoic acid, 2 methylpropyl ester	50 FR 10536(10539) (3-15-85)	Do
P85-643	Generic name Substituted pyridine	50 FR 10536(10539) (3-15-85)	Do
P85-644	Generic name Substituted alkanoic triester	50 FR 10536(10539) (3-15-85)	Do
P85-645	Generic name A titanium complex compound	50 FR 10536(10539) (3-15-85)	Do.
P85-646	Generic name A titanium complex compound	50 FR 10536(10539) (3-15-85)	Do
P85-647	Generic name Tnsubstituted naphthalene-carboxamide	50 FR 11557(11558) (3-22-85)	June 5, 1985
P85-648	Generic name Isopropylidene-bis-(1,1-dimethylpropyl) derivative	50 FR 11557(11558) (3-22-85)	Do
P85-649	Generic name Sulfurized alkyl phenol	50 FR 11557(11558) (3-22-85)	Do.
P85-650	Generic name Mixed amine/alkane spiropolycarboxylate octaesters	50 FR 11557(11558) (3-22-85)	Do
P85-651	Generic name Mixed amine/alkane spiropolycarboxylate octaesters	50 FR 11557(11558) (3-22-85)	Do
P85-652	Generic name Reacted epoxy resin	50 FR 11557(11558) (3-22-85)	June 8, 1985
P85-653	Generic name Organomagnesium compound	50 FR 11557(11558) (3-22-85)	Do.
P85-654	Generic name Halogenated organo-metal complex	50 FR 11557(11558) (3-22-85)	June 9, 1985
P85-655	Generic name Quaternary ammonium humate	50 FR 11557(11558) (3-22-85)	Do
P85-656	Generic name Cyanophenyl, alkyl cyclohexane carboxylic acid	50 FR 11557(11558) (3-22-85)	Do.
P85-657	Generic name Cyano alkylterphenyl	50 FR 11557(11558) (3-22-85)	Do.
[illegible]	Generic name Cyanophenyl alkylbenzoic acid	50 FR 11557(11558) (3-22-85)	Do.
P85-659	Generic name Cyanonaphthyl alkyl cyclohexane carboxylic acid	50 FR 11557(11558) (3-22-85)	Do.
P85-660	Generic name Fatty acids, esters with alkanolamine, alkoxylated	50 FR 11557(11559) (3-22-85)	June 10, 1985.
P85-661	Generic name Alkylthiophenol	50 FR 11557(11559) (3-22-85)	Do
P85-662	Generic name Organometallic polymer	50 FR 12623 (3-29-85)	June 12, 1985
P85-663	Generic name Pyrrolopyrrol	50 FR 12623 (3-29-85)	Do.
[illegible]	Generic name Reaction product of metallic alkyl and polysiloxanes	50 FR 12623 (3-29-85)	Do.
[illegible]	Generic name Reaction product of metallic alkyls, polysiloxanes and titanates	50 FR 12623 (3-29-85)	Do.
P85-666	Generic name Polyester polyurethane	50 FR 12623 (3-29-85)	June 15, 1985
P85-667	Generic name Aliphatic unsaturated aldehyde	50 FR 12623 (3-29-85)	Do.
[illegible]	Mixture of acetic acid, 2,2',2''-(dodecylstannylidyne)tris(thio)-tris-trisooctyl ester and acetic acid, 2,2'-(dodecylstannylidyne)bis(thio)-bis-,diisooctyl ester	50 FR 12623 (3-29-85)	Do
P85-669	Generic name. Silylated amino carboxylate	50 FR 12623 (3-29-85)	Do
P85-670	Generic name: Tall oil rosin propylene oxide reaction	50 FR 12623(12624) (3-29-85)	June 30, 1985
P85-671	Generic name Reacted modified cyclo-aliphatic diamine	50 FR 12623(12624) (3-29-85)	June 4, 1985
P85-672	Generic name Thionocarbamate derivative	50 FR 12623(12624) (3-29-85)	June 15, 1985.
P85-673	Generic name Silylated amino carboxylate	50 FR 12623(12624) (3-29-85)	Do
P85-674	Generic name: Aliphatic polyester	50 FR 12623(12624) (3-29-85)	June 16, 1985
P85-675	Generic name: Aliphatic/aromatic polyester	50 FR 12623(12624) (3-29-85)	Do.
P85-676	Generic name Functional polyester	50 FR 12623(12624) (3-29-85)	Do.
P85-677	Generic name: Functional polyether	50 FR 12623(12624) (3-29-85)	Do.
P85-678	Generic name Benzenesulfoanilide	50 FR 12623(12624) (3-29-85)	Do.
P85-679	Generic name: Polyurethane	50 FR 12623(12624) (3-29-85)	Do.
[illegible]	Generic name: 1,1-dimethylpropyl peroxyester	50 FR 12623(12624) (3-29-85)	Do.
P85-681	1,2,7,8-diepoxyoctane	50 FR 12623(12624) (3-29-85)	Do
P85-682	Generic name: Vinyl reactive plasticizer	50 FR 12623(12624) (3-29-85)	Do
P85-683	Methacryloxy ethylacrylphthalate	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Generic name: Aliphatic polyester	50 FR 12623(12625) (3-29-85)	Do
P85-685	Triethanolamine, compounded with boron fluoride (1:1)	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Generic name: Acrylate copolymer	50 FR 12623(12625) (3-29-85)	Do.
P85-687	Generic name: Acrylate copoymer	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Generic name: Acrylate complymer	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Generic name: Acrylate copolymer	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Potassium antimony tris-(ethanediol)	50 FR 12623(12625) (3-29-85)	June 17, 1985
P85-691	Generic name, Metal salt of substituted (dialkyl) bis (alkyl succinate ester)	50 FR 12623(12625) (3-29-85)	Do
P85-692	7-(diethylamino)-3-(1-oxo-3-phenyl-2-propenyl)-2H-1-benzopyran-2-one	50 FR 12623(12625) (3-29-85)	June 18, 1985.
P85-693	Generic name: Acrylated urethane resin	50 FR 12623(12625) (3-29-85)	Do
[illegible]	Generic name; 2-propenoic acid copolymer	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Generic name. Acrylate copolymer	50 FR 12623(12625) (3-29-85)	Do.
[illegible]	Generic Name: Acrylate copolymer	50 FR 12623(12626) (3-29-85)	Do
P85-697	Generic name: Acrylate copolymer	50 FR 12623(12626) (3-29-85)	Do
[illegible]	Generic name Acrylate copolymer	50 FR 12623(12626) (3-29-85)	Do.
[illegible]	Generic name Polymer of styrene with acrylate and methacrylates	50 FR 13652 (4-5-85)	June 19, 1985
P85-700	Generic name Mixed acrylate/methacrylate polymer	50 FR 13652 (4-5-85)	Do.
P85-701	Generic name: Polyester derivative	50 FR 13652 (4-5-85)	Do
P85-702	Generic name: Acrylic terpolymer resin	50 FR 13652 (4-5-85)	Do.
P85-703	Polymer of hydroxy ethyl acrylate; isophorone diisocyanate; and melpol 125	50 FR 13652 (4-5-85)	Do.
P85-704	Generic name Modified trisphenol novolac	50 FR 13652 (4-5-85)	Do.
P85-705	Generic name. Substituted polyglycol	50 FR 13652 (4-5-85)	Do.
P85-706	Generic name: Substituted pyridine	50 FR 13652 (4-5-85)	Do.
P85-707	Generic name. Saturated polyester	50 FR 13652 (4-5-85)	Do.
[illegible]	Generic name: Saturated polyester, silicone modified	50 FR 13652 (4-5-85)	Do.
P85-709	Generic name Styrene-acrylic modified oil	50 FR 13652(13653) (4-5-85)	Do.
P85-710	Generic name Poly acrylate/methacrylate ester	50 FR 13652(13653) (4-5-85)	Do.
P85-711	Generic name: Metal alkoxide	50 FR 13652(13653) (4-5-85)	June 22, 1985.
P85-712	Generic name: Acrylic polymer substituted amine reaction product	50 FR 13652(13653) (4-5-85)	June 23, 1985
P85-713	Generic name. Styrene, acrylic copolymer	50 FR 13652(13653) (4-5-85)	Do
P85-714	Generic name: Distributed urea	50 FR 13652(13653) (4-5-85)	Do.
P85-717	Generic name Polycarbodiimide	50 FR 13652(13653) (4-5-85)	Do.
P85-716	Generic name Poly(ethylene-butyl acrylate-maleic anhydride)	50 FR 13652(13653) (4-5-85)	Do.
85-717	Polyglycidyl ether of polyglycerol	50 FR 13652(13653) (4-5-85)	June 24, 1985
P85-718	Generic name: Polyol polyacrylate	50 FR 13652(13653) (4-5-85)	Do.
P85-719	Generic name: Polymer of styrene and methacrylates	50 FR 13652(13653) (4-5-85)	Do.
P85-720	Generic name: Polyacrylate	50 FR 13652(13653) (4-5-85)	June 25, 1985
P85-721	Generic name: Melamine, hydroxypropyl-melamine polymer with formaldehyde	50 FR 13652(13653) (4-5-85)	Do.
P85-722	C_{16} and C_{18} unsaturated alkyl nitriles	50 FR 13652(13653) (4-5-85)	Do.
P85-723	Distillation residue from $C_{16}-C_{18}$ unsaturated alkyl nitriles	50 FR 13652(13654) (4-5-85)	Do.
P85-724	Generic name Ethoxylated thiol ether	50 FR 13652(13654) (4-5-85)	June 26, 1985.

I. 117 Premanufacture Notices Received During the Month—Continued

PMN No	Identity/generic name	FR citation	Expiration date
Y85-28	Generic name: Rosin modified alkyd resin	50 FR 10539(10540) (3-15-85)	June 25, 1985
Y85-29	Generic name: Modified rosin ester	50 FR 11559 (3-22-85)	Mar. 28, 1985
Y85-30	Generic name: Acrylic polymer	50 FR 11559 (3-22-85)	Mar. 30, 1985
Y85-31	Generic name: Styrene acrylate t-thiol polymer	50 FR 11559 (3-22-85)	Apr. 1, 1985
Y85-32	Generic name: Terpolyamide	50 FR 11559 (3-22-85)	Do
Y85-33	Generic name: Copolyamide (polymer)	50 FR 11559 (3-22-85)	Do
Y85-34	Generic name: Calcium salt of -2-acrylamide-2-methyl-propanesulfonic acid copolymer	50 FR 12626 (3-29-85)	Apr. 4, 1985
Y85-35	Generic name: Aliphatic polyester	50 FR 12626 (3-29-85)	Do

II. 166 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity/generic name	FR citation	Expiration date
P85-457	Generic name: Reaction product of poly-tetramethylene glycol, methylene bis phenylisocyanate) and alcohols.	50 FR 6383 (6384) (2-15-85)	May 1, 1985
P85-458	Generic name: Alkyl ester of a trialkoxy-silane	50 FR 6383 (6384) (2-15-85)	May 4, 1985
P85-460	Generic name: Substituted succinic anhydride, reaction product with hetero-cyclic amine	50 FR 6383 (6384) (2-15-85)	Do
P85-461	Generic name: Hydroxy terminated polyester diol reaction with benzophenone tetracarboxylic dianhydride, terminated with hydroxyethyl methacrylate.	50 FR 6383 (6384) (2-15-85)	Do
P85-462	Generic name: Acrylic polymer	50 FR 6383 (6384) (2-15-85)	May 5, 1985
P85-463	Generic name: Silane	50 FR 6383 (6384) (2-15-85)	Do
P85-464	Generic name: Substituted phenyl azo substituted heteromonocycle	50 FR 6383 (6384) (2-15-85)	Do
P85-465	Generic name: Mercaptan terminted polyether polymer	50 FR 6383 (6384) (2-15-85)	Do
P85-466	N-butyl cyanoacetate	50 FR 6383 (6384) (2-15-85)	Do
P85-467	Generic name: Functional vinyl copolymer	50 FR 6383 (6384) (2-15-85)	May 6, 1985
P85-468	Generic name: Polycyclic sulfonic acid salt	50 FR 6383 (6384) (2-15-85)	May 7, 1985
P85-469	Generic name: Phosphate(mono-/di) methacrylate monomer	50 FR 6383 (6385) (2-15-85)	Do.
P85-470	Generic name: Substituted alkyl butylester	50 FR 6383 (6385) (2-15-85)	Do
P85-471	Generic name: Carbomonocylic butyl ester	50 FR 6383 (6385) (2-15-85)	Do
P85-472	Generic name: Aromatic polycarbodiimide	50 FR 6383 (6385) (2-15-85)	Do
P85-473	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do
P85-474	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do
P85-475	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do
P85-476	Generic name: Substituted cyclohexene carboxylic acid	50 FR 7640 (2-25-85)	May 8, 1985
P85-477	Generic name: Substituted cyclohexene carboxylic acid	50 FR 7640 (2-25-85)	Do
P85-478	Found to be on the inventory		Do
P85-479	2,5-furandimethanol	50 FR 7640 (2-25-85)	Do
P85-480	Generic name: Cellulose ester	50 FR 7640 (7641) (2-25-85)	Do
P85-481	Generic name: Polyamic acid polymer A	50 FR 7640 (7641) (2-25-85)	Do
P85-482	Generic name: Polyamic acid polymer B	50 FR 7640 (7641) (2-25-85)	Do
P85-483	Generic name: Polyamic acid polymer C	50 FR 7640 (7641) (2-25-85)	Do
P85-484	Generic name: Polyamic acid polymer D	50 FR 7640 (7641) (2-25-85)	Do
P85-485	Found to be on the inventory		Do
P85-486	Found to be on the inventory		May 11, 1985
P85-487	Generic name: Alkylalcohol ethoxylate, phosphate ester, sodium salt	50 FR 7640 (7641) (2-25-85)	Do
P85-488	Generic name: Vinyl acetate copolymer	50 FR 7640 (7641) (2-25-85)	Do
P85-489	Generic name: Polyvinyl alcohol	50 FR 7640 (7641) (2-25-85)	Do
P85-490	Generic name: Substituted benzene-sulfonamide	50 FR 7640 (7641) (2-25-85)	Do
P85-491	Generic name: Carbonic acid, polymer with 4,1'-(1-methylethylidene)bis(phenol) and hydroxy arene.	50 FR 7640 (7641) (2-25-85)	Do
P85-492	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylinene)bis(phenol) and 4-alkyl phenol.	50 FR 7640 (7641) (2-25-85)	Do
P85-493	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-aralkyl phenol.	50 FR 7640 (7642) (2-25-85)	Do
P85-494	Generic name: Carbonic acid, polymer with 4,4'-(1-lethylethylidene)bis(phenol) and 4-arcycloalkyl phenol.	50 FR 7640 (7642) (2-25-85)	May 12, 1985
P85-495	Ethanone, 1-(3-fluorophenyl)-		May 13, 1985
P85-496	Invalid submission	50 FR 7640 (7642) (2-25-85)	Do
P85-497	2-hydroxy-3-epsilon lysino propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640 (7642) (2-25-85)	Do
P85-498	2-hydroxy-3-epsilon lysino propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640 (7642) (2-25-85)	Do
P85-499	Generic name: Polyether polyurethane derivative	50 FR 7640 (7642) (2-25-85)	Do
P85-500	Generic name: Modified styrene copolymer	50 FR 7640 (7642) (2-25-85)	Do
P85-501	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do
P85-502	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do
P85-503	Generic name: Substituted imidic acid, methyl ester, hydrochloride	50 FR 7640 (7642) (2-25-85)	May 14, 1985
P85-504	Generic name: Substituted diisocyanate polymer	50 FR 7640 (7642) (2-25-85)	Do.
P85-505	Generic name: Propoxylated quaternary ammonium compound	50 FR 7640 (7642) (2-25-85)	Do
P85-506	Generic name: Inorganic complex of rosin	50 FR 7640 (7642) (2-25-85)	Do
P85-507	Generic name: Substituted quinoline	50 FR 7640 (7642) (2-25-85)	Do
P85-508	Generic name: Substituted benzopyran	50 FR 7640 (7643) (2-25-85)	Do
P85-509	Generic name: Substututed-substituted-substituted-anthraquinone	50 FR 7640 (7643) (2-25-85)	Do
P85-510	Poly(oxy-1,2-ethanediyl), alpha-higher alkyl C>30, omega-hydroxy	50 FR 7640 (7643) (2-25-85)	May 12, 1985
P85-511	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-512	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-513	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-514	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-515	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-516	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols	50 FR 7640 (7643) (2-25-85)	Do
P85-517	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols	50 FR 7640 (7643) (2-25-85)	Do
P85-518	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols	50 FR 7640 (7643) (2-25-85)	Do
P85-519	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do

II. 166 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P85-520	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-521	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P85-522	Generic name: Polymer of functional acrylates and methacrylates.	50 FR 8390 (8391) (3-1-85)	May 15, 1985
P85-523	Generic name: Functionally modified urethane	50 FR 8390 (8391) (3-1-85)	Do.
P85-524	Polymer of hydroxy ethyl acrylate, Desmodur W, Duracarb 122, and Jeffamine D230	50 FR 8390 (8391) (3-1-85)	Do.
P85-525	Generic name: Modified acrylic terpolymer	50 FR 8390 (8391) (3-1-85)	May 19, 1985
P85-526	Generic name: terpolymer Modified acrylate	50 FR 8390 (8391) (3-1-85)	Do
P85-527	Generic name: Vinyl-epoxy ester	50 FR 8390 (8391) (3-1-85)	May 20, 1985.
P85-528	Generic name: Anthranilate schiff base	50 FR 8390 (8391) (3-1-85)	Do
P85-529	Generic name: Trisubstituted naphthalenecarboxamide	50 FR 8390 (8391) (3-1-85)	Do
P85-530	Generic name: Trisubstituted naphthalenecarboxamide	50 FR 8390 (8391) (3-1-85)	Do.
P85-531	Prepolymer of ethanol, 1,1'-thiobis, ethanol-2-mercapto, reaction product with propylene oxide, and benzene, isocyanato	50 FR 8390 (8392) (3-1-85)	Do
P85-532	Generic name: Modified epoxy resin	50 FR 8390 (8392) (3-1-85)	Do
P85-533	Generic name: Aminated epoxy resin	50 FR 8390 (8392) (3-1-85)	Do
P85-534	Generic name: Alkyl sulfonate	50 FR 8390 (8392) (3-1-85)	Do
P85-535	Generic name: Substituted pyridine	50 FR 8390 (8391) (3-1-85)	Do.
P85-536	Invalid submission		
P85-537	1-(1-phenylethylidene) 2,2 diphenyl hydrazine	50 FR 8390 (8392) (3-1-85)	Do
P85-538	2,3,3-trimethyl-5-nitro-3H indole	50 FR 8390 (8392) (3-1-85)	Do
P85-539	Generic name: Indolo-oxazolidinone merocyanine	50 FR 8390 (8392) (3-1-85)	Do
P85-540	1,2,3,3-tetramethyl-5-nitro-3H indolium 4-methylbenzene sulfonate	50 FR 8390 (8392) (3-1-85)	Do
P85-541	Generic name: Indolo-pyrrolopyridine carbocyanine	50 FR 8390 (8392) (3-1-85)	Do
P85-542	Generic name: Polymethacrylate cationic polymer	50 FR 8390 (8392) (3-1-85)	Do.
P85-543	2-butenedioic acid (Z)-, mono[2-[(1-oxo-2-propenyl)oxy]ethyl]-ester	50 FR 8390 (8392) (3-1-85)	Do.
P85-544	2-propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxa-5,12-diaza hexadecane-1,16-diylester	50 FR 10536(10537) (3-15-85)	Do
P85-545	2-propenoic acid-3-(dimethylamino)-2,2-dimethyl-propyl ester	50 FR 10536(10537) (3-15-85)	Do
P85-546	2-propenoic acid, 2-methyl-3,3,5-trimethyl-cyclohexylester	50 FR 8390 (8393) (3-1-85)	Do
P85-547	2-propenoic acid, 3,3,5-trimethylcyclo-hexylester	50 FR 8390 (8393) (3-1-85)	Do
P85-548	Generic name: Oligoaminoester	50 FR 6383 (8393) (3-1-85)	Do
P85-549	Generic name: Poly(methacrylate)	50 FR 6383 (8393) (3-1-85)	Do
P85-550	Generic name: Poly(methacrylate)	50 FR 8390 (8393) (3-1-85)	Do
P85-551	3-carbomethoxypropionyl chloride	50 FR 8390 (8393) (3-1-85)	May 21, 1985
P85-552	Generic name: Tetraalkoxyethane/methacrylate polymer	50 FR 8390 (8393) (3-1-85)	Do.
P85-553	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do.
P85-554	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do
P85-555	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do.
P85-556	1,3,5-triazine, 2,4,6-triamine, N,N',N''-tris(4-aminophenyl)-	50 FR 8390 (8393) (3-1-85)	Do
P85-557	Generic name: Methine dye	50 FR 8390 (8393) (3-1-85)	Do
P85-558	Generic name: Waterborne urethane-acrylic polymer	50 FR 9504 (3-8-85)	May 22, 1985
P85-559	Generic name: Alkyl carbaryl acetate	50 FR 9504 (3-8-85)	Do.
P85-560	Generic name: Substituted olefinic ketone	50 FR 9504 (9505) (3-8-85)	Do.
P85-561	Generic name: Substituted olefinic alcohol	50 FR 9504 (9505) (3-8-85)	Do
P85-562	Generic name: Trimethylolpropane triacrylate octylamino adduct	50 FR 9504 (9505) (3-8-85)	Do.
P85-563	Generic name: Polyester polymer composed of fumarated rosin, glycerine, diethylene glycol and a polyhydroxyl prepolymer	50 FR 9504 (9505) (3-8-85)	Do
P85-564	Polymer of hydroxyethyl acrylate, 4,4'-diphenylmethane diisocyanate; and polymethylene polyphenyl isocyanate	50 FR 9504 (9505) (3-8-85)	Do
P85-565	Generic name: Organo sulfonic acid, zinc salt	50 FR 9504 (9505) (3-8-85)	Do
P85-566	Generic name: Alcohol ether sulfate, amine salt	50 FR 9504 (9505) (3-8-85)	Do.
P85-567	Generic name: Silyl ketone acetal	50 FR 9504 (9505) (3-8-85)	May 25, 1985
P85-568	Generic name: Difunctional ester	50 FR 9504 (9505) (3-8-85)	May 26, 1985.
P85-569	Generic name: Styrene/acrylate/methacrylate polymer	50 FR 9504 (9505) (3-8-85)	Do
P85-570	Generic name: Ester of olefinic acid	50 FR 9504 (9505) (3-8-85)	Do
P85-571	Generic name: Ester of olefinic acid	50 FR 9504 (9505) (3-8-85)	Do.
P85-572	Generic name: Quaternary ammonium montmorillonite	50 FR 9504 (9505) (3-8-85)	Do.
P85-573	Generic name: Quaternary ammonium hectorite	50 FR 9504 (9505) (3-8-85)	Do
P85-574	Generic name: Substituted benzocyazol-ethylidine	50 FR 9504 (9505) (3-8-85)	Do
P85-575	Generic name: Substituted bisbenzopnenone	50 FR 9504 (9506) (3-8-85)	Do
P85-576	Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2'-oxybis (ethanol), and Fascat 4100	50 FR 9504 (9506) (3-8-85)	Do
P85-577	Polymer of 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 2,2'-oxybis (ethanol), 2,2-dimethyl-1,3-propanediol and 2,2,4-trimethyl-1,3-pentanediol.	50 FR 9504 (9506) (3-8-85)	Do
P85-578	Generic name: Substituted stilbene	50 FR 9504 (9506) (3-8-85)	Do
P85-579	Generic name: Sulfonated styrene-containing polymer	50 FR 9504 (9505) (3-8-85)	Do
P85-580	Generic name: Sulfonated styrene-containing polymer	50 FR 9504 (9506) (3-8-85)	Do
P85-581	Generic name: Chloride-containing styrene copolymer	50 FR 9504 (9506) (3-8-85)	Do
P85-582	Generic name: Styrene-containing ion exchange material	50 FR 9504 (9506) (3-8-85)	Do.
P85-583	Generic name: Chlorosulfonated polystyrene	50 FR 9504 (9506) (3-8-85)	Do
P85-584	Generic name: Polymer of acrylate-acrylonitrile, salt.	50 FR 9504 (9506) (3-8-85)	May 27, 1985
P85-585	Generic name: Alkyd resin	50 FR 9504 (9506) (3-8-85)	Do.
P85-586	Generic name: Functionally modified acrylic system	50 FR 9504 (9506) (3-8-85)	Do
P85-587	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9506) (3-8-85)	Do
P85-588	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do
P85-589	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine.	50 FR 9504 (9507) (3-8-85)	Do
P85-590	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine.	50 FR 9504 (9507) (3-8-85)	Do
P85-591	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine.	50 FR 9504 (9507) (3-8-85)	Do
P85-592	Generic name: Heterocyclic substituted butane	50 FR 9504 (9507) (3-8-85)	Do
P85-593	Generic name: Polyamine ion exchange resin	50 FR 9504 (9507) (3-8-85)	Do.
P85-594	Generic name: Polyamine ion exchange resin	50 FR 9504 (9507) (3-8-85)	Do
P85-595	Generic name: Emulsion tetrapolymer	50 FR 9504 (9507) (3-8-85)	Do
P85-596	Generic name: 1-substituted-3-alkyl-heteromonocyclic-4-hydroxybenzene	50 FR 9504 (9507) (3-8-85)	Do
P85-597	Generic name: 3-alkylheteromonocyclic-4-hydroxy-1-substitutedbenzene	50 FR 9504 (9507) (3-8-85)	Do
P85-598	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted))heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do
P85-599	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted))heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do
P85-600	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted))heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P85-601	Generic name: Disubstituted phenol	50 FR 9504 (9508) (3-8-85)	Do
P85-602	Generic name: 2,4-diheteromonocyclic phenol	50 FR 9504 (9508) (3-8-85)	Do.

II. 166 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P85-603	Generic name: (3-alkylheteromonocyclic-4-hydroxyphenylsubstituted)(3'-substituted-4'hydroxyphenylsubstituted) alkyl	50 FR 9504 (9508) (3-8-85)	Do.
P85-604	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted))heteropolycycle	50 FR 9504 (9508) (3-8-85)	[illegible]
P85-605	Generic name: Trisubstituted phenol	50 FR 9504 (9508) (3-8-85)	Do.
P85-606	Generic name: (3-alkylheteromonocyclic-4-hydroxyphenylsubstituted)(3'-substituted-4'hydroxyphenylsubstituted) alkyl.	50 FR 9504 (9508) (3-8-85)	Do.
P85-607	Generic name: 2-alkylheteromonocyclic-4-substituedphenol	50 FR 9504 (9508) (3-8-85)	Do.
P85-608	Generic name: Polymer of hydroxy ethyl acrylate, Desmodur W, Jeffamine D230, Teracol 650, and Dianol.	50 FR 9504 (9508) (3-8-85)	May 28, 1985
P85-609	Generic name: Functionally modified methacrylate polymer	50 FR 9504 (9508) (3-8-85)	Do
P85-610	Generic name: Aryl-alkyl dithioether	50 FR 9504 (9508) (3-8-85)	Do
P85-611	Generic name: Copper complex of substitute-disazo-naphthalene trisulfonic acid	50 FR 9504 (9508) (3-8-85)	[illegible]
P85-612	Generic name: Polymer of substituted aryl olefin	50 FR 9504 (9508) (3-8-85)	Do.
P85-6.0	Generic name: Functionally substituted acrylic/methacrylic/styrene polymer	50 FR 9504 (9509) (3-8-85)	[illegible]

III. 130 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.	Identity/generic name	FR citation	Expiration date
P84-780	Generic name: Aliphatic diacrylate	49 FR 23916 (23919) (6-8-84)	Mar. 24, 1985
P84-963	6-Nitro-2 (3H)-benzoxazolone	49 FR 30238 (30240) (7-27-84)	Mar. 13, 1985
P85-182	Generic name: Alkyl ester	49 FR 47106 (47111) (11-30-84)	Mar. 24, 1985
P85-232	Chromate (2-), [2-[[1-(3-chlorophenyl)-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-4-yl]azo]-5-sulfobenzoate-(2)] [2-[4,5-dihydro-5-oxo-1,3-diphenyl-IH-pyrazol-4-yl)azo]benzoato(2-)]-, sodium hydrogen (9Cl).	49 FR 47921 (47924) (12-7-84)	Mar. 23, 1985
P85-238	Generic name: Unsaturated polyester	49 FR 48801 (48802) (12-14-84)	Mar. 2, 1985
P85-239	Generic name: Substituted phenylazo tetrasubstituted naphthalenesulfonamide	49 FR 48801 (48802) (12-14-84)	Do
P85-240	Generic name: Substituted phenylazo disubstituted naphtohol	49 FR 48801 (48802) (12-14-84)	Do
P85-241	Generic name: Disubstituted benezene-sulfonic acid derivative	49 FR 48801 (48802) (12-14-84)	Do
P85-242	Generic name: Tetrasubstituted phenylazo-naphthalene	49 FR 48801 (48802) (12-14-84)	Do
P85-243	Generic name: Linear saturated polyester resin containing hydroxyl groups	49 FR 48801 (48802) (12-14-84)	Do.
P85-244	Generic name: Branched polyester resin containing hydroxyl groups	49 FR 48801 (48802) (12-14-84)	Do
P85-245	Generic name: Modified hydrocarbon resin	49 FR 48801 (48802) (12-14-84)	Mar. 3, 1985.
P85-246	Generic name: Tetra-substituted-biphenol	49 FR 48801 (48803) (12-14-84)	Mar. 18, 1985
P85-247	Generic name: Bis-imidazolium dibromide	49 FR 48801 (48803) (12-14-84)	Mar. 22, 1985
P85-248	Generic name: Quinone-imine dye	49 FR 48801 (48803) (12-14-84)	Mar. 3, 1985
P85-249	Generic name: Isobenzofuranone	49 FR 48801 (48803) (12-14-84)	Do
P85-250	Generic name: Polyoxymethylene copolymer	49 FR 48801 (48803) (12-14-84)	Do
P85-251	Generic name: Reaction product of polyalkylene oxide polyol, isocyanate and diol	49 FR 48801 (48803) (12-14-84)	Do
P85-252	Generic name: Polyurethane polymer	49 FR 48801 (48803) (12-14-84)	Mar. 4, 1985
P85-253	Generic name: Polyester resin	49 FR 48801 (48803) (12-14-84)	Do.
P85-254	Generic name: Amine salt of mono-, di-, and tri-substituted heterocyclic compound	49 FR 48801 (48803) (12-14-84)	Do.
P85-255	Generic name: Sulfonamide of mono-, di-, tri-, and tetra-substituted heterocyclic compound	49 FR 48801 (48803) (12-14-84)	[illegible]
P85-256	Generic name: Alcohol ether sulfate, ammonium salt	49 FR 48801 (48803) (12-14-84)	Mar. 5, 1985
P85-257	Generic name: Acrylic copolymer	49 FR 48801 (48803) (12-14-84)	Do
P85-258	Generic name: Substituted phenylazo substituted carbopolycycle-carboxylic acid, salt	49 FR 48801 (48803) (12-14-84)	Do
P85-259	Generic name: Substituted phenylazo substituted heteropolycycle	49 FR 48801 (48803) (12-14-84)	Do.
P85-260	Generic name: Substituted phenylazo substituted carbopolycycle	49 FR 48801 (48803) (12-14-84)	Mar. 26, 1985
P85-261	Generic name: Heteropolycycle azo substituted heteromonocycle	49 FR 48801 (48804) (12-14-84)	Mar. 5, 1985
P85-262	Generic name: Substituted terpene resin	49 FR 49895 (49896) (12-24-84)	Mar. 6, 1985
P85-263	Generic name: Substituted terpene resin	49 FR 49895 (49896) (12-24-84)	Do
P85-264	Generic name: Substituted terpene resin	49 FR 48895 (49896) (12-24-84)	Do
P85-265	Amines, tri (C_{11-14}-iso-C_6-rich)	49 FR 488895 (49896) (12-24-84)	Do
P85-266	Acryamide-methyl chloride quaternary of dimethylaminoethyl acrylate copolymer	49 FR 48895 (49896) (12-24-84)	Do
P85 267	Generic name: Unsaturated etherfied melamine formaldehyde resin	49 FR 48895 (49896) (12-24-84)	Mar. 9, 1985
P85-268	Generic name: Substituted furanone	49 FR 48895 (49896) (12-24-84)	Do
P85-269	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do
P85-270	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do
P85-271	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do
P85-272	Generic name: Substituted aliphatic-terminated poly(dimethylsiloxane)	49 FR 49895 (49896) (12-24-84)	Do
P85-273	Generic name: Polyester urethane acrylate blocked	49 FR 49895 (49896) (12-24-84)	Do.
P85-274	Generic name: Substituted phenylazo naphthalene sulfonic acid, salt	49 FR 49895 (49896) (12-24-84)	Do
P85-275	Generic name: Substituted naphthylazo naphthalene sulfonic acid	49 FR 49895 (49896) (12-24-84)	[illegible]
P85-276	Generic name: Substituted phenylazo substituted naphthalene sulfonic acid, salt	49 FR 49895 (49897) (12-24-84)	Do
P85-277	Generic name: Substituted phenylazo substituted naphthalene sulfonic acid, salt	49 FR 49895 (49897) (12-24-84)	Mar. 12, 1985
P85-278	Generic name: Functionalized polyacrylic acid derivative	49 FR 49895 (49897) (12-24-84)	Mar. 9, 1985
P85-279	Generic name: Vinyl modified terpene resin	49 FR 49895 (49897) (12-24-84)	Do.
P85-280	Generic name: Disubstituted naphthalene sulfonic acid derivative	49 FR 49895 (49897) (12-24-84)	Do
P85-281	Generic name: Disubstituted naphthalene sulfonic acid derivative sale	49 FR 49895(49897) (12-24-84)	Do
P85-282	Generic name: Substituted benzoic acid derivative	49 FR 49895(49897) (12-24-84)	Do
P85-283	Generic name: Disubstituted naphthol	49 FR 49895(49897) (12-24-84)	Do
P85-284	Generic name: Substituted phenylazo disubstituted naphthol	49 FR 49895(49897) (12-24-84)	Do
P85-285	Generic name: Polyhydroxy ether phosphate	49 FR 49895(49897) (12-24-84)	Do
P85-286	Generic name: Polyhydroxy ether phosphate	49 FR 49895(49897) (12-24-84)	Do
P85-287	Generic name: Alkali metal dicarboxylate	49 FR 49895(49897) (12-24-84)	Do
P85-288	Generic name: Alkyl oxirane reacted with polyalkylene glycol	49 FR 49895(49897) (12-24-84)	Do
P85-289	2,5 8,10-tetraoxatridec-12-enoic acid, 9 oxo-, 2 propenyl ester, polymer with vinyl acetate	49 FR 49895(49897) (12-24-84)	Do.
P85-290	2,5 8,10-tetraoxatridec-12-enoic acid, 9 oxo-, 2-propenyl ester homopolymer	49 FR 49895(49897) (12-24-84)	Do
P85-291	2,5,8,10-tetraoxatridec-12-enoic acid, 9-oxo-, 2-propenyl ester, polymer with methyl 2-methyl-2-propenyl ester polymer with methyl 2-methyl-2-propenoate.	49 FR 49895(49897) (12-24-84)	Do
P85-292	Generic name: Organofunctional polysiloxane	49 FR 49895(49898) (12-24-84)	Do
P85-293	Generic name: Chloroetherketone	49 FR 49895(49898) (12-24-84)	Do
P85-294	Generic name: Etherketone	49 FR 49895(49898) (12-24-84)	Do
P85-295	Generic name: Modified acrylic polymer	49 FR 49895(49898) (12-24-84)	Do
P85-296	Generic name: Silicone ester polyacrylate	49 FR 49895(49898) (12-24-84)	Do
P85-297	Generic name: Isophorone diisocyanate adduct of a polyether glycol, an alkanediol, and a substituted alkanol.	49 FR 49895(49898) (12-24-84)	Do
P85-298	Generic name: Amino acrylate monomer	49 FR 49895(49898) (12-24-84)	Do

III. 130 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)—Continued

PMN No.	Identity generic name	FR citation	Expiration date
P85-299	Generic name Polyester resin	49 FR 49895(49898) (12-24-84)	Do
P85-300	Generic name Bis arylmethylene aminobutene nickel complex	49 FR 49895(49898) (12-24-84)	Do
P85-302	Generic name Polyol acetal	49 FR 50444 (12-28-84)	Do
P85-303	Generic name Aliphatic polyester urethane	49 FR 50444 (12-28-84)	Do
P85-304	Generic name Alkyl diol, toluene disocyanate alkene ester, adipic acid resin	49 FR 50444 (12-28-84)	Do
P85-305	Generic name Substituted silyl epoxide	49 FR 50444 (12-28-84)	Do.
P85-306	Generic name Substituted silyl epoxide	49 FR 50444 (12-28-84)	Mar. 14, 1985
P85-307	Generic name Substituted alkyl silyl	49 FR 50444 (12-28-84)	Do
P85-308	Generic name Substituted alkyl silyl	49 FR 50444 (12-28-84)	Do
P85-309	Generic name Di-substituted phenol	49 FR 50444 (12-28-84)	Mar. 17, 1985
P85-310	Generic name Tri-substituted phenol	49 FR 50444 (12-28-84)	Do
P85-311	Generic name Polyurethane	49 FR 50444 (12-28-84)	Do
P85-312	Generic name Complex polyether-amine	49 FR 50444 (12-28-84)	Do
P85-313	Generic name Substituted alkanol adduct of a long chain disocyanate	49 FR 50444 (12-28-84)	Mar. 28, 1985
P85-314	Generic name Fatty acid amide	49 FR 50444 (1-4-85)	Mar. 17, 1985
P85-315	Generic name Substituted benzotrazole	49 FR 50444 (12-28-84)	Do
P85-316	Generic name Aryl alkenyl aryl nitrile	49 FR 50444 (12-28-84)	Do
P85-317	Phosphine oxide, diphenyl(2,4,6-trimethylbenzoyl)-	49 FR 50444 (12-28-84)	Do
P85-318	1-isopropylthio-beta-D-galactopyranoside	49 FR 50444 (12-28-84)	Do
P85-319	Pentaacetyl-beta-D-galactopyranoside	49 FR 50444 (50445) (12-28-84)	Do
P85-320	Generic name Polyamide	49 FR 50444 (50445) (12-28-84)	Do
P85-321	Generic name Substituted phenol formaldehyde resin	49 FR 50444 (50445) (12-28-84)	Mar. 20, 1985
P85-322	2-Propanamine, N-(1-methylethyl)-, lithium salt	49 FR 50444 (50445) (12-28-84)	Mar. 17, 1985
P85-323	Generic name Bis(substitutecalkyl) disulfide	49 FR 50444 (50445) (12-28-84)	Do
P85-324	Generic name Substituted heteromonocyclic phenol	49 FR 50444 (50446) (12-28-84)	Do
P85-325	Cobaltate(1-),[N-[8[[5-aminosulfonyl)-2-hydroxyphenol]azo]-7-hydroxy-1-naphthalenyl]acetamidato(2-)][3-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-1H-pyrazol-1-yl]benzene-sulfonamidato(2-)], sodium (9Cl)	49 FR 50444 (50446) (12-28-84)	Mar. 18, 1985
P85-326	Chromate(1-),[3-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-1H-pyrazol-1-yl]benzene-sulfonamidato(2)][4-hydroxy-3-[(2-hydroxy-1-naphthalenyl)azo]benzensulfonamidato(2-)] hydrogen (9Cl).	49 FR 50444 (50446) (12-28-84)	Do
P85-327	Generic name Isocyanate terminated polyether prepolymer	49 FR 50444 (50446) (12-28-84)	Do.
P85-328	Generic name Substituted paracyclophane	49 FR 50444 (50446) (12-28-84)	Do
P85-329	Generic name Silylated amino ester	49 FR 50444 (50446) (12-28-84)	Do
P85-330	Alkyl aryl ethoxylate sulfate, sodium salt	49 FR 50444 (50446) (12-28-84)	Mar. 17, 1985
P85-331	Generic name Acrylic polymer imine reaction product	49 FR 50444 (50446) (12-28-84)	Mar. 19, 1985
P85-332	Generic name: Acrylic copolymer	49 FR 50444 (50446) (12-28-84)	Do
P85-333	Generic name: Polyurethane acrylate	49 FR 50444 (50446) (12-28-84)	April 2, 1985
P85-334	Generic name: Aromatic dinitro compound	49 FR 50444 (50446) (12-28-84)	Mar. 19, 1985
P85-335	Generic name: Aromatic diamine	49 FR 50444 (50446) (12-28-84)	Do.
P85-336	Generic name: Polymide precursor	49 FR 50444 (50446) (12-28-84)	Do.
P85-337	Generic name: Fiber reinforced polymide	49 FR 50444 (50446) (12-28-84)	Do.
P85-338	Generic name: Cyanoacrylate ester	49 FR 50444 (50447) (12-28-84)	Do
P85-339	Generic name: Coconut alkyd resin	50 FR 543 (544) (1-4-85)	Mar. 20, 1985
P85-340	Generic name: Organofunctional polysiloxane	50 FR 543 (544) (1-4-85)	Mar. 23, 1985
P85-341	Generic name: Substituted xanthene	50 FR 543 (544) (1-4-85)	Do.
P85-342	Generic name: Polyester resin	50 FR 543 (544) (1-4-85)	Mar. 25, 1985.
P85-343	Alpha, alpha, alpha tribromomethyl phenyl sulfone	50 FR 543 (544) (1-4-85)	Do
P85-344	Benzoic acid, 2-(3-(1,3-benzodioxole-5-yl)-2 methyl propylidene)amino, methyl ester	50 FR 543 (544) (1-4-85)	Apr. 22, 1985.
P85-345	Generic name: Phenolic resin	50 FR 543 (544) (1-4-85)	Mar. 23, 1985
P85-346	Generic name: Alkyd resin	50 FR 543 (544) (1-4-85)	Mar. 25, 1985.
P85-347	Generic name: Modified phenolic resin	50 FR 543 (544) (1-4-85)	Do.
P85-348	Generic name: Alkyd resin	50 FR 543 (544) (1-4-85)	Do.
P85-349	Generic name: Acrylated alkyd resin	50 FR 543 (544) (1-4-85)	Do
P85-350	Generic name: Modified phenolic resin	50 FR 543 (544) (1-4-85)	Do
P85-351	2,6-Naphthalenee dicarboxylic acid	50 FR 543 (544) (1-4-85)	Do
P85-352	Generic name: MDI adduct with a polyether glycol and a hydroxy methacrylate	50 FR 543 (544) (1-4-85)	Mar. 26, 1985.
P85-353	Generic name: Polymer of aliphatic diisocyanate, aliphatic glycols, aliphatic diacid, aromatic anhydride and alkylene oxides.	50 FR 543 (544) (1-4-85)	Do
P85-354	Generic name: Polymer of aliphatic diisocyanate, aliphatic diacids, aromatic diacid, aliphatic diol, aliphatic epoxides	50 FR 543 (544) (1-4-85)	Do.
P85-355	Generic name: Polyhalogenated alkyl phenol	50 FR 1630 (1-11-85)	Mar. 27, 1985.
P85-356	Generic name: Alcohol sulfate, lithium salt	50 FR 1630 (1-11-85)	Do.
P85-357	Polymer of ester diol 204, trimethylol propane, adipic acid, Desmodur-W, isocyanato ethyl methacrylate and butyl methyacrylate.	50 FR 1630 (1-11-85)	Do.
P85-358	Polymer of 2, 2 dimethyl-3-hydroxypropyl-1,2 dimethyl-3-hydroxypropionate, methylene bis (4-cyclohexyl isocyanate), polycaprolactone triol, adipic acid, E-caprolactone	50 FR 1630(1631) (1-11-85)	Do.
P85-359	Generic name: Advancement product of triglycidyl ether of tri(Hydroxyphenyl) methane	50 FR 1630(1631) (1-11-85)	Do.
P85-360	Generic name: Partial metal complex of aminomethylene phosphonic acid	50 FR 1630(1631) (1-11-85)	Do.
P85-361	Generic name: Polymer of aliphatic diisocyanate, aliphatice diacid, aromatice diacid, aliphatic diol, aliphatic epoxide, urea, and formaldehyde.	50 FR 1630(1631) (1-11-85)	Do.
P85-362	Polymer of mercaptobenzimidazoid and ethylene oxide	50 FR 1630(1631) (1-11-85)	Do.
P85-363	Generic name: Alkyl substituted cyclopentanol acetate	50 FR 1630(1631) (1-11-85)	Mar. 30, 1985.
P85-364	Generic name: Hydrochloride salt of a substituted dialkyl amine	50 FR 1630(1631) (1-11-85)	Do.
Y85-18	Polymer of acrylamide and maleic anhydride	50 FR 8390 (3-1-85)	Mar. 11, 1985.
Y85-19	Generic name: Polymer polyol	50 FR 8390 (3-1-85)	Mar. 12, 1985.
Y85-20	Generic name: Vinyl modified alkyd resin	50 FR 8390 (3-1-85)	Do.
Y85-21	Generic name: Alkyd resin	50 FR 8390 (3-1-85)	Do.
Y85-22	Generic name: Polyester diol	50 FR 8390 (3-1-85)	Do.
Y85-23	Generic name: Modified styrene copolymer	50 FR 8390 (3-1-85)	Do.
Y85-24	Generic name: Polyester polyol	50 FR 8390 (3-1-85)	Do.
Y85-25	Generic name: Polyester from poly (alkalene ether)glycol and methylene bis (isocyanatobenzene)	50 FR 9503(9504) (3-8-85)	Mar. 14, 1985.
Y85-26	Generic name: Alkyd copolymer	50 FR 9503(9504) (3-8-85)	Do.
Y85-27	Generic name: A functional methacrylate polymer	50 FR 9503(9504) (3-8-85)	Mar. 18, 1985.
		50 FR 9503(9504) (3-8-85)	Mar. 20, 1985.

IV. 101 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Chemical identification	FR citation	Date of commencement
P81-24	Generic name: Ditallowalkylquaternary ammonium compounds	46 FR 16125 (16127) (3-11-81)	Jan 30, 1985
P81-473	Generic name: Oxoarylpolyalkylbenzene alkanoic acid ester	46 FR 48753 (48754) (10-2-81)	Apr 3, 1984
P81-474	Generic name: Polyhaloalkylbenzene alkanoic acid ester	46 FR 48753 (48754) (10-2-81)	Mar 14, 1984
P81-486	Generic name: Polyhaloalkylbenzene	46 FR 48979 (48980) (10-5-81)	Feb 3, 1984
P82-72	Generic name: Alkenoic acid ester of a halogenated alkyl aryl ether	47 FR 7311 (2-18-82)	Jan 29, 1985
P82-232	Generic name: Thiophosphate	47 FR 15407	Apr. 17, 1984
P82-542	Generic name: Citric acid ester	47 FR 35332 (35333) (8-13-82)	Feb 25, 1985
P82-669	Generic name: Unsaturated polyester with halogenated glycol	47 FR 42152 (42153) (9-24-82)	Feb. 28, 1985
P83-342	3-[5-[4-chloro-6-[3-[2-hydroxy sulfonyloxy) ethyl sulfonyl] anilino]-1,3,5-triazin-2-ylamino]-2-sulfophenylazo]-4-hydroxy-5-propionylamino-2,7-naphthalene disulfonic acid tetrasodium salt.	48 FR 862 (1-7-83)	Mar 20, 1985
P83-345	Generic name: Alkyl thiocyanate	48 FR 862 (1-7-83)	Mar 26, 1985
P83-558	Generic name: Modified epoxy resin	48 FR 12590 (12591) (3-25-83)	Jan 8, 1985
P83-632	7-[4-chloro-6-[3-[2-hydroxy sulfonyloxy) ethyl sulfonyl)-N-ethylanilino]-1,3,5,-triazine-2-ylamino-4-hydroxy-3-(4-methoxy-2-sulfophenylazo)-2-naphthalene sulfonic acid trisodium salt	48 FR 17385 (4-22-83)	Mar 20, 1985
P83-731	Generic name: Acrylic resin	48 FR 23903 (23904) (5-27-83)	Feb 20, 1985.
P83-[illegible]	Generic name: Saturated polyester	48 FR 26684 (26686) (6-10-83)	Mar 1, 1985
P83-989	Generic name: Substituted carboxylated cocoimidazoline	48 FR 35713 (8-5-83)	Jan 23, 1985
P83-1033	Generic name: C_{6-9} carboxylic acid	48 FR 37689 (37700) (8-19-83)	Mar 15, 1985
P83-1082	Docosyl methacrylate	48 FR 39689 (39691) (9-1-83)	Feb 19, 1985
P83-1167	Generic name: Trisubstitutedmethylsilane hydrochloride	48 FR 41638 (41643) (9-16-83)	Feb 26, 1985
P84-261	Generic name: Polyester/alkyd from alkanediols carbomonocyclic anhydride and mixed acids	48 FR 56846 (56847) (12-3-83)	May 22, 1984.
P84-274	Poly(OXY-1,4-butanediyl)-X-(1-oxo-2 propenyl)-w-[1-OXO-2-propenyl)OXY]	48 FR 56718 (56719) (12-30-83)	Feb. 7, 1985
P84-284	Generic Name: Mercaptocarboxylic acid ester reaction product with olefin	49 FR 930 (1-6-84)	Dec. 1, 1984
P84-303	Generic name: Polyurethane polymer	49 FR 930 (932) (1-6-84)	Feb 20, 1985
P84-318	[4-(4-methylphenylthio)phenyl]phenylmethanone	49 FR 2526 (1-20-84)	Feb 26, 1985
P84-358	Generic name: Polyaromatic urethane poly (unsaturated) ester	49 FR 6991 (2-24-84)	Jan 22, 1985
P84-544	Generic name: Polymer of substituted benzenes and tetra-substituted propane	49 FR 14802 (4-13-84)	Feb 18, 1985
P84-633	Vinyl chloride; dimethyl ester of maleic acid; diethyl ester of maleic acid	49 FR 19110 (19111) (5-4-84)	Sept 14, 1984
P84-871	Generic name: Disubstituted benzotriazole	49 FR 26800 (26802)	Mar 7, 1985
P84-887	Generic name: Alkanedioic acid, alkyloxy sulfonyl, ammonium salt	49 FR 26614 (28615) (7-13-84)	Feb 6, 1985
P84-919	Generic name: Urethane-ester polymer	40 FR 29451 (29452) (7-20-84)	Dec. 14, 1984
P84-945	Generic name: Trisubstituted aminobenzoic acid ester.	49 FR 29451 (29453) (8-31-84)	Feb 9, 1985
P84-1061	Generic name: Trisubstituted malonamide	49 FR 33721 (8-24-84)	Feb 8, 1985
P84-1067	Generic name: Substituted metal complex	49 FR 33721 (33722) (8-24-84)	Feb. 16, 1985
P84-1102	Generic name: Modified polymer of acrylates and methacrylates	49 FR 35414 (35415) (9-7-84)	Dec 10, 1984.
P84-1133	Generic name: Hydroxy acrylic resin	49 FR 36151 (36151) (9-14-84)	Mar 5, 1985
P84-1134	....do	49 FR 36151 (36152) (9-14-84)	Feb. 28, 1985
P84-1193	Generic name: Functional polyester	49 FR 38356 (38358) (9-28-84)	Jan. 15, 1985
P84-1149	Generic name: Acrylated polyester	49 FR 38356 (38358) (9-28-84)	Feb. 20, 1985
P84-1203	Generic name: Substituted amino benzoic acid derivative	49 FR 38356 (38359) (9-28-84)	Mar 4, 1985
P84-1211	Generic name: Reaction product of alkyldiamine and excess formaldehyde	49 FR 39379 (39380) (10-5-84)	Mar 12, 1985
P84-1212	Generic name: Alkyl diamino polyacetonitrile	49 FR 39379 (39380) (10-5-84)	Mar 13, 1985.
P84-1213	Generic name: Sodium salt of alkyldiamino polycarboxylic acid	49 FR 39379 (39380) (10-5-84)	Mar 14, 1985
P84-1214	Generic name: Acrylic copolymer	49 FR 39379 (39380) (10-5-84)	Mar 5, 1985
P84-1215	Generic name: Alkyd copolymer	49 FR 39379 (39380) (10-5-84)	Mar 12, 1985
P84-1216	Generic name: Acrylic copolymer	49 FR 39379 (39380) (10-5-84)	Mar 5, 1985
P84-1217	Generic name: Alkyd base for an alkyd modified acrylic copolymer	49 FR 39379 (39380) (10-5-84)	Mar 10, 1985
P85-5	Generic name: Adipic acid, azelaic acid, and phthalic anhydride with ethylene glycol terminated with 2-ethyl hexanol.	49 FR 41100 (41101) (10-19-84)	Mar 7, 1985
P85-33	Generic name: Polymonocyclic urethane	49 FR 43105 (43106) (10-26-84)	Feb. 6, 1985
P85-61	Generic name: Aromatic polyester	49 FR 44139 (44140) (11-2-84)	Apr. 13, 1985
P85-68	Generic name: Alkyd resin	49 FR 44139 (44140) (11-2-84)	Mar 7, 1985
P85-69	Generic name: Condensation acrylic copolymer	49 FR 44139 (44140) (11-2-84)	Mar 11, 1985
P85-70	Generic name: Epoxy modified alkyd resin	49 FR 44139 (44140) (11-2-84)	Mar 13, 1985
P85-71	Generic name: Alkyd resin	49 FR 44139 (44141) (11-2-84)	Mar. 20, 1985.
P85-85	Generic name: Sodium salt of sulfated linear C_{9-11} alcohol ethoxylate	49 FR 44139 (44142) (11-2-84)	Mar. 1, 1985
P85-86	Generic name: Modified acrylic polymer	49 FR 44676 (11-8-84)	Feb. 4, 1985
P85-95	Generic name: Carboxylated acrylic multipolymer	49 FR 44676 (44677) (11-8-84)	Feb. 6, 1985
P85-111	Generic name: Polymer of disubstituted polysiloxane, substituted phenol and substituted alkanoyl halide.	49 FR 45657 (45658) (11-19-84)	Feb. 13, 1985.
P85-117	Generic name: Hydroxy resin	49 FR 45657 (45658) (11-19-84)	Mar 17, 1985
P85-119	....do	49 FR 45657 (45658) (11-19-84)	Mar. 7, 1985
P85-120	Generic name: Hydroxy acrylic resin	49 FR 45657 (45658) (11-19-84)	Mar. 9, 1985
P85-121	Generic name: Acrylic copolymer	49 FR 45657 (45658) (11-19-84)	Feb 28, 1985
P85-123	Generic name: Copolymer of vinyl amide and organic acid salt	49 FR 45657 (45658) (11-19-84)	Feb. 25, 1985
P85-129	Generic name: Styrene, acrylate polymer	49 FR 45657 (45659) (11-19-84)	Mar. 19, 1985
P85-134	Generic name: Intermolecularly rearranged triglycerides	49 FR 46482 (11-26-84)	Apr. 1, 1985
P85-158	Generic name: Aromatic diol	49 FR 47108 (47109) (11-30-84)	Apr. 13, 1985
P85-185	Generic name: Substituted phenyl salt	49 FR 47108 (47111) (11-30-84)	Feb. 28, 1985
P85-189	Generic name: Alkyl alkoxy siloxane	49 FR 47108 (47111) (11-30-84)	Do
P85-213	Generic name: Aromatic polyurethane prepolymer containing tertiary amine	49 FR 47921 (47922) (12-7-84)	Feb. 24, 1985
P85-214	Generic name: Aromatic polyurethane prepolymer containing polyether	49 FR 47921 (47922) (12-7-84)	Do
P85-215	Generic name: Polyester polyol	49 FR 47921 (47922) (12-7-84)	Mar 10, 1985
P85-229	Generic name: Epoxy polyester	49 FR 47921 (47923) (12-7-84)	Mar 5, 1985
P85-230	Generic name: Acrylated alkyd resin	49 FR 47921 (47923) (12-7-84)	Do
P85-231	Generic name: Polyester base	49 FR 47921 (47924) (12-7-84)	Do
P85-235	Generic name: Unsaturated polyester	49 FR 48802 (12-14-84)	Mar 22, 1985
P85-268	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Mar 21, 1985
P85-269	....do	49 FR 49895 (49896) (12-24-84)	Do
P85-270	....do	49 FR 49895 (49896) (12-14-84)	Do
P85-271	....do	49 FR 49895 (49896) (12-14-84)	Do
P85-274	Generic name: Color index reactive yellow 84	49 FR 49895 (49896) (12-14-84)	Mar 15, 1985
P85-280	Generic name: Alkyl oxirane reacted with polyalkylene glycol	49 FR 49895 (49897) (12-14-84)	Mar. 18, 1985
P85-292	Generic name: Organofunctional polysiloxane	49 FR 49895 (49898) (12-14-84)	Mar 25, 1985
P85-299	Generic name: Polyester resin	49 FR 49895 (49898) (12-14-84)	Mar 13, 1985.
P85-302	Generic name: Polyol acetal	49 FR 50444 (12-14-84)	Mar 20, 1985
P85-318	1-isopropylthio-beta-D-galactopyranoside	49 FR 50444 (50445) (12-14-84)	Mar. 26, 1985
P85-319	Pentaacetyl-beta-D-galactopyranoside	49 FR 50444 (50445) (12-14-84)	Do
P85-322	2-Propanamine, N-1-methylethyl)-, lithium salt	49 FR 50444 (50445) (12-14-84)	Apr. 4, 1985
P85-327	Generic name: Isocyanate terminated polyether prepolymer	49 FR 50444 (50446) (12-14-84)	Mar 20, 1985
P85-339	Generic name: Coconut alkyd resin	50 FR 543 (544) (1-4-85)	Mar 24, 1985

IV. 101 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No	Chemical identification	FR citation	Date of commencement
P85-340	Generic name: Organofunctional polysiloxane	50 FR 543 (544) (1-4-85)	Mar. 25, 1985
P85-342	Generic name: Polyester resin	50 FR 543 (544) (1-4-85)	Mar. 26, 1985
P85-346	Generic name: Alkyd resin	50 FR 543 (544) (1-4-85)	Do
P85-347	Generic name: Modified phenolic	50 FR 543 (544) (1-4-85)	Do
P85-348	Generic name: Alkyd resin	50 FR 543 (544) (1-4-85)	Do.
P85-349	Generic name: Acrylated alkyd resin	50 FR 543 (544) (1-4-85)	Do
P85-350	Generic name: Modified phenolic resin	50 FR 543 (544) (1-4-85)	Do
Y85-1	Generic name: Polyoxymethylene copolymer	50 FR 2726 (1-18-85)	Feb. 15, 1985
Y85-4	Generic name: Acrylic copolymer	50 FR 3592 (1-25-85)	Jan. 25, 1985
Y85-8	Generic name: Alkyd resin	50 FR 5790 (2-1-85)	Mar 5, 1985
Y85-10	do	50 FR 5790 (2-1-85)	Do
Y85-11	do	50 FR 5790 (2-1-85)	Do
Y85-12	Generic name: Rosin modified phenolic resin	50 FR 4790 (2-1-85)	Mar 12, 1985
Y85-28	Rosin modified alkyd polymer	50 FR 10539 (3-15-85)	Mar 26, 1985

V. 126 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identity/generic name	FR citation	Expiration date
P83-1	Generic name: Polyhalogenated aromatica alkylated hydrocarbon	47 FR 46371 (10-18-82)	Oct. 22, 1982
P83-333	Generic name: Reaction product of polycyclesulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite	48 FR 72(73) (1-3-83)	Mar 13,1983
P83-4012	Generic name: Naphthalenetrisulfonic acid, chlorotriazinylamino-methoxymethyl phenylazo	48 FR 5304 (2-4-83)	Aug. 18,1983
P83-418	Generic name: Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfonaphthalen-	48 FR 5304(5306) (2-4-83)	Feb. 19,1985
P83-481	Generic name: Substituted alkoxy silane	48 FR 7299(7300) (2-18-3)	July 1 ,1
P83-5[illegible]	Generic name: Substituted mono azo aromatic	48 FR 17385 (4-22-883)	July 5,1963
P83-[illegible]	Generic name: Chromium complex of substitutedphenolazosulfonaphthol with naphtholazosulfonaphthol	48 FR 20490 (5-6-83)	Aug. 5, 1983
P83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sulfonaphtholazosulfophenylpyrozolone	48 FR 20490(20491) (5-6-83)	Do.
P83-770	Generic name: Cobalt complex of substituted phenolazonaphthol	48 FR 24967(24968) (6-3-83)	Aug. 15, 1983
P83-771	Generic name: Chromium complex of substrued phenolazoalkylarylamino-formimidphenol with sulfonaphthtyazo-sulfonaphthol	48 FR 24967 (24968) (6-3-83)	Do
P83-[illegible]	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30434 (30435) (7-1-83)	Sept 21, 1983
P83-875	4-(2-cyano-4-nitrophenylazo) [N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	48 FR 31460 (31462) (7-8-83)	Do.
P83-876	4-(2-cyano-4-nitrophenylazo)-[N N-bis(2-propinoyloxyethyl)amino]-3-chlorobenzene	48 FR 31460(31462) (7-8-83)	Do
P83-913	Generic name: Copper sulfonilphenazopoly-hydroxy phenazobenzoate	48 FR 32381 (32383) (7-15-83)	Oct. 1, 1983
P83-1006	Generic name: (Amino)-(hydroxy)-(substituted) (substituted) naphehalened-sulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalened-sulfonic acid, salts with sodium and potassium	48 FR 366447 (36648) (8-12-83)	July 19, 1984
P83-1007	Generic name: (Substituted)-(substituted)-hydroxy-naphthalenesulfonic acid, sodium salts	48 FR 36647 (36648) (8-12-83)	Do
P83-1012	Generic name: Bis(sulfophenylchloro-triazineaminosulfophenylazo) hydroxyamino-disulfonaphthalene	48 FR 36647 (36648) (8-12-83)	Oct. 24, 1983
P83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazolphenyl] derivative.	48 FR 36647 (36649) (8-12-83)	Do
P83-1238	Generic name: Substituted anthraquinone	48 FR 43397 (43400) (9-23-83)	Dec. 9, 1983
P84-15	Generic name: Substituted heterocyclic metal complex	48 FR [illegible] (48864) (10-21-83)	Feb. 9, 1985
P84-17	do	48 FR [illegible] (48864) (10-21-83)	Do
P84-18	1(1,1 dimethylethoxy)-propan-2-ol	48 FR [illegible] (48864) (10-21-83)	Feb 28, 1985
P84-[illegible]	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48866) (10-21-83)	Feb 9, 1985
P84-[illegible]	Generic name: Substituted heterocyclic metal complex	48 FR 50951 (50952) (11-4-83)	Do
P84-[illegible]	Generic name: Substituted-phenylamino monochloro-triazinylamino sulfophenylazo-substituted-disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt.	48 FR 50951 (59053) (11-4-83)	July 9, 1984
P84-108	Generic name: Trisubstituted heterocyclic disubstituted monocycle	48 FR 50944 (50945) (11-4-83)	Mar. 5 1984
P84-121	Generic name: Substituted heterocyclic metal complex	48 FR 50944 (50946) (11-4-83)	Feb 9, 1985
P84-305	Benzoic acid, 2-((((2-(2 methyl-1-oxo-2-propenyl)oxy)ethyl)amino)carbonyl)oxy-, methyl ester	49 FR 930 (932) (1-6-84)	Mar. 22, 1984
P84-307	2-propenoic acid, 2-methyl-, 2-((hexahydro 2-oxo-1H-azepin-1-yl)carbonyl)amino)ethyl ester	49 FR 930 (932) (1-6-84)	Do
P84-375	Generic name: Sodium salt of alkyl dithocarbamates	49 FR 4980 (4981) (2-9-84)	Jan. 10, 1985
P84-376	Generic name: Aryle sters of alkyl dithocarbamates	49 FR 4980 (4981) (2-9-84)	Do.
P84-391	Generic name: Cuprate (5-), [5-hydroxy-2[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted)phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl)amino])]-1,3,5-tnazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene-disulfonato(7-)], penta-	49 FR 6160(6162) (2-17-84)	Apr 27, 1984
P84-392	Generic name: Alkoxylated cycloaliphatic diamine	49 FR 6160(6162) (2-17-84)	Do
P84-485	Generic name: Poly(oxy-1,2 ethanediyl) alpha-acyl-w-alkyl	49 FR 11009(11010) (3-23-84)	June 4, 1984
P84-591	Generic name: Sodium salt of an alkylated, sulfonated aromatic	49 FR 16833(16835) (4-20-84)	August 21, 1984
P84-597	Generic name: Blocked aliphatic polyisocyanate	49 FR 16833(16835) (4-20-84)	July 19, 1984
P84-649	Generic name: Chromate, bis(substituted substituted phenolato)inorganic salts	49 FR 19110(19113) (5-4-84)	July 20, 1984
P84-650	Generic name: Chromate, bis(substituted substituted substituted pyrazolyl), sodium	49 FR 19110(19113) (5-4-84)	Do
F84-651	Generic name: Chromate bis(substituted substituted naphthalenolato)sodium	49 FR 19110(19113) (5-4-84)	Do
P84-664	Generic name: Chromate, (substituted substituted phenolato) (substituted substituted substituted phenolato) sodium	49 FR 20060(20061) (5-11-84)	Do.
P84-665	Generic name: Chromate, bis(substituted substituted substituted phenolato), sodium	49 FR 20060(20061) (5-11-84)	Do
P84-669	Oleic, linoleic, palmitic acid ester of ethoxylated $C_{12}C_{14}$ alcohols	49 FR 20060(20061) (5-11-84)	July 18, 1984
P84-673	Generic name: Chromate (substituted naphthalenolato) (substituted substituted naphthalenolato) inorganic salts.	49 FR 20060(20061) (5-11-84)	July 20, 1874
P84-698	Generic name: 9,10-Anthracenedione sulfonic acid, sodium salt	49 FR 22128(222129) (5-25-84)	Aug. 10, 1984
P84-703	Oxo-octyl acetate	49 FR 22128(22130) (5-25-84)	Oct. 29, 1984
P84-713	Generic name: Acrylated alkoxylated aliphatic polyol	49 FR 22126(22130) (5-25-84)	Feb. 1, 1985
P84-737	Generic name: Glycol ether	49 FR 22865(22866) (6-1-84)	Mar 21, 1985
P84-738	do	49 FR 22865(22866) (6-1-84)	Do
P84-742	Generic name: Cross-linked modified polyvinyl amide	49 FR 22865(22866) (6-1-84)	Aug. 22, 1984
P84-796	Generic name: Polyfunctional azindine	49 FR 24782 (6-15-84)	Dec. 17, 1984
P84-814	Generic name: Polysubstituted polyol	49 FR 24782(24784) (6-15-84)	Jan. 4, 1985
P84-824	Generic name: Substituted aromatic	49 FR 25676 (6-22-84)	Feb. 7, 1985
P84-858	Generic name: Polyalkylene glycol ether acrylate	49 FR 26800(26801) (6-29-84)	Jan. 3, 1985
P84-881	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylates	49 FR 28614 (28615) (7-13-84)	Oct. 31, 1984

V. 126 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P84-886	Generic name: Triazine derivative	49 FR 28614 (28615) (7-13-84)	Oct. 22, 1984
P84-895	Generic name: Substituted-substituted benzenesulfonic acid coupled with substituted-substituted benzenes and substituted substituted naphthalenedisulfonic acid, sodium salt.	49 FR 28614 (28616) (7-13-84)	Nov 16, 1984
P84-900	1,3,5-Triazine-2,4,6 (1H,3H,5H)-trione, 1,3,5-tris(2,3-dibromopropyl)-	49 FR 28616 (28617) (7-13-84)	Mar 26, 1985
P84-901	Bis(tetrabromobisphenol A)Bis(tribromophenyl)ethylenetetracarbonate	49 FR 28616 (28617) (7-13-84)	Feb. 7, 1985.
P84-902	Hexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do
P84-903	N-methylhexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do
P84-913	Generic name: N,N'-bis(2-(2-(3-alkyl) thiasoline)vinyl)-1,4-phenylene diamine double salt	49 FR 28616 (28618) (7-13-84)	Nov. 28, 1984
P84-938	Polymer of hydroxy ethyl acrylate and polyisocyanate T 1890/100	49 FR 29451 (29453) (7-20-84)	Jan. 3, 1985
P84-954	Generic name: Substituted aromatic	49 FR 30238 (30239) (7-27-84)	Oct. 10, 1984.
P84-989	4-amino-3,6-bis[5-[4-(3-carboxypyridinio)-6-(4-chloro-3-sulfonateanilino)-1,3,5-triazin-2-ylamino]-2-sulfonato-phenylazo]-5-hydroxy-2,7-naphthalene-disulfonate-dihydroxid, hexasodium.	49 FR 31136 (31137) (8-3-84)	Oct. 16, 1984.
P84-1005	Generic name: Alkyl amine derivative	49 FR 32110 (8-10-84)	Oct. 24, 1984
P84-1007	Generic name: 3-alkyl-2-(2-anilino)vinyl thiazolinium salt	49 FR 32110 (8-10-84)	Jan. 7, 1985.
P84-1053	Generic name: Ethoxylated vegetable fatty acid	49 FR 33718 (33720) (8-24-84)	Oct. 26, 1984
P84-1062	Methyl vinyl sulfone	49 FR 33718 (33721) (8-24-84)	Mar 25, 1985.
P84-1074	Generic name: Polyurethane polymer	49 FR 34572 (8-31-84)	Mar 11, 1985
P84-1079	Generic name: Alkylated diphenyl oxide	49 FR 34572 (34573) (8-31-84)	Nov 26, 1984
P84-1114	Generic name: Sodium salt of sulfonated, alkylated diphenyl oxide	49 FR 35414 (35416) (9-7-84)	Nov 19, 1984.
P84-1128	Generic name: Isoalkyleneoxy alkanol	49 FR 35414 (35417) (9-7-84)	Nov 26, 1984
P84-1129	Acetic acid, ester with C_9-C_{11} iso alcohols, C_{10}-rich	49 FR 35414 (35417) (9-7-84)	Jan. 10, 1985
P84-1130	Acetic acid, ester with C_9-C_{16} alcohols, C_9-rich	49 FR 35414 (35417) (9-7-84)	Do
P84-1131	Acetic acid, ester with C_{11}-C_{14} iso alcohols, C_{13}-rich	49 FR 35414 (35417) (9-7-84)	Do
P84-1136	Generic name: Substituted aromatic amide	49 FR 36151 (36152) (9-14-84)	Feb. 4, 1985
P84-1137	Generic name: Cycloaliphatic epoxide	49 FR 36151 (36152) (9-14-84)	Do
P84-1144	Generic name: Isoalkyleneoxy alkanoate	49 FR 36151 (36152) (9-14-84)	Feb. 11, 1985.
P84-1145	Generic name: Alkyltrialkoxysilane	49 FR 36151 (36152) (9-14-84)	Nov 27, 1984.
P84-1182	Generic name: Aminopolyamide-epichlorohydrin resin	49 FR 38356 (38357) (9-28-84)	Jan. 11, 1985
P84-1183	Generic name: Aminopolyamide-epichlorohydrin polymer	49 FR 33356 (38357) (9-28-84)	Do
P84-1188	Generic name: Modified acrylamide polymer	49 FR 38356 (38357) (9-28-84)	Dec. 7, 1984
P84-1204	Generic name: Substituted, sulfonated naphthylazo sodium salt	49 FR 38356 (38359) (9-28-84)	Dec 17, 1984.
P84-1219	Generic name: Substituted pyridine	49 FR 39379 (38380) (10-5-84)	Feb. 5, 1985
P84-1228	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Jan. 8, 1985
P84-1129	....do	49 FR 39379 (39381) (10-5-84)	Do
P85-8	Generic name: Polyether polyester urethane	49 FR 41100 (41101) (10-19-84)	Dec. 17 1984.
P85-16	Generic name: Acrylamide unsaturated quaternary ammonium copolymer	49 FR 41102 (41103) (10-19-84)	Jan. 4, 1985
P85-30	Generic name: Carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle	49 FR 43105 (43106) (10-26-84)	Jan 9, 1985
P85-31	Generic name: Carbopolycycle sulfonate of substituted heteropolycycle	49 FR 43105 (43106) (10-26-84)	Do
P85-36	Generic name: Substituted pyridine	49 FR 43105 (43106) (10-26-84)	Feb 5, 1985
P85-67	2,2'-diallyl-4,4'-sulfonyl diphenol	49 FR 44139 (44140) (11-2-84)	Jan 23 1985
P85-109	Generic name: Arylthioalkanoylhydrazide	49 FR 45657 (11-19-84)	Jan 22, 1985
P85-141	Generic name: Polyester acrylate	49 FR 46852 (46853) (11-12-84)	Feb 12, 1985.
P85-142	Generic name: Aromatic epoxy ester	49 FR 46852 (46853) (11-26-84)	Do
P85-152	Generic name: Reacted epoxy resin	49 FR 47108 (47109) (11-30-84)	Feb 6, 1985
P85-155	Generic name: Halogenated aromatic sulamide	49 FR 47108 (47109) (11-30-84)	Feb 13 1985
P85-159	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Feb. 11 1985
P85-160	....do	49 FR 47108 (47109) (11-30-84)	Do
P85-161	....do	49 FR 47108 (47109) (11-30-84)	Do
P85-162	....do	49 FR 47108 (47109) (11-30-84)	Dc
P85-194	Generic name: Acid amide salt	49 FR 47921 (12-7-84)	Feb 20, 1985
P85-198	Generic name: Alkylated aromatic diamine	49 FR 47921 (47922) (12-7-84)	Mar 8, 1985
P85-203	Generic name: Sulfur-containing polyalkylene oxide	49 FR 47821(42722) (12-7-84)	Mar. 5, 1985
P85-216	Generic name: Substituted pyridine	49 FR 47921(47922) (12-7-84)	Feb 19, 1985.
P85-234	Generic name: Disubstituted sulfide	49 FR 47921(47924) (12-7-84)	Feb 26, 1985
P85-236	Generic name: Substituted pyridine	49 FR 48801(48802) (12-14-84)	Feb 27, 1985
P85-265	Amines, tri $C_{(11-14}$-iso-C_{13} rich)	49 FR 49695(49896) (12-24-84)	Mar 5, 1985
P85-296	Generic name: Silicone ester polyacrylate	49 FR 49895(49898 (12-24-84)	Mar 13, 1985
P85-298	Generic name: Amino acrylate monomer	49 FR 49895(49898) (12-24-84)	Do
P85-301	Generic name: Urethane acrylate	49 FR 50444 (12-28-84)	Mar 26, 1985
P85-317	Phosphine oxide, diphenyl(2,4,6-trimethyl-benzoyl)-	49 FR 50444(50445) (12-28-84)	Mar 14, 1985
P85-325	Cobaltate(1-)[N-[8[[5-aminosulfonyl)-2-hydroxyphenyl]azo]-7-hydroxy-1-napthalenyl]acetamidato(2-)]-[3-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo-3-methyl-5-oxo-1H-pyrazol-1-yl]benzene-sulfonamidato(2-)-, sodium (9Cl)	49 FR 50444(50446) (12-28-84)	Mar 13, 1985
P85-326	Chromate(1-),[3-4,5-dihydor-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxol-1H-pyrazol-1-yl]benzene-sulfonamidato(2)][4-hydroxy-3-[(2-hydorxy-1-naphthalenyl) azo]benzenesulfonamidato(2-)]-hydrogen (9Cl).	49 FR 50444(50446) (12-28-84)	Do
P85-344	Benzoic acid, 2-(3-(1,3-benzodioxole-5-yl)-2 methyl propylidene)amino, methyl ester	50 FR 543(544) (1-4-85)	Mar 19 1985
P85-352	Generic name: MDI adduct with a polyether glycol and a hydroxy methacrylate	50 FR 543(544) (1-4-85	Mar 29, 1985
P85-360	Generic name: Partial metal complex of aminomethylene phosphonic acid	50 FR 1630(1631) (1-4-85)	Mar 22 1985
P85-367	Generic name: Haloalkyl substituted cyclic ether	50 FR 6130(1631) (1-11-85	Mar 25 1985
P85-368	.do	50 FR 1630(1631) (1-11-85)	Do
P85-369	..do	50 FR 1630(1631) (1-11-85)	Do
P85-410	Generic name: Amine substituted imidazolidines	50 FR 3592(3593) (1-25-85)	Mar 5, 1985
P85-411	.....do	50 FR 3592(3594) (1-25-85)	Do
P85-412	.....do	50 FR 3592(3594) (1-25-85)	Do
P85-459	Generic name: Aromatic tertiary diamine	50 FR 6383(6384) (2-15-85)	Feb 19, 1985
P85-619	Generic name: Tetra substituted amino-carboxylic acid	50 FR 10536(10537) (3-15-85)	Mar 22 1985
P85-670	Tall oil rosin propylene oxide reaction product	50 FR 12623(12624) (3-29-85)	Mar 25 1985

[FR Doc. 85-13866 Filed 6-10-85; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-2672-1]

Assessment of Epichlorohydrin as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent not to regulate and request for comments.

SUMMARY: This notice announces the results of EPA's assessment of epichlorohydrin as an air pollutant. EPA is announcing for public comment that

present ambient air concentrations of epichlorohydrin do not pose a significant risk to public health and that no regulation directed specifically at epichlorohydrin is necessary at this time under any section of the Clean Air Act to protect public health. This notice has no effect on the regulation of epichlorohydrin as a volatile organic compound in order to attain the national ambient air quality standards (NAAQS) for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of epichlorohydrin.

DATE: Written comments pertaining to this notice must be received on or before July 11, 1985.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–84–27, 401 M Street SW, Washington, D.C. Docket A–84–27, which contains information relevant to this proposed decision is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street SW, Washington, D.C. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information: The Health Assessment Document (HAD) for epichlorohydrin is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Information on the availability of the HAD is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS).

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: EPA initiated this assessment because of the potential for human exposure to epichlorohydrin as a result of its use in the production of a number of different chemicals and because it has been implicated in the causation of cancer in animals. As a first step in this process, a HAD for epichlorohydrin was drafted summarizing available information on the properties, sources, emissions and effects of epichlorohydrin on humans and the environment. Although the HAD has not been reviewed by EPA's Science Advisory Board, a group of independent scientists, the availability of the draft document for a 60-day public comment period was announced in the **Federal Register** (48 FR 50159, October 31, 1983).

Epichlorohydrin (CAS No. 106–89–8) is used extensively as a chemical intermediate in the production of a variety of chemical compounds (Shular, 1984). Crude epichlorohydrin is used to produce synthetic glycerin while finished epichlorohydrin is used principally in the production of epoxy resins. Epichlorohydrin is also used to manufacture polyamide epichlorohydrin resins, epichlorohydrin elastomers, surfactants, and other miscellaneous products such as water treatment resins, solvents, flame retardants, and stabilizers. Epichlorohydrin production in 1982 was approximately 170,000 megagrams (Mg or metric tons). Epichlorohydrin is emitted from process vents, storage facilities and fugitive sources (e.g., pumps, valves, and flanges).

Epichlorohydrin has an atmospheric residence time (time required for the initial concentration be reduced to about 37 percent) of 5.8 days. Thus, its accumulation in the atmosphere is not significant and background concentrations of epichlorohydrin are not a concern to public health.

In order to estimate epichlorohydrin exposure, EPA conducted a study of sources and emissions (Shular, 1984). The study examined emissions of 19 plants that produce or use epichlorohydrin, accounting for all production and 90 to 94 percent of domestic consumption. Two plants alone accounted for almost 70 percent of the 1982 emissions. Of these, fugitive releases accounted for 84 percent, storage facilities accounted for 12 percent, and process vents accounted for 4 percent. Secondary sources, such as wastewater streams, are assumed to be insignificant sources of air emissions because epichlorohydrin hydrolyzes readily in aqueous solutions to form water soluble alcohols. Although ambient monitoring tests for epichlorohydrin have been conducted, it has not been measured in air at the limits of detection of the techniques used.

Exposure estimates were developed using EPS's Human Exposure Model (HEM), which estimates human exposure within 50 km of individual sources. The EPA analysis of human exposure to epichlorohydrin near sources is based on the 19 industrial sources mentioned above (Schell, 1984). The analysis indicates that about 30 million people live within 50 km of such facilities.

The HAD suggests that epichlorohydrin is a probable human carcinogen. Using a classification scheme developed by the International Agency for Research on Cancer (IARC) the EPA has classified epichlorohydrin in Group 2B, which indicates that there is sufficient animal but inadequate human evidence for a determination of carcinogenicity. Among those chemicals that the EPA has evaluated for carcinogenic potential, the potency of epichlorohydrin is among the weakest for those carcinogens evaluated (upper limit risk $= 1.2 \times 10^{-6}$) $(\mu g/m^3)^{-1}$).

The HAD also reports that non-fatal intoxication (e.g., respiratory irritation and systemic effects) has been reported in workers occupationally exposed to epichlorohydrin. Although the actual level of exposure associated with the onset of noncarcinogenic effects in humans is unknown, the National Institute of Occupational Safety and Health (NIOSH) has established an exposure ceiling level based on animal bioassay data. This ceiling level, at 5 ppm, is a level not to be exceeded at any time in the workplace established to protect all workers from all noncarcinogenic health effects associated with exposure to epichlorohydrin.

In order to assess the risk of cancer, two upper-limit unit risk estimates for the carcinogenic potency of epichlorohydrin at low levels of air exposures are provided in the HAD (EPA, 1984). The upper limit unit risk is the additional lifetime probability of cancer for an individual continuously exposed to 1 $\mu g/m^3$ of epichlorohydrin in air over his or her lifetime (assumed to be 70 years). One of these upper-limit unit risk estimates is based on an animal inhalation bioassay (Laskin et al., 1980), while the other is derived from an epidemiological study showing a non-statistically significant increase in respiratory cancer deaths (Enterline, 1981). (An additional 95 percent upper-limit unit risk developed from an animal study of lifetime exposure to epichlorohydrin in drinking water was not used for an inhalation risk estimate because available information indicates epichlorohydrin is primarily a site specific, route dependent, contact carcinogen (EPA, 1984; Konishi et al., 1980; Kawabata, 1981).) The HAD notes that both unit risk estimates developed from the inhalation studies have more uncertainty than those of most other suspect carcinogens that EPA has assessed. The upper-limit unit risk estimate based upon the animal

inhalation study bore the uncertainty that biologically and statistically significant increases in tumors occurred only in the high exposure group (100 ppm, 30 exposures) in a short-term experiment (Laskin et al., 1980). The lower concentration (30 ppm) lifetime exposure group had only one nasal tumor (out of 100 rats exposed) despite having more than three times the cumulative exposure of the high concentration short-term exposure group. Because of the absence of a statistically significant effect in the epidemiological study and the difficulties associated with translating study results using different routes of exposure, the upper limit unit risk estimate developed from the animal inhalation study was determined to provide the most appropriate value to calculate public health risk estimates from air exposures. The value of this upper limit unit risk estimate is $1.2 \times 10^{-6} (\mu g/m^3)^{-1}$.

The upper limit unit risk estimate described above and exposure modeling results provide the basis for estimating the number of cancer deaths associated with epichlorohydrin exposure. The maximum individual risk is an estimate of the lifetime cancer risk at the highest modeled annual average concentration to which any individual might be exposed. The aggregate risk estimate is a cumulative estimate of the total cancer cases that would result from all human exposure. Both risk measures assume that people are exposed, on average, for a 70 year lifetime to the modeled annual average concentrations. The aggregate population risk estimate from exposure near all 19 sources is one cancer every 710 years or 0.0014 cancers per year (Schell, 1984). The maximum individual risk from epichlorohydrin exposure is estimated to be 1.1×10^{-5}, which is associated with a lifetime exposure to 9 $\mu g/m^3$.

A preliminary analysis was conducted to examine the potential for short-term concentrations of epichlorohydrin in the ambient air surrounding industrial facilities to exceed the exposure limit established by NIOSH. This rough analysis, which used worst case meteorological conditions in a conservative screening model, indicated that ambient concentrations of 1.4 ppm near epichlorohydrin sources resulting from continuous routine emissions do not exceed the NIOSH exposure limit for noncarcinogenic effects (5 ppm).

Given the relatively low risk of cancer from ambient air exposures and the absence of evidence of other health effects near ambient levels, the Agency has decided that the development of regulations for epichlorohydrin under the Clear Air Act is not warranted. Because of the limited opportunity for comment on the HAD, the Agency is providing the opportunity to comment on all the information discussed in this notice as well as the conclusions presented. A further notice will be published only if the public comment indicates a need to reconsider these conclusions. Furthermore, the Agency recognizes the uncertainties in the information used in the analysis described above. The Agency will continue to review the health effects of epichlorohydrin and will reevaluate the need to regulate epichlorohydrin if warranted by new information.

Dated: June 3, 1985.

Lee N. Thomas,

Administrator.

[FR Doc. 85-13870 Filed 6-10-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1985-6]

Filing Dates for Texas Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas special election.

SUMMARY: Committees required to file reports in connection with the special election to be held on June 29, 1985, must file a 12-day pre-election report by June 17, 1985, and if there is a majority winner, a 30-day post-election report by July 29, 1985. In this case, the semiannual report would be waived. In the event no candidate achieves a majority vote in the special election, the 30-day post-election report would not be required. Instead committees should file a semiannual report by July 31, 1985. In addition, a second election shall be called and the necessary filing dates for reports will be established.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 1325 K Street, NW., Washington, D.C. 20463, Telephone: (202) 523-4058, Toll free: (800) 424-9530.

Notice of Filing Dates for Special Election, 1st Congressional District, Texas

All principal campaign committees of candidates in the special election and all other political committees not filing monthly, which support candidates in the special election shall file a 12-day pre-election report due on June 17, 1985, with coverage dates from last report filed through June 9, 1985. Political committees that have not previously filed a financial report should report all financial activity through June 9, 1985. If one candidate receives a majority of votes cast, a 30-day post-election report due on July 29, 1985, with coverage dates from June 10, 1985, through July 19, 1985, must be filed by the above committees.

In the event that no candidate achieves a majority vote in the special election, the 30-day post-election report will not be required. Rather, a semiannual report due on July 31, 1985, will be required. A second special election will be called within 5 days after the official election results are declared and will be held not less than thirty but not more than forty days after the date of proclamation calling the election. If a second special election is necessary, filing dates for the appropriate reports will be established.

Dated: June 6, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-14013 Filed 6-10-85; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-738-DR]

Major Disaster and Related Determinations; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA-738-DR), dated June 3, 1985, and related determinations.

DATED: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of June 3, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and tornadoes beginning on May 31, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore

declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide necessary Public Assistance in the affected areas based on known requirements and an acceptable State commitment. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Ashtabula, Columbiana, and Licking Counties for Individual Assistance only.

Trumbull County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–13989 Filed 6–10–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–737–DR]

Notice of Major Disaster and Related Determinations; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–737–DR), dated June 3, 1985, and related determinations.

DATED: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646–3616.

Notice

Notice is hereby given that, in a letter of June 3, 1985 the President delcared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et. seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe storms and tornadoes beginning on May 31, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide necessary Public Assistance in the affected areas, once an acceptable Commonwealth commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following Counties of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Beaver, Butler, Crawford, Erie, Forest, Lycoming, McKean, Mercer, Northumberland, Venango, Union, and Warren for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–13988 Filed 6–10–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–737–DR]

Amendment to Notice of a Major-Disaster Declaration; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–737–DR), dated June 3, 1985, and related determinations.

DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

Notice

The notice of a major disaster for the Commonwealth of Pennsylvania, dated June 3, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 1985:

Clearfield County for Individual Assistance.

Crawford, Erie, Forest, McKean, and Mercer Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–13987 Filed 6–10–85; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

BoRC Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 3, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BoRC Financial Corporation*, Harriman, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Roane County, Harriman, Tennessee.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cainer Corporation*, Merrillville, Indiana; to acquire 100 percent of the voting shares or assets of The Commercial Bank, Crown Point, Indiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares or assets of Gravois Bank, St. Louis, Missouri, through the merger of Gravois Bancorp., Inc., and Mercantile Acquisition Company, a wholly-owned subsidiary of Applicant.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares or assets of United Bank of Westminster, Westminster, Colorado, a *de novo* bank.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coble Bankshares, Inc.*, Waco, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Consolidated Bank-Hewitt, Hewitt, Texas.

2. *Independent Community Financial Corp.*, Dallas, Texas; to acquire 51 percent of the voting shares of Coppell Financial Corporation, Coppell, Texas, and Coppell Bank, N.A., Coppell, Texas.

Board of Governors of the Federal Reserve System, June 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13985 Filed 6-10-85; 8:45 am]

BILLING CODE 6210-01-M

J.E. Coonley Co. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *J.E. Coonley Company*, Dows, Iowa; to engage *de novo* directly in the activity of providing data processing facilities through a lease relationship, to Sheffield Savings Bank, Sheffield, Iowa. This activity would be conducted in Sheffield, Iowa.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Area Bancshares Corporation*, Hopkinsville, Kentucky; to continue to engage through its subsidiary, Datanet, Inc., Hopkinsville, Kentucky, in performing data processing services for banks located in the state of Kentucky Applicant proposes to expand its geographic scope to include the entire United States.

2. *First Western Bancshares, Inc.*, Boonesville, Arkansas; to engage *de novo* directly in the activity of making real estate appraisals in Arkansas and all continguous states.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United Bankers, Inc.*, Waco, Texas to engage *de novo* through its subsidiary, United Data Services, Inc., Robinson, Texas, in providing to others financially related data processing and data transmission services, facilities, data bases and access to data bases. These activities would be performed in Tyler County, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Midland Bank plc.*, London, England, and *Crocker National Corporation*, San Francisco, California; to expand the activities of and the geographic areas served by their subsidiaries, Crocker Financial Corporation, Honolulu, Hawaii and CNC Insurance Agency, Inc., San Francisco, California, to include the sale of unemployment insurance throughout the United States and to continue to act as an agent with respect to the sale of credit life, accident, health insurance directly related to extensions of credit by Applicant or its subsidiaries.

Board of Governors of the Federal Reserve System, June 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13986 Filed 6-10-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education; Availability of Funds for Fiscal Year 1985; Correction

In FR Doc. 85–10641 beginning on page 19738 in the issue of Thursday, May 2, 1985, make the following corrections:

1. On page 18739, first column, item 1.b., change "360" to read "300."

2. On page 18739, second column, in the paragraph beginning "Approximately $115,000," change the date to read "September 1, 1985."

3. On page 18740, third column, in the paragraph beginning "The original and one copy," the phrase "one copy" is corrected to read "two copies" and the date "May 31, 1985" is corrected to read "June 21, 1985."

4. On page 18740, third column, under the heading "Deadlines," in item 2, the date "May 31, 1985" is changed to read "June 21, 1985."

Dated: May 31, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85–14025 Filed 6–10–85; 8:45 am]

BILLING CODE 4160–18–M

Cooperative Agreements; State-Based Diabetes Control Programs; Availability of Funds for Fiscal Year 1985; Correction

In FR Doc. 85–11464 beginning on page 20010 in the issue of Monday, May 13, 1985, make the following corrections on page 20011, second column:

Under the heading "Application Information," the second paragraph is corrected to read: "The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on Monday, July 1, 1985."

Under the heading "Deadline," in item 2, the date "June 24, 1985" is corrected to read "July 1, 1985."

Dated: May 31, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85–14024 Filed 6–10–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Dallas District Office, chaired by Donald Healton, Regional/District Director. The topic to be discussed is Changes in Life Styles.

Date: Monday, June 17, 1985, 3 to 5 p.m.

Address: Mabry Hall, State Education Building, 300 East DeVargas St., Santa Fe, NM 87501.

For further information contact: Hazel Wallace, Consumer Affairs Officer, Food and Drug Administration, 1200 Main Tower Bldg., Dallas, TX 75202, 214–767–5433.

Newark District Office, chaired by Matthew H. Lewis, District Director. The topic to be discussed is Phenylpropanolamine (PPA) and Diet Products.

Date: Tuesday, June 18, 1985, 10 a.m. to 12 m.

Address: Bergen County Department of Health Services, 327 Ridgewood Ave., Paramus, NJ 07652.

For further information contact: Joan A. Godal, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201–645–6365.

Newark District Office, chaired by Matthew H. Lewis, District Director. The topic to be discussed is Phenylpropanolamine (PPA) and Diet Products.

Date: Thursday, June 20, 1985, 10 a.m. to 12m.

Address: Hunterdon County Extension Center, 4 Gauntt Pl., Flemington, NJ 08822.

For further information contact: Joan A. Godal, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201–645–6365.

New York District Office, chaired by George J. Gerstenberg, District Director. The topics to be discussed are Prescription Drug to Over-the-Counter Drug (Rx-to-OTC) Switch Procedures and Sodium Labeling (an Update).

Date: Thursday, June 20, 1985, 10 a.m. to 12 m.

Address: Suffolk County Legislative Auditorium, Suffolk County Center, Hauppauge, NY 11787.

For further information contact: Herman B. Janiger, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232–1593, 718–965–5043.

Nashville District Office, chaired by Hayward E. Mayfield, District Director. The topic to be discussed is Prescription Drug to Over-the-Counter Drug (Rx-to-OTC) Switch Procedures.

Date: Thursday, June 20, 1985, 2 to 4 p.m.

Address: Meharry Medical College, 1005 18th Ave., North, Nashville, TN 37208.

For further information contact: Barbara L. Loyd, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–251–5208.

Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are Prescription Drug to Over-the-Counter Drug (Rx-to-OTC) Switch Procedures and Updates on Sulfites, Aspartame, and Health Fraud.

Date: Tuesday, June 25, 1985, 9:30 to 11:30 a.m.

Address: The Federal Plaza, Rm. 1100, 310 West Wisconsin Ave., Milwaukee, WI 53203.

For further information contact: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–349–3906.

San Francisco District Office, chaired by Ronald M. Johnson, District Director. The topics to be discussed are Women's Health Issues and Screening Donated Blood for the Virus Suspected of Causing Acquired Immunodeficiency Syndrome (AIDS).

Date: Wednesday, June 26, 1985, 2 to 4 p.m.

Address: 50 United Nations Plaza, Rm. 406, San Francisco, CA 94102.

For further information contact: Lula Holland, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Rm. 532, San Francisco, CA 94102, 415–556–2682.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: June 6, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-14072, Filed 6-10-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0139]

Oral Proteolytic Enzymes; Withdrawal of Approval of New Drug Applications; Availability of the Commissioner's Decision

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs has issued his final decision concerning the new drug applications (NDA's) for certain oral proteolytic enzymes. The Commissioner has decided to withdraw these approvals.

EFFECTIVE DATE: July 1, 1985.

ADDRESS: The Commissioner's decision, including the final order, and all other documents related to the decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Division of Regulations Policy (HFC-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 21, 1979 (44 FR 75718), FDA announced a formal evidentiary hearing on its proposal to withdraw approval of NDA's for products containing oral proteolytic enzymes. The NDA's in question are for Orenzyme, Chymoral, Papase, Ananase, Avazyme, Wilzyme, and Chymolase. The drug products are recommended for the control of edema and inflammation associated with surgical procedures, accidental trauma, or infections or allergic manifestations.

The Commissioner has determined that approval of the NDA's for Orenzyme, Chymoral, Papase, Ananase, and Avazyme should be withdrawn because the sponsors have failed to submit substantial evidence that the drug products are effective for their intended uses, as required by section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The decision therefore affirms the conclusion reached by the Administrative Law Judge in his initial decision that approval be withdrawn. FDA has already withdrawn approval for Wilzyme and Chymolase (NDA 12-724) in the **Federal Register** of June 12, 1981 (46 FR 31075).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the Commissioner's Order withdraws approval of NDA 11-783 (Orenzyme), NDA 12-178 (Chymoral), NDA 12-293 (Papase), NDA 12-527 (Ananase), and NDA 12-626 (Avazyme), effective July 1, 1985.

Dated: June 6, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-14071 Filed 6-7-85; 10:35 am]

BILLING CODE 4160-01-M

Office of Child Support Enforcement

Child Support Enforcement Research and Demonstration Interstate Grants; Availability of Fiscal Year 1985 Funds

The Director of the Office of Child Support Enforcement (OCSE) gives notice of the availability of Fiscal Year 1985 funds for projects in the area of interstate child support processes. Funding for grants is authorized under Pub. L. 98-378. In accordance with section 455(e)(4) of the Social Security Act as amended by section 8 of Pub. L. 98-378, amounts expended by a State in carrying out a project funded under this grant program will be considered as part of the grantee State's administrative expenditures for purposes of calculating incentive payments.

A notice was previously published on January 30, 1985, announcing the availability of FY 1985 funds for these projects. There will be one funding cycle for the remainder of FY 1985. The closing date for the submission of grant applications will be July 31, 1985. It is anticipated that grant awards will be issued within 60 days of the receipt of grant applications.

Program Purpose

Grants funded by OCSE under the Interstate Program are for research and demonstration projects which will add to existing knowledge and promote improvements or new methods and techniques in the area of interstate child support operations.

Program Goals

In general, OCSE intends to support the following types of projects through the Interstate Grants Program:

(1) Those which encourages States to develop efficient and effective ways of handling interstate cases.

(2) Those which augment and improve existing State efforts to pursue and respond to interstate efforts. Funds from this program are not available to supplant current State and local funding efforts.

(3) These which develop, test, implement, and demonstrate new or innovative methods of interstate case processing.

(4) Those which show a high promise of ready transferability to other States and of producing verifiable knowledge of demonstration results through definitive evaluation.

Program Priorities for Research and Demonstration Funding

Research and demonstration projects will be directed toward broadly stated priorities derived from issues centering around the administration of interstate child support processes. OCSE has identified priorities which reflect the major aims of the program's interstate processes.

Applicants may also submit proposals for projects not specifically identified in this announcement but which are relevant to OCSE interstate goals. Such proposals will compete for funding with those submitted for the priority areas listed below.

Program Priorities for Interstate Grants

Applications should contain plans for an up-front performance assessment, problem identification, and planning module as part of the initial project activities. This module will result in a management study that identifies existent problems with interstate cases and how the project will approach solution of these problems. This effort can be the first phase of a multi year project.

Interstate grant applications should emphasize the development of innovative techniques that can eventually be generalized to the entire caseload. As a matter of general policy, OCSE intends to encourage experimentation and demonstration of ways of handling interstate cases in such a manner that they are integrated into the normal handling of a State's IV-D caseload. Examples of interstate program priorities are the following.

I. Development of innovative techniques in processing interstate cases such as:

A. Innovative communication techniques to include teleconferencing, electronic mail and other electronic

means of moving information from one jurisdiction to another;

B. Interstate tracking and monitoring systems; and

C. Staffing patterns for interstate case processing—experimentation with combinations of specialization vs. generalization of the interstate function.

II. Development of innovative techniques for child support collections in interstate cases, especially in the area of application of mandatory procedures such as wage withholding. Also of interest are:

A. Use of credit reporting agencies;

B. Use of property liens;

C. User fees; and

D. Tax refund offsets.

III. Development of automated data processing and interstate systems components such as clearinghouses for the centralization of multi-state data bases and new data bases for interstate use.

Note.—OCSE does not contemplate funding for the purchase of ordinary computer hardware, which could be authorized under the 90 percent Federal matching for automated management systems.

IV. Development of innovative paternity establishment techniques in interstate such as methods for lowering the cost or increasing the use of parentage testing laboratories on a regional basis.

V. Other program ideas with an explicit interstate focus will be entertained for funding.

Applications should contain for comprehensive evaluation of the results of the demonstation. OCSE will also entertain plans for dissemination of results of the evaluation and lessons learned from the demonstration.

Eligible Applicants

Grants are to be awarded to the State agency responsible for administering the IV–D program. The IV–D agency can enter into cooperative arrangements with other State agencies within the State (e.g., Attorney General, State court system, etc.) but the grant will remain responsible for financial and program management of the grant, for reports, auditing, and other normal grant functions. Applicants can also subcontract with private contractors for performance of work proposed in the grant application.

In addition to applications made by individual State agencies proposing to experiment with their own internal procedures for processing interstate cases, proposals may include demonstrations which involve one or several other State IV–D agencies. These proposals will require that the applicant State IV–D agency retain responsibility for the proper administration of the grant. Such applications must come from a single lead State that will assume the responsibilities of the grantee for tracking, monitoring, auditing, reporting and other grant administrative functions. These applications should contain explicit information on the activities and responsibilities of each of the participating States and a detailed budget for each State. The application should show evidence of agreement of each of the participating States in the grant activity. Expenses incurred by the grant recipient in administering and evaluating the project activity can be allocated to the budgets of other participating States on some equitable basis, so that the grant recipient State need not assume the total cost of the grant for purposes of calculating incentive payments.

OCSE will also entertain applications that include the study and demonstration of intra state/intercounty case processing, as long as this part of the project is viewed as a test or demonstration phase meant to be transferred to an interstate demonstration or application.

Availability of Funds

It is anticipated that up to $7 million will be available for funding interstate grants in FY 1985. For planning purposes, OCSE anticipates awarding 15–20 grants ranging from $350,000 to $465,000 each. The amounts of the grants may vary according to the scope and merit of the individual application and are quoted as projected averages for the first year of the program.

Grantee's Share of Projected Cost

Grant recipients receiving assistance to conduct these projects are expected to contribute towards the projected costs. Generally, 5 percent of the total cost of the activity is considered acceptable. No grant will be awarded that covers 100 percent of the project's cost. Cash or in-kind contributions may be used to satisfy this requirement.

Waivers

Waivers of certain provisions of part D of title IV of the Social Security Act may be granted for the conduct of these demonstrations. The requests for such waivers must be included in the grant proposal.

The Application Process

1. *Availability of application forms.* Application kits containing the prescribed application forms and related documents are available from: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, 1–C–1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207. Telephone: (301) 594–0284. Lawrence H. Pullen, Chief, Grants Management Branch.

2. *Application submission.* To be considered for a grant award, all applications must be submitted on standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant.

3. *Application consideration.* Applications are initially screened for relevance to interstate child support concerns. Irrelevant applications are returned to the applicant. Relevant applications are reviewed and evaluated by a review panel of not less than three persons.

4. *Application approval.* Following approval of selected for funding, financial assistance awards will be issued within limits of Federal funds available. The official grant document is the Notice of Grant Award. It provides the amount of funds awarded, the purpose of the award, the budget period for which support is given, the terms and conditions of the award, the total project period for which support is contemplated, and the total grantee financial participation.

5. *Additional information.* For questions concerning project development please contact John K. Maniha, Office of Child Support Enforcement, Room 931A, 6110 Executive Boulevard, Rockville, MD 20852, (301) 443–2980.

Criteria for Review and Evaluation of Applications

Applications will be reviewed and evaluated by a review panel against the following criteria:

1. *Project Design and Evaluation Methodology.* Feasibility and coherence of the project design and the quality of its evaluation component. (30 points);

2. *Knowledge.* Knowledge about possible alternative solutions to interstate problems, background presentation material, statement of the problem, and general grasp of the proposed solution. (10 points);

3. *Innovation.* Degree to which the application shows evidence of breaking new ground or presenting new solutions to interstate case problems. (25 points);

4. *Relevance and Applicability.* Relevance of proposal to OCSE's

interstate priorities and goals, the degree to which the proposed solution could be transferred to other States. Does the application make sense and can it be done? (20 points); and

5. *Personnel, Budget, and Facilities.* Availability and competence of specific kinds and numbers of experienced personnel. Is the project cost effective? Are the costs reasonable and adquately described considering the anticipated results? Are the applicant's facilities and resources adequate? (15 points)

Closing Dates and Times

For FY 1985 projects, the remaining closing date for submission of applications is July 31, 1985. Applications not received by the deadline date of one cycle of funding will be held for review during the next cycle.

Applications may be mailed or hand delivered to: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, 1–C–1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, MD 21207.

Hand delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing dates.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Executive Order 12372—Intergovernmental Review of Federal Programs

These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials in proposed Federal financial assistance.

Dated: May 31, 1985.

R. Stephen Ritchie,

Director, Office of Child Support Enforcement.

[FR Doc. 85–14012 Filed 6–10–85; 8:45 am]

BILLING CODE 4190–11–M

Social Security Administration

Title II Research Grant; Availability of Grant Funds

Correction

In FR Doc. 85–12298 beginning on page 21141 in the issue of Wednesday, May 22, 1985, make the following corrections:

1. On page 21141, in the third column, under the heading **Project Purpose,** in the eighth line, "traning" should read "training".

2. On page 21142, in the second column, in the third line, "Room 2232" should read "Room 2223".

3. Also on page 21142, in the second column, under the heading **Eligible Applicants,** the first line should read: "Any State or local government, for"; and in the next paragraph, in the second line, "grants funds" should read "grant funds".

BILLING CODE 1505–01–M

Availability of Funding for Demonstration Projects Which Test Alternative Approaches to the Provision of Cash Assistance, Medical Assistance, Social Services, and/or Case Management to Refugees

AGENCY: Office of Refugee Resettlement (ORR), Social Security Administration, HHS.

ACTION: Final notice of availability of funding for projects to implement alternative means of providing cash assistance, medical assistance, social services, and case management to refugees and Cuban and Haitian entrants.[1]

SUMMARY: This announcement governs the proposed award of demonstration project grants to eligible grantees. Grants are for the purpose of reducing public assistance dependence among refugees by promoting refugee employment in the earliest time possible and by funding new and innovative aproaches for the provision of cash assistance, medical assistance, social services, and/or case management to refugees. The needs of refugees are often transitional and the existing systems are not necessarily the most responsive to the particular needs refugees have and the obstacles they must overcome. Congress has expressed an interest in alternative approaches which may better promote refugee early employment and self-sufficiency than does the current system. Grant funds may be used to demonstrate alternative approaches to one component of the refugee resettlement system, or to the entire system itself, insofar as those functions are normally funded through the Office of Refugee Resettlement. Project participants must be refugees who have been in the United States less than 36 months. Refugees participating in these demonstration projects will be precluded from receiving assistance under the programs of aid to families with dependent children (AFDC), refugee cash assistance (RCA), Medicaid, and/or refugee medical assistance (RMA), depending upon the scope of the project. However, they may receive cash and/or medical assistance under the terms of the demonstration project. Because of the difficulty refugees have had moving from receipt of cash assistance to employment and self-support, proposed demonstration projects must either serve welfare-dependent refugees and promote their independence or serve newly arriving refugees who otherwise could be expected to become welfare-dependent. Grantees will be required to contract for an outside evaluation of the demonstration projects and an Evaluation Plan must be submitted as part of the application.

EFFECTIVE DATE: June 11, 1985.

Closing Dates for Preapplications and Applications

Review of proposals will take place during specific review cycles indicated under "Review and Award Procedures." The applicant has the option to select the preferred review cycle. Successful applicants will ordinarily be funded on a descending point score basis at the end of each review cycle, subject to the discretion of the Director, ORR, and to the availability of funds. Future fiscal year funding will be subject to Congressional appropriations. The Director, ORR, requires the submission of a preapplication before the submission of a formal grant application. Only those applicants whose preapplications have been reviewed and have been invited by the Director, ORR, to submit a full application will be eligible for funding. Preapplications can be submitted at any time and will be reviewed by Office of Refugee Resettlement staff in accordance with the schedule established under "Review and Award Procedures." The submission of a preapplication package will: (a) Establish communication between the applicant and ORR; (b) enable early determination of the applicant's eligibility; and (c) establish overall desirability of a given approach to

[1] Hereafter, all references in the notice to "refugees" will also include Cuban and Haitian entrants.

discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures in preparing an application. Specific guidance on preapplication content is provided in section III, below.

Authorization

Demonstration project grants will be funded under section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) as amended by Pub. L. 98–473 entitled "Making Continuing Appropriations for the Fiscal Year 1985, and for Other Purposes."

Available Funds

The Office of Refugee Resettlement has no additional funds available for demonstration projects funded under this announcement. Therefore, ORR will fund projects at levels no higher than the estimated cost of serving project participants in the absence of the demonstration project. In the case of projects submitted by non-State applicants, funds will be drawn from cash and medical assistance grants and social service allocations which otherwise would have gone to the States to serve project participants. If a State receives targeted assistance funds, it can use those funds for demonstration project purposes provided such funds are used in areas for which they were originally allocated. To the extent that projects propose to serve refugees potentially eligible for assistance under AFDC and/or Medicaid, funds appropriated under part A of title IV of the Social Security Act, or title XIX of such Act, may be used for the purpose of implementing alternative projects. ORR will consider multi-year applications but will only fund approved applications one year at a time. In addition, projects demonstrating cost savings will be given priority consideration. The cost of contracting for an outside evaluation, as required, also must be included and covered in available project funds.

Eligible Applicants

The Federal refugee program is essentially a State-administered program. Under the Refugee Act of 1980, States have key responsibilities in planning, administering, and coordinating refugee resettlement activities. States administer the provision of cash and medical assistance and social services to refugees. They also maintain legal responsibility for the care of unaccompanied refugee children in the State. ORR awards grants directly to the States for the provision of services and assistance to refugees.

In order to receive assistance under the refugee program, a State is required by the Refugee Act and by HHS regulations to submit a plan to ORR which describes the nature and scope of the program and gives assurances that the program will be administered in conformity with the Act. As part of the plan, a State must designate a State agency to be responsible for developing and administering the plan and name a refugee coordinator who will ensure the coordination of public and private refugee resettlement resources in the State. Notwithstanding the central role played by States in the refugee program, ORR intends to give full and fair consideration to all eligible applicants. Eligible applicants for the demonstration grants include public and private nonprofit organizations, such as (but not limited to) States, a private voluntary resettlement agency or consortium of agencies, refugee mutual assistance associations, and local government entities. Applicants must demonstrate (1) experience in serving, or the capacity to serve, refugees and (2) a thorough understanding of how the refugee program operates.

Because any demonstration project will have a potential impact on a State's or locality's budgetary needs for cash assistance and/or medical assistance, as well as social services, a non-State applicant is required to coordinate its activities with the State Refugee Coordinator in the development and implementation of such a demonstration project and also, if the refugee program is administered locally by a local public agency (rather than a State agency), to coordinate its activities with the local agency. State applicants must also coordinate their proposed activities with other participants in refugee resettlement such as voluntary agencies, service providers, mutual assistance associations, and local agencies if applicable.

Planning Grants

ORR intends to make available up to $25,000 to an applicant who has successfully passed the preapplication stage. The grant is intended to help fund project planning and development costs which may be incurred between the preapplication approval stage and the formal application submission. Applicants who wish to be considered for a planning grant should include as part of the preapplication submission: (1) A description of the prospective costs estimated to be incurred between the time a preapplication is approved and a final application is submitted (a budget); (2) an assurance that the applicant has no alternative sources of funding for planning costs; and (3) a justification of both the need for the funds and of the costs' being reasonable. The ORR review panel will recommend whether to approve funds for a planning grant at the time the preapplication is reviewed in ORR based on a satisfactory response to the three elements listed above. The Director, ORR, will make the final decision whether to approve and release funds for this purpose.

Discussion of Comments Received

Fourteen comments were received during the public comment period in repsonse to the notice. These are summarized below and are followed in each case by ORR's response.

Comment: One commenter recommended that demonstration projects include refugees who have been in the U.S. since 1980.

Response: The Wilson-Fish amendment specifically limits participation in demonstration projects to refugees who have been in the U.S. 36 months or less, which coincides with the period of Federal refugee funding for cash and medical assistance.

Comment: Several commenters urged ORR to provide additional funds for the costs to applicants of developing demonstration projects.

Response: ORR recognizes that substantial time and effort must be committed in planning and developing a thoughtful and effective demonstration project. Therefore, we have added a new section to the notice which makes available planning grants of up to $25,000 for those applicants who have successfully passed the pre-application stage, have no alternative sources of funding, have justified the need for these funds, and whose costs appear reasonable.

Comment: One commenter asked that ORR's procedures for funding multi-year projects be explained.

Response: While ORR will consider projects of up to three years duration, funding will be incremental and issued to cover costs for a period of a year or less. If appropriate, serial noncompetitive continuation awards may be issued to allow completion of the project period. Under Department of Health and Human Services standards, continuation funding will be conditioned upon the availability of funds, satisfactory progress by the grantee, and ORR's determination that continued funding is in the best interest of the Government. In the event that ORR is unable to draw conclusions as to the adequacy of grantee performance on the basis of reports submitted, a brief

continuation application may be required."

Comment: Two commenters expressed concern that demonstration projects which are national in scope would not be required to meet the coordination requirements applicable to State and local projects.

Response: ORR has reconsidered this matter and has agreed to make all national projects subject to the coordination requirements in the States and localities where the projects would be implemented if the project would have a significant impact in the State. The notice has been revised to reflect this change.

Comment: One commenter recommended that demonstration projects be limited to no more than one per State.

Response: ORR will not permit demonstration projects which would provide similar services to the same participants in the same geographic area. We recognize, however, that in certain instances it may be advisable to consider different kinds of projects operating within the same area.

Comment: One commenter suggested that demonstration project sites be limited to States with a specified minimum number of refugees or with a given allocation to ensure that the demonstration project doesn't jeopardize the feasibility of the continued administration of the State program.

Response: The notice as drafted is designed to give potential applicants as much flexibility as possible in determining the scope of a project, the number of participants in a project, and the geographic area encompassed by a project. At the same time, applicants will be judged against the rigorous evaluation criteria outlined in the notice. If proposals successfully meet these criteria, we believe it it unlikely that they would jeopardize the administration of the State refugee program.

Comment: Several commenters asked for clarification of the provision in the Wilson-Fish amendment which precludes refugees who participate in demonstration projects from receiving AFDC, RCA, Medicaid, or RMA. A few commenters wondered whether refugees would be precluded from accessing these programs only to the extent that they would have sufficient resources in the demonstration projects to make them ineligible for AFDC, RCA, Medicaid, or RMA.

Response: The Department interprets the Wilson/Fish amendment to prohibit refugees from accessing AFDC or RCA if an alternative form of maintenance is established in the demonstration project, provided that the benefit levels set forth in the project are substantially equivalent to the AFDC benefit levels in terms of cash and in-kind contributions. Similarly, in a project which proposes an alternative form of medical assistance, refugee participants would be precluded from accessing RMA or Medicaid provided that the scope of services is comparable to services provided through Medicaid. Even though the Wilson/Fish amendment is a statutory amendment to the Immigration and Nationality Act and not to the Social Security Act, the prohibition on refugees receiving benefits under programs funded through title IV–A and title XIX of the Social Security Act still applies.

Comment: One commenter asked whether refugee participation in the projects would be voluntary or mandatory.

Response: In the notice, the applicant is given the flexibility to decide how it intends to select refugees for the project and how it plans to define who continues to participate in the project. However, once those decisions are made, participation in the project would be mandatory, not elective. In addition, we reiterate that project participants will be precluded from receiving duplicate assistance through the programs of AFDC, RCA, Medicaid, or RMA if they are participating in a project which establishes an alternative cash and/or medical assistance system. We have revised the "Program Description" section of the notice to reflect this clarification.

Comment: Four commenters recommended that the notice require States to approve a demonstration project before it could be funded. One of the four also called upon ORR to enter into demonstration arrangements only with State agencies. Two of the four asked that the notice be revised to require an applicant to describe how the demonstration proposal would affect the State agency's administration of the refugee resettlement program.

Response: ORR believes that the legislative intent of the Wilson/Fish amendment would be violated if we restricted applicants to State agencies. We have drafted the demonstration project notice to cast as wide a net as possible in soliciting creative and effective alternatives from interested participants in the refugee resettlement programs. We believe this is not only in keeping with the spirit of the amendment but will serve well those program objectives of reducing welfare use by refugees, increasing self-sufficiency, and fostering coordination. The notice does set forth coordination requirements. If non-State applicants are to be considered for funding, they must involve State agencies and the States Refugee Coordinator in their planning.

Comment: One commenter requested that project applicants be required to consult with and include the comments of the voluntary agencies if the proposed project would have an impact on the initial resettlement activities carried out by those agencies.

Response: We believe the notice gives ample opportunity to the voluntary resettlement agencies to become involved in the consultative process by requiring all applicants to coordinate their proposed activities with voluntary resettlement agencies located in the area to be covered under a project. The additional requirement that a State Refugee Coordinator submit comments on a proposal recognizes the unique role played by the coordinator who is statutorily required to coordinate, overall, public and private resouces in the refugee program in the State.

Comment: One commenter expressed concern that the ability of a State to plan the social services delivery system and to contract for services would be hampered if ORR could decrease a State's social services funds in order to fund demonstration projects during the course of a fiscal year.

Response: ORR does not intend to reduce its announced social service allocation to a State in order to fund a demonstration project. In addition, we believe that the coordination requirements with the State set forth in the notice will provide an opportunity for the State to make clear to a potential applicant what contractual arrangements have already been made. The State may also identify where flexibility exists in order to assist the applicant in fashioning a proposal whose content and timing would not conflict with existing State serivce contracts and which could, in fact, help to promote the effective utilization of services already contracted for and scheduled to be offered.

Comment: One commenter asked whether the fair hearings and appeals procedures set forth in a project had to be essentially equivalent to the procedures followed in the AFDC or RCA programs.

Response: The Department believes that every participant in a demonstration project must be given an opportunity to appeal a decision made by a project official with which he or she disagrees. As a result, both preapplications and applications will be judged on the extent to which an

applicant has outlined fair hearings and appeals procedures similar to those in effect in the AFDC and RCA programs, if relevant to the scope of the project. Both the preapplication and application evaluation criteria have been strengthened to reflect this view.

Based on internal HHS comments, other changes in the notice have been made which include: (1) Clarifying that an evaluation of the project must be contracted for by the applicant and that ORR must review and approve the evaluation plan; (2) revising the proposal due dates and panel review cycles to allow adequate preparation time for interested potential applicants; (3) making editorial revisions to the E.O. 12372 notification process. Additional minor editorial changes have been made.

Program Information

I. Purpose and Scope

The 1985 Continuing Appropriations Resolution, Pub. L. 98-473, amended the Immigration and Nationality Act and thus provided the authority for this notice which invites applications for demonstration projects. The full text of this provision, know as the "Wilson/Fish Amendment," follows:

Section 119. (a) Section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) is amended by adding at the end thereof the following new paragraph:

"(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

"(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act.

"(C) The Secretary, in consultation with the United States Coordinator for Refugee Affairs, shall report to Congress not later than October 31, 1985, on the results of these projects and on any recommendations respecting changes in the refugee assistance program under this section to take into account such results.

"(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under paragraph (1) or (2) of section 414(a) of this Act, part A of title IV of the Social Security Act, or title XIX of such Act, may be used for the purpose of implementing and evaluating alternative projects under this paragraph.".

(b) The amendment made by subsection (a) shall take effect on October 1, 1984.

The purpose of the announcement is to provide interested and eligible applicants an opportunity to test innovative ways of meeting refugees' basic needs while enhancing their prospects for the earliest possible attainment of self-sufficiency. ORR will be interested both in approaches and outcomes which can be replicated at the national program level and in projects which may be particularly well-suited to the specific needs of a targeted population in a given location.

Demonstration projects may propose alternative approaches to one component of the resettlement system or to the entire system itself. While proposals need not present a comprehensive alternative to the current system, they must meet the statutory intent of the Wilson/Fish amendment, *i.e.:*

(1) Promoting refugee economic self-sufficiency;

(2) Reducing refugee reliance on public assistance; and

(3) Fostering greater coordination among resettlement agencies and service providers, including refugee mutual assistance associations (MAAs).

Congress, the Department of Health and Human Services, and others involved in the refugee resettlement program have recognized the difficulties associated with frequent and prolonged use of public assistance by refugees. This announcement encourages the development of projects which target welfare-dependent refugee populations by offering new ways to reduce public assistance use and to find jobs for refugees as soon after their arrival as possible. The basic premise of this announcement is that while refugees may be in need of a range of services, provision of these services should not stand in the way of refugees' seeking work as soon as practicable.

II. Program Description

In developing alternative demonstration projects, potential applicants must be aware of two statutory limitations: (1) The Wilson/Fish Amendment requires that refugees who participate in demonstration projects not have been in the U.S. more than 36 months; and (2) refugee participants are precluded from receiving AFDC, refugee cash assistance (RCA), Medicaid, or refugee medical assistance (RMA), although cash and medical assistance can be provided under the terms of the demonstrations themselves. For example, in a demonstration project which proposes an alternative cash assistance system, refugee participants would not be permitted to receive AFDC or RCA because they would be receiving substantially equivalent levels of assistance under the terms of the project. Refugee participants in such a project, however, could receive Medicaid or RMA if otherwise eligible. Likewise, if a demonstration project proposes an alternative medical assistance system, refugee participants would not be permitted to receive Medicaid or RMA because they would be receiving comparable medical assistance under the terms of the project. Project participants could receive AFDC or RCA if a cash assistance alternative was not a part of the project and if they would be eligible otherwise for these programs. In addition, the Department of Health and Human Services remains opposed to the provision of medical assistance without regard to need and economic circumstances of the refugee. Applicants who propose alternatives to the current system of medical assistance must therefore relate such assistance to an appropriate needs test.

The projects submitted are expected to reflect a range of variations in the present program in elements such as: Demographic characteristics of refugees served, extent of the geographic area covered in the project, mix of services proposed, length of project period, and types of mechanisms used to provide assistance and services. Close collaboration is expected between the applicant, the voluntary resettlement agencies in the proposed project area under cooperative agreements with the State Department, the State, and, if applicable, the local agency which administers ORR-funded refugee assistance programs. Such cooperation will be necessary to ensure project continuity and coordination of available resources.

Applicants are given the flexibility to decide how they intend to select refugees for the project and how they plan to define continued participation in the project. However, once those decisions are made, refugee participation in the project would be mandatory.

Applicants wishing to carry out a demonstration project in States where the State agency also has indicated an intention to apply for demonstration funds should, to the extent practicable, coordinate with and build upon the State's demonstration proposal. Likewise, applicants offering demonstrations from the same jurisdiction should seek to coordinate such efforts to avoid administrative difficulties which would occur through a

fragmented approach to State or local resettlement.

Diversity among the various projects submitted for consideration is anticipated and encouraged. Projects might include but need not be limited to:

(1) Alternatives to the current systems for providing cash assistance to refugees. For example, ORR will consider projects to provide cash assistance through a non-State-administered mechanism, such as through the private voluntary resettlement agencies. Consideration will also be given to variations in the State-administered system which increase work incentives, such as a project in which a cash assistance system similar to RCA would be provided as the maintenance program of first resort (rather than AFDC). Applicants must use the AFDC payment levels as a guide in determining cash and in-kind benefit levels for project participants. Any deviation from the AFDC policies should be fully justified. In addition, applicants are expected to devise alternative approaches which are equitable and which provide for fair hearings and appeals processes for participating refugees similar to procedures followed in the AFDC or RCA programs.

(2) Alternatives to the current systems for providing medical assistance to refugees. For example, ORR will consider proposals to provide medical care from a health maintenance organization or by purchasing health insurance through a private provider (if a refugee's eligibility for medical assistance continued to be based on financial need). Applicants must show that such an alternative is likely to lead to increased economic self-sufficiency and reduced welfare use. Any deviation from the scope of services provided through Medicaid and RMA should be fully justified.

(3) Comprehensive provision of assistance and services provided to refugees and different administrative alternatives by which they are provided. These projects might operate entirely outside the State-administered structure such as through a privately administered resettlement system or through a local, public resettlement project.

III. Preapplication Content

In developing proposals for funding under this notice, applicants shall submit an original and two copies of the preapplication. The preapplication should:

A. General Program Description

1. Generally describe the problem to be addressed by the demonstration effort in light of the statutory priorities of reducing welfare dependence; increasing self-sufficiency; and fostering greater coordination among voluntary agencies, service providers, mutual assistance associations, and the relevant State and local agencies. Include documentation of the problem and sources of evidence;

2. Indicate the need for the demonstration project and state the principal and subordinate objectives of the project;

3. Identify in a general way results and benefits to be derived;

4. Outline a plan of action pertaining to the scope and the detail of how the proposed work will be accomplished for each function or activity provided in the budget;

5. Cite factors which might accelerate or decelerate the work and the reason for taking the chosen approach as opposed to others; and

6. Provide, for each function or activity, quantitative quarterly projections of the accomplishments to be achieved, particularly as they relate to job placement, welfare reductions, and cost savings.

B. Administration and Management Information

1. Specify who has fiscal and programmatic responsibility along with a short description of the nature of the effort or contribution;

2. Discuss the existing and proposed capacity of participating administrative entities to collect information and data for purposes of reporting on the project, and conducting a summative evaluation of the project; and

3. Explain the monitioring and evaluation methodologies that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item A.3 are being achieved.

C. Budget and Fiscal Information

1. Include a preliminary budget by component by Federal fiscal year, for each cycle of funding;

2. Discuss projected cost savings by component with a general description of how these savings have been determined; and

3. Specify that demonstration project funds will not supplant non-ORR funds available to the applicant from other sources.

IV. Preapplication Evaluation Criteria

Completeness and feasibility of the proposed project: (40)

- Likelihood of project design's effectuating program priorities of reducing refugee welfare use, promoting early employment, and fostering self-sufficiency;
- Relevance of proposed activities to anticipated project outcomes;
- Description of how refugees will be selected for the project including a definition of what constitutes participation in the project;
- Awareness of current economic circumstances prevailing in the geographic area encompassed by the project, along with an awareness of employment opportunities available to project participants;
- Feasibility of methodologies to implement proposed activities;
- Reasonableness of employment objectives and their impact on refugee self-sufficiency;
- Extent to which applicant has coordinated proposed activities with other participants in refugee resettlement—such as voluntary agencies, service providers, mutual assistance associations, State agencies, and local governments;
- Evidence that applicant has consulted with the State Refugee Coordinator, solicited the State Refugee Coordinator's comments on the proposal, included these comments, if provided, as part of the preapplication submission, and, if the refugee program is administered locally by a local public agency (rather than a State agency), has also carried out the same actions with respect to the local agency (national level projects are subject to this provision if a project would have a significant impact in a State);
- Clarity of staffing patterns described; and
- Where project proposes changes from current cash assistance policies, and where changes are proposed in the Medicaid scope of services, adequate justification presented in keeping with goals of project;
- Adequate general description that the fair hearings and appeals procedures to be followed when a project participant questions a decision made by grantee are comparable to the procedures used in the AFDC and RCA programs (if applicable to scope of project); and
- Adequate evidence that the applicant has a solid background in program management and financial management in similar kinds of activities.

Monitoring and Evaluation Plan: (30)

- Adequate procedures and system proposed to collect data on the performance measures;

• Measurability of goals and objectives as stated and identification of performance measures and their relation to goals and objectives—i.e., whether the measures proposed are appropriate and adequate to measure progress against the stated goals and objectives of the project;

• Technical feasibility of the evaluation methodology proposed and its appropriateness to the project; and

• Adequacy of monitoring plan describing how operational components will be supervised and what procedures will be used to assure accountability.

Budget and Fiscal: (30)

• Administrative functions and costs clearly presented and reasonable;

• Acceptability of estimated program costs and adequacy of rationale for allocating funds to each budget component, including, if applicable, identification of numbers of participants who otherwise would have been eligible for the programs of RCA, AFDC, RMA, and/or Medicaid;

• Adequacy of facility and resources;

• Reasonableness of the budget in relation to the proposed project and the anticipated results, proposed activities, client characteristics, and the projected client outcomes;

• Evidence that benefit levels established are substantially equivalent in terms of cash and in-kind contributions to AFDC benefits levels (if applicable to scope of project);

• Evidence of potential cost savings which would occur as soon as possible as a result of the demonstration.

V. Application Content

The application should:

A. General Program Description

1. Specifically describe the problem to be addressed by the demonstration effort, in light of the statutory intent of reducing welfare dependence; increasing self-sufficiency; and fostering greater coordination of resources among voluntary agencies, service providers, mutual assistance associations, and the relevant State and local agencies. Include documentation of the problem and sources of evidence;

2. Indicate the need for the demonstration project and state the principal and subordinate objectives of the project;

3. Identify results and benefits to be derived;

4. Provide a detailed plan of action pertaining to the scope and the detail of how the proposed work will be accomplished for each function or activity provided in the budget;

5. Cite factors which might accelerate or decelerate the work and the reason for taking the chosen approach as opposed to others; and

6. Provide, for each function or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved, particularly as they relate to job placement, welfare reductions, and cost savings.

B. Administration and Management

1. Provide a detailed management plan indicating who has fiscal and programmatic responsibility. Identify the organizational structure and include a staffing pattern and key position descriptions;

2. Discuss the capacity of participating entities to collect information and data for purposes of reporting, monitoring, and evaluation. Provide the monitoring plan and plans for procurement of an outside evaluation of the project—specifically the procedures and systems for collection of information, budget for the evaluation of the project, and plans for manipulating data—i.e., what will be analyzed and how, what are the performance measures, how will progress be measured, and what questions will be addressed and how;

3. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item A.3 are being achieved; and

4. Provide a chart of project milestones.

C. Budget

1. Submit a detailed budget by component by Federal fiscal year, for each cycle of funding, with narrative explanation to include: Total dollar amount by component, Percent of total amount by component; and per capita costs;

2. Discuss projected cost savings by component with detailed description of how these savings have been determined; and

3. Provide assurance that demonstration project funds will not supplant non-ORR funds available to the applicant from other sources.

VI. Application Evaluation Criteria

Completeness and feasibility of the proposed project: (40)

• Likelihood of project design's effectuating program priorities of reducing refugee welfare use, promoting early employment and self-sufficiency, and fostering improved coordination among the resettlement agencies and service providers.

• Relevance of proposed activities to anticipated project outcomes;

• Description of how refugees will be selected for the project including a definition of what constitutes participation in the project;

• Awareness of current economic circumstances prevailing in the geographic area encompassed by the project, along with an awareness of employment opportunities available to project participants;

• Feasibility of methodologies to implement proposed activities;

• Reasonableness of employment objectives and their impact on refugee self-sufficiency;

• Extent to which applicant has coordinated proposed activities with other participants in refugee resettlement—such as voluntary agencies, service providers, mutal assistance associations, State agencies, and local governments.

• Evidence that applicant has consulted with the State Refugee Coordinator, has solicited the State Refugee Coordinator's comments on the proposal, has included these comments, if provided, as part of the application submission, has sought to coordinate activities with the State in the development and implementation of the project, and, if the refugee program is administered locally by a local public agency (rather than a State agnecy), has also carried out the same actions with respect to the local agency (national level projects are subject to this provision if a project would have a significant impact in a State);

• Clarity of staffing patterns described;

• Adequate rationale for establishing priorities for specific activities proposed, for the refugees proposed to be served, for the geographic area encompassed, for the length of project proposed;

• Where project proposes changes from current cash assistance policies, and where changes are proposed in the Medicaid scope of services, adequate justification presented in keeping with goals of project;

• Adequate specific description that the fair hearings and appeals procedures to be followed when a project participant questions a decision made by grantee are comparable to the procedures used in the AFDC or RCA programs (if applicable to scope of project); and

• Adequate evidence that the applicant has a solid background in program management and financial management in similar kinds of activities.

Monitoring and Evaluation Plan: (30)

- Adequate procedures and system proposed to collect data on the performance measures;
- Measurability of goals and objectives as stated and identification of performance measures and their relation to goals and objectives—i.e., whether the meaures proposed are appropriate and adequate to measure progress against the stated goals and objectives of the project;
- Technical feasibility of the evaluation methodology proposed and its appropriateness to the project;
- Adequacy of monitoring plan describing how operational components will be supervised and what procedures will be used to assure accountability; and
- Adequacy of evaluation plan.

Budget and Fiscal: (30)

- Administrative functions and costs clearly presented and reasonable;
- Acceptability of estimated program costs and adequacy of rationale for allocating funds to each budget component, including, if applicable, identification of numbers of participants who otherwise would have been eligible for the programs of RCA, AFDC, RMA, and/or Medicaid;
- Adequacy of facility and resources;
- Reasonableness of the budget in relation to the proposed project and the anticipated results, proposed activities, client characteristics, and the projected client outcomes;
- Evidence that benefit levels established are substantially equivalent in terms of cash and in-kind contributions to AFDC benefit levels (if applicable to scope of project); and
- Evidence of potential cost savings which would occur as soon as possible as a result of the demonstration.

SUPPLEMENTARY INFORMATION:

Review and Award Procedures

Preapplications will be reviewed and point-score rated by a review panel of experts according to the above criteria, and in accordance with the HHS Grants Administration Manual. A decision as to whether a preapplication will be recommended for further consideration will be made by the Director, ORR. Only those applicants whose preapplications have been reviewed and who have been invited by the Director, ORR, to submit a full application will be eligible for funding.

Applications will be evaluated on a competitive basis by a review panel of experts according to the above criteria, and in accordance with the HHS Grants Administration Manual. Applications are expected to be much more specific in nature than preapplications. Final funding decisions will be made by the Director, ORR. Not more than nine proposals will be funded during a fiscal year. A schedule of proposed panel review cycles and the corresponding proposal due dates (for preapplications and applications) follows:

Proposal Due Dates and Panel Review Cycles

Preapplications received by July 15, 1985 will be reviewed no later than August 2, 1985

Preapplications/Applications received by October 1, 1985 will be reviewed no later than October 22, 1985

Preapplications/Applications received by January 2, 1986 will be reviewed no later than January 22, 1986

Preapplications/Applications received by April 1, 1986 will be reviewed no later than April 22, 1986

Preapplications/Applications received by July 1, 1986 will be reviewed no later than July 22, 1986

The Office of Refugee Resettlement reserves the right to cancel or reschedule panel review dates in cases where the number of applications received would not, in the judgment of the Director, warrant the expenditure of public monies. In such instances, all eligible applicants will be notified in writing of the schedule adjustment at least ten calendar days before the scheduled review date. Review cycles after FY 1986 will be announced at a later time by the Director, ORR.

Records and Reports

Preapplications and applications for grants to be awarded under this notice are to be submitted on Standard Form 424 which has current OMB approval (0348–0006).

Financial reporting is to be provided on Standard Form 269. Activity items will be identified on a sample of Standard Form 269 accompany grant awards.

Grantees will be required to report financial status and program progress quarterly, and separately from ORR's regular Refugee Resettlement Program or other discretionary grants. Both financial status reports (SF 269s) and program progress reports shall be due 30 days after the first calendar day of each Federal quarter following the effective date of the grant award, except for the final financial and program reports which shall be due 90 days after the expiration or termination of grant support.

A grantee must provide for the maintenance of such operational records as are necessary for Federal monitoring of the grantee's project.

The content of the program progress reports shall conform to the guidelines which will be issued by ORR under separate cover. In general, however, the progress reports shall include, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the costs per unit of output may be required if that information will be useful.

(2) The reason for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

Grantees shall adhere to the standards in this section when prescribing program progress reporting requirements of subgrantees.

These reporting requirements directly follow Departmental grants administration regulations at 45 CFR Part 74.

Should projects propose to serve refugees who otherwise would have been eligible for the programs of aid to families with dependent children (AFDC) and Medicaid, additional reporting forms will be required by the Office of Family Assistance and the Health Care Financing Administration. These reports will be identified at the time the grant is awarded.

Executive Order 12372, Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Applicants should contact the designated Single Point of Contact (SPOC) in their State as early as possible to alert the SPOC of the prospective preapplication and/or application and receive specific instructions regarding the State's review process. Applicants should submit the material required by the State to the SPOC.

State SPOC comments on preapplications will be considered by ORR, but the "accommodate or explain" rule of E.O. 12372 will apply only to State SPOC process recommendations

on applicants, not preapplications. State process recommendations will be due by the 60th day after the proposal due date for the application. SPOC comments and recommendations should be submitted to the same address used for preapplications and applications: U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229 Switzer Building, 330 C Street, SW., Washington, D.C. 20201. A list of State SPOCs is included at the end of this announcement.

Application Request

Preapplication and application forms (Standard Form 424 "Federal Assistance") are available on request from the Office of Refugee Resettlement, Grants Management Office, SSA, Room 1229 Switzer Building, HHS, 330 C Street, SW., Washington, D.C. 20201, Betsy Andress, (202) 245–1715. To be considered complete, a preapplication or application package must consist of a signed original and two copies, one of which should be addressed to the appropriate Regional Director, ORR. All preapplication or application packages must be received by the U.S. Department of Health and Human Services, SSA, Grants Management Office, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

Application Delivered by Mail

Even though this is a standing announcement, five cut-off and corresponding panel review dates are proposed. In order to meet these respective deadlines, the procedures below must be followed.

A formal grant application sent by mail must be addressed as indicated immediately above.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A legibly dated receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service. Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local post office. Applicants are encouraged to use registered or at least first class mail. Applications must be postmarked in 1985 no later than 11:59 pm July 15 to be reviewed no later than August 2; 11:59 pm October 1 to be reviewed no later than October 22; and in 1986 no later than 11:59 pm January 2 to be reviewed no later than January 22; 11:59 pm April 1 to be reviewed no later than April 22; and 11:59 pm July 1 to be reviewed no later than July 22.

Applications Delivered by Hand

A preapplication or an application that is hand-delivered should be taken to the U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229 Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

The Grant Management Office will accept a hand-delivered preapplication or application between 8:30 am and 5:00 pm Eastern Time daily, except Saturdays, Sundays, and Federal holidays.

Preapplications or applications delivered by hand must be received in 1985 by 5:00 pm July 15 to be reviewed no later than August 2; by 5:00 pm October 1, to be reviewed no later than October 22; and in 1986 by 5:00pm January 2 to be reviewed by no later than January 22; by 5:00 pm April 1 to be reviewed no later than April 22; and by 5:00 pm July 1 to be reviewed no later than July 22.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack Anderson, Regional Director, Office of Refugee Resettlement, Room 2403, J.F.K. Federal Building, Government Center, Boston, MA 02203, 617–223–6180

Mr. Bill Neary, Regional Director, Office of Refugee Resettlement, 3535 Market Street, Room 11150, P.O. Box 13716, Philadelphia, PA 19101, 215–596–0210

Ms. Suanne Brooks, Regional Director, Office of Refugee Resettlement, 101 Marietta Tower, Suite 2112, Atlanta, GA 30323, 404–221–2250

Mr. Derek Schoen, Regional Director, Office of Refugee Resettlement, 300 S. Wacker Drive, 35th Floor, Chicago, IL 60606, 312–353–5182

Mr. Manuel Rodriguez Fleitas, Director, Florida Office, Office of Refugee Resettlement, P.O. Box 140188, Coral Gables, FL 33134, 305–643–2667

Office of Refugee Resettlement, Division of Financial Management and Administration, 330 C Street, SW., Room 129, Switzer Building, Washington, DC 20201, Attention: Sara Stone, 202–245–1832

Mr. James Turman, Regional Director, Office of Refugee Resettlement, 1200 Main Tower Bldg., Room 700A, Dallas, TX 75202, 214–767–4301

Mr. Larry L. Laverentz, Assistant Regional Director, Office of Refugee Resettlement, 601 East 12th Street, Room 436, Kansas City, MO 64106, 816–758–7081

Mr. Edwin LaPedis, Regional Director, Office of Refugee Resettlement, 19th & Stout Streets, Room 1185, Federal Building, Denver, CO 80294, 303–844–5387

Ms. Sharon Fujii, Regional Director, Office of Refugee Resettlement, 50 United Nations Plaza, Mail Stop 352, San Francisco, CA 94102, 415–556–8582

Mr. John Crossman, Regional Director, Office of Refugee Resettlement, 2901 Third Avenue Mail Stop 212, Seattle, WA 98101, 206–442–8049

Applicable Regulations

The following HHS regulations apply to grants under this Notice:

a. Title 42 of the *Code of Federal Regulations:*

Part 441, Subparts E & F, Services: Requirements and Limits Applicable to Specific Services—Abortions and Sterilization.

b. Title 45 of the *Code of Federal Regulations:*

Part 16, Procedures of the Departmental Grant Appeals Board;
Part 46, Protection of Human Subjects;
Part 74, Administration of Grants;
Part 75, Informal Grant Appeal Procedures;
Part 76, Debarment and Suspension from Eligibility for Financial Assistance;
Part 80, Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;
Part 81, Practice and Procedure for Hearings Under Part 80 of this Title;
Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;
Part 91, Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance;
Part 400, Refugee Resettlement Program;
Part 401, Cuban/Haitian Entrant Program (except that 401.2(b)(2) does not apply).

(No Catalog of Federal Domestic Assistance number has been assigned.)

Dated: June 4, 1985.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic

and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Rm. 205, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804; for information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Dept. of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building—Room 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Mississippi

Office of the Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202; for information contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129 Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services,

Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to:

Neson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York [1]

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215; for information contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Attn: Barbara J. Gontz, Project Coordinator, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhl, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building 6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street—GEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002 Tel. (307) 777–7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

[FR Doc. 85–14001 Filed 6–10–85; 8:45 am]

BILLING CODE 4190–11–M

[1] New York State Clearinghouse advised ORR in a letter dated March 14, 1985, that it has elected to waive intergovernmental review of funding applications under this notice.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., May 30, 1985.

Sixth Principle Meridian

T. 43 N., R. 69 W.

The plat representing the dependent resurvey of the east and north

boundaries and the subdivisional lines, T. 43 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 415, was accepted May 24, 1985.

T. 44 N., R. 69 W.

The plat representing the dependent resurvey of the Eleventh Standard Parallel North, through R. 69 W., the east boundary and the subdivisional lines, T. 44 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 415, was accepted May 24, 1985.

T. 53 N., R. 69 W.

The plat representing the dependent resurvey of the Thirteenth Standard Parallel North, through R. 69 W., the Eighth Auxiliary Meridian West, through T. 53 N., between Rs. 68 and 69 W., the west and north boundaries and the subdivisional lines, T. 53 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 449, was accepted May 24, 1985.

T. 52 N., R. 72 W.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 52 N., R. 72 W., Sixth Principal Meridian, Wyoming, Group No. 460, was accepted May 24, 1985.

T. 52 N., R. 73 W.

The plat representing the corrective dependent resurvey of the section line between sections 25 and 36, T. 52 N., R. 73 W., Sixth Principal Meridian, Wyoming, Group No. 460, was accepted May 24, 1985.

T. 44 N., R. 94 W.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, a portion of the meander lines on the right bank of the Bighorn River, and the subdivision of section 5, T. 44 N., R. 94 W., Sixth Principal Meridian, Wyoming, Group No. 435, was accepted May 24, 1985.

T. 45 N., R. 94 W.

The plat representing the dependent resurvey of a portions of the Eleventh Standard Parallel North, through R. 94 W., west boundary and subdivisional lines, and a portion of the adjusted meanders in certain sections, and the subdivision of certain sections, T. 45 N., R. 94 W., Sixth Principal Meridian, Wyoming, Group No. 435, was accepted May 24, 1985.

These surveys were executed to meet certain administrative needs of this bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 4, 1985

Richard L. Oakes

Chief Cadestral Surveyor for Wyoming.

[FR Doc. 85-13998 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-22-M

Availability of Planning Criteria; Red Mountain Planning Unit Management Framework Plan Amendment, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to 43 CFR 1610.4-2 notice is hereby given that draft planning criteria for the amendment to the Red Mountain Management Framework Plan are available for review and comment.

DATE: Comments on the draft planning criteria will be accepted for 30 days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John T. Lloyd, Resource Area Manager, 1125 16th Street, P.O. Box II, Arcata, Calfornia 95521, Telephone (707)822-7648.

SUPPLEMENTARY INFORMATION: This amendment is being prepared primarily to make land use allocations for recently acquired lands in northern Mendocino County, and to address implications of the Wild and Scenic River designations on public lands along the Eel River.

Dated: June 3, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85-14021 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Thomnas C. Emmel

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-695444

Applicant: Dr. Thomnas C. Emmel, University of Florida, Gainesville, FL.

The applicant requests a permit to remove ten eggs of the Schaus Swallowtail Butterfly (*Papilio aristodemus ponceanus*) from the wild Key Biscayne National Park, FL, for laboratory propagation and release of progeny back to the wild in 1986.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director of the above address. Please refer to the appropriate PRT number when submitting comments.

Date: June 4, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-13705 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4712A and 4713, Blocks 452 (portion) and 453, respectively, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from offshore bases located at Flour Bluff and Aransas Pass, Texas.

DATE: The subject DOCD was deemed submitted on June 3, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the

public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979; (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 3, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-14022 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463. A meeting of the Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on July 24-25, 1985, in Metairie, Louisiana. The agenda of the meeting is as follows:

July 24

8:30 a.m.-4:30 p.m.: Gulf of Mexico Ternary Studies Meeting

July 25

8:30 a.m.-4:30 p.m.: Regional Technical Working Group Business Meeting

A. Current Regional Activities
B. Regional Sales Update
C. Industry Perspective on Artificial Reefs Program
D. 5-Year Outer Continental Shelf Leasing Program
E. Louisiana Coastal Protection and Enhancement Project
F. Regional Projects Status

The meeting will be held in Room 437 of the Gulf of Mexico OCS Regional Office, 3301 North Causeway Boulevard, Metairie, Louisiana. All sessions are open to the public, and interested persons may make oral or written presentations at the Business Meeting upon request. Such requests should be made not later than July 19, 1985, to Mr. Sydney H. Verinder, Gulf of Mexico OCS Region, Minerals Management Service, P.O. Box 7944, Metairie, Louisiana 70010, or telephone (504) 838-0627.

A taped cassette transcript and summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

Dated: June 4, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 85-14023 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the South Timbalier Block 54 Field Federal Unit Agreement No. 14-08-0001-3444, submitted on May 29, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the South Timbalier Block 54 Field Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 3, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-14026 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-12-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 1, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 26, 1985.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Palm Beach County

Boca Raton, *Administration Buildings*, Dixie Hwy. & Camino Real

INDIANA

Vanderburgh County

Evansville, *Bayard Park Historic District*, Roughly bounded by Gum, Kentucky, Blackford and Garvin Sts.

IOWA

Allamakee County

Waukon, *Hager, Otto J., House*, 402 Allamakee St.

Buchanan County

Aurora vicinity, *Richardson-Jakway House*, R.R. #1

Iowa County

North English vicinity, *Turner, Fred G., House*, IA 149

Jackson County

Springbrook, *Kegler-Gonner Store and Post Office*, 100 East Main

Jones County

Monticello, *Odd Fellows Hall*, 203 W. First St.

Linn County

Cedar Rapids, *St. Paul Methodist Episcopal Church*, 1340 Third Avenue, Southeast

Mt. Vernon, *West, Wesley, House*, Palisades Rd.

Monroe County

Albia, *Elbert-Bates House*, 106 Second Ave. West

Polk County

Des Moines, *Des Moines Saddlery Company Building*, 307—311 Court Ave.

Story County

Ames, *Agricultural Hall*, Iowa State University

Woodbury County

Sioux City, *Warrior Hotel*, 6th and Nebraska Sts.

KANSAS

Butler County

Douglass vicinity, *Muddy Creek Bridge (Masonary Arch Bridges of Kansas TR)*, Off US 77

Douglass vicinity, *Polecat Creek Bridge (Masonary Arch Bridges of Kansas TR)*, 5 miles West and 2 miles South of Douglass

Chase County

Cottonwood Falls, *Cottonwood River Bridge (Masonary Arch Bridges of Kansas TR)*, KS 177, North edge of Cottonwood Falls

Cowley County

Dexter vicinity, *Esch's Spur Bridge (Masonary Arch Bridges of Kansas TR)*, 3 miles South and 3 miles West of Dexter

Rock, *Bucher Bridge (Masonary Arch Bridges of Kansas TR)*, Off US 77

Crawford County

Girard vicinity, *Hudgeon Bridge (Masonary Arch Bridges of Kansas TR)*, 10 miles South and 3.2 miles West of Girard

Franklin County

Princeton vicinity, *Middle Creek Tributary Bridge (Masonary Arch Bridges of Kansas TR)*, 5.8 miles West of Princeton

Wellsville vicinity, *Walnut Creek Bridge (Masonary Arch Bridges of Kansas TR)*, Off KS 33 one mile South of Wellsville

Greenwood County

Madison vicinity, *Verdigris River Bridge (Masonary Arch Bridges of Kansas TR)*, .5 miles North of Madison

Pidemont vicinity, *North Branch Otter Creek Bridge (Masonary Arch Bridges of Kansas TR)*, 1 mile West and 5 miles North of Piedmont

Hodgeman County

Jetmore vicinity, *Hackberry Creek Bridge (Masonary Arch Bridges of Kansas TR)*, 13 miles West and 11 miles North of Jetmore

Kiowa County

Belvidere vicinity, *Belvidere Medicine River Bridge (Masonary Arch Bridges of Kansas TR)*, .25 miles North of Belvidere

Labette County

Mound Valley vicinity, *Pumpkin Creek Tributary Bridge (Masonary Arch Bridges of Kansas TR)*, Off KS 22 two miles West of Mound Valley

Parsons vicinity, *Labette Creek Tributary Bridge (Masonary Arch Bridges of Kansas TR)*, Off US 160 2.3 miles West of Parsons

Parson vicinity, *Parsons Filled Arch Bridge (Masonary Arch Bridges of Kansas TR)*, Off US 160 1 mile East and 1.2 miles south of Parsons

Lincoln County

Lincoln vicinity, *Spring Creek Tributary Bridge (Masonary Arch Bridges of Kansas TR)*, 8 miles South and five miles West of Lincoln

Vesper vicinity *Bullfoot Creek Bridge (Masonary Arch Bridges of Kansas TR)*, 4 miles South and .9 miles East of Vesper

Linn County

Goodrich vicinity, *Landers Creek Bridge (Masonary Arch Bridges of Kansas TR)*, South edge of Goodrich

Lyon County

Americus vicinity, *Harris Bridge (Masonary Arch Bridges of Kansas TR)*, 3 miles North and 4 miles West of Americus

Miami County

Louisburg vicinity, *Jake's Branch of Middle Creek Bridge (Masonary Arch Bridges of Kansas TR)*, Off US 69

Montgomery County

Independence *Pennsylvania Avenue Rock Creek Bridge (Masonary Arch Bridges of Kansas TR)*, Pennsylvania Ave. over Rock Creek

Morton County

Richfield vicinity, *Morton County Bear Creek WPA Bridge (Masonary Arch Bridges of Kansas TR)*, 6 miles West and 4 miles North of Richfield

Neosho County

Erie, State Street Bridge *(Masonary Arch Bridges of Kansas TR)*, State St. over Neosho River Tributary St. Paul vicinity, *Cut-Off Bridge (Masonary Arch Bridges of Kansas TR)*, 6.3 miles South and 1.7 miles East of St. Paul

St. Paul vicinity, *Maxwell's Slough Bridge (Masonary Arch Bridges of Kansas TR)*, Off KS 57.5 miles West and 1 mile South of St. Paul

Ness County

Bazine vicinity, *Pawnee River Tributary Bridge (Masonary Arch Bridges of Kansas TR)*, 8 miles South of Bazine

Pawnee County

Rozel vicinity, *Township Line Bridge (Masonary Arch Bridges Kansas TR)*, Off US 156 3 miles West of Rozel

Pottawatomie County

Onaga vicinity, *Vermillion Creek Tributary Stone Arch Bridge (Masonary Arch Bridges of Kansas TR)*, 5 miles South and 1 mile East of Onaga

Rush County

Nekoma vicinity, *Old Maids Fork Bridge (Masonary Arch Bridges of Kansas TR)*, .5 mile North and 2.5 miles West of Nekoma

Otis vicinity, *Rush County Line Bridge (Masonary Arch Bridges of Kansas TR)*, 11 miles North of Otis

Shawnee County

Auburn vicinity, *McCauley Bridge (Masonary Arch Bridges of Kansas TR)*, .5 mile South of Auburn

Wilson County

Coyville vicinity, *Brush Creek Bridge (Masonary Arch Bridges of Kansas TR)*, .5 miles South of Coyville off KS 105

NEW MEXICO

Dona Ana County

Dona Ana, *Our Lady of Purification Catholic Church*, Camino Real and 2nd St.

NORTH CAROLINA

Cumberland County

Hope Mills, *Hope Mills Historic Distric*, Roughly bounded by Seaboard Coastline RR tracks, Lakeview Rd., Little Creek and Cross St.

PENNSYLVANIA

Berks County

Reading vicinity, *Bishop, John, House*, Perkiomen Ave.

Philadelphia County

Philadelphia, *Northern National Bank*, 2300 Germantown Ave.

UTAH

Salt Lake County

Salt Lake City, *Congregation Montefiore (Jewish Synogogue TR)*, 355S. 300 East

Salt Lake City *Congregation Sharey Tzedek Synagogue (Jewish Synagogue TR)*, 833 S. 200 East

Sanpete County

Manti, *Manti City Hall*, 191 N. Main

Utah County

Pleasant Grove, *Pleasant Grove Town Hall*, 107 S. 100 East

Springville, *Reynolds, John T. and Henry T., Jr., House, 101 E. 200 South*

Wasatch County

Heber City, *Blackley, George, House*, 421 East 200 North

Weber County

Ogden, *Congregation B'rith Sholem Synagogue (Jewish Synagogue TR)*, 2750 Grant

VIRGINIA

Roanoke County

Salem, *Williams-Brown House-Store (Proposed Move)*, 523 East Main St.

WEST VIRGINIA

Berkeley County

Baker Heights vicinity, *Kearfott-Bane House*, SR 36/1

Bunker Hill vicinity, *Morgan-Gold House*, SR 26

Gerrardstown vicinity, *Wilson, Mary Park, House*, SR 51/2.

Gerrardstown, *Hays-Gerrard House*, Congress St.

Hedgesville vicinity, *Hughes-Cunningham House*, Harlan Springs Rd.

Inwood vicinity, *Brown, Thomas, House, CR 30*

Martinsburg vicinity, *Seibert, Henry J., II, House*, Off W.VA 45

Shanghai vicinity, *DeHaven Joseph T., Log Cabain*, SR 7/14

Smoketown vicinity, *Rush-Miller House*, Off W.VA 45

Grant County

Petersburg, *Hermitage Motor Inn (South Branch MRA)*, Virginia Ave.

Hampshire County

Romney vicinity, *Kuykendall Polygonal Barn (Round and Polygonal Barns of West Virginia TR)*, River Rd.

Hardy County

Moorefield vicinity, *Meadows, The (South Branch MRA)*, US 220
Moorefield vicinity, *Oakland Hall (South Branch MRA)*, US 220
Moorefield vicinity, *Westfall Place (South Branch MRA)*, US 220
Moorefield vicinity, *Wilson-Kuykendall Farm (South Branch MRA)*, US 220
Moorefield, *Inskeep, P. W., House (South Branch MRA)*, W.VA 55
Moorefield, *Moorefield Historic District (South Branch Valley MRA)*, Portions of Main, Elm, Washington & Winchester Sts.
Old Fields vicinity, *Buena Vista Farms (South Branch MRA)*, US 220
Petersburg vicinity, *Hickory Mill) South Branch MRA)*, US 220

Jackson County

Silverton vicinity, *Rankin Octagonal Barn (Round and Polygonal Barns of West Virginia TR)*, CR 3

Jefferson County

Harpers Ferry, *Lee-Longsworth House*, 1141 Washington St.

Lewis County

Camden vicinity, *St. Bernard Church and Cemetery*, Cty. Rds. 20/6 & 17/2

Marion County

Mannington vicinity, *Hamilton Round Barn (Round and Polygonal Barns of West Virginia TR)*, CR 11

Mason County

Point Pleasant, *Point Pleasant Historic District*, Main St. between 1st & 11th and Viand St. between 8th & 10th

Monongalia County

Morgantown, *Brown Building*, 295 High St.
Morgantown, *Monongalia County Courthouse*, 243 High St.
Morgantown, *Seneca Glass Company Building*, 709 Beechurst Ave.

Monroe County

Union, *Echols, Brigadier General John, House*, Elmwood & 2nd St. N.

Pendleton County

Brandywine vicinity, *Old Propst Church (South Branch MRA)*, CR 21/9
Franklin vicinity, *McCoy Mill (South Branch MRA)* Johnstown Rd.
Franklin, *Franklin Historic District (South Branch Valley MRA)*, Roughly Main and High Sts.
Sugar Grove, *Bowers House (South Branch MRA)*, Brandywine-Sugar Grove Rd.
Upper Tract, *Cunningham-Havener House (South Branch MRA)*, US 220
Upper Tract, *Pendleton County Poor Farm (South Branch MRA)*, US 220

Preston County

Masontown vicinity, *Ralphsnyder Decagonal Barn (Round and Polygonal Barns of West Virginia TR)*, CR 52/2

Randolph County

Elkins vicinity, *Elkins Round Barn (Round and Polygonal Barns of West Virginia TR)*, US 219

WISCONSIN

Dane County

Madison, *Agricultural Engineering Building*, 460 Henry Mall, University of Wisconsin Campus

[FR Doc. 85-14053 Filed 6-10-85; 8:45 am]
BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Analysis for Continuing Operation of a Natural Gas Pipeline; Texas Eastern Transmission Corp., Padre Island National Seashore, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received form Texas Eastern Transmission Corporation a Plan of Operations for the purpose of continuing operation of a natural gas pipeline within Padre Island National Seashore, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418. Copies of the document are available from Padre Island National Seashore and will be sent, upon request, to individuals or groups at a charge of $7.30 per copy. The document is 73 pages in length.

Donald Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 85-14055 Filed 6-10-85; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Reclamation

Proposed Draft Contract Available With the Central Utah Water Conservancy District; Proposed Draft Supplemental Repayment Contract Available, Bonneville Unit, Central Utah Project, Utah.

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Bureau of Reclamation announces the availability of a draft supplemental repayment contract with the Central Utah Water Conservancy District (CUWCD), Orem, Utah, to cover the increased costs of municipal and industrial (M&I) water to be developed by the Bonneville Unit of the Central Utah Project. Construction on the Bonneville Unit was initiated in fiscal year 1966. The contract is written pursuant to Reclamation Laws and authorized under the Act of Congress approved April 11, 1956 (70 Stat. 105).

The Bonneville Unit will provide 94,100 acre-feet of M&I water; 70,000 acre-feet for use in Salt Lake County, 20,000 acre-feet in northern Utah County, 3,600 acre-feet in southern Utah and Juab Counties, and 500 acre-feet in Duchesne County. The CUWCD entered into a repayment contract on December 28, 1965, amended April 15, 1966, with the United States to repay the costs associated with the Bonneville Unit. That contract provides for a repayment of about $140,000,000 of costs associated with M&I water development.

Total estimated costs have increased due to inflation and other factors since the execution of that contract. Presently, a difference of about $335,000,000 exists between estimated M&I construction costs repayable by the CUWCD and the repayment coverage in the 1965 contract.

The supplemental contract will provide for the repayment of the additional costs which will be incurred to deliver the full amount of M&I water. The new contract provisions will apply only to those costs to be repaid under the supplemental contract. The existing contract will remain in effect for repayment of the costs associated with the project irrigation water supplies and remaining M&I water costs.

The terms and conditions of the proposed contract were approved as to form by the CUWCD on May 9, 1985, but have not yet been approved by the Secretary of the Interior, which will be necessary before the contract is executed.

The public is invited to submit written comments on the form of the proposed contract not later than June 24, 1985. The Commissioner of Reclamation will review comments submitted. Based on the number, source, and nature of the comments, he will decide whether to hold a public hearing.

Requests for copies of the proposed contract and comments on the contract should be addressed to: Regional Director, Bureau of Reclamation, Attention: 440, P.O. Box 11568, Salt Lake City, Utah 84147.

Dated: June 6, 1985.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 85-14070 Filed 6-10-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB-6 (Sub-256X), and AB-236 (Sub-2S)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment Camas Prairie Railroad Co.; Discontinuance of Service Exemption; Idaho County, ID

The Burlington Northern Railroad Company (BN) and Camas Prairie Railroad Company (CP) have filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights.* CP will discontinue service over, and BN will abandon, its 1.9 mile line of railroad between milepost 61.0 near Kooskia and milepost 62.9 near Stites, in Idaho County, ID.

Applicants have certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service year the line either is pending with the Commission or a U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 11, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by June 21, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 1, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-14005 Filed 6-10-85; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray House, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance—Revision
Bureau/Office—Office of Proceedings
Title of Form—Application for Certificates of Registration for certain Motor Carriers of Property under Section 10530 of the IC Act.
OMB Form No.—3120-0124
Agency Form No.—OP-2
Frequency—Annual
Respondents—Foreign motor carriers of Property
No. of Respondents—5,000
Total Burden Hrs.—5,000

James H. Bayne,

Secretary.

[FR Doc. 85-13983 Filed 6-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-249X]

Rail Carriers; the Mobile and Gulf Railroad Co.; Abandonment and Discontinuance of Operations Exemption in Tuscaloosa County, AL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a line of railroad between milepost 21 north of the Brown Wood Preserving Company Yard near Brownsville and milepost 32 near Buhl, in Tuscaloosa County, AL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 24, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by July 4, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 15, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Frederick G. Heath, P.O. Box 14234, 5200 Crittenden Drive, Louisville, KY 40214.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13984 Filed 6-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-131 (Sub-1)]

Yakima Valley Transportation Co.—Abandonment—in Yakima County, WA; Notice of Findings

The Commission has issued a certificate authorizing Yakima Valley Transportation Company to abandon its 19.92-mile rail line between Wide Hollow (milepost 0.00) and Wiley City (milepost 4.72); between Eastman (milepost 0.00) and Orchard (milepost 1.04); between Yakima (milepost 0.00) and Selah (milepost 4.46); and between Yakima (milepost 0.00) and Henrybro

(milepost 9.7), in Yakima County, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 85–14002 Filed 6–10–85; 8:45 am]

BILLING CODE 7035–01–M

Commission Reorganization Proposal; Hearing

Time and Date: 9:00 a.m., Tuesday, June 18, 1985.

Place: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Ave., NW., Washington, D.C. 20423.

Status: Open Special Conference.

Matter to be discussed: Commission Reorganization Proposal.

Contact person for more information: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275–7252.

James H. Bayne,

Secretary.

[FR Doc. 85–14039 Filed 6–10–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–52 Sub-37][1]

Rail Carriers; the Atchison, Topeka and Santa Fe Railway Co.—Abandonment—in Douglas and Franklin Counties, KS; Findings

The Commission has found that the public convenience and necessity require or permit The Atchison, Topeka and Santa Fe Railway Company to abandon its 11.09-mile line of railroad between Baldwin (milepost 14.95) and Ottawa (milepost 26.04) in Douglas and Franklin Counties, KS. A certificate will be issued authorizing abandonment within 15 days after publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA."

Information and procedures regarding financial assistance for continued rail service are set forth at 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85–14003 Filed 6–10–85; 8:45 am]

BILLING CODE 7035–01–M

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[1] This notice was inadvertently published at 50 FR 21515 May 24, 1985, in advance of the service of the Commission's decision. The allotted 10 day period should be calculated instead from this current publication.

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance for Workers; General Administration Letter No. 10–85

Public Law 98–369—the Deficit Reduction Act of 1984—amended the Trade Act of 1974 to enable workers to receive up to 26 additional weeks of trade readjustment allowance (TRA) by beginning the additional 26-week period with the first week the worker is in training, if such training was applied for in a timely manner and is approved after the last week of basic TRA entitlement, and to increase the maximum amount payable for job search allowance and maximum lump sum amount payable for relocation allowances from $600 to $800. The amendments became effective July 18, 1984. The Department of Labor has issued operating instructions to all State employment security agencies for implementing the amendments in Pub. L. 98–369. The instructions are contained in General Administration Letter No. 10–85, which is published below:

Dated: June 5, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

Dated: May 23, 1985.

Directive: General Administration Letter No. 10–85

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator, Office of Regional Management

Subject: Role of State Employment Security Agencies in Implementing Amendments to The Trade Act of 1974 in the Deficit Reduction Act of 1984

1. *Purpose.* To advise SESA officials to implement amendments to the Trade Act in sections 2671 and 2672 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) according to the following operating instructions.

2. *Reference.* Trade Act of 1974 (Pub. L. 93–618), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Deficit Reduction Act of 1984 (Pub. L. 98–369).

3. *Background.* The Trade Act of 1974, as amended, provides adjustment assistance in the form of reemployment services, training, job search and relocation allowances and trade readjustment allowance (TRA) cash benefits to workers whose unemployment is linked to increased imports of foreign made products.

Sections 2671 and 2672 of the District Reduction Act, enacted on July 18, 1984, amended the Trade Act (1) to enable workers to receive up to 26 additional weeks of TRA by beginning the additional 26-week period with the first week the worker is in training, if such training was applied for in a timely manner and is approved after the last week of basic TRA entitlement, and (2) to increase the maximum amount payable for job search allowances and maximum lump sum amount payable for relocation allowances from $600 to $800.

4. *Effective Date.* These amendments to Chapter 2—Adjustment Assistance for Workers, of Title II of the Trade Act of 1974 became effective July 18, 1984.

5. *Basic Provisions of the New Admendments.*

(a) *Duration of TRA.* Section 233 (a)(3) of the Trade Act of 1974, is revised to permit workers to receive up to 26 additional weeks of TRA payments in the 26-week period that begins with the first week or such training, if the training is approved after the last week of entitlement to basic TRA otherwise payable to the individual.

To be eligible under this provision an individual must make a bona fide application for such training within 210 days after the certification under which the individual is covered or, if later, within 210 days after the date of the individual's first total or partial separation.

To be eligible to receive additional weeks to TRA beginning the first week of such training a worker must have filed a bona fide application for training and additional weeks of TRA on or after December 18, 1983, and had the application approved on or after July 18, 1984.

(b) *Job Search Allowance.* The total job search allowances paid to an individual under a certification may not exceed $800

(previously $600) providing the individual filed a timely application for job search allowance that is approved on or after July 18, 1984. The total allowances approvable before that date may not exceed $600.

(c) *Relocation Allowance.* The lump sum payment for relocation, equal to 3 times the individual's average weekly wage, may not exceed $800 (previously $600) providing the worker filed timely for relocation allowance that is approved on/or after July 18, 1984.

6. *Action Required.* SESAs should implement the amendments to the Trade Act in sections 2671 and 2672 of the Deficit Reduction Act of 1984, immediately by taking the following actions:

(a) Inform appropriate SESA staff of these changes to the Trade Act.

(b) Notify all TAA eligible workers who might be affected by the changes of the provisions of the new legislation and the potential impact on their TRA benefits while in training and on job search and relocation allowances payable.

(c) Issue appropriate releases to the news media.

(d) Make necessary adjustments in benefits payable.

7. *Regulations.* Supplemental proposed rule to 20 CFR Part 635, implementing the Deficit Reduction Act amendments to the Trade Act, was published in the **Federal Register** on April 15, 1985 (FR Vol. 50, No 72, page 14720). A copy of the proposed rule is attached.

Regulations published in the **Federal Register** as a final rule will take precedent over this GAL.

8. *Inquiries.* Inquiries should be directed to appropriate regional offices.

9. *Attachment.* Copy of supplemental proposed rule described in 7 above.

Note.—Attachment not reprinted with this notice.

[FR Doc. 85–14050 Filed 6–10–85; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 27, 1985–May 31, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,773; Allied Corp., Bendix Chassis & Brake Component Division, South Bend Plant, South Bend, IN

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,787; Wallace International Silversmith, Inc., Meriden, CT

Wallace International Silversmith, Inc., Meriden, CT was a distribution center and was not engaged in the production of a article. The subject firm is not affiliated with any corporate facilities which have workers who are currently under a certification for trade adjustment assistance.

Affirmative Determinations

TA–W–15,792; Chambersburg Manufacturing, Chambersburg, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1984 and before April 1, 1985.

TA–W–15,826; Double-Z Knitwear Corp., Ridgewood, NY

A certification was issued covering all workers of the firm separated on or after March 12, 1984.

TA–W–15,783; Tommies, Inc., Staunton, VA

A certification was issued covering all workers of the firm separated on or after February 4, 1984.

TA–W–15,774; Airco Carbon, St Marys, PA

A certification was issued covering all workers of the firm separated on or after June 1, 1984.

TA–W–15,621; Riegel Textile Corp., Ware Shoals, SC

A certification was issued covering all workers of the firm separated on or after November 26, 1983.

TA–W–15,733; Montgomery Manufacturing Co., Montgomery, PA

A certification was issued covering all workers of the firm separated on or after January 17, 1984 and before February 14, 1985.

TA–W–15,734; E. F. Manufacturing Co., Montgomery, PA

A certification was issued covering all workers of the firm separated on or after January 17, 1984 and before February 14, 1985.

TA–W–15,785; Riegel Textile Corp., Johnston, SC

A certification was issued covering all workers of the Whitmire, SC plant of Riegel Textile Corp. and all workers engaged in employment related to the production of institutional products (table cloths, napkins and bath towels) at the Johnston, SC plant of Riegel Textile Corp., who were separated on or after February 25, 1984.

TA–W–15,786; Riegel Textile Corp., Whitmire, SC

A certification was issued covering all workers of the Whitmire, SC plant of Riegel Textile Corp. and all workers engaged in employment related to the production of institutional products (table cloths, napkins and bath towels) at the Johnston, SC plant of Riegel Textile Corp., who were separated on or after February 25, 1984.

I hereby certify that the aforementioned determinations were issued during the period May 27, 1985—May 31, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated June 4, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–13680 Filed 6–10–85; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–85–52–C]

Kaiser Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kaiser Coal Corporation, 102 South Tejon, Suite 800, Colorado Springs, Colorado 80903 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Upper York Canyon Mine (I.D. No. 29–00224) located in Colfax County, New Mexico. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake

and return air courses be separated from belt haulage entries.

2. Petitioner uses a longwall mining system. Petitioner states that the standard requires the use of a 3-entry longwall panel development system which would result in a diminution of safety because use of the 3-entry system will introduce significantly greater roof exposure, increased roof falls, excessive chain pillar loading and rib roll hazards.

3. As an alternate method, petitioner proposes to use a 2-entry longwall panel development system, with the belt entry doubling as an air return. This 2-entry development will ensure better strata control and safer mining conditions than multiple-entry systems because it results in lower stresses in pillars and areas adjacent to the entries.

4. In support of the proposed alternate method, petitioner proposes to install a remote monitoring system for carbon monoxide and methane at certain locations in the belt entry with specified conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 11, 1985. Copies of the petition are available for inspection at that address.

Dated: June 5, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-14052 Filed 6-10-85; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-105; Exemption Application No. D-5544 et al.]

Grant of Individual Exemptions; Simpson Manufacturing Co., Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Simpson Manufacturing Co., Inc. Profit Sharing Plan (the Plan), Located in San Leandro, California

[Prohibited Transaction Exemption 85-105; Exemption Application No. D-5544]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the leasing of real property located at 1450-1532 Doolittle Drive, San Leandro, California, by the Plan to Simpson Strong-Tie Company, Inc. and Simpson Structures, Inc., under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and (2) the continuation beyond June 30, 1984, of a loan to the Plan by Bank of America, N.T. & S.A., provided the terms of the loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15242.

Effective Dates: This exemption is effective from December 4, 1984 through December 31, 1987 as to the lease, and effective July 1, 1984 as to the loan.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Paint America Company Employees' Profit Sharing Plan (the Plan) Located in Dayton, Ohio

[Prohibited Transaction Exemption 85-106; Exemption Application No. D-5548]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 1975, to the lease of an improved parcel of real property (the Property) entered into on October 1, 1974, by the Plan to Paint America Company, the sponsor of the Plan, provided that the terms and conditions of the lease were not less favorable to the Plan than those terms available in a transaction with an unrelated party. The lease was entered into before the effective date of the Act but after July 1, 1974, the date specified in the transitional rules under sections 414 and 2003 of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 9, 1985 at 50 FR 14045.

Effective Date: This exemption is effective January 1, 1975 through June 25, 1982, the date of the sale of the Property by the Plan.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Raleigh Medical Group, P.A. Profit Sharing Plan (the Plan) Located in Raleigh, North Carolina

[Prohibited Transaction Exemption 85–107; Exemption Application No. D–5935]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (A) of the Code, shall not apply to the sale by the Plan of a parcel of unimproved real property (the Property) to BEDB Realty Associates, a partnership which is a party in interest with respect to the Plan, provided that the price received is no less than the fair market value of the Property on the date of such sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15249.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dow Chemical Company Voluntary Group Accident Plan (the Plan) Located in Midland, Michigan

[Prohibited Transaction Exemption 85–108; Exemption Application No. D–6057]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply effective October 1, 1984, to the reinsurance of risks and the receipt of premiums therefrom by Dorinco Reinsurance Company (Dorinco) from the insurance contracts sold by American Home Assurance Company to provide benefits to employees of Dorinco and the Dow Chemical Company under the Plan, provided the conditions set forth in the notice of proposed exemption are satisfied.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15250.

Effective Date: This exemption is effective October 1, 1984.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408 (a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1) (B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 6th day of June, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–14037 Filed 6–10–85; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

Date: July 1–2, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Public Libraries, for projects beginning after December 1, 1985.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–14004 Filed 6–10–85; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date and time: June 26, 1985, 8:30 a.m.–8:00 p.m.; June 27, 1985, 8:30 a.m.–5:00 p.m.; June 28, 1985, 8:30 a.m.–12 noon.

Place: National Science Foundation, 1800 G Street, NW, Room 543, Washington, D.C.

Type of meeting: Closed—June 26, 10:30 a.m.–8:00 p.m.; June 27, 8:30 a.m.–11:30 a.m.: Open—June 26, 1985, 8:30 a.m.–10:30 a.m.: June 27, 12:30 p.m.–5:00 p.m.; June 28, 8:30 a.m.–12 noon.

Contact person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7766.

Purpose of committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on polar operations support, budgetary planning, polar coordination and information and science programs.

Agenda:

June 26

—8:30 a.m.–10:30 a.m. NSF and DPP Affairs.
—10:30 a.m.–8:00 p.m. Review of Polar Biological Sciences Program.

June 27

—8:30 a.m.–11:30 a.m. Review of Polar Biological Sciences Program.
—12:45 p.m.–1:15 p.m. Progress Report on the Arctic Research and Policy Act.
—1:15 p.m.–2:15 p.m. Preview of Arctic Summer Projects and the Next Antarctic Field Season.
—2:15 p.m.–3:00 p.m. Report on the Upcoming Major Review of the U.S. Antarctic Program.
—3:15 p.m.–5:00 p.m. Discussion of DPP Questions to Division Advisory Committee.

June 28

—8:30 a.m.–10:30 a.m. Future directions for polar research and the roles of DPP and the Advisory Committee.
—10:45 a.m.–12:00 noon Other Business.

Reason for closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.

Summary minutes: May be obtained from Contact Person.

Dated: June 6, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–14018 Filed 6–10–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Co. (Enrico Fermi Unit 2); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by letter received April 17, 1985, Stanley Nietubicz requested that the Nuclear Regulatory Commission institute legal action to rectify the alleged lack of viable evacuation routes under flood conditions for certain areas near the Enrico Fermi Unit 2 facility. The letter is being handled as a request for action pursuant to 10 CFR 2.206 and, accordingly, appropriate action will be taken on the petition within a reasonable time.

Copies of the petition are available for public inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Monroe County Library, Reference Department, 3700 South Custer Road, Monroe, Michigan 41861.

Dated at Bethesda, Maryland, this 5th day of June, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement

[FR Doc. 85–14033 Filed 6–10–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–413 and 50–414]

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2); Issuance of Director's Decision Under 10 CFR 2.206 (DD–85–9)

Notice is hereby given that the Director, Office of Inspection and Enforcement, has granted in part and denied in part a petition under 10 CFR 2.206 filed by Robert Guild on behalf of the Palmetto Alliance and a request by the Government Accountability Project (GAP) for imposition of civil penalties. In its petition, the Palmetto Alliance asked the Director, Office of Inspection and Enforcement, to suspend or revoke the construction permits for Duke Power Company's Catawba Nuclear Station and to take other appropriate action on the basis of violations of Appendix B to 10 CFR Part 50 and instances of harassment and intimidation of quality control inspectors. GAP requested imposition of $250,000 in civil penalties on the basis of the harassment and intimidation incidents.

The staff has determined that a violation of 10 CFR 50.7 occurred and that a $64,000 civil penalty should be proposed. However, the Palmetto Alliance request to suspend or revoke the construction permits for the Duke Power Company's Catawba Nuclear Station and GAP's request for larger civil penalties have been denied. The reasons for this decision are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, N.W. Washington, D.C. 20555, and in the local public document room for the Catawba Nuclear Station at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 4th of June 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85–14032 Filed 6–10–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50–482]

Kansas Gas and Electric Co. et al.; Wolf Creek Generating Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–42 to Kansas Gas & Electric Company, Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc. (the licensees) which authorizes operation of the Wolf Creek Generating Station, Unit No. 1 at reactor core power levels not in excess of 3,411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan.

The issuance of this license was approved by the Nuclear Regulatory Commission at a meeting on June 3, 1985, and it superseded the License for Fuel Loading and Low Power Testing, License No. NPF–32, issued on March 11, 1985.

License No. NPF–42 incorporates changes to the technical specifications that were made subsequent to the issuance of NPF–32 and supersedes NPF–32.

Wolf Creek Generating Station, Unit No. 1 is a pressurized water reactor located approximately 28 miles east-southeast of Emporia, in Coffey County, Kansas. The application was submitted and accepted for review under the

Commission's standardization policy statement of March 5, 1973. Kansas Gas & Electric Company was one of five utilities who joined together under the acronym SNUPPS (Standarized Nuclear Unit Power Plant System) to submit applications for Construction Permits for a standard plant design for review under the Commission's standardization policy, using the duplicate plant option described in Appendix N to the Commission's regulations in Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), "Licensing of Production and Utilization Facilities." This option allows for a simultaneous review of the safety-related parameters of a limited number of duplicate plants which are to be constructed within a limited time span at a multiplicity of sites. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on December 8, 1980 (45 FR 83360).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–42, with Technical Specifications (NUREG–1136) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated May 11, 1982; (3) the Commission's Safety Evaluation Report, dated April 1982 (NUREG–0881), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated June 1982.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C. 20555, and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801; and at the Washburn University School of Law Library, Topeka, Kansas. A copy of Facility Operating License NPF–42 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 6 (NUREG–0881) and the Final Environmental Statement (NUREG–0878) may be ordered by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, VISA or Mastercard number and expiration date. Anyone wishing to inquire about a subscription account or subscribe to a periodic NRC publication may do so by calling GPO at (202) 783–3238. The NRC will continue to participate in the National Technical Information Service Program and individuals or organizations may continue to purchase NRC documents at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 4th day of June, 1985.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85–14034 Filed 6–10–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–275]

Pacific Gas and Electric Co. Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–80 issued to the Pacific Gas and Electric Company, the licensee, for the operation of the Diablo Canyon Nuclear Power Plant, Unit 1 located in San Luis Obispo, California.

In accordance with the licensee's application dated May 14, 1985, which encompasses requests dated January 30, 1985, April 12, 1985, and April 24, 1985, the proposed change would revise the Diablo Canyon Unit 1 Technical Specifications to incorporate new and additional Radiological Effluent Technical Specifications (RETS) to meet the intent of the NRC Staff position presented in NUREG–0472, "Standard Radiological Effluent Technical Specifications for Pressurized Water Reactors," and to upgrade provisions to implement the requirements of 10 CFR Part 50, Appendix I.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an acccident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the proposed changes do not involve significant hazards considerations. In this regard, the Commission has provided guidance concerning the application of standards for determining whether or not a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards considerations. Example (ii) relates to changes that constitute additional restrictions or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement. The proposed changes are similar to this example. On this basis, it is proposed that these changes do not involve significant hazards considerations. The following is a description of the proposed changes and how each is similar to one of the examples of 48 FR 14870.

When Diablo Canyon, Unit 1 was licensed it conformed with the guidance provided relative to Appendix I to 10 CFR 50. Subsequent refinement of that guidance required that Diablo Canyon, Unit 2 Technical Specifications be consistent with present day guidance. In order that the Technical Specifications for both Units be consistent in this area, PG&E requested that the Unit 1 RETS be upgraded to those previously approved for Unit 2. The proposed change would update the Technical Specifications by defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose,

and treatment of liquid, gaseous, and solid waste; total dose; and a radiological environmental monitoring that consists of a monitoring program, a land use census, and an interlaboratory comparison program. The proposed changes also include the bases that support the operation and surveillance requirements. Changes in administrative controls, dealing specifically with the process control program and the offsite dose calculation procedure, are also proposed.

The changes are consistent with the revision to Appendix I to 10 CFR Part 50, requiring licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonable achieveable. In complying with this requirement it became necessary to add the new restrictions and controls to the Technical Specifications as described above. This proposed change is similar to example (ii) of 45 FR 14870 in that the proposed change provides additional restrictions and controls not presently included in the Technical Specifications. On this basis, the NRC proposes to determine that the change does not involve a significant hazards consideration since the changes incorporate addition of restrictions and controls that are not currently included in the Technical Specifications to meet the Commission-mandated "as low as is reasonably achievable" effluent release objectives.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By July 11, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those admitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards determination, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to G. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and

French, P.O. Box 10679, Phoenix, Arizona 85064.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. The determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment dated January 30, April 12 and 24, and May 14, 1985 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 5th day of June, 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85–14036 Filed 6–10–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

The University of Texas; Issuance of Construction Permit

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Construction Permit No. CPRR–123 to The University of Texas (the applicant) located in Austin, Texas. The permit authorizes the applicant to construct a TRIGA research reactor at its Balcones Research Center in Austin, Texas. If an operating license is granted by the Commission upon completion of construction, the facility is intended to be operated at power levels not in excess of 1.1 megawatt thermal and will be used for educational training and research purposes. The construction permit is effective as of its date of issuance. The earliest date for completion of the construction of the facility is June 30, 1987 and the latest date for completion of this activity is December 31, 1988.

Notice of proposed issuance of the permit was published in the **Federal Register** on March 29, 1985 at (50 FR 12669). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the construction permit. The application, as supplemented for the construction permit complies with the standards and requirements of the Act and the Commission's rules and regulations.

A copy of (1) the application, dated November 9, 1984, as supplemented, filed by The University of Texas, (2) Construction Permit No. CPRR–123, (3) the Commission's concurrently issued Safety Evaluation Report, and (4) the Finding of No Significant Environmental Impact which was published in the **Federal Register** on May 30, 1985 at 50 FR 23088, and associated Environmenal Assessment, dated May 13, 1985, are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. A copy of the Safety Evaluation Report (NUREG–1135) may be purchsed by writing the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7982 or by calling (202) 275–2060 or (202) 275–2171.

The construction permit is effective as of its date of issuance.

Dated at Bethesda, Maryland, this 4th day of June 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing.

[FR Doc. 85–14035, Filed 6–10–85; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Notice of Intent To Prepare a Draft Environmental Impact Statement and Project Scoping Hearing

Notice is hereby given that the United States Postal Service (USPS) intends to prepare a Draft Environmental Impact Statement (DEIS) Documenting the assessment of effects related to development of a new General Mail Facility (GMF) to supplement or replace certain existing mail processing facilities in Manhattan. Also evaluated will be: A "No-Action" alternative in which the James A. Farley Station at 8th Avenue and 31st/33rd Streets will be retained for mail processing; and a "Rehabilitation" alternative involving renovation of the Farley Station and its retention for mail processing.

In conjunction with this intention to prepare a DEIS, the USPS will hold a project scoping public hearing on June 26, 1985 at 7:00 p.m. at the Church of the Holy Apostles, 360 West 28th Street, in Manhattan. The purpose of this hearing is to obtain public comments leading to the preparation of the aforementioned DEIS for the new GMF and alternatives.

For further information about the proposed action and the environmental document, call or write to: Blair L. Wildermuth, P.E., Regional Director, Real Estate and Buildings Department, Northeast Region—U.S. Postal Service, 1633 Broadway—20th Floor, New York, New York 10098, (212) 974–8522.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85–13995 Filed 6–10–85; 8:45 am]

BILLING CODE 7710–12–M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02–0487]

Atlantic Capital Corp.; Notice of Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to Section 107.102 of the SBA Regulations governing small business investment companies [13 CFR 107.102 (1985)] under the name of Atlantic Capital Corporation (the Applicant), 40 Wall Street, New York, New York 10005 for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and sole stockholder of the Applicant are as follows:

Name, Address, Title and Relationship

Barthold von Ribbentrop, 133 East 64th Street, New York, NY 10022; Chairman of the Board and Director

Harold Paumgarten, 298 Hicks Street, Brooklyn, NY 11201; President and Director

Owen W. Jaegar, 179 Howard Avenue, Rockville Center, NY 11570; Vice President, Secretary, Treasurer and Director

Deutsche Bank Capital Corp. (DBCC), 40 Wall Street, New York, NY 10005; 100% Stockholder

DBCC, a New York Corporation, is a wholly-owned subsidiary of Deutsche Bank AG, a bank in the Federal Republic of Germany.

The Applicant will begin operations with a capitalization of $4,975,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA in writing revelant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 4, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-13977 Filed 6-10-85; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Washington, D.C., will hold a public meeting at 2:00 p.m., on Thursday, June 27, 1985, at the SBA Washington District Office, 1111 18th Street, NW., Room 404, Washington, D.C. to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Janice E. Wolfe, District Director, U.S. Small Business Administration, 1111 Eighteenth Street, NW., Washington, D.C. 20417, (202) 643-1805.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 5, 1985.

[FR Doc. 85-13978 Filed 6-10-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/859]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Subcommittee on Food, Hunger, and Agriculture in Developing Countries of the Advisory Committee on International Investment, Technology, and Development on June 25, 1985 from 1:30 pm to 4:30 pm. The meeting will be held in Room 1408 of the Department of State, 2201 "C" Street, NW., Washington, D.C., 20520.

The purpose of the meeting will be: (1) Report of the Coordinating Group on development of a work plan; presentation of a proposed framework for recommendations; and discussion. (2) Presentation of the results of a survey of subcommittee membership concerning their overseas investment experience (obstacles, incentives, the role of U.S. embassies).

Members of the public wishing to attend must contact the Office of Investment Affairs (202) 632-2728 in order to arrange admittance to the State Department. Please use the "C" street entrance.

The Chairperson of the Subcommittee will, as time permits entertain oral comments from members of the public at the meeting.

Dated: May 28, 1985.

Walter B. Lockwood, Jr.,

Deputy Director, Office of Investment Affairs.

[FR Doc. 85-14019 Filed 6-10-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Allegany County, MD; Notice of Intent; U.S. Route 48

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement is being prepared for the proposed National Freeway section (approximately 19 miles) between Wolfe Mill and M.V. Smith Roads in Allegany County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th St., Baltimore, Maryland 21211, telephone 301/962-4010, and/or Mr. Louis Ege, Acting Chief, Bureau of Project Planning, Maryland State Highway Administration, 707 North Calvert St., Room 310, Baltimore, Maryland 21202, telephone 301/659-1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation, with the Maryland State Highway Administration, is preparing a supplemental environmental impact statement to develop an acceptable alternate to complete the final 19 mile gap of the 111 mile long National Freeway extending from Morgantown, West Virginia to Hancock, Maryland.

Two alternates, Modified AGEA and Tie Line, are under consideration.

The modified AGEA alignment generally follows existing U.S. Route 40 from Wolfe Mill to M.V. Smith Road. The Title Line Alternate generally follows the AGBF2 alignment from Wolfe Mill to Town Creek. AGBF2, presented in the Draft EIS, was an alignment on new location south of existing U.S. Route 40. On reaching Town Creek, the Tie Line Alternate turns north through Town Creek Valley and connects with Modified AGEA on Polish Mountain, following Modified AGEA to M.V. Smith Road.

Two public meetings and several scoping meetings have recently been held. A public hearings will also be held after circulation of the Draft E.I.S. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups and individuals on the mailing list. The Supplemental Draft E.I.S. will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposal are addressed and all signficant issues are identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: June 4, 1985.

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 85-14020 Filed 6-10-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Docket No. NPDA-2]

City of New York; Application for Non-Preemption Determination

AGENCY: Research and Special Programs Administration, Materials Transportation Bureau, DOT.

ACTION: Notice.

SUMMARY: Pursuant to the procedural requirement set forth at 49 CFR 107.219(d), the Materials Transportation Bureau (MTB) hereby serves notice of the fact that it has received all substantive information it considers necessary to process New York City's application for a non-preemption determination (docket no. NPDA-2). As set forth at 49 CFR 107.223, if the MTB fails to take action on docket no. NPDA-2 within ninety (90) days of publication of this Notice, New York City may treat its application as having been denied in all respects and may appeal therefrom as provided in § 107.225.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel: 202/755-4972).

Signed in Washington, DC on June 6, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-14058 Filed 6-10-85; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Exemptions

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemption from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes July 12, 1985.

Address comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9436-N	Union Carbide Corp., Danbury, CT.	49 CFR 173.315(a)(1)	To manufacture, mark, sell and ship non-DOT specification 11,000 gallon capacity portable tanks for shipment of refrigerated liquid helium (cryogenic liquid). (Modes 1, 3.)
9439-N	Unitek Environmental Services, Inc., Honolulu, HI	49 CFR 173.1015(a)	To authorize shipment of lithium batteries for disposal to be transported by cargo vessel. (Mode 3.)
9440-N	Hoover Universal, Inc., Beatnce, NE	49 CFR Part 173, Subpart D, F	To manufacture, mark and sell non-DOT specification 350 gallon capacity polyethylene portable tanks within a protection steel frame, for shipment of various flammable and corrosive liquids. (Modes 1, 2, 3.)
9441-N	Amtrol, Inc., West Warwick, RI	49 CFR 173.306(g)(1)	To authorize shipment of compresed air and nitrogen, nonflammable gases in water pump system tanks having a diameter of 26 inches. (Modes 1, 2, 3.)
9443-N	Hercules Inc., Wilmington, DE	49 CFR 173.92(b)	To authorize shipment of class B rocket motors with igniters installed. (Modes 1, 3, 4.)
9444-N	Champion Chemicals, Inc., Houston, TX	49 CFR 173.28(m)(1)	To authorize reuse of DOT Specification 17C, 17E and 17H steel drums, for shipment of certain flammable liquids, without subjecting drums to cleaning and rinsing before refilling. (Mode 1.)
9445-N	Petroleum Construction Inc., Santa Paula, CA	49 CFR 173.119(a)(17), 173.245(a)(30), (31), 178.340-7, 178.342-5, 178.343-5, 178.3442-5.	To manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MCC-307/312 except for circumferential reinforcement and botton outlet valve variations for shipment of various flammable or corrosive waste liquids or semi-solids. (Mode 1.)
9446-N	Matson Navigation Co., San Francisco, CA	49 CFR 176.305(c)(5)	To authorize stowage of flammable liquids with flash points below 73 degrees Fahrenheit to be transported in holds or compartments that are fitted with a gooseneck type of vent head. (Mode 3.)
9448-N	W.R. Grace & Co., Baltimore, MD	49 CFR 178.98	To authorize shipment of a flammable solid, n.o.s. in metal drums comparable to DOT Specification 6B except they are equipped with a venting device. (Mode 1.)
9449-N	Union Carbide Corp., Danbury, CT	49 CFR 173.346	To ship a carbamate liquid pesticide, classed as poison B, in non-DOT specification stainless steel portable tanks complying with DOT Specification 51 except for ASME Code marking; safety relief valve setting alterations and post weld heat treatment relief. (Modes 1, 3.)
9449-N	Union Carbide Agricultural Products Co., Inc., Danbury, CT.	49 CFR 173.346	To ship a carbamate liquid pesticide, classed as poison B, in non-DOT specification stainless steel portable tanks complying with DOT Specification 51 except for ASME Code marking; safety relief valve setting alterations and post weld heat treatment relief. (Modes 1, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 4, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-14057 Filed 6-10-85; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Renewal or Modification of Exemptions of Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc. they are described in footnotes to the application number. Application numbers with the suffic "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes June 28, 1985.

Address comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC

Application No.	Applicant	Renewal of exemption
3630-X	Allied Chemical, Morristown, NJ	[illegible]
4459-X	Allied Healthcare Products, Inc., Saint Louis, MO	4459
4719-X	Allied Corp., Morristown, NJ	4719
4932-X	Federal Laboratories, Inc., Saltsburg, PA	4932
5923-X	Union Carbide Corp., Danbury, CT	5923
5945-X	Carcox Corp., Countryside, IL	5945
6122-X	Pennwalt Corp., Buffalo, NY	6122
6232-X	McDonnell Douglas Corp., Saint Louis, MO	6232
7023-X	Texas Instruments, Inc., Dallas, TX	7023
7071-X	Clayton Chemical, Los Angeles, CA	7071
7227-X	Richmond Lox Equipment Co., Livermore, CA [1]	7227
7605-X	General Dynamics, Fort Worth, TX	7605
7607-X	The Foxboro Co., South Norwalk, CT	7607
7716-X	Kinepak, Inc., Lewisville, TX	7716
7835-X	MG Industries, Valley Forge, PA	7835
7835-X	Air Products and Chemicals, Inc., Allentown, PA	7835
7928-X	Alaska Marine Highway System, State of Alaska, Juneau, AK [2]	7928
7954-X	Air Products and Chemicals, Inc., Allentown, PA [3]	7954
8168-X	Container Corporation of America, Wilmington, DE [4]	8168
8213-X	Trailmaster Tanks, Inc., Fort Worth, TX	8213
8249-X	LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ	8249
8255-X	Applied Environments Corp., Woodland Hills, CA	8255
8256-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	8256
8547-X	Natco, Inc., Chicago, IL	8547
8609-X	Natco, Inc., Chicago, IL	8609
8614-X	Arrow Airways, Inc., Minneapolis, MN	8614
8645-X	Austin Powder Co., Cleveland, OH	8645
8645-X	Wampum Hardware Co., New Galilee, PA	8645
8673-X	MarkAir, Inc., Anchorage, AK	8673
8678-X	Eurotainer, S.A., Paris, France	8678
8692-X	Dow Chemical Co., Midland, MI	8692
8710-X	Noury Chemical Corp., Chicago, IL	8710
8716-X	GTE Products Corp., Wartham, MA	8716
8757-X	Y-Z Industries, Inc., Snyder, TX	8757
8813-X	Nebraska Solvents Co., Grand Island, NE	8813
8988-X	Goex, Inc., Cleburne, TX	[illegible]
9053-X	Delaware Valley Industrial Gases, Inc., Waterford Works, NJ	9052
9059-X	Boeing Aerospace Co., Seattle, WA	[illegible]
9061-X	The S.S.I. Group Ltd., Fairdale, KY	9061
9064-X	J.T. Baker Chemical Co., Phillipsburg, NJ	[illegible]
9064-X	Amalgamet Canada—Division of Premetalco Inc., Toronto, Ontario, Canada	9064
9064-X	Corning Glass Works, Corning, NY [5]	[illegible]
9064-X	Preussag AG Metall, Goslar, West Germany	[illegible]
9064-X	KBI Division of Cabot Corp., Revere, PA	[illegible]
9079-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	9079
9088-X	Ethyl Corp., Baton Rouge, LA	[illegible]
9154-X	Bennett Industries, Peotone, IL	9154
9194-X	Cyanamid Canada, Inc., East Willowdale, Canada [6]	9194
9330-X	MarkAir, Inc., Anchorage, AK	9330

[1] To authorize cargo aircraft as an additional mode of transportation.

[2] To authorize stowage of certain flammable liquids in lockers aboard passenger vessel

[3] To authorize cargo vessel as additional mode of transportation and to open exemption to use of additional type valves on cylinders which are suitable for fluorine/nitrogen service.

[4] To renew and to authorize ammonium perchlorate (solid), classed as an oxidizer as additional commodity

[5] To renew and to authorize silicon tetrachloride, corrosive material, as an additional commodity

[6] To increase weight of bulk bags containing calcium cyanide from 2,865 pounds to 4,400 pounds.

Application No	Applicant	Parties to exemption
2582-P	Stauffer Chemical Co. Westport, CT	2582
4453-P	Kesco, Inc., Kittanning, PA	4453
5600-P	Stauffer Chemical Co., Westport, CT	5600
6267-P	Chem-Tab Chemical Corp., Carson, CA	6267
6874-P	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	6874
6922-P	General Electric Co., Waterford, NY	6922
7052-P	Exploration Logging Inc., Sacramento, CA	7052
7052-P	Flopetrol Johnston, a Division of Schlumberger, Houston,TX	7052
7909-P	Bulldog Jordan Co., Ogdensburg, NY	7909
8308-P	Customized Transportation, Inc., Jacksonville, FL	8308
8344-P	Hodgdon Powder Co., Shawnee Mission, KS	8344
8378-P	Sigma Chemical Co., Saint Louis, Mo	8378
8445-P	Waste Conversion, Inc., Hatfield, PA	8445
8445-P	IT Corp., Wilmington, CA	8445
8582-P	The Milwaukee Road, Inc., Chicago, IL	8582
8689-P	Flopetrol Johnston a Division of Schlumberger, Houston, TX	8689
9061-P	Leonard Josepn Co., & Safesport Manufacturing Co., Denver, CO	9061
9130-P	Chem-Tab Chemical Corp., Carson, CA	9130

This notice of receipt of applications for renewal of exemption and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.SA.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 4, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulations, Materials Transportation Bureau.

[FR. Doc. 85-14056 Filed 6-10-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 112
Tuesday, June 11, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 7, 1985, 50 FR 24085.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., June 12, 1985.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

4. Administrative Matters Requiring Commission Authorization.

Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-14095 Filed 6-7-85; 11:57 am]
BILLING CODE 6730-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 6, 1985

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Part open, part Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item the Commission will consider in closed session the following:

2. Secretary of Labor, MSHA on behalf of Robert A. Ribel v. Eastern Associated Coal Corp., Docket No. WEVA 84-33-D. (Issues include whether the administrative law judge properly concluded that the operator discharged the miner in violation of the Mine Act and whether the judge properly denied attorney fees to the miner's privately retained counsel.)

This item was previously scheduled for June 6, 1985. It was determined by a unanimous vote of Commissioners that this item be added and that no earlier announcement of the addition was possible. 5 U.S.C. § 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 85-14154 Filed 6-7-85; 3:58 pm
BILLING CODE 6735-01-M

3

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published June 7, 1985, 50 FR 24085.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., Thursday, June 27, 1985.

CHANGE IN TIME OF MEETING: The Meeting of the Operations and Regulations Committee of the Legal Services Corporation scheduled for 9:00 a.m. on June 27, 1985 will be held 1:30 p.m. on June 27, 1985.

EXPLANATION OF CHANGE: The time of the meeting for the Operations and Regulations Committee was noted in error.

The corrected meeting notice follows:

TIME AND DATE: Meeting will commence at 1:30 p.m., Thursday, June 27, 1985 and continue until all official business is completed.

PLACE: The Westin Hotel, Renaissance Center, Kent Room, Detroit, Michigan 48243.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —May 23, 1985
3. Private Attorney Involvement—45 CFR 1614
   —Report from the Office of Field Services
   —Report from the Audit Division
   —Report from the Office of the General Counsel
   —Outside witnesses
   —Public comment
4. Recommendations to full Board on 45 CFR 1614 (Private Attorney Involvement)
5. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Tom Bovard, Office of General Counsel, (202) 272-4010.

Date issued: June 7, 1985.

Dennis Daugherty,
Acting Secretary
[FR Doc. 85-14121 Filed 6-7-85; 3:06 pm]
BILLING CODE 6820-35-M

4

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Wednesday, June 19, 1985.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Salonga* v. *Department of the Army*, MSPB Docket No. SF04328310010.
2. *Pangarova* v. *Department of the Army*, MSPB Docket No. AT04328410292.
3. *Jones* v. *Department of the Army*, MSPB Docket No. AT04328410245.
4. *White* v. *Department of the Army*, MSPB Docket No. BN04328310224.
5. *Brown* v. *Department of the Army*, MSPB Docket No. PH04328310568.
6. *Shorter* v. *Department of the Air Force*, MSPB Docket No. AT04328310036.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: June 7, 1985.

Robert E. Taylor,
Clerk of the Board.
[FR Doc. 85-14106 Filed 6-7-85; 2:03 pm]
BILLING CODE 7400-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 10, 17, 24, and July 1, 1985.

PLACE: Commissioners, Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 10

Monday, June 10

10:00 a.m.
Briefing by Representatives of INPO Accrediting Board (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, June 11

1:30 p.m.
Discussion of Adjudicatory Matter (Closed—Ex. 10)

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Limerick (Public Meeting)
4:00 p.m.
Discussion/Possible Vote on Review of ALAB-800 and Related Matters (Shoreham) (Closed—Ex. 10, portion will be open)

Wednesday, June 12

10:00 a.m.
Continuation of 5/16 Briefing on Mid-Year Budget and Program Review (Public Meeting)

Thursday, June 13

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Severe Accident Policy Statement (tentative)
b. Revised Disposition of Hearing Requests Re Edlow International Nuclear Materials Licenses
c. Final Amendments to 10 CFR Part O, "Conduct of Employees" (tentative)
d. Delegation of FOIA Appeal Functions to the Secretary of the Commission (tentative)

Week of June 17—Tentative

Wednesday, June 19

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

2:00 p.m.
Staff Briefing on Final Rule on HEU Regulations for Domestic Non-Power Reactors (Public Meeting)

Thursday, June 20

11:00 a.m.
Periodic Meeting with Advisory Panel for Decontamination of TMI-2 (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)
2:30 p.m.
Discussion of Commission Position on Price-Anderson (Public Meeting)

Friday, June 21

10:00 a.m.
Continuation of 5/15 Briefing on Proposed Revision of Part 20 (Public Meeting)

Week of June 24—Tentative

Wednesday, June 26

2:00 p.m.
Discussion/Possible Vote on Final Rule on Backfitting (Public Meeting)

Thursday, June 27

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 1—Tentative

Tuesday, July 2

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Wednesday, July 3

2:00 p.m.
Briefing on Safety Goal Evluation Plan (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Pending Investigations (Closed—Ex. 5 and 7) was held on June 3.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Andrew L. Bates,
Office of the Secretary.
June 6, 1985.

[FR Doc. 85–14153 Filed 6–7–85; 8:45 am]
BILLING CODE 7590-01-M

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Federal Register

Vol. 50, No. 112

Tuesday, June 11, 1985

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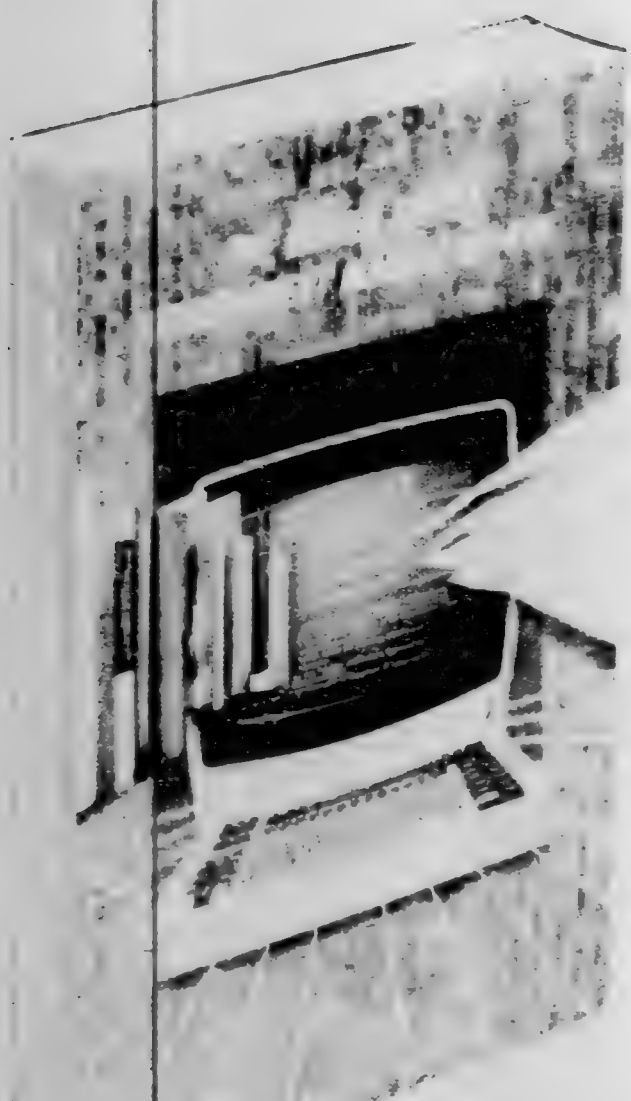
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Vol. 50 No. 113
Pages 24611-24756

Federal Register

Wednesday
June 12, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

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Internal Revenue Service

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Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Endangered and Threatened Species
Fish and Wildlife Service

Flood Insurance
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Low and Moderate Income Housing
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Navy Department

Milk Marketing Orders
Agricultural Marketing Service

Mortgage Insurance
Housing and Urban Development Department

Radio Broadcasting
Federal Communications Commission

Railroads
Interstate Commerce Commission

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Television Broadcasting
Federal Communications Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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Rules and Regulations

Federal Register
Vol. 50, No. 113
Wednesday, June 12, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Order Terminating Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of certain rules.

SUMMARY: This action terminates the 12-month base-excess plan for paying producers for their milk under the Southern Michigan Federal milk order. The base-excess plan was designed to encourage dairy farmers to maintain stable production levels throughout the year. The termination was requested by three dairy farmer cooperative associations whose collective membership accounts for about 85 percent of the producers who supply milk to the market. The cooperatives contend that the plan is incompatible with efforts toward a balanced supply and demand, and that it no longer accomplishes its intended purpose under current marketing conditions. As under the present suspension of the plan, the minimum federal order price to producers each month will be a single uniform price rather than base and excess prices.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Termination: Issued April 26, 1985; published May 2, 1985 (50 FR 18677).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on dairy farmers and will not affect milk handlers.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Michigan marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 2, 1985 (50 FR 18677) concerning a proposed termination of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon by May 17, 1985. A proponent cooperative submitted a recommendation to change the provisions as proposed along with additional information in support of the proposed termination.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. In § 1040.32, paragraph (a).
2. In § 1040.32(b), the words "paragraph (a) of this section and".
3. In § 1040.61, paragraphs (c), (d), and (e).
4. In § 1040.62(b), the words ", the adjusted uniform price, the price for base milk, and the price for excess milk".
5. In §§ 1040.71(a)(1)(ii) and 1040.73(c), the words "for base milk".
6. In § 1040.74, the words "the base price and excess price or".
7. In § 1040.75(a)(1), the words "base milk and", and the words "or adjusted uniform price".
8. Sections 1040.90 through 1040.95.

Statement of Consideration

This action removes the 12-month base-excess plan provisions from the Southern Michigan order. These provisions were suspended for the base-forming and base-paying periods of 1984–86, with the former scheduled to be reinstated on August 1, 1985. Under these provisions, producers are paid a higher price for the base milk that they market and a lower price for all milk marketed in excess of their base production level. Producers establish their bases during the months of August through December, and then are paid accordingly the following February through January. The plan was designed to encourage dairy farmers to maintain stable production levels throughout the year.

Termination of the base-excess plan on or before August 1, 1985, was requested by Independent Co-operative Milk Producers Association, Inc. (ICMPA), Michigan Milk Producers Association (MMPA), and National Farmers Organization (NFO); three cooperative associations whose combined membership accounts for about 85 percent of the producers who supply the Southern Michigan milk market. Interested parties were invited to comment on the proposed termination of the base-excess plan. The sole comment received, submitted by one of the proponent cooperatives (NFO), in addition to support of the proposal, recommended that the list of the provisions to be terminated be modified so that the remaining paragraphs would not include references to the deleted ones. This recommendation is adopted.

The base-excess plan has no direct effect on handler costs for milk; it is a method of dividing returns among producers in a way that encourages a leveling of seasonal production. Since any action concerning the base-excess plan is strictly a producer issue, it is appropriate to take action in accordance with the wishes of the majority of producers. As stated, approximately 85 percent of the producers favor the termination of the base-excess plan; therefore, on this basis alone, the base-excess plan should be terminated.

However, this action is also warranted because the base-excess plan no longer accomplishes its intended purpose under current marketing conditions in that the difference between the base price and excess price is no longer an adequate incentive to gain the desired leveling effect on milk production. Whereas the differential in 1968 was $1.20, which was 23 percent of the uniform price, the differential in 1984 was $0.78, only 5.9 percent of the uniform price. That amount is too low relative to producer pay-prices to

effectively encourage level milk production.

Also, the action is necessary because the base-excess plan tends to encourage overproduction through the base-building incentive. Each year the potential exists for producers to build larger fall bases because they are paid a higher price for base milk throughout a 12-month period. A plan that tends to encourage an increase in the production of milk during the base-building months when supply is more than adequate to meet the fluid milk needs in the market should not be continued.

It is hereby found and determined that thirty days notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) Termination of the provisions is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the program would no longer achieve its intended purpose;

(b) Termination of the provisions does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties and they were afforded an opportunity to file written data, views, or arguments concerning this action. A vast majority of the producers supplying this market now favor termination of the payment plan which has been inoperative for some time.

Therefore, good cause exists for terminating the aforesaid provisions of the Southern Michigan order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

PART 1040—[AMENDED]

The authority citation for 7 CFR part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, that the aforesaid provisions of the Southern Michigan order are hereby removed as follows:

§ 1040.32 [Amended]

1. In § 1040.32, paragraph (a).

2. In § 1040.32(b), the words "paragraph (a) of this section and".

§ 1040.61 [Amended]

3. In § 1040.61, paragraphs (c), (d), and (e).

§ 1040.62 [Amended]

4. In § 1040.62(b), the words ", the adjusted uniform price, the price for base milk, and the price for excess milk".

§§ 1040.71 and 1040.73 [Amended]

5. In §§ 1040.71(a)(1)(ii) and 1040.73(c), the words "for base milk".

§ 1040.74 [Amended]

6. In § 1040.74, the words "the base price and excess price or".

§ 1040.75 [Amended]

7. In § 1040.75(a)(1), the words "base milk and", and the words "or adjusted uniform price".

§§ 1040.90—1040.95 [Removed]

8. Sections 1040.90 through 1040.95.

Effective Date: June 12, 1985.

Signed at Washington, D.C. on June 6, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 85–14087 Filed 6–11–85; 8:45 am]

BILLING CODE 3410–02–M

Office of the Secretary

7 CFR Part 3015

Department of Agriculture Programs and Activities Covered Under Executive Order 12372

AGENCY: Department of Agriculture, USDA.

ACTION: Rule-related notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, published June 24, 1983.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 2117–B, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250, telephone (202 382–1553).

SUPPLEMENTARY INFORMATION: It has been determined that the program listed below has a direct effect on State and local governments and therefore included within the scope of Executive Order 12372.

10.164 Wholesale Market Development

States interested in adding this program to their list of programs to be reviewed under Executive Order 12372 should have their Single Point of Contact notify the Office of Finance and Management, Financial Management Division, USDA, Room 118–W, 14th and Independence Avenue, SW., Administration Building, Washington, D.C. 20250, Attention: Ms. Lyn Zimmerman.

Dated: June 6, 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 85–14086 Filed 6–11–85; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 85–044]

Swine, Pork, and Pork Products Imported From Great Britain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations concerning the importation into the United States of swine, pork, and pork products by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries declared to be free of swine vesicular disease (SVD) and to the list of countries free of SVD which are subject to special restrictions on the importation of their pork and pork products into the United States. These amendments are necessary to reflect that SVD has been eradicated from Great Britain and to protect against the introduction into the United States of certain diseases. The overall effect of the amendments is to relieve certain restrictions on the importation into the United States of swine, pork, and pork products from Great Britain.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8172.

SUPPLEMENTARY INFORMATION: .

Background

The regulations in 9 CFR Part 94 (the regulations) regulate the importation into the United States of specified animals and animal products in order to

prevent the introduction into the United States of various diseases, including swine vesicular disease (SVD). SVD is an acute, highly infectious viral disease of swine. It is characterized by vesicular lesions and subsequently by erosions of the epithelium of the mouth, nares, snout, and feet.

Section 94.12(a) of the regulations provides that SVD is considered to exist in all countries of the world, except those countries listed in § 94.12(a).

Section 94.13 of the regulations imposes restrictions on the importation into the United States of pork and pork products from countries listed in that section which are declared to be free of SVD in § 94.12(a); and which either supplement their national pork supply by the importation of fresh, chilled, or frozen pork from countries where SVD or other vesicular diseases, such as foot-and-mouth disease, are considered to exist; or which have a common border with such countries; or which have certain trade practices that are less restrictive than are acceptable to the United States.

A document was published in the Federal Register on February 22, 1985 (50 FR 7328–7330), which amended the regulations in 9 CFR Part 94 by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries in § 94.12(a) considered to be free of SVD. Also, because Great Britain supplements its national pork supply by the importation of fresh, chilled, or frozen pork from countries where a vesicular disease is considered to exist, the document of February 22, 1985, added Great Britain to the list of countries in § 94.13.

The interim rule became effective on the date it was signed, February 19, 1985. Comments were solicited for 60 days following publication. No comments were received. The factual situation which was set forth in the interim rule still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that the amount of swine, pork, or pork products imported into the United States from Great Britain as a result of this rule will be less than one percent of the amount of these items imported into the United States annually. Further, the importation of any of these items from Great Britain is not the primary business activity of any business in the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PHOHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, the interim rule amending 9 CFR Part 94 published in the Federal Register at 50 FR 7328–7330 on February 22, 1985, is adopted as a final rule.

Authority: 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C. this 7th day of June, 1985.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–14203 Filed 6–11–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220 and 221

[Docket No. R-0543]

Regulations G, T, and U; Securities Credit Transactions; Discussion of Comments on Final Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Discussion of comments on final rule.

SUMMARY: Four parties responded to the Board's invitation to comment on a final rule (adopted without the customary notice and public participation period since the rule amendment was a relaxation of a restriction). The comments were all favorable and no modification of the Board's final rule is required.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Douglas Blass, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781; Joy W. O'Connell, TDD, (202) 452–3244.

SUPPLEMENTARY INFORMATION: On March 13, 1985, the Board adopted an amendment to the margin regulations which became effective on April 19, 1985 (50 FR 10933, March 19, 1985). Because the amendment relieved a restriction, the requirements of the Administrative Procedure Act with respect to notice and public participation were not followed. The rule pertained to an amendment to the margin regulations which excluded face-amount certificates from the definition of margin security and permitted broker-dealers to sell them without violating the arranging prohibition of Regulation T. The public was invited to comment and modifications would have been made had the comments reflected this necessity. No modification is required based upon an analysis of the four comments received.

By order of the Board of Governors of the Federal Reserve System, June 6, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–14081 Filed 6–11–85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–116–AD; Amdt. 39–5082]

Airworthiness Directives: British Aerospace (BAe) Argosy, AW–650 Series 100 and 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection, replacement, and modification, as necessary, of certain components on British Aerospace, Aircraft Group, Argosy airplanes, to detect and prevent cracks in the tail boom structure. This action is necessary because cracks have been reported in

this area which could lead to loss of tail boom structure.

DATES: Effective July 22, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of inspections, replacements, and modifications contained in British Aerospace Service Bulletin 55-41, which has been made mandatory for the Argosy Model AW-650 Series 100 and Series 200 airplanes, operated under registry of the United Kingdom, to correct reported cracking of the tail boom skin doubler plates. Failure to repair cracks could lead to loss of tail boom structure.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the action mentioned above was published in the **Federal Register** on January 15, 1985 (50 FR 5626). The comment period closed March 18, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that 2 airplanes of U.S. registry will be affected by this AD. It will take approximately 1½ hours per airplane to accomplish the required inspections. Necessary modification parts will be locally manufactured and will require approximately 30 manhours to install. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $2,520.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Argosy Model AW-650 Series 100 and Series 200 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace Argosy: Applies to Argosy Model AW-650 Series 100 and 200 aircraft Serial Numbers 6651, 6652, 6653, 6656, 6660, 6801, 6802, 6803 and 6805, certificated in all categories. To prevent possible loss of the vertical fin, accomplish the following:

A. Within 350 flying hours after the effective date of this AD, visually inspect the tail boom frame skin doubler plates, items 5, 6, 7, and 8 on drawing BBH 2702 for cracks in accordance with British Aerospace Service Bulletin 55/41 dated May 1984.

B. If no cracks are found, repeat the inspection at intervals not to exceed 700 flying hours.

C. If any cracks are found, incorporate repair scheme BBH 2733 within the next 700 flying hours. Incorporation of BBH 2733 eliminates the requirement for the repetitive inspections required by paragraph A., above.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate ariplanes to a base for the accomplishment of inspections and modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 22, 1985.

Issued in Seattle, Washington, on June 5, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-14090 Filed 6-11-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Colorado-1); Appendix to Order No. 124]

High-Cost Gas Produced From Tight Formations; Colorado; Correction

Issued March 30, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction to final rule.

SUMMARY: This document corrects the appendix to Order No. 124, a Final Rule designating portions of the Wattenberg J Sand Formation as tight formations. The appendix appeared in the **Federal Register** on April 4, 1984 (49 FR 13337) and contained an incomplete description of the area excluded from designation as a tight formation in Docket No. RM79-76 (Colorado-1).

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357-8511 or Victor Zabel, (202) 357-8616.

DATES: This notice was issued June 7, 1985

SUPPLEMENTARY INFORMATION: The following correction should be made in FR Doc 84-8882 appearing on page 13338:

On page 13338, the description of the area of Weld County, Colorado, excluded from designation as a tight formation, in "Township 2 North, Range 67 West, 6th P.M." should read as follows:

Sections 1-5, 7, 9, 11, 12, 14-16, 18-20, 22-28, 30, 31 and 33-36: All
Sections 6, 8, 13, 17, and 21: N½
Section 8: S½
Section 32: E½
Sections 10 and 29: W½.

Kenneth F. Plumb.

Secretary.

[FR Doc. 14202 Filed 6-11-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-227 (Colorado-1 Amendment III) Order No. 425]

High-Cost Gas Produced From Tight Formations; Colorado

Issued: June 7, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the FERC rejects the recommendation of the State of Colorado Oil and Gas Conservation Commission that portions of the J Sand Formation located in Weld County, Colorado originally excluded by the Commission in Order No. 124, be included in the designated tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Fredrick W. Peters, (202) 357-9115, or Victor Zabel, (202) 357-8616.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On February 24, 1984, the Federal Energy Regulatory Commission (Commission) received a recommendation pursuant to § 271.703(d) of the Commission's regulations [1] from the State of Colorado Oil and Gas Conservation Commission (Colorado) that twelve 320-acre drilling units in the J Sand Formation [2] underlying the Wattenberg Field in Weld County, Colorado, be designated as a tight formation. The drilling units were previously excluded from tight formation designation under § 271.703(c)(2)(i)(D), by Order No. 124, RM79-76 (Colorado-1), issued January 23, 1981.[3] By Order No. 357, Docket No. RM79-76-219 (Colorado-1 Amendment II), issued February 6, 1984, Order No. 124 was amended to include one of the units of the subject recommendation in the area approved as a tight formation.[4] Since this unit currently is in a designated tight formation area, its review in the subject recommendation is moot.

The recommendation to include the previously excluded units in the J Sand Formation tight formation description was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (Director), issued March 22, 1984.[5]

Background

Under § 271.703(c)(2) of the Commission's regulations, the Commission may approve a recommendation by a jurisdictional agency that a natural gas formation be designated a tight formation if certain geological criteria are met.[6] Even when the geological criteria are satisfied, the jurisdictional agency may not include in its recommendation a formation, or any *portion* of a formation, which was authorized to be developed by infill drilling prior to the date of the recommendation if it is determined that the formation or portion subject to infill drilling can be developed absent the incentive price.[7]

By Order No. 124, RM79-76 (Colorado-1), issued January 23, 1981, the Commission designated portions of the J Sand Formation as a tight formation, Order No. 124, as amended by Order No. 357, excluded the eleven drilling units at issue here from the tight formation designation under § 271.703(c)(2)(i)(D). Order No. 124 further provided that "the exclusion [of the drilling units] does not preclude future consideration of these areas as tight formations, if information and economic data become available which show that all or part of the excluded area would not be developed absent the incentive price under section 107(c)(5)."

By Order No. 137-A, RM79-76 (Colorado-3), issued June 17, 1981,[8] the Commission described the type of economic data jurisdictional agencies must provide to qualify previously excluded portions of tight formation subject to infill drilling. To demonstrate that the excluded area presents extraordinary risks or costs which prohibit further development at existing prices, data should address factors such as the actual impact that the incentive price would have on encouraging production from the excluded area and why currently available prices are not adequate to provide economic incentives to produce [from the area].[9]

To obtain such data, Colorado convened a hearing on September 19, 1983.[10]

Discussion

Review of Colorado's submission reveals the absence of economic data which show that the excluded area presents extraordinary risks or costs which prohibit further development at existing prices.

The units were excluded from the original J Sand Formation tight formation designation for two reasons: (1) The units were authorized to be developed by infill drilling prior to the date of the recommendation for tight formation status, and (2) there were no economic data to support the need for an incentive price. Indeed, infill drilling orders suggest that development has begun. Other evidence to explain why an incentive price is nontheless necessary may be offered, even at a later date, but must demonstrate extraordinary costs and risks which prohibit further development at existing prices.

If the proposed drilling of additional wells on ten of the eleven units at issue took place, the wells would qualify under NGPA section 103 and produce from a depth greater than 5,000 feet. Drilling on the eleventh unit has already begun. The Haley-Gumeson No. 2 well [11] was spudded on December 15, 1981, and has a section 103 determination. This well would qualify for the section 107

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[1] 18 CFR 271.703(d) (1983).

[2] The specified area underlies about 3,840 acres. The average depth to the top of the J Sand Formation is approximately 8,000 feet.

[3] 46 FR 9921 (January 30, 1981). A description of the eleven excluded portions appears in the Appendix to Order No. 124. 49 FR 13337 (April 4, 1984). Colorado, and the applicant requesting the tight formation designation, recognize that the drilling unit described as the "Dier unit," Township 2 North, Range 67 West, Section 8, S½ was not excluded in Order No. 124, but should have been if the infill drilling criteria had been properly applied. The Dier unit will be treated for purposes of this order as if it was excluded by Order No. 124.

[4] 49 FR 4938 (February 9, 1984). The "Johnson-Niven unit," Township 2 North, Range 68 West, Section 13, W½.

[5] 49 FR 13378 (April 4, 1984). No comments were received, no party requested a public hearing, and no hearing was held.

[6] Section 271.703(c)(2)(i)(A)-(c) (1984).

[7] Section 271.703(c)(2)(i)(D) (1984). "Infill drilling" is defined as "any drilling in a substantially developed formation (or a portion thereof) subject to requirements . . . respecting well spacing or proration units which were amended by the jurisdictional agency after the formation * * * was substantially developed and which were adopted for the purpose of more effective and efficient drainage of the reservoirs in such formations" § 271.703(b)(6) (1984).

[8] 46 FR 32235 (June 22, 1981).

[9] Order No. 137-A, 15 FERC ¶ 61,277 at 61,626.

[10] Colorado Cause No. NG-3-4.

[11] Located in Township 2 North, Range 67 West, Section 32, E ½.

price, retroactively, if designated as a tight formation.[12]

Staff analysis of cost and production data submitted by Colorado reveals that at the section 103 price the project would yield a rate of return in excess of 19.9 percent before income taxes. Further, under section 121 of the Natural Gas Policy Act of 1978,[13] and Order Nos. 406, 406–A, and 406–B, the Haley-Gumeson No. 2 well gas was deregulated on January 1, 1985. Gas produced from the other units similarly would become deregulated upon receiving a section 103 determination. Therefore, the price at which all of the subject gas is sold should be established by the market regardless of the disposition of this application for tight formation status.

The Commission Orders:

Based on the discussion herein, the Commission rejects the recommendation of the State of Colorado Oil and Gas Conservation Commission that portions of the J Sand Formation, underlying Weld County, Colorado, be included in the description of the tight formation designation as set out in Commission Order No. 124.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14201 Filed 6–11–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 85–87]

Customs Regulations Amendment Adding Ireland and Sweden to List of Countries Whose Pleasure Vessels Are Entitled To Be Issued U.S. Cruising Licenses

Correction

In FR Doc. 85–11849 beginning on page 20900 in the issue of Tuesday, May 21, 1985, make the following correction: On page 20901, in the second column, in the **Authority** citation, the second entry for "Section 4.7" should read "Section 4.7a".

BILLING CODE 1505–01–M

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[12] The underlying contract provides for payment of $4.00 per MMbtu upon classification as a tight formation.

[13] 15 U.S.C. 3301–3432. (1983), and Order No. 406, Docket No. RM84–14, 29 FERC ¶ 61,202 (1984), Order No. 406–A, 29 FERC ¶ 61,315 (1984), Order No. 406–B, 30 FERC ¶ 61,152 (1985)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate Film-Coated Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories for use of a 150 milligram amoxicillin tablet for treating certain bacterial infections in dogs.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia N. Cushing, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1768.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed a supplement to NADA 55–078 which covers use of amoxicillin trihydrate film-coated tablets in dogs for the treatment of infections of the respiratory tract (tonsillitis, tracheobronchitis), genitourinary tract (cystitis), gastrointestinal tract (bacterial gastroenteritis), and soft tissues (abscesses, lacerations, wounds), caused by susceptible strains of *Staphylococcus aureus, Streptococcus spp., Escherichia coli, Proteus mirabilis,* and bacterial dermatitis caused by *Staphylococcus aureus, Streptococcus spp.,* and *Proteus mirabilis.*

The supplement covers use of a tablet containing 150 milligrams of amoxicillin, as amoxicillin trihydrate. NADA 55–078 was originally approved by a final rule published in the **Federal Register** of February 4, 1976 (41 FR 5093) which covered use of 50-, 100-, and 200-milligram tablets of amoxicillin, as amoxicillin trihydrate, for use in dogs. A supplement published in the **Federal Register** of September 27, 1977 (42 FR 49453), added the 400-milligram tablets. The supplement for the 150-milligram tablet is approved and the regulations are amended to reflect the approval.

The freedom of information summary made available under the provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), which consisted of a summary of safety and effectiveness data and information submitted to support approval of this original application, applies also to this supplemental application and may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics, penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.103a [Amended]

2. In § 540.103a *Amoxicillin trihydrate film-coated tablets* in paragraph (a)(1) by revising the phrase "50, 100, 200, or 400 milligrams of amoxicillin." to read "50, 100, 150, 200 or 400 milligrams of amoxicillin."

Dated: June 5, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–14074 Filed 6–11–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215, 236, and 813

[Docket Nos. R–85–981 and 85–1163; FR–2083]

Delayed Implementation of Income Definitions for the Section 8 Housing Assistance Payments, Rent Supplement, and Section 236 Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department published rules concerning definition of income, income limits, rent and reexamination of family income on May 10, 1984 (49 FR 19925) for the Section 8 Housing Assistance programs and on July 23, 1984 (49 FR 29580) for the Rent Supplement and Section 236 programs. Those rules stated that the new definitions of Annual Income and Adjusted Income were to be used for all income reexaminations conducted on or after October 1, 1984 (corresponding to rent calculations effective on on after January 1, 1985), and that a recalculation of rent due for the period from October 1, 1984 until the effective date of the first reexamination using the new definitions of Annual Income and Adjusted Income would be made to determine whether a rent rebate was due for that period. This final rule revises the portions of those rules that prescribe the timing for implementation. This revision is based on the Secretary's determination that it was impracticable for owners to start using the new definitions as early as October 1, 1984, and that implementation must be delayed until HUD forms and instructions are available. No benefits accruing to tenants under those rules will be forfeited.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: For the Section 8 Existing Housing Certificate Program and Moderate Rehabilitation Program, Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755–6887; for all other programs, James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, telephone (202) 426–3944. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Department published a final rule on May 10, 1984 (49 FR 19925) entitled Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs ("new rule"), with a stated effective date of July 1, 1984. Section 813.110 of that rule provided that the applicability of the definitions of Annual Income and Adjusted Income contained in the rule was delayed until reexaminations conducted on or after October 1, 1984, "due to the need for distribution of instructions and forms, instruction of PHA and Owner staffs, and similar administrative adjustments."

Similarly, an interim rule was published on July 23, 1984 (49 FR 29580), entitled Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs ("new rule"), with a stated effective date of October 1, 1984. Sections 215.56 and 236.81 contained provisions similar to § 813.110, requiring income reexaminations that are conducted on or after October 1, 1984 to use the new definitions of Annual Income and Adjusted Income.

The statutory changes being implemented by the new rules involve not only changes in definitions of Annual Income and Adjusted Income, but also other changes, including application of a ten percent annual cap on rent increases resulting from statutory and regulatory changes, a special rent calculation for some tenants converted from one form of housing assistance to another, and a limit on the number of applicants with incomes between 50 and 80 percent of median income that can be approved to receive assistance under the Section 8 and Public Housing programs. Because the new rules involve many complex issues, and HUD is concerned that the calculations under the new rules be done correctly, we decided (and § 813.110 provided) not to require implementation until PHAs and project owners had been provided an opportunity to establish procedures to carry out the requirements of the regulations.

The Section 8 program is divided into two major categories: Those programs where determinations of family eligibility and tenant payment are the responsibility of the project owner, and those programs where these functions are the responsibility of the PHA that administers the HAP contract. The programs in the latter category include the Section 8 Existing Housing Certificate Program (often referred to as "Finders-Keepers") and the Moderate Rehabilitation program, both administered under Part 882 of this chapter, as well as the new Housing Voucher program. Section 8 programs in the first category include the Section 8 New Construction and Substantial Rehabilitation programs and certain variations on the Section 8 Existing Housing Program where the subsidy is tied to specific projects and units. This category of programs will be referred to in this rule as "project-based."

With respect to the project-based Section 8 programs (*i.e.*, programs administered under Parts 880, 881, 883–886) and the Rent Supplement and Section 236 programs, we believed in September 1984 that we could provide forms and instructions for the new rule in October 1984. On September 17, 1984, the Assistant Secretary for Housing-Federal Housing Commissioner informed HUD Field Offices that they should advise project owners that forms and instructions would not be available before October 1, 1984, but were expected to be available the third week in October. On November 21, 1984, the Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner informed the HUD Field Offices that the Housing and Community Development Technical Amendments Act of 1984 had been enacted, requiring the addition of a new deduction from income for handicapped assistance expenses, which would cause additional changes in the forms and instructions, and hence further delay their issuance. The Field Offices were instructed to advise project owners to continue to use the old forms and instructions until the revised ones were available. In the meantime, some private housing consultants trained owner and PHA staffs on the draft forms and instructions for implementation of the new rules. Final forms and instructions were signed on March 7, 1985 and are now being printed and distributed.

In the Section 8 Existing Housing Certificate and Moderate Rehabilitation programs, there has been no administrative barrier to implementing 24 CFR Part 813 in accordance with the schedule in 24 CFR 813.110, *Transition Provisions*. In addition, because of the greater degree of autonomy afforded to PHAs by Section 2 of the United States Housing Act of 1937 ("the 1937 Act") and the fact that PHAs are government bodies, HUD traditionally gives PHAs more latitude than private owners to develop their own procedures. Some PHAs have proceeded to implement the provisions of 24 CFR Part 813 based on the regulation itself, as well as their experience with the public housing program, which has almost identical requirements (see 24 CFR Part 913).

Other PHAs, however, have hesitated to implement the provisions of 24 CFR Part 813 in their Section 8 Existing Housing Certificate and Moderate

Rehabilitation programs because of their desire for additional technical assistance from HUD. Although HUD initially expected that the delay established in 24 CFR Part 813.110 would be sufficient to respond to the anticipated needs of the PHAs in this regard, we have not yet been able to provide technical assistance directly to the PHAs. Therefore, we are making this additional delay applicable to the Section 8 Existing Housing Certificate and Moderate Rehabilitation programs to cover those PHAs that have not yet implemented 24 CFR Part 813.

Section 206(d)(1) of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983) provides that (notwithstanding certain other provisions of the Housing and Community Development Act of 1981 which the above rules seek to implement), the Secretary "may provide for delayed applicability . . . of the procedures for determining rents . . . required by such provisions if the Secretary determines that immediate application of such procedures would be impracticable . . ."

Under the authority of Section 206(d)(1) of the 1983 Act, taking into account the complexity of the new procedures, the Secretary had determined that implementation of the new rules by owners and PHAs on October 1, 1984 was impracticable and had to be delayed. HUD is now amending the rules to require all owners and PHAs to implement the new rules for examinations for admission and reexaminations with effective dates on or after August 1, 1985.

This delay in implementation will not affect a tenant's underlying rights, but will merely delay receipt of the full benefits of reduced rents in the cases where the new procedures are favorable to the tenant. Tenants whose rents would have decreased for the period from October 1, 1984 to the next reexamination date on or after August 1, 1985 had the new rule been implemented for that period will receive a rent rebate, based on the recalculation required by §§ 813.110, 215.56 and 236.81. Tenants whose rents would have increased as a result of the new procedures will *not* be required to make any additional payment for the period starting with October 1, 1984 during which they effectively underpaid their rents.

The following examples illustrate in general terms the effect of this delayed implementation on a few common situations: (1) A tenant first receiving Rent Supplement assistance before October 1, 1984; (2) a family first receiving Section 236 Rental Assistance Payments after October 1, 1984 and before August 1, 1985; (3) a family in a Section 8 project that has paid more than it would have paid from October 1, 1984 to the reexamination effective date had the new rule been implemented for that period; and (4) a family in a Section 8 project that has paid less than it would have paid from October 1, 1984 to the reexamination effective date had the new rule been implemented for that period. These examples do not attempt to cover all the possible factors. The forms and instructions must be followed to correctly determine the rent of any particular family.

Example (1)

A family first received Rent Supplement assistance on June 1, 1984. Thus, the definitions of Annual Income and Adjusted Income used in performing the income examination effective June 1, were those under the pre-July 1984 rules. When the date for processing the family's first annual reexamination came, on March 1, 1985, the project owner did not have the new implementation procedures available. Therefore, the old rule's procedures were used for this first post-October 1, 1984 reexamination. At the first annual reexamination processed under the new rule, the family's rental payment for the period October 1, 1984 to the date the rent calculation under the new rule is effective, is recalculated under § 215.56, using the income data available for the initial examination and the new definitions of Annual Income and Adjusted Income, and the ten percent cap on annual rent increases is applied. This recalculated rent is then used as described in examples 3 and 4. The rental payment effective for the next 12 months is based on new income data and the new procedures.

Example (2)

A family first received Section 236 Rental Assistance Payments on November 1, 1984. Since implementing procedures for the new rule were not yet available when the family's examination was being processed, the old definitions were applied. At the first reexamination processed under the new rule, the family's rental payment for the period from November 1, 1984 to the date the rent calculated under the new rule is effective, is recalculated under § 236.81, similar to the recalculation in example (1). However, the ten percent cap on rental increases is not applied, since the family first received Rental Assistance Payments after October 1, 1984, and, therefore, should have paid, under the statutes and regulations then in effect, a rental payment calculated under the new rule from the date of certification of eligibility for the Rental Assistance Payments program.

Example (3)

A family in occupancy in a Section 8 project on September 30, 1984, whose head is 63 years of age and which contains five dependents, qualified in November, 1984 for the following deductions under the respective rules:

Old Rule:		
Minor deduction	5 × $300 =	$1,500
Medical deduction		500
Unusual expense deduction		2,000
Total		4,000
New Rule:		
Dependent deduction	5 × $480 =	$2,400
Medical deduction		500
Child care deduction		2,000
Elderly deduction		400
Total		5,300

With an Annual Income of $12,000 (based on the old rule), the monthly rental payments due under the old rule and under § 813.110(f) of the new rule based on 30 percent of adjusted income would be $200.00 and $167.50, respectively.

If the family were current in its payments to the owner and it had paid $200 for its rental payment from October 1, 1984 until November 1, 1985 (the date the rent calculated under the new rule is effective), it would then be entitled to a total rent rebate of $422.50 (13 months times the difference between the old and recalculated rents). Its rental payment starting on November 1, 1985 would be based on new income data and the new rule.

Example (4)

A nonelderly family in occupancy in a Section 8 project on September 30, 1984, with two dependents and significant medical expenses would produce quite a different result:

Old Rule:		
Minor deduction	2 × $300 =	$600
Medical deduction		1,000
Unusual expense deduction		2,000
Total		3,600
New Rule:		
Dependent deduction	2 × $480 =	$960
Medical deduction		
Child care deduction		2,000
Total		2,960

With an Annual Income of $10,000 (based on the old rule), the monthly rental payments due under the old rule and under § 813.110(f) of the new rule based on 30 percent of adjusted income

would be $160.00 and $176.00, respectively.

In this case, the family would have effectively underpaid for the period from October 1, 1984 until its first reexamination under the new rule. The family would consequently *not* receive a rent rebate, but neither would it be required under § 813.110(g) to pay any additional rental payment for the prior period because of the difference in rents under the old and new rules. The family would simply start paying rent at the new level.

Use of Final Rule

This rule is being published as a final rule without prior notice and comment. Notice and comment procedures are considered to be contrary to the public interest for two reasons: First, any delay in effectuating the changes made by this rule would disserve the public interest, because the delay would perpetuate an implementation date which has proved to be impossible. Second, it would frustrate Congressional policy to delay the implementation date any longer than absolutely necessary. The implementation date contained here is the earliest precticable date. Morever, since benefits will be calculated retroactively to October 1, 1984—the *unaltered* date for the accrual of benefits for families whose income was reexamined under the old rule after October 1, 1984—and since proper rebates will be made, this necessary delay in implementation will not deprive families of any substantive right.

Findings and Certifications

Findings of No Significant Impact with respect to the environment were made in accordance with HUD regualtions in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the rules that are being amended herein. Those Findings of No Significant Impact are applicable to this rule amending those rules, and the Findings are available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rules indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rules does not have a significant economic impact on a substantial number of small entities, because it recognizes the need for most owners and PHAs to have HUD forms and instructions before implementing the new income definition rules.

This rule was not listed on any Semiannual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Domestic Assistance Numbers are 14.103, 14.149 and 14.156.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies.

24 CFR Part 813

Lower income housing, Rent subsidies, Utilities.

Accordingly, the Department amends 24 CFR Parts 215, 236 and 813 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR Part 215 is revised to read as set forth below and any authority citation following any section in Part 215 is removed:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965, (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 215.56 is revised to read as follows:

§ 215.56 Transition provision.

(a) *Admissions and reexaminations effective on or after August 1, 1985.* All regular and interim reexaminations and examinations for admission that are to be effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55.

(b) *Optional interim reexamination.* Each owner shall have the right, at its discretion, to require any Qualified Tenant who paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before October 1, 1984, to undergo an interim reexamination and determination of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, in accordance with the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, before the next regularly scheduled reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants, other than those whose examination for admission was based on the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, the owner shall make an additional calculation, at the first reexamination using the 1984 revisions, with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Total Tenant Payment shall be calculated for such period, in accordance with HUD administrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 215.1;

(3) Medical Expenses and Handicapped Assistance Expenses as prescribed in HUD administrative instructions implementing the definition of Adjusted Income in § 215.1, as adapted to conform to section 102(b)(3) of the Housing and Community Development Technical Amendments Act of 1984;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 215.1; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted Income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual adjustments.* (1) If the adjusted monthly rental charge calculated under paragraph (c) of this section is higher than or equal to the actual monthly rental charge for the applicable period, no adjustment shall be made. If the adjusted monthly rental

charge calculated under paragraph (c) of this section is lower than the actual monthly rental charge for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance is the amount due the tenant. This amount due the tenant may be paid to the tenant; or it may be applied as a credit to the Tenant Rent due immediately after the effective date of the reexamination; or, if the amount due to a tenant exceeds 25 percent of the Total Tenant Payment due from such tenant, it may be applied as a credit in not more than four installments.

(2) If a Qualified Tenant vacates a unit on of after October 1, 1984, and before the first reexamination based on the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amount due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, HUD will follow regular procedures appropriate to the circumstances.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

3. The authority citation for 24 CFR Part 236 is revised to read as set forth below and any authority citation following any section in Part 236 is removed:

Authority: Secs. 211 and 236 of the National Housing Act (12 U.S.C. 1715b and 1715z–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 236.81 is revised to read as follows:

§ 236.81 Transition provision.

(a) *Admissions and reexaminations effective on or after August 1, 1985.* All regular and interim reexaminations and examinations for admission that are to be effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the July 1984 revisions to §§ 236.2, 236.3, 236.55 (or § 236.735, if applicable).

(b) *Optional interim reexamination.* Each owner shall have the right, at its discretion, to require any Qualified Tenant who paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before October 1, 1984, to undergo an interim reexamination, and determination of Annual Income, Adjusted Income, Total Tenant Payment, and Tenant Rent based thereon, in accordance with the July 1984 revisions to §§ 236.3, 236.55, and 236.735, before the next regularly scheduled reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants, other than those whose examination for admission was based on the July 1984 revisions to §§ 236.2, 236.3, 236.55 and 236.735, the owner shall make an additional calculation, at the first reexamination using the 1984 revisions, with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Total Tenant Payment (or Tenant Rent for tenants not receiving the benefit of Rental Assistance Payments) shall be calculated for such period, in accordance with HUD administrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 236.2;

(3) Medical Expenses and Handicapped Assistance Expenses as prescribed in HUD administrative instructions implementing the definition of Adjusted Income in § 236.2, as adapted to conform to section 102(b)(3) of the Housing and Community Development Technical Amendments Act of 1984;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 236.2; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual Adjustments.* (1) If the adjusted rental charge calculated under paragraph (c) of this section is higher than or equal to the actual monthly rental charge for the applicable period, no adjustment shall be made. If the adjusted monthly rental charge calculated under paragraph (c) of this section is lower than the actual monthly rental charge for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance is the amount due the tenant. This amount due the tenant may be paid to the tenant; or it may applied as a credit to the Total Tenant Payment or Tenant Rent, as appropriate, due immediately after the effective date of the reexamination; or, if the amount due to a tenant exceeds 25 percent of the Total Tenant Payment or Tenant Rent, as appropriate, due from such tenant, it may be applied as a credit in not more than four installments.

(2) If a Qualified Tenant vacates a unit on or after October 1, 1984, and before the first reexamination based on the July 1984 revisions to §§ 236.2, 236.3, 236.55 and 236.735, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amounts due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the revisions to §§ 236.2, 236.3, 236.55 and 236.735, HUD will follow regular procedures appropriate to the circumstances.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

5. The authority citation for 24 CFR Part 813 is revised to read as set forth below and any authority citation following any section in Part 813 is removed:

Authority: Secs. 3, 5(b), 8, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 813.107 [Amended]

6. Section 813.107(c)(6) is amended (1) by removing the phrase "conducted on or after October 1, 1984" in the four places where it appears, and substituting in its place "using the 1984 revised definitions of income"; (2) by inserting after the phrase "any remaining balance shall be" the words "the amount due to the Family. This amount due the Family may be paid to the Family, or it may be"; (3) by removing the phrase "credit to the Total Tenant Payment" and substituting in its place "credit to the Tenant Rent"; and (4) by inserting after the phrase "any amounts due from the Family and" the phrase "any Section 8 damage and rent claims HUD has paid to the Owner on the Family's behalf, and".

7. Section 813.110 is revised to read as follows:

§ 813.110 Transition provision.

(a) *Delayed implementation for rent calculations.* This Part is effective on July 1, 1984. However, implementation of the definitions of Annual Income and Adjusted Income contained in this Part shall take place in time to be applied to examinations for admission and reexaminations effective on or after August 1, 1985.

(b) *Examinations and reexaminations effective before August 1, 1985.* In the case of the following categories of tenants, the PHA or Owner shall conduct the examination or reexamination as scheduled and may determine the tenant's contribution in accordance with regulations and procedures in effect immediately before July 1, 1984 (including the percentage to be applied to adjusted income in the case of such tenants pursuant to § 813.107 based on the effective date of the examination or reexamination): (1) Any current tenant for whom the examination or regularly scheduled reexamination process started on or after July 1, 1984, and whose examination or reexamination was effective before August 1, 1985; (2) current tenants for whom interim reexaminations have effective dates during that period; and (3) applicants for admission whose initial examinations have an effective date during that period.

(c) *Admissions.* On or after July 1, 1984, and before August 1, 1985, for purposes of application of §§ 813.103 and 813.105, a Family will be determined to be a Lower-Income Family or a Very Low-Income Family on the basis of a determination of Annual Income made in accordance with regulations and procedures in effect immediately before July 1, 1984. The admission of any Family on such basis before August 1, 1985, shall not be effected by a recalculation of Annual Income pursuant to this Part effective on or after August 1, 1985.

(d) *Admissions and Reexaminations effective on or after August 1, 1985.* All regular or interim reexaminations, or examinations for admission, effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the requirements of this Part.

(e) *Optional Interim Reexamination.* Each PHA or Owner shall have the right, at its discretion, to require any Family that paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before July 1, 1984, to undergo an interim reexamination, and determination of Annual Income, Adjusted Income, Total Tenant Payment, and Tenant Rent based thereon, in accordance with the requirements of this Part, before the next regularly scheduled reexamination for such Family.

(f) *Calculation of Retroactive Adjustment.* For all Families, other than those whose examination for admission was based on the revised definitions of Annual Income and Adjusted Income established in this Part, the PHA or Owner shall make an additional calculation at the time of the first regular or interim reexamination using the 1984 revisions, with respect to the period between October 1, 1984, and the effective date of such reexamination. An adjusted tenant rental payment shall be calculated for such period, in accordance with HUD administrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before July 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed by § 813.102;

(3) Estimated Medical Expenses and Handicapped Assistance Expenses as prescribed in HUD administrative instructions implementing the definition of Adjusted Income in § 813.102, as adapted to conform to section 102(b)(3) of the Housing and Community Development Technical Amendments Act of 1984;

(4) Unusual Expenses taken into account in the calculation of Annual Income After Allowances for such period in accordance with regulations and procedures in effect immediately before July 1, 1984, but only if such unusual expenses qualify as Child Care Expenses as defined in § 813.102.

(5) The percentage applied to Monthly Adjusted Income in accordance with regulations and procedures in effect immediately before July 1, 1984, to determine the rental payment actually charged during such period.

(g) *Actual adjustments.* (1) If the adjusted tenant rental payment calculated under paragraph (f) is higher than or equal to the tenant payment actually charged for the applicable period, no adjustment shall be made. If the adjusted tenant rental payment calculated under paragraph (f) is lower than the tenant rental payment actually charged for the applicable period, the amount of such difference shall first be offset against any amounts due from the Family to the PHA or Owner and any remaining balance shall be the amount due to the Family. This amount due the Family may be paid to the Family; or it may be applied as a credit to the Tenant Rent due immediately after the effective date of the reexamination; or, if the amount due to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, it may be applied as a credit in not more than four installments.

(2) If a Family vacates a unit on or after October 1, 1984, and before the first reexamination based on the revised definitions of Annual Income and Adjusted Income established in this Part, the PHA or Owner will notify the Family of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any Family making such a timely request, the PHA or Owner will make all calculations necessary to determine whether an adjustment is due to the Family pursuant to this subsection (g)

and, if so, the amount of any such adjustment will first be offset against any amounts due from the Family to the PHA or Owner and any Section 8 damage or rent claims HUD has paid on the Family's behalf, and any balance will be refunded to the Family.

(h) *Increased subsidy needs.* If a PHA or Owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of this Part, HUD will follow regular procedures appropriate to the circumstances.

Dated: June 5, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-14097 Filed 6-11-85; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

State and Local Government Information Report (EEO-4); Change in Survey Form and Instructions

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of change in Survey Form and Instructions, State and Local Government Information (EEO-4) Report.

SUMMARY: Starting with the 1986 survey year, the salary ranges on the EEO-4 form will be revised to reflect current earnings levels.

DATE: This change will be effective beginning with the 1986 EEO-4 survey.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Survey Division, Office of Program Research, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20507 (703/756-6020).

SUPPLEMENTARY INFORMATION: The above change involves a modification in the reporting form and does not entail any additional reporting requirements. The salary ranges on the EEO-4 form will be revised to reflect current earnings level, starting with the 1986 survey, as follows:

[Dollars in thousands]

Current ranges	Revised ranges
$0.1 to 5.9	Below $8.0
6.0 to 9.9	$8.0 to 11.9
10.0 to 12.9	12.0 to 15.9
13.0 to 15.9	16.0 to 19.9
16.0 to 19.9	20.0 to 24.9
20.0 to 24.9	25.0 to 32.9
25.0 to 32.9	33.0 to 42.9
33.0—plus	43.0—plus

Respondents will receive notification of the above change along with their EEO-4 forms for the 1985 survey, thus allowing a year's lead time before the change is implemented.

Signed at Washington, D.C. this 5th day of June, 1985.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 85-14088 Filed 6-11-85; 8:45 am]

BILLING CODE 6570-06-M

29 CFR Part 1602

Higher Education Staff Information Report (EEO-6); Revision of Salary Ranges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of change in Survey Form and Instructions, Higher Education Staff Information (EEO-6) Report.

SUMMARY: Starting with 1987 survey year, the salary ranges on the EEO-6 forms will be revised to reflect current earnings levels.

DATE: This change will be effective beginning with the 1987 EEO-6 survey.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Survey Division, Office of Program Research, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20507 (703/756-6020).

SUPPLEMENTARY INFORMATION: The above change involves a modification in the reporting form and does not entail any additional reporting requirements. The salary ranges on the EEO-6 form will be revised to reflect current earnings levels by occupational groups, starting with 1987 survey, as follows:

[Dollars in thousands]

Current ranges	Revised ranges
Faculty: 9-10 Month Contract, 11-12 Month Contract, Executive/Administrative/Managerial Professional, Non-faculty:	
Below $7,500	Below $10,000
$7,500 to 9,999	$10,000 to 14,999
10,000 to 12,999	15,000 to 19,999
13,000 to 15,999	20,000 to 24,999
16,000 to 18,999	25,000 to 29,999
19,000 to 24,999	30,000 to 34,999
25,000 to 29,999	35,000 to 39,999
30,000 and above	40,000 and above
Secretarial/Clerical Technical/Paraprofessional Skilled Craft:	
Below $5,000	Below $8,000
$5,000 to 7,499	$8,000 to 11,999
7,500 to 9,999	12,000 to 15,999
10,000 to 12,999	16,000 to 21,999
13,000 to 15,999	22,000 to 29,999
16,000 and above	30,000 and above
Service/Maintenance:	
Below $3,000	Below $8,000
$3,000 to 4,999	$8,000 to 11,999
5,000 to 7,499	12,000 to 17,999
7,500 to 9,999	18,000 to 24,999
10,000 and above	25,000 and above

Respondents will receive notification of the above change along with their EEO-6 forms for the 1985 survey, thus allowing two year's lead time before the change is implemented.

Signed at Washington, D.C. this 5th day of June, 1985.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 85-14089 Filed 6-11-85; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 725

Disposition of Cases Involving Physical Disability; Removal

AGENCY: Department of the Navy, DOD.

ACTION: Removal of rule from CFR.

SUMMARY: This document removes the Navy *Disability Evaluation Manual* (DEM) from the **Federal Register** and the *Code of Federal Regulations*. The purpose of this action is to avoid the costs associated with publishing the DEM. The DEM is still effective, however, and copies may be obtained from the Naval Council of Personnel Boards.

EFFECTIVE DATE: June 12, 1985.

ADDRESSES: Copies of the current edition of the DEM may be obtained from the Naval Council of Personnel Boards, Disability Evaluation System, Room 905—801 North Randolph Street, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Capt. J.O. Hall, 801 N. Randolph St. Suite 730, Arlington, VA 22203-1989, (703) 696-4371.

SUPPLEMENTARY INFORMATION: The DEM is being removed from 32 CFR Part 725 to avoid the expense of publishing this lengthy and oft-changed regulation in the **Federal Register** and the *Code of*

Federal Regulations. The DEM need not be published since it does not affect the public. It applies only to Department of the Navy military personnel. The DEM itself, as amended, is still in effect, however.

List of Subjects in 32 CFR Part 725

Administrative practice and procedure, Disability benefits, Military personnel, Retirement.

PART 725—[REMOVED]

Accordingly, Part 725 is removed from title 32, CFR.

Dated: June 6, 1985.

William F. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-14062 Filed 6-11-85; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Managment Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are established for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Cape Coral (city), Lee County (FEMA Docket No. 6614)	
Charlotte Harbor:	
Intersection of Old Burnt Store Road and NW 41st Lane	*8
Approximately 3,150 feet west of intersection of Durden Parkway West and Old Burnt Store Road	*11
Along shoreline north of Yucca Creek	*12
Matlacha Pass:	
Intersection of Gulfstream Parkway and NW 36th Avenue	*8
Intersection of Embers Parkway and Burnt Store Road	*8
Intersection of SW 20th Avenue and SW 32nd Street	*8
Approximately 9,000 feet west of intersection of Gulfstream Parkway and NW 39th Avenue	*9
Intersection of SW 28th Place and EL Dorado Parkway	*9
Approximately 3,800 feet west of intersection of SW 2nd Lane and SW 38th Place	*10
Approximately 9,900 feet west of intersection of SW 20th Avenue and SW 32nd Street	*11
Approximately 8,000 feet west of the intersection of SW 28th Place and El Dorado Parkway	*11
Caloosahatchee River:	
Intersection of River SE 46th Street and SE 5th Place	*8
Intersection of Country Club Boulevard and Wildwood Parkway	*8
Intersection of SW 52nd Street and SW 8th Place	*8
Intersection of Del Prado Parkway and Coral Point Drive	[illegible]
Intersection of Flamingo Drive and Riverside Drive	*10
Approximately 8,000 feet south of the intersection of SW 28th Place and El Dorado Parkway	*11
Maps available for inspection at City Hall, Cape Coral, Florida.	
MONTANA	
Belt (town), Cascade County (FEMA Docket No. 6645)	
Belt Creek: 50 feet downstream of Bridge Street crossing	*3,509
Maps available for inspection at City Hall, Belt, Montana	
NEW YORK	
Oneida, city Madison County (FEMA Docket No. 6485)	
Oneida Creek:	
Downstream corporate limits	*386
Upstream Swallows Bridge Road	*397
Upstream Old Erie Canal bridge	*418
Upstream State Route 90	*422
Upstream Abandoned Railroad	*425
Upstream Lenox Avenue	*427
Upstream of Genesee Street	*446
Upstream Middle Road	*451
Upstream pipe crossing	*466
Upstream second crossing Kenwood Avenue	*484
Approximately 1,300 feet upstream of dam	*494
Upstream Peterboro Road	*509
Upstream corporate limits	*518
Higinbotham Brook:	
Confluence with Oneida Creek	*428
Upstream Sylvan Street	*444
Upstream CONRAIL	*461
Upstream State Route 5	*479
Cowaselon Creek:	
Downstream CONRAIL	*428
Downstream Elm Street	*444
Upstream Abandoned Railroad	*452
Upstream State Route 5	*475
Downstream of 1st upstream corporate limits	*497
Downstream of most upstream corporate limits	*513
Maps available for inspection at the City Engineer's Office, City Hall, 109 North Main Street, Oneida, New York.	
NORTH DAKOTA	
Bismarck (city), Burleigh County (FEMA Docket No. 6122)	
Missouri River: 500 feet upstream from center of Burlington Northern Railroad	*1,636

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Apple Creek: 200 feet upstream from center of Soo Line Railroad	*1,642
Hay Creek: 200 feet upstream from center of Interstate Highway 94	*1,693
Maps available for inspection at Planning Department, 221 N. 5th Street, Bismarck, North Dakota.	
Grand Forks (city), Grand Forks County (FEMA Docket No. 6522)	
English Coulee:	
At the intersection of Columbia Road and Gateway Drive	*829
At the intersection of Royal Drive and Baron Boulevard	[illegible]
Maps available for inspection at City Engineer's Office, 440 2nd Avenue, North, Grand Forks, North Dakota.	
Stanley (township), Coes County (FEMA Docket No. 6548)	
Red River of the North: Intersection of Red River of the North and center of County Road No. 16	[illegible]
Sheyenne River: Intersection of river and center of County Highway 6	*913
Wild Rice River: Intersection of river and center of U.S. Highway 81	[illegible]
Maps available for inspection at Stanley Township Supervisor's Home, Route 1, Horace, North Dakota.	
TEXAS	
Harris County (FEMA Docket No. [illegible])	
Halls Bayou:	
Approximately 1.0 mile upstream of confluence with Greens Bayou	*33
Approximately 800 feet downstream of confluence of Tributary 6.71	*[illegible]
At downstream corporate limits	*61
At Bertrand (upstream side)	[illegible]
At Aldine Westfield Road (upstream side)	*70
At confluence of Tributary 11.96	*74
At Airline Drive (upstream side)	*78
Downstream side of Sweetwater Road	*81
Upstream side of Steubner Airline Road	*87
Approximately 1.4 miles upstream of Steubner Airline Road	[illegible]
Approximately 0.6 mile downstream of Ann Louise Road	*[illegible]
Downstream of Moselee Road	*100
Tributary 6.71 to Halls Bayou:	
At downstream corporate limits	[illegible]
At Hopper Road (upstream side)	*82
Approximately 1,950 feet upstream of Hartwick Lane	[illegible]
Tributary 11.96 to Halls Bayou:	
At confluence with Halls Bayou	*74
Downstream of Carby	*75
Big Gulch:	
At confluence with Greens Bayou	*24
Upstream side of Wallisville Road	*25
Approximately 0.9 mile upstream of Wallisville Road	*32
Approximately 0.4 mile downstream of Villagrove	*38
Upstream side of Tidwell Road	*44
Approximately 300 feet downstream of Little York (extended)	*47
Spring Gully:	
At confluence with Greens Bayou	*26
Approximately 1.3 miles upstream of confluence with Greens Bayou	*32
Garners Bayou:	
Confluence with Greens Bayou	*57
Approximately 0.8 mile downstream of confluence of Tributary 3.19	*58
Approximately 1,700 feet upstream of confluence of Tributary 3.19	*62
At corporate limits	*65
Williams Gully:	
Confluence with Garners Bayou	*57
Approximately 1.1 miles upstream of confluence with Garners Bayou	*59
Approximately 1,400 feet upstream of confluence of Tributary 2.01	*64
Approximately 2.3 miles upstream of confluence of Tributary 2.01	[illegible]
Tributary 2.01 to Williams Gully:	
Confluence with Williams Gully	*63
Approximately 0.9 mile upstream of confluence with Williams Gully	*66
Approximately 1.9 miles upstream of confluence with Williams Gully	*72
Tributary 3.19 to Garners Bayou:	
Confluence with Garners Bayou	*61
Upstream corporate limits	*68
Tributary 0.55 to Tributary 3.19 to Garners Bayou:	
Confluence with Tributary 3.19	*65
Upstream corporate limits	*67
North Fork Greens Bayou:	
At downstream corporate limits	*92
Upstream side of Ella Boulevard	*94
Upstream side of most downstream Shell Road	*104
Upstream side of most upstream Shell Road	*107
Approximately 1,875 feet upstream of Walters Road	*108
Tributary 1.95 to North Fork Greens Bayou:	
Confluence with North Fork Greens Bayou	[illegible]
Approximately 0.6 mile upstream of Kuykendahl Road	*104
Approximately 0.3 mile upstream of Harrell-Dwyer Road	*112
Tributary 14.27 to Greens Bayou:	
At confluence with Greens Bayou	*41
At corporate limits	*44
Tributary 14.82 to Greens Bayou:	
At confluence with Greens Bayou	*43
Approximately 1.2 miles upstream of confluence with Greens Bayou	*48
Upstream side of East Houston Dyersdale Road	*57
Upstream side of Shendan Road	*62
At upstream corporate limits	*64
Tributary 20.88 to Greens Bayou:	
At confluence with Greens Bayou	*59
Upstream of Grand Prairie Drive	*62
Corporate limits at Old Humble Road	*68
Approximately 100 feet downstream of U.S. Route 59	*70
Mason Creek:	
At corporate limits with the City of Houston	*98
Upstream side of Fry Road	*102
Upstream side of Park Pine Road	*110
Approximately 0.5 mile downstream of Interstate 10/State Route 90	*123
Upstream of Interstate Route 10	*125
At Colonial Parkway	*126
Approximately 0.4 mile upstream of Franz Road	*130
Tributary 4.96 to Mason Creek:	
Confluence with Mason Creek	*125
Approximately 0.9 mile upstream of Mason Road	*128
Approximately 1.9 miles upstream of Mason Road	*132
Approximately 100 feet downstream of Katy-Fort Bend Road	*135
Tributary 52.9 to Buffalo Bayou:	
At corporate limits	[illegible]
Approximately 1,850 feet upstream of confluence of Tributary 2.17 to Tributary 52.9 to Buffalo Bayou	*102
Tributary 2.17 to Tributary 52.9 to Buffalo Bayou:	
Confluence with Tributary 52.9 to Buffalo Bayou	*100
Approximately 0.6 mile upstream of confluence with Tributary 52.9 to Buffalo Bayou	*103
Cane Island Branch:	
Approximately 0.6 mile downstream of county boundary	*147
Approximately 0.6 mile upstream of Morton Road	*156
At Pitts Road	*159
Hunting Bayou:	
Confluence with Buffalo Bayou	*12
At upstream corporate limits (with Galena Park)	*12
Carpenters Bayou:	
Confluence with Buffalo Bayou	*12
Upstream side of Woodford Drive	*24
Upstream side of Wallisville Road	*33
At U.S. Route 90	*40
Tributary 3.33 to Carpenters Bayou:	
Confluence with Carpenters Bayou	*13
Upstream side of Avenue C	*23
Approximately 850 feet upstream of Elgin Road	*29
Tributary 11.715 to Carpenters Bayou:	
Confluence with Carpenters Bayou	*40
Approximately 1.0 mile upstream of Hatchery Road	*46
Sheldon Reservoir:	
Entire shoreline	*49
Buffalo Bayou:	
At confluence of Tucker Bayou	*12
At confluence of Tributary 6.77	*12
At confluence of Sims Bayou	*12
At Dairy Ashford Road and Houston corporate limits	*78
At confluence of Langham Creek	[illegible]
Downstream of State Route 6	*80
Turkey Creek:	
At downstream City of Houston corporate limits	[illegible]
At first upstream Houston corporate limits	*92
Corporate limits at Clay Road	*104
Upstream side of Tanmner Road	*108
At Fisher Road	*110
Tributary 3.9 to Turkey Creek:	
At City of Houston corporate limits	*107
Approximately 3,000 feet upstream of Tanner Road	*114
Glenmore Ditch:	
Confluence with Buffalo Bayou	*12
At corporate limits	*18
Tributary 8.17 to Buffalo Bayou:	
Confluence with Buffalo Bayou	*12
At corporate limits	*12
Tucker Bayou:	
Confluence with Buffalo Bayou	*12
At corporate limits with Deer Park	*12
Patrick Bayou:	
Confluence with Buffalo Bayou	*12
At corporate limits	*12
Panther Creek:	
Confluence with Buffalo Bayou	*12
At corporate limits	*12
Tributary 6.77 to Buffalo Bayou:	
At confluence with Buffalo Bayou	*12
At corporate limits	*12
Goose Creek:	
At downstream corporate limits	*24
Approximately .6 mile upstream of Interstate Route 10	*30
Approximately 200 feet upstream of Wallisville Road East	*35
Approximately .8 mile upstream of Fig Orchard Road	*42
East Fork Goose Creek:	
At downstream corporate limits	*25
Approximately 0.45 mile upstream of West Lynchburg-Cedar Bayou Road	*28
Forrest Lake:	
Downstream corporate limits	*11
Corporate limits with the City of Pasadena	*11
Approximately 1,200 feet upstream of corporate limits	*11
Clear Creek:	
Upstream corporate limits of unincorporated areas of Harris County/City of Seabrook	*15
Approximately 2.0 miles downstream of confluence of Cow Bayou	*12
At confluence of Cow Bayou	*11
Upstream side of Interstate Route 45/U.S. Route 25	*12
Upstream side of FM 528	*18
Upstream side of Edgewood Avenue/FM 2351	*24
At confluence of Halls Road Ditch	*27
Upstream side of Dixie Farm Road	*32
At upstream corporate limits of Harris County/City of Pearland	*39
At downstream corporate limits of Harris County/City of Houston	*44
Upstream side of Cullen Boulevard/FM 516	*53
Upstream side of County Route 403	*59
At county boundary	*63
Taylors Bayou:	
Entire shoreline with county	*11
Tributary 3.10 to Taylors Bayou:	
At confluence with Taylors Bayou	*11
Approximately 0.65 mile upstream of confluence with Taylors Bayou	*11
Tributary 3.36 to Taylors Bayou:	
At confluence with Taylors Bayou	*11
Approximately 1,360 feet upstream of pipeline crossing	*11

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tributary 3.93 to Taylors Bayou:	
At confluence with Taylors Bayou	*11
At corporate limits	*11
Big Island Slough:	
Upstream face of Red Bluff Road	*12
At upstream corporate limits	16
Spring Gully:	
At upstream face of Red Bluff Road	*15
Approximately 840' downstream of corporate limits	*19
Willow Springs Bayou:	
Upstream of Red Bluff Road	*21
At upstream corporate limits	*21
Armand Bayou:	
Approximately 0.90 mile upstream of confluence of Spring Gully	*16
Cow Bayou:	
Downstream corporate limits	*12
Approximately 620 feet upstream of El Camino Real Boulevard	*16
Tributary 10.08 of Clear Creek:	
Downstream corporate limits	*11
Corporate limits at West Nasa Road	*17
Approximately 1,550 feet upstream of third downstream corporate limits	*24
Turkey Creek:	
Downstream corporate limits	*26
Downstream corporate limits of the City of Houston	*29
At most upstream corporate limits with the City of Houston	*31
Tributary 0.16 to Turkey Creek:	
Confluence with Turkey Creek	*26
Approximately 0.7 mile upstream of confluence with Turkey Creek	*29
Halls Road Ditch:	
At downstream corporate limits	*30
Most upstream corporate limits	*37
Galveston Bay:	
Shoreline of southwestern corporate limits at Atkinson Island	*15
Shoreline approximately 1.1 miles east of Lee Drive (extended)	*16
Shoreline at Diverson Channel	*19
Shoreline of eastern corporate limits sourth of the City of Baytown	*17
White Oak Bayou:	
Downstream corporate limits with City of Houston	*84
Upstream corporate limits with City of Houston	*89
Fairbanks-North Houston Road (upstream side)	*97
Windfern Road (upstream side)	*100
Upstream corporate limits of City of Jersey Village	*110
Jones Road (upstream side)	*120
Addicks-Fairbanks Road (upstream side)	*126
Huffmeister Road (upstream side)	*133
Brickhouse Gully:	
Downstream corporate limits	*100
Approximately 300 feet upstream of Gessner Road	*101
Cole Creek:	
Downstream corporate limits	*93
Windfern Road (upstream side)	*97
Hempstead Road (upstream side)	*101
Approximately 1,150 feet upstream of Sommermeyer Road (upstream side)	*102
Vogel Creek:	
Downstream corporate limits	*86
West Mount Houston Road (upstream side)	*87
Chippewa Boulevard (downstream side)	*95
Romona Boulevard (upstream side)	*101
Silent Wood Lane (upstream side)	*105
Bunker Wood Lane (upstream side)	*107
Approximately 2,500 feet upstream of Fairbanks-North Houston Road	*115
Tributary 15.8 of White Oak Bayou:	
Confluence with White Oak Bayou	*92
Warren Road (upstream side)	*101
Rodney Ray Boulevard (upstream side)	*109
Taub Road (downstream side)	*113
Rolling Fork:	
Confluence with White Oak Bayou	*99
Rodney Boulevard (downstream side)	*106
Prairie Drive (upstream side)	*112
Approximately 1,100 feet upstream of Taub Road	*117
Approximately 2.0 miles upstream of Taub Road	*120

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tributary 19.82 to White Oak Bayou:	
Downstream corporate limits	*110
Jones Road (upstream side)	*111
Hemstead Road (upstream side)	*117
East Fork San Jacinto River:	
Confluence with Lake Houston	*50
Approximately 1.6 mile upstream of confluence of Caney Creek	*58
Confluence of Church House Gully	*67
County boundary	*69
West Fork San Jacinto River:	
Confluence with Lake Houston	*50
Approximately 1.5 miles upstream of confluence of Bear Branch (Tributary to Kingwood Village)	
At U.S. Route 59	*65
White Oak Creek:	
Downstream corporate limits	*59
Upstream corporate limits	*65
Mills Branch:	
Confluence with White Oak Creek	*61
Approximately 106 feet upstream of Hamblen Road	*75
Tributary 16.8 to West Fork San Jacinto River:	
Confluence with West Fork San Jacinto River	*62
Upstream corporate limits	*62
Tributary 17.7 to West Fork San Jacinto River:	
Confluence with West Fork San Jacinto River	*64
Approximately 0.9 mile upstream of confluence	*64
Bens Branch:	
At downstream corporate limits	*50
Approximately 500 feet upstream of Kingwood Drive	*54
At county boundary	*74
Jordon Gully:	
At corporate limits	*61
Approximately 2,000 feet upstream of FM 1960	
San Jacinto River:	
Downstream corporate limits	*14
Interstate Route 10 upstream	*14
Missouri Pacific Railroad upstream	*16
Approximately 2 miles upstream of Missouri Pacific Railroad	*17
Approximately 21,120 feet above Missouri Pacific Railroad	*19
Beaumont Highway (U.S. Route 90)	
Upstream corporate limits	*32
Approximately 3,250 feet downstream of Lake Houston Dam	*33
Lake Houston:	
Entire shoreline within community	*50
Cedar Bayou:	
Confluence with Galveston Bay	*15
Upstream side of Tri-Cities Beach Road	*12
Upstream side of Ferry Road/State Route 146	*15
Approximately 600 feet upstream of downstream crossing of Southern Pacific Railroad	*20
Upstream side of Interstate Route 10/U.S. Route 75	*22
At Crosby-Barbers Hill Road/FM 1942	*31
At confluence of Buck Gully	*35
At confluence of Adlong Ditch	*44
Approximately 2.1 miles upstream of confluence of Adlong Ditch	*48
Upstream side of upstream crossing of Southern Pacific Railroad	*57
Upstream side of Crosby-Eastgate Road	*63
Upstream side of Ramsey Road	*66
Upstream county boundary	*72
Cary Bayou:	
Confluence with Cedar Bayou	*15
Upstream side of Southern Pacific Railroad	*21
Upstream side of East Archer Road	*28
Approximately 0.5 mile upstream of East Archer Road	*30
McGee Gully:	
Confluence with Cedar Bayou	*18
Approximately 350 feet upstream of Needlepoint Road	*26
At Sjolander Road	*29
Approximately 1.4 miles upstream of Sjolander Road	*34
Cypress Creek:	
Confluence with Spring Creek	*76
Confluence of Wild Cow Gulch	*76
Upstream side of Aldine-Westfield Road	*82
Downstream side of Missouri-Pacific Railroad	
Upstream Interstate Route 45 (southbound)	*96

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of Kuykendahl Road	*104
Confluence of Spring Gully	*107
Upstream side of Steubner-Airline Road	*111
Confluence of Dry Gully	*115
Approximately 1.2 miles upstream of Champion Forest Drive	*116
Upstream Chicago Rock Island and Pacific Railroad	*118
Upstream FM 149	*120
Confluence of Faulkey Gully	*123
Upstream side of Grant Road	*130
Confluence of Little Cypress Creek	*135
Downstream side of Telge Road	*138
Upstream side of Woodworth Drive	*141
Upstream side of Southern Pacific Railroad	*144
Approximately 1.2 miles upstream of Southern Pacific Railroad	*145
Upstream side of House Hahl Road	*149
Approximately 1 mile upstream of House Hahl Road	*150
Approximately 2.1 miles upstream of House Hahl Road	*153
Confluence of Tributary 40.7	*157
Downstream Katy Hockley Road	*160
Confluence of Tributary 44.5	*166
Upstream Sharp Road	*169
County boundary	*171
Wild Cow Gulch:	
Confluence with Cypress Creek	*76
Upstream Treaschwig Road	*76
Downstream Hickory Gate Drive	*90
Schultz Gully:	
Confluence with Cypress Creek	*84
Approximately 800 feet upstream of Aldine Westfield Road	*89
Lemm Gully:	
Confluence with Cypress Creek	*90
Upstream Lockridge Drive	*90
Confluence of Wunsche Gully	*104
Approximately 1,200 feet downstream of Spring-Cypress Road	*112
Turkey Creek:	
Confluence with Cypress Creek	*76
Approximately 4,200 feet upstream of confluence	*76
Downstream Humble Westfield Road	*82
Upstream Aldine Westfield Road	*86
Approximately 4,700 feet upstream of W.W. Thorne Boulevard	
Downstream Hardy Road	*91
Downstream Imperial Valley Drive	*100
Upstream North Vista Drive	*105
Senger Gully:	
Confluence with Lemm Gully	
Upstream Northill Drive	*92
Upstream Cypresswood Drive	*104
Upstream side of Louetta Road	*115
Wunsche Gully:	
Confluence with Lemm Gully	*104
Upstream Spring-Cypress Road	*125
Approximately 1,550 feet upstream of Interstate Route 45	*127
Seals Gully:	
Confluence with Cypress Creek	*99
Upstream Candle Creek Road	*102
Downstream Louetta Road	*111
Upstream side of Spring-Cypress Road	*124
Upstream side of Rhodes Road	*132
Kothman Gully:	
Confluence with Seals Gully	*108
Upstream Spring-Cypress Road	*129
Downstream FM 2920	*131
Approximately 1,400 feet upstream of Spring Stuebner Road	*139
Spring Gully:	
Confluence with Cypress Creek	*107
Confluence of Theiss Gully	*111
Upstream side of Spring Creek Oak Drive	*117
Downstream side of Spring-Cypress Road	*133
Approximately .87 mile upstream of Spring-Cypress Road	*140
Theiss Gully:	
Confluence with Spring Gully	*111
Downstream side of Louetta Road	*117
Downstream Theisswood Road	*124
Upstream Spring-Cypress Road	*141
Approximately 1.5 miles upstream of Spring-Cypress Road	*147

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Tributary 2.1 to Spring Gully:	
Confluence with Spring Gully	*118
Downstream Spring-Cypress Road	*130
Approximately 1.2 miles upstream of Spring-Cypress Road	*136
Dry Gully	
Confluence with Cypress Creek	*115
Downstream side of Herts Road	*116
Approximately 1.57 miles upstream of Louetta Road	*139
Pillot Gully	
Confluence with Cypress Creek	*119
Upstream side of Cane Creek Road	*124
Downstream Cossey Road	*134
Downstream Huffsmith-Kohrville Road	*143
Approximately 0.8 mile upstream of Huffsmith-Kohrville Road	*149
Faulkey Gully:	
Confluence with Cypress Creek	*123
Downstream side of Malcomson Road	*126
Upstream side of Spring-Cypress Road	*143
Approximately 1 mile upstream of Spring-Cypress Road	*151
Upstream Shaw Road	*155
Approximately 3,650 feet upstream of Shaw Road	*158
Little Cypress Creek	
Confluence with Cypress Creek	*134
Upstream side of Klyge Road	*137
Approximately 1 mile upstream of Klyge Road	*141
Upstream side of Spring-Cypress Road	*146
Approximately 1 mile upstream of Spring-Cypress Road	*148
Approximately 2 miles upstream of Spring-Cypress Road	*152
Approximately 72 mile downstream of Cypress Rosehill Road	*157
Upstream Cypress Rosehill Road	*162
At confluence of Tributary 9.36	*167
Approximately 93 mile upstream of Mueschke Road	*173
Approximately 2.6 miles upstream of Mueschke Road	*179
Upstream Bauer Road	*189
Downstream side of Becker Road	*197
Upstream side of Roberts Road	*206
Upstream side of Bauer-Hockley Road (downstream crossing)	*210
Downstream side of Bauer-Hockley Road (upstream crossing)	*218
Approximately 1,400 feet upstream of Warren Ranch Road	*221
Tributary 9.36 to Little Cypress Creek	
At confluence with Little Cypress Creek	*167
Upstream side of Mueschke Road	*174
Tributary 10.99 to Little Cypress Creek	
Confluence with Little Cypress Creek	*173
Downstream side of Juergen Road	*180
Approximately 95 mile upstream of Juergen Road	*202
Approximately 1.4 miles upstream of Juergen Road	*213
Tributary 13.92 to Little Cypress Creek	
Confluence with Little Cypress Creek	*185
Downstream Bauer Road	*189
Approximately 3,400 feet downstream of Botkins Road	*201
Downstream Botkins Road	*210
Approximately 2,000 feet upstream of Botkins Road	*216
Tributary 0.12 to Tributary 13.92 to Little Cypress Creek	
Confluence with Tributary 13.92 to Little Cypress Creek	*187
Approximately 1 mile upstream of Bauer-Hockley Road at Private road crossing	*201
Dry Creek	
Confluence with Cypress Creek	*142
Downstream side of Spring-Cypress Road	*146
Upstream side of Skinner Road	*150
Upstream side of Cypress Rosehill Road	*151
Upstream side of Mueschke Road	*156
Approximately 1.1 miles above Mueschke Road	*159
Tributary 36.5 to Cypress Creek	
Confluence with Cypress Creek	*148
Approximately 5,000 feet upstream of confluence with Cypress Creek	*149
Approximately 1.9 miles upstream of confluence with Cypress Creek	*152
Approximately 2.4 miles upstream of confluence with Cypress Creek	*153
Tributary 37.1 to Cypress Creek:	
Confluence with Cypress Creek	*149
Approximately 6,150 feet upstream of confluence with Cypress Creek	*155
Tributary 40.7 to Cypress Creek:	
Confluence with Cypress Creek	*157
Upstream House Road	*172
Approximately 5,000 feet upstream of House Road	*189
Approximately 1.8 miles upstream of House Road	*195
Tributary 42.7 to Cypress Creek:	
Confluence with Cypress Creek	*161
Approximately .47 mile upstream of Katy-Hockley Road	*162
Approximately 1,450 feet downstream of Jack Road	*164
Upstream of Southern Pacific Railroad	*180
Approximately 1.1 miles upstream of Southern Pacific Railroad	*192
Approximately 300 feet south of Mound Creek	*195
Rock Hollow	
Confluence with Cypress Creek	*162
Approximately .95 mile upstream of confluence with Cypress Creek	*165
At confluence of Tributary 1.63	*166
Approximately 1 mile upstream of confluence of Tributary 1.63	*171
Upstream Jack Road	*178
Approximately 1 mile upstream of Warren Lake Dam	*197
Approximately 1,450 feet upstream of Mound Road	[illegible]
Tributary 1.63 to Rock Hollow:	
Confluence with Rock Hollow	*166
Upstream side of Warren Ranch Road	*171
Approximately 1.1 miles upstream of Warren Ranch Road	*181
Approximately 1.8 miles upstream of Warren Ranch Road	*194
Tributary 44.5 to Cypress Creek:	
Confluence with Cypress Creek	*166
Upstream Warren Ranch Road	*170
Approximately 1 mile upstream of Warren Ranch Road	*172
Approximately 2 miles upstream of Warren Ranch Road	*176
Approximately 3 miles upstream of Warren Ranch Road	*184
Approximately 4.1 miles upstream of Warren Ranch Road	*206
Mound Creek:	
At most downstream county boundary	*192
Approximately 2.46 miles upstream of confluence with Cypress Creek and Snake Creek	*198
Approximately .66 mile downstream of confluence of Little Mound Creek	*203
At most upstream county boundary	*206
Little Mound Creek	
Confluence with Mound Creek	*205
Approximately 5,000 feet upstream of confluence with Cypress Creek	*212
Upstream side of Betka Road	*219
Approximately 9 mile upstream of Betka Road	*232
Tributary 7.62 to Mound Creek:	
At county boundary	*221
Approximately 800 feet upstream of county boundary	*225
Tributary 8.18 to Mound Creek	
At corporate limits	*264
Approximately 1,600 feet upstream of corporate limits	*271
Luce Bayou:	
At confluence with East Fork San Jacinto River	*50
Downstream county boundary	*52
Confluence of Shook Gully	*55
Confluence of Mexican Gully	*59
Approximately 3.6 miles upstream of confluence of Mexican Gully	*67
Shook Gully:	
At confluence with Luce Bayou	*55
Approximately 1.3 mile upstream of Aftonway Road	*76
Mexican Gully:	
At confluence with Luce Bayou	*59
Approximately 0.3 mile upstream of confluence with Luce Bayou	*67
Jackson Bayou:	
At confluence with the San Jacinto River	*29
Upstream Avenue E	*29
Upstream Runneburg Road	*46
Downstream side of Ramsey Road	*49
Gum Gully:	
At confluence with Jackson Bayou	[illegible]
Approximately .95 mile upstream of Diamondhead Boulevard	*30
At confluence of Tributary 3.08	*35
Approximately .95 mile of confluence of Tributary 3.08	*41
Upstream side of Foley Road	*47
Upstream Humble Crosby Road	*53
Approximately 1,475 feet upstream of Stroker Road	*59
Tributary 2.70 to Gum Gully:	
At confluence with Gum Gully	*33
Upstream side of Marlin Spike Way	*41
Approximately 950 feet upstream of Humble Crosby Road	*52
Tributary 3.08 to Gum Gully:	
At confluence with Gum Gully	*35
Approximately .59 mile upstream of Golf Club Road	*46
Approximately 1.4 miles upstream of Golf Club Road	*54
Bear Creek:	
Approximately 5.6 miles upstream of confluence with South Mayde Creek	*109
Approximately 1.1 miles downstream of Barker Cypress Road	*111
Upstream side of Barker Cypress Road	*115
Approximately .81 mile upstream of Clay Road	*122
Upstream side of Barker Cypress Road	*125
Approximately 1.33 miles upstream of Barker Cypress Road	*130
Approximately 2.27 miles upstream of Barker Cypress Road	*132
Approximately 1.88 miles downstream of Stockdick Road	*135
Approximately .93 mile downstream of Stockdick Road	*141
Upstream Stockdick Road	*146
Upstream FM 529	*150
Approximately 95 mile upstream of FM 529	*154
Approximately .78 mile upstream of Logenbaugh Road	*161
Langham Creek:	
At downstream corporate limits	*111
Upstream side of West Little York Road	*114
Approximately 1.4 miles upstream of West Little York Road	*118
Downstream Barker Cypress Road	*124
Approximately 1,600 feet upstream of Freeman Road	*130
Approximately 2.3 miles upstream of Freeman Road	*141
Approximately 4.3 miles upstream of Freeman Road	*150
Approximately 7.1 miles upstream of Freeman Road	*156
Dinner Creek:	
At confluence with Langham Creek	*124
Approximately 1 mile upstream of confluence with Langham Creek	*127
Approximately 2,200 feet downstream of Freeman Road	*128
Approximately 1.4 miles upstream of Freeman Road	*143
Horsepen Creek	
At downstream corporate limits	*110
Approximately 2,800 feet upstream of West Little York Road	*112
Upstream Huffmeister Road	*117
Upstream side of State Route 6	*120
Approximately 1 mile upstream of State Route 6	*132
Approximately 2.5 miles upstream of State Route 6	*139
Tributary 9.4 to South Mayde Creek	
At confluence with South Mayde Creek	*122
Upstream side of Elrod Road	*135
Downstream Peek Road	*138
Upstream side of Porter Road	*143

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Downstream Katy Hockley Cutoff	*148
South Mayde Creek:	
Approximately 2,000 feet downstream of Barker-Cypress Road	*105
Downstream Groeschke Road	*109
Downstream Greenhouse Road	*112
At confluence of Tributary 9.4	*122
Upstream Clay Road	*130
Upstream Stockdick Road	*142
Downstream side of Katy Hockley Cutoff	*154
At most upstream corporate limits	*171
Vince Bayou:	
Confluence with Buffalo Bayou	*12
Upstream corporate limits	*12
Little Vince Bayou:	
Confluence with Vince Bayou	*12
Upstream corporate limits	*12
Greens Bayou:	
At confluence with Buffalo Bayou	*12
Corporate limits at Missoun Pacific Railroad crossing	*14
Downstream side of Normandy Drive	*18
Approximately 1.14 miles upstream of Normandy Drive	*22
At confluence of Big Gulch	*24
Upstream side of South Lake Houston Parkway	*26
Approximately 1.19 miles upstream of South Lake Houston Parkway	*28
Upstream Southern Pacific Railroad	*31
Upstream Green River Drive	*33
Downstream Tidwell Road	*35
Downstream confluence of Tributary 14.27	*40
Upstream North Lake Houston Parkway	*49
At confluence of Garners Bayou	*57
Upstream side of Southern Pacific Railroad	*63
Upstream U.S. Route 59	*66
At confluence of Tributary 24.97	*69
Upstream side of FM 525	*72
Corporate limits upstream of North Belt	*74
Upstream side of Aldine Westfield Road	*76
Corporate limits located downstream of East Hardy Road	*80
Pedestrian bridge downstream of Greens Road	*86
Upstream side of Interstate Route 45	*91
Downstream Gears Road	*95
Upstream of Stuebner-Airline Road	*104
Upstream side of Bammel North Houston Road	*111
Upstream side of Cutten Road	*118
Upstream side of Mills Road	*122
Downstream of Louedd Road	*129
Sulphur Gully	
At confluence with Greens Bayou	*26
Upstream Thrasher Street	*32
Approximately 2,000 feet upstream of Thrasher Street	*33
Tributary 24.97 to Greens Bayou:	
At confluence with Greens Bayou	*69
Upstream side of Aldine Westfield Road	*72
Upstream side of Reeveston Road	*76
Downstream side of Sweetwater	*86
Approximately .5 mile upstream of most upstream crossing of Interstate Route 45	*87
Tributary 26.64 to Greens Bayou	
Upstream Aldine Westfield Road	*86
Approximately .8 mile upstream of Aldine Westfield Road	*88
Approximately 1.6 miles upstream of Aldine Westfield Road	*91
Approximately 2.2 miles upstream of Aldine Westfield Road	*94
Tributary 32.23 to Greens Bayou:	
At confluence with Greens Bayou	*93
Upstream side of Spears Gears Road	*99
Aproximately 1,500 feet upstream of Hugh Road	*103
Tributary 34.60 to Greens Bayou:	
At confluence with Greens Bayou	*101
Upstream Ann Louse Road	*105
Approximately .51 mile upstream of Ann Louse Road	*106
Spring Creek:	
Downstream county boundary	*73
Confluence of Cypress Creek	*76
Approximately 2.0 miles upstream of confluence of Cypress Creek	*79
Approximately 1.8 miles downstream of confluence of Bender Lake	*82
Confluence of Bender Lake	*87
Approximately 1.6 miles upstream of confluence of Bender Lake	*92
Approximately 1 mile downstream of Riley Fussel Road	*96
Riley Fussel Road upstream	*98
Approximately 1.6 miles upstream of Riley Fussel Road	*103
Interstate Route 45 upstream	*108
Approximately 1 mile upstream of Interstate Route 45	*111
Confluence of Tributary 21.08 to Spring Creek	*118
Approximately 8.4 miles upstream of confluence of Tributary 21.08	*139
Huffsmith-Conroe Road	*151
Downstream City of Tomball corporate limits	*156
Upstream City of Tomball corporate limits	*162
Approximately 2.66 miles upstream of Cypress-Rosehill-Decker Road	*185
Bender Lake:	
At confluence with Spring Creek	*87
Approximately 1,400 feet upstream of Domino Road	*106
Boggs Gully	
Confluence with Spring Creek	*151
Confluence of Tributary 1.25	*158
Zion Road downstream	*166
Tributary 1.25 to Boggs Gully:	
At confluence with Boggs Gully	*158
At corporate limits located at upstream side of Zion Road	*171
Upstream of Huffsmith Road	*173
Tributary 21.08 to Spring Creek:	
At confluence with Spring Creek	*118
Approximately 0.9 mile upstream of confluence with Spring Creek	*118
Willow Creek:	
Confluence with Spring Creek	*120
First Golf Cart bridge (upstream side)	*122
Confluence of Hughes Gully	*129
First crossing of Huffsmith-Kohrville Road (upstream side)	*135
Stuebner-Airline Road (upstream side)	*144
Second crossing of Huffsmith-Kohrville Road (upstream side)	*152
West Montgomery Road (upstream side)	*159
Telge Road (upstream side)	*164
Cypress-Rosehill Road (upstream side)	*171
Juergen Road (upstream side)	*176
Approximately 7,150 feet upstream of Juergen Road	*196
Tributary 0.26 to Willow Creek:	
Confluence with Willow Creek	*121
Approximately 3,270 feet upstream of confluence with Willow Creek	*120
Tributary 2.44 to Willow Creek:	
Confluence with Willow Creek	*124
Approximately 5,100 feet upstream of confluence with Willow Creek	*130
Approximately 8,450 feet upstream of confluence with Willow Creek	*135
Hughes Gully:	
Confluence with Willow Creek	*129
Approximately 3,070 feet upstream of confluence with Willow Creek	*135
Cannon Gully:	
Confluence with Willow Creek	*130
Approximately 500 feet upstream of confluence of Metzler Creek	*135
Kuykendahl Road (upstream side)	*139
Metzler Creek:	
Confluence with Cannon Gully	*131
Approximately 1,430 feet upstream of London Way Drive	*140
Tributary 6.52 to Willow Creek:	
Confluence with Willow Creek	*138
Approximately 1.02 miles upstream of confluence with Willow Creek	*142
Approximately 1.99 miles upstream of confluence with Willow Creek	*150
Tributary 8.16 to Willow Creek.	
Confluence with Willow Creek	*145
Tomball County Club Road (upstream side)	*147
Approximately .7 mile upstream of Tomball Country Club Road	*158
Tributary 13.50 to Willow Creek	
Confluence with Willow Creek	*16
Humble Road (upstream side)	*169
Access Road (downstream side)	*174
Approximately 1,600 feet upstream of Trechel Road	*176
Tributary 26.20 to Brays Bayou:	
At upstream face of Southern Pacific Railroad	*81
Approximately 1,800 feet upstream of Piping Rock	*86
Tributary 29 16 to Brays Bayou:	
At confluence with Brays Bayou	*84
Upstream side of Addicks Clodine Road	*87
Brays Bayou	
Upstream side of Southern Pacific Railroad	*81
Approximately 1,100 feet upstream Addicks-Clodine Road	*87
Keegans Bayou:	
Downstream corporate limits	*86
At county boundary	*86
Maps available for inspection at the Harris County Permit Office, County Annex, 301 Main Street, Houston, Texas.	
Houston, City, Fort Bend, Harris and Montgomery Counties (FEMA Docket No. 6625)	
Mustang Bayou: Quail Glen Drive (extended)	*75
Turkey Creek	
Upstream Humble-Westfield Road	*83
Upstream corporate limits	*86
Spring Creek:	
Confluence with West Fork San Jacinto River	*66
Approximately 2 miles upstream of corporate limits	*74
Armand Bayou: Near the northeastern corporate limits along Genoa-Red Bluff Road and approximately 1,200 feet north of Tributary 9.40 to Armand Bayou at its downstream corporate limits	*21
Horsepen Bayou:	
Downstream corporate limits	*15
Ellington Air Force Base Runway (upstream side)	*25
Tributary 4.13 to Horsepen Bayou: Approximately 2.37 miles upstream of confluence with Horsepen Bayou	*24
Tributary 5.44 to Horsepen Bayou:	
Confluence with Horsepen Bayou	*21
Approximately .66 mile upstream of confluence with Horsepen Bayou	*21
Tributary 9.40 to Armand Bayou:	
At downstream corporate limits	*19
Approximately .57 mile upstream corporate limits	*25
Approximately 1.7 miles upstream of corporate limits	*31
San Jacinto River	
At Black Duck Bay north of Baytown Tunnel	*15
At Crystal Bay at northern end of Goat Island	*15
At Little Eddy	*32
At Lake Houston Dam (downstream face)	*34
Lake Houston, Entire shoreline	*50
East Fork San Jacinto River:	
Confluence with Lake Houston	*50
Confluence of Caney Creek	*56
Approximately 1.10 miles upstream of corporate limits	*58
Luce Bayou:	
Confluence with East Fork San Jacinto River	*50
Upstream side of Wolf Road	*50
Approximately .24 mile upstream of corporate limits	*52
Caney Creek	
Confluence with East Fork San Jacinto River	*56
Confluence of White Oak Creek	*56
At corporate limits	*64
White Oak Creek	
Confluence with Canney Creek	*56
Upstream of Dogwood Lane	*59
Upstream corporate limits	*65
West Fork San Jacinto Rivere	
Confluence with Lake Houston	*50
Confluence of Jordon Gully	*61
At upstream side of Southern Pacific Railroad	*64
Upstream corporate limits	*68
Jordon Gully	
At confluence with West Fork San Jacinto River	*61
At corporate limits	*61
Bens Branch:	
At confluence with West Fork San Jacinto River	*50
At corporate limits	*60

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Buffalo Bayou	
Confluence with san Jancinto River	*11
Confluence of Green Bayou	*12
Confluence of Brays Bayou	*12
Upstream side of 69th Street	*15
Upstream side of Lockwood Drive	*23
Upstream side of Jensen Drive	*28
Upstream side of McKee	*33
Upstream side of Main Street	*38
Upstream side of Shepherd Drive	*41
Upstream side of Interstate Highway 610	*46
At confluence of Spring Branch	*52
Corporate limits at Voss Road	*58
Upstream side of San Felipe	*61
At corporate limits of City of Piney Point Village	*64
Upstream side of Briar Forest Drive	*67
Upstream side of West Belt Drive	*72
Upstream side of North Wilcrest Drive	*74
Upstream side of Dairy Ashford Road	*78
At confluence of Turkey Creek	*79
Upstream side of State Route 6	*80
Spring Branch:	
At confluence with Buffalo Bayou	*52
At Interstate Route 10	*55
Upstream side of Westview Drive	*65
Upstream side of Bingle Road	*69
Upstream side of Bracher Road	*73
Upstream side of Longpoint Road	*79
Approximately 900 feet upstream of Campbell Road	*85
Bering Ditch	
At confluence with Buffalo Bayou	*56
Upstream side of Woodway Drive	*62
Olympia Drive (extended)	*66
Turkey Creek	
At confluence with Buffalo Bayou	*80
Upstream side of Old Katy Road	*84
At most downstream corporate limits	*88
Approximately 200 feet upstream of second upstream coroprate limits	*93
Hammerly Boulevard (extended)	*99
Downstream side of Clay Road	*103
Tributary 3.9 to Turkey Creek	
At confluence with Turkey Creek	*104
At corporate limits	*106
Briar Branch: At confluence with Spring Branch	*52
Rummel Creek	
At confluence with Buffalo Bayou	*72
250 feet downstream of Interstate Route 10	*72
Hunting Bayou	
Most downstream corporate limits	*15
Interstate Route 10 (upstream side)	*24
Wallisville Road (upstream side)	*31
McCarty Road (upstream side)	*39
Homestead Road (upstream side)	*45
Approximately 0.2 mile upstream of U.S. Route 59	*47
Tributary 5.22 to Hunting Bayou	
Confluence with Hunting Bayou	*25
Upstream side of Mercury Drive	*30
Approximately 250 feet downstream of Gellhorn Drive	*35
Tributary 12.05 to Hunting Bayou	
Confluence with Hunting Bayou	*45
Approximately 0.3 mile upstream of Lockwood Road	*51
Tributary 12.70 to Hunting Bayou	
Confluence with Hunting Bayou	*46
Upstream side of Octavia Street	*46
Tributary 13.85 to Hunting Bayou	
Confluence with Hunting Bayou	*47
Bain Street (extended)	*47
Barker Reservoir Entire shoreline	
Addicks Reservoir Entire shoreline	*104
Bear Creek	
Approximately 3.8 miles upstream of confluence with South Mayde Creek (within limits of reservoir)	*104
Approximately 4.8 miles upstream of South Mayde Creek	*106
Upstream corporate limits	*110
Horsepen Creek	
Confluence with Langham Creek	*109
At corporate limits	*110
Langham Creek	
Approximately 3 miles upstream of confluence with Bear Creek	*104
Approximately 4 miles upstream of confluence with Bear Creek	*107
At corporate limits	*111
South Mayde Creek:	
Approximately 3,300 feet downstream side of Barker-Cypress Road	*104
Upstream side of Barker-Cypress Road	*108
Downstream side of Greenhouse Road	*112
Mason Creek	
At confluence with Buffalo Bayou	*98
At corporate limits	*98
Tributary 52.9 to Buffalo Bayou:	
At confluence with Buffalo Bayou	*98
At corporate limits	*98
Clodine Ditch:	
Approximately 850 feet upstream of Noble-Goar Road	*80
Approximately .95 mile upstream of Beeler Road	*91
Approximately .95 mile downstream of Barker-Clodine Road	*92
Approximately 1,475 feet upstream of Barker-Clodine Road	*95
Halls Bayou:	
At confluence with Greens Bayou	*33
Approximately 500 feet upstream of FM 527	*34
Approximately 0.9 mile upstream of FM 527	*40
At Missouri Pacific Railroad	*46
Upstream side of Homestead Road	*50
Upstream side of Hirsch Road	*57
Upstream side of Jensen Drive	[illegible]
Approximately 0.47 mile upstream of Little York Road	*64
Corporate limits at Sweetwater Road	*81
Corporate limits at Sunnywood Street	*83
Approximately 400 feet upstream of Stuebner-Airline	*87
Tributary 6.71 to Halls Bayou	
At confluence with Halls Bayou	*58
At upstream corporate limits	*58
Tributary 11.96 to Halls Bayou:	
At confluence with Halls Bayou	*74
Downstream of East Mitchell	*74
Approximately 350 feet downstream of East Canino Road	*76
Tributary 14.27 to Greens Bayou:	
At downstream corporate limits	*44
Approximately 350 feet downstream of Mesa	*50
Approximately 550 feet upstream of Little York Road	*57
Approximately 100 feet downstream of Van Zandt	*64
Tributary 14.82 to Greens Bayou:	
At downstream corporate limits	*64
Upstream side of Suburban Road	*64
Tributary 20.88 to Greens Bayou:	
Approximately 400 feet upstream of Smith Road	*67
At downstream face of Old Humble Road	[illegible]
At downstream face of U.S. Route 59	*70
Garners Bayou:	
At downstream corporate limits	*75
Approximately 1,400 feet upstream of Jetero Boulevard (westbound)	*82
Approximately 400 feet downstream of Lee Road	*84
At upstream corporate limits	*91
Reinhardt Bayou:	
At confluence with Garners Bayou	*65
Approximately 300 feet upstream of Southern Pacific Railroad	[illegible]
Approximately 0.8 mile downstream of Lee Road	*75
Approximately 900 feet upstream of Lee Road	*78
Approximately 1 mile upstream of Lee Road	[illegible]
Sims Bayou:	
Confluence with Buffalo Bayou	*12
La Porte Freeway/State Route 225 (upstream side)	*14
Galveston Houston and Henderson Railroad (upstream side)	*18
Interstate Route 45/U.S. Route 75/Gulf Freeway (upstream side)	[illegible]
Bellfort Avenue (upstream side)	*32
Swallow Street (upstream side)	*35
Timber Branch Road (upstream side)	*39
Cullen Boulevard (upstream side)	*42
State Route 288 (upstream side)	*48
Almeda Road (upstream side)	*54
White Heather Drive (upstream side)	*55
Heatherbrook Drive (upstream side)	*59
Hillcroft (upstream side)	*64
Approximately 2,400 feet upstream of Settlemont Road	*69
Plum Creek:	
Confluence with Sims Bayou	*14
La Porte Freeway/State Route 225 (upstream side)	*25
Galveston Houston and Henderson Railroad (upstream side)	*22
Approximately 800 feet upstream of Fennel	*24
Pine Gully	
Confluence with Sims Bayou	*15
Broadway Boulevard (upstream side)	*29
Interstate Route 45/U.S. Route 75/Gulf Freeway (upstream side)	*32
Plum Drive (upstream side)	*36
Berry Bayou:	
Confluence with Sims Bayou	*17
Allendale Road (upstream side)	*20
Richey (upstream side)	*23
Lavaun	*33
Approximately 1,200 feet upstream of Gilpin Street	*35
Berry Creek:	
Confluence with Berry Bayou	*19
Winkler Road (upstream side)	*31
Wynlea	*37
Scranton Street	*39
Approximately 2,200 feet upstream of third crossing of West Monore Street	*42
Tributary 2.00 to Berry Bayou:	
Confluence with Berry Bayou	*22
Wynbelts (extended)	*32
College Avenue culvert (upstream side)	*34
Tributary 3.31 to Berry Bayou:	
Downstream corporate limits	*33
Approximately 650 feet upstream of Edgebrook Drive	*36
Tributary 10.12 to Sims Bayou:	
Confluence with Sims Bayou	*39
Vasser (upstream side)	*40
Bellfort Avenue (upstream side)	*41
Tributary 10.77 to Sims Bayou:	
Confluence with Sims Bayou	*40
Approximately 3,900 feet upstream of Selinsky Road	*43
Tributary 13.73 to Sims Bayou:	
Confluence with Sims Bayou	*45
Approximately 2,950 feet upstream of Airport Boulevard	*47
Tributary 17.76 to Sims Bayou:	
Confluence with Sims Bayou	*54
Approximately 2,550 feet upstream of Tidewater Drive	*54
Tributary 20.12 to Sims Bayou:	
Confluence with Sims Bayou	*58
Gatewood (extended upstream side)	*63
Greens Bayou:	
At confluence with Buffalo Bayou	*12
Appoximately .95 mile upstream of confluence with Buffalo Bayou	*12
Upstream side of Port Terminal Railroad Association Railroad	*13
Upstream side of Interstate Route 10	*15
Downstream side of Normandy Drive	*18
Eastbrook Drive (extended)	*23
Upstream side of South Lake Houston Parkway	*26
Downstream side of U.S. Route 90	*30
Corporate limits located approximately .87 mile upstream of Greenriver Drive	*34
At corporate limits located at confluence of Tributary 26.64	*74
Corporate limits at Aldine Westfield Road	*75
Corporate limits located upstream of East Hardy Road	*81
At corporate limits upstream of Greens Road	*87
At upstream corporate limits	*93
Spring Gully:	
At downstream corporate limits	*28
At upstream corporate limits	*31
Tributary 24.97 to Greens Bayou:	
Corporate limits located at Aldine Westfield Road	*72
Corporate limits located approximately 150 feet downstream of Old Creek (extended)	*83
Downstream side of Airline Drive	*86

Source of flooding and location	#Depth in feet above ground ²Elevation in feet (NGVD)
Upstream of the most upstream crossing of Interstate Route 45	*87
Tributary 26.64 to Greens Bayou	
At confluence with Greens Bayou	*74
Upstream side of Greens Road	*74
Upstream side of Rankin Road	*80
Downstream side of Aldine Westfield Road	*85
North Fork Greens Bayou.	
At confluence with Greens Bayou	*92
At upstream corporate limits	*93
Clear Creek.	
Downstream corporate limits	*44
State Route 35/Telephone Road (upstream side)	*46
Stone Road (upstream side)	*52
Second upstream corporate limits	*53
Third upstream corporate limits	*65
Most upstream corporate limits	*66
Cow Bayou:	
Downstream corporate limits	*12
Most upstream corporate limits	*12
Turkey Creek:	
Downstream corporate limits	*29
Corporate limits located upstream of Scarsdale Boulevard	*29
Downstream side of Sagedowne Lane	*31
Halls Road Ditch:	
Approximately 1.40 miles downstream of downstream corporate limits	*32
Downstream corporate limits	*34
Kirkfair Drive (upstream side)	*36
Approximately .66 mile upstream of Fuqua	*41
Brays Bayou	
Confluence with Buffalo Bayou	*12
Upstream side of Forest Hill Boulevard	*19
Upstream side of Telephone Road	*28
Upstream side of Scott	*36
Houston Belt and Terminal Railroad (upstream side)	*40
Braeswood Boulevard (upstream side)	*45
Buffalo Speedway (upstream side)	*50
Hillcroft Avenue (upstream side)	*60
South Gessner Road (upstream side)	*64
Confluence of Tributary 20.86 to Brays Bayou	*68
Bellaire Boulevard (upstream side)	*72
Upstream corporate limits	*75
Willow Waterhole Bayou.	
Confluence with Brays Bayou	*53
South Post Oak Road (upstream side)	*55
Approximately 600 feet upstream of Landsdowne Drive	*61
Chimney Rock Diversion.	
Confluence of Brays Bayou	*56
Stillbrooke Drive (upstream side)	*58
Confluence with Willow Waterhole Bayou	*60
Tributary 17.42 to Brays Bayou.	
Confluence with Brays Bayou	*61
Bissonnet Road (upstream side)	*65
Upstream of Leader	*67
Fondren Diversion Channel:	
Confluence with Brays Bayou	*61
McLain Boulevard (upstream side)	*64
Approximately 2,000 feet upstream of Energy Dissipator	*68
Keegans Bayou	
Confluence with Brays Bayou	*64
Wilcrest Drive (upstream side)	*79
Kirkwood Road (upstream side)	*82
Dairy Ashford Road (upstream side)	*84
Approximately 1,500 feet upstream of corporate limits	*86
Tributary 19.77 to Brays Bayou	
Confluence with Brays Bayou	*66
Approximately 1,000 feet upstream of Neff	*69
Tributary 20.86 to Brays Bayou.	
Confluence with Brays Bayou	*68
Neff extended (upstream side)	*74
Downstream of Alief Road	*76
Tributary 20.90 to Brays Bayou:	
Confluence with Brays Bayou	*69
Boone Road (downstream side)	*74
Approximately 250 feet downstream of Cook Road	*83
Tributary 21.95 to Brays Bayou:	
Confluence with Brays Bayou	*71
Kirkwood Road (upstream side)	*78
Synott Road (downstream side)	*85
Tributary 22.69 to Brays Bayou:	
Confluence with Brays Bayou	*72
Approximately 400 feet upstream of intersection of Cooper Road and corporate limits (extended)	*75
Tributary 23.53 to Brays Bayou	
Confluence with Brays Bayou	*73
Upstream of Cook Road	*80
Approximately 100 feet downstream of Synott Road	*85
Tributary 26.20 to Brays Bayou:	
At confluence with Brays Bayou	*79
At upstream corporate limits	*82
White Oak Bayou	
Confluence with Buffalo Bayou	*38
Houston Avenue (upstream side)	*41
Yale Street (upstream side)	*45
Second crossing of West T.C. Jester Boulevard (upstream side)	*50
Interstate Route 610/State Route 90 (upstream side)	*53
Most downstream crossing of Fort Worth and Denver Railroad/Chicago Rock Island and Pacific Railroad (upstream side)	*59
Pinemont Drive (upstream side)	*63
West Little York Road (upstream side)	*78
North Houston-Rosslyn Road (upstream side)	*87
Upstream corporate limits	*91
Little White Oak Bayou.	
Confluence with White Oak Bayou	*41
Trimblee (upstream)	*43
Cavalcade Road (upstream)	*53
Stokes	*60
Victoria Drive	*63
West Tidwell Road	*65
North Shepherd Drive	*78
West Rittenhouse (upstream)	*82
Brickhouse Gully.	
Confluence with White Oak Bayou	*61
Costa Rica Road (upstream side)	*71
Bolin Road (upstream side)	*75
Bingle Road (upstream side)	*80
Colleen Road (upstream side)	*85
Campbell Road (upstream side)	*89
Palo Pinto Drive (upstream side)	*97
Talina Way (upstream side)	*100
Tributary 1.61 to Brickhouse Gully	
Confluence with Brickhouse Gully	*73
Lang Road (upstream side)	*80
Pinemont Drive (upstream side)	*85
Tributary 10.1 to White Oak Bayou:	
Confluence with White Oak Bayou	*63
Rosslyn extended (upstream side)	*78
Approximately 2,200 feet upstream of Oak Forest Drive	*84
Cole Creek:	
Confluence with White Oak Bayou	*67
Antoine Road (upstream side)	*76
Bingle Road (upstream side)	*81
Langfield Road (upstream side)	*84
Fairbanks-North Houston Road (upstream side)	*93
Downstream of Hempstead Road	*100
Vogel Creek:	
Confluence with White Oak Bayou	*77
Maple Tree Drive (upstream side)	*83
Upstream corporate limits	*87

Maps available for inspection at the City Hall, 901 Bagby, P.O. Box 1561, Houston, Texas.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground ²Elevation in feet (NGVD)
ALABAMA	
Unincorporated Areas of Fayette County (FEMA Docket No. 6645)	
Sipsey River	
About 1.6 miles downstream of County Highway 35	*311
About 5.4 miles upstream of U.S. Highway 43	*339
Luxapallila Creek.	
About 3,050 feet downstream of County Highway 37	*321
About 3,100 feet upstream of State Highway 18	*340
Maps available for inspection at the Fayette County Courthouse, P.O. Box 509, Fayette, Alabama	
Millport (town), Lamar County (FEMA Docket No. 6645)	
Luxapallila Creek.	
About 2,000 feet downstream of confluence of Propst Creek	*249
Just upstream of State Highway 17	*259
About 4,400 feet upstream of State Highway 17	*261
Driver Creek	
About 0.6 mile upstream of confluence with Luxapallila Creek	*260
Just upstream of State Highway 96	*275
About 200 feet upstream of Dam Road	*280
Propst Creek	
At confluence with Luxapallila Creek	*249
About 240 feet upstream of Norfolk Southern Railway	*260
Maps available for inspection at the City Hall, P.O. Box M, Millport, Alabama	
Scottsboro (city), Jackson County (FEMA Docket No. 6645)	
Tennessee River	
About 10.0 miles downstream of Comer Bridge	*598
About 1.7 miles upstream of Comer Bridge	*599
Roseberry Creek.	
At mouth	
Just downstream of U.S. Highway 72	*598
Just upstream of U.S. Highway 72	*603
Just downstream of Norfolk Southern Railway	*620
Wacker Branch	
Mouth at Roseberry Creek	*603
Just downstream of Woods Cove Road	*618
Tributary A:	
Mouth at Roseberry Creek	*604
Just downstream of Tupelo Pike	*640
Bynum Branch.	
Mouth at Roseberry Creek	*605
Just downstream of Norfolk Southern Railway	*642
College Branch	
Mouth at Bynum Branch	*621
Just downstream of Laurel Street	*639
Maps available for inspection at the City Hall, 916 South Broad Street, Scottsboro, Alabama	
ARIZONA	
Gila County (unincorporated areas) (FEMA Docket No. 6645)	
Cherry Creek: 70 feet upstream from center of Cherry Creek Road	*5,075
Christopher Creek: 50 feet upstream from the center of State Highway 260	*5,860
Dripping Springs Wash: 50 feet upstream of the center of State Highway 77	*2,128
East Verde River (Near State Highway 87). At confluence with Weber Creek	*4,620
East Verde River (At Whispering Pines: Intersection of East Verde River and center of Scott Drive	*5,205
Gila River (At Hayden and Winkelman): 20 feet upstream of State Highway 77	*1,906
Houston Creek: At the intersection of Mars Lane and Milky Way	*4,664
M.O. Creek: 40 feet upstream from center of State Highway 288	*5,151
Pinal Creek: Intersection of Pinal Creek and center of Wilbanks Drive Bridge	*3,061
Pine Creek: 50 feet upstream from the center of State Highway 87	*5,371

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Pinto Creek: Intersection of Stage Coach Trail and Mallard Street	*2,242
Strawberry Creek: Intersection of creek and State Highway 87	*5,880
Strawberry Hollow: 20 feet upstream from the center of Warren Drive	*5,423
Thompson Draw: 20 feet upstream from the center of Johnson Boulevard Bridge	*5,731
Tonto Creek (At Bear Flat): Intersection of Tonto Creek and center of County Highway 405	*4,952
Tonto Creek (At Gisela): Intersection of Tonto Creek center of ford	*2,862
Tonto Creek (At Kohls Ranch): 30 feet upstream from the center of State Highway 260	*5,335
Tonto Creek (At Roosevelt Gardens): 3,100 feet due east of the intersection of Tonto Creek Trail and State Highway 188	*2,276
Maps available for inspection at the Engineering Department, 1400 East Ash Street, Globe, Arizona.	
Yavapai County (unincorporated areas) (FEMA Docket No. 6640)	
Verde River:	
Intersection of Pearl Drive and Pine Street	*3,063
Intersection of the river and the center of U.S. Route 89 Alternate	*3,262
Beaver Creek (At Camp Verde): 250 feet north along Montezuma Castle Highway from its intersection with Kachina Lane	*3,096
Beaver Creek (At Lake Montezuma): 1,000 feet downstream from the confluence with Dry Beaver Creek	*3,258
Wet Beaver Creek: Intersection of Montezuma Avenue and Beaver Vista Road	*3,436
Russell Wash: 100 feet upstream from the center of Lake Shore Drive	*3,415
West Clear Creek: At the intersection of Susan Way and Lake Front Drive	*3,085
Jacks Canyon: 150 feet east along Juniper Street from its intersection with Rosewood Road	*4,040
Oak Creek: Intersection of Cottonwood Court and Creekside Drive	*3,380
Spring Creek: 50 feet upstream from the center of Oak Creek Valley Drive	*3,366
Dry Creek: 50 feet upstream from the confluence with Boynton Canyon	*4,404
Boynton Canyon: 50 feet downstream from the center of Boynton Pass Road	*4,475
Big Chino Wash: 50 feet upstream from the center of the Atchison, Topeka & Santa Fe Railroad	*4,374
Williamson Valley Wash: 5,100 feet west along the Atchison, Topeka & Santa Fe Railroad from the bridge crossing at Big Chino Wash	*4,376
Chino Valley Stream: 100 feet downstream from the center of West Postle Road	*4,540
Chino Valley Stream (Tributary): 600 feet upstream from the confluence with Chino Valley Stream	*4,607
American Wash: 10 feet upstream from the center of the first Simmons Highway crossing	*5,195
Ash Fork Draw Wash:	
50 feet uptream from the center of U.S. Route 66	*5,128
100 feet north along Double A Ranch Road from its intersection with the Atchison, Topeka & Santa Fe Railroad	*5,134
800 feet north along Double A Ranch Road from its intersection with the Atchison, Topeka & Santa Fe Railroad	#1
Agua Fria River (At Black Canyon City): 100 feet east along Spencer Street from its intersection with Albins Way	*1,973
Agua Fria River (At Dewey-Humboldt): 800 feet upstream from the center of State Route 169	*4,553
Augs Fria River (At Prescott Valley): At the confluence with Navajo Drive Wash	*4,821
Navajo Drive Wash: 180 feet upstream from the center of an abandoned railroad crossing	*4,830
Black Canyon Creek: 100 feet upstream from the center of Maren Avenue	*2,000
Big Bug Creek: 150 feet north along Antelope Road from its intersection with Wagon Lane	*3,680
Clipper Wash: At the center of State Route 69	*4,623
Lynx Creek: 70 feet upstream from the center of Lynx Creek Road	*5,243
Manzanita Creek: 80 feet upstream from the center of Canyon Drive	*5,476
Aspen Creek: 190 feet upstream from the center of Rancho Vista Road	*5,745
Willow Creek: At the center of Iron Springs Road	*5,441
Hassayampa River: 120 feet upstream from the center of the second Rincon Road crossing	*2,163
Martinez Wash: 150 feet downstream from the confluence with Antelope Creek	*2,351
Miller Creek: At the intersection of Gold Way, Norton Way, and Cross Way	*4,695
Model Creek: 10 feet upstream from the center of Crowfoot Trail	*4,500
South Rocky Boy Wash: At the intersection of Laughing Water Pass and White Buffaloe Trail	#1
Skull Valley Wash: 3,000 feet upstream from the confluence with Kirkland Creek	*3,888
Ramsgate Wash:	
10 feet upstream from the center of Iron Springs Road	*4,263
30 feet upstream from the center of the Atchison, Topeka & Santa Fe Railroad crossing	#2
Dead Mule Canyon Wash: At the center of the Atchison, Topeka & Santa Fe Railroad crossing	*4,264
Gamboa Wash:	
400 feet upstream from the confluence with Ramsgate Wash	#1
100 feet upstream from the center of the Atchison, Topeka & Santa Fe Railroad	*4,318
Maps available for inspection at Department of Planning and Zoning, 255 East Gurley, Prescott, Arizona.	
CALIFORNIA	
Cloverdale (city), Sonoma County (FEMA Docket No. 6645)	
Russian River: Approximately 100 feet downstream of River Road	*302
Maps available for inspection at Public Works Department, 124 North Cloverdale Boulevard, Cloverdale, California.	
Danville (city), Contra Costa County (FEMA Docket No. 6645)	
Green Valley Creek: 30 feet upstream from centerline of George Lane	*410
East Branch Green Valley Creek: At the intersection of Green Valley Road and Clydesdale Drive	*430
Sycamore Creek: 70 feet upstream from the centerline of Sycamore Valley Road	*420
Maps available for inspection at the Department of Public Works, 542 San Ramon Valley Boulevard, Danville, California.	
Poway (city), San Diego County (FEMA-6640)	
Beeler Creek: 20 feet upstream from center of Pomerado Road	*464
Green Valley Creek: 20 feet upstream from center of Orchard Bend Road	*617
Green Valley Creek Tributary: 40 feet upstream from center of Sagewood Drive	*601
Poway Creek: Intersection of Standish Drive and Kennebunk Street	*542
North Branch Poway Creek: 30 feet upstream from center of Sycamore Canyon Road	*573
South Branch Poway Creek: 35 feet upstream from center of Sycamore Canyon Road	*570
Rattlesnake Creek: Intersection of Poway Road and Bowron Road	*488
Maps available for inspection at City Engineer's Office, 13325 Civic Center Drive, Poway, California.	
San Ramon (city), Contra Costa County (FEMA Docket No. 6645)	
San Ramon Creek: 50 feet upstream from center of San Ramon Valley Boulevard	*486
Maps available for inspection at Planning Department, 2222 Camino Ramon, San Ramon, California.	
Santa Barbara County (unincorporated areas) (FEMA Docket No. 6645)	
Orcutt Creek:	
50 feet upstream from center of Solomon Road	*231
50 feet upstream from center of Stillwell Road	*491
Branch Canyon Wash: Intersection of Perkins Road and Cebrian Avenue	#1
Salisbury Canyon Wash: Intersection of State Highway 166 and Hubbard Avenue	#1
San Antonio Creek: Intersection of State Highway 135 and Den Street	*559
Los Alamos Interceptor Channel: 450 feet southeast along State Highway 135 from its intersection with Foxen Lane	#2
Zaca Creek: 200 feet upstream from center of Avenue of the Flags	*351
Thumbelina Creek: 100 feet upstream from center of State Highway 246	*362
Alamo Pintado Creek:	
50 feet upstream from center of lower Alamo Pintado Road crossing	*565
200 feet upstream from center of State Highway 154	*830
East Branch Alamo Pintado Creek:	
50 feet upstream from center of lower Quail Valley Road crossing	*523
200 feet upstream from center of Base Line Avenue	*706
East Tributary to East Branch Alamo Pintado Creek: 100 feet upstream from center of Refugio Road	*630
West Fork Zanja de Cota Creek: Intersection of Edison and Trivola Streets	*583
East Fork Zanja de Cota Creek: 100 feet upstream from center of State Highway 246 (Santa Barbara Avenue)	*589
Bell Canyon Wash: 100 feet upstream from center of Winchester Canyon Road	*67
Winchester Canyon Wash: 50 feet upstream from center of Winchester Canyon Road	*80
Ellwood Canyon Wash: 300 feet upstream from confluence with Winchester Canyon Wash	#1
Tecolote Canyon Creek: Intersection of Tecolote Canyon Creek and Vereda del Padre	*40
Santa Ynez River: Intersection of Sweeny Road and State Highway 246	*112
San Miguelito Creek: 25 feet upstream from center of Feed Store Bridge	*243
East-West Channel: 250 feet southeast from intersection of Central Avenue and North O Street	*75
Pacific Ocean:	
At mouth of El Estero Lagoon at Sand Point	*8
At mouth of Romero Creek at Fernald Point	*8
At mouth of Bell Canyon Wash	*7
Maps available for inspection at the Santa Barbara County Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, California.	
Shasta County (unincorporated areas) (FEMA Docket No. 6645)	
Burney Creek: 90 feet upstream from center of State Highway 299	*3127
Burney Creek West Branch: Intersection of Superior Avenue and Hudson Street	*3121
Churn Creek: Intersection of Churn Creek and center of State Highway 299	*596
Clover Creek: 50 feet upstream from center of Old Forty Four Drive	*483
Cow Creek (Near Millville): 200 feet upstream from center of Old Forty Four Drive	*503
Cow Creek (Near Palo Cedro): Intersection of Cow Creek and center of State Highway 44	*442
Dry Creek: 100 feet upstream from center of State Highway 299	*529
Little Cow Creek: 10 feet upstream from center of Old Forty Four Drive	*447
Sacramento River: Intersection of Sacramento River and center of Interstate Highway 5	*413
Tormey Drain: Intersection of Tormey Drain and center of Dodson Lane	*405

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Shasta County Water Distnct, 1558 West Street, Reeding, California.	
COLORADO	
Otero County (unincorporated areas) FEMA-	
Arkansas River:	
Intersection of Chalmers Street and Olive Avenue	*4,057
150 feet upstream from center of State Highway 167	*4,315
Anderson Arroyo: 50 feet south of intersection of Barnes Avenue and Tenth Street	*4,094
King Arroyo: 50 feet upstrem from center of Sixth Street	*4,070
Timpas Creek: 300 feet upstream from center of U.S. Highway 50	*4,117
Maps available for inspection at Land Use Department, 3rd and Colorado Avenues, La Junta, Colorado.	
Rangely (town), Rio Blanco County (FEMA Docket No. 6645)	
White River: Intersection of East Rangely Avenue and Nichols Street	*5,212
Coal Mine Draw: Intersection of stream and center of County Highway 2	*5,244
College Canyon Draw: 60 feet upstream from center to Prospect Street	*5,221
Maps available for inspection at the Town Hall, 209 East Main, Rangely, Colorado.	
Ridgway (town), Ouray County (FEMA Docket No. 6645)	
Upcompahgre River: 60 feet upstream from center of State Highway 62 (Sherman Street)	*6,975
Maps available for inspection at Town Clerk's Office, Town Hall, Ridgeway, Colorado.	
CONNECTICUT	
New London (city), New London County (FEMA Docket No. 6640)	
Long Island Sound:	
Shoreline at Ocean Avenue (extended)	*15
Shoreline at Bayshore Drive (extended)	*10
Thames River:	
Shoreline at Montauk Avenue (extended)	*15
Shoreline at Granada Terrace (extended)	*13
Shoreline at Smith Street (extended)	*10
Maps available for inspection at the Building Department, 33 Union Street, New London, Connecticut.	
FLORIDA	
Flager Beach (city), Flagler County (FEMA Docket No. 6645)	
Atlantic Ocean:	
Along shoreline about 100 feet inland	*9
Along shoreline	*13
Intracoastal Waterway:	
Along northeast shoreline from about 1200 feet south of Beachwood Drive to southern Flager County Boundary	*4
Along Flagler Avenue	*5
About 200 feet west of North Daytona Avenue from 13th Street north to City of Flagler Beach northern corporate limits	*5
Maps available for inspection at the City Hall, P.O. Box 758, Flagler Beach, Florida.	
Unincorporated Areas of St. Johns County (FEMA Docket No. 6645)	
Atlantic Ocean:	
About 150 feet west of shoreline from southern county boundary to about 2.3 miles south of intersection of State Road A1A and State Road 206	*8
About 200 feet west of shoreline from northern county boundary to St. Augustine Inlet	*9
About 300 feet west of shoreline from about 2.3 miles south of intersection of State Road A1A and State Road 206 to southern corporate limits of Town of St. Augustine Beach	*9
At intersection of State Road A1A and Ocean Avenue	*9
At intersection of Barcelona Street and Asturias Street	*9
About 300 feet west of intersection of Franciscan Way and Barcelona Avenue	*9
Along eastern shoreline of Salt Run	*10
Along shoreline from about 5.5 miles south of intersection of County Highway 203 and State Road A1A to southern county boundary	*13
Along shoreline from northern county boundary to about 5.5 miles south of intersection of County Highway 203 and State Road A1A	*14
St. Johns River: Along shoreline	*6
Matanzas River/Intracoastal Waterway:	
Along shoreline from about 2.3 miles south of State Road 206 to southern county boundary	*7
Along shoreline from State Road 312 to about 2.3 miles south of State Road 206	*8
Mantanzas River/San Sebastian River: Along shoreline from State Road 312 to Lewis speedway	*9
Shallow Flooding (Ponding from Guano River):	
Along shoreline from Guano Lake to Lake Ponte Vedra	*5
About 400 feet west of County Highway 203 from State Road A1A to County Highway 210	*6
Along shoreline of Lake Vedra	*6
Guano River: Along shoreline from mouth to Guano Lake	*8
Tolomato River/Intracoastal Waterway:	
Along shoreline from about 3,000 feet south of mouth of Smith Creek to northern county boundary	*6
Along shoreline from about 2,000 feet south of mouth of Tolomato River Tributary No. 1 to about 3,000 feet south of mouth of Smith Creek	*7
Tolomato River:	
Along shoreline from Carcaba Road to about 2,000 feet south of mouth of Tolomato River Tributary No. 1	*8
Along shoreline from Vilano Beach Bridge to Carcaba Road	*9
Shallow Flooding (Ponding behind road on Moultrie Creek Tributary No. 2):	
From Vaill Point Road to Shores Boulevard	*13
From Shores Boulevard to Deltona Boulevard	*19
From Deltona Boulevard to about 3,000 feet upstream of Deltona Boulevard	*21
Cunningham Creek:	
At mouth	[illegible]
About 4,600 feet upstream of Unnamed Road crossing	*22
Deep Creek:	
At confluence of West Run Cracker Branch	[illegible]
About 1,800 feet upstream of confluence of Sixteenmile Creek	*10
Durbin Creek:	
At confluence with Julington Creek	*6
Just upstsam of Race Track Road	*12
Durbin Creek Tributary:	
At mouth	*6
Just downstream of Race Track Road	*13
Kendall Creek:	
At mouth	*6
Just upstream of Dirt Road	*24
Mill Creek:	
At mouth	*6
Just downstream of Old Airport Road	*26
Trout Creek:	
At mouth	*6
Just downstream of County Highway 210	*13
Moses Creek.	
At mouth	*8
Just upstream of State Road 206	*29
Moses Creek Tributary No. 1:	
At mouth	*8
Just upstream of State Road 206	*20
Moses Creek Tributary No. 2:	
At mouth	*11
Just downstream of Dirt Road	*15
Moses Creek Tributary No. 2 (cont'd):	
Just upstream of Dirt Road	*20
About 2,500 feet upstream of Shores Boulevard	*22
Moses Creek Tributary No. 3.	
At mouth	*11
About 2,400 feet upstraam of mouth	*23
Moses Creek Tributary No. 4:	
At mouth	*12
About 0.65 mile upstream of mouth	*23
Moses Creek Tributary No. 5:	
At mouth	*16
About 0.75 mile upstream of mouth	*26
Moses Creek Tributary No. 6:	
At mouth	*26
About 0.7 mile upstream of mouth	*28
Moultne Creek:	
At mouth	*8
Just upstream of County Highway 214	*33
Moultrie Creek Tributary No. 1:	
At confluence with Moultne Creek	*8
Just upstream of Lewis Point Road	*25
Moultrie Creek Tributary No. 3:	
At mouth	*9
About 1.1 miles upstream of mouth	*21
Moultrie Creek Tributary No. 4:	
At mouth	*9
Just upstream of State Road 207	*36
Sixteenmile Creek:	
At mouth	*9
At southern county boundary	*14
St. Johns Tributary No. 1:	
At mouth	*6
Just downstream of State Road 13	*16
Just upstream of State Road 13	*22
St. Johns River Tributary No. 2:	
At mouth	*6
Just upstream of Dirt Road (about 0.7 mile upstream of mouth)	*12
St. Johns River Tributary No. 3 Branch No. 1:	
At mouth	*6
About 0.5 mile upstream of State Road 13	*22
St. Johns River Tributary No. 3 Branch 2:	
At mouth	*13
About 1,600 feet upstream of mouth	*24
St. Johns River Tributary No. 4:	
At mouth	*6
About 0.55 mile upstream of State Road 13	*23
St. Johns River Tributary No. 5:	
At mouth	*6
About 0.7 mile upstream of State Road 13	*17
Tolomato River Tributary No. 1:	
At mouth	*8
Just downstream of U.S. Route 1	[illegible]
Tolomato River Tributary No. 2:	
At mouth	*8
Just upstream of U.S. Route 1	*27
Big Lige Branch:	
At mouth	[illegible]
About 0.8 mile upstream of mouth	*17
Flora Branch:	
At mouth	[illegible]
About 1.1 miles upstream of Race Track Road	*18
Kentucky Branch:	
At mouth	*6
About 1.4 miles upstream of State Road 13	*24
Kentucky Branch Tributary:	
At mouth	*8
Just upstream of Old Airport Road	*19
Orange Grove Branch:	
At mouth	*6
Just downstream of State Road 13	*7
Just upstream of State Road 13	*14
About 1.85 miles upstream of State Road 13	*27
Petty Branch:	
At mouth	*6
Just downstream of State Road 13	*8
Just upstream of State Road 13	*15
About 2.0 miles upstream of State Road 13	*27
Red House Branch:	
At mouth	*9
Just upstream of Chicken Farm Road	*28
West Run Cracker Branch:	
At mouth	*6
At western county boundary	*11
Maps available for inspection at the Planning & Zoning Office, P.O. Drawer 349, St. Augustine, Florida.	

Source of flooding and location	#Depth in feet above ground ²Elevation in feet (NGVD)
GEORGIA	
City of Cave Spring, Floyd County (Docket No. FEMA-6640)	
Little Cedar Creek	
About 2,400 feet downstream of Cave Spring Highway	*628
About 2,200 feet upstream of State Route 100	*650
Mill Race Creek:	
At mouth	*643
About 2,300 feet upstream of mouth	*656
Maps available for inspection at City Hall, Cave Spring, Georgia.	
IDAHO	
Bonners Ferry (city), Boundary County (FEMA-6640)	
Kootenai River: At intersection of Kootenai River and U.S. Highway 95	*1769
Maps available for inspection at Engineer's Office, 102 Main Street, Bonners Ferry, Idaho.	
Kamiah (city), Lewis County (FEMA-6640)	
Clearwater Creek: Intersection of Clearwater River and center of U.S. Highway 12 (3rd Street)	*1184
Lawyer Creek: Intersection of Lawyer Creek and center of Hill Street	*1237
Maps available for inspection at City Hall, Kamiah, Idaho.	
Malad City (city), Oneida County (FEMA Docket No. 6640)	
Deep Creek: Intersection of Deep Creek and 90 South Street	*4538
Maps available for inspection at Water Office, 59 Bannock, Malad City, Idaho	
ILLINOIS	
Unincorporated Areas of Coles County (Docket No. FEMA-6640)	
Kaskaskia River:	
About 7.7 miles downstream of County Route 20	*631
About 6.1 miles upstream of County Route 16	*643
Embarras River:	
About 3.1 miles downstream of State Route 130	*580
About 2.2 miles upstream of Conrail	*608
Riley Creek:	
About 0.95 mile downstream of State Route 16	*603
About 0.95 mile upstream of Norfolk Southern Railway	*616
Cassell Creek:	
Mouth at Riley Creek	*609
Just downstream of Conrail	*619
Town Branch Creek	
Mouth at Cassell Creek	*611
About 0.43 mile upstream of Norfolk Southern Railway	*630
Kickapoo Creek:	
Just upstream of Odd Fellow Road	*700
About 0.32 mile downstream of 5th Street	*702
Maps available for inspection at the Coles County Regional Planning Commission, Coles County Courthouse, Charleston, Illinois.	
De Pue (village), Bureau County (FEMA Docket No. 6640)	
Illinois River: Within community	*464
Maps available for inspection at the Clerks Office De Pue Water Plant, 111 West 2nd Street, De Pue, Illinois	
Equality (village), Gallatin County (FEMA Docket No. 6640)	
Saline River: Within community	*367
North Fork Saline River: Within community	*367
Maps available for inspection at the Equality Municipal Building, P.O. Box 368, Equality, Illinois	
Fults (village), Monroe County (FEMA Docket No. 6640)	
Mississippi River: Within corporate limits	*406
Maps available for inspection at the Village Clerks Office, P.O. Box 6, Fults, Illinois.	
Kaskaskia (village), Randolph County (FEMA Docket No. 6640)	
Mississippi River:	
At southern corporate limits	*392
At northern corporate limits	*394
Maps available for inspection at the Kaskaskia School, Principal Office, Village of Kaskaskia, Illinois.	
Old Shawneetown (village), Gallatin County (FEMA Docket No. 6640)	
Ohio River:	
About 1,600 feet downstream of Garfield Street	*367
About 3,000 feet upstream of Garfield Street	*368
Maps available for inspection at the Village Hall, Rt. 1, Old Shawneetown, Illinois.	
Ottawa (city), LaSalle County (FEMA Docket No. 6640)	
Illinois River:	
About 0.92 mile downstream of Burlington Northern railroad	*471
About 0.75 mile upstream of State Route 23	*473
Fox River:	
At mouth	*472
About 2,500 feet upstream of U.S. Route 6	*476
Goose Creek:	
At mouth	*476
About 7,050 feet upstream of Columbus Street	*516
Maps available for inspection at the City Clerks Office, City Hall, Ottawa, Illinois.	
Palestine (village), Crawford County (FEMA Docket No. 6640)	
Sugar Creek	
Just upstream of Franklin Street	*440
About 0.5 mile upstream of Main Street	*445
Lamotte Creek	
About 1200 feet downstream of confluence of Tributary A	*440
At confluence of Tributary A	*441
Tributary A	
At confluence with Lamotte Creek	*441
About 0.5 mile upstream of Main Street	*443
Maps available for inspection at the Village Centre, 301 South Main Street, Palestine, Illinois	
City of Peru, La Salle County (Docket No. FEMA-6640)	
Illinois River:	
About 2.2 miles downstream of U.S. Route 51	*460
About 0.65 miles upstream of U.S. Route 51	*462
West Creek	
About 630 feet downstream of 4th Street	*466
About 130 feet downstream of 4th Street	*470
About 130 feet upstream of 4th Street	*488
About 130 feet downstream of 7th Street	*496
About 130 feet upstream of 7th Street	*502
About 1,850 feet upstream of 7th Street	*543
Maps available for inspection at the Office of the City Clerk, Community Building, P.O. Box 299, Peru, Illinois.	
Prairie du Rocher (village), Randolph Country (FEMA Docket No. 6640)	
Mississippi River:	
At southeastern corporate limits	*400
At northwestern corporate limits	*401
Maps available for inspection at the Post Office, Prairie du Rocher, Illinois.	
Valmeyer (village), Monroe County (FEMA Docket No. 6640)	
Mississippi River	
At southern corporate limits	*413
At northern corporate limits	*414
Maps available for inspection at the Village Hall, 100 Maple Street, Valmeyer, Illinois	
IOWA	
Unincorporated Areas, Johnson County (Docket No. FEMA-6640)	
Iowa River	
At Southern county boundary (about 1.3 miles downstream of Tri-County Bridge)	*611
About 8.1 miles upstream of County Highway F62	*642
Just upstream of Interstate 80	*658
Just downstream of Coralville Dam	*663
Just upstream of Coralville Dam	*713
At Western County boundary	*713
Old Mans Creek	
At mouth	*627
At Western County boundary	*711
Old Mans Bypass	
At mouth	*631
At divergence from Old Mans Creek	*639
Clear Creek	
About 1.9 miles downstream of Interstate 80	*667
Just downstream of County Highway F46	*740
Cedar River	
At Eastern County Boundary	*683
At Northern County Boundary	*691
Rapid Creek	
At mouth	*661
About 2.4 miles upstream of State Highway 1	*710
About 3,900 feet downstream of County Highway F8W	*756
Just downstream of Chicago, Rock Island and Pacific Railroad	*773
East Fork Rapid Creek:	
At mouth	*760
About 0.7 mile upstream of County Road F36	*768
Rapid Creek Tributary No. 3.	
At mouth	*703
About 0.45 miles upstream of mouth	*710
Jordan Creek:	
About 2.4 miles upstream of Lake MacBride Dam	*716
Just downstream of State Highway 1	*772
Just upstream of State Highway 1	*778
About 0.6 mile upstream of State Highway 1	*785
Mill Creek:	
About 3.4 miles upstream of Lake MacBride Dam	*716
Just downstream of Chicago, Rock Island and Pacific Railroad	*721
Just upstream of Chicago, Rock Island, and Pacific Railroad	*726
Just downstream of State Highway 382	*726
Just upstream of State Highway 382	*731
About 1.0 mile upstream of State Highway 1	*743
McAllister Creek.	
About 1.2 miles upstream of mouth	*713
About 0.45 mile upstream of eastwest County Road (about 2.6 miles upstream of mouth)	*727
Swishsr Creek	
About 400 feet downstream of County Road F20	*713
Just downstream of a County Road (about 2.4 miles upstream of County Highway F20)	*743
Rhine Creek	
At mouth	*726
About 2.0 miles upstream of State Highway 109	*769
Muddy Creek	
At mouth	*660
About 1.55 miles upstream of a County Road (Road is about 5.1 miles upstream of mouth)	*746
Lake MacBride. At shoreline	*716
Maps available for inspection at the Johnson County Courthouse, Iowa City, Iowa 52240	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
KANSAS	
(C) El Dorado, Butler County (Docket No. FEMA-6356)	
Walnut River:	
Downstream coporate limit	*1,271
Upstream corporate limit	*1,281
Constant Creek:	
Just downstream Douglas Road	*1,276
Just downstream Central Avenue	*1,313
About 900 feet upstream Sixth Avenue	*1,328
West Branch Walnut River:	
Mouth at Walnut River	*1,280
About 1.83 miles upstream of 9th Avenue	*1,296
Tributary A:	
Mouth at West Branch Walnut River	*1,290
Just downstream Topeka Street	*1,297
Maps available for inspection at the City Hall, P.O. Box 762, El Dorado, Kansas.	
KENTUCKY	
City of Calvert City, Marshall County (Docket No. FEMA-6640)	
Tennessee River:	
About 2.0 miles upstream of confluence of Cypress Creek	*342
About 9.0 miles upstream of confluence with Cypress Creek	*344
Cypress Creek:	
About 1.4 miles downstream of County Highway 1523	*342
Just downstream of Interstate 24	*347
Maps available for inspection at the City Hall, Calvert City, Kentucky.	
MAINE	
Shapleigh (town), York County (FEMA Docket No. 6640)	
Little Ossipee River:	
At downstream corporate limits	*418
Upstream side of State Route 11	*487
Upstream side of Shapleigh Pond Road	*516
At upstream corporate limits	*518
Maps available for inspection at the Clerk's Vault, Shapleigh, Maine.	
MARYLAND	
Centreville (town), Queen Annes County (FEMA Docket No. 6640)	
Mill Stream Branch:	
Approximately 1,100 feet downstream of Bridge Street	*7
Upstream side of State Route 213	*8
Upstream corporate limits	*9
Gravel Run: At Commerce Street	*7
Yellow Bank Stream: At confluence with Gravel Run	*7
Three Bridges Branch: Upstream side of State Route 213	*7
Maps available for inspection at the Centreville Town Hall, 101 Lawyers Road, Centreville, Maryland.	
Mardela Springs (town), Wicomico County (FEMA Docket No. 1604)	
Nanticoke River: Entire length of Baron Creek	*6
Maps available for inspection at the Town Hall, Station Street, Mardela Springs, Maryland.	
Sharptown (town), Wicomico County (FEMA Docket No. 1604)	
Nanticoke River: Entire shoreline within community	*6
Maps available for inspection at the Town Hall, Sharptown, Maryland.	
Queen Anne (town), Queen Annes County (FEMA Docket No. 6640)	
Tuckahoe Creek:	
Downstream corporate limits	*7
Upstream corporate limits	*9
Maps available for inspection at the Queen Annes Post Office, Queen Anne, Maryland.	
MASSACHUSETTS	
Barnstable (town), Barnstable County (FEMA Docket No. 6640)	
Cape Cod Bay:	
Shoreline of Barnstable Harbor at Locust Lane (extended)	*15
Area 800 feet east of intersection of Mill Way and Freezer Road	*11
Shoreline at Beach Point Area 1.0 mile north of Mussel Point	*17
Shoreline 0.8 mile north of north end of Little Thatch Island	*18
Shoreline 0.9 mile east of Sandy Neck Road (extended)	*20
Shoreline 0.6 mile east of Sandy Neck Road (extended)	*25
Area 800 feet northeast of northern end of Sandy Neck Road	#2
Nantucket Sound:	
Area at intersection of Old Colony Road and Nantucket Street	*10
Shoreline of Hyannis Inner Harbor at School Street (extended)	*12
Shoreline of Lewis Bay at Harbor Bluff	*15
Area 1,000 feet west of intersection of Ocean Avenue and Studley Road	*11
Shoreline at Hyannis Point	*15
Area 1,500 feet of intersection of Bag Lane and South Main Street	#1
Shoreline at West Street (extended)	*16
Shoreline of Eel River at Hathaway Road (extended)	*11
Shoreline of Cotuit Bay 1,000 feet southeast of intersection of Putnam Avenue and Lowell Avenue	*19
Shoreline 3,000 feet southwest of Bluff Point	*17
Maps available for inspection at the Building Inspector's Office, Barnstable Town Hall, Hyannis, Massachusetts.	
Billerica (town), Middlesex County (FEMA Docket No. 6625)	
Concord River:	
At downstream corporate limits	*106
Approximately 1,000 feet downstream of Faulkner Street	*107
Talbot Mill Dam upstream side	*115
Approximately 1,000 feet upstream of Pollard Street	*116
Boston Road, upstream side	*117
U.S. Route 3, upstream side	*118
Nashua Road, upstream side	*119
At upstream corporate limits	*119
Shawsheen River:	
At downstream corporate limits	*89
Salem Road upstream side	*97
At confluence of Jones Brook	[illegible]
Boston Road upstream side	[illegible]
At upstream corporate limits	*99
Jones Brook:	
At confluence with Shawsheen River	[illegible]
Golf Course Culvert upstream side	*105
Approximately 720 feet upstream of Baldwin Road	*109
Content Brook:	
At most downstream corporate limits	*92
Whipple Road, upstream side	[illegible]
200 feet upstream of Andover Road	*102
Boston and Maine Railroad, upstream side	*106
At confluence of Middlesex Canal	*107
Middlesex Canal:	
At confluence with Content Brook	*107
Pond Street, downstream side	*110
Lubber Brook:	
At downstream corporate limits	*103
Cook Street, upstream side	*104
At upstream corporate limits	*104
Maps available for inspection at the Board of Health Office, Billenca, Massachusetts.	
Ipswich (town), Essex County (FEMA Docket No. 6640)	
Atlantic Ocean:	
Shoreline at Rowley-Ipswich corporate limits	*14
Shoreline at confluence of Pine Creek	*10
Shoreline of Middle Ground	*10
Shoreline at Clark Road (extended)	*14
Shoreline approximately 1,000 feet north of Bay Road (extended)	*22
Dune area along 5th Street	#2
Shoreline at River Road (extended)	*16
Shoreline at Gloucester-Ipswich corporate limits	*14
Entire shoreline of Castle Neck River	*10
Entire shoreline of Rowley River	*10
Confluence of Eagle Hill River with Plum Island Sound	*11
At confluence of Paine Creek	*10
Ipswich River:	
At confluence of Treadwell Island Creek	*11
At Jurdins Hill Road (extended)	*10
At Boston & Maine Railroad	*15
Approximately 0.5 mile upstream of Boston & Maine Railroad	*17
Upstream side of Mill Road	*20
Approximately 0.5 mile upstream of Mill Road	*22
Approximately 1.0 mile upstream of Mill Road	*24
Approximately 0.3 mile downstream of Willowdale Road	*26
Upstream side of Willowdale Road	*28
At confluence of Gravelly Brook	32
Miles River:	
At confluence with Ipswich River	*15
Approximately 600 feet upstream of Lakemans Drive	*18
At County Road	*20
Downstreagn side Sagamore Road	*24
At Hamilton-Ipswich corporate limits	*25
Maps available for inspection at the Ipswich Town Manager's Office, Ipswich, Massachusetts.	
Kingston (town), Plymouth County (FEMA Docket No. 6640)	
Kingston Bay:	
Shoreline at southern corporate limits	*15
Shoreline at Rocky Nook Point	*13
Jones River:	
At River Street Landing	*10
Upstream side of State Route 3	*9
Downstream side of dam	*11
Upstream side of dam	*21
Upstream side of Wapping Road	*29
At confluence of Jones River Brook	*35
Downstream side of Silver Lake Dam	*45
Smelt Brook:	
At confluence with Jones River	*10
Upstream side of Foundary Pond outlets	*28
Upstream side of Cranberry Road	*59
Halls Brook:	
At confluence with Jones River	*9
Upstream side of dam	*21
At confluence of Mile Brook	*25
Upstream side of Brookdale Road	*32
Upstream side of weir upstream of Winter Street	*54
Mile Brook:	
Upstream side of Winthrop Street	*25
Near intersection of state Route 3A and State Route 53	#2
Upstream side of culvert under State Routes 3A and 53	*36
Upstream side of dam	*54
Jones River Brook:	
At confluence with Jones River	*35
Upstream corporate limits	*40
Maps available for inspection at the Board of Selectmen's Office, Town Hall, Kingston, Massachusetts.	
Millis (town), Norfolk County (FEMA Docket No. 1604)	
Charles River:	
Downstream corporate limits	*123
Main Street (upstream side)	*124

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2,900 feet downstream of Norfolk Road	*125
Norfolk Road (upstream side)	*127
Approximately 240 feet [illegible] of Pleasant Street	*129
Approximately 80 feet upstream of Myrtle Street	*136
Upstream corporate limits	*138
Bogastow Brook:	
At confluence with Charles River	*123
Approximately 180 feet upstream of Orchard Street by Partridge Hill	*131
Ridge Street (upstream side)	*134
Orchard Street by School House Hill (upstream side)	*143
[illegible] corporate limits	*145
Maps available for inspection at the Selectmen's Office, Town Hall, Mills, [illegible]	
Norfolk (town), Norfolk County (FEMA Docket No. 6614)	
Charles River:	
Approximately 400 feet downstream of Harlow Pond Lateral	*125
Approximately 800 feet upstream of Harlow Pond Lateral	*125
Approximately 700 feet downstream of Myrtle Street	*133
Approximately 4,000 feet upstream of Myrtle Street	*138
At upstream corporate limits	*138
Harlow Pond Lateral:	
Harlow Pond Dam (upstream side)	*127
Approximately 3,350 feet upstream of Coolige Pond Dam	*129
Myrtle Street Lateral:	
Upstream side of Myrtle Street bridge	*139
Approximately 3,230 feet upstream of Myrtle Street bridge	*144
Mill River:	
Upstream side of River Road	*137
Upstream side of Main Street Dam	*151
Upstream side of Bush Pond Dam	*176
Upstream corporate limits	*181
Cress Brook:	
Confluence with Mill River	*137
Approximately 5,000 feet upstream of confluence with Mill River	*146
Approximately 6,640 feet upstream of confluence with Mill River	*148
[illegible] Brook:	
Confluence with Mill River	*137
Upstream corporate limits	*160
Stop River:	
Downstream corporate limits	*124
Upstream side of Commonwealth of Massachusetts Railroad bridge	*147
Confluence with Prison Farm Lateral	*149
Downstream side of Prison Road Dam	*150
Approximately 5,000 feet upstream of Prison Road Dam	*153
At upstream corporate limits	*187
Main Pond Lateral:	
Confluence with Stop River	*149
Boardman Street bridge (upstream side)	*173
Prison Farm Lateral:	
Confluence with Stop River	*149
Approximately 1,200 feet upstream of Needham Street	*162
Stony Brook:	
Confluence with Stop River	*153
Upstream of dam	*176
Upstream corporate limits	*183
Maps available for inspection at the Selectmen's Office, Norfolk Town Office, Norfolk, Massachusetts	
Salem (city), Essex County (FEMA Docket No. [illegible])	
Atlantic Ocean:	
Entire shoreline of Danvers River within community	*10
Shoreline of Collins Cove	*13
Massachusetts Bay:	
Shoreline at Sutton Avenue (extended)	*15
Shoreline at Juniper Cove at Dustin Street (extended)	*10
Shoreline approximately 250 feet south of Winter Island Road (extended)	*20
Eastern shoreline of Cat Island	*15
Western shoreline of Cat Island	*12
Eastern shoreline of Tinkers Island	*15
Western shoreline of Tinkers Island	*12
Eastern shoreline of Great Misery Island	*24
Western shoreline of Great Misery Island	*15
Northeastern shoreline of Bakers Island	*30
Southwestern shoreline of Bakers Island	*12
Salem Harbor: Shoreline at Carlton Street (extended)	*13
Shallow Flooding:	
Dunes in the vicinity of Salem Neck	#1
Dunes in the vicinity of Juniper Avenue	#2
Dunes in the vicinity of Winter Island Road (extended)	#1
Maps available for inspection at the City Clerk's Office, Salem, Massachusetts.	
MISSOURI	
City of Chillicothe, Livingston County (Docket No. FEMA-6640)	
Grand River Tributary:	
About 3,000 feet downstream of State Highway 190	[illegible]
About 1,250 feet upstream of U.S. Highway 65	*738
Maps available for inspection at the Building Commissioner's Office, Harrison, Ohio.	
MONTANA	
East Helena (city), Lewis and Clark County (FEMA Docket No. 6640)	
Prickly Pear Creek: Intersection of Morton Avenue and Groschell Street	*3,870
Maps available for inspection at Flood Plain Administrator's Office, 7 East Main, East Helena, Montana 59635.	
Lewis and Clark County (unincorporated areas) FEMA-6640	
Prickly Pear Creek:	
170 feet upstream from the center of Sierra Road East	*3,681
At the Helena Valley Irrigation Canal	*3,799
South Braid of Prickly Pear Creek: 50 feet upstream from the center of Wylie Drive	*3,846
East Overflow of Prickly Pear Creek: 160 feet upstream from the center of the Helena Valley Irrigation Canal	*3,801
North Overflow of Prickly Pear Creek: 470 feet west from the northwest corner of the East Helena Sewage Lagoon holding ponds	*3,829
Tenmile Creek:	
30 feet upstream from the center of Sierra Road East	*3,694
85 feet upstream from the center of Country Club Avenue	*3,912
Shallow Flooding:	
900 feet west of the intersection of Franklin Mine Road and Green Meadow Drive	*3,790
Maps available for inspection at DES Director's Office, 201 South Main, Helena, Montana.	
NEW JERSEY	
Totowa, Borough, Morris County (FEMA Docket No. 6640)	
Passaic River:	
Approximately 500 feet downstream of corporate limits	*126
Totowa Road (upstream side)	*128
Interstate 80	*129
Lackawana Avenue (upstream side)	*132
N.J.W.S. Aqueduct (upstream corporate limits)	*138
Singac Brook:	
Downstream corporate limits	*173
Approximately 200 feet upstream of upstream corporate limits	*175
Naachtpunkt Brook:	
Jackson Road (downstream side)	*175
Totowa Road (downstream side)	*183
Maps available for inspection at the Totowa Clerk's Office, Municipal Building, 537 Totowa Road, Totowa, New Jersey.	
NEW YORK	
Saugerties, Town, Ulster County (FEMA Docket No. 6640)	
Esopus Creek:	
Downstream corporate limits	*59
Upstream side Glasco Turnpike	*70
Approximately 865 feet downstream CONRAIL	*82
Upstream side of CONRAIL	*127
Approximately 510 feet upstream of upstream corporate limits	*133
Hudson River: Entire shoreline within community	*9
Maps available for inspection at the Town Clerk's Offices, Saugerties Town Hall, Saugerties, New York.	
Saugerties, Village, Ulster County (FEMA Docket No. 6640)	
Esopus Creek:	
Cantine Dam	[illegible]
At U.S. corporate limits	[illegible]
Hudson River:	
Entire Shoreline within community	*9
Esopus Creek below Cantine Dam	*9
Maps available for inspection at the Municipal Building, Partition Street, Saugerties, New York.	
NORTH CAROLINA	
Town of Alliance, Pamlico County (Docket No. FEMA-6640)	
South Prong Bay River:	
About 1.45 miles downstream of Campen Swamp Road	*8
About 0.95 mile upstream of Campen Swamp Road	*10
Maps available for inspection at the Town Hall, Alliance, North Carolina.	
Unincorporated Areas, Carteret County (Docket No. FEMA-6640)	
Adams Creek: Along eastern bank from its mouth to mouth of Back Creek	*9
Atlantic Ocean:	
About 300 feet northwest of shoreline from Drum Inlet to about 2500 feet southeast of the High Hills	*6
About 500 feet northwest of shoreline from The Swash to Drum Inlet	*8
About 0.75 mile east of Wreck Point on Core Banks	*6
About 300 feet northwest of shoreline from about 0.75 mile southeast of Daniel Swash to Ocracoke Inlet	*7
Along western and southern shoreline of Lookout Bight	*7
Along shoreline from southern tip of Shackleford Banks to about 0.55 mile northwest of southern tip of Shackleford Banks	*8
Along shoreline from about 0.85 mile north of jetty located about 2.2 miles northwest of Cape Point to Ocracoke Inlet	*10
About 300 feet north of shoreline from about 1 mile southeast of Shackleford Point to about 0.65 mile west of Bald Hill	*10
Along shoreline from about 0.4 mile south of Horse Point to about 0.75 mile northwest of southern tip of Shackleford Banks	*11
About 100 feet north of shoreline between eastern section and western section of Town of Indian Beach	*11
About 50 feet north of shoreline between Town of Pine Knoll Shores and Town of Atlantic Beach	*11
Along shoreline from about 0.65 mile west of Bald Hill to about 0.4 mile south of Horse Point	*12
About 150 feet north of shoreline from Town of Atlantic Beach to Beaufort Inlet	*12
Along shoreline from about 1 mile southeast of Shackleford Point to about 0.65 mile west of Bald Hill	*13

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Along shoreline from Shackleford Point to about 1 mile southeast of Shackleford Point	*14
Along shoreline between Town of Pine Knoll Shores and Town of Atlantic Beach	*15
Along shoreline from the Town of Atlantic Beach to about 1500 feet west of western shore of Beaufort Inlet	*15
Along shoreline between eastern section and western section of Town of Indian Beach	*16
Back Sound	
Along shoreline of Great Marsh Island	*6
Along shorelines of Morgan Island and Whitehurst Island	*7
Along shoreline of Barden Inlet	*7
Along northern shoreline of Shackleford Banks	*8
Along shoreline from about 2000 feet north of Shell Point to about 2500 feet northwest of Shell Point	*8
Along shoreline from about 2500 feet northwest of Shell Point to Rush Point	*9
Bouge Sound:	
Along shoreline from eastern section of Town of Indian Beach to about 1200 feet northwest of intersection of SR 1193 and NC 58	*6
At NC 24 bridge over Jumping Run	*7
At confluence of East Prong with Gales Creek	*7
Along shoreline of West Prong from confluence with Broad Creek to confluence of Wolf Branch	*7
About 300 feet south of intersection of SR 1122 and SR 1256	*7
Just north of intersection of SR 1122 and SR 1213	*7
About 300 feet landward of shoreline along SR 1121	*7
Along shoreline between Town of Pine Knoll Shores and the Town of Atlantic Beach	*7
Along shoreline from Town of Atlantic Beach to Fort Macon Creek	*7
Along Salter Path Road between Town of Pine Knoll Shores and Town of Atlantic Beach	*7
About 800 feet north of Salter Path Road between Town of Pine Knoll Shores and Town of Atlantic Beach	*7
At Harbor Drive bridge over Spooner Creek	*8
About 100 feet north of shoreline from mouth of Spooner Creek to mouth of Gales Creek	*8
At US Route 70 bridge over Peletier Creek	*8
Just north of intersection of SR 1249 and SR 1281	*8
Along shoreline of southeastern half of Wood Island	*8
Along shoreline of Dog Islands	[illegible]
Along shoreline of northwestern half of Wood Island	*9
At confluence of Sikes Branch and East Prong	[illegible]
At NC 24 bridge over Sanders Creek	*9
At NC 24 bridge over Hunting Island Creek	*9
About 250 feet landward of shoreline from about 1,500 feet southwest of mouth of Sikes Branch to about 2,000 feet southwest of intersection of SR 1119 and SR 1215	*9
Along shorelines of Piney Island and Bean Island	*10
Along shoreline from mouth of Peletier Creek to about 0.6 mile southwest of mouth of Broad Creek	*10
Along shoreline from about 0.6 mile southwest of mouth of Broad Creek to about 0.1 mile west of end of SR 1215	*11
Along shoreline from about 0.65 mile south of intersection of NC 24 and SR 1225 to mouth of Hunting Island Creek	*12
Along southern shoreline of Hunting Island	*13
Core Sound:	
About 1,300 feet northwest of intersection of SR 1362 and SR 1363	*5
Along western shoreline of Core Banks from about 0.6 mile southeast of Whitehurst Island to Dear Pond	[illegible]
Along shorelines of Gunning Hammock Island and Rush Island	*6
Along shoreline from Great Island Bay to The Swash	*6
Along shoreline of Oyster Creek	*6
Along shoreline of Spit Bay	*6
Along shoreline of Jarrett Bay from Spit Bay to Ditch Cove	*6
Along shoreline of Lewis Creek	*7
Along shorelines of Horse Island and Dump Island	*7
Along shoreline from Drum Inlet to Kathryne Jane Islands	*7
At intersection of Marshallberg Road and Gloucester Road	*7
At intersection of Straits Road and Gloucester Road	*7
At intersection of Harkers Island Road and SR 1340	*7
Along shorelines of Leo Cockle Marsh Island, Little Deep Marsh Island, Big Deep Marsh Island, and Teal Island	*7
At Douglas Point	*7
Along shoreline from The Swash to Drum Inlet	*7
Along shoreline from mouth of Fork Creek to The Spit	*7
Along shoraline of Jarrett Bay from mouth of Smyrna Creek to Howland Point	*7
At intersection of US Route 70 and SR 1411	*7
At intersection of US Route 70 ans SR 1354	*7
At intersection of US Route 70 and SR 1353	*7
At intersection of USMC Road and US Route 70	*7
At intersection of US Route 70 and SR 1377	*7
At intersection of US Route 70 and SR 1373	*7
Along Salters Creek north of NC 12	*7
At intersection of US Route 70 and SR 1371	*7
Along shorelines of Chain Shot Island, Harbor Island, Wainwright Island, and Shell Island	*8
Along shoreline of Back Bay	*8
Along shoreline of South Island	*8
At intersection of NC 12 and SR 1388	*8
Along shoreline of Thorofare Bay from mouth of Merkle Hammock Creek to Green Point	*8
At Cricket Island Point	*8
Along shoreline from mouth of Middens Creek to end of SR 1347	*8
Along shorelines of Sellers Lumps and Big Island	*8
At Pasture Point	*8
At intersection of US Route 70 and SR 1350	*8
Along shoreline of Bells Island	*8
Along southern shoreline of Barry Bay	*8
At Thorofare Bridge	*8
Along shoreline from about 1.4 miles southwest of Hall Point to Steep Point	[illegible]
Along eastern shoreline of Nelson Bay	[illegible]
Along shoreline from Cedar Point to mouth of Marra Creek	[illegible]
At Cowpen Point	[illegible]
At Hog Island Point	[illegible]
Along shoreline from Cedar Inlet Point to Fish Hawk Point	[illegible]
Along northern shoreline of Thorofare Bay	[illegible]
Along shoreline of Barry Bay from Green Point to about 0.9 mile southwest of Green Point	[illegible]
Along shoreline of Jarrett Bay from mouth of Williston Creek to mouth of Middens Creek	[illegible]
Along shoreline from Hall Point to about 1.4 miles southwest of Hall Point	[illegible]
Along shoreline from Steep Point to about 0.4 mile east of Drum Point	[illegible]
Along shoreline of Nelson Bay from Broad Creek to mouth of Pasture Creek	[illegible]
Core Sound/The Straits:	
Along shoreline from mouth of Sleepy Creek to Harkers Island Road bridge over The Straits	[illegible]
Goose Bay:	
Along northern shoreline	[illegible]
Intracoastal Waterway:	
About 0.6 mile south of intersection of NC 24 and NC 58	[illegible]
At intersection of Easy Street and Leisure Lane	[illegible]
Along shoreline from about 1,700 feet southwest of intersection of NC 24 and SR 1117 to NC 24 bridge over White Oak River	[illegible]
Along shoreline from Cameron Langston Bridge to about 1,800 feet south of intersection of NC 24 and SR 1117	[illegible]
Along shoreline from about 1,800 feet south of intersection of NC 24 and SR 1117 to about 1700 feet southwest of intersection of NC 24 and SR 1117	[illegible]
Neuse River:	
Along shoreline from Westward Point to Point of Marsh	[illegible]
Along shoreline of South River from north of confluence of Eastman Creek to mouth of East Fork	[illegible]
Along shoreline from Horton Point to about 2,000 feet southwest of Westward Point	[illegible]
At mouth of Broad Creed	[illegible]
Along shoreline of Old Canal	[illegible]
Along shoreline from Winthrop Point to about 0.9 mile east of Herring Pond	[illegible]
Along shoreline of South River north of mouth of Little Creek	[illegible]
Newport River:	
At intersection of New Bern Road and SR 1166	[illegible]
About 500 feet southwest of intersection of New Bern Road and SR 1246	[illegible]
About 200 feet south of intersection of NC 101 and SR 1161	[illegible]
At intersection of New Bern Road and SR 1155	[illegible]
About 100 feet north of intersection of SR 1158 and SR 1159	[illegible]
About 0.65 mile east of intersection of SR 1176 and SR 1177	[illegible]
At intersection of US Route 70 and SR 1175	[illegible]
Along shoreline of Morehead City Channel	[illegible]
At mouth of Alligator Creek	[illegible]
Along shoreline of Adams Creek Canal from mouth of Bell Creek to mouth of Eastman Creek	[illegible]
Along shoreline from just south of mouth of Ware Creek to about 0.55 mile south of mouth of Russell Creek	[illegible]
Along shoreline of Bulkhead Channel	[illegible]
Along shoreline of Mill Creek	[illegible]
Along shoreline from Core Creek to Oyster Creek	[illegible]
Along shoreline from mouth of Harlow Creek to about 1,500 feet east of mouth of Mill Creek	[illegible]
Along shoreline from mouth of Ware Creek to mouth of Core Creek	[illegible]
Along shoreline of The Narrows just west of confluence of Little Creek Swamp	[illegible]
Along shoreline of Mill Pond	[illegible]
Along shoreline of Hull Swamp	[illegible]
Along shoreline from about 1,000 feet southwest of mouth of Oyster Creek to about 2,200 feet southwest of mouth of Oyster Creek	[illegible]
North River:	
About 50 feet west of intersection of SR 1301 and SR 1302	[illegible]
Along shoreline from about 0.2 mile west of Harkers Island Road to Crow Hill Road	[illegible]
At intersection of SR 1331 and SR 1328	[illegible]
Along shoreline of Ward Creek north of US Route 70	[illegible]
At intersection of US Route 70 and SR 1429	[illegible]
Along shorelines of Gull Island and Simons Island	[illegible]
Along shoreline from Goose Bay to mouth of South Leopard Creek	[illegible]
At mouth of Felton Creek	[illegible]
At intersection of US Route 70 and SR 1238	[illegible]
Along shoreline from mouth of South Leopard Creek to mouth of Ward Creek	[illegible]
Along shoreline from Thomas Marsh to Marsh Hen Point	[illegible]
Along shoreline from about 1 mile south of US Route 70 to US Route 70	[illegible]
Pamlico Sound:	
Along shoreline of Big Swan Island	[illegible]
Along shoreline of West Bay from Deep Hole Point to Dowdy Point	[illegible]
Along shoreline of Long Bay	[illegible]
Along shoreline of West Thorofare Bay	[illegible]
Along shoreline of West Bay	[illegible]
At intersection of Cedar Island Road and SR 1389	[illegible]
Along shoreline from Raymond Sand to Camp Point	[illegible]
Along shorelines of Kathryne Jane Islands	[illegible]
Along shoreline from High Hills Inlet to Ocracoke Inlet	[illegible]
Along shorelines of North Rock, Shell Castle, and Casey Island	[illegible]
The Straits:	
At intersection of SR 1414 and SR 1416	[illegible]
Along northern shoreline of Harkers Island	[illegible]
Along shoreline of Browns Island	[illegible]

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
White Oak River:	
Along shoreline from mouth of Bathouse Creek to Hampton Bay	*8
Along shoreline of Pettiford Creek	*8
Along shoreline from Hampton Bay to about 1,200 feet north of Hancock Point	*9
Along shoreline from about 0.25 mile north of Hancock Point to about 0.95 mile west of mouth of Cales Creek	*10
At intersection of NC 24 and SR 1117	*10
Along shoreline from NC 24 bridge over White Oak River to mouth of Bathouse Creek	*10
Deep Creek:	
About 0.6 mile downstream of SR 1133	*11
Just upstream of SR 1133	*13
Little Deep Creek:	
About 0.55 mile downstream of SR 1139	*11
About 0.6 mile upstream of SR 1139	*16
Maps available for inspection at the Carteret County Courthouse, P.O. Box 630, Beaufort, North Carolina.	

Town of Columbia, Tyrrell County (Docket No. FEMA-6640)

Atlantic Ocean/Albemarle Sound: Within community	*6
Maps available for inspection at Town Hall, Columbia, North Carolina.	

City of Elizabeth (city), Pasquotank and Camden Counties (Docket No. FEMA-6640)

Pasquotank River: Within community	*6
Knobbs Creek:	
From mouth at Pasquotank River to about 1.1 miles upstream of U.S. Highway 17	*6
From about 1.1 miles upstream of U.S. Highway 17 to just downstream of Creek Road	*7
Knobbs Creek Tributary:	
Mouth at Knobbs Creek	*7
Just upstream of SR 1309	*7
Just downstream of West Ehringhaus Street	*8
Charles Creek:	
From mouth at Pasquotank River to just upstream of Halsey Boulevard	6*
Just upstream of SR 1101	
Maps available for inspection at the City Hall, Elizabeth City, North Carolina.	

Town of Minnesott Beach, Pamlico County (Docket No. FEMA-6640)

Atlantic Ocean/Pamlico Sound/Neuse River: Within community	*9
Maps available for inspection at the Town Hall, Arapahoe, North Carolina.	

Unincorporated Areas of Pamlico County (Docket No. FEMA-6640)

Pamlico Sound:	
At intersection of SR 1327 and SR 1328	*8
At intersection of SR 1320 and SR 1321	*8
Along shoreline from Yaupon Hammock Point to Big Propose Point	*10
Along shoreline from Pine Tree Point to Cockle Point	*11
Along shoreline from Maiden Point to about 3,000 feet east of Rockhole Islands	*11
Along shoreline from Big Fishing Point to about 2,000 feet southwest of Sow Island Point	*11
Along shoreline from Sage Point to Deep Point	*11
Pamlico River:	
Along shoreline of Intracoastal Waterway from northern boundary of Goose Creek State Game Refuge to Cow Hole Bay	*7
At intersection of SR 1237 and SR 1232	*7
At mouth of Wallace Gateaway Creek	*7
Along shoreline from Deep Watering Point to James Point	*8
Along shoreline from 2,500 feet west of Long Point to Cedar Island Thourofare	*8
Along shoreline from Boar Creek to about 6,500 feet east of Boar Creek	*9
Along shoreline from about 6,500 feet east of Boar Creek to Hog Cove	*10
Jones Bay	
At intersection of SR 1228 and SR 1229	*8
At Minktrap Point	*9
Along shoreline from mouth of Lambert Creek to Maiden Point	*10
At Drum Creek Point	*10
Middle Bay:	
Along shoreline from Rocky Point to Preston Bay	*9
At Oyster Creek Point	*11
Bay River:	
Along Intracoastal Waterway from northern boundary of Goose Creek State Game Refuge to Persimmon Tree Point	*8
Along shoreline from Ball Island to Raccoon Creek	
Along Bear Creek from Harper Creek to NC 304	*8
Along shoreline from Bell Point to confluence of Trent Creek	
Along southeast shoreline of Spring Creek	
Along shoreline from Deadman Point to Branes Creek	*10
Along shoreline from Cove Point to mouth of Spring Creek	*10
Along shoreline from Bryan Point to Hogpen Creek	*10
Pamlico Sound Bay River: Southern shore of Fisherman Bay	*10
Big Porpoise Bay: At mouth of Porpoise Creek	*9
Pamlico Sound/Neuse River: Along Pasture Creek	*10
Neuse River:	
Along shoreline from about 4,500 feet southeast of Murtle Marsh point to Cooper Point	*8
Along southeast shore of Goose Creek to SR 1110	*8
Along shoreline of the Town of Oriental	*8
Along shoreline from about 6,000 feet east-northeast of Daniels Point to about 4,500 feet southeast of Murtle Marsh Point	*9
Along shoreline from Creek Point to SR 1103	*9
At confluence of Alexander Swamp with Goose Creek	*9
Trent Creek: Along shoreline from mouth to NC 55	*7
Greens Creek:	
Just upstream of SR 1308	
Just downstream of SR 1300	*10
South Prong Bay River:	
Just upstream of SR 1343	*8
About 5,000 feet upstream of SR 1344	*10
Smith Creek: At intersection of NC 55 and SR 1300	
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina.	

Town of Pantego, Beaufort County (Docket No. FEMA 6640)

Atlantic Ocean/Pamlico Sound/Pantego Creek: Within Community	*9
Maps available for inspection at Town Hall, Pantego, North Carolina.	

Town of Plymouth, Washington County (Docket No. FEMA-6640)

Welch Creek:	
Just upstream of Southern Railway	*7
About 2,800 feet upstream of Seaboard Coast Line Railroad	*7
Conaby Creek:	
About 1.7 miles downstream of East Main Street	*7
About 0.9 mile upstream of Roosevelt Avenue	*21
Conaby Creek Tributary:	
At mouth	*12
About 3,100 feet upstream of State Road 1115	*19
Maps available for inspection at City Hall, P.O. Box 806, 132 East Water Street, Plymouth, North Carolina 27962.	

Town of Roper, Washington County (Docket No. FEMA-6640)

Mill Creek	
About 3,900 feet downstream of U.S. Highway 64	*8
About 3,700 feet upstream of Buncombe Avenue	*11
Kendrick Creek:	
Just upstream of SR 1301	*10
Maps available for inspection at City Hall, Hall, Roper, North Carolina.	

Unincorporated Areas, Tyrrell County (Docket No. FEMA-6640)

Atlantic Ocean/Albemarle Sound:	
Along shoreline from about 9,000 feet southwest of Ship Point to about 9,000 feet southeast of Greys Canal	*4
Along shoreline from about 5,500 feet northwest of Goose Pond Island to about 1,600 feet north of Catfish Point	*4
Along shoreline of The Frying Pan	*4
Along shoreline of Alligator River from the confluence of Gum Neck Creek to the confluence of New Lake Fork	*4
Along northern shoreline of New Lake Fork	*4
At confluence of Southwest Fork and Northwest Fork	*4
At intersection of SR 1229 and U.S. 64	*4
Along shoreline from about 4.0 miles northeast of Taylors Beach to about 9,000 feet southwest of Ship Point	*5
Along shoreline from about 6,500 feet northwest of Long Shoal Point to about 5,500 feet northwest of Goose Pond Island	*5
Along shoreline from about 2,000 feet north of Orange Point to Rattlesnake Bay	*5
Along shoreline of Alligator River from about 4,000 feet northwest of Tuckahoe Point to Gum Neck Creek	*5
At intersection of SR 1103 and State Road 94	*5
At intersection of SR 1118 and SR 1121	*5
Along southern shoreline of Scuppernong River from Second Creek to Simmons Landing	*5
At Cross Landing	*5
At intersection of SR 1302 and SR 1301	*5
Along shoreline from Rattlesnake Bay to about 4,000 feet northwest of Tuckahoe Point	*6
At intersection of SR 1110 and SR 1111	*6
Along shoreline from about 0.7 mile northeast of Taylors Beach to about 4.0 miles northeast of Taylors Beach	*6
About 2,000 feet southeast of intersection of SR 1113 and U.S. Route 64	*6
Along western shoreline and northern shoreline of Scuppernong River from SR 1212 to Simmons Landing	*6
Along shoreline from Bunton Creek to south end of SR 1212 crossing over Scuppernong River	*7
Along shoreline from north end of SR 1212 crossing over Scuppernong River to about 3,500 feet northeast of Taylors Beach	*7
About 500 feet south of intersection of SR 1200 and SR 1203	*7
Maps available for inspection at the Tyrrell County Courthouse, Columbia, North Carolina 27925.	

Unincorporated Areas, Washington County (Docket No. FEMA-6640)

Kendrick Creek:	
Just upstream of SR 1301	*10
About 500 feet upstream of confluence of Kendrick Creek Tributary	*11
Kendrick Creek Tributary:	
At confluence with Kendrick Creek	*11
Just upstream of U.S. Route 64	*17
Welch Creek:	
About 0.9 mile downstream of U.S. Route 64	*7
About 700 feet upstream of confluence of Welch Creek Tributary	*8
Welch Creek Tributary:	
At confluence with Welch Creek	*8
Just downstream of SR 1100	*19
Conaby Creek	
About 1.6 miles upstream of NC 45	*7
About 4,550 feet upstream of SR 1108	*21
About 7,100 feet upstream of SR 1108	*25
Conaby Creek Tributary:	
About 250 feet downstream of SR 1117	*19
Just downstream of NC 32	*26

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Mill Creek	
About 1.85 miles upstream of confluence with Kendrick Creek	*11
About 2.6 miles upstream of confluence with Kendrick Creek	*11
Scuppernong River:	
From the eastern County Boundary to SR 1155	*5
Along Maw Creek from its mouth to about 3,000 feet upstream of SR 1163	*5
Albemarle Sound	
About 300 feet north of intersection of Cross Road and NC 308	*7
Just downstream of U.S. Route 64 bridge over Lees Mills Creek	*7
Along Shoreline from about 500 feet west of intersection of SR 1323 and SR 1343 to mouth of Bunton Creek	*7
Just downstream of U.S Route 64 bridge over Deep Creek	*7
Just downstream of NC 45 bridge over Roanoke River	*8
Along shoreline from mouth of Roanoke River to about 500 feet west of intersection of SR 1323 and SR 1343	*8
About 500 feet north of intersection of SR 1324 and NC 308	*8
Maps available for inspection at the Washington County Courthouse, Plymouth, North Carolina 27962	
Town of Windsor, Bertie County (Docket No. FEMA-6640)	
Cashie River	
About 1,700 feet downstream of King Street	*8
About 3.7 miles upstream of King Street	*12
Maps available for inspection at the City Hall, 128 South King Street, Windsor, North Carolina.	
NORTH DAKOTA	
Barnes (township), Cass County (FEMA Docket No. 6645)	
Sheyenne River: Intersection of Sheyenne River and County Road 8	*908
Maps available for inspection at Barnes Township Supervisor's Home, Rural Route 1, Fargo, North Dakota.	
Briarwood (town), Cass County (FEMA Docket No. 6645)	
Red River of the North: At southern corporate limits of the Town of Brainwood	
Maps available for inspection at the Town Auditor's Office, 22 Briarwood, Briarwood, North Dakota	
Burleigh County (unincorporated areas) (FEMA Docket No. 6122)	
Missouri River Confluence with Burnt Creek	*1,639
Burnt Creek	
400 feet upstream from center of Old F.A.S 1804	*1,647
1,000 feet downstream from center of U.S Highway 83	*1,774
Apple Creek. 300 feet upstream from center of Bismarck Avenue	*1,658
Maps available for inspection at County Engineering Department, Sixth and Bismarck, Bismarck, North Dakota.	
Fort Ransom (city), Ransom County (FEMA Docket No. 6645)	
Sheyenne River: Intersection of Sheyenne River and center of County Highway 11	*1,133
Maps available for inspection at Department of Planning and Zoning, Main Avenue, Fort Ransome, North Dakota.	
Hillsboro (city), Traill County (FEMA Docket No. 6645)	
Goose River: Intersection of Goose River and center of Burlington Northern Railroad	[illegible]

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Maps available for inspection at the City Auditor's Office, South Main Street, Hillsboro, North Dakota.	
Horace (city), Cass County (FEMA Docket No. [illegible])	
Sheyenne River: Intersection of Wall Avenue and Sheyenne Drive	*915
Maps available for inspection at City Hall, Horace, North Dakota.	
Lisbon (city), Ransom County (FEMA Docket No. 6645)	
Sheyenne River: Intersection of Fifth Avenue (State Highway 27) and Harms Street	*1,088
Maps available for inspection at City Hall, 18 4th Avenue West, Lisbon, North Dakota.	
North River (city), Cass County (FEMA Docket No. 6645)	
Red River of the North: 100 feet east of the intersection of County Road No. 31 and Reed Drive	*892
Maps available for inspection at the City Auditor's Office, City Hall, North River, North Dakota	
Ransom County (unincorporated areas) (FEMA Docket No. 6645)	
Sheyenne River (at Lisbon): Intersection of Sheyenne River and center of an unnamed road located in Sections 23 and 24 of Township 23 and 24 of Township 134 North and Range 56 West	*1,081
Sheyenne River (at Fort Ransom): 150 feet upstream from State Park Bridge	*1,141
Maps available for inspection at the County Auditor's Office, Ransom County Courthouse, Libson, North Dakota.	
Riverside (city), Cass County (FEMA Docket No. 6645)	
Sheyenne River: Intersection of Sheyenne River and Burlington Northern Railroad	*900
County Drain 21: Intersection of County Drain 21 and Burlington Northern Railroad	*900
Maps available for inspection at the Department of Planning and Zoning, 108 West Main Avenue, Riverside, North Dakota	
West Fargo (city), Cass County (FEMA Docket No. 6645)	
Sheyenne River: Intersection of 7th Avenue West and Sheyenne Street	*902
County Drain 21: Intersection of County Highway 10 and County Highway 19	*899
Maps available for inspection at the Engineer's Office, 800 4th Avenue East, West Fargo, North Dakota.	
OHIO	
Village of Briarwood Beach, Medina County (Docket No. FEMA-6640)	
The Inlet Within community	*995
Maps available for inspection at the Town Hall, P.O. Box 25, Chippewa Lake, Ohio.	
Village of Gloria Glens Park, Medina County (Docket No. FEMA-6640)	
Chippewa Creek: Within community	*995
Maps available for inspection at the Town Hall, P.O. Box 457, Chippewa Lake, Ohio.	
Unincorporated Areas of Jackson County (Docket No. FEMA-6640)	
Little Salt Creek:	
About 2,200 feet downstream of confluence of Pigeon Creek	*602

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
About 0.9 mile upstream of Keystone Station Road	*880
Pigeon Creek:	
At mouth	*602
Just downstream of Big Rock Road	*651
Buckeye Creek	
At mouth	*647
Just downstream of Township Road 925	*668
Jisco Lake Creek	
At confluence of Parkview Lateral	*649
About 1,700 feet upstream of the Detroit, Toledo and Ironton Railroad	*668
Sugar Run:	
About 1,800 feet downstream of State Route 788 (downstream crossing)	[illegible]
About 3,200 feet upstream of Chessie System	*671
Four Mile Creek:	
At mouth	*665
About 1,000 feet upstream of Four Mile Road	[illegible]
Parkview Lateral	
At confluence with Jisco Lake Creek	[illegible]
About 400 feet upstream of State Street	*650
Diversion No. 1:	
At confluence with Little Salt Creek	*656
At divergence from Little Salt Creek	*663
Diversion No. 2:	
At confluence with Little Salt Creek	[illegible]
At divergence from Little Salt Creek	[illegible]
Maps available for inspection at 200 Main Street, Jackson, Ohio 45640.	
Wadsworth (city), Medina County (FEMA Docket No. 6640)	
River Styx:	
Just upstream of Wall Road	*962
About 2700 feet upstream of Seville Road	*966
Maps available for inspection at the Municipal Building, 145 High Street, Wadsworth, Ohio 44281.	
OREGON	
Brookings (city), Curry County (FEMA Docket No. 6640)	
Chetco River. 50 feet upstream from the center of U.S Highway 101	*13
Maps available for inspection at the City Hall, 898 Elk Drive, Brookings, Oregon.	
Creswell (city), Lane County, (FEMA Docket No. 6640)	
Coast Fork Willamette River: Along Park Street, approximately 200 feet west of its intersection with Pacific Highway	*540
Maps available for inspection at the City Hall, Creswell, Oregon.	
Springfield (city), Lane County (FEMA Docket No. 6640)	
McKenzie: At the centerline of the Southern Pacific Railroad Bridge	*467
Willamette River: At the centerline of the Southern Pacific Railroad Bridge	*440
Middle Fork Willamette River: 1730 feet south along 28th Street from its intersection with the Southern Pacific Railroad	*462
Maps available for inspection at the Public Works Department, 225 North 5th, Springfield, Oregon.	
Westfir (city), Lane County (FEMA Docket No. 6640)	
Middle Fork Willamette River: At confluence with North Fork Middle Fork Willamette River	*1028
North Fork Middle Fork Willamette River: 75 feet upstream from the center of West Oak Road	*1072
Maps available for inspection at the City Hall, Recorder's Office, City Hall, Westfir, Oregon	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
TENNESSEE	
City of Dayton, Rhea County (Docket No. FEMA-6640)	
Richland Creek:	
About 800 feet downstream of U.S. Route 27	*[illegible]
About 1,800 feet upstream of Norfolk Southern Railway	*711
Little Richland Creek:	
At mouth	*689
About 1,150 feet upstream of Walnut Grove Road	*701
Broyles Branch:	
About 1,950 feet downstream of Blythes Ferry Road	*689
About 350 feet upstream of U.S. Route 27	*720
Unnamed Tributary Broyles Branch:	
At mouth	*720
Just downstream of Laurel Street	*722
Chickamauga Lake: Within community	*689
Maps available for inspection at the City Hall, Dayton, Tennessee.	
WASHINGTON	
Darrington (town), Snohomish County (FEMA-[illegible])	
Sauk River: On Alvord Street [illegible] 500 feet east from intersection of Montague Avenue	*535
Maps available for inspection at Town Hall, Darrington, Washington.	
Elma (city), Grays Harbor County (FEMA-6640)	
Cloquallum Creek: Intersection of Cloquallum Creek and Interstate 12	*51
Maps available for inspection at City Hall, Elma, Washington.	
Orting (city), Pierce County (FEMA Docket No. [illegible])	
Puyallup River—With Consideration of Levee: 110 feet upstream from the center of Orting-Kapowsin Highway	*196
Puyallup River—Without Consideration of Levee: At the intersection of Kansas Avenue and Ford Lane	*194
Carbon River—With Consideration of Levee: 100 feet downstream from the southern corporate limits	*200
Carbon River—Without Consideration of Levee: 100 feet East on Calistoga Avenue from the intersection of Calistoga Avenue and River Street	*182
Maps available for inspection at City Hall, Orting, Washington.	
Pacific County (Unincorporated areas) (FEMA Docket No. 6645)	
Pacific Ocean: 2000 feet west of intersection of State Highway 105 and Cranberry Beach Extension County Road	*24
Shallow Flooding: 1300 feet west of intersection of Ocean Beach Highway and Pioneer Road	#1
Maps available for inspection at Planning Department, 300 Memorial Avenue, South Bend, Washington.	
WISCONSIN	
Rock Springs (village), Sauk County (FEMA Docket No. 6592)	
[illegible] River	
About 0.63 mile downstream of State Highway 136	*870
About 0.15 mile upstream of Chicago and Northwestern Railroad	*872
Narrows Creek:	
At mouth	*871
About 1.04 miles upstream of State Highway 136	*872
Maps available for inspection at the Village Clerk's Office, Village Hall, Rock Springs, Wisconsin.	
Tomahawk (city), Lincoln County (FEMA Docket No. [illegible])	
Tomahawk River:	
About 360 feet downstream from Mannette, Tomahawk and Western railroad bridge	*1435
Just downstream of Jersey City Dam	*1436
Just upstream of Jersey City Dam	*1450
About 1,700 feet upstream of Jersey City Dam	*1450
Wisconsin River: Within community	*1435
Maps available for inspection at the Building Inspector's Office, City Hall, P.O. Box 469, 2nd Street, Tomahawk, Wisconsin.	

Issued: June 4, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 13990 Filed 6–11–85; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–1; RM–4726]

FM Broadcast Stations in Big Flats, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 249A to Big Flats, New York, as that community's first local FM service, at the request of the Heron Corporation.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Big Flats, New York); MM Docket No. 85–1, RM–4726.

Adopted: May 21, 1985.

Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 4712, published February 1, 1985, proposing the allocation of Channel 249A to Big Flats, New York, as that community's first local FM service, at the request of the Heron Corporation ("petitioner"). Petitioner filed comments supporting the proposal and reiterating its intention to apply for the channel. No other comments were received.

2. Channel 249A can be allocated in conformance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 1.13 kilometers northwest of the community, to prevent a short-spacing to Station WSQV, Channel 249A, Jersey Shores, Pennsylvania. Canadian concurrence in the allocation has been received as Big Flats is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. We believe the public interest would be served by allocating the channel to Big Flats, as it could provide the community with its first local FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 12, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Big Flats, NY	249A

4. The window period for filing applications will open on June 13, 1985 and close on July 12, 1985.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14148 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–17; RM–4624]

FM Broadcast Stations in Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Class C FM Channel 231 to Billings, Montana, in response to a petition for reconsideration filed by Champion Broadcasting. The allotment could provide a sixth FM service for the community.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments FM broadcast stations, (Billings, Montana); MM Docket No. 84–17, RM–4624.

Adopted: May 21, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration, the Petition for Reconsideration of the *Memorandum Opinion and Order*, which dismissed a proposal to allot Channel 231 to Billings, Montana. Reconsideration of that decision is sought by Champion Broadcasting.

2. In response to the *Notice of Proposed Rule Making*, 49 FR 3887, published January 31, 1984, seeking comments on the proposal to allot FM Channel 231 to Billings, Montana, the Commission failed to receive comments from the original petitioner, Charles Thompson, or any other party. Therefore consistent with our policy and procedures set forth in the Appendix to the *Notice*, we dismisssed the petition. Champion Broadcasting, in its petition for reconsideration, advises the Commission that it was unaware of the ongoing rule making proceeding and therefore did not file its comments. However, it states that it intends to apply for Channel 231, if allocated.

3. We believe that the public interest would be served by the allotment of Channel 231 to Billings, Montana, since it could provide the community with a sixth FM channel. Inasmuch as the channel would have been allocated earlier had it not been for the lack of an expression of interest, we believe that a reversal of our earlier decision is warranted.

4. Accordingly it is ordered, that effective July 15, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to Billings, Montana, as follows:

City	Channel No.
Billings, MT	227, 231, 246, 253, 275, and 279.

5. The window period for filing applications will open on June 13, 1985, and close on July 12, 1985.

6. Authority for the action taken herein is found in sections 4(i), 5(c)(1) and 303 (b) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the date set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–14157 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84-720; RM-4588, RM 4654]

FM Broadcast Stations in Boston and Quitman, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 292A to Boston, Georgia, and Channel 287A to Quitman, Georgia, in response to petitions filed by Donald E. White and Sons, Inc. and Nankin Broadcasting, respectively. The channels could provide a first FM service to each community.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Allotments, FM broadcast stations, (Boston and Quitman, Georgia); MM Docket 84-720, RM-4588, RM-4654.

Adopted: May 22, 1985.
Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 30730, published August 1, 1984, proposing the allotments of Channel 292A to Boston, Georgia, and Channel 287A to Quitman, Georgia, as each community's first FM service. The proceeding was instituted in response to petitions filed by Donald E. White and Sons, Inc. ("White") and by Nankin Broadcasting ("Nankin"), respectively. Both petitioners filed comments restating their intention to apply for the channel, if allotted to their requested community.

2. The Commission believes that the public interest would be served by the proposed allotments, as it could provide each community with a first FM service. Both the allotment of Channel 292A to Boston and Channel 287A to Quitman can be made in compliance with the minimum distance separation requirements.

3. Accordingly, pursuant to the authority contained in section 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 12, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the following communities:

City	Channel No.
Boston, GA	[illegible]

4. The window period for filing applications will open on June 13, 1985, and close July 12, 1985.

5. It is furthered ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Montrose H. Tyree (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-14152 Filed 6-11-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-600; RM-4641]

FM Broadcast Stations in East Jordan, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots Channel 265A to East Jordan, Michigan, in response to a petition filed by Midwest Radio Consultants. The allotment could provide a first local broadcast service for East Jordan.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Inerpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (East Jordan, Michigan) MM Docket No. 84-600; RM-4641).

Adopted: May 21, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 26115, published June 26, 1984, in response to a petition filed by Midwest Radio Consultants ("petitioner"). The *Notice* proposed the allotment of FM Channel 265A to East Jordan, Michigan, as that community's first FM service. Petitioner filed comments in support of the *Notice* and stated its intention to apply for the channel.

2. A staff study indicates that Channel 265A could be allotted to East Jordan, Michigan, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Canadian concurrence has been obtained since the proposed assignment is within 320 kilometers (200 miles) of the common U.S.-Canadian border.

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request since it could provide for the first FM service in that community.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 15, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
East Jordan, MI	265A

5. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divisions, Mass Media Bureau.

[FR. Doc. 85–14161 Filed 6–11–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–506; RM–4698]

FM Broadcast Stations in Eureka, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule

SUMMARY: Action taken herein allots Channel 288A to Eureka, California, as that community's fourth FM service, at the request of Thomas Renteria.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Eureka, California) (MM Docket No. 84–506, RM–4698).

Adopted: May 21, 1985.
Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 24410, published June 13, 1984, proposing the allotment of Channel 249A to Eureka, California, as that community's fourth FM channel, in response to a petition filed by Thomas Renteria ("petitioner"). Petitioner filed comments reaffirming his intention in applying for the channel. KPDJ–FM, Inc. ("KPDJ"), licensee of Station KPDJ–FM, Eureka, California submitted comments and a counterproposal.

2. KPDJ urges the allocation of an alternative channel to Eureka and suggests Channel 288A is best suited for allotment there. KPDJ states that the instant proposal would cause interference to translators at Ferndale, California (Channel 252) and Willow Creek, California (a recently applied for translator on Channel 249). Petitioner did not respond.

3. The Commission does not generally provide protection for translator stations from a full service station. See, 47 CFR 74.1203(a). Our main concern is to provide an allotment to Eureka as requested by the petitioner. Of course we do not want to intentionally disrupt any service to the public when a suitable alternative allotment is available. Therefore, the Commission believes that the public interest would be served by the allotment of FM Channel 288A to Eureka, California, in order to provide a fourth FM service to that community. The allotment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, That effective July 12, 1985, the FM Table of Allotments is amended with regard to the community listed below:

City	Channel No.
Eureka, CA	222, 242, 268, and 288A.

5. It is further ordered, that this proceeding is terminated.

6. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14161 Filed 6–11–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–788; RM–4821]

TV Broadcast Stations in Islamorada, Key West, and Marathon, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns noncommercial educational television channels to Islamorada, Key West and Marathon, Florida, in response to a petition filed by Florida Educational Television, Inc. The assignments could provide a first noncommercial educational service to each community.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific section are cited to text.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.606(b), table of assignments, TV broadcast stations, (Islamorada, Key West, and Marathon, Florida); MM Docket 84–788, RM–4821.

Adopted: May 22, 1985.
Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 33465, published August 23, 1984, issued in response to a petition filed by Florida Educational Television, Inc. ("petitioner"). The *Notice* proposed to assign UHF Channel *18 to Islamorada, Florida, VHF Channel *13 to Key West, Florida, and VHF Channel *9 to Marathon, Florida. The proposed assignments could provide a first noncommercial educational television service to each community. Supporting comments were filed by the petitioner restating the need for the requested assignments and its intention to apply for the channels, if assigned.

2. We believe that the public interest would be served by the proposed assignments. The petitioner has

adequately demonstrated the need for a first noncommercial television service at each community. The channels can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Rules.

3. Accordingly, pursuant to the authority contained in Section 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 12, 1985, the FM Table of Assignments § 73.606(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Islamorada, FL	* [illegible]
Key West, FL	3, *13, 16 +, and 22
Marathon, FL	*9

4. It is further ordered, that this proceeding is terminated.

5. For information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau (202) 634–6530

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14155 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–626; RM–4723]

FM Broadcast Stations in Lisbon, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 292A to Lisbon, North Dakota, in response to a petition filed by Charles Thompson, Terry Loomis, and Bob Hein as that community's first FM channel.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations, (Lisbon, North Dakota); MM Docket No. 84–626, RM–4723.

Adopted: May 21, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 27330, published July 3, 1984, in response to a petition filed by Charles Thompson, Terry Loomis and Bob Hein ("petitioners") proposing the allotment of FM Channel 292A to Lisbon, North Dakota, as that community's first FM channel. Petitioners have filed supporting comments reaffirming their intention to file for the channel.

2. The Commission believes that the public interest would be served by the allotment of FM Channel 292A to Lisbon, North Dakota, since it could provide that community with its first FM service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Rules.

3. The concurrence of the Canadian government has been received as Lisbon is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 15, 1985, the Table of FM Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Lisbon, ND	292A

5. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14160 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–653; RM–4713]

FM Broadcast Stations in Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 238A to Oxford, Mississippi, in response to comments filed by J. Boyd Ingram. The allotment could provide a third FM service to the community.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurele, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Oxford, Mississippi); MM Docket No. 84–653, RM–4713.

Adopted: May 21, 1985.
Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 29423, published July 20, 1984, in response to petition filed by North Mississippi Broadcasters ("petitioner"). The *Notice* proposed the allotment of FM Channel 238A to Oxford, Mississippi, as that community's third FM assignment. Petitioner failed to file supporting comments but J. Boyd Ingram filed comments expressing his intention to apply for the channel.

2. Channel 238A can be allotted to Oxford in compliance with the minimum distance separation requirements of

§ 73.207 of the Commission's Rules, provided there is a site restriction of 1.7 miles southeast of the community. The site restriction will prevent a short spacing to FM Station WVIM–FM, Channel 237, Coldwater, Mississippi.

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the third FM service to Oxford.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0 283 of the Commission's Rules, it is ordered, That effective July 12, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
Oxford, Miss.	238A, 248, and 296A.

5. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

6. It is further ordered, That is proceeding is terminated.

7. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Burea, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14150 Filed 6–11–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–504; RM–4708]

FM Broadcast Stations in Rapid City, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channel 282 to Rapid City, South Dakota, in response to a petition filed by William H. Payne as that community's fourth FM allotment.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations, (Rapid City, South Dakota); MM Docket No. 84–504, RM–4708.

Adopted: May 22, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24402, published June 13, 1984, proposing the allotment of Class C FM Channel 282 to Rapid City, South Dakota, as that community's fourth FM channel. The *Notice* was adopted in response to a petition filed by William H. Payne ("petitioner"). Petitioner submitted a late-filed letter reaffirming its intention to apply for the channel, if allotted. Tom-Tom Broadcasting ("Tom-Tom") also submitted late filed comments. Petitioner submitted an opposition thereto.[1] We find that it is in the public interest to accept petitioner's late filed comment for the purpose of expressing his interest in applying for the channel.

2. The Commission believes that the public interest would be served by the allotment of Channel 282 to Rapid City, South Dakota, since it could provide a fourth FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 15, 1985, the Table of FM Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Rapid City, SD	230, 250, 262, and 282

[1] Petitioner's opposition is based on Tom-Tom's assertion that no party filed comments in support. In view of our action taken herein, Tom-Tom's late-filed comments expressing an interest in the proposal and petitioner's opposition thereto are moot.

4. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14159 Filed 6–11–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83–514; RM–4431, RM–4561]

FM Broadcast Stations in Susanville, CA and Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Class C FM Channel 227 for Channel 224A at Susanville, California, and modifies the Class A license of Station KSUE–FM, in response to a petition filed by Radio Lassen. Also, Class C FM Channel 225 is allocated to Reno, Nevada, as that community's sixth commercial broadcast service, in response to a proposal filed by David E. and Kathryn S. Caldwell.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority. Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations, (Susanville, California and Reno, Nevada [1])

[1] This community has been added to the caption.

MM Docket No. 83-514, RM-4431, and RM-4561.

Adopted: May 22, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 28494, published June 22, 1983, proposing the substitution of Class C FM Channel 226 for Channel 224A at Susanville, California, in response to a request filed by Radio Lassen ("petitioner"),[2] licensee of Station KSUE-FM, Susanville. Petitioner desires to expand its coverage area to serve the rural areas of Lassen County. In response to the *Notice*, David E. and Kathryn S. Caldwell ("Caldwell") filed a counterproposal requesting the allotment of Channel 226 to Reno, Nevada, as that community's sixth commercial FM broadcast service.[3] Both parties stated their intention to apply for the channel, if allocated. Reply comments were filed by each party.[4]

2. In the counterproposal, Caldwell notes that due to technical considerations, Channel 226 cannot be assigned to Susanville and Reno simultaneously. (The distance between the two communities is approximately 120 kilometers, whereas 290 kilometers is required to accommodate co-channel allotments.) Thus, Caldwell requests, as an alternative, that Channel 226 be allotted to Reno, Nevada, and that Channel 277 be allotted to Susanville to accommodate petitioner's proposal. According to Caldwell's engineering study, Channel 226 would require a site restriction on Spanish Springs Peak, while Channel 277 would necessitate a site on Shaffer Mountain. According to Caldwell, each restricted site would provide 70 dBu line-of-sight coverage to Reno and Susanville, respectively.

3. In response, petitioner states that the proposed reference sites suggested by Caldwell are not feasible. According to petitioner's engineer, the Spanish Springs Peak is under the authority of the Bureau of Land Management ("BLM"), which has advised it would be adverse to the use of that location for a transmitter site for several reasons. First, it is currently undeveloped with a steep terrain. Also, there are no access roads nor electrical power available. Moreover, it is asserted that line-of-site coverage to Reno's dense population to the north would not be possible due to the intervening moutainous terrain, culminating in severe shadowing and poor reception quality.

4. With regard to Shaffer Mountain, petitioner's engineer asserts that such site would result in shadowing of large areas of Susanville. Further, petitioner advises that the BLM is opposed to the use of a proposed transmitter on Shaffer Mountain since it is the location of a developed two-way repeater radio site under its jurisdiction, that is utilized by approximately 17 concerns, including various Federal, State and local governments, as well as private users.

5. Since the parties differ on the useability of transmitter sites on Spanish Springs Peak and Shaffer Mountain to serve Reno, Nevada and Susanville, California, respectively, a staff engineering study was undertaken in an attempt to resolve the dispute to mutual satisfaction. As a result, we have determined that other channel allotment schemes are feasible.

6. We have determined that Channel 227 can be allocated to Susanville and located at the present site of Station KSUE-FM, while Channel 225 can be allocated to Reno with a site restriction 17.4 kilometers (10.8 miles) northeast of the community. Such location would appear to provide a transmitter site at a sufficiently elevation from which Reno could be provided city grade service.

7. In view of the above, and absent any other expressions of interest in the Susanville, California, proposal, we have authorized, *infra*, a modification of the license of Station KSUE-FM. See, *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

8. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 15, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below, as follows:

City	Channel No
Susanville, CA	227
Reno, NV	225, 238, 272A, 283, 289, and 195.

9. It is further ordered, that, pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Radio Lassen for Station KSUE-FM, Susanville, CA, is modified effective July 15, 1985, to specify operation on Channel 227 in lieu of Channel 224A. This license modification for Station KSUE-FM is subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

10. It is further ordered, that the Secretary of the Commission shall send a copy of this *Order* by certified mail, Return Receipt Requested, to Radio Lassen, 3015 Johnstonville Road, Susanville, CA 94130, and to petitioner's counsel, George M. Malti, Esq., Farrand, Malti and Cooper, 701 Sutter Street, 7th Floor, San Francisco, CA 94109.

11. It is further ordered, that this proceeding is terminated.

12. The filing window for application on Class C Channel 225 at Reno, NV, will open on June 13, 1985 and close on July 12, 1985.

13. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission,
Charles Schott,
Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85-14158 Filed 6-11-85; 8:45 am]
BILLING CODE 6712-01-M

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[2] Petitioner is also the licensee of co-owned Station KSUE(AM).

[3] *Public Notice* of the filing of the counterproposal was given on August 3, 1983, Report No. 1418.

[4] Petitioner's reply comments elicited additional comments from Caldwell to which petitioner responded. However, § 1.415(d) of the Commission's Rules does not generally contemplate such filings after the record has closed. The unsolicited comments in response to petitioner's reply are immaterial due to the fact that they relate to site availability problems on the proposed channels. However ultimate determination reached herein involves different channels which can be used at sites unrelated to the issues raised in the late comments. Thus, no analysis thereof is required, and their acceptance will be denied. Those comment include: "Response of David E. Caldwell and Kathryn S. Caldwell to Reply Comments of Radio Lassen"; "Reply to Caldwell Response"; "Motion to Enlarge the Pleading Schedule to Permit a Response to the Reply of Radio Lassen"; Supplement to Reply to Caldwell Response"; "Opposition . . . to Second Reply and Supplement of Radio Lassen"; Reply to Request to File Supplement"; and "Motion to Strike Radio Lassen's Reply of February 18, 1984, or to Enlarge the Pleading Schedule to Permit the Caldwell's to Respond."

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47 CFR Part 73

[MM Docket No. 84-895; RM-4799]

TV Broadcast Stations in Santa Catalina Island or Avalon, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 54 to Avalon, California, as that community's first television assignment in response to comments filed by Catalina Television Corporation.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Allotments, TV Broadcast Stations (Santa Catalina Island or Avalon, California); MM Docket No. 84–895, RM–4799.

Adopted: May 21, 1985.
Released: June 5, 1985.
By the Chief, Policy and Rules Division.

1. The commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 38676, published October 1, 1984, proposing the assignment of UHF TV Channel 54 to Santa Catalina Island, California,[1] or Avalon, California, as its first television assignment. The *Notice* was adopted in response to a petition filed by Jin Nok Wi ("petitioner"). Petitioner failed to file supporting comments in response to the *Notice*. However, comments were filed by Catalina Television Corporation ("Catalina"), in which it expressed an intention to apply for the channel, if assigned to Avalon, California.

2. In view of Catalina's expressed interest in the assignment of UHF TV Channel 54 to Avalon, California, the Commission believes that the public interest would be served by the assignment to that community since it could provide Avalon with a first local television service. The assignment can be made in compliance with the minimum distance separation and other technical requirements of the Commission's Rules. Mexican concurrence in the proposed assignment has been obtained.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective July 12, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Avalon, CA	54

4. It is further ordered, That this proceeding is terminated.

5. For further information contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14151 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

[1] Petitioner requested the assignment of TV Channel 54 to the entire island of Santa Catalina rather than to the principal island community of Avalon and was requested to supply information to demonstrate that the island was a community for assignment purposes. Petitioner failed to file comments and no other comments were received on this matter.

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47 CFR Part 73

[MM Docket No. 84–521; RM–4700]

FM Broadcast Stations in Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 265A to Walla Walla, Washington, as that community's fourth channel in response to a petition filed by Thomas D. Hodgins.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Walla Walla, Washington, MM Docket No. 84–521, RM–4700.

Adopted: May 21, 1985.
Released: June 5, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 24415, published June 13, 1984, proposing the allotment of FM Channel 265A to Walla Walla, Washington, as that community's fourth channel. The *Notice* was adopted in response to a petition filed by Thomas D. Hodgins ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel. No oppositions or other comments expressing an interest in the proposal were received.

2. The Channel can be allotted in compliance with the minimum distance separation requirements of §73.207 of the rules with a site restriction 5.3 miles south to avoid short spacing to pending applications for Channel 266 at Cheney, Washington.[1]

3. Accordingly, in view of the fact that the allotment could provide a fourth FM service, pursuant to the authority contained in section (i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communication Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective July 12, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Walla Walla, WA	227, 239, 246, and 265A.

4. It is further ordered, That this proceeding is Terminated.

5. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

6. For further information concerning this proceeding, contact D. David

[1] The applicants are; Delta Radio, Inc. (BPH–830616AI), Cheney Broadcasting Company (BPH–830929AA) and High Tech Industries, Inc. (BPH–830818AG). If High Tech Industries, Inc.'s application is granted, no site restriction is necessary.

Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14149 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–517; RM–4697, RM–4836]

FM Broadcast Stations in Tranquillity and San Joaquin, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FR Channel 288A to San Joaquin, California, in response to a petition filed by Stanley Soho as that community's first FM channel.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation of Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Tranquillity and *San Joaquin,*[1]) California (MM Docket No. 84–517, RM–4697, RM–4836).

Adopted: May 22, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 49 FR 24394, published June 13, 1984, proposing the allotment of FM Channel 288A to Tranquillity, California, as that community's first FM channel. The Notice was adopted in response to a petition filed by Stanley Soho ("petitioner"). Petitioner filed comments requesting that the channel be allotted to San Joaquin, California,[2] rather than Tranquillity, California.

2. Generally, we require the petitioner or interested parties to express in their comments a continuing interest in the proposed allotment. Since petitioner has failed to express a continuing interest and no other expressions of interest were received, we will, in accordance with Commission policy, give no further consideration to the proposal to allot FM Channel 288A to Tranquillity. See *West Memphis, Arkansas,* 38 R.R. 2d 970(1976). However, we are treating petitioner's comments as a counterproposal to allot Channel 288A to San Joaquin, California. In view of petitioner's expressed interest in the allotment, and having received no oppositions or counter-proposals, the Commission believes the public interest would be served by adopting the proposal to allot FM Channel 288A to San Joaquin, as its first local FM channel.

3. The Channel can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective July 15, 1985, the Table of FM Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
San Joaquin, CA	288A

5. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

6. It is further ordered, that this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14165 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

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[1] This community has been added to the caption.

[2] This petition was treated as a counterproposal and Public Notice was given on August 2, 1984, Report No. 1472.

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47 CFR Part 73

[MM Docket No. 84–786; RM–4655, RM–4721, RM–4746]

FM Broadcast Stations in Fenwick Island, DE and Hurlock, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 221A to Fenwick Island Maryland, in response to a petition filed by Gregory W. Guise, and Channel 265A to Hurlock, Maryland, in response to a petition filed by the Muir Corporation. The allotments could provide a first local broadcast service to both communities.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurele, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Fenwick Island, Delaware, and Hurlock, Maryland) (MM Docket No. 84–786, RM–4655, RM–4721, RM–4746 [1]).

Adopted: May 21, 1985.
Released: June 6, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making,* 49 FR 33461, published August 23, 1984, in response to petitions filed by Gregory W. Guise ("Guise") seeking the allotment of FM Channel 221A to Fenwick Island, Delaware (RM–4721), and the Muir Corporation ("Muir"), requesting the allotment of Channel 265A [2] to Hurlock, Maryland (RM–4655).

[1] Genesis Communications, Incorporated filed a petition for rule making (RM–4746) seeking the allotment of FM Channel 265A to Hurlock, Maryland. The petition has been treated as comments in support of the Hurlock assignment.

[2] The Muir Corporation originally requested Channel 221A, but that channel could not be

Continued

Guise and Muir filed comments in support of the *Notice* and reaffirmed their intention to apply for the channel. Fenwick Island Communications ("Fenwick") also filed supporting comments and stated its intention to apply for the channel alloted to Fenwick Island.

2. Channel 221A can be alloted to Fenwick Island in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of approximately 3.2 miles south of the community. The site restriction will prevent a short spacing to the allotment of Channel 222A at Wildwood Crest, New Jersey. At the same time, Channel 265A can be allotted to Hurlock, Maryland, in compliance with the Commission's mileage separation requirements provided there is a site restriction. The Hurlock allotment requires a site restriction of 0.3 miles south of the community.

3. In view of the above considerations, we believe the public interest would be served by a grant of each petitioner's request, since it could provide for a first FM service to Fenwick Island, Delaware and Hurlock, Maryland.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 15, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below:

City	Channel No.
Fenwick Island, MD	221A
Hurlock, MD	265A

5. The window period for filing applications will open on June 13, 1985 and close on July 12, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

assigned to Hurlock and Fenwick Island, Maryland. Therefore, we proposed Channel 265A at Hurlock as a substitute.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14167 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–656; RM–4710]

FM Broadcast Stations in Mechanicsville, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 252A to Mechanicsville, Maryland, in response to a petition filed by Roy Robertson d/b/a Southern Maryland Broadcasting Co. The allotment could provide a first local broadcast service for Mechanicsville.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments FM Broadcast Stations. (Mechanicsville, Maryland) (MM Docket No. 84–656, RM–4710).

Adopted: May 22, 1985.

Released: June 5, 1985.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 29422, published July 20, 1984, in response to a petition filed by Roy Robertson d/b/a Southern Maryland Broadcasting Co. ("petitioner"). The *Notice* proposed the allotment of FM Channel 252A to Mechanicsville, Maryland, as that community's first FM service. Petitioner filed comments in support of the *Notice* and stated its intention to apply for the channel.

2. Channel 252A can be allotted to Mechanicsville, in compliance with the minimum distance separation requirements of section 73.207 of the Commission's Rules, provided there is a site restriction of approximately 1.8 miles southwest of the community. The site restriction will prevent a short spacing to FM station WSUX, Channel 252A, Seaford, Delaware.

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first FM service to Mechanicsville.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 12, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
Mechanicsville, MD	252 A

5. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14164 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–297; RM–4596]

FM Broadcast Stations in Eastland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 249A to Eastland, Texas, as that community's second FM allotment in response to a petition filed by Breckenridge Broadcasting Company.

EFFECTIVE DATE: July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions relating or interpreted or applied by actions are cited in text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Eastland, Texas) (MM Docket No. 84–297, RM-4800)

Adopted: May 21, 1985
Released: June 6, 1985

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is its Notice of Proposed Rule Making, 49 FR 14745, published April 12, 1984, proposing the allotment of Channel 249A to Eastland, Texas, as that community's second FM assignment. The Notice was adopted in response to a petition filed by Breckenridge Broadcasting Company ("petitioner"), licensee of Stations KEAS (AM), Eastland, Texas, and KROO (FM), Breckenridge, Texas. Petitioner filed supporting comments restating its intention to apply for the channel, if assigned. Micromedia,[1] a partnership composed of Don Pierson, Ann Pierson, and Gray Pierson ("Micromedia") filed comments to which petitioner replied.

2. In its opposition Micromedia asserts that "any new broadcast facility in Eastland would not only fail to be economically viable but would, in fact, imperil the economic viability of the two existing stations." Further, if petitioner is ultimately granted a license for the new facility" its ownership of an AM station in Eastland and an FM station within "23 miles" of Eastland would lead to "an over-concentration of facilities bordering on monopolistic" in the Eastland, Texas, market. In conclusion, Micromedia argues that if Channel 249A is allocated to Eastland, it will "make this channel unavailable for assignment to a number of cities currently lacking any broadcast facilities whatsoever. . . ."

[1] Micromedia is the licensee of Station KVMX (AM), Eastland, Texas.

3. In response, petitioner argues that Micromedia's opposition should be "rejected as an unwarranted attempt to protect its competitive position in Eastland." In support, petitioner points out the "Commission long ago rejected the argument that a proposed FM assignment should be denied on economic viability grounds." Further, Micromedia's assertions of "monopolistic" impact are not a "legitimate issue" since "the issue in this proceeding is not whether [it] should be granted a permit but whether the assignment should be made by the Commission." As to the preclusive effect of this assignment upon surrounding communities, petitioner argues that "Micromedia has made no showing that the channel could technically be assigned [elsewhere] or that there is any interest in such alternative assignments."

4. As a preliminary matter, the Commission eliminated many of its previous policy considerations including its criteria for determining when a community presumably has its fair share of channel assignments. As a result, the Commission no longer considers the preclusive impact on surrounding communities. See *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). However, the focal point of Micromedia's opposition appears to be its concern of economic harm to its existing station. That argument is not a sufficient justification for denial of this proposal. For as we have held on other occasions, if the community's status is not questionable, and a proponent believes that there is a need for additional service, the Commission has no reason to question such judgment. See *Sacramento, California*, 50 RR 2d 951 (1982); and *Chadron, Nebraska*, 52 RR 2d 1480 (1982) and cases cited therein. Micromedia's objections relate to the consequences if petitioner should become the successful applicant and that is a matter which can best be addressed at the application stage rather than in a rulemaking proceeding. See *Kankakee and Crete, Illinois, et. al.*, 48 Fed. Reg. 53178, published September 22, 1983. *Sacramento, California*, and *Chadron, Nebraska, supra*.

5. In view of the above considerations and finding no policy objections to the proposal, we believe the public interest would be served by the allotment of Channel 249A to Eastland, Texas, since it could provide that community with its second FM channel. The channel can be allotted in compliance with the minimum distance separation and other technical requirements.

PART 73—[AMENDED]

§ 73.202 [Amended]

6. Accordingly, pursuant to the authority contained in §§ 4(i), (5)(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 15, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Eastland, TX	244A, and 249A

7. It is further ordered, that this proceeding is terminated.

8. The window period for filing applications will open June 13, 1985, and close July 12, 1985.

9. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–14166 Filed 6–11–85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC–43 (Sub-14)]

Lease and Interchange Regulations (Master Leases); Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction of final rule.

SUMMARY: At 49 FR 47268, December 3, 1984, the Commission adopted final rules modifying existing leasing regulations. The new rules allow the use of master leases and allow required receipts to be transmitted by mail, telegraph, or other similar means of communications. Those rules added a new sentence to 49 CFR 1057.11(d)(1) which was inadvertently removed at 49 FR 47850, December 7, 1985, (Ex Parte MC–43 (Sub-No. 15)), when paragraph (d)(1) was revised. This notice corrects § 1057.11 by adding the sentence that was removed.

FOR FURTHER INFORMATION CONTACT:
Judy Ann Barnes, (202) 275–7962.

SUPPLEMENTARY INFORMATION: To correct the rule originally published at

49 FR 47268, December 7, 1984, 49 FR 47850, December 7, 1984, the following sentence is added to the end of § 1057.11(d)(1):

§ 1057.11 General leasing requirements.

* * * * *

(d) * * *

(1) * * * As to lease agreements negotiated under a master lease, this provision is complied with by having a copy of a master lease in the unit of equipment in question and where the balance of documentation called for by this paragraph is included in the freight documents prepared for the specific movement.

* * * * *

James H. Bayne,

Secretary.

[FR Doc. 85-14094 Filed 6-11-85; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1152

[Ex Parte No. 274 (Sub-8B]

Exemption of Out of Service Rail Lines; Notice to the Department of Defense

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; procedural change.

SUMMARY: The Commission is modifying its regulations at 49 CFR Part 1152, Subpart F, to require railroads to notify, in writing, the Department of Defense (Military Traffic Management Command), at least 10 days prior to the filing of a notice of exemption, that a railroad line out of service for at least two years will be abandoned, or that service or trackage rights over the line will be discontinued. DOD requests that we provide them the same advance notification as they now must provide to Public Service Commissions. Modification of our regulations to require railroads to notify MTMC as well as Public Service Commissions will not unduly burden the railroads and will increase the time available for DOD to evaluate the relation of a specific rail line to the Nation's defense needs.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245;

or

Wayne A. Michel, (202) 275-7657.

SUPPLEMENTARY INFORMATION: Under 49 CFR Part 1152.50(d)(1), at least 10 days prior to filing a notice of exemption with the Commission, a railroad seeking exemption under 49 CFR Part 1152, Subpart F, is required to notify the Public Service Commission (or equivalent agency) in the State(s) where a line will be abandoned or the service or trackage rights discontinued.

The United States Department of Defense (DOD) requests that we require railroads to provide the same advance notification to the Military Traffic Management Command (MTMC) as they now must provide to Public Service Commissions. Modification of our regulations to require railroads to notify MTMC as well as Public Service Commissions will not unduly burden the railroads and will increase the time available for DOD to evaluate the relation of a specific rail line to the Nation's defense needs. Accordingly, the revision in the Appendix is adopted.

The proposed minor procedural change will not have a significant economic impact on a substantial number of small entities.

This action does not significantly affect either the quality of the human environment or energy conservation.

Comments: Since this is a minor procedural change, formal comments are unnecessary. 5 U.S.C. 553(b)(A).

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

These final rules are issued pursuant to 5 U.S.C. 553, and 553(b)(A) and 49 U.S.C. 10321 and 10903, *et seq.*

Dated: May 28, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1152—[AMENDED]

1. The authority citation for Part 1152 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10903-10905; 5 U.S.C. 559; 45 U.S.C. 904 and 915, unless otherwise noted.

2. Paragraph (d)(1) of § 1152.50 is revised to read as follows:

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

* * * * *

(d) *Notice of exemption.* (1) At least 10 days prior to filing a notice of exemption with the Commission, the railroad seeking the exemption must notify in writing (i) the Public Service Commission (or equivalent agency) in the State(s) where the line will be abandoned or the service or trackage rights discontinued, and (ii) the United States Department of Defense (Military Traffic Management Command). The notice shall name the railroad, describe the line involved, indicate the exemption procedure is being used, and include the approximate date that the notice of exemption will be filed with the Commission.

* * * * *

FR Doc. 85-14092 Filed 6-11-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat for the Niangua Darter (Etheostoma Nianguae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Niangua darter (*Etheostoma nianquae*) to be a threatened species and designates its critical habitat under the authority contained in the Endangered Species Act of 1973, as amended. A special rule allowing take for certain purposes in accordance with State laws and regulations is established. This fish is presently known only from the Osage River Basin of west-centeral Missouri. It is rare, localized in occurrence, and vulnerable to extinction. Reservoir construction, stream channelization, accelerated erosion and sedimentation, nutrient enrichment, and introduction of potential predators are threats to the Niangua darter. The final rule will provide the protection of the Endangered Species Act to this species. The Service will initiate recovery efforts for the Niangua darter.

EFFECTIVE DATE: July 12. 1985.

ADDRESSES: The complete file for this rule is available for inspection during business hours (7:00 a.m.-4:30 p.m.) at the Endangered Species Office, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Engel (see **ADDRESSES** section) (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

The Niangua darter, a percid fish, was first described by Gibert and Meek in 1888 (Gilbert, 1886). Pflieger (1975) described the fish as a slender darter with about eight dark cross-bars on the back, readily distinguished from other Missouri darters by the presence of two small jet-black spots at the base of the caudal fin. Adults are 3 to 4 inches long. Life colors and other characteristics were given by Pflieger (1975). The only near-relative of the Niangua darter is the arrow darter (*Etheostoma sagitta*), which occurs in eastern Kentucky and northern Tennessee. The Niangua darter is known only from a few tributaries of the Osage River in Missouri (Pflieger, 1971). The species inhabits clear, medium-sized streams draining hilly areas underlain by chert, dolomitic bedrocks. It perfers the margins of shallow pools with silt-free gravelly or rocky bottoms. Spawning occurs on swift, gravel riffles. Nymphs of stoneflies and mayflies gleaned from crevices of the stream bottom comprise the diet of the Niangua darter.

Pflieger (1978) reported 8 populations of the Niangua darter along 128 miles of the Osage River Basin, Missouri. Specifically, these populations were located in the Maries River and lower Maries Creek, Osage County; Big Tavern Creek and upper Little Tavern Creek, Barren Fork, and Brushy Fork, Miller County; Niangua River and Greasy Creek, Dallas County; Little Niangua River, Starks Creek, Thomas Creek, and Cahoochie Creek, Camden, Hickory and Dallas Counties; Little Pomme de Terre River, Benton County; Pomme de Terre River, Greene and Webster Counties; Brush Creek, Cedar and St. Clair Counties; and the North Dry Sac River, Polk County. The Niangua darter is part of a diverse fish fauna of 107 species in the Osage Basin. Although historical numbers are unknown, it is believed that the Niangua darter population has declined at most sites in recent years. Pflieger (1978) searched extensively for the species in the Osage River Basin where it was found at 64 of 168 stations sampled. Intensive analyses of habitat, abundance, and life history were made at these 64 sites. The species is rare, localized in occurrence, and vulnerable to extinction.

In 1979, the American Fisheries Society's Endangered Species Committee expressed its opinion that the Niangua darter was a threatened species (Deacon *et al.*, 1979). On December 10, 1980, the Service received a petition from the Ozark Endangered Species Task Force to list the Niangua darter as a threatened species. The petition was based on the comprehensive report on the Niangua darter by William L. Pflieger (1978) of the Missouri Department of Conservation. The report by Pflieger was based on research carried out between 1974 and 1977. It included a thorough review of the literature, and information on the distribution and life history of the Niangua darter. It also recommended threatened status for the darter throughout its range. The Service accepted the petition on April 9, 1981, and indicated its intent to prepare a proposed rule to list the Niangua darter as a threatened species (46 FR 21208). The Niangua darter was also included in the Service's Notice of Review of Vertebrate Wildlife published December 30, 1982 (47 FR 58454–60).

On April 17, 1984, the Service published a proposed rule in the **Federal Register** (49 FR 15102–09) to list the Niangua darter as a threatened species with critical habitat. The proposal solicited comments from any interested parties concerning threats to this species, its distribution and range, whether or not critical habitat should be designated, and activities that might impact the species.

Summary of Comments and Recommendations

In the proposal of April 17, 1984, all interested parties were requested to submit information on the status of the Niangua darter that might contribute to the development of a final rule. Subsequently, letters were sent to appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties notifying them of the proposal and soliciting their comments and suggestions. Newspaper notices were published in three Missouri newspapers which invited general public comment. Three comments were received and are discussed below.

The Missouri Department of Conservation supported the proposed rule. Most of the data for the proposal are from the Missouri Department of Conservation. One public comment recommended endangered status but offered no supporting data. The U.S. Army Corps of Engineers recommended that the downstream limit of the proposed critical habitat on Brush Creek be reestablished at least 1,000 feet upstream from the currently proposed downstream limit at County Road J. The Corps reasoned that the operation of two Corps' projects, Harry S. Truman Reservoir and Stockton Lake, may affect brush Creek. Specifically, the hydrologic evaluation indicates that the maximum flood control pool of the reservior and lake may be exceeded on the average of once every 100 years. If the flood storage capacities of both the lake and reservoir are concurrently exceeded the water surface would extend approximately 1,000 feet upstream from county Road J, the current downstream limit of the Niangua darter's proposed critical habitat. The Service believes that deletion of the small area on the lower portion of this segment of the critical habitat would not reduce the protection of the Niangua darter and its habitat. The Service accepted the Corps's reason for this deletion and reestablished the critical habitat boundary for Brush Creek.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Niangua darter should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Niangua darter (*Etheostoma nianguae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Reservoir construction, siltation, and stream channelization are threats to the Niangua darter. One of the eight populations of Niangua darters reported by Pflieger (1978) has been extirpated. the Truman Reservior has inundated all of the know distribution of the species in the Little Pomme de Terre River and repeated sampling has failed to collect any Niangua darters. The reservior also presents a barrier to the movement of the species between habitable tributary streams. Such movements are important to the long-term survival of the species. Stream channelization projects, often associated with highway and bridge construction, straighten and widen stream channels and frequently cause increased erosion and siltation. Landowners channelize streams to control local flooding. These practices, leading to sedimentation and pollution, are general and pervasive throughout the range of the Niangua darter and represent a major threat to the species. In addition to stream channelization, the practice of removing woody vegetation from stream channels causes increased

erosion, changes in the character of the stream substrate, elimination of pools, and the alteration of stream flow, all of which seriously disrupt the stream ecosystem.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that the Niangua darter is overutilized for any of these purposes.

C. *Disease or predation.* Although disease is not known to be a factor affecting the species, the introduction of piscivorous fishes could be detrimental to the Niangua darter. The spotted bass (*Micropterus punctulatus*) and rock bass (*Ambloplites rupestris*) were introduced into the Osage Basin before 1940 and are now widely distributed. Reservior habitat is ideal for these predators and serves as large population centers. The movement of these predatory fishes from reservoirs into tributary streams inhabited by the Niangua darter could further reduct the darter population.

D. *The inadequacy of existing regulatory mechanisms.* Current regulations protecting the Niangua darter are limited to the State of Missouri's collecting permit requirements for fishes. At present, there is no mechanism for habitat protection. The Endangered Species Act will provide protection for the species and its habitat through the requirements of sections 7 and 9.

E. *Other natural or manmade factors affecting its continued existence.* None are known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Niangua darter in determining to make this rule final. Based on this evaluation, the preferred action is to list the Niangua darter as threatened with critical habitat. Threatened status is appropriate because, although not immediately in danger extinction, the species is likely to become endangered if trends in population decline and habitat alteration continue. Proper and adequate management could prevent the species from becoming endangered. Reasons for critical habitat designation are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being designated for the Niangua darter to include 90 of the 128 miles of streams inhabited by the species plus a 50 foot riparian zone along each side of the 90 miles of stream. The critical habitat is located in Camden, Cedar, Dallas, Greene, Hickory, Miller, and St. Clair Counties, Missouri. The critical habitat is based primarily on the recommendation of the Missouri Department of Conservation.

In considering designation of critical habitat, 50 CFR 424.12(b) requires consideration of the biological or physical constituent elements within the defined area that are essential to the conservation of the species involved. With respect to the Niangua darter, the critical habitat satisfies all known criteria for the ecological, behavioral, and physiological requirements of the species. The streams are largely undisturbed and possess the habitat characteristics described for the Niangua darter by Pflieger (1978). The 50 foot riparian zone along each side of the stream is included in the critical habitat designation because this zone is helpful in preventing runoff pollutants from entering the stream and reduces siltation, and thereby protects the chemical and physical properties of the stream ecosystem. The vegetation in the riparian zone provides shading to the stream which helps stabilize the water temperature and dissolved oxygen levels. Populations of the fish survive and reproduce within the designated critical habitat.

Section 4(b)(8) of the Act requires, for any final regulation that determines critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat, if undertaken, or may be affected by such designation. In the case of the Niangua darter, such activities could include reservoir construction, stream channelization, removal of stream channel vegetation, erosion, sedimentation, nutrient enrichment from adjoining land, sewage discharge, and introduction of nonnative fishes that are predators or competitors of the species. Two Corps projects, the Harry S. Truman Reservoir and Stockton Lake, are located in the vicinity of the Brush Creek portion of the proposed critical habitat. A 100-year flood event would cause the waters of the reservoir and Stockton Lake to back up and inundate about 1,000 feet of Brush Creek. This inundation renders the habitat unsuitable for the Niangua darter. Consequently, the area affected by the inundation was removed from the critical habitat designation. For these reasons, the two Corps projects are not expected to affect or be affected by the designation of critical habitat.

Stream channelization projects, often associated with road and bridge construction and maintenance, may result in erosion and siltation and affect the proposed critical habitat. Currently, there are no known or planned road or bridge projects within or in the vicinity of the proposed critical habitat. In addition, there is no known involvement of Federal funds or permits for the activities occurring on private land within the proposed critical habitat area.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. To obtain this information the Service contacted Federal agencies that could possibly be involved in constructing, authorizing, or funding projects within the critical habitat. The Service has evaluated the critical habitat designation after considering all available information and concludes that no additional adjustments to the area proposed as critical habitat are warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The section 7 responsibilities of Federal agencies and the Act's general prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision

of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy to adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. At present there are no known Federal actions which will be affected by this rule.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The Niangua darter is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species for commercial purposes. Given this fact and the fact that the State effectively regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State regulation is adequate to protect the species from excessive taking, so long as taking is allowed only for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the Service issues a special rule allowing take for the above-stated purposes without the need for a Federal permit, if a valid collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this special rule is necessary and advisable for the conservation of the Niangua darter.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat areas are located entirely on private land. There is no known involvement of Federal funds or permits for these private lands. Consequently, no adverse effects on small entities within the area affected by the designation of critical habitat have been identified and none are expected. No direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects that is available at the Regional Office address (see ADDRESSES section).

Literature Cited

Deacon, J.E., G. Kobetich, J.D. Williams, and S. Contreras. 1979. Fishes of North America—endangered, threatened, or of special concern. Fisheries 4(2):29–44.

Gilbert, C.H. 1888. Descriptions of new and little known etheostomids. Proc. U.S. Nat. Mus. 10:47–64.

Missouri Department of Conservation. 1974. Rare and endangered species of Missouri. 80 pp.

Pflieger, W.L. 1971. A distributional study of Missouri fishes. Mus. Nat. Hist., Univ. Kansas, Publ. 20(3):229–570.

Pflieger, W.L. 1975. The fishes of Missouri. Missouri Dept. of Conservation. 342 pp.

Pflieger, W.L. 1978. Distribution, status, and life history of the Niangua darter, *Etheostoma nianguae*. Aquatic Ser. No. 16. Missouri Dept. of Conservation. 24 pp.

Author

The primary author of this final rule is Mr. John G. Sidle, Endangered Species Office, U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Darter, Niangua	*Etheostoma nianguae*	U.S.A. (MO)	Entire	T	184	17.95(e)	17.44(k)

3. Add the following as a special rule to § 17.44:

§ 17.44 Special rules—fishes.

(k) Niangua Darter, *Etheostoma nianguae.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) of this paragraph.

4. Amend § 17.95(e) by adding critical habitat for the Niangua darter, in the same sequence that it appears in § 17.11(h), as follows:

§ 17.95 Critical habitat—fish and wildlife.

Niangua Darter

(Etheostoma nianguae)

Missouri. Big Tavern Creek, Miller County. Big Tavern Creek and 50 feet along each side of the creek from Highway 52 upstream to Highway 17.



Missouri. Niangua River, Dallas County. Niangua River and 50 feet on each side of the river from county road K upstream to 1 mile beyond county road M to the Webster County line.

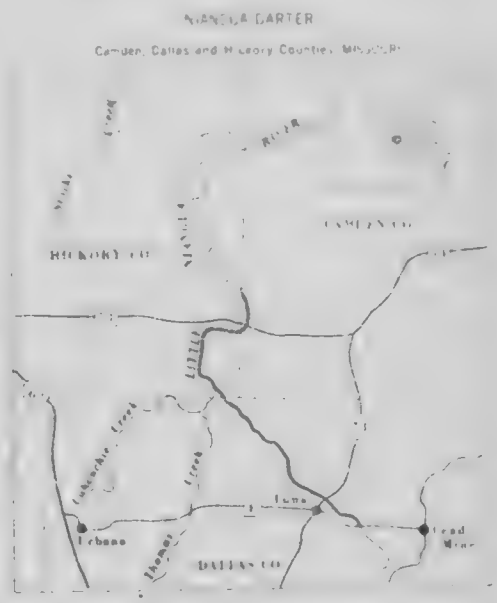
Missouri. Pomme de Terre River, Greene County. Pomme de Terre River and 50 feet on each side of the river from Highway 65 upstream to the Webster County line.



Missouri. Brush Creek, Cedar, and St. Clair Counties. Brush Creek and 50 feet on each side of the creek from 1000 feet upstream of county road J to the boundary of Sections 34 and 35, Township 36 N, Range 25 W



Missouri. Little Niangua River, Camden, Dallas, and Hickory Counties. Little Niangua River and 50 feet on each side of the river from 1 mile below (downstream of) Highway 54, Camden County, to county road E, Dallas County.



Constituent elements, for all areas designated as critical habitat, consist of medium-sized creeks with silt-free pools and riffles and moderately clear water draining hilly areas underlain by chert and dolomite. Water ranges from 8 to 46 inches in depth over gravel with scattered rubble.

* * * * *

(Final: Niangua darter (*Etheostoma nianguae*)—threatened with critical habitat)

Dated: May 15, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-13993 Filed 6-11-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 113
Wednesday, June 12, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-39]

Southern California Edison Co.; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from Southern California Edison Company; correction.

SUMMARY: In the notice of receipt of petition for rulemaking PRM–50–39 filed by Southern California Edison Company and published in the **Federal Register** on May 20, 1985 (50 FR 20799), the 60 day comment expiration date for receiving comments was inadvertently omitted. The comment period expires July 22, 1985.

Dated at Washington, DC this 6th day of June 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 14176 Filed 6–11–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR–10–83]

Administrative Summonses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to administrative summonses. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations provide the public with the guidance needed to comply with that Act and affect persons who received summonses, third party recordkeepers who receive summonses, and persons with respect to whose tax liability a summons is issued.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 12, 1985. The regulations pertaining to section 7602 of the Code are proposed to be effective after September 3, 1982.

The regulations pertaining to section 7609 of the Code are proposed to be effective for summonses served after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–10–83], 1111 Constitution Avenue, NW, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, (Attention: CC:LR:T) 202–566–3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations would amend the Regulations on Procedure and Administration (26 CFR Part 301) under sections 7602 and 7609 of the Internal Revenue Code of 1954. Changes to the applicable tax law were made by sections 331, 332, and 333 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 620). The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68 A Stat. 917; 26 U.S.C. 7805).

Administrative Summonses

Under prior law the Secretary could issue summonses allowing for the examination of books, records, or witnesses for the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax, or collecting such liability. The Secretary could not issue an administrative summons once the Internal Revenue Service had referred the case to the Justice Department for criminal prosecution, or had made an institutional commitment to refer the case to the Justice Department for criminal prosecution. This judicially conceived limitation, articulated in the case of *United States* v. *Lasalle*, 437 U.S. 298 (1978), spawned protracted litigation.

In order to simplify the determination of when the power to issue an administrative summons exists and when it does not exist in cases with a criminal aspect, Congress promulgated section 333 of TEFRA. The Act expands the Secretary's authority by including the right to issue a summons for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws. Concurrently, the Act establishes a mechanical test for determining when the Secretary no longer has the power to issue a summons. The former test, based on institutional commitment, is abolished. Under the new test, the Secretary ceases to have authority to issue a summons once a case is referred to the Department of Justice.

These proposed regulations provide guidelines for determining when a referral to the Department of Justice is in effect.

Special Procedure for Third-Party Summonses

Generally, when a summons is served upon a third-part recordkeeper (recordkeeper) to examine records, section 7609(a) requires that notice be given of the service of the summons to the taxpayer and any other person who is identified in the description of the records contained in the body of the summons (the notified person). Under prior law, the notified person could prevent the recordkeeper from complying with a third-party summons by notifying the recordkeeper in writing not to comply with the summons and mailing a copy of this notice to the Secretary by registered or certified mail. The burden was on the Service to commence a proceeding to enforce the summons. These provisions were used frequently by taxpayers, solely to delay enforcement of summonses without regard to the merit of any objection they might have.

Section 331 of TEFRA shifts the burden of commencing litigation with respect to the validity of a third-party summons to the notified person. The notified person's right to stay compliance is replaced with the right to institute a proceeding to quash.

In addition, under prior law, there was no requirement that third-party

recordkeepers immediately proceed to assemble summoned records. Section 332 of TEFRA requires recordkeepers to assemble the summoned records within the time allotted on the face of the summons.

These regulations contain interpretative guidelines as to how a notified person may institute a proceeding to quash. They also contain guidelines setting forth the duty of recordkeepers to assemble records, and procedures by which recordkeepers may be relieved of liability for disclosing records under certain circumstances.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Anaylsis is not required. Although this document is a notice of proposed rulemaking that solicits public comments the Internal Revenue Service has concluded that these regulations are interpretive and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these proposed regulations is Bruce H. Jurist of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subject in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 301 are as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues in part to read:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7602–1 is amended by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d). The amended section reads as follows:

§ 301.7602–1 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, collecting any such liability, or inquiring into any offense connected with the administration or enforcement of the internal revenue laws, and any authorized officer or employee of the Internal Revenue Service may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) *Summons.* For the purposes described in paragraph (a) of this section the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper to appear before a designated officer or employee of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be utilized in an investigation of either civil or criminal tax-related liability. The Commissioner may designate any employee of the Internal Revenue Service as the individual before whom a person summoned pursuant to section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602 shall appear. Any such employee, when so designated in a summons, is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons.

(c) *Proscription on issuing of administrative summons when a Justice Department referral is in affect*—(1) *In general.* The Commission may neither issue a summons under this title nor initiate a proceeding to enforce a previously issued summons by way of section 7604 with respect to any person whose tax liability is in issue, if a Justice Department referral is in effect with respect to that person for that liability.

(2) *Justice Department referral in effect.* A Justice Department referral is in effect with respect to any person when:

(i) The Secretary recommends, within the meaning of this paragraph, that the Attorney General either commence a grand jury investigation of or criminal prosecution of such person for any alleged offense connected with the administration or enforcement of the internal revenue laws, or

(ii) The Attorney General (or Deputy Attorney General or Assistant Attorney General) under section 6103(h)(3)(B) requests in writing that the Secretary disclose a return of, or return information relating to, such person. The request must set forth that the need for disclosure is for tax administration purposes. The referral is effective at the time the document recommending criminal prosecution or grand jury investigation is signed by the Secretary or upon the Secretary's receipt of the section 6103(h)(3)(B) request.

(3) *Cessation of Justice Department referral.* A Justice Department referral ceases to be in effect with respect to a person:

(i) When the Secretary receives written notification from the Attorney General that the Justice Department:

(A) Will not prosecute that person for any offense connected with the administration or enforcement of the internal revenue laws that gave rise to the referral under paragraph (2)(i) of this section, or

(B) Will not authorize a grand jury investigation of that person with respect to such offense, or

(C) Will discontinue any grand jury investigation of that person with respect to such offense;

(ii) When a final disposition with respect to a criminal proceeding brought against that person has been made; or

(iii) When the Secretary receives written notification from the Attorney General, Deputy Attorney General, or an Assistant Attorney General, that the Justice Department will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws, based upon a previous request for disclosure under section 6103(h)(3)(B).

(4) *Taxable years and taxes imposed by separate chapters of the Code treated separately*—(i) *In general.* For purposes of this section, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of the Code is treated separately.

(ii) Examples. The following examples illustrate the application of this paragraph (c)(4):

Example (1) A Justice Department referral is in effect for D's criminal evasion of income tax for the taxable year 1979. The Commissioner may issue a summons respecting D's 1980 criminal and/or civil tax liability. The Commissioner may not issue a summons respecting D's 1979 income tax liability.

Example (2) A referral has been made to the Department of Justice for the criminal proscecution of F with regard to F's income tax liability for the taxable year 1978. The Commissioner may issue a summons respecting F's gift tax liability for the taxable year 1978.

Example (3) A referral has been made to the Department of Justice for a grand jury investigation respecting G's 1980 income tax liability. The Commissioner may issue a summons related to an investigation of G's liability for Federal Insurance Contribution Act (FICA) taxes for the taxable year 1980.

Example (4) A referral has been made to the Department of Justice respecting J's criminal evasion of windfall profit tax for all quarters of the calendar year 1982. The Commissioner may issue a summons respecting J's liability for highway motor vehicle use tax covering the same periods.

(d) *Effective date.* This section is effective after September 3, 1982. For rules effective on or before September 3, 1982, see 26 CFR 301.7602–1 (revised as of April 1, 1984).

Par. 3. Section 301.7609–1 is amended by designating the original text as paragraph (a), revising redesignated paragraph (a), and adding a new paragraph (b). The amended section reads as follows:

§ 301.7609–1 Special procedures for third-party summonses.

(a) *In general.* Section 7609 requires the Internal Revenue Service to follow special procedures when summoning the records of persons defined by section 7609(a)(3) as "third'party recordkeepers." Under these special procedures, the person about whom information is being gathered must be notified in advance in many cases. If the person about whom information is being gathered has received a notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed to such notified persons, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitations are suspended under section 7609(e). Section 7609 does not restrict the authority under section 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination. Sections 301.7609–1 through 301.7609–5 relate to section 7609; § 301.7609–2, discusses matters under sections 7609(a)(3) and 7609 (i) relating to third-party recordkeepers; § 301.7609–3 discusses matters under section 7609(b), relating to intervention rights; and the institution of a proceeding to quash; § 301.7609–4 discusses matters under section 7609(c), relating to summonses excepted from the section 7609 procedures; and § 301.7609–5 discusses matters under section 7609(e), relating to the suspension of the statute of limitations.

(b) *Effective dates.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and served before January 1, 1983, see 26 CFR 301.7609–1 (revised as of April 1, 1984).

Par. 4. Section 301.7609–2 is amended by adding new paragraphs (c) and (d). The amended section reads as follows:

§ 301.7609–2 Third-party recordkeepers.

* * * * *

(c) *Duty of third-party recordkeeper*—(1) *In general.* Upon receipt of a summons, the third-party recordkeeper ("recordkeeper") must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the records are to be examined regardless of the institution or anticipated institution of a proceeding to quash or the recordkeeper's intervention (as allowed under section 7609(b)(2)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable*—(1) *In general.* A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the certificate of the Secretary (as defined in paragraph (c)(2)(ii) of this section) or an order of a court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary.* The Secretary may issue to the recordkeeper a certificate stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons, has expired; and

(B) That no proceeding has been properly instituted within that period.

The Secretary may also issue a certificate to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs.* Recordkeepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by section 7610, even if the summons ultimately is not enforced.

(d) *Effective dates.* This section, with the exception of paragraph (c), applies generally to all summonses issued on or after March 1, 1977. Paragraph (c) applies only to summonses seved after December 31, 1982.

Par. 5. Section 301.7609–3 is amended by revising paragraphs (a), (b), (c), and by adding new paragraph (d). The amended section reads as follows:

§ 301.7609–3 Right to intervene; right to institute a proceeding to quash.

(a) *Notified person.* Under section 7609(a), the Internal Revenue Service must give notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Service to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Service issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under section 7609(a). Therefore, if the Service requests the records of a joint bank account of A and B both of whom are named in the summons, then both A and B are notified persons entitled to notice under section 7609(a).

(b) *Right to institute a proceeding to quash*—(1) *In general.* Section 7609(b) grants a notified person the right to institute a proceeding to quash the

summons in the United States district court for the district within which the person summoned resides or is found. Jurusdiction of the court is based on section 7609(h). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under section 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by section 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash.* In order to institute a proceeding to quash a summons the notified person (or the notified person's agent, nominee, of other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in a district court having jurisdiction,

(ii) Notify the Service by sending a copy of that petition by registered or certified mail to the Service employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition. Failure to give timely notice to either the summoned party or the Service in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Service employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person but, instead of sending a copy of the notice by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash.* If the notified person fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such notified person, the Service may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see section 7609(d)(1)).

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Service and the summoned person. Unless the notified person has notified both the Service and the summoned person in the appropriate manner, the notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Service within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed.

(d) *Effective date.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and served before January 1, 1983, see 26 CFR 301.7609–3 (revised as of April 1, 1984).

Par. 6. Section 301.7609–4 is amended by adding new paragraph (c). The amended section reads as follows:

§ 301.7609–4 Summons excepted from section 7609 procedures.

* * * * *

(c) *Effective date.* This section applies to all summonses issued after February 28, 1977.

Par. 6. Section 301.7609–5 is amended by revising paragraphs (b) and (c) and by adding new paragraph (d).

The amended section reads as follows.

§ 301.7609–5 Suspension of statutes of limitation.

* * * * *

(b) *Period during which a proceeding, etc., is pending.* Under section 7609(e), the statute of limitations may be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending. This period begins on the date the petition to quash the summons is filed in District Court. The period continues until all appeals are disposed of, or until the expiration of the period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. Of course, if the notified person takes no action provided in subsection (b) of section 7609, no suspension of the statutes of limitations takes place. The periods of limitations which are suspended under section 7609(e) are those which apply to the taxable periods to which the summons relates.

(c) Taking of action as provided in section 7609(b). Section 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase "takes any action as provided in subsection (b)", found in section 7609(e), includes any intervention, whether or not section 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of section 7609(b)(2), relating to the right of a person to institute a proceeding to quash. Thus, for instance, if a notified person notifies a person who has been summoned by sending a copy of the petition by registered or certified mail but does not mail a copy of that notice to the appropriate person and office under section 7609(b)(2)(B), the notified person has taken an action under section 7609(e).

(d) *Effective dates.* This section applies to summonses served after December 13, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and before January 1, 1983, see 26 CFR 301.7609–5 (revised as of April 1, 1984).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–13957 Filed 6–11–85; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–2849–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Correction

AGENCY: Environmental Protection Agency [EPA].

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency [EPA] today is correcting several typographical errors and omissions in a proposed rule that was published in the **Federal Register** on June 5, 1985 [50 FR 23721–23728]. That rule proposed to exclude solid wastes generated by EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000. For technical information, contact Dr. Doreen Sterling, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M

Street SW., Washington, D.C. 20460, (202) 475–6775.

SUPPLEMENTARY INFORMATION: The following corrections and additions are made in FR Doc. 85–2845–7 appearing on 23721 in the issue of June 5, 1985.

1. On page 23722, column 1, line 3, insert after "[POHCs] which are", the word, "as".

2. On page 23722, column 2, line 22, delete the comma between "hazardous" and "waste".

3. On page 23722, column 2, line 2 under heading Petitioner, change "involes" to "involves".

4. On page 23724, column 2, line 33, insert a period after the word "capacity" and change "if" to "If".

5. On page 23725, Table 4, delete vertical lines between columns "wastewater" and "Detection Limit"; between columns "kiln ash" and "Detection Limit"; and between columns "CHEAF" and "Detection Limit". Delete leaders in column 3, Detection Limit and column 5, Detection Limit.

6. On page 23725, Table 4, parameter 17, Polychlorinated Biphenyls (commercial Alochlor), second column (wastewater) Detection Limit, change "1 ppb" to "1 ppm".

7. On page 23725, Table 4, parameter 21, change "Dibenzo(a,h)anathracene" to "Dibenzo(a,h)anthracene"; parameter 22, change "Indo(1,2,3-c,d) pyrene" to "Indeno(1,2,3-c,d) pyrene".

8. On page 23726, Table 5, parameter 21, change "tetrachloroethlene" to "tetrachloroethylene".

9. On page 23726, Table 6, parameter 1, change "AS" to "As"; parameter 6, change "SE" to "Se".

10. On page 23726, column 2, footnote 10, change "(See Footnote 2)" to "(See Footnote 3)".

11. On page 23728, column 1, insert between last complete paragraph, ending with the words "Agency will drop these conditions." and the paragraph beginning with the words "This regulation" the following paragraphs:

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impant on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a signficant economic impact on a substantial number of small entities."

12. On page 23728, Table 1 under column labeled "waste description", change "[Insert date of publication in the **Federal Register**]" to "June 5, 1985".

Dated: June 6, 1985.

Stephen R. Wassersug,

Acting Assistant Administrator.

[FR Doc. 85–14083 Filed 6–12–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–158; RM–4868]

FM Broadcast Stations in Falmouth, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 266A for Channel 265A, and modification of the permit for Station WFAL at Falmouth, Massachusetts, to specify operation on Channel 266A, in response to a petition filed by Schooner Broadcasting, Inc.

DATES: Comments must be filed on or before July 26, 1985, and reply comments must be filed on or before August 12, 1985.

ADDRESS: Federal Communications Commission, Washingtn, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Falmouth, Massachusetts); MM Docket No. 85–158, RM–4868.

Adopted: May 8, 1985.

Released: June 4, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Schooner Broadcasting, Inc. ("petitioner"), permittee of FM Station WFAL, Channel 265a, Falmouth, Massachusetts, requesting the substitution of FM Channel 266A for Channel 265A and modification of its permit to specify operation on Channel 266A. Channel 266A can be assigned to Falmouth in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 4.7 miles northeast of Falmouth to prevent a short spacing to Station WKKT, Boston, Massachusetts.

2. Petitioner states that the substitution of channels is necessary to alleviate current siting problems for Channel 265A at Falmouth. Petitioner relates that adjacent channel Station WKKT (Channel 264) Boston, Massachusetts, was previously permitted to move its transmitter site approximately 7 miles closer to Falmouth. According to petitioner, this move has created 6 miles of short spacing with respect to the WFAL site and precludes the use of any area in Falmouth as a site for Channel 265A on a fully spaced basis.[1] Moreover, petitioner states that the owner of the property on which WFAL inteneded to place its transmitting tower has indicated that he is no longer willing to have radio tower constructed on his property. Petitioner asserts that it is unable to find an alternate site without

[1] In the rule making proceeding which allotted Channel 265A to Falmouth, Station WKKT had represented that it had an application pending to move its transmitter to a site 6 miles short spaced to the Falmouth proposal. Station WKKT stated that it was willing to provide equivalent protection to the 60 dbu service contour to the proposed Falmouth station.

creating additional short spacing and unacceptable interference. We are told that substitution of Channel 266A for 265A would remedy this situation by providing an adequate area of site selection. Petitioner alleges that grant of the proposed channel change will serve the public interest by allowing Schooner Broadcasting to expeditiously construct the station, providing a second broadcast service to Falmouth.

3. We believe the petitioner's proposal warrants consideration. The channel can be assigned in compliance with the Commission's minimum distance separation requirements. In addition, we shall propose to modify the permit of Station WFAL, Channel 265A, as requested by petitioner, to specify operation on Channel 266A.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. In view of the above, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Falmouth, MA	265A and 270	266A, and 270.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before July 26, 1985, and reply comments on or before August 12, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Linda R. Bains, Vice President & Treasurer, Schooner Broadcasting, Inc., P.O. Box. 671, Pocasset, MA 02559

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. A comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i) 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, section 73.202(b) of the Commission's Rules and Regulations as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–14156 Filed 6–11–85; 8:45 am]
BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 50, No. 113
Wednesday, June 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement with USDA Forest Service; Implementation of Small Tracts Act

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement under § 800.8 of its regulations (36 CFR Part 800) with the USDA Forest Service and the National Conference of State Historic Preservation Officers regarding the protection of historic properties during implementation of the Small Tracts Act Pub. L. 97–465; 2535). The Act provides for the transfer of public lands administrated by the Forest Service to private parties whose buildings and other improvements have through inadvertence been placed on such lands. The Programmatic Agreement will provide for the identification of any historic values potentially affected by such conveyances, and establish mechanisms for their protection. Comments are solicited on approaches to this matter that will afford adequate protection to historic values without unnecessarily encumbering the Forest Service's administration of the Act's provisions. Working drafts of the Programmatic Agreement are available at the address given below.

Comments Due: July 12, 1985.

Dated: June 6, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–14091 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 7, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collectin; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202)447–2118.

Comments on any of the items listed should be sumitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer of USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Farmers Home Administration

7 CFR 1930–C, Management and Supervision of Multiple Family Housing
Borrowers and Grant Recipients
FmHA 444–27A, 1944–8; –25, –27, –29, 1930–5, –6, –7, –8
On occasion; Monthly
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,694,385 responses; 1,972,734 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

- Food and Nutrition Service

Intergated Quality Control Review-Worksheet
FNS 380
On occasion, Recordkeeping
Individuals or households; State or local governments; 68,700 responses; 619,921 hours; not applicable under 3504(h) Joe Bonelli (703) 756–3431

- Food and Nutrition Service

Report of School Program Operations
FNS–10
Monthly, Annually
State or local governments; 2,976 responses; 110,112 hours; not applicable under 3504(h)
Alan Rich (703) 756–3100

- Food Nutrition Service

Report of the Child Care Food Program
FNS 44
Monthly, Quarterly, Annually
State or local governments; 1,584 responses; 4,752 hours; not applicable under 3504(h)
Alan Rich (703) 756–3100

Extension

- Food and Nutrition Service

Report of Coupon Issuance and Commodity Distribution for Disaster Relief
FNS 292
On occasion
State or local governments; 100 responses; 42 hours; not applicable under 3504(h)
Alan Rich (703) 756–3100

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85–14204 Filed 6–11–85; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Bridger-Teton National Forest Grazing Advisory Board; Meeting

The Bridger-Teton National Forest Grazing Advisory Board will meet at 1:00 PM, July 2, 1985 in the US Forest Service Office in Big Piney, Wyoming. The purpose of this meeting is to discuss utilization of range betterment funds

and the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend should notify Forest Supervisor Reid Jackson, Box 1888, Jackson, Wyoming 83001, telephone (307) 733–2752. Written statements may be filed with the board before or after the meeting.

The board has established the following rules for public participation:

1. If a group wishes to be heard at the meeting, they are required to select a chairman to voice their ideas.

2. Persons or groups may send written statements to the Forest Supervisor for presentation at the meeting.

3. The Chairman of the Forest Grazing Advisory Board will set aside a time period on the agenda for public comment.

Reid Jackson,

Forest Supervisor.

[FR Doc. 85–14190 Filed 6–11–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Cumberland Head Critical Area Treatment RC&D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guideline (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cumberland Head Critical Area Treatment RC&D Measure, Clinton County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns of plan for reducing critical erosion along a 90 foot reach of shoreline of Lake Champlain in the Town of Plattsburgh which results from wave action and periodic ice action. The integrity of the adjacent roadbank will be maintained and the annual cost of maintenance will be reduced through the installation of project measures. The planned works of improvement include the construction of a wall consisting of pre-cast, jack-type structures which interlock to preclude movement. The structures will be placed beyond the toe of the existing bank with rock rip-rap placed between the structures and the bank.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 3, 1985.

Paul A. Dodd,

State Conservationist.

[FR Doc. 85–14199 Filed 11–6–85; 8:45 am]

BILLING CODE 3410–16–M

Otisco Lake Watershed, NY; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Otisco Lake Watershed, Onondaga County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, James M. Hanley Federal Building, Room 771, 100 S. Clinton Street, Syracuse, New York 13260, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The project concerns a plan for accelerated application of conservation land treatment measures to control ongoing erosion, sustain long-term soil productivity, reduce sediment and phosphorus delivered to Otisco Lake, thereby improving the overall quality of the lake. Planned works of improvement include the use of conservation tillage systems (minimum and no-till), stripcropping systems, diversions, grass and stone centered waterways, fencing, agricultural waste storage facilities, critical area seedings, and agricultural waste management systems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Paul A. Dodd,

State Conservationist.

[FR Doc. 85–14200 Filed 6–11–85; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:30 p.m. on July 1, 1985, in the

Midwestern Regional Office Conference Room, 230 South Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is to discuss plans for future Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark G. Roberts, Director of the Midwestern Regional Office at (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–14067 Filed 6–11–85; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and will adjourn at 1:00 p.m. on July 13, 1985, at the Sheraton Great Falls, 400 10th Avenue South, Board Room, Great Falls, Montana. The purpose of the meeting is to provide an orientation for new members and develop plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lawrence D. Huss or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–14065 Filed 6–11–85; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Montana Advisory Committee to the Commission originally scheduled for June 22, 1985, at the Sheraton Great Falls Board Room, 400 10th Avenue, South, Great Falls, Montana, has been cancelled.

Dated at Washington, D.C., June 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–14064 Filed 6–11–85; 8:45 am]

BILLING CODE 6335–01–M

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:00 p.m. and will adjourn at 6:00 p.m. on July 2, 1985, at the Summit Hotel, 51st Street and Lexington Avenue, New York, New York. The purpose of the meeting is to discuss and select program activities for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Arch Puddington or Ruth J. Cubero, Director of the Eastern Regional Office at (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 6, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–14063 Filed 6–11–85; 8:45 am]

BILLING CODE 6335–01–M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 9:00 a.m. and will adjourn at 1:00 p.m., on July 19, 1985, at the South Dakota State Capitol Building, Conference Room, Pierre, South Dakota. The purpose of the meeting is to hold an orientation session for new members and discuss current projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Francis Whitebird or William Muldrow, Acting Director of the Rocky Mountain Regional Office, at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 5, 1985

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–14066 Filed 6–11–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 304]

Resolution and Order Approving the Application of the Ogdensburg Bridge and Port Authority, for a Foreign-Trade Zone in Ogdensburg, NY

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Ogdensburg Bridge and Port Authority, filed with the Foreign-Trade Zones Board (the Board) on April 17, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Ogdensburg, New York, within the Ogdensburg Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Ogdensburg, New York

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation,

and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Ogdensburg Bridge and Port Authority (the Grantee), has made application (filed April 17, 1984, Docket No. 14–84, 49 FR 17060) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Ogdensburg, New York, within the Ogdensburg Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 118 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 3rd day of June 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

[FR Doc. 85–14114 Filed 6–11–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting, June 17–20, 1985, in Kill Devil Hills, NC, to discuss the Billfish, Mackerel, Snapper-Grouper, and Swordfish Fishery Management Plans, as well as discuss other fishery management business. A detailed agenda will be made available to the public around June 10. For further information, contact David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: June 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–14100 Filed 6–11–85; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 445 (P67A)]

Marine Mammals Permit Modification; Marineland, Inc.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 445 issued to Marineland, Inc., Route 1, Box 122, St. Augustine, Florida on December 28, 1983, (49 FR 653), is modified as follows:

Section A–1 is deleted and replaced by:

"A–1 Two (2) short-finned pilot whales (*Globicephala macrorhynchus*) may be taken from Florida waters or may taken and imported from the Bahamas."

Section B–5 is deleted and replaced by:

"B–5 This Permit is valid with respect to the taking authorized until December 31, 1987."

This modification became effective on June 5, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: June 5, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–14102 Filed 6–11–85; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Mystic Marinelife Aquarium (P13R)

On November 9, 1984, notice was published in the **Federal Register** (49 FR 44781) that an application had been filed by Mystic Marinelife Aquarium, Mystic, Connecticut 06355 for a permit to take and import two (2) Beluga Whales (*Delphinaterus leucas*) for the purpose of public display.

Notice is hereby given that on June 5, 1985 and as authorized by the provisions of the Marine Mammal protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking and importing subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930

Dated: June 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-14101 Filed 6-11-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Shipping and Handling Charges

Effective on Orders received June 1, 1985, the following NTIS shipping and handling charges apply:

U.S., Canada, Mexico—ADD $3 per TOTAL ORDER

All other Countries—ADD $4 per TOTAL ORDER

Exceptions—Does NOT apply to:

ORDERS REQUESTING NTIS RUSH HANDLING

ORDERS REQUESTING PREMIUM SERVICE

ORDERS FOR SUBSCRIPTION OR STANDING ORDER PRODUCTS *ONLY*

Thomas P. Bold, Jr.,

Director, Office of Administrative Management.

[FR Doc. 85-14191 Filed 6-11-85; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grants to Cetus Corporation, having a place of business in Emeryville, California, an exclusive right to manufacture, use and sell products embodied on the invention entitled "Pseudomonas Exotoxins Conjugate Immunotoxin" U.S. Patent Application SN 6-574,173. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and condition of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-14189 Filed 6-11-85; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries and Sovereign Authorities of Australia

AGENCY: Patent and Trademerk Office, Commerce.

ACTION: Proceeding for issuance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14, the authority to make findings and issue orders for the interim protection of mask works.

Chapter 9 of 17 U.S.C., the Semiconductor Chip Portection Act (SCPA), established a system to encourage the development of international regime for the protection of mask works, through the provisions of section 914, dealing with the establishment of interim or transitional protection, and section 902 providing for the recognition of long-term bilateral or multilateral relations among states. The Government of Australia has submitted an diplomatic note requesting that they be accorded protection under section 902 by a Presidential proclamation that the Australian copyright law affords protection for mask works and that, by virtue of their membership along with the United Statees in the Universial Copywright Convention (UCC), this protection is available to mask works of United states national s and domiciliaries. In the event that this request cannot be honored before July 1, 1985, they have alternatively requested the issuance of an order under section 914 of the SCPA. Because of the divergent approach in Australia to chip protection from that of the SCPA and the complexity of the issues arising from this fact, the impracticability of fully evaluating before July 1, 1985, these factors in light of the Congressional intent embodied in the SCPA to develop an international regime assuring generally similar protection for mask works, and the desire to promote international comity by taking effective action to assure the full benefit of the SCPA to Australia, a proceeding under § 914 has been initiated. Comments are requested.

DATES: Comments must be submitted on or before June 18, 1985.

ADDRESS: Address written comments to: Commission of Patents and Trademarks, attention Assistant Commission for External Affairs, Box 4, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded—
>
> (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10-year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office Before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue a proclamation upon a finding that:

A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of the nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask work unless the works are first commerceally exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A), or

(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and (2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919, and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress . . .. the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity." Further they both acknowledge that for the issuance of an interim order for "those countries already having a system allowing mask work protection . . . expedited action may be particularly appropriate to encourage and facilitate international comity."

Unlike the United States, the Government of Australia states that the Australian copyright legislation is applicable to the protection of mask works, and that this protection is available to U.S. nationals and domiciliaries because of their obligation under the UCC to provide national treatment for the copyrighted work of U.S. citizens. This approach raises a number of concerns relating to international as well as domestic U.S. law and policy.

In enacting the SCPA, Congress specifically concluded that mask works *per se* were not subject to copyright protection under the U.S. copyright law because of its prohibition of the protection of the utilitarian aspects of pictoral, graphic and sculptural works. Congress further concluded that, since mask works were not subject to copyright protection, they were not subject matter protectable under the UCC. The issues raised by the divergent positions of the Government of the United States and the Government of Australia require careful evaluation and study both in the U.S. context and in appropriate international fora.

While the Government of Australia has stated that the Australian copyright law protects mask works and that the reproduction of a mask work in three-dimensional form in a semiconductor chip product would constitute an infringement of copyright, the statutes do not expressly deal with mask works and no cases on mask work protection have been decided in the courts. However, Australian case law has established that utilitarian works, in appropriate circumstances are protectable by copyright. *See, Ancher Mortlock, Murray and Woolley Pty Ltd. and Others* v. *Hooker Homes Pty Limited*, (1971) 2 NSWLR 278; *L.A. Randell Pty Ltd.* v. *Millman Services Pty Limited*, (1977) 17 ALR 140; *Concrete Systems Pty Limited* v. *Devon Symonds Holdings Ltd.*, (1978) 20 S.A.S.R. 79; *Ogden Industries Pty Ltd. and Others* v. *Kis (Australia) Pty Ltd.*, (1982 45 ALR 129); *Timbs* v. *Miller*, (1983) 1 I.P.R. 128; and *Edwards Hot Water Systems* v. *S.W. Hart and Co., Pty Ltd.*, (1983) 49 ALR 605. However section 71 of the Australian Copyright Act of 1968 provides that:

(a) The making of an object of any kind that is in three dimensions does not infringe the copyright in an artistic work that is in two dimensions; and

(2) The making of an object of any kind that is in two dimensions does not infringe the copyright in an artistic work that is in three dimensions.

If the object would not appear to persons who are not experts in relation to objects of that kind to be a reproduction of the artistic work.

Further study of these features of the Australian law is appropriate. No incidents of misappropriation, unauthorized distribution or commercial exploitation of mask works in Australia have been reported to the Department of Commerce. In addition, we would not wish, in any way, by the issuance of a Presidential proclamation, to limit a foreign government's policy options that may be more available under a section 914 order with its great flexibility.

Consequently, I am considering issuing on my own motion an interim order extending the protection of the SCPA to the nationals, domiciliaries and sovereign authorities of Australia, in accordance with the suggestion that such expedited action would be appropriate in instances where a nation has "a system allowing mask work protection." Public comment on this action will be considered if received in the Office of the Commission of Patents and Trademarks on or before 5:00 p.m., June 18, 1985.

Dated: June 5, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85-14133-Filed 6-11-85; 8:45 am]

BILLING CODE 3510-16-M

Interim Protection for Mask Works of Nationals, Domiciliaries and Sovereign Authorities of the United Kingdom of Great Britain and Northern Ireland

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proceeding for insurance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10–14, the authority to make findings and issue orders for the interim protection of mask works.

Chapter 9 of 17 U.S.C. the Semiconductor Chip Protection Act (SCPA), established a system to encourage the development of an international regime for the protection of mask works, through the provisions of section 914, dealing with the establishment of interim or transitional protection, and section 902 providing for the recognition of long-term bilateral or multilateral relations among states. The Government of the United Kingdom of Great Britain and Northern Ireland (UK) has submitted a diplomatic note requesting that they be accorded protection under Section 902 by a Presidential proclamation that UK copyright law affords protection for mask works and that, by virtue of the membership of the UK and the United States in the Universal Copyright Convention (UCC), this protection is available to mask works of U.S. nationals and domiciliaries. Because of the divergent approach to chip protection from that of the SCPA in the UK and the complexity of the issues arising from this fact, the impracticability of fully evaluating before July 1, 1985, these factors in light of the Congressional intent embodied in the SCAP to develop an international regime assuring generally similar protection for mask works, and the desire to promote international comity by taking effective action to assure the full benefits of the SCPA to the UK, a proceeding under section 914 has been initiated. Comments are requested.

DATES: Comments must be submitted on or before June 18, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, attention Assistant Commission for External Affairs, Box 4, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded—
>
> (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10 year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902: first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) Entering into a treaty described in section 902(a)(1)(A), or
>
> (B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919, and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress . . ., the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity." Further they both acknowledge that for the issuance of an interim order for "those countries already having a system allowing mask work protection . . . expedited action may be particularly appropiate to encourage and facilitate international comity."

Unlike the United States, the Government of the UK states that the

UK copyright legislation is applicable to the protection of mask works, and that this protection is available to U.S. nationals and domiciliaries because of the UK's obligation under the UCC to provide national treatment for the copyrighted works of U.S. citizens. Over 20 years of case law supports the conclusion that mask works are protected under the UK copyright law because of its provisions extending protection to drawings, engravings, and photographs irrespective of their esthetic appeal and that this protection includes reproducing the work in three-dimensional form. *See, Dorling* v. *Honnor Marine Ltd.*, 1964 RPC 160; *Amp* v. *Utilux*, 1972 RPC 103; *British Northrup* v. *Texteam Blackburn Ltd.*, 1974 RPC 57; *Solar Thomson Engineering Co. Ltd.* v. *Barton*, 1977 RPC 537; *LB (Plastics) Ltd.* v. *Swish Products*, 1979 FRC 551; and *Hoover PLC* v. *George Hulme (Stockport) Ltd.*, 1982 FSR 565; and *British Leyland Motor Corporation Ltd.*, v. *Armstrong Patents Company Ltd.*, [1984] 3 C.M.L.R. 102. This approach raises a number of concerns relating to international as well as domestic U.S. law and policy.

In enacting the SCPA, Congress specifically concluded that mask works *per se* were not subject to copyright protection under the U.S. copyright law because of its prohibition of the protection of the utilitarian aspects of pictoral, graphic and sculptural works. Congress further concluded that, since mask works were not subject to copyright protection, they were not subject matter protectable under the UCC. The issues raised by the divergent positions of the Government of the United States and the Government of the UK require careful evaluation and study both in the U.S. context and in appropriate international fora.

While the Government of the UK has stated that the UK copyright law protect mask works and that the reproduction of a mask work in three-dimensional form in a semiconductor chip product would constitute an infringement of copyright, the statutes do not expressly deal with mask works and no cases on mask work protection have been decided in the courts. Further study of these features of the UK law is appropriate. No incidents of misappropriation, unauthorized distribution or commercial exploitation of mask works in the UK have been reported to the Department of Commerce. In addition, we would not wish, in any way, by the issuance of a Presidential proclamation, to limit a foreign government's policy options that may be more available under a section 914 order with its great flexibility.

Consequently, I am considering issuing on my own motion an interim order extending the protection of the SCPA to the nationals, domiciliaries and sovereign authorities of the UK in accordance with the suggestion that such expedited action would be appropriate in instances where a nation has "a system allowing mask work protection." Public comment on this action will be considered if received in the Office of the Commissioner of Patents and Trademarks by 5:00 p.m., June 18, 1985.

Dated: June 5, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85-14132 Filed 6-11-85; 8:45 am]

BILLING CODE 3510-16-M

Interim Protection for Mask Works of Japanese Nationals Domiciliaries and Sovereign Authorities

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10-14, the authority under section 914 of 17 U.S.C. (the copyright law) to make findings and issue orders for the interim protection of mask works.

On October 22, 1984, prior to the November 8, 1984, effective date of Pub. L. 98-620 which added Chapter 9 to 17 U.S.C., the Electronic Industries Association of Japan (EIAJ) through its attorneys submitted to the Secretary of Commerce a request for the issuance of an interim order. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984 in the **Federal Register** 49 FR 44517-9, and on November 13, 1984, in the *Official Gazette*, of the PTO, 1048 O.G. 30. The original EIAJ request was supplemented by additional information from the Government of Japan sufficient to bring it into compliance with the guidelines.

Comments on the EIAJ petition were requested on or before April 23, 1985, and a hearing was set for May 8, 1985. Comments were submitted by the Semiconductor Industry Association (SIA) and AT&T Technologies; requests to testify were received from the SIA and the EIAJ.

At the May 8, 1985, hearing both SIA and EIAJ testified in support of the issuance of an interim order; the major point of dispute was in regard to the duration of the order. SIA urged that, in view of their continuing areas of concern, and the importance of the implementing regulations to be promulgated by the Ministry of International Trade and Industry (MITI), any order issued should be limited to 6 months in duration. The EIAJ position was that the order should issue for the full term of the Commissioner's authority. The commissioner has determined that Japan has demonstrated good faith efforts and reasonable progress in respect to providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue for one year from this date.

EFFECTIVE DATE: The effective date of this order shall be November 8, 1984.

TERMINATION DATE: This order shall terminate on June 6, 1986, one year from its date of signature.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Maskworks are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded—
>
> (A) Having or representing the predetermined, three dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10 year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983 are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. First, the owner of the

mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential Proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or soverign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) Entering into a treaty described in section 902(a)(1)(A), or
>
> (B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) that the nationals, domiciliaries; and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask work.

On October 22, 1984, prior to the November 8, 1984 effective date of Pub. L. 98–620 which added Chapter 9 to 17 U.S.C., the Electronic Industries Association of Japan (EIAJ) through its attorneys, submitted a request for the issuance of an interim order to Secretary Baldrige. The Secretary informed EIAJ's attorneys that the request had been referred to the Patent and Trademark Office, and that the Commissioner would advise them if additional information were required. On November 15, 1984, Commissioner Mossinghoff met with Japanese officials to discuss a letter from Mr. Yuji Tanahashi of the Japanese Ministry of International Trade and Industry, and what additional information might be required to complete the EIAJ submission. The results of this meeting were confirmed on November 30, 1984, in a letter to Mr. Tanahashi. No response was received from Mr. Tanahashi. On January 22, 1985, Acting Commissioner Quigg wrote Mr. Taizo Yokayama pointing out what additional information would be required. On March 4, 1985, Mr. Tanahashi wrote to Mr. Quigg supplementing the original request with sufficient information to permit the commencement of proceedings under the guidelines. The original petition and the supplemental information were reproduced in the **Federal Register**, 49 FR 12355 on March 28, 1985 as part of the notice announcing the commencement of proceedings with respect to Japan, by requesting comments on the EIAJ petition and scheduling a hearing for May 8, 1985.

On April 22, 1985, Mr. Ronald Pump of AT&T Technologies commented on the Japanese petition opposing the issuance of an interim order "on the assumption that such relief will delay passage of the legislation Japan is required to enact in order to protect U.S. chips in that country." The Semiconductor Industry Association (SIA) also commented on April 22 raising several questions regarding specific features of the Japanese legislation which were discussed in the written submissions and the oral statement at the May 8, 1985 hearing.

At the hearing, SIA presented its testimony and clearly stated that they "believe that Japan has demonstrated its good faith legislation." However, SIA urged that because "there are sufficient remaining questions regarding the legislation now under consideration in the Japanese Diet that an interim order designating Japan" should be granted for a period not be exceed 6 months. They argued that this would permit a review of the manner in which the law is being implemented, and how the Japanese law will function in a manner that provides protection equivalent to that under U.S. law.

The EIAJ asserted its belief that the proposed Japanese law provides protection for U.S. mask works on substantially the same basis as it protects the works of Japanese nationals, and that it also offers protection on substantially the same basis as Chapter 9 of 17 U.S.C. EIAJ specifically interprets section 902 as providing two sources of eligibility of protection. The first is the principle of national treatment—that U.S. mask work owners receive exactly the same protection as domestic Japanese mask work owners. The second is that reciprocal protection of substantially the same level as that provided under the U.S. law be provided to U.S. mask work owners in Japan. EIAJ asserts that the Japanese bill meets both tests, and that passage of the bill will not be delayed by the issuance of this order.

In his oral statement Mr. R. Michael Gadbaw, attorney for the SIA expressed his view that something more than simple national treatment was required to qualify a country under section 902(a)1)(B). That is to say, that there is a "threshold that has to be passed in order to provide effective protection." (transcript of hearing, p. 4). Mr. Schwartz, representing EIAJ, asserted that satisfaction of either criterion would be sufficient.

The record supports the conclusion that the Japanese bill satisfies both tests at its present stage of development. However, we also recognize that, in some respects, the Japanese bill is not as specific as is the U.S. legislation, and that the implementing regulations to be drafted by MITI will be important in determining how the law will work in Japan. We have determined that, as urged by SIA, a review of progress would be appropriate, but that as surged by EIAJ the order should be long enough in duration to permit MITI to develop its regulations. Accordingly, this order will endure one year from its date of issuance. This will permit a review of progress on a timely bais without unduly burdening either the parties to this proceeding or the government. The record supports the EIAJ contention that Japan, since the enactment of the U.S. legislation, has been making good faith efforts toward enacting legislation, consequently, the effective date of this order shall be November 8, 1984, the effective date of the Act.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code to Nationals, Domiciliaries and Sovereign Authorities of Japan

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the materials submitted by the parties to the proceeding commenced on March 28, 1985, as supplemented by information provided by the Government of Japan and made part of the record of this proceeding I find that: Japan is and has, since November 8, 1984, been making

good faith efforts toward enacting legislation that will be in compliance with 17 U.S.C. 902(a)(2); Japanese nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries and sovereign authorities of Japan are entitled to protection under Chapter 9 of 17 U.S.C. subject to compliance with all formalities specified therein.

The effective date of this order shall be November 8, 1984 and this order shall terminate, on June 6, 1986, one year from its date of signature.

Dated: June 6, 1985.

Donald J. Quigg,

Acting Commissioner of Patent and Trademarks.

[FR Doc. 85-14131 Filed 6-11-85; 8:45 am]

BILLING CODE 3510-16-M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Panel on Allergic Sensitization; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Panel on Allergic Sensitization will meet on Monday, June 24, 1985, to discuss Commission staff documents concerning allergic sensitivity to cobalt, nickel, chromium, and formaldehyde.

DATE: The meeting will begin at 8:30 a.m. on Monday, June 24, 1985.

ADDRESS: The meeting will be in Room 456 of the Commission's offices at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Virginia White, Directorate for Health Science, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6957.

SUPPLEMENTARY INFORMATION: Provisions of the Federal Hazardous Substances Act codified at 15 U.S.C. 1261(f) 1 (A) and (K) authorize the Consumer Product Safety Commission to regulate household substances which contain or consist of "strong sensitizers." The Commission has established the Technical Advisory Panel on Allergic Sensitization to provide advice and recommendations on refining terms and criteria for defining strong sensitizers for purposes of the Federal Hazardous Substances Act: ranking by magnitude of risk a list of sensitizers found in consumer products; and labeling sensitizers in consumer products.

This meeting will be open to observation by members of the public. Participation will be limited to members of the technical advisory panel and the Commission's staff.

Dated: June 6, 1985.

Sheldon D. Butts,

Acting Secretary,

Consumer Product Safety Commission.

[FR Doc. 85-14061 Filed 6-11-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on On-Site Inspection; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on On-Site Inspection will meet in closed session on 28 July 1985 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine concepts for on-site inspection technical sensor systems which could verify possible arms control limits.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1985.

[FR Doc. 85-14123 Filed 6-11-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 11-12 July and 21-22 August 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1985.

[FR Doc. 85-14124 Filed 6-11-85; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Education Benefits Board of Actuaries; Past Meeting

SUMMARY: A meeting of the Board was scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. seq.). The Board reviewed the interest assumption to be used in the FY85 Valuation of the GI Bill. Due to the unavailability of Board members in June and the time constraints of implementing per capita FY85 costs the meeting had to be held without prior notice. Anyone desiring formal minutes of the meeting should notify Ms. Kathy Greenstreet at 696-5793. They will be available under the Federal Advisory Committee Act.

DATE: May 31, 1985, 2:00 p.m. to 3:30 p.m.

ADDRESS: Room 201, Hilton Inn, Columbia, Maryland.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209 (202) 696-5869.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1985.

[FR Doc. 85-14125 Filed 6-11-85; 8:45 am]

BILLING CODE 3810-01-M

Membership of OSD Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the

OSD DoD Field Activities, the Organization of the Joint Chiefs of Staff, DoD Inspector General, the U.S. Court of Military Appeals, and the U.S. Mission to NATO. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

DATE: Effective date is June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Bobb, Chief, Senior Executive Service & Classification Division, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, Washington, D.C. 20301, telephone (202) 697–8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the OSD PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective June 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1985.

OSD Performance Review Board Membership

Adams, Benson D.
Adams, Mac C.
Agnew, Ann C.
Alderman, Craig (NMN)
Alderman, Karen A.
Alewine, Ralph W., III
Anderson, David L.
Anderson, Maynard C.
Atkins, Allen R.
Austin, Charles L.
Bachkosky, John M.
Bader, George W.
Bain, James D.
Barringer, Philip E.
Batjer, Marybel
Beach, John W.
Berenson, Paul J.
Berg, Roland E.
Bergmann, Walter B., II
Bernard, Charles W.
Bertapelle, Arthur H.
Bialick, Irving
Blackstead, Joseph H.
Blaker, James R.
Bloom, Harold (NMN)
Brandenstein, Albert E.
Brannan, James T.
Briskin, Manuel (NMN)
Bryen, Stephen D.
Buck, Kathleen A.
Buffalano, August C.
Buzalski, Ernest A.
Calhoun, Jerry Lee
Campbell, Leonard G.
Campbell, Thomas P.
Campen, Alan D.
Carabello, John M.
Cavallini, Nathaniel
Cavaney, William T.
Cevasco, Francis M., Jr.
Charles, Sandra L.
Christie, Deborah
Christie, Thomas P.
Christle, Gaylord E.
Chu, David S. C.
Cipolla, Charles L.
Cipolla, Frank P.
Cittadino, John C.
Coakley, William F.
Colocotronis, Gregory L.
Compton, James M.
Conroy, Matthew J.
Conte, Albert V.
Cooke, David O.
Coonce, William C.
Cratch, Geoffrey A.
Crossman, George R.
Croteau, Robert J.
Crouch, Horace J.
Culosi, Salvatore J.
Curry, James H.
Daniel, Robert W., Jr.
Dashiell, Thomas R.
Davidson, Ronald A.
Decarli, Raymond J.
Delaney, Robert P.
Denning, Daniel B.
Dexter, John E.
Dix, Donald M.
Dominguez, Raymond
Donnelly, John F.
Donnelly, Richard E.
Douglas, Terrence Richard
Dube, Lawrence P.
Earich, Douglas R.
Eaton, Nelson W.
Eberhardt, Michael C.
Ehlers, Arthur H., Jr.
Ellison, Bobby
Ely, Gerald L.
Engel, Roger K.
Entzminger, John N., Jr.
Facey, Albert G., Jr.
Fair, Harry D.
Farbrother, Douglas D.
Fawsett, John
Feith, Douglas J.
Fields, Craig I.
Finsterle, James C.
Fisher, Herbert L.
Fites, Jeanne B.
Flinn, John A.
Frederick, Wiliam G. D.
Freeman, Linus Walter, Jr.
Funk, Kennerly W.
Gaffney, Frank J., Jr.
Gaffney, Henry H., Jr.
Gardner, John L.
Garnett, Thomas F.
Genalis, Paris
Gentzel, Charles R.
Gilleece, Mary Ann
Gilliat, Robert L.
Glaister, Clyde O.
Goldberg, Alfred (NMN)
Goldstein, Donald J.
Gontarek, Stanley J.
Goodwyn, James C.
Goodyear, William G.
Granahan, Thomas F.
Granato, Dennis J.
Gray, Anthony W., Jr.
Greenlee, Donald R.
Groover, Charles W.
Hanmer, Stephen R.
Hansen, John W.
Haughton, Clariborne D., Jr.
Hawkes, Teresa A.
Hawkins, Charles A., Jr.
Heaston, Robert J.
Hessler, David J.
Hinds, Jim E.
Hinman, Kenneth R.
Hoffman, Fred
Hoffman, George
Holaday, Duncan A.
Horn, Sally K.
Horton, Cyril F.
Howe, Richard G.
Ioffredo, Michael L.
Ionson, James A.
Jefferson, Ralph H.
Johnson, Darel S.
Jones, Billy M.
Jones, Jeffery
Jones, Thomas K.
Kahn, Robert E.
Kammerer, Joseph T.
Kapper, Francis B.
Karp, Sherman
Kauvar, Gerald Bluestone
Keesee, William K.
Kelly, Clinton W., III
Kelly, James A.
Kendall, Cynthia
Kendig, John L.
Killin, Edward C.
Kloske, Dennis E.
Kniaz, Leon
Koch, Noel C.
Kopscak, George C.
Kraft, Herbert
Kupelian, Vahey S.
Lane, John
Lanoue, Robert J.
Lauder, Ronald S.
Laughlin, John L.
Leary, William H., III
Lebo, Jerry A.
Leftwich, Norman B.
Legere, Laurence J.
Lehman, Ronald F.
Lelli, Thomas J.
Leonard, Michael (NMN)
Lese, William G., Jr.
Levden, Donovan K.
Lieberman, Richard D.
Lieberman, Robert
Lieblien, Edward
Linstrom, Talbot S.
Lipton, Maurice
Lomacky, Oles
Lose, Graydon I.
Loveland, Trafton J.
Lubarsky, Albert R.
Lynch, John E.
Lynn, Verne L.
Maccallum, John M., Jr.
Major, Philip L.
Makris, Anthony S.
Maldonado, Joe P.
Margolis, Milton A.
Marquet, Louis C.
Marquitz, William T.
Marshall, Andrew W.
Martin, C. Joseph

Martin, John David
Maynard, Egbert
McCarty, Thomas F.
McDonald, William M.
McNeill, John H.
McNicol, David L.
McQuality, James A.
Meehan, Patrick J.
Melburn, Michael J.
Melchner, John W.
Michael, Louis G.
Michel, Werner E.
Miller, Franklin
Miller, James H.
Minichiello, Lee P.
Minneman, Milton J.
Mintz, Jeanne S.
Mittino, John A.
Mobbs, Michael H.
Moesser, Alba I.
Montgomery, Jack L.
Moody, Kevin C.
Moore, Robert H.
Moore, Robert J.
Morgan, John D., Jr.
Morris, Herbert K.
Morrison, James W.
Murrell, Billy C.
Newhall, David, III
Nicholas, George
Niederlehner, Leonard (NMN)
Oplinger, Gerald
Pallas, Spiros G.
Pantuso, Francis P.
Pennington, Arthur W.
Persh, Jerome
Phillips, Gary R.
Pillsbury, Michael P.
Quetsch, John R.
Quinn, Thomas P.
Rauner, Robert M.
Reay, James H.
Reynolds, Richard A.
Richardson, William A.
Rizer, Jordon E.
Robertson, William B.
Roll, Charles R., Jr.
Rona, Thomas P.
Roosild, Sven A.
Rudd, Glenn A.
Ruffine, Richard S.
Russ, John M.
Russ, Richard T.
Rydzewski, James C.
Sanchez, Nestor D.
Schafer, Carl J., Jr.
Schmidt, Raymond E.
Sellman, Wayne S.
Sharkey, William J., Jr.
Shaw, Dennis R.
Sheils, Marylou
Shilling, David M.
Shorey, Russel R.
Shriber, Maurice N.
Siebert, George W.
Siewert, Raymond F., Jr.
Smith, John E.
Snider, Britt L.
Spector, Eleanor Ruth
Springett, John P.
St. John, Adrian, II
Stephens, W. Beth
Stimson, Richard A.
Stivers, Ronald H.
Stone, Robert A.
Sullivan, Gerald D.
Sungenis, Joseph R.
Tapparo, Frank A.
Tegnelia, James A.
Tether, Anthony J.
Thomas, Ronald D.
Thomas, William F.
Tillson, John C.
Toulme, Clarence V.
Townley, Richard W.
Trodden, Stephen A.
Trosch, Dennis H.
Truxell, Bertrand G.
Tucker, Alvin
Turley, Gerald H.
Tyler, John T.
Van Wagenen, James S.
Vander Schaaf, Derek J.
Verhey, Carl T.
Warren, Raymond A.
Watt, Charles K.
Welch, Thomas J.
Wilcox, Benjamin A.
Wolthuis, Robert K.
Wood, Theodore D.
Woods, James L.
Woodworth, John A.
Young, Leo (NMN)
Young, Roscoe C., II
Yurcisin, Peter
Zakheim, Dov S.
Macpherson, J. Randolph (DCA)
Whealen, John T. (DCA)
Starrett, Charles O., Jr. (DCAA)
Newton, Fred J. (DCAA)
Quill, John J. (DCAA)
O'Brien, Thomas J. (DIS)
Dinan, Daniel J. (DIS)
Ewald, Thomas E. (DIS)
Maclin, James F., Jr. (DLA)
Kabeiseman, Karl W. (DLA)
Atkins, Marvin C. (DNA)

[FR Doc. 85-14126 Filed 6-11-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Alteration to an Air Force System of Records

AGENCY: Department of the Air Force (DAF), DOD.

ACTION: An alteration of an Air Force system or records.

SUMMARY: The Air Force is altering an existing system of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice on or before July 12, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Jon Updike, HQ USAF/DAQD, The Pentagon, Washington, D.C. 20310-5024. Telephone: 202-694-3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been previously published in the **Federal Register** as follows: FR Doc. 85-10237 (50 FR 22332) May 29, 1985.

The record system identified as F120 AF IG B entitled: Inspector General Records, was previously published at 50 FR 22487 on May 29, 1985. This system is being altered to partially automate record keeping and analysis. An altered system report, as required by 5 U.S.C. 552a(o), was submitted on May 9, 1985 as required by OMB Circular A-108. Transmittal Memorandum No. 1, dated September 30, 1975.

Dated: June 7, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

F120 AF IG B

SYSTEM NAME:

120 AF IG B Inspector General Records.

SYSTEM LOCATION:

Office of the Inspectors General, Headquarters United States Air Force, Washington DC 20330 and all levels down to Air Force bases. Official mailing addresses are contained in the Department of Defense directory in the appendix to the Air Force system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint or query with the Inspector General or Base Inspector on matters related to the Department of the Air Force or are subjects of a significant contract fraud or corruption investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms, letters, messages, reports, surveys, photographs, medical, finance, personnel, administrative and technical reports, witness statements and statistical data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to insure just, through, and timely resolution and response to complaints or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspectors General and Base Inspectors in the resolution of complaints and responding to queries involving matters concerning the Department of the Air Force and in some instances the Department of

Defense. Used to monitor and coordinate remedies in significant cases of contract fraud or corruption.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer and computer output products.

RETRIEVABILITY:

Filed by name, Social Security Number (SSN) and year and office where complaint was filed.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly sereened and cleared for need-to-know. Records are stored in safes and in locked cabinets or rooms, controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained in office files for two years after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Headquarters Unitied States Air Force, Washington DC 20330.

NOTIFICATION PROCEDURE:

See Exemption.

RECORD ACCESS PROCEDURE:

See Exemption.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

See Exemption.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(2). For additional information, contact the System Manager.

[FR Doc. 85–14122 Filed 6–11–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app), notice is hereby given that the Naval Research, 800 North Quincy Street Arlington, VA. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 27. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide update briefings for the Committee members on various topics of current interest. The agenda for the meeting will consist of briefings on the latest information available concerning Soviet submarine threat, SSN–21, and ASW appraisal. These briefings will contain classfied information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: June 7, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–14115 Filed 6–11–85; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Change in Meeting Times

SUMMARY: This document is intended to notify the general public of the change of time for the meetings of the Executive Committee, Civil Rights Committee, WEEA Program Committee and Federal Policies, Practices and Programs Committee of the National Advisory Council on Women's Educational Programs as published in FR/Vol. 50, No. 104/ Thursday, May 30, 1985. All other dates, times and locations remain the same.

The Executive Committee will meet from 7:00 p.m. to 9:00 p.m. on June 12. The Civil Rights Committee, WEEA Program Committee and Federal Policies, Practices and Programs Committee will meet from 9:00 a.m. to 10:00 a.m. on June 13, 1985.

For further information contact: Patricia A. Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street NW., Suite 568, Washington, D.C. 20036, (202) 634–6105.

Signed at Washington, D.C. on June 3, 1985.

Sally A. Todd,

Executive Director.

[FR Doc. 85–14103 Filed 6–11–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Special Needs Program; Application for New Awards in Fiscal Year 1985 and Special Eligibility Announcement

Applications are invited for new development grants under the Special Needs Program from institutions that have established eligibility to participate in the Special Needs Program for Fiscal Year 1985.

Authority for the Special Needs Program in contained in sections 321–324 and 341–347 of Title III of the Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1060–1063, and 1066–1069c).

The Special Needs Program assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and the strengthen their planning, management, and fiscal capabilities. To this end, the Secretary awards planning grants and non-renewable development grant to eligible two-year and four-year, public and private institutions of higher education. The purpose of a planning grant is to assist an institution to develop its long-range plan: however, *no planning grants will be awarded under this announcement.*

The purpose of a development grant is to assist an institution to implement portions of its long-range plan, thereby becoming self-sufficient.

Closing date for Transmittal of Applications for New Awards: An application for a development grant must be mailed or hand-delivered by August 1, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031B, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Application delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Program Information

1. *Available Funds:* The Department of Education Appropriation Act, 1985 (Pub. L. 98–619) appropriated $141,208,000 for the Institutional Aid Programs of which $45,741,000 must be awarded to "historically Black institutions." Of the $141,208,000 appropriation, $65,804,000 is available for the Special Needs Program. In accordance with section 347(f) of the HEA, $11,600,000 of the Special Needs Program appropriation has been transferred to the Endowment Grant Program, and to the Challenge Grant Program to continue non-competing Challenge Grants awarded in prior fiscal years. It is estimated that approximately $39,000,000 of the funds will be awarded to non-competing continuation Special Needs projects.

For the FY 1985 Special Needs Program competition for new grants, it is estimated that approximately $15,000,000 will be available for new awards. In accordance with section 347 of the HEA, priority in the selection of grantees may be given to historically Black and two-year institutions to satisfy those statutory set-aside requirements. The Secretary considers "historically Black institutions" as those institutions listed in the 1978 publication by the National Center for Education Statistics entitled *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics.* (34 CFR 626.31(b))

In accordance with § 626.31(c)(2) of the Special Needs Program regulations, the Secretary is limiting the maximum award for new non-renewable grants to $800,000 per year. Accordingly, applicants should not submit budget requests in excess of this amount. *The Secretary will not accept any application containing a request in excess of this maximum; such applications will be returned by the Application Control Center.*

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulation.

2. *New Awards:* The Secretary will accept an application for a development grant from any institution that is eligible to participate in the Special Needs Program. However, under §§ 626.10 and 626.20 of the regulations an applicant may not receive a Special Needs Grant under this competition if it previousy received a Special Needs Program development grant or previously received a non-renewable Strengthening Program development grant.

3. *Special Eligibility Announcement:* To receive a grant under this notice, an institution must have been designated as an eligible institution *for the Special Needs Program* under one of the following notices:

(a) The notice extending the closing date for designation as an eligible institution for the Endowment Grant Program that was published in the **Federal Register** of June 20, 1984, 49 FR 25272–25282;

(b) The notice establishing the closing date for designation as an eligible institution for the Strengthening, Special Needs and Endowment Grant Programs for FY 1985 that was published in the **Federal Register** of September 28, 1984, 49 FR 38331–38341;

(c) The notice extending the closing date for the Strengthening, Special Needs and Endowment Grant Programs for FY 1985 that was published in the **Federal Register** of November 30, 1984, 49 FR 47084–47094; or

(d) The notice establishing the closing date for designation as an eligible institution for the Strengthening, Special Needs and Endowment Grant Program for FY 1986 that was published in the **Federal Register** of May 16, 1985, 50 FR 20477–88. Applicants establishing eligibility under this May 16, 1985 notice should specify in the cover letter of their eligibility request that their eligibility designation should include the FY 1985 Special Needs Program competition announced by this notice. Previous applicants that responded to above-cited notices (a), (b), or (c) but failed to include sufficient data to calculate eligibility under the Special Needs Program should respond to the Notice published on May 16, 1985. Those institutions that responded only to the June 20, 1984 notice, (a), must provide certification of the Fall 1984 FTE enrollment at the institution.

4. *Budget and Activity Requests:* Applicants are reminded that if they have received a prior Title III grant that *they may not receive funds for an activity previously supported under the Strengthening Developing Institutions Program (SDIP) or the current Institutional Aid Programs.*

Applicants should note that budget requests for the second through fifth years of multi-year non-renewable development grants will be limited in future years to the amounts *projected* for these years in the original application for funds, minus any amounts which have been projected for *disallowed* activities. In order to plan accurate funding requests for future years of the grant, institutions receiving awards under this competition will be notified of any disallowed activities at the time their award is negotiated. Applicants are reminded that if they have received a planning grant under the Special Needs Program, the maximum length of a development grant is four years.

Grantees must pay a portion of the costs of a Special Needs Program grant during the third through fifth years of the grant in accordance with the requirements of section 324 of the statute. The portion paid by the grantee is 10, 20 and 30 percent respectively, and is included in the maximum annual grant award of $800,000, thereby limiting the maximum federal grant in those years to $720,000, $640,000 and $560,000, respectively. In providing information on the grantee's share of the costs of allowable development activities, applicants are reminded that all institutional costs must be for *developmental purposes* and *delineated in the budget notes accompanying each proposed activity.* Grant funds may not

supplant regular operating expenditures at the institution.

In general, administrative costs for non-renewable development grants should not exceed 20 percent of the total amount of funds requested, or $75,000 annually, whichever sum is less. Applications containing requests in excess of this amount must include a thorough justification of the need for additional administrative funds.

Application forms: Application forms and program information packages for new awards are expected to be ready for mailing by June 20, 1985. They may be obtained by writing the Division of Institutional Development, U.S. Department of Education, Room 3045, Regional Office Building #3, 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed by the statute and regulations.

Applicable regulations: Regulations applicable to this program include the following:

(a) The regulations in 34 CFR Part 624.

(b) The reguations in 34 CFR Part 626.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, except under the provisions of 34 CFR 624.34(c), the provisions under 34 CFR 75.128(a)(2) and 34 CFR 75.129(a) do not apply to cooperative arrangements.

FOR FURTHER INFORMATION CONTACT:
Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, (Room 3042, Regional Office Building #3), 400 Maryland Avenue SW, Washington, D.C. 20202. Telephone: (202) 245–9077 or 245–9094.

(U.S.C. 1060–1063 and 1066–1069c.)

Dated: June 6, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance no. 84.031B—Special Needs Program).

[FR Doc. 85–14134 Filed 6–11–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85–08–NG]

N–REN Corporation; Order Authorizing Import of Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on June 3, 1985, the ERA Administrator issued an opinion and order authorizing N–REN Corporation (N–REN) to import up to 35,000 Mcf of Canadian natural gas per day for its fertilizer manufacturing plant in East Dubuque, Illinois. The gas will be imported over a two-year period, on a best-efforts, interruptible basis at $2.76 (U.S.) per MMBtu, commencing on the date of first delivery. The maximum obligation for the period ending November 1, 1986, is 21.90 Bcf with deliveries in any given year not to exceed 10.95 Bcf.

The text of the opinion and order follows:

FOR FURTHER INFORMATION CONTACT:
Robert M. Stronach (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–9622.
Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C. on June 3, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Order Granting Authorization To Import Natural Gas From Canada

[DOE/ERA Opinion and Order No. 83]

June 3, 1985.

I. Background

On April 4, 1985, N-REN Corporation (N-REN) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for an authorization to import up to 35 MMcf of Canadian natural gas per day. N-REN has entered into an agreement with Northridge Petroleum Marketing, Inc. (Northridge), a Canadian corporation with control over natural gas reserves in the Province of Alberta, Canada, to obtain the gas on a best-efforts basis at $2.87 (U.S.) per Mcf. This price was changed to $2.76 (U.S.) per MMBtu by an amending agreement filed with the ERA on May 8, 1984.

N-REN, a Delaware corporation, whose principal place of business is in Cincinnati, Ohio, intends to use the gas at a plant it owns and operates in East Dubuque, Illinois. This plant uses natural gas as a process fuel and feedstock in the manufacture of anhydrous ammonia and by-products primarily for essential agricultural purposes. The agreement with Northridge has an initial term which begins on the date of first delivery and ends on November 1, 1986. Following the initial term, the agreement could be automatically extended for a two-year term and then could be automatically extended for successive one-year terms unless terminated by written notice by either party at least 60 days prior to the expiration of the initial term or any subsequent term. Notwithstanding the automatic extension of terms in its agreement with Northridge, N-REN notified the ERA by a letter dated and filed on May 1, 1985, that the authorization it is seeking is for a two-year period commencing on the date of first delivery. The maximum obligation during the initial term of the agreement, ending November 1, 1986, is 21.90 Bcf with deliveries in any given year not to exceed 10.95 Bcf.

The price of the gas may be renegotiated upon 30 days written notice by either party subject to regulatory approvals. If negotiations fail, the agreement will terminate 30 days following cessation of negotiations. The agreement also provides for immediate renegotiation of the price if changes in the U.S./Canadian exchange rate or increases in transportation costs in Canada result in a price netback to Alberta lower than the Alberta border price. The agreement contains no minimum purchase obligation or take-or-pay requirement and allows N-REN to revert totally to domestic supplies without penalty if the Canadian supply becomes uncompetitive. However, N-REN has agreed to take the gas "to the best of its efforts" up to an average daily quantity of 30 MMcf but may restrict the flow or discontinue the taking of gas for any reason and to any extent, and may commingle the gas with other higher or lower priced gas.

Under the proposed import arrangement, the gas will be delivered by Northridge at the interconnection of the facilities of TransCanada PipeLines

Limited and Great Lakes Gas Transmission Company (Great Lakes) at the international border between Canada and the United States in the vicinity of Noyes, Minnesota. Great Lakes will transport the gas over existing facilities to its interconnection with Northern Natural Gas Company (Northern) at either Carlton or Fortune Lake, Minnesota. Northern will then transport the gas over its existing facilities to Northern Illinois Gas Company (NI-Gas), N-REN's current distributor, which will then deliver the gas to N-REN's plant at East Dubuque, Illinois. N-REN will bear the cost of transporting the gas from the Canadian border to its plant. This cost has been projected to be no more than $.34 (U.S.) per MMBtu.

II. Interventions and Comments

A notice of N-REN's application was issued on April 15, 1985, inviting protests and motions to intervene to be filed by May 23, 1985.[1] Two motions to intervene were filed. A joint motion was filed by Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Lake Superior District Power Company (collectively referred to as the NSP Companies). The other motion to intervene was filed by Natural Gas Pipeline Company of America (Natural).

The NSP Companies, the second largest jurisdictional distribution customer on Northern's system, intervened in their own direct interest but made no other comment and did not request further proceedings. Natural, a major pipeline supplier to NI-Gas, intervened and protested the application on the grounds that unfair competition would result from the proposed import, but did not request further proceedings. This order grants intervention to all movants.

III. Decision

N-REN's application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[2] The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.[3] Under the policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In its motion to intervene and protest, Natural stated that unfair competition would result if N-REN's application were approved. Natural asserted that the price to N-REN is significantly lower than that available to Natural from its Canadian suppliers because the proposed import was not subjected to the same Canadian floor price limitations as its arrangement was. Natural expressed concern that N-REN's import could have the anomalous effect of backing out firm sales of Canadian gas. Natural asserted that such action could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. Natural urged that the ERA give careful consideration to the effect of spot sales on long-term supplies.

The ERA believes that the competitiveness of an import is of prime concern. The policy of this agency is to promote competition, and the applicant's import brings new and positive competitive forces to its marketplace. Purchasers will avail themselves of short-term arrangements when they are competitive with available long-term arrangements. The ERA has ruled in numerous import cases that it does not intend to protect long-term import arrangements from competition.[4] Natural has options available to it to meet competition, as do other pipelines. Natural has indicated that the new price under its contracts were the result of direct negotiations to bring prices more in line with market forces. Natural may continue to pursue such options.

Natural alleged that the proposed import could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. The ERA is not persuaded by this argument. The Canadian government and gas industry are moving to correct price disparities that have existed for the past several years between U.S. and Canadian supplies serving U.S. markets. There has been no sign of reluctance by Canadian exporters to negotiate in response to competition, and it is unlikely that the competition from the N-REN/Northridge arrangement will change this.

Natural claimed that unfair competition woud result if the proposed import is approved because the price N-REN will pay is significantly lower than that available to Natural because of differing floor prices imposed by Canada on Natural's and N-REN's contracts. While the DOE has urged that the Canadian government remove floors from its export prices, the ERA does not intend to disapprove import arrangements which are competitive and that put pressure on other arrangements to become more competitive.

The N-REN arrangement for the import of Canadian gas, as set forth in the application, is wholly consistent with the DOE policy guidelines. The agreement with Northridge contains no minimum purchase obligation or take-or-pay reguirement, and the price may be renegotiated upon 30 days notice with automatic termination if negotiations fail. The volumes will be imported on a best-efforts, interruptible basis under a two-year authorization which N-REN may seek to have extended prior to its termination. The flexibility of the arrangement, which also allows N-REN to revert to domestic supplies without penalty, ensures that the gas will only be imported when it is fully competitive.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, N-REN will purchase the gas only to the extend it needs the volumes for its fertilizer manufacturing operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by N-REN is not inconsistent with the public interest and thus should be granted.[5]

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[1] 50 FR 15960, April 23, 1985.

[2] 15 U.S.C. § 717b.

[3] 49 FR 6684, February 22, 1984.

[4] *See Northwest Natural Gas Company*, DOE/ERA Opinion and Order No. 65, issued December 10, 1984 (1 ERA ¶ 70.577); *Cascade Natural Gas Corporation*, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA ¶ 70.578); *Southwest Gas Corporation*, DOE/ERA Opinion and Order No. 69, issued December 18, 1984 (1 ERA ¶ 70.581); *Cabot Energy Supply Corporation*, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA ¶ 70.124); *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA ¶ 70.585); and *Tenngasco Exchange Corporation and LHC Pipeline Company*, DOE/ERA Opinion and Order No. 80, issued May 6, 1985 (unpublished).

[5] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq*), and therefore an environmental impact statement or environmental assessment is not required.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. N–REN Corporation (N–REN) is authorized to import up to 35 MMcf of Canadian natural gas per day during the 24-month period beginning on the date of first delivery in accordance with the provisions established in the agreement, as amended, submitted as part of the application in this docket.

B. N–REN shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. N–REN shall file with the ERA in the month following each calendar quarter, quarterly reports showing by month, the quantities of natural gas imported under this authorization, and the price per MMBtu paid for those volumes.

D. The motions to intervene as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C. June 3, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85–14104 Filed 6–11–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 85–09–NG]

Natural Gas Imports; Bethlehem Steel Corp.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on June 3, 1985, the ERA Administrator issued an opinion and order approving Bethlehem Steel Corporation's (Bethlehem) application to import Canadian natural gas from Northridge Petroleum Marketing, Inc. The approval authorizes Bethlehem to import at a price of $2.87 (U.S.) up to 25 MMcf per day and a total volume of up to 12 Bcf of natural gas on a best-efforts basis for a period beginning on the date of issue and ending November 1, 1986.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667

Issued In Washington, D.C., on June 3, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Order Granting Authorization To Import Natural Gas From Canada

[DOE/ERA Opinion and Order No. 84]

June 3, 1985.

I. Background

On April 4, 1985, Bethlehem Steel Corporation (Bethlehem) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for authorization to import up to 12 Bcf of Canadian gas over a period ending November 1, 1986. Bethlehem and Northridge Petroleum Marketing, Inc. (Northridge) entered into a gas sales agreement dated February 22, 1985. Under the agreement, Northridge would make available on a best-efforts, interruptible basis up to 25 MMcf of gas per day and 6 Bcf per year, up to 12 Bcf for the period ending November 1, 1986. Bethlehem would attempt to take an average of 15 MMcf of gas per day on a best-efforts basis, although it may take all the gas Northridge has available up to 25 MMcf per day. Although the primary term of the contract extends through November 1, 1986, it is automatically extended for successive two-year terms unless terminated by either party giving 60-day notice prior to the expiration of a term.

Deliveries under the contract will begin on the first day of the month following the month in which all necessary approvals are received unless this occurs during the last five days of the month. In that case, deliveries would commence on the first day of the second month following the month in which approvals are received.

The price at the point of importation initially will be $2.87 (U.S.) per Mcf and will be subject to renegotiation at any time by either party giving the other 30-days notice. The contract also provides for renegotiation at any time if the price netted back to Express, Alberta, is lower than the Alberta border price set monthly by the Alberta Petroleum Marketing Commission. There is no minimum purchase obligation and the only take-or-pay requirement relates to volumes nominated by Bethlehem and actually delivered by Northridge to the intervening transporters at the time of contract termination. Sales and deliveries will be on a best-efforts basis by Northridge, as requested by Bethlehem in monthly volume nominations. Bethlehem retains the right to restrict or cease taking the imported supplies at any time and for so long as it deems it expedient to do so.

Bethlehem maintains that the importation will be in the public interest. It asserts that the importation will place downward pressure on high-cost domestic suppliers. Bethlehem alleges that this downward price pressure ultimately benefits the residential, commercial and industrial customers of the local distributing companies which purchase from such domestic suppliers by fostering lower-priced natural gas supplies. Also, there is nothing in its contract to prevent Bethlehem from switching to alternate lower-priced gas supplies or to other alternate fuels.

According to Bethlehem's application, the Canadian gas will come from reserves owned or controlled by producers in the Province of Alberta, Canada, or from such other sources as may be required from time to time. No new facilities will be required to implement the proposed importation. The imported volumes will be transported for Northridge by NOVA, an Alberta Corporation, to the Alberta border and thereafter will be transported to the international boundary at Emerson, Manitoba, by TransCanada PipeLine Limited. Bethlehem states that there are five potential transporters within the United States that have indicated a willingness to transport the gas for Bethlehem through existing pipeline facilities—ANR Pipeline Company, Great Lakes Transmission Company, Northern Natural Gas Company, Natural Gas Pipeline Company of America (Natural) and Midwestern Gas Transmission Company. No final transportation agreements had been reached at the date of the applicant's filing. The gas would ultimately be delivered to the Northern Indiana Public Service Company (NIPSCO), the existing utility supplier of Bethlehem's Burns Harbor,

Indiana, plant, for redelivery to Bethlehem.

The gas to be imported would initially displace a portion of the gas being purchased from MidCon Ventures, Inc. (MidCon), an affiliate of Natural. Under the MidCon arrangement, Bethlehem is currently purchasing up to 25 MMcf per day delivered to the Burns Harbor plant by Natural and NIPSCO. The MidCon gas began flowing on September 1, 1984, according to Bethlehem.

II. Interventions and Comments

A notice of Bethlehem's application was issued on April 10, 1985, inviting protests and motions to intervene to be filed by May 23, 1985.[1] Motions to intervene were filed by Natural, NIPSCO, and Northern Natural Gas Company, Division of Internorth, Inc. (Northern).

Northern, an interstate pipeline company serving the midwestern region of the United States and a potential transporter of the proposed import, intervened in its own direct interest but made no other comment. NIPSCO stated that, while it did not oppose Bethlehem's application, it strongly disagreed with Bethlehem's assertion that the import is needed to improve its reliability of supply and to exert pressure on NIPSCO to acquire lower-priced supplies to remain competitive. NIPSCO asserted that it has been supplying reliable service to Bethlehem for many years, will continue to do so, and that its industrial rates are already highly competitive. Natural, a major pipeline supplier to NIPSCO, intervened and protested the application on the grounds that unfair competition would result from the proposed import, but did not request further proceedings. This order grants intervention to all movants.

III. Decision

Bethlehem's application has been reviewed to determine if it conforms with Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest."[2] In making this finding, the Administrator of the ERA is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.[3] Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In its motion to intervene and protest, Natural stated that unfair competition would result if Bethlehem's application were approved. Natural asserted that Bethlehem's price of $2.87 (U.S.) per Mcf is significantly lower than that available to Natural from its Canadian suppliers because the proposed import was not subjected to the same Canadian floor price limitations as its arrangement was. Natural expressed concern that Bethlehem's import could have the anomalous effect of backing out firm sales of Canadian gas. Natural asserted that such action could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. Natural urged that the ERA give careful consideration to the effect of spot sales on long-term supplies.

The ERA believes that the competitiveness of an import is of prime concern. The policy of this agency is to promote competition, and the applicant's import brings new and positive competitive forces to its marketplace. Purchasers will avail themselves of short-term arrangements when they are competitive with available long-term arrangements. The ERA has ruled in numerous import cases that it does not intend to protect long-term import arrangements from competition.[4] Natural has options available to it to meet competition, as do other pipelines. Natural has indicated that the new prices under its contracts were the result of direct negotiations to bring prices more in line with market forces. Natural may continue to pursue such options.

Natural alleged that the proposed import could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. The ERA is not persuaded by this argument. The Canadian government and gas industry are moving to correct price disparities that have existed for the past several years between U.S. and Canadian supplies serving U.S. markets. There has been no sign of reluctance by Canadian exporters to negotiate in response to competition, and it is unlikely that the competition from the Bethlehem/Northridge arrangement will change this.

Natural claimed that unfair competition would result if the proposed import is approved because the $2.87 (U.S.) per Mcf price Bethlehem will pay is significantly lower than that available to Natural because of differing floor prices imposed by Canada on Natural's and Bethlehem's contracts. While the DOE has urged the Canadian government remove floors from its export prices, the ERA does not intend to disapprove import arrangements that are competitive and that put pressure on other arrangements to become more competitive.

The Bethlehem arrangement for the import of Canadian gas, as set forth in the application, is wholly consistent with the DOE policy guidelines. The volumes will be imported on a short-term, interruptible basis. No minimum purchase provisions or take-or-pay obligations are included in the contracts. There are renegotiation provisions and adjustments as necessary to enable response to market changes over the term of the arrangement. These components of the arrangement, taken together, provide sufficient flexibility to ensure that the gas will only be imported when it is fully competitive.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under this best-efforts, interruptible arrangement, Bethlehem will opt to purchase gas only to the extent it is competitive with other fuels at its plant. The security of this import supply is not an issue here because of the short-term, interruptible nature of the contract.

After taking into consideration all of the information in the record of this proceeding, I find that the authorization requested by Bethlehem is not inconsistent with the public interest and should be granted.[5]

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Bethlehem Steel Corporation is authorized to import up to 25 MMcf per day and up to 12 Bcf of Canadian gas during the period beginning on the date

[1] 50 FR 15958, April 23, 1985.

[2] 15 U.S.C. § 717b.

[3] 49 FR 6684, February 22, 1984.

[4] See *Northwest Natural Gas Company*, DOE/ERA Opinion and Order No. 65, issued December 10, 1984 (1 ERA ¶ 70,577 *Cascade Natural Gas Corporation*, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA ¶ 70,578); *Southwest Gas Corporation*, DOE/ERA Opinion and Order No. 69, issued December 18, 1984 (1 ERA ¶ 70,581); *Cabot Energy Supply Corporation*, (DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA ¶ 70,124); *Northwest Alaskan Pipeline Company, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA* ¶ 70,585); and *Tenngasco Exchange Corporation and LHC Pipeline Company*, DOE/ERA Opinion and Order No. 80, issued May 6, 1985 (1 ERA ¶ 70,596).

[5] The DOE has determined that because existing pipeline facilities will be used and no new construction is being undertaken specifically for this import, granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

of issuance, and ending November 1, 1986, in accordance with the provisions of the contract submitted as part of the application.

B. Bethlehem shall notify the ERA in writing of the date of the first delivery of gas authorized in ordering paragraph A within two weeks after deliveries begin.

C. Bethlehem shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price per Mcf paid for those volumes.

D. The motions to intervene as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., June 3, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-14105 Filed 6-11-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, International R&D Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: International R&D Panel of the Energy Research Advisory Board (ERAB).

Date & Time: June 26, 1985—9:00 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585.

Purpose of the Parent Board

To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The purpose of the Panel is to report to the parent Board on international energy R&D and specifically on international collaboration on large scale scientific and technology programs involving longtime horizons for energy research and development.

Tentative Agenda

- Review of Draft Report.
- Administrative Items.
- Future Meeting Schedule.

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 23, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85-14215 Filed 6-11-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-527-000]

Centel Corp.; Filing

June 6, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Centel Corporation (Centel) tendered for filing Appendix No. 1 to Service Schedule P (Participation Power Service), as a part of the Electronic Interconnection and Interchange Agreement dated June 27, 1963 between Centel Corporation, formerly Western Light & Telephone Company, Inc., and Midwest Energy, Inc., formerly Central Kansas Electric Cooperative, Inc. Centel states that this Appendix contains the rate determination calculations for the contract year beginning June 1, 1985 and ending May 31, 1986.

Centel requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14209 Filed 6-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-529-000, et al.]

Electric Rate and Corporate Regulation Filings; Cliffs Electric Service Company et al.

June 7, 1985.

Take notice that the following filings have been made with the Commission:

1. Cliffs Electric Service Company

[Docket No. ER85-529-000]

Take notice that on May 22, 1985, Cliffs Electric Service Company (Service Company) tendered for filing a three year Power Sales Agreement with Wisconsin Public Power Incorporated System. The Agreement provides for the sale of up to 30,000 kilowatts of firm power and associated energy.

Service Company requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. The Washington Water Power Company

[Docket No. ER85-536-000]

Take notice that the Washington Water Power Company (Washington) on May 24, 1985, tendered for filing FERC Electric Tariff Original Volume No. 1 of the Washington Water Power Company.

Washington's Rate Schedule W-1 is available to all electric utilities as Purchasers of Washington's nonfirm energy. The rate schedules apply to energy delivered from purchased power, thermal resources, noncontrollable and controllable hydroelectric resources. Two additional schedules include share-savings and provisional energy.

Washington requests an effective date of June 1, 1985 and therefore requests a waiver of the Commission's notice requirements.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Company

[Docket No. ER85-534-000]

Take notice that on May 23, 1985, Southwestern Electric Power Company ("SWEPCO") tendered for filing rates applicable to the City of Bentonville, Arkansas ("Bentonville") for the period February 1, 1985 to December 31, 1985. Such rates were calculated pursuant to the Amendment, dated September 28, 1982, to the Contract for Electric Service, dated July 31, 1983, between SWEPCO and Bentonville, FERC Rate Schedule No. 69. SWEPCO asks that the rates be made effective as of February 1, 1985 and, accordingly, requests waiver of the notice requirements under the Federal Power Act. Copies of the filing have been served on Bentonville and on the Arkansas Public Service Commission.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER85-539-000]

Take notice that on May 28, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedules A, B, F and X providing for emergency, short term firm, assured capacity and energy, and extended economy interchange [illegible] with the City of Homestead, Florida. Florida Power states that Service Schedules A, B, F and X are executed pursuant to the Contract for Interchange Service dated October 14, 1977 between Florida Power and the City of Homestead, which contract is designated as Florida Power's Rate Schedule FERC No. 82. Service Schedules A, B, F and X are submitted for inclusion as supplements to that rate schedule. Florida Power also tendered for filing revised pages 5, 5a and 5b of the Contract for Interchange Services to reflect the addition of new service schedules.

Florida Power requests that Service Schedules A, B, F and X and revised pages 5, 5a and 5b of the Contract for Interchange Service be permitted to become effective June 1, 1985, and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the City of Homestead and the Florida Public Service Commission.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER85-541-000]

Take notice that Florida Power & Light Company (FPL), on May 28, 1985, tendered for filing a document entitled Amendment Number Fifteen to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead, Florida (Rate Schedule FERC No. 55).

FPL states that under Amendment Number Fifteen, FPL will transmit power and energy for City of Homestead, Florida as is required in the implementation of its interchange agreement with Florida Power Corporation for Service Schedule A—Emergency Interchange Service, Schedule B—Short Term Firm Interchange Service, and Service Schedule D—Firm Interchange Service.

FPL requests that waiver of Section 35.3 of the Commission Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served on the Director of Utilities, City of Homestead, Florida.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER85-537-000]

Take notice that on May 24, 1985, Montaup Electric Company ("Montaup") tendered for filing an amended Exhibit A to Article 2.3 of the contract demand agreement between Montaup and the Town of Middleborough, Massachusetts ("Middleborough"). The agreement is Supplement No. 3 of Montaup's Rate Schedule FERC No. 75. The amended Exhibit A provides the charge for radial transmission service to Middleborough for calendar year 1985 and is based on year-end 1984 investment and capitalization. As shown in Exhibit A, that charge is increased by $1,824 above the charges in effect for 1984, which is based on year-end 1983 investment and capitalization.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and the Town of Middleborough.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER85-530-000]

Take notice that on May 22, 1985, Duke Power Company (Duke Power) tendered for filing a supplement to the Company's Electric Power Contract with Lockhart Power Company. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 252.

Duke Power further states that the Company's contract supplement, made at the request of the customer and the agreement obtained from the customer, provides the following increases in contract demand: Delivery Point No. 1 from 8,000 KW to 9,000 KW and Delivery Point No. 3 from 33,000 KW to 44,000 KW.

Duke Power indicates that this supplement also includes an estimate of sale and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of July 19, 1985.

According to Duke Power copies of this filing were mailed to Lockhart Power Company and the South Carolina Public Service Commission.

Comment date: June 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER85-540-000]

Take notice that on May 28, 1985, Pacific Gas and Electric Company ("PG and E") tendered for filing changes to the rate schedules under the Interconnection Agreement between PGandE and Northern California Power Agency (the "NCPA Agreement").

The NCPA Agreement provides for firm transmission service between Points of Receipt and Points of Delivery. Northern California Power Agency ("NCPA") wishes to include a new Point of Receipt and Delivery at PGandE's Tesla Substation ("Tesla"). The new Point of Receipt at Tesla will allow NCPA to import power over the existing Pacific Northwest-Southwest Intertie pursuant to the assignment by the Sacramento Municipal Utility District ("SMUD") of transmission service under its EVH Contract (FERC Docket No. ER85-342).

PGandE states that since the contractual arrangements have just concluded, PGandE must request a waiver of the Commission's notice requirements. PGandE requests an effective date of May 1, 1985.

PG and E requests that the new Point of Receipt and Delivery at Tesla should

be effective only until the earliest of the following:

(1) May 1, 1986; or

(2) The date when the California-Oregon Transmission Project (the "Project") becomes operational; or

(3) The date when the participation of PG and E in the Project is terminated because the approvals required under Section 11.4 of the Project's Memorandum of Understanding (the "MOU") cannot be obtained or because those approvals are unsatisfactory to PG and E; or

(4) The date when the Project is terminated prior to its operations, such termination to be deemed to have occurred on January 1, 1983, if no work has been on the Project for three years prior to that date.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket NO. ER85–535–000]

Take notice that Wisconsin Public Service Corporation (WPS) on May 23, 1985, tendered for filing revisions to the Participation Capacity and Contract Energy, Emergency Energy, Short Term Power, Maintenance Energy, and General Purpose Energy service schedules of the following WPS rate schedules:

FPC No. 17—Interconnection Agreement with Wisconsin Power and Light Co.
FPC No. 26—Interconnection Agreement with Northern States Power Co.
FPC No. 30—Interconnection Agreement with Wisconsin Electric Power Co.
FPC No. 33—Power Pool Agreement with Wisconsin Power and Light Company and Madision Gas and Electric Co.

WPS states that the proposed service schedule revisions are unilateral and provide for a more appropriate transmission use charge for third party transactions of 1.51 mills/Kwh instead of the existing 0.58 mills/Kwh. The proposed charge is based on commonly accepted FERC methodology and more current costs. No other revisions are proposed to the currently effective wording of these service schedules.

WPS proposes an effective date of August 1, 1985 for the revision of these service schedules.

WPS says that copies of this filing have been served upon Madison Gas and Electric Company, Northern States Power Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, and the Public Service Commission of Wisconsin.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER85–532–000]

Take notice that Niagara Mohawk Power Corporation (Niagara), on May 23, 1985 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated March 14, 1985.

Niagara presently has on file an agreement with Central Hudson dated November 1, 1983. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 128. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the rate for providing transmission service for Central Hudson for the delivery of pumping and generating energy in connection with pumped storage power service provided to Central Hudson by the Power Authority of the State of New York (PASNY) from PASNY's Blenheim-Gilboa Pumped Storage Project. Niagara requests an effective date of July 1, 1984.

copies of the filing were served upon the followng:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602
Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER85–533–000]

Take notice that Niagara Mohawk Power Corporation (Niagara), on May 23, 1985 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated October 1, 1984.

Niagara presently has on file an agreement with Central Hudson dated February 14, 1975. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 88. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New York to Central Hudson as provided for in the terms of the original agreement. Niagara requests the Commission to allow said agreement to become effective as of September 1, 1984.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602
Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223.

Comments date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14211 Filed 6–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP85–94–001 et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corporation et al.

Take notice that the following filings have been made with the commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP85–94–001]

June 5, 1985.

Take notice that on May 29, 1985, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–94–001 an amendment to its pending application filed with the Commission on November 7, 1984 in Docket No.CP85–94–000 pursuant to section 7(c) of the Natural Gas Act to reflect alternative levels of service to a new wholesale customer, Eastern Shore Natural Gas Company (Eastern Shore), all as more fully set forth in the

amendment which is on file with the Commission and open to public inspection.

It is indicated that in the application Applicant requested authorization for:

(1) Initiation of service to Eastern Shore under Rate Schedule CDS providing for a contract demand of up to 3,000 dt equivalent of gas per day, and under Rate Schedule WS providing for a maximum daily quantity of 1,300 dt equivalent per day, and a winter contract quantity of 65,000 dt equivalent, to be effective November 1, 1984 or such later date as the Commission may authorize.

(2) An increase in contract demand under Rate Schedule CDS of 425 dt equivalent of gas per day, from 3,000 to 3,425 dt equivalent per day, and an increase in maximum daily quantity an Rate Schedule WS of 700 dt equivalent of gas per day, from 1,300 to 2,000 dt equivalent per day, and an increase in winter contract quantity of 35,000 dt equivalent of gass from 65,000 to 100,000 dt equivalent, all to be effective November 1, 1985.

Pursuant to an April 15, 1985 precedent agreement between Eastern Shore and Applicant, Applicant now requests authorization for the following alternative service levels:

1(A) Initiation of servce to Eastern Shore under Rate Schedule CDS providing for a contract demand of up to 750 dt equivalent of gas per day, and under Rate Schedule WS providing for a maximum daily quantity of 1,360 dt equivalent of gas per day, and a winter contract quantity of 68,000 dt equivalent of gas, to be effective November 1, 1984 or such later date as the Commission my authorize.

2(A) An increase in contract demand under Rate Schedule CDS of 425 dt equivalent of gas per day, from 750 to 1,175 dt equivalent per day, and an increase in maximum daily quantity under Rate Schedule WS of 750 dt equivalent of gas per day, from 1,360 to 2,110 dt equivalent per day, and an increase in winter contract quantity of 37,500 dt equivalent of gas, from 68,000 to 105,000 dt equivalent, all to be effective November 1, 1985.

Applicant states that its existing pipeline system has adequate capacity to provide the alternative service levels requested by Eastern Shore without the construction of any additional facilities. Applicant indicates that in all respects, other than the proposed levels of service, Applicant's application in Docket No. CP85-94-000 remains unchanged.

Comment date: June 19, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP85-528-000]

June 7, 1985.

Take notice that on May 20, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-538-000 a request pursuant to § 157.205 of the Regulations (18 CFR 157.205) for permission and approval to abandon service and a farm tap located on United's Iowa-Marksville 6-inch line in Bunkie, Avoyelles Parish, Louisiana, under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the subject farm tap was constructed in 1931 and was authorized in Docket No. CP71-89. United further states the farm tap has been used to provide natural gas service to the residence of Flora Randolph and to the Second Union Baptist Church through Entex, Inc. (Entex), the local distribution company and the only customer United serves through the tap. United avers the tap has been rendered unnecessary since Entex has connected its distribution system directly to the residence and the church. United advises that the proposed abandonment would be achieved without detriment or disadvantage to United's other customers.

Comment date: July 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-512-000]

June 7, 1985.

Take notice that on May 16, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-512-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a qualified end-user under the certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The proposed transportation service would be performed in accordance with the terms and conditions of a transportation agreement dated March 15, 1985, between Northern and Armour-Dail, Inc. (Armour), for a term not to extend beyond June 30, 1985, or such date as the Commission may extend the current end-user transportation program, whichever is later. Northern states that the agreement provides for the transportation of up to 5,000 Mcf of natural gas per day on an interruptible basis. It is explained that Armour would have gas delivered to Northern at an existing interconnection with Funk Fuels Corporation located in Beaver County, Oklahoma, and that Northern would transport equivalent volumes to Northern Illinois Gas Company at an existing interconnection located near East Dubuque, Illinois, for ultimate delivery to Armour. It is stated that Northern would charge Armour 34.2 cents per Mcf of gas transported. It is explained that the gas would be used as boiler fuel to produce steam at Armour's soap plant at Montgomery, Illinois.

Northern also requests authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Northern will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quanities herein and not to increase those quantities.

Comment date: July 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company, of America

[Docket No. CP85-521-000]

June 7, 1985.

Take notice that on May 20, 1985, Northern Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-521-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips Petroleum Company (Phillips), an industrial end-user, under the certificate issued in Docket No. CP82-402-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with

the Commission and open to public inspection.

Natural proposes to transport up to 20 billion Btu of natural gas per day on an interruptible basis for Phillips for a term to end no later than March 11, 1987, should the Commission extend the end-user transportation program beyond June 30, 1985. Natural indicates that the gas to be transported would, in part, be gas owned and developed by Phillips and, in part, gas purchased from numerous independent produces in first sales and that such volumes were not dedicated to interstate commerce on November 8, 1978.

Natural stated it would receive said volumes of natural gas from the gathering systems of two of Phillips affilates located on the tailgate of the Amoco Old Ocean processing plant, in Brazoria County, Texas, and redeliver thermally equivalent volumes of natural gas to Phillips at an existing interconnection between Natural's and Phillips' facilities also located in Brazoria County. Natural states it would deliver said volumes to Phillips at its Sweeny refinery for boiler fuel and process fuel use. No distributor or intrastate pipeline would be involved in this transaction, it is asserted.

Natural indicated that it would intitially charge Phillips 1.0 cent for each million Btu of natural gas transported, stating this rate is based on its settlement cost of onshore transmission in Docket No. RP83–68 and that such rate is consistent with its Rate Schedule EUT–1. In addition, Phillips would pay a Gas Research Institute surcharge, if applicable.

Natural also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Phillips and the numerous producers involved in this proposal. The flexible authority requested is to apply only to points related to sources of gas supply not to delivery points in the market area. Natural will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quanities herein and not increase those quantities.

Comment date: July 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or made any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385:214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14212 Filed 6–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2457–002 et al.]

Hydroelectric Applications (Public Service Co., of New Hampshire et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspections.

a. Type of Applicantion: New Major License.

b. Project No.: 2457–002.

c. Date Filed: December 10, 1984.

d. Applicant: Public Service Company of New Hampshire.

e. Name of Project: Eastman Falls.

f. Location: On the Pemigewasset River in Merrimack and Belknap Counties, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy Barbour, Vice President, Public Service Company of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, New Hampshire 03105.

i. Comment Date: July 31, 1985.

j. Description of Project: The existing operating project commenced operation in 1910 and was issued an initial license in 1969, which will expire in 1987. The Licensee has filed for a new liocense for the continued operation of the project. The existing project consists of: (1) A reinforced concrete gravity dam, 341 feet long and 31 feet high with a crest elevation of 301 feet USGS; (2) f-foot-high hinged steel flashboards extending to elevation 307 feet USGS; (3) a 16-foot-high, 30-foot-wide steel wastegate located at the west and of the dam; (4) a powerhouse divided into two sections; (a) the western section contains a 4,600-KW unit and; (b) the eastern section contains a 1,800-KW unit for a total installed capacity of 6,400 KW; (5) a transmission line, 100 feet long; and (6) appurtenant facilities. The project generates an average of 26,600 HWh annually. The dam ius owned by the Public Service Company of New Hampshire. The existing project would be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. The cost of the existing project is $22,074,000.

k. Purpose of Project: Project power would continue to be solid to the customers of the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Exemption 5 MW or Less.

b. Project No.: P–8999–000.

c. Date Filed: March 4, 1985.
d. Applicant: White's Bridge Hydro Company.
e. Name of Project: White's Bridge.
f. Location: On the Flat River in Ionia County, Michigan.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.
h. Contact Person: Victor D. Leabu, White's Bridge Hydro Company, 6023 Winans Drive, Brighton, MI 48116.
i. Comment Date: July 30, 1985.
j. Description of Project: The proposed project would consist of: (1) an existing dam 24-feet-high and 120-feet-long including spillway at elevation 732 m.s.l. owned by the Applicant; (2) an existing 300-acre reservoir with a storage capacity of 1500 acre-feet at elevation 732 m.s.l.; (3) a rehabilitated powerhouse to contain a generating unit with a capacity of 775 kW which would discharge flows back into the Flat River; (4) an existing 3-phase transmission line 300 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 3 million kWh operating under a net hydraulic head of 17 feet. Project power will be sold to Consumers Power Company.
k. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.
l. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.
3 a. Type of Application: Preliminary Permit.
b. Project No.: 9065–000.
c. Date Filed: March 28, 1985.
d. Applicant: Burlington Energy Development Associates..
e. Name of Project: Risingdale Pond.
f. Location: Housatonic River in Berkshire County, Massachusetts.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(A)–825(r).
h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.
i. Comment Date: July 31, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high, 120-foot-long concrete dam owned by the Rising Paper Company; (2) an existing reservoir with a surface area of 2 million square feet and a storage capacity of 15 million cubic feet at water surface elevation 712 feet msl; (3) an existing 8-foot-high, 40-foot-wide, 500-foot-long canal; (4) an existing powerhouse containing a generating unit with a rated capacity of 800 kW; and (5) a proposed 200-foot-long transmission line tying into the existing Western Massachusetts Electric Company System. The Applicant estimates a 3.5 million kWh average annual energy production.
k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $24,000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.
4 a. Type of Application: Preliminary Permit.
b. Project No: 9082–000.
c. Date Filed: April 1, 1985.
d. Applicant: Burlington Energy Development Associates.
e. Name of Project: Dalton Dam No. 1.
f. Location: East Branch Housatonic River in Berkshire County, Massachusetts.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.
i. Comment Date: July 31, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 200-foot-long fitted stone dam owned by Crane and Co., Inc.; (2) an existing reservoir with a surface area of 200,000 square feet and a storage capacity of 1 million cubic feet at water surface elevation 1,010 feet msl; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 100 kw; and (4) a proposed 60-foot-long transmission line tying into the existing Western Massachusetts Electric Company System. The Applicant estimates a 440,000 kWh average annual energy production.
k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $8,500.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.
5 a. Type of Application: Preliminary Permit.
b. Project No: 9081–000.
c. Date Filed: April 1, 1985.
d. Applicant: Burlington Energy Development Associates.
e. Name of Project: Center Pond.
f. Location: East Branch Housatonic River in Berkshire County, Massachusetts.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).
h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.
i. Comment Date: July 31, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 19-foot-high, 120-foot-long concrete dam owned by Byron Weston Co., Inc.; (2) an existing reservoir with a surface area of 1 million square feet and a storage capacity of 5 million cubic feet at water surface elevation 1,135 feet msl; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 130 kw; and (4) a proposed 50-foot-long transmission line tying into the existing Western Massachusetts Electric Company system. The Applicant estimates a 570,000 kWh average annual energy production.
k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $8,500.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.
6 a. Type of Application: Preliminary Permit.
b. Project No: 8891–000.
c. Date Filed: January 28, 1985.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Morgan Dam Project.

f. Location: On the West Canada Creek in the Village of Barnerald, Oneida and Herkimer Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Fred T. Samel, Trenton Falls Hydroelectric Company, P.O. Box 169, Prospect, NY 13435.

i. Comment Date: July 31, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 175-foot-long, 8-foot-high overflow dam; (2) an impoundment having a surface area of 1-acre with negligible storage and a normal water surface elevation of 752 feet m.s.l.; (3) a new 120-foot-long, 10-foot-diameter steel penstock; (4) a new powerhouse containing a generating unit with an installed capacity of 250 kW; (5) a new tailrace; (6) a new 1000-foot-long, 46-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 1,824,000 kWh. The dam is owned by the New York State Department of Transportation.

k. Purpose of Project: All project energy would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $46,500.

7 a. Type of Application: Small Conduit Exemption.

b. Project No.: P–9087–000.

c. Date Filed: April 3, 1985.

d. Applicant: City of Boulder, Colorado.

e. Name of Project: Sunshine Hydroelectric Facility.

f. Location: In Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Bill Mitzelfeld, City of Boulder, Utilities Division, P.O. Box 791, Boulder, CO 80306.

i. Comment Date: July 10, 1985.

j. Description of Project: The proposed project would utilize the City of Boulder's existing 30-inch water distribution system and would consist of: (1) A proposed reinforced concrete powerhouse which will house two turbine/generator units for an installed capacity of 750 kW; and: (2) appurenant facilities. The estimated average annual energy produced by the project would be 3,100,000 kWh operating under a net hydraulic head of 495 feet. Project power will be used for the City's domestic energy needs.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

8 a. Type of Application: Constructed Major License (Over 5MW).

b. Project No.: 8243–000.

c. Date Filed: March 30, 1984.

d. Applicant: Wisconsin Public Power Incorporated System.

e. Name of Project: Grandfather Falls.

f. Location: On the Wisconsin River in Lincoln County, Wisconsin.

g. Filed pursuant to: Federal Power Act 16, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael P. May, Boardman, Suhr, Curry and Field, One South Pinckney Street, P. O. Box 927, Madison, WI 53701.

i. Comment Date: July 10, 1985.

j. Competing Application: Project No. 1966, Date Filed: December 20, 1984, Due Date: July 5, 1985.

k. Description of Project: The existing project is owned by the Wisconsin Public Service Corporation and would consist of: (1) The 410–foot-long and 36–foot-high reinforced concrete dam; (2) the reservoir with a surface area of 200 acres and a storage capacity of 2,540 acre-feet at powerpool elevation of 1,396 feet m.s.l.; (3) the 4,000-foot-long by 11-foot-deep power canal; (4) the two 1,400-foot-long, 13.5-foot and 11-foot diameter wood stave penstocks which connect to two steel penstocks that are 61.5 feet and 68.75 feet long; (5) the powerhouse containing two generating units rated at 6,240 kW and 11,000 kW, respectively, for a total installed capacity of 17,240 kW; (6) the tailrace; (7) the 6.9–kV transmission line; and (8) appurtenant facilities. The average annual energy generation is estimated to be 102.4 GWh.

l. Purpose of Project: The energy generated at the project would be fed into the Applicant's electric system.

m. This notice also consists of the following standard paragraphs: A4, B and C.

9 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8235–001.

c. Date Filed: January 30, 1985.

d. Applicant: Hydroelectric Development, Inc.

e. Name of Project: Lower Robertson Dam.

f. Location: On the Ashuelot River in Cheshire County, New Hampshire.

g. Filed Pursuant to: Energy Security Act of 1980, section 408, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: James C. Katsekas, River Engineering Corporation, 217 Rockingham Road, Londonderry, New Hampshire 03053.

i. Comment Date: July 10, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 18-foot-high and 125-foot-long Lower Robertson Dam with a spillway crest elevation of 383.6 feet mean sea leval (msl) which would be raised 1 foot to elevation 384.6 feet msl; (2) new 1.5–foot-high flashboards to raise the normal maximum pool elevation to its historical elevation of 386.1 feet msl; (3) an impoundment with a surface area of 8.6 acres; (4) a new intake structure and powerhouse at the north end of the dam with 3 turbine-generator units with a total installed capacity of 840 kW; (5) a short tailrace; and (6) other appurtenances. Interconnection facilities are available at the site. Flashboards were last used in 1950 to create a maximum pool elevation of 386.1 feet msl. Applicant owns all existing facilities. Applicant estimates and average annual generation of 3,200,000 kWh. The Applicant filed this application within its preliminary permit term for Project No. 8235.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

10 a. Type of Application: Exemption (5 MW or Less)

b. Project No: 8915–000.

c. Date Filed: January 30, 1985.

d. Applicant: Hydroelectric Development, Inc.

e. Name of Project: Upper Robertson Dam.

f. Location: On the Ashuelot River in Cheshire County, New Hampshire.

g. Filed Pursuant to: Energy Security act of 1980, section 408, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: James C. Katsekas, Rivers Engineering Corporation, 217 Rockingham Road, Londonderry, New Hampshire 03053.

i. Comment Date: July 10, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) Reconstruction of the now breached reinforced concrete Upper Robertson Dam to be 16 feet high and 208 feet long with a spillway crest elevation of 405.8 feet mean sea level (msl); (2) a small impoundment; (3) a new intake structure and powerhouse at the north end of the dam with 3 turbine-generator units with a total installed capacity of 810 kW; (4) an existing 300-foot-long tailrace; and (5) other appurtenances. Interconnection facilities are available at the site. The Upper Robertson Dam was a concrete capped timber crib structure with a spillway crest elevation of 404.3 feet msl until it was breached in 1978; 1.5-foot-high flashboards were utilized until 1950 for a normal maximum pool elevation of 405.8 feet msl. Applicant owns all existing facilities. Applicant estimates an average annual generation of 3,000,000 kWh. The application was filed during the Applicant's preliminary permit term for the Upper and Lower Robertson Dams Project No. 8235.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, & D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

11 a. Type of Application: Preliminary Permit

b. Project No: 9068–000.

c. Date Filed: March 29, 1985.

d. Applicant: Colorado River Commission.

e. Name of Project: Las Vegas Wash Hydro Project.

f. Location: Las Vegas Wash in Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jack L. Stonehocker, Director, Colorado River Commission, 1515 East Tropicana, Suite 400, Las Vegas, NV 89109.

i. Comment Date: July 15, 1985.

j. Competing Application: Project No. 8344, Dated Filed June 4, 1984.

k. Description of Project: The proposed project would be located, in part, on National Recreation Area lands and would consist of: (1) a new diversion and intake structure within Las vegas Wash; (2) a new 11,000-foot-long, six-foot-diameter penstock; (3) a new powerhouse to contain a turbine-generator unit rated at 1,100 kW; (4) a tailrace returning flow to the Wash.; (5) a new 10-mile-long , 12-kV transmission line connecting to a Nevada Power Company substation; and (6) appurtenant facilities. the Applicant estimates that the average annual energy output would be 5,780,000 KWh.

l. Purpose of Project: Project energy would be utilized by the Applicant and/or sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

12 a. Type of Application: Conduit Exemption.

b. Project No: 9032–000.

c. Date Filed: March 19, 1985.

d. Applicant: Swiss-American Company.

e. Name of Project: Bell Power Project.

f. Location: On Lower Fiddler Green Canal, part of Pacific Gas and Electric Company's (PG&E) water distribution system, in Placer County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Randolph C. Rowland, Associated Engineering Consultants, 124 Oakwood Drive, Suite D, Auburn, CA 95603.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) a tap into PG&E's existing 48-inch-diameter pipe that carries water into Lower Fiddler Green Canal; (2) a 700-foot-long, 18-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 100 kW to operate under a head of 80 feet; and (4) a 30-inch-diameter, 50-food-long pipe from the powerhouse to the Lower Fiddler Green Canal. A short tap will connect the powerhouse with an existing PG&E's 12–kV transmission line at the site.

k. Purpose of Project: The estimated annual generation of 280,000 kWh will be sold to PG&E.

This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

13 a. Type of Application: Amendment to Exhibit R (Recreation Plan).

b. Project No.: P–405–019.

c. Dated Filed: April 8, 1985.

d. Applicant: Philadelphia Electric Power Company and Susquehanna Power Company.

e. Name of Project: Conowingo.

f. Location: On the Susquehanna River in Cecil and Harford Counties, Maryland; and York and Lancaster Counties, Pennsylvania.

g. Filed Pursuant to: License Articles 44 and 45.

h. Contact Person: Mr. Kurt Samuelson, Philadelphia Electric Power Company, 2301 Market Street, P.O. Box 8699, Philadelphia, PA 19101.

i. Comment Date: July 15, 1985.

j. Description of Project Amendment: The Susquehanna Power Company and the Philadelphia Electric Power Company, Licensees, for the Conowingo Dam Project FERC No. 405, filed on April 8, 1985, a report on compliance with the approved Exhibit R (recreation plan) for the project. Substantial improvements have been made by the Licensees to recreational use areas at the project.

The Licensees propose to make additional improvements to the Conowingo Boat Launch area and extend the date of its completion to 1988.

The Licensees have requested deletion of the license requirement to improve the Cold Cabin Boat Launch area.

k. This notice also consists of the following standard paragraphs: B, C and D2.

14 a. Type of Application: Exemption from Licensing.

b. Project No: 7878–000.

c. Date Filed: November 28, 1983.

d. Applicant: William A. Curtis.

e. Name of Project: Hidden Springs.

f. Location: On Hidden Springs, a tributary of Billingsley Creek in Gooding County, Idaho near the Town of Hagerman.

g. Filed Pursuant to: Energy Security Act (16 U.S.C. 2705, 2708 as amended).

h. Contact Person: Mr. Vernon F. Ravenscroft, Consulting Associates, Inc., P.O. Box 893, Boise, Idaho 83701.

i. Comment Date: July 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing diversion dam at an evalation of 3,105 feet; (2) an 18-inch-diameter, 288-foot-long buried penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 73 kW, operating under a head of 60 feet; and (4) a short transmission line which ties into an Idaho Power Company line.

The estimated average annual energy output would be 307,500 kWh.

Purpose of Exemption: An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power will be sold to Idaho Power Company.

l. This notice also consist of the following standard paragraphs: A1, A9, B, C, and D3a.

15 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7791–001.

c. Date Filed: February 15, 1985.

d. Applicant: Hydroelectric Development, Inc.

e. Name of Project: Ashuelot Paper Company Dam.

f. Location: On the Ashuelot River in Cheshire County, New Hampshire.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: James C. Katsekas, Rivers Engineering Corporation, 217 Rockingham Road, Londonderry, New Hampshire 03053.

i. Comment Date: July 10, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 18-foot-high and 144.5-foot-long concrete-capped timber crib Ashuelot Paper Company Dam with a spillway crest elevation of 335.4 feet mean sea level (msl); (2) the reinstallation of 3.5-foot-high flashboards to raise the normal maximum pool elevation to 338.9 feet msl; (3) a small impoundment; (4) a new intake structure and powerhouse at the south end of the dam with 3 turbine-generator units with a total installed capacity of 870 kW; (5) a 100-foot-long tailrace; and (6) other appurtenances. Interconnection facilities are available at the site. Flashboards, 3.5 feet high, were utilized at the dam until 1963 creating a normal maximum pool elevation of 338.9 feet msl. Applicant owns all existing facilities. Applicant estimates an average annual generation of 3,300,000 kWh. The application was filed during the Applicant's preliminary permit term for the Ashuelot Paper Company Dam Project No. 7791.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consist of the following standard paragraphs: A1, A9, B, C, & D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

16 a. Type of Application: Conduit Exemption.

b. Project No: 9071–000.

c. Date Filed: March 29, 1985.

d. Applicant: Calleguas Municipal Water District (CMWD).

e. Name of Project: Santa Rosa Valley.

f. Location: Pressure Reduction Station, at Santa Rosa Valley, near the City of Thousand Oaks, Los Angeles County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mrs. Frances B. Kimball, Manager, CMWD, 2100 Olsen Road, Thousand Oaks, CA 91362, (805) 526–9323.

i. Comment Date: July 22, 1985.

j. Description of Project: The proposed project would consist of a single turbine-generator unit with an installed capacity of 250 kW, producing an estimated average annual generation of 1.25 GWh, and located at the Oxnard-Santa Rosa Pressure Reducing Station No. 2. A 300-foot-long tap transmission line would connect the project to an existing 16-kV Southern California Edison (SCE) line. Project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

17 a. Type of Application: Major License (5 MW or Less).

b. Project No: P–8403–000.

c. Date Filed: July 2, 1984.

d. Applicant: McCallum Hydro Associates.

e. Name of Project: Windsor Locks Project.

f. Location: On the Connecticut River in the Towns of Suffield, Enfield and Windsor Locks, Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: E.J. McCallum, McCallum Hydro Enterprises, P.O. Box 1780, Bridgeport, CT 06601–1780.

i. Comment Date: July 22, 1985.

j. Competing Application: Project No. 8404, Date Filed: July 2, 1984.

k. Description of Project: The proposed project would consist of: (1) The existing 1484-foot-long Enfield Dam which varies in height from 5 feet to 10 feet; (2) an existing 112-foot-long headworks which varies in height from 5 feet to 10 feet; (3) a proposed 900-foot-long breakwater structure which would vary in height from 7 feet to 12 feet; (4) a reservoir having a surface area of 2,470 acres, with negligible storage, and a normal water surface elevation of 38.8 feet m.s.l.; (5) an existing intake structure; (6) and existing 4.5-mile-long, 80-foot-wide, 10-foot-deep power canal; (7) a proposed powerhouse containing 2 generating units with a total installed capacity of 4,500 kW; (8) a proposed 100-foot-long, 60-foot-wide tailrace; (9) a proosed 1,500- foot-long, 23-kV transmission line; and (10) appurtenant facilities. The Applicant estimates the average annual generation would be 30,000,000 kWh. The existing dam and project facilities are owned by the Windsor Locks Canal Company.

The Applicant would also consider the following development alternative consisting of the same impoundment structures, reservoir, intake structure, and power canal as stated above, and (1) a proposed 30-foot-long, 12-foot-diameter steel penstock off the canal at the 2.5-mile point downstream; (2) a proposed powerhouse containing one generating unit with an installed capacity of 2,250 kW; (3) a proposed 40-foot-wide, 100-foot-long tailrace; (4) a 2.75-mile-long, 23-kV underground transmission line; (5) a second proposed 30-foot-long, 12-foot-diameter steel.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 8762–000.

c. Date Filed: December 3, 1984.

d. Applicant: Allegheny County, Pennsylvania.

e. Name of Project: Monongahela River Locks and Dam #2.

f. Location: Monongahela River in Allegheny County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C § 791(a)–825(r).

h. Contact Person: Mr. James W. Knox, Director, Allegheny County Hydropower Programs, 429 Forbes Avenue, Room 1307, Pittsburgh, Pennsylvania 15219.

i. Comment Date: July 15, 1985.

j. Competing Application: Project No. 8757. Date Filed: December 3, 1984.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers Monongahela River L/D #2 and would consist of: (1) A new reinforced concrete intake structure; (2) a new powerhouse at the left dam abutment containing

three generating units with a capacity of 750 kW each for a total installed capacity of 2,250 kW; (3) a new 300-foot-long concrete tailrace; (4) a new transmission line, 2,640 feet long; and (5) apurtenant facilities. The Applicant estimates the average annual generation would be 13,140,000 kWh.

l. Purpose of Project: Project power would be sold to Duquesne Light Company.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $45,000.

19 a. Type of Application: 5 MW Exemption.

b. Project No.: 9075–000.

c. Date Filed: April 1, 1985.

d. Applicant: Red Bluff Water Power Control District; PRODEK, Inc.

e. Name of Project: Red Bluff Water Power.

f. Location: On the Pecos River in Reeves and Loving Counties, Texas and Eddy County, New Mexico.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. David N. Raffel, PRODEK, Inc., P.O. Box 12608, El Paso, TX 79912.

i. Comment Date: July 13, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing earth dam about 9,200 feet long and 102 high; (2) an existing emergency spillway about 790 feet long; (3) an existing service spillway, mounted by 12 Tainter gates, each 25 feet high by 15 feet wide; (4) a reservior with a water surface area of about 11,700 acres and storage capacity of about 310,000 acre-feet at maximum normal water surface elevation of 2841.7 NGVD; (5) two existing penstocks controlled by butterfly valves; (6) an existing concrete powerhouse, approximately 41.5 feet by 32 feet, which will house two rehabilitated turbine-generator units with a total installed capacity of 2,300 kW; (7) approximately 40 feet of existing underground transmission line at 22.5-kV; and (8) appurtenant facilities. Applicant estimates that the average annual energy would be 1,350,000.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Texas Electric Service Company.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

a. 20 Type of Application: Amendment of License.

b. Project No.: 632–001.

c. Date filed: October 19, 1984.

d. Applicant: Monroe City Corporation.

e. Name of Project: Lower Monroe Hydro Project.

f. Location: On Monroe Creek in Sevier County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mayor Myron Madsen, Monroe City, Monroe, UT 84654.

i. Comment Date: July 12, 1985.

j. Description of Projects: The project as relicensed on November 21, 1978, consisted of: (1) A 3-foot-high and 13-foot long concrete overflow-type diversion dam topped with 3-foot-high flashboards; (2) a concrete intake structure with a trash rack and a 21-inch diameter cast iron pipeline 100 feet long; (3) a 4,405-foot long welded steel penstock of which 24 feet is 20-inch diameter pipe and 4,381 feet is 16-inch diameter pipe; (4) a powerhouse containing a Pelton wheel connected to a generator rated at 100 kW; (5) a 2.4-kV 3-pphase generator lead and a transmission line approximately 3,570 feet long; and (6) appurtenant facilities.

The proposed amendment would abandon the exisiting powerplant site, would construct new facilities about 4,000 feet downstream, and would consist of: (1) a new penstock extension, 16 inches in diameter and about 4,000 feet long; (2) a new powerhouse to contain a new turbine-generator unit having a total rated capacity of 250 kW; (3) a tailrace returning flow to monroe Creek; (4) a new transmisson line connecting to an existing line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,275,456 kWh.

k. Purpose of Project: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: B, C and D1.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capactiy—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file competing application must submit to the Commission, on or before the specified comment data for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file

such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectic exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission or or before, the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectic exemption applicatant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectic exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectic exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower

Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 6, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14213 Filed 6–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID–1835–004 et al.]

Interlocking Directorate Applications, Brian A. Parent et al.

June 5, 1985.

Take notice that the following filings have been made with the Commission:

1. Brian A. Parent

[Docket No. ID–1835–004]

Take notice that on May 16, 1985, Brian A. Parent (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President-Planning and Rates—Atlantic City Electric Company
Director—Deepwater Operating Company

Comment date: June 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

J. David McCann

[Docket No. ID–2178–000]

Take notice that on May 16, 1985, J. David McCann (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Assistant Treasurer, Assistant Secretary—Atlantic City Electric Company
Treasurer, Assistant Secretary—Deepwater Operating Company

Comment date: June 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14210 Filed 6–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85–772–000, et al.]

United Gas Pipe Line Co. et al.; Self-Implementing Transactions

June 10, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to Section 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidential to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before June 27, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date	Transportation rate (¢/MMBtu)
ST85-772	United Gas Pipe Line Co	Owens-Illinois, Inc	04-01-85	F(157)		
ST85-773	United Gas Pipe Line Co	Endevco Pipeline Co	04-01-85	[illegible]		
ST85-774	United Gas Pipe Line Co	Shreveport Intra. Gas Trans., Inc	04-01-85	[illegible]		
ST85-775	United Gas Pipe Line Co	L. E. Smith Glass Co	04-01-85	F(157)		
ST85-776	Lawrenceburg Gas Transmission Corp	Cincinnati Gas and Electric Co	04-01-85	[illegible]		
ST85-777	United Gas Pipe Line Co	Allied Corp	04-01-85	F(157)		
ST85-778	United Gas Pipe Line Co	Allied Corp	04-01-85	F(157)		
ST85-779	Panhandle Eastern Pipe Line Co	American Cyanamid Co	04-01-85	F(157)		
ST85-780	Panhandle Eastern Pipe Line Co	Decatur Public Schools	04-01-85	F(157)		
ST85-781	Panhandle Eastern Pipe Line Co	DeKalb Swine Breeders, Inc	04-02-85	F(157)		
ST85-782	Oklahoma Natural Gas Co	Michigan Consolidated Gas Co	04-03-85	C	08-31-85	24.32
ST85-783	Tennessee Gas Pipeline Co	Central Gas Co	04-02-85	[illegible]		
ST85-784	Florida Gas Transmission Co	American Distribution Co	04-02-85	[illegible]		
ST85-785	Oklahoma Natural Gas Co	Northern Indiana Public Service Co	04-02-85	C	08-30-85	24.32
ST85-786	Houston Pipe Line Co	Brooklyn Union Gas Co	04-03-85	C		
ST85-787	Kansas Power and Light Co	Sabine Gas Transmission Co	04-03-85	D		
ST85-788	Houston Pipe Line Co	Public Service Electric and Gas Co	04-03-85	[illegible]		
ST85-789	Mustang Fuel Corp	Midcon Ventures, Inc	04-03-85	[illegible]	08-31-85	23.90
ST85-790	Natural Gas Pipeline Co. of America	UGI Corp., et al	04-04-85	[illegible]		
ST85-791	Columbia Gulf Transmission Co	National Fuel Gas Supply Corp	04-04-85	G		
ST85-792	Columbia Gulf Transmission Co	Baltimore Steam Co	04-04-85	F(157)		
ST85-793	Columbia Gulf Transmission Co	Teledyne Ohio Steel	04-04-85	F(157)		
ST85-794	Columbia Gulf Transmission Co	Air Products and Chemicals, Inc	04-04-85	F(157)		
ST85-795	Columbia Gulf Transmission Co	Allied Corp	04-04-85	F(157)		
ST85-796	Columbia Gas Transmission Corp	National Fuel Gas Supply Corp	04-04-85	G		
ST85-797	Columbia Gas Transmission Corp	Teledyne Ohio Steel	04-04-85	F(157)		
ST85-798	Columbia Gas Transmission Corp	Brooke Glass Co., Inc	04-04-85	F(157)		
ST85-799	Columbia Gas Transmission Corp	Air Products and Chemicals, Inc	04-04-85	F(157)		
ST85-800	Columbia Gas Transmission Corp	Allied Corp	04-04-85	F(157)		
ST85-801	Columbia Gas Transmission Corp	Baltimore Steam Co	04-04-85	F(157)		
ST85-802	Panhandle Eastern Pipe Line Co	Archer-Daniels-Midland Co	04-04-85	F(157)		
ST85-803	Southern Natural Gas Co	Tennessee Gas Pipeline Co	04-03-85	[illegible]		
ST85-804	Tennessee Gas Pipeline Co	Columbia Gas of Virginia, et al	04-05-85	[illegible]		
ST85-810	Northern Natural Gas Co	Power-Tex Joint Venture	04-05-85	B		
ST85-811	Black Marlin Pipeline Co	Humble Gas Transmission Co	04-05-85	B		
ST85-812	Texas Gas Transmission Corp	A.E. Staley Manufacturing Co	04-08-85	F(157)		
ST85-813	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	04-08-85	B		
ST85-814	Northwest Central Pipeline Corp	City of Coffeyville, KS	04-08-85	F(157)		
ST85-815	Producer's Gas Co	National Fuel Gas Supply Corp	04-09-85	D		
ST85-816	United Gas Pipe Line Co	Intrastate Gathering Corp	04-09-85	[illegible]		
ST85-817	Houston Pipe Line Co	Philadelphia Electric Co	04-10-85	C		
ST85-818	Southern Natural Gas Co	Florida Gas Transmission Co	04-11-85	G		
ST85-819	United Texas Transmission Co	United Gas Pipe Line Co	04-11-85	C		
ST85-820	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	04-11-85	C		
ST85-821	Intrastate Gathering Corp	Tennessee Gas Pipeline Co	04-11-85	C		
ST85-822	Oasis Pipe Line Co	Transwestern Pipeline Co	04-11-85	C		
ST85-823	Northern Natural Gas Co	Armour-Dial, Inc	04-10-85	F(157)		
ST85-824	Northern Natural Gas Co	Bethleham Steel Corp	04-10-85	F(157)		
ST85-825	Houston Pipe Line Co	Transwestern Pipeline Co	04-11-85	C		
ST85-826	Natural Gas Pipeline Co of America	Phillips Petroleum Co	04-11-85	F(157)		
ST85-827	United Gas Pipeline Co	Texas Eastern Transmission Corp	04-11-85	[illegible]		
ST85-828	Tennessee Gas Pipeline Co	Dresser Clark Div., Dresser Ind	04-11-85	F(157)		
ST85-829	United Gas Pipe Line Co	Scott Paper Co	04-15-85	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date	Transportation rate (¢/MMBtu)
ST85-830	Northwest Central Pipeline Corp	Petrolite Corp	04-15-85	F(157)		
ST85-831	ANR Pipeline Co	Bridgeline Gas Distribution Co	04-12-85	B		
ST85-832	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	04-12-85	B		
ST85-833	ANR Pipeline Co	Baltimore Gas and Electric Co	04-12-85	B		
ST85-834	Northwest Central Pipeline Corp	Archer Daniels Midland Co	04-15-85	F(157)		
ST85-835	Oklahoma Natural Gas Co	ANR Pipeline Co	04-15-85	C	09-12-85	24.32
ST85-836	Panhandle Eastern Pipe Line Co	Dow Chemical Co	04-15-85	F(157)		
ST85-837	Texas Gas Transmission Corp	Owens-Corning Fiberglas Corp	04-12-85	F(157)		
ST85-838	Western Gas Supply Co	Mountain Fuel Resources, Inc	04-15-85	C		
ST85-839	Houston Pipe Line Co	Baltimore Gas and Electric Co	04-10-85	C		
ST85-841	ANR Pipeline Co	Creole Gas Pipeline Corp	04-15-85	B		
ST85-842	Texas Gas Transmission Corp	Buckeye Cellulose Corp	04-15-85	F(157)		
ST85-843	Texas Gas Transmission Corp	Consolidated Gas Transmission Corp	04-17-85	G		
ST85-844	Transwestern Pipeline Co	Pacific Lighting Service Co	04-17-85	B		
ST85-845	Northern Natural Gas Co	Northern Gas Products Pipeline Co	04-15-85	B		
ST85-846	Transcontinental Gas Pipe Line Corp	Alexandria City, AL	04-17-85	B		
ST85-847	Columbia Gulf Transmission Co	Union Light Heat and Power Co	04-16-85	B		
ST85-848	Columbia Gas Transmission Corp	Union Light Heat and Power Co	04-16-85	B		
ST85-849	Mountain Fuel Resources, Inc	Natural Gas Pipeline Co. of America	04-17-85	G		
ST85-850	Houston Pipe Line Co	Pacific Lighting Gas Supply Co	04-16-85	C		
ST85-851	Oasis Pipe Line Co	Pacific Lighting Gas Supply Co	04-16-85	C		
ST85-852	Columbia Gas Transmission Corp	Genstar Stone Products	04-16-85	F(157)		
ST85-853	United Gas Pipe Line Co	Allied Corp	04-16-85	F(157)		
ST85-854	United Gas Pipe Line Co	Baltimore Gas and Electric Co	04-16-85	B		
ST85-855	Southern Natural Gas Co	Northern Illinois Gas Co	04-15-85	B		
ST85-856	Superior Offshore Pipeline Co	Faustina Pipeline Co	04-15-85	B		
ST85-857	United Texas Transmission Co	United Gas Pipe Line Co	04-16-85	C		
ST85-858	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	04-18-85	B		
ST85-859	United Gas Pipe Line Co	Industrial Pipeline Gas Co	04-18-85	B		
ST85-860	United Gas Pipe Line Co	Cincinnati Gas and Electric Co	04-18-85	B		
ST85-861	Michigan Gas Storage Co	Dow Chemical Co	04-19-85	F(157)		
ST85-862	Consolidated Gas Transmission Corp	Diamond Glass Vienna, Inc	04-19-85	F(157)		
ST85-863	ANR Pipeline Co	Mead Paperboard Products	04-19-85	F(157)		
ST85-864	ANR Pipeline Co	UGI Corp	04-19-85	E		
ST85-865	ANR Pipeline Co	Mountaineer Gas Co	04-19-85	B		
ST85-866	Trunkline Gas Co	Libra Energies, Inc	04-23-85	E		
ST85-867	Texas Eastern Transmission Corp	Consolidated Edison Co. of NY, Inc	04-22-85	B		
ST85-868	Texas Eastern Transmission Corp	Consolidated Edison Co. of NY, Inc	04-22-85	E		
ST85-869	Texas Eastern Transmission Corp	Consolidated Edison Co. of NY, Inc	04-22-85	B		
ST85-870	Natural Gas Pipeline Co. of America	Owens Corning Fiberglas Corp	04-23-85	F(157)		
ST85-871	ANR Pipeline Co	Louisiana Indust. Gas Supply System	04-24-85	E		
ST85-872	Texas Gas Transmission Corp	Procter and Gamble Manufacturing Co	04-24-85	F(157)		
ST85-873	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	04-25-85	E		
ST85-874	United Gas Pipe Line Co	THC Pipeline Co	04-25-85	B		
ST85-875	United Gas Pipe Line Co	A. E. Staley Co	04-25-85	F(157)		
ST85-876	United Gas Pipe Line Co	Delta Gas, Inc	04-25-85	D		
ST85-877	United Gas Pipe Line Co	Commonwealth Gas Pipeline Co	04-25-85	E		
ST85-878	Trunkline Gas Co	Gulf -Coast Energy, Inc	04-24-85	E		
ST85-879	Northwest Central Pipeline Corp	Sissortail Natural Gas Co., *et al*	04-24-85	E		
ST85-880	Tennessee Gas Pipeline Co	Commonwealth Gas Pipeline Corp	04-25-85	B		
ST85-881	Transcontinental Gas Pipe Line Corp	Bridgeline Gas Distribution Co	04-25-85	E		
ST85-882	Transcontinental Gas Pipe Line Corp	Owens-Illinois, Inc	04-25-85	F(157)		
ST85-883	United Texas Transmission Co	Florida Gas Transmission Co	04-25-85	C		
ST85-884	Northern Natural Gas Co	Columbia Gas of Pennsylvania	04-26-85	B		
ST85-885	Northern Natural Gas Co	Columbia Gas of Virginia	04-26-85	D		
ST85-886	Northern Natural Gas Co	Columbia Gas of Kentucky	04-26-85	D		
ST85-887	Northern Natural Gas Co	Columbia Gas of Maryland	04-26-85	D		
ST85-888	Northern Natural Gas Co	Columbia Gas of Ohio	04-26-85	B		
ST85-889	Tennessee Gas Pipeline Co	Union Light Heat and Power Co	04-26-85	B		
ST85-890	United Gas Pipe Line Co	LGS Intrastate, Inc	04-26-85	B		
ST85-891	Northern Natural Gas Co	Mountain Fuel Resources, Inc	04-26-85	G		
ST85-892	Northern Natural Gas Co	Anheuser Busch, Inc	04-26-85	F(157)		
ST85-893	Northern Natural Gas Co	Columbia Gas of New York	04-26-85	E		
ST85-894	Delhi Gas Pipeline Corp	Spindletop Gas Distribution System	04-29-85	C		
ST85-895	Delhi Gas Pipeline Corp	Baltimore Gas and Electric Co	04-29-85	E		
ST85-896	Valero Transmission Co	NorVal Gas Co	04-29-85	C		
ST85-897	ANR Pipeline Co	Northern Gas Marketing, Inc	04-30-85	E		
ST85-898	ANR Pipeline Co	Consolidated Edison Co. of NY, Inc	04-30-85	E		
ST85-899	ANR Pipeline Co	Columbia Gas of Ohio	04-30-85	E		
ST85-900	Oklahoma Natural Gas Co.	Natural Gas Pipeline Co. of America	04-30-85	C	09-27-85	24.32

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-14206 Filed 6-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF85-518-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; the Upjohn Manufacturing Company et. al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. The Upjohn Manufacturing Company

[Docket No. QF85-518-000]

June 7, 1985.

On May 29, 1985, the Upjohn Manufacturing Company, P.O. Box 11307, Barceloneta, Puerto Rico 00617 (Applicant) submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Arecibo, Puerto Rico. The facility will consist of two identical diesel-engine generators,

each exhausing to a separate heat recovery boiler for the generation of steam for process use. The heat recovery steam generators will be equipped with duct burners for supplementary firing. The primary energy source will be No. 6 fuel oil. The electric power production capacity will be 17.4 megawatts. Installation of the facility is estimated to begin April 1, 1986.

2. LUZ Solar Partners II, Ltd.

[Docket No. QF85-504-000]

May 31, 1985.

On May 21, 1985, LUZ Solar Partners II, Ltd. (Applicant) a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately two miles east of Daggett, California. The primary energy source will be solar energy. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a natural gas-fired superheater, a separate natural gas-fired auxiliary boiler, a natural gas-fired emergency heater and a dual inlet steam turbine generator. The net power production capacity of the facility will be 30 MW. At present, a subsidiary of CP National Corporation, an electric utility, is expected to acquire 12% of the equity ownership interest in the facility. No other small power production facilities owned by the Applicant and using solar energy as an energy source are located within one mile of the facility.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-14208 Filed 6-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-19-000]

State of Texas, NGPA Section 102 Determinations, Champlin Petroleum Company, Carthage Gas Unit Well Nos. 11-4, 12-2, 13-3, 11-2 and 21-2 FERC JD Nos. 83-20584, 83-41187, 83-20581, 83-20587, and 83-20582; Petition To Reopen and Vacate Final Well Category Determinations and Request for Withdrawal of Applications

June 10, 1985.

On February 13, 1985, Champlin Petroleum Company filed with the Federal Energy Regulatory Commission to petition to reopen and vacate final well category determinations under section 102 of the Natural Gas Policy Act of 1978 (NGPA) and to permit Champlin to withdraw its applications for the determinations.

The five wells involved are located in the Carthage Field, Panola County, Texas. In March 1982, the Texas Railroad Commission issued determinations that the wells qualified under section 102(c)(1)(B) of the NGPA. Notices of the determinations were filed with the Commission and became final pursuant to § 275.202(a) of the Commission's regulations. Each of the wells with the exception of No. 12-2 had previously qualified under section 103 of the NGPA.

Champlin states that subsequent to the well category determinations it discovered that the plats relied upon for the initial determinations contained inaccurate or incomplete information concerning wells which are now shown to be marker wells and that as a result the subject wells do not qualify under section 102.

Take notice that the question of whether refunds, plus interest as computed under § 154.102(c) of the Commission's regulations, will be required is a matter subject to review and final determination by the Commission.

Any person desiring to be heard or protest Champlin's petition should file a motion to intervene (18 CFR 385.214) or protest (18 CFR 385.211) with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426 within 30 days after this notice is published in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14207 Filed 6-11-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100024; PH-FRL 2849-3]

Transfer of Data to TRC Environmental Consultants, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to TRC Environmental Consultants, Inc., of Englewood, Colorado, under Contract No. 68-02-3886. This contractor shall perform for the Air Management Division in EPA Region IX. Some of the information that will be made available to the contractor has been claimed to be confidential business information (CBI). Information will be made available to the contractor consistent with the requirements of 40 CFR 2.301(h). This action will enable the contractor to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: TRC Environmental Consultants, Inc., will be given access to these documents no sooner than June 17, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 222, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia (703-557-2613).

SUPPLEMENTARY INFORMATION: Under this contract, TRC Environmental

Consultants, Inc., will support the development of a program for gathering current herbicide emission inventory information for the Air Management Division in EPA Region IX.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such information as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6, and 7.

Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made converning the contract with TRC Environmental Consultants, Inc.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential business information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contract with TRC Environmental Consultants, Inc. specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of this contractor will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: May 28, 1985.

Streven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-13867 Filed 6-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100022; PH-FRL 2849-2]

Transfer of Data to Occupational Safety and Health Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to the Occupational Safety and Health Administration (OSHA). Some of the information that will be made available to OSHA has been claimed to be confidential business information (CBI). Information will be transferred to OSHA consistent with the requirements of 40 CFR 2.209(c). This action will enable OSHA to fulfill its obligations, and this notice serves to notify affected persons.

DATE: OSHA will be given access to these documents no sooner than June 24, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2613).

SUPPLEMENTARY INFORMATION: OSHA wishes to review all information on 2-(2-methyl-4-chlorophenoxy)propionic acid (MCPP) to determine the possible short and long term health effects as a result of exposure to this herbicide. To perform this review, OSHA has requested access to information, which may include CBI, submitted to EPA under FIFRA.

Under 40 CFR 2.209(c), information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to another Federal agency upon EPA's receipt of a written request that gives the official purpose for which the information is needed.

FIFRA section 10(f) sets a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an officer or employee of the United States.

EPA specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and OSHA personnel will be asked to sign a nondisclosure agreement.

Dated: May 24, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-13868 Filed 6-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42066; FRL-2810-8]

Isopropyl Biphenyl/Diisopropyl Biphenyl Response to the Interagency Testing Committee

Correction

In FR Doc. 85-10794 beginning on page 18920 in the issue of Friday, May 3, 1985, make the following correction:

On page 18926, third column, paragraph (59), third line, "107(7)" should read" 102(7)".

BILLING CODE 1505-01-M

[OPTS-51569; FRL-2829-7]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-10797 beginning on page 18915 in the issue of Friday, May 3, 1985, make the following corrections:

1. On page 18918, second column, **P 85-850**, *Chemicals*, second line, "phenylbiphenyl" should read "pentylbiphenyl".

2. On the same page, third column, **P 85-854**, *Toxicity Data*, second line, "substance" should read "substannce."

BILLING CODE 1505-01-M

[OPTS-51573; TSH-FRL 2844-6]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-13055 beginning on page 23185 in the issue of Friday, May 31, 1985, make the following correction:

On page 23187, second column, **P 85-997**, *Environmental Release/Disposol*, fifth line, "10.0" should read "1.0".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 85-269]

Tonka Tools, Inc. and Southern Merchandise Corp.; Hearing Designation, Order

In the matter of petition for Declaratory Ruling of Tonka Tools, Inc. and Southern Merchandise Corp. regarding American Telephone and Telegraph Company provision of coinless pay telephones.

Adopted May 16, 1985.
Released May 22, 1985.

By the Commission:

I. Introduction

1. Before the Commission is a petition for declaratory ruling filed by Tonka Tools, Inc. (Tonka) and Southern Merchandise Corporation (Southern) asking the Commission to find that American Telephone and Telegraph Company (AT&T) has been providing its coinless pay telephones in violation of the separate subsidiary requirements established in the Commission's Computer II decisions.[1] In particular,

[1] Amendment of § 64.702 of the Commission's Rules and Regulations (Computer II), 77 F.C.C. 2d 384 (1980) (Final Decision), *reconsideration*, 84 F.C.C. 2d 50 (1980), *further reconsideration*, 88 F.C.C. 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983).

petitioners allege that the "Card Caller" and "Custom Caller" telephones now being provided by AT&T Communications (ATTCOM) as part of a tariffed service offering constitute customer premises equipment (CPE) which under the current rules of Computer II can be provided by AT&T only through an unregulated, fully separated subsidiary on an unbundled basis.[2] Petitioners request the Commission to issue a declaratory ruling to this effect and to direct ATTCOM to unbundle its current credit card telephone offerings and refrain from offering such devices in connection with its tariffed transmission services.

2. The petition was placed on public notice and comments and reply comments were received.[3] Although the Computer II issue raised in the Tonka-Southern petition focuses on AT&T's provision of non-coin telephones, the comments also addressed the Bell Operating Companies' (BOCs) provision of coin and non-coin pay telephones. For the reasons discussed below, we conclude that the coin and coinless public telephones provided by the BOCs and AT&T do not constitute CPE for Computer II purposes.

II. Background

3. In its Computer II decisions the Commission determined that carrier-provided customer premises equipment and enhanced services would not be regulated under Title II of the Communications Act.[4] The Commission concluded that since CPE was a competitively provided commodity which was severable from the carriers' associated transmission services, it was not in the public interest to permit carriers to continue to provide CPE under tariff. The Commission was concerned that if carriers were allowed to tariff and bundle this equipment with their basic services, consumer freedom of choice and marketplace competition in the developing non-carrier telecommunications equipment market would be hampered. The Commission recognized the potential that the regulated entity would use its control over network design and technical standards to favor its own equipment or services, or improperly shift costs and revenues between its unregulated activities provided in competition with others and its monopoly or other regulated activities. In order to allow common carriers to participate in the unregulated CPE markets while minimizing the potential for cross-subsidization and other anticompetitive conduct, the Computer II decisions provided that CPE should be detariffed and enhanced services remain untarriffed, and provided separately from regulated activities. In the case of AT&T and the BOCs[5] the Commission determined that enhanced services and CPE should be offered through a separate subsidiary.

4. Computer II defined CPE as "terminal equipment located at a subscriber's premises which is connected with the termination of a carrier's communication channel(s) at the network interface at that subscriber's premises." Final Decision, 77 F.C.C. 2d 384, 398, n. 10. Excluded from the definition of CPE was "over voltage protection equipment, inside wiring, *coin operated or pay telephones*, and multiplexing equipment to deliver multiple channels to the customer", as well as "CPE attached to residential party line service . . . ." *Id.* at 447, n. 57, (emphasis added). Thus, on its face, Computer II did not detariff the provision of coin or coinless telephones by AT&T or the BOCs.

5. As to the provision of pay telephones by entities other than AT&T and the BOCs, notably non-carriers, Part 68 of the Commission's Rules provides the technical and procedural standards under which all customer-provided telephone equipment may be connected to the nationwide telephone network, "for use in conjunction with all services other than party line service and coin service". 47 CFR 68.2(a)(1). Devices used in conjunction with coin service were excluded from Part 68 because, in the words of the *First Report and Order* in CC Docket No. 19528 establishing the Part 68 registration program,[6] "under present regulatory policies only telephone carriers may provide coin telephone service."[7] At that time, the only type of coin telephones available were those activated and controlled through the telephone company's central office, and they were used to provide a service which was the exclusive province of the telephone companies. Moreover, resale of both intrastate and interstate telecommunications services was at that time generally prohibited by telephone company tariffs.[8] Manufacturers or purchasers of coin telephone equipment therefore had no

[2] There have been two Computer-II related decisions rendered since the comments were filed in this proceeding which bear on the issues discussed herein. First, in Report and Order in CC Docket No. 83-1375 (ATTIS Resale), 49 FR 28.835 (July 17, 1984), *recon. pending*, petition for stay denied, FCC 84-142 (released September 24, 1984), the Commission decided to allow AT&T to provide common carrier domestic services via resale through AT&T Information Services (ATTIS), its unregulated separate subsidiary, subject to the requirement that any ATTCOM offerings used by ATTIS be made available by ATTCOM through non-discriminatory tariffs, and that ATTIS use only unbundled, non-discriminatory offerings for its basic services. More recently, the Commission has proposed relieving AT&T from the Computer II requirement that it provide CPE pursuant to structional separation. It issued an NPRM soliciting suggestions on less restrictive alternatives to reduce the potential that AT&T will engage in anti-competitive conduct in the terminal equipment market. Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 85-28, (FCC 85-56), released February 22, 1985 (Computer II NPRM).

[3] Comments on the Tonka-Southern petition for declaratory ruling were filed by the following parties: AT&T; Southwestern Bell Telephone Company (Southwestern Bell); Pacific Bell and Nevada Bell (Pacific Bell); New England Telephone and Telegraph Company, New York Telephone Company, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (The NYNEX and Southern Bell Companies); Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (The Mountain Bell Companies); GTE Service Corporation (GTE); and National Pay Telephone Corporation (NPTC). Reply comments were filed by petitioners; NPTC; Southwestern Bell; The Bell Telephone Company of Pennsylvania, The Four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and New Jersey Bell Telephone Company (Bell Atlantic Companies); Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc. (Ameritech Companies); The NYNEX and Southern Bell Companies; and AT&T.

[4] The Commission developed a regulatory structure classifying carrier service offerings as either "basic" or "enhanced". "Basic services"—services which involve no more than the simple transmission of information between two or more points—remain subject to Commission regulation; "enhanced services"—services which act on the format or content of the message being transmitted, provide the customer with additonal or restructured information, or allow the customer to interact with stored information—remain unregulated. *See* 47 CFR 64.702(a).

[5] *See supra* note 1; Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 F.C.C. 2d 1117 (1983), *reconsideration*, 49 FR 26056 (June 26, 1984), *aff'd sub nom.* Illinois Bell Tel. Co. v. FCC, 740 F.2d 465 (7th Cir., 1984), petition for rehearing pending, in which the Commission concluded that, with certain modifications, the structural separation requirements of Computer II would continue to be applicable to the BOCs after their divestiture from AT&T pursuant to the Modification of Final Judgment (MFJ), United States v. American Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983).

[6] 56 F.C.C. 2d 593 (1975), Second Report and Order, 58 F.C.C. 2d 736 (1976), *aff'd sub nom.* North Carolina Utilities Commission v. FCC, 552 F.2d 1036 (4th Cir. 1977), *cert. denied*, 434 U.S. 874 (1977).

[7] 56 F.C.C. 2d at at 600, n. 7.

[8] The Commission subsequently found common carrier tariff restrictions on interstate resale to be unlawful in Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C. 2d 261 (1976), *recon.*, 62 F.C.C. 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 F.C.C. 2d 167 (1980).

authority under Part 68 to connect such equipment to the network. More recently, however, in response to an application seeking to register a coin-operated telephone device under Part 68, the Commission clarified the Part 68 status of coin operated telephones and interpreted the "coin service" exclusion contained in §68.2(a)(1) to extend only to "central office implemented" coin service, and not to "instrument-implemented" coin telephones.[9] By so doing, the Commission affirmed the registrability of instrument-implemented coin operated telephones, and the right of any person purchasing such a telephone to connect it to the network and use it to provide authorized interstate services and, to the extent consonant with state law and policy, intrastate services.[10] The Commission reached this result because it determined that Part 68's coin service exclusion was directed at the coin telephones designed for use in conjunction with the telephone companies' integrated coin telephone service and was not formulated in the context of the newly available breed of instrument-implemented coin devices that could be attached to regular telephone company subscriber lines. The Commission found there was no valid basis to exclude instrument implemented coin telephones from the registration program.[11]

III. Comments

6. The Commission now has before it a declaratory ruling petitions which asks the Commission to find that ATTCOM's provision of its coinless Card Caller and Customs Caller[12] pay telephones violates Computer II because these devices are CPE and are not being offered through the required, unregulated Computer II separate subsidiary. Petitioners argue that these coinless devices are not within the class of conventional telephone company-provided telephone used to provide traditional coin service excluded from the Computer II definition of CPE. They claim that Computer II found CPE to be a severable commodity and required that CPE be separately provided in order to promote competition between multiple vendors in the terminal equipment marketplace. Petitioners reasons that because at the time of Computer II no competition existed in the coin telephone service or equipment market, and the coin telephones provided by the local exchange companies operated in the conjunction with special coin service lines, coin telephones were excluded from the class of equipment to be deregulated. By contrast, today there are several registered coinless pay telephone models being competitively supplied.[13] and these devices do not require coin service lines or interaction with central office equipment, but may be connected to ordinary business lines.[14]

7. GTE and NPTC, the only parties supporting the petition, arge the Commission to find that the equipment used by carriers to provide pay telephone service constitutes CPE.[15] Like petitioners, NPTC argues that Computer II's CPE pay telephone exclusion was formulated in the context of the traditional telephone company-provided coin telephone service offered on a monopoly basis which depended on central office involvement and specialized coin circuits, and did not address the more recently available pay telephone devices which can operate with ordinary subscriber lines. They claim that, like ordinary CPE detariffed by Computer II, these newer devices are logically and technically severable from the underlying transmission service. NPTC Comments at 4–6. They furthermore contend that notwithstanding Computer II's CPE definition, the Bureau's March 13, 1984 registration of two credit card services, *supra* note 12, constitutes a determination that these registered devices are indeed CPE.[16] NPTC Comments at 5; GTE Comments at 2. NPTC argues that allowing a dominant service provider such as ATTCOM to continue bundling jeopardizes both the ability of those who wish to offer pay telephone service to obtain the service and equipment packages of their choice, and the development of a competitive market in this area that is fair to both carriers and non-carriers.[17] NPTC Comments at 6. In NPTC's view, these arguments apply with equal or greater force to the divested BOCs.

8. AT&T, Southern Bell, Pacific Bell, the NYNEX and Southern Bell Companies, the Mountain Bell Companies, Bell Atlantic, and the Ameritech Companies all oppose imposition of the Computer II constraints on BOC/AT&T provision of coin and credit card devices, and ask the Commission to reaffirm its prior determination in the Computer II decisions that coin and other pay telephones are not CPE.[18] In their view,

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[9] Memorandum Opinion and Order, FCC 84-270, released June 25, 1984, 49 FR 27263 (July 6, 1984) (Coin Registration Order), *recon. denied*, Memorandum Opinion and Order, FCC 85-16, released January 22, 1985. That order defined "coin operated telephone" to encompass all telephones capable of accepting payment by specie or paper money; telephones capable of accepting payment solely by credit card were already registrable under Part 68. *See infra* note 12. "Coin service" is defined to be the unique service that uses, typically, a TSPS (traffic service position system) operator on telephone company premises in conjunction with a terminal device that provides coin insert tones and engages in an electrical protocol exchange with central office equipment to control coin deposit. Coin Registration Order at Para. 9. "Instrument-implement" coin telephones, by contrast, are those coin devices that contain all the intelligence required to execute coin acceptance and other coin-related functions in the telephone instrument itself, without central office involvement, without line polarity reversal, (or other special electrical protocols), and without TSPS operator intervention. *Id.* at Para. 10.

[10] In response to a petition for declaratory ruling recently filed by Universal Pay Telephone Corporation, the Commission has recently issued an order clarifying the relationship between federal and state regulatory authority over pay telephone services. FCC No. 85-222, released May 6, 1985.

[11] To date, 16 such devices have been registered.

[12] Both of these devices are Part 68 registered. The Card Caller (reg. no. AS593M-70796-TE-T, which provides for payment by use of coded magnetic strip charge cards inserted into the telephone, including AT&T cards and authorized commercial credit cards, was registered by a Common Carrier Bureau Order released March 13, 1984, FCC No. 2866. That Order also registered the "MCI Expressphone" credit card device (reg. no. D536XC-70797-TE-T). The Custer Caller (reg. No. AS593M-63169-MT-E), a modified table top multifunction Genesis telephone which is activated by the customer punching in his AT&T Calling Card number, was registered on September 15, 1982.

[13] *Id.*

[14] Although primarily challenging ATTCOM's provision of credit card devices, petitioners argue in a footnote to their petition that the Computer II consequences for similar coin operated devices, *i.e.*, those referred to as ""instrument implemented" by the language of our Coin Registration Order, should be identical. Petition at 9, n. 10.

[15] GTE agrees with the petition only insofar as it regards the provision of the "Card Caller", "Customer Caller" or other registered magnetic card or coinless pay telephones, not to the extent it encompasses coin activated telephones. GTE bases its position on the grounds that coin telephones, which had yet to be registered under Part 68, raise distinct regulatory issues. GTE Comments at 4–5.

[16] NPTC states it does not necessarily oppose AT&T provision of an end-to-end pay telephone service. NPTC suggests that the Commission consider a Computer II waiver until the proceedings relating to ATTIS resale and elimination of the Computer II structural separation rules, *supra* note 2, are completed, to permit ATTCOM (and the BOCs) to provide an integrated pay telephone service. NPTC Comments at 7–8.

[17] AT&T counters NPTC's claim by noting that, irrespective of AT&T's manner of providing pay telephone service, AT&T's interstate services are fully subject to resale and shared use. AT&T Reply Comments at 2–3.

[18] In their comments, filed before issuance of the Commission's Coin Registration Order first articulating the instrument implemented/central office coin service dichotomy, these parties do not distinguish between central office and instrument implemented varieties of pay telephone service. They generally oppose classifying any carrier provided pay telephone equipment as CPE, and urge the Commission to use this proceeding to clarify and unravel the "regulatory web in which public telephone services are entwined." *See* The Mountain Bell Companies Comments at 2.

there are significant differences between pay telephones and other terminal equipment, and compelling public policy reasons which justify excluding pay telephones from the category of Computer II CPE, and allowing state authorities to regulate this type of equipment. They claim that pay telephones—whose true customer is the general public rather than the owner of the device—do not fall within Computer II's primary definition of CPE because such telephones are not located "at a subscriber's premises" within the intended meaning of the phrase. According to AT&T and the BOCs, a crucial difference between Computer II CPE and pay telephone equipment is that the former is located on the premises of an individual who both owns and is the primary user, *i.e.*, customer, of that equipment, while the latter is located on the premises of a party who is not its primary user or customer. Because the true customer of pay telephone equipment is the general public, rather than the owner of the instrument or premises on which it is located, they conclude these devices are not CPE. *See* AT&T Comments at 5.[19] And, in contrast to the CPE detariffed by Computer II, pay telephones cannot be severed from the underlying transmission service; the user buys the call and does not separately select or pay for use of the terminal equipment. Pacific Bell Comments at 3. Contrary to the significance petitioners seek to attach to a Part 68 registration grant, these parties argue that the purpose of the registration rules is to protect the network from harm and the fact that a piece of equipment is or is not registrable, is separate from the determination as to whether that terminal equipment constitutes CPE for purposes of Computer II.[20] They further note that although non-coin devices have been registered since 1981, the Commission has on several occasions since restated the Computer II definition of CPE without retreating from its coin-operated/pay telephone exclusion.[21]

9. AT&T claims that this exclusion is justified in the case of coinless telephones because in making such devices available they are actually offering telephone service to the public at large, and not merely equipment to the premises owner. For their part, the BOCs contend that the coin and coinless pay telephones they provide, from which multiple interchange carriers can generally be accessed, are offered not as CPE, but as part of the basic exchange telecommunications and exchange access services they are obligated to provide. They point to language in the Department of Justice's (DOJ) Competitive Impact Statement on the proposed MFJ,[22] as well as the MFJ court's opinion modifying and approving AT&T's Plan of Reorganization (POR) implementing the MFJ,[23] supporting the notion that the BOCs provide pay telephones to the public as part of their exchange telecommunications and access functions.[24] According to Bell Atlantic, even if the Commission finds pay telephones to be CPE as to AT&T, the fact that these BOC-provided pay telephones form a unique and integral part of their network-access obligations to the public justifies exempting exchange carrier public telephones, whether coin or non-coin, from the Computer II regime, and continuing to leave the regulation of this BOC public telephone service to state commissions. Reply comments at 1–3. They emphasize that, unlike the interexchange carriers, the exchange carriers provide pay stations which will allow access to all interexchange carriers, not just the carrier providing the station, and imposition of the Computer II rules would create needless inefficiences in the provision of this essential public service. *Id.*[25]

IV. Discussion

10. The petition now before us asks the Commission to clarify the federal regulatory status of the coin and coinless pay telephone devices now being made available to the public by AT&T and the BOCs. This proceeding provides an opportunity to discuss the meaning and scope of Computer II's exclusion of "coin operated or pay telephones" from the definition of CPE,[26] and to consider its applicability in light of the regulatory and technological developments since Computer II affecting the provision of pay telephones. There are three general types of pay telephones being provided by carriers subject to Computer II which this decision must address:

(1) Traditional coin telephones provided by the BOCs which require interaction between the telephone instrument and the central office, and use special coin service lines. Interexchange carriers other than AT&T can be accessed, although this generally requires that extra digits be dialed.[27]

(2) BOC-provided coinless pay telephones which may be instrument implemented, central office implemented or some combination of the two.[28]

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[19] Petitioners' and NPTC's reply comments contest the notion that pay telephones are not CPE simply because they are not on the premises of the primary user. In their view, these pay stations are located on some customer's premises, even if that customer makes the telephone available for use by the general public or some segment of the public affiliated with him, such as his customers or patrons.

[20] Pacific Bell, for example, points to the case of party line premises equipment. In addition to pay telephone devices, Computer II initially excluded from its CPE definition equipment attached to residential party line service. On reconsideration of Computer II, however, the Commission revised its definition of CPE to include party line CPE, 84 F.C.C.2d 50, 70, even though this equipment was not, and still is not, registrable under the Part 68 program. *See* 92 F.C.C.2d 1, 36–39. Pacific Bell Comments at 2. *See* Reply Comments of the Ameritech Companies at 3–4; NYNEX and Southern Bell Reply Comments at 4–5; *infra* note 33.

[21] AT&T points to the Report and Order in CC Docket No. 82–681, FCC 83–457, 48 Fed. Reg. 50,534 (Nov. 2, 1983), in which the Commission stated that "coin-operated and credit card telephones . . . were specifically excluded from the detariffing of CPE under Computer II . . .", para 4, and the December 15, 1983 Opinion and Order in CC Docket 81–893 detariffing embedded CPE, in which the Commission reiterated that coin-operated or other pay telephones are expected from the CPE category. AT&T Comments at 2–3. *See also* Southern Bell Comments at 3; the NYNEX and Southern Bell Companies Comments at 3 and Reply Comments at 2–3; Ameritech Companies Reply Comments at 2.

[22] *See* Competitive Impact Statement in Connection with Proposed Modification of Final Judgment, 47 FR 7170, 7176, n. 21 (Feb. 17, 1982); Comments of Southwestern Bell at 3; the NYNEX and Southern Bell Companies at 6.

[23] *See* 569 F. Supp. 1057, 1102 n. 195 (D.D.C. 1983); Comments of Southwestern Bell at 3–4; The NYNEX and Southern Bell Companies at 6–7.

[24] In this regard, the BOCs point to the compelling public interest and policy issues at stake, noting that all aspects of coin and pay telephone service, including the equipment itself, have remained subject to pervasive regulation at the state level, irrespective of the Part 68 status of the equipment. *See* Comments of the NYNEX and Southern Bell Companies at 4–5; Pacific Bell, at 5–6; Southwestern Bell at 5–6.

[25] The Ameritech Companies focus on the potentially adverse impact grant of the subject petition would have on the ability of the BOCs to provide a quality public telephone service adapted to a multi-carrier equal access environment. In particular, they cite the likelihood that treating public service instruments as CPE would freeze the technology and flexibility the BOCs now have in their efforts to provide pay telephone customers access to their interexchange carriers of choice and to accommodate the diverse billing and credit arrangements of these various carriers. Ameritech Reply Comments at 3.

[26] *See supra* para. 4.

[27] Although the record of this proceeding focuses on the traditional central office coin service telephones provided by the BOCs, our finding that these devices are not CPE for Computer II purposes extends to any instrument-implemented coin telephones that the BOCs may be providing as well. We note that neither the petitioner nor any of the supporting commenters advocate that we treat the coin telephones used to provide traditional coin service as CPE. *See* Tonka-Southern Reply Comments at 3.

[28] The record also does not reveal the precise operational characteristics of the BOC-provided coinless pay telephones. As is discussed below, our analysis of the proper regulatory treatment for the

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These coinless pay telephones may involve operator assistance [29] or insertion of a calling card or commercial credit card to bill and complete a call. Multiple interexchange carriers can generally be accessed from these coinless pay telephones, and in some instances, on an equal access basis.[30]

(3) Coinless telephones provided by AT&T which can be used to make interexchange calls over the AT&T network. These devices may or may not be used to make local calls, depending upon the individual state policies and whether or not AT&T is certificated to provide intra-LATA service in the state.

11. After reviewing the record before us, we conclude that the Computer II pay telephone exclusion encompasses both the traditional and more recent coin and coinless pay telephones provided by the BOCs and AT&T, as described above, and accordingly, that these devices do not constitute CPE for purposes of Computer II. The original Computer II policy excluding pay telephones from "CPE" reflected a determination that the pay telephone devices then being provided by telephone companies formed an integral part of a communications transmission service, *i.e.*, pay telephone service,[31] and as such should remain subject to regulation under Title II of the Communications Act. As originally conceived, the pay telephone exclusion recognized that the technical integration of the pay terminal and central office facilities characteristic of the coin service then being provided distinguished these types of devices from the general class of CPE being detariffed by Computer II. While it is true that the pay telephone exclusion was formulated at a time when the only type of coin telephones available were those activated and controlled through the telephone company's central office and used to provide coin service which was the exclusive province of the telephone companies, we do not agree with petitioners that the CPE pay telephone exclusion is therefore limited to those types of devices.

12. In considering the applicability of Computer II to the newer, more innovative and technologically advanced coin and coinless pay telephones, some of which do not rely upon central office facilities and interaction, we conclude that the pay telephone exclusion does not rest upon considerations of technical severability alone. Regardless of the method of payment or operational characteristics of these newer devices, they have not changed in one important respect; the equipment and transmission capacity are not logically severable. Pay telephones provided by carriers subject to regulation have historically been accorded special regulatory status because they serve the public service role of ensuring pay telephone service is available to the transient, mobile public, and they have as their primary customer or user the general public. Even if the telephone company describes the service as "semi-public" and collects a charge from a subscriber such as a bar or restaurant, the primary customer of this pay telephone equipment for Computer II regulatory purposes is still the general public or some segment thereof. As to these customers or users the telephone instrument and line are necessarily integrated. The user of these devices pays a single charge in order to place a call from a pay telephone at a public or semi-public location. The instrument and the pay telephone service are not severable from that customer's perspective. Although free to choose another location from which to place his call, the customer cannot separately select, combine or pay for the terminal device and transmission line which are used to make the call. In this sense, the pay telephones and transmission capacity provided by AT&T and the BOCs are logically an integrated offering and these carriers should be permitted to provide them as an end-to-end service.[32]

13. This conclusion is independent of the issues of Part 68 registration and competition. In response to petitioners' arguments to the contrary, we note that there is no precedent supporting the notion that Part 68 registration inherently classifies equipment as CPE under Computer II. While it is true that equipment included within the registration program is equipment that may be provided by non-carrier vendors and connected directly to the network, it is also true, as the BOCs and AT&T assert, that registration does not, and should not, of itself dictate the manner in which Computer II-subject carriers may provide that same equipment.[33] A Part 68 registration grant for a pay telephone reflects no more than a determination that it may be connected to the network without harm; it does not of itself determine the Computer II status of that equipment. Regardless of whether that equipment is Part 68 registered, for the reasons discussed above we agree with AT&T and the BOCs that their pay telephone devices constitute an offering to the public of a communications service.

V. Conclusion

14. The Computer II exclusion of pay telephone central office equipment from the definition of CPE was based upon the coin service that then existed and reflected the Commission's determination that this equipment was distinguishable from the general class of CPE to be detariffed and should continue to be provided in its traditional manner: as part of an end-to-end communications service. We have

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non-coin pay telephone devices of the BOCs obtains whether the intelligence for this service is located in the instrument, the central office, or both, and whether or not these devices are registered.

[29] *See* for example, the "Charge-A-Call" coinless pay telephone set, Registration No. BW3877–68413–TE–T, granted August 19, 1981. The POR, as modified, assigned all the Bell System's "Charge-A-Call" sets to the BOCs. *See* 569 F. Supp. at 1102, n. 195, *supra* note 23.

[30] One example of this type of offering is Mountain Bell's Goldphone Service. The Goldphone is a public telephone that affords convenient access to multiple long-distance carrier networks in addition to all of the other calling services associated with Charge-A-Call coinless public telephone service. This service substitutes two digit speed calling capability for the numerous digits now required to access GTE Sprint and MCI networks. In order to promote "equal access," AT&T callers must also dial a two digit access code. *See* letter from Mountain Bell to Commissioner Dennis Patrick, dated May 7, 1984.

[31] The AT&T and BOC coin and coinless pay telephones used to provide pay telephone service are part of the public telephone system, which includes "public" and "semi-public" telephone service. "Public" telephone service is provided when a general need for the service exists in a public location such as an airport or street corner and the telephone is placed at the option of the telephone company with the agreement of the owner (or agent or lessee) of the property. "Semi-public" telephone service is provided when there is a combination of transient public and specific customer use for the service on the customer's privately owned premises such as a gasoline station or restaurant. *See* Coin Registration Order at note 10. Our analysis here remains the same whether the pay terminals are located at public or semi-public locations.

[32] Recent federal and state actions have introduced an opportunity for competition in the pay telephone arena, enabling unregulated entities to provide pay telephone services on a resale basis through the packaging of pay terminals and transmission capacity, thus increasing the pay equipment and service options available to the public. We are not convinced that allowing AT&T and the BOCs to continue to offer integrated pay telephone service presents any serious threat to the viability of these competitors.

[33] For example, in the First Report and Order in CC Docket No. 81–216, the Commission adopted Part 68 rules that permit customers to install their own non-system, *i.e.*, business and residential one and two-line, customer premises wiring. Despite its inclusion in Part 68 and competitive provision, however, this inside wiring has been provided by the telephone companies on a regulated basis. 97 F.C.C. 2d 527 (1984). In a recent Further Notice of Proposed Rulemaking in CC Docket No. 79–105, however, the Commission has proposed the detariffing of the installation of simple inside wiring provided by the telephone companies. FCC 85–148, released April 5, 1985. *See also supra* note 20.

reexamined this exclusion in light of the various regulatory and technological changes which have altered pay telephone devices and the environment in which they are offered, and find that the exclusion nonetheless remains valid today for the variety of pay telephnes the BOCs and AT&T are making available to the public. We therefore conclude that the pay telephone service provided by AT&T and the BOCs is a communications service which should be provided subject to regulation, and that the coin and non-coin pay terminals made available by these carriers do not constitute CPE for purposes of Computer II.

15. Accordingly, it is ordered, that the petition for declaratory ruling filed by Tonka Tools, Inc. and Southern Merchandise Corp. is denied in accordance with the foregoing opinion.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–14173 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

Digital Paging Systems, Inc., et al.; Hearing Designation, Order

In the matter of applications of:

	CC Docket No. 85–188
Digital Paging Systems, Inc...	File No. 50087–CM–P–74.
Added Attractions, Inc.....	File No. 50196–CM–P–74.
Ohio MDS Corporation.....	File No. 50009–CM–P–75.
Omega Communications, Inc..	File No. 50029–CM–P–75.
VideOhio, Inc.....	File No. 50031–CM–P–75.
Private Networks, Inc.	File No. 50040–CM–P–75.

for construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Indianapolis, Indiana.

Adopted June 4, 1985.
Released June 10, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Indianapolis, Indiana. The applications are therefore mutually exclusive and require comparative considerations. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Added Attraction, Inc., Ohio MDS Corporation, Omega Communications, Inc., VideOhio, Inc., Private Networks, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82–391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85–14171 Filed 6–11–85; 8:45 am]

BILLING CODE 6712–01–M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Indianapolis, Indiana, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

Digital Paging Systems, Inc., et al.; Hearing Designation Order

In the matter of applications of:

	CC Docket No. 85–185
Digital Paging Systems, Inc..	File No. 50093–CM–P–74.
Cross Country Network, Inc..	File No. 50014–CM–P–75.
Private Networks, Inc.	File No. 50039–CM–P–75.

For construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Seattle, Washington.

Adopted May 28, 1985.
Released June 10, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Seattle, Washington. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be

specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of the efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Cross Country Network, Inc., Private Networks, Inc. and the Chief of Common Carier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14169 Filed 6-11-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Seattle, Washington, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

Digital Paging Systems, Inc., et al.; Hearing Designation, Order

In the matter of applications of:

	CC Docket No. 85-186
Digital Paging Systems, Inc...	File No. 50047-CM-P-74.
Microband Corporation of America.	File No. 50165-CM-P-74.
Greater Media, Inc.....	File No. 50166-CM-P-74.
Private Networks, Inc.	File No. 50170-CM-P-74.
Multipoint Information Systems, Inc.	File No. 50175-CM-P-74.

For construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Philadelphia, Pennsylvania.

Adopted May 30, 1985.
Released June 10, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction in the Multipoint Distribution Service and they propose operations on Channel 2 at Philadelphia, Pennsylvania. The applications are therefore mutually exclusive and require competitive consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a competitive basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Commission's Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Philadelphia, Pennsylvania, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative costs of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Microband Corporation of America, Greater Media, Inc., Private Networks, Inc., Multipoint Information Systems, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of the company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14170 Filed 6-11-85; 8:45 am]

BILLING CODE 6712-01-M

Digital Paging Systems, Inc., et al.; Hearing Designation, Order

In the matter of:

	CC Docket No. 85-161
Digital Paging Systems, Inc...	File No. 50041-CM-P-74.
Private Networks, Inc.	File No. 50127-CM-P-74.
Midwest Corporation	File No. 50139-CM-P-74.

2d 20 (1980). Accordingly, we are hereby dismissing the petition.

For construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Kansas City, Missouri.

Adopted May 14, 1985.
Released June 7, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Kansas City, Missouri. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the above-captioned applications are designated for Hearing, in a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) the anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Private Networks, Inc., Midwest Corporation, and the Chief of Common Carrier Bureau, are made Parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,
Chief, Domestic Facilities Division Common Carrier Bureau.

[FR Doc. 85-14168 Filed 6-11-85; 8:45 am]
BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Kansas City, Missouri, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[CC Docket No. 85-189; File No. 50038-CM-P-74 et al.]

Tel-Car Corp. et al; Hearing Designation Order

In the matter of applications of:

	CC Docket No. 85-189
Tel-Car Corporation	File No. 50039-CM-P-74.
Multi-Communications Service, Inc.	File No. 50105-CM-P-74.
Private Networks, Inc.	File No. 50124-CM-P-74.
M.C.C.A. Service Corporation.	File No. 50146-CM-P-74.

For construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Miami, Florida.

Adopted June 4, 1985.
Released June 7, 1985.

By the Common Carrier Bureaus.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Miami, Florida. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of the efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Tel-Car Corporation, Multi-Communications Service, Inc., Private Networks, Inc., M.C.C.A. Service Corporation and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Miami, Florida, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

§ 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14172 Filed 6-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants; American Freight Exchange, Inc., et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

American Freight Exchange, Inc., 149-10 183rd Street, #228, Jamaica, NY 11413.
Officers: Matthew Zip, Chairman. Lawrence Rein, President. Florence Cotler, Secretary. Robert Agoglia, Director

Renate H. Omania d.b.a Waldo's Multi-Service, 29 Southwaite Court, Orinda, CA 94563

U.S. Carriage International, Inc., 11938 Waveland Avenue, Franklin Park, IL 60131
Officer: William John Marston, Sole Officer

Seino Enterprise Corporation, 5250 El Segundo Blvd., Hawthorne, CA 90250
Officer: Walter Y. Watanabe, President

Michael J. Loprimo, 33 Gleaner Lane, Levittown, NY 11756

By the Federal Maritime Commission

Dated: June 7, 1985.

Bruce A Dombrowski,

Acting Secretary.

[FR Doc. 85-14099 Filed 6-11-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Behring International, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 910
Name: Behring International, Inc.
Address: 10,700 N.W. Freeway, Houston, TX 77092
Date Revoked: May 26, 1985
Reason: Failed to maintain a valid surety bond.

License Number: 2519
Name: World Transportation Services, Inc. d.b.a. WTS, Inc.
Address: 1632 So. Redwood Road, Salt Lake City, UT 84104
Date Revoked: May 29, 1985
Reason: Failed to maintain a valid surety bond.

License Number: 2508
Name: Samaras International Corporation
Address: P.O. Box 38235 AMF, Denver, CO 80238-0235
Date Revoked: June 1, 1985
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-14098 Filed 6-11-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Commonwealth Trust Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Commonwealth Trust Bancorp, Inc.*, Covington, Kentucky; to engage *de novo* through its subsidiary, Commonwealth Banclease, Inc., Covington, Kentucky, in the leasing of real and personal property.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to continue to engage through its subsidiaries, First Interstate Services Company, Torrance, California; Resulting Consultants Group, Inc., Atlanta, Georgia; and Transaction Systems, Inc., Denver, Colorado, in providing to others data processing and data transmission services, facilities or data bases, and to expand the geographic scope of these activities to include the entire United States.

Board of Governors of the Federal Reserve System, June 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14077 Filed 6-11-85; 8:45 am]

BILLING CODE 6210-01-M

First Camden Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Camden Bancorporation*, St. Marys, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Camden County, St. Marys, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F M Fincorp*, Laotto, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank, Laotto, Indiana.

Board of Governors of the Federal Reserve System, June 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–14078 Filed 6–11–85; 8:45 am]

BILLING CODE 6210–01–M

Key BancShares of New York Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Key Bancshares of New York Inc.*, Albany, New York; to become a bank holding company by acquiring 100 percent of the voting shares of the following banks: Key Bank N.A., Albany; Key Bank of Central New York, N.A., Watertown; Key Bank of Southeastern New York, N.A., Chester; Key Bank of Western New York, N.A., Jamestown; and Key Bank of Long Island, Sayville, all located in New York.

Key Bancshares of New York Inc. has also applied to acquire the following non-bank companies: Key Trust Company, Albany, New York (fiduciary, agency and custodian activities, serving the State of New York); Key Trust Company of Florida, N.A., Orlando, Florida (fiduciary, agency and custodial activities, serving the Tampa-Orlando area of Florida); Key Financial Services, Inc., Wellesley Hills, Maine (making or acquiring loans to finance personal property, serving the entire United States); Key Bank Life Insurance Ltd., Albany, New York (underwriting credit life accident and health insurance, serving the States of New York and Maine); Key Mortgage Funding Inc., Albany, New York (making and servicing mortgage loans, serving the State of New York); Key Services Corporation, Albany, New York (data processing activities, serving the States of New York and Maine); Key Advisory Services Inc., Albany, New York (investment and financial advisory services, serving the States of New York, and New Jersey and the Commonwealth of Pennsylvania); and Howe and Rusling, Inc., Rochester, New York (investment and financial advisory services, serving the western portion of the State of New York).

Board of Governors of the Federal Reserve System, June 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–14079 Filed 6–11–85; 8:45 am]

BILLING CODE 6210–01–M

[Docket Nos. R–0515B and R–0515C]

Requests for Comments on Proposals Regarding Automated Clearing Houses and Net Settlement Arrangements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of the comment periods.

SUMMARY: On May 17, 1985, the Board requested public comment on proposals regarding automated clearing houses (Docket No. R–0515B) and net settlement arrangements (Docket No. R–0515C) These requests are related to the Board's attempts to reduce risks in the payments system that we announced on the same day. 50 FR 21120 et seq. (May 22, 1985) In both cases, comments were due by August 15, 1985. In response to a request, the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), has extended the comment period for 45 days.

DATE: Comments must be received by September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452–3368); Mr. Elliott C. McEntee, Associate Director (202/452–3926), Ms. Florence Young, Advisor (202/452–3955), Division of Federal Reserve Bank Operations; or Ms. Joy W. O'Connell, TDD (202/452–3244).

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), June 7, 1985.

William W. Wiles,

Secretary of the Board

[FR Doc. 85-14080 Filed 6-11-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individuals cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intendes to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0406—Bntoil PLC's proposed acquisition of assets of Freeport-McMoRan, Inc	May 20, 1985
(2) 85-0518—Bergen Brunswig Corporation's proposed acquisition of assets of Pharmaceutical Distribution Business of Davis, (The Davis Companies, Inc., UPE)	Do
(3) 85-0466—Fairview Community Hospitals' proposed acquisition of assets of Iowa Lutheran Hospital, (Iowa Synod of the Lutheran Church in America, UPE)	May 21, 1985
(4) 85-0491—The Times Mirror Company's proposed acquisition of assets of Xerox Learning Systems, (Xerox Corporation, UPE)	May 22, 1985
(5) 85-0527—DMC/WSU Health System's proposed acquisition of voting securities of Children's Hospital of Michigan	May 23, 1985
(6) 85-0528—DMC/WSU Health System's proposed acquisition of voting securities of Detroit Medical Center Corporation	Do
(7) 85-0529—DMC/WSU Health System's proposed acquisition of voting securities of Great Lakes Rehabilitation Corporation	Do
(8) 85-0530—DMC/WSU Health System's proposed acquisition of voting securities of HGH Health System.	Do
(9) 85-0552—Ing. C. Olivetti & C. S.p.A.'s proposed acquisition of voting securities of Docutel/Olivetti Corporation	Do
(10) 85-0531—Dynamics Corporation of America's proposed acquisition of voting securities of Dale Electronics, Inc., (The Lionel Corporation, UPE)	May 24, 1985
(11) 85-0540—L.B. Foster Company's proposed acquisition of assets of Illinois Central Gulf Railroad, (IC Industries, Inc. UPE)	Do
(12) 85-0546—HealthAmerica Corporation's proposed acquisition of voting securities of MetroHealth, Inc	Do
(13) 85-0547—Mrs. Harriet Hartmann's proposed acquisition of assets of Laminated and Coated Products Division (Champion International Corporation, UPE).	Do
(14) 85-0570—Goldome FSB's proposed acquisition of assets of Bankers Funding Corporation, (Central Pacific Corporation UPE)	Do
(15) 85-0587—Sidney Kaplan's proposed acquisition of assets of Putnam Mills Corporation, (Fope, Evans and Robbins incorporated, UPE)	Do
(16) 85-0521—Southmark Corporation's proposed acquisition of voting securities of Retirement Corporation of America, (Richard T. Conard, M.D., UPE)	May 28, 1985
(17) 85-0523—The Rio Tinto-Zinc Corpo PLC's proposed acquisition of voting securities of Walsh Chemical Corp., (Maurice J. Walsh, UPE)	Do
(18) 85-0445—Swire Pacific Limited's proposed acquisition of voting securities of Wometco Coca-Cola Bottling Co. of Northern Arizona, Inc., (Coca-Cola Bottling Co. Consolidated J. Frank Harrison, UPE)	May 29, 1985
(19) 85-0457—International Thomson Organization Ltd.'s proposed acquisition of assets of AutEx Systems, University Microfilms International, (Zerox Corporation, UPE)	Do
(20) 85-0544—American Brands, Inc.'s proposed acquisition of voting securities of Foot-Joy, Inc., (General Mills, Inc., UPE)	Do
(21) 85-0555—American Medical International, Inc.'s proposed acquisition of voting securities of American Hospital of Miami, Inc	Do
(22) 85-0560—American Medical International, Inc.'s proposed acquisition of voting securities of South Dade Health Complex, Inc	Do
(23) 85-0568—Donald J. Trump's proposed acquisition of assets of Atlantic City Hilton, (Hilton Hotels Corporation, UPE)	Do
(24) 85-0573—The Pillsbury Company's proposed acquisition of assets of Atlanta Fast Food Corporation, (Charles A. Micale, UPE) and AFFC Realty Partnership	Do
(25) 85-0599—Kemira Oy's proposed acquisition of assets of titanium dioxide business, (American Cyanamid Company, UPE)	Do
(26) 85-0602—Norwest Corporation's proposed acquisition of assets of Southwest Forest Industries, Inc	Do
1(27) 85-0490—Mr. Marshall Field V's proposed acquisition of assets of Zerox Education Publications, (Zerox Corporation, UPE)	May 30, 1985
(28) 85-0532—National Intergroup Inc.'s proposed acquisition of voting securities of Stone Co. of Texas	Do
(29) 85-0550—Raymond G. Perelman's proposed acquisition of voting securities of General Refractories Company	Do
(30) 85-0576—William Jack Davis' proposed acquisition of voting securities of Bluefield Supply Company.	Do
(31) 85-0577—Dart & Kraft, Inc.'s proposed acquisition of voting securities of Westman Commission Company, (Robert L. Weil, UPE)	Do
(32) 85-0553—Central Jersey Industries, Inc.'s proposed acquisition of voting securities of Rowe International, Inc., (Tnangle Industries, Inc UPE).	May 31, 1985
(33) 85-0554—Tnangle Industries, Inc.'s proposed acquisition of voting securities of Central Jersey Industries, Inc.	Do
(34) 85-0629—United Airlines, Inc.'s proposed acquisition of assets of Frontier Airlines, Inc., (25 Boeing 737-200 Airplanes) (Frontier Holdings, Inc., UPE)	Do
(35) 85-0561—Petroleum Associates, L.P.'s proposed acquisition of voting securities of Union Texas Petroleum Holding, Inc., (Allied Corporation, UPE)	June 3, 1985
(36) 85-0578—McKesson Corporation's proposed acquisition of voting securities of Mass Merchandisers, Inc.	Do
(37) 85-0596—CBS Inc.'s proposed acquisition of WSUN, WYNF, (Taft Broadcasting Company, UPE)	Do
(38) 85-0548—RCA Corporation's proposed acquisition of RCA/Sharp Microelectronics, Inc., a corporate joint venture.	June 4, 1985
(39) 85-0585—Sam Fox's proposed acquisition of voting securities of Allied Healthcare Products, Inc., (Allegheny International, Inc, UPE).	Do
(40) 85-0591—Riverside Partners' proposed acquisition of Itel Corporation	Do
(41) 85-0621—Allegheny Corporation's proposed acquisition of voting securities of Chicago Tile and Trust Company, (Lincoln National Corporation, UPE).	Do
(42) 85-0638—Harcourt Brace Jovanovich, Inc.'s proposed acquisition of voting securities of Florida Cypress Gardens, Inc	Do
(43) 85-0639—Harcourt Brace Jovanovich, Inc.'s proposed acquisition of voting securities of Florida Cypress Gardens, Inc.	Do

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician Premerger Notification Office, Bureau of Competition, Room 303 Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-14082 Filed 6-11-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85M-0253]

Hoffmann-La Roche, Inc.; Premarket Approval of the CEA-Roche' EIA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Hoffmann-La Roche, Inc., Nutley, NJ, for premarket approval, under the Medical

Device Amendments of 1976, of the CEA-Roche® EIA. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 12, 1985.

ADDRESS: Written request for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S.K. Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: On June 19, 1984, Hoffmann-La Roche, Inc., Nutley, NJ 07110, submitted to CDRH an application for premarket approval of the CEA-Roche® EIA, an in vitro device. The device is an enzyme immunoassay (EIA) indicated for the quantitative measurement of carcinoembryonic antigen (CEA) in human plasma to be used as an aid in the prognosis and management of cancer patients in whom changing concentrations of CEA are observed. On September 24, 1984, the Immunology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 9, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness in data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S.K. Vadlamudi (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested persons to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review.

After reviewing the petition, FDA will decide whether to grantor deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 12, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological health (21 CFR 5.53).

Dated: June 4, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–14073 Filed 6–11–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85P–0213]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Geo. A. Hormel & Co. to market test canned smoked-flavored, skinless and boneless, chunk salmon. The purpose of the termporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nicholse, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–485–0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a termporary permit has been issued to Geo. A. Hormel & Co., Austin, MN 55912.

The permit covers limited interstate marketing tests of canned smoked-flavored, skinless and boneless, chunk salmon. The test product deviates from the standard of identity for canned Pacific salmon (21 CFR 161.170) in four ways: (1) the form of pack is chunk, i.e., not less than 50 percent of the fill weight of the salmon is retained on a ½-inch mesh screen; (2) the skin and backbone, i.e., the vertebrae and associated bones (neural spines and ventral ribs) will be removed; (3) the product contains natural smoke flavoring and adjunct flavoring ingredients (i.e., corn oil, salt, brown sugar, and dextrose) in an amount not to exceed 8.73 percent of the weight of the food; and (4) a small amount of water (1 percent of the weight of the food) will be added to the product prior to processing to aid in dispersion of salt. The test product meets all requirements of § 161.170 with the exception of these deviations. The permit provides for the temporary marketing of 100,000 cases of test product containing twenty-four 6¾-ounce cans each. The test product will be distributed throughout the continental United States.

The test product is to be manufactured at the Tony Downs Food Co. plant located in Madelia, MN.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 10, 1985.

Dated: June 5, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-14075 Filed 6-11-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85P-0272]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Geo. A. Hormel & Co. to market test canned skinless and boneless chunk salmon. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than (September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF-215), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Geo. A. Hormel & Co., Austin, MN 55912.

The permit covers limited interstate marketing tests of canned skinless and boneless chunk salmon. The test product deviates from the standard of identify for canned Pacific salmon (21 CFR 161.170) in three ways: (1) the form of pack is chunk, i.e., not less than 50 percent of the fill weight of the salmon is retained on a ½-inch mesh screen; (2) the skin and backbone, i.e., the vertebrae and associated bones (neural spines and ventral ribs) will be removed; and (3) a small amount of water (1 percent of the weight of the food) will be added to the product prior to processing to aid in dispersion of salt. The test product meets all requirements of § 161.170 with the exception of these deviations. The permit provides for the temporary maketing of 300,000 cases of test product containing twenty-four 6 ¾-ounce cans each. The test product will be distributed throughout the continental United States.

The test product is to be manufactured at the Tony Downs Food Co. plant located in Madelia, MN.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 10, 1985.

Dated: June 5, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-14076 Filed 6-11-85; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Demonstration Projects To Demonstrate Methods for Assisting Social Security Disability Insurance Beneficiaries To Obtain Employment; Announcement of the Availability of Grant Funds

Correction

In FR. Doc. 85-12960, beginning on page 23071 in the issue of Thursday, May 30, 1985, make the following corrections:

1. On page 23702, in the first column, the seventh line should read "natural setting various employment and".

2. Also on page 23702, in the middle column, the first word in the third line of the last paragraph should read "contacting ".

3. On page 23703, in the middle column, in the paragraph designated "2.", the second word in the fourth line should read "resources".

BILLING CODE 1505-01-M

Research Grants; Announcement of the Availability of Grants Funds

Correction

In FR Doc. 85-12959, beginning on page 23073 in the issue of Thursday, May 30, 1985, make the following corrections:

1. On page 23074, in the first column, the third line of the last paragraph should read "fringe benefits) in the post-war period".

2. Also on page 23074, in the middle column, the fifth line of the second complete paragraph should read "in priority area SSA-85-01".

3. Also on page 23074, in the middle column, the forth line of the paragraph designated "1." should read "available from Social Security".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-85-1470; FR-2048]

Prototype Cost Determinations Issued Under the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of prototype cost determinations for the State of New Mexico.

SUMMARY: This notice establishes prototype cost limits for the development of public housing new construction projects under the United States Housing Act of 1937 for the State of New Mexico. The New Mexico prototype costs are based on five market areas rather than the 20 market areas used in the schedules published on December 6, 1984 (49 FR 47772). This notice supersedes the New Mexico schedules published in the prior notice.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Development Division, Office of Public Housing, Room 4220, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Telephone (202) 426-0938. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 6, 1984 (49 FR 47772), the Department published its annual prototype cost limit determinations for the development of new construction projects under the United States Housing Act of 1937. The cost limit determinations for the State of New Mexico announced in that notice were based on 20 prototype marketing areas. A subsequent review of actual dwelling construction and equipment costs in these 20 areas indicated that five marketing areas would more accurately reflect current conditions. Accordingly, this notice amends the New Mexico prototype cost limits based on five marketing areas.

The five marketing areas include the following counties:

Zone I—Albuquerque

Bernalillo.

Zone II—Silver City

Catron, Cibola, Grant, Hidalgo, Los Alamos, McKinley, Rio Arriba, Sandoval, San Juan, and Valencia.

Zone III—Clovis

Chaves, Curry, Dona Ana, Eddy, Harding, Lea, Luna, Otero, Quay, Roosevelt, Sierra, Socorro, and Union.

Zone IV—Santa Fe

Colfax, DeBaca, Guadalupe, Lincoln, Mora, San Miguel, Santa Fe, and Torrence.

Zone V—Taos

Taos

This notice does not affect the Indian prototype areas or Indian prototype cost determinations for the State of New Mexico published April 25, 1985 (50 FR 16438).

Written comments will be considered and additional amendments published if the Department determines that amendments are justified in light of the comments. Comments should be sent to the Fort Worth Regional Office, 221 W. Lancaster, P.O. Box 2905, Fort Worth, TX 76113–2905.

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since statutorily required prototype costs are categorically excluded under 24 CFR 50.20(1).

The Catalog of Federal Domestic Assistance program number is: 14.146, Low Income Housing Assistance Program (public housing).

The prototype per unit cost schedules for prototype cost areas, issued under 24 CFR Part 941, Prototype Cost Limits for Low-Income Public Housing are amended as shown on the tables set forth below entitled "Prototype Per Unit Cost Schedule—Region VI, New Mexico."

Dated: June 5, 1985.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

PROTOTYPE PER LIMIT COST SCHEDULE

	Number of bedrooms						
	0	1	2	3	4	5	6
Region VI							
New Mexico:							
Albuquerque:							
Detached and semidetached	18,350	22,000	24,550	29,200	35,100	39,300	40,950
Row dwellings	17,000	20,300	22,600	27,050	32,300	36,000	37,850
Walkup	14,700	18,200	20,650	24,400	28,400	31,100	32,700
Elevator-structure	25,750	30,050	38,050				
Silver City:							
Detached and semidetached	21,000	25,200	28,200	33,450	40,400	45,100	46,900
Row dwellings	19,050	22,700	25,450	30,200	36,200	40,250	42,250
Walkup	16,450	20,400	23,050	27,400	31,750	34,900	36,500
Elevator-structure	25,900	30,350	38,150				
Clovis:							
Detached and semidetached	19,500	23,450	26,100	31,100	37,400	41,700	43,350
Row dwellings	17,900	21,600	24,050	28,800	34,250	38,200	40,100
Walkup	15,650	19,500	21,800	26,050	30,050	33,150	34,750
Elevator-structure	24,600	28,600	36,200				
Santa Fe:							
Detached and semidetached	19,850	24,000	26,750	31,750	38,300	42,800	44,550
Row dwellings	18,600	22,200	24,650	29,550	35,250	39,300	41,100
Walkup	16,000	19,800	22,400	26,600	30,700	33,950	35,650
Elevator-structure	25,300	29,550	37,250				
Taos:							
Detached and semidetached	23,200	27,700	30,950	36,750	44,500	49,550	51,500
Row dwellings	21,500	25,850	28,750	34,100	41,050	45,550	47,800
Walkup	18,300	22,550	25,700	30,250	35,100	38,600	40,600
Elevator-structure	25,700	30,050	37,900				

[FR Doc. 85–14096 Filed 6–11–85; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

School Construction Priorities List, FY 1986

May 28, 1985.

ACTION: Bureau of Indian Affairs, Department of Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary Indian Affairs by 209 DM 8. The school construction priority list has been revised for FY 1986 as required by Pub. L. 95–561; 92 Stat. 2319. Section 1125(o) requires that: At the time any budget request for school construction is presented, the Secretary shall publish in the **Federal Register** and submit with the budget request the current list of all school construction priorities.

This notice for FY 1986 provides the current revised list of proposed construction projects.

Construction of these projects is subject to the availabilitiy of funds and/or the status of currently committed construction projects approved by Congress. Committed projects are Two Eagle River Indian High School, MT, and Rocky Boy High School, MT.

The current list of school construction projects applies to FY 1986 based upon the Bureau's criteria for ranking projects using "unhoused" students. A revised list is developed and published for each succeeding fiscal year.

Further information regarding this list or the ranking process may be obtained from Frank Latta, Chief, School Facilities Staff, Bureau of Indian Affairs, Room 309 South Interior Building, telephone number (202) 343–1484. BIA, Contract and Previously Private School Construction Ranking—FY 1986.

1. Oglala High School, SD. St. Francis School, SD;

2. Turtle Mountain Middle School, ND.

3. Coeur d'Alene Elementary School, ID.

4. Cheyenne River High School, SD.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 85–14193 Filed 6–7–85; 8:45 am]

BILLING CODE 4310–02–M

Plan For the Use and Distribution of Pauma Band of Mission Indians Judgment Funds in Docket 80–A Before the United States Claims Courts

June 4, 1985

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on November 16, 1963, in satisfaction of the award granted to the Pauma Band of Mission Indians before the United States Claims Court in Docket 80–A. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated November 7, 1984, and was received (as recorded in the *Congressional Record*) by the Senate on November 9, 1984, and by the House of Representatives on November 9, 1984. The plan became effective on April 18, 1985, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

The funds of the Pauma Band of Mission Indians, appropriated November 16, 1983, in Docket 80–A before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Payment Aspect

Eighty (80) percent of the funds shall be utilized for per capita payments and dividend payments as distributed by the Secretary of the Interior (hereinafter the "Secretary"). One Thousand Five Hundred Dollars ($1,500) shall be distributed per capita to all tribal members born on or prior to and living on the effective date of this plan. The balance of the eighty (80) percent, and any amounts left from the per capita payment, shall be invested by the Secretary, with the interest and investment income accured to be utilized for periodic dividend payments to tribal members as designated by the tribal governing body and approved by the Secretary.

Programing Aspect

Twenty (20) percent of the funds shall be invested by the Secretary and utilized by the tribal governing body on a budgetary basis subject to the approval of the Secretary, for the following purposes:

A. Agricultural Development—$25,000.

B. Domestic/Irrigation Water Use—$15,000.

C. Tribal Administrative Costs—$10,000.

D. Public Address System—$1,000.

E. Burial Gasoline Fund—$5,000.

F. Completion of Gas Station and Purchase of gasoline—$8,000.

G. The balance of the twenty (20) percent set aside for programing shall be invested by the Secretary. Fifty (50) percent of the interest accrued shall be used to establish an education fund. All remaining funds including principal and interest shall only be used with the recommendation of the general council of the Pauma Band subject to the approval of the Secretary. None of the twenty (20) percent programing portion of the funds shall be available for per capita or dividend payments.

General Provisions

The per capita shares and dividend payments of living, competent adults shall be paid directly to them. The shares and payments of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. The shares and payments of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds distributed per capita or as dividend payments or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, an Federal or federally assisted programs.

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–14194 Filed 6–7–85; 8:45 am]

BILLING CODE 4310–02–M

Plan for the Use and Distribution of the Walker River Paiute Tribe's Judgment Funds in Docket 87–E Before the United States Claims Court

June 4, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on November 9, 1983, in satisfaction of the award granted to the Walker River Paiute Tribe of Indians before the United States Claims Court in Docket 87–E. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated November 7, 1984, and was received (as recorded in the Congressional Record) by the Senate on November 8, 1984, and by the House of Representatives on November 8, 1984. The plan became effective on April 18, 1985, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

The funds of the Walker River Paiute Tribe, appropriated November 9, 1983, in Docket 87–E before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Payment Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan, except that, individuals who have received per capita payments or dividend payments from any other federally recognized tribe or tribes, by virtue of tribal membership, shall not be eligible to participate in the per capita payment aspect of this plan.

The tribal governing body shall establish, with the approval of the Secretary, a procedure and deadline for the filing of applications for tribal enrollment. Such deadline shall not be established on a Saturday, Sunday or legal holiday.

Programing Aspect

Twenty (20) percent of the funds, and any amounts remaining from the per capita payments provided above, shall be invested by the Secretary, and utilized by the tribal governing body on a budgetary basis, subject to the approval of the Secretary, for tribal social and economic development programs. Such programs may include, but are not limited to, tribal administration, capital improvements and collateral on loans.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended. January 12, 1983, 96 Stat. 2512.

None of the funds distributed per capital or made available under this plan for programing shall be subject to Federal or State income, taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–14195 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–02–M

Notice of Proposed Findings Against Federal Acknowledgment of the Tchinouk Indians of Oregon

May 30, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the: Tchinouk Indians, c/o Karleen Parazoo, 5621 Altamount Drive, Klamath Falls, Oregon 97601, exist as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the Tchinouk do not meet four of the criteria set forth in 25 CFR 83.7 and, therefore, do not meet the requirements necessary for a government-to-government relationship with the United States.

The Tchinouk Indians descend from an unknown band or bands of Chinook Indians who inhabited the Columbia River Basin in Oregon and Washington. (For the purpose of this proposed finding Tchinouk should be understood as referring to the petitioning group and Chinook as referring to the aboriginal tribe.) The documented history of the Chinooks began in 1788. The vast majority of the aboriginal population died in an epidemic in the 1830's. The Tchinouk Indians generally trace their Chinook ancestry to two Chinook women who married French-Canadian traders from the Hudson's Bay Company prior to 1830. The specific Chinook band these women were from, or whether they were Lower of Upper Chinook, could not be determined. These individuals settled in the French Prairie region of northwestern Oregon in the 1830's, becoming part of the community of French-Canadians and mixed-bloods. There is no evidence that they formed a distinct Indian community within French Prairie.

By the late 1870's, many of the mixed-blood descendants of these Tchinouk families, along with other mixed-bloods, had migrated to Douglas and Lane Counties in southwestern Oregon. Many settled in an area near Sutherlin, where may Indians and mixed-bloods from different parts of Oregon also settled, and with whom they developed some kinship ties. Shortly after 1900, two of the Tchinouks moved east to the Klamath Indian Reservation in southern Oregon, intermarrying with the local Indian community.

The collection of mixed-blood and Indian families in the Sutherlin area which included the Tchinouk families did not form a distinct Indian community, although many were individually indentified as Indians of one tribe or another. There was no known leadership or other political structure which governed them as a distinct body of people.

Prior to 1957, most of the group members were not identified as being Chinook but rather as being members of other tribal groups, usually Umpqua. They participated in several Indian claims organizations which began in the 1920's which were identified as Umpqua and which included many non-Tchinouk families from the Umpqua Valley region of Douglas County. None of these organizations served as a political entity governing the group's membership. The Tchinouks applied for payment under the Western Oregon judgment fund as Umpqua, Molalla or Calapuya and were rejected in 1957 when their ancestry was determined to be Chinook.

The Tchinouk Indians have only had a formal structure since organizing in 1974 and have only been identified as a Chinook group since that date. The group's constitution and bylaws describe how the membership is determined and how the governing body of the group functions.

Approximately 94 percent of the group's 304 members can document descendancy from one or both of the original Chinook ancestors and meet the group's membership criteria. The other 6 percent were found ineligible for membership due to the fact that their ancestry could not be determined or they did not have Chinook ancestry. Only one of the group's members belonged to a recognized tribe.

Detailed research led to the conclusion that the Tchinouk Indians are forbidden the Federal relationship by the Western Oregon Termination Act of 1954. Although not specifically named in the act, the act's broad language applied to them and other non-reservation Indians of Southwestern Oregon. Many members of the Tchinouk received termination services under the act.

Based on this preliminary factual determination, we conclude that the Tchinouk Indians meet criteria d, e, and f, but do not meet criteria a, b, c, or g, of Section 83.7 of the Acknowledgment regulations. Even if it were determined that the Western Oregon Termination Act did not apply to this group, the petitioner would still fail to meet three of the acknowledgment criteria.

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 days from the date of publication of this notice.

Under section 83.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision is available to the petitioners and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., South Interior Building, Room 32, Washington, D.C. 20245, Attention: Branch of Acknowledgment and Research.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary

will publish the final determination regarding the petitioner's status in the **Federal Register** as provided in § 83.9(h).

Theodore C. Krenzke,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–14196 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA 17118]

Noncompetitive Sale of Public Lands in Trinity County, California; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Noncompetitive sale of public land in Trinity County, California.

SUMMARY: The following described public land has been examined, and identified as suitable for disposal by sale under Sec. 203 of the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value. Appraisal value will be available prior to sale at BLM area office, Redding, California.

Legal Descriptions:

Township 31 North, Range 11 West, M.D.B.&M.,
Sec. 2, NW¼NW¼SE¼NE¼.

Containing approximately 2.5 acres.

The above described land will be offered as a direct sale to Thomas and Rachel Brezinski.

This direct sale is necessary to protect equities arising from inadvertent unauthorized use, as a result of private surveying errors. The proposed sale area contains a protion of their residence and improvements which have been established for may years. The area to be conveyed will accommodate the subject inadvertent trespasses upon public land, comply with Trinity County Planning Department requirements, and assure that no uneconomic, difficult-to-manage remnant is created.

The proposed sale has been examined and found suitable for disposal under the said Act of October 21, 1976, and is consistent with the approved Redding Resource Area Land Use Plans.

BLM may withdraw this land from sale at any time if, in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

The terms and conditions applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. The land will be sold subject to those rights for electric transmission line purposes as have been granted to Pacific Gas and Electric Company, Serial =S 051295, under the Act of March 4, 1911 (43 U.S.C. 961).

3. It has been determined that the subject parcel contains no known mineral values. Therefore, as a condition of sale, a $50.00 nonrefundable fee will be required for conveyance of those mineral interests offered for conveyance in the sale.

Publication of this Notice in the **Federal Register**, segregates the public lands from appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

Detailed information concerning the sale, including the environmental assessment and land report are available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002. The appraisal for this parcel will be available prior to sale.

DATE: Comments should be sent to the following address no later than July 30, 1985.

ADDRESS: Comments and suggestions should be sent to: Area Manager, Redding Resource Area, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

Comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246–5325.

Dated May 31, 1985.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 85–14197 Filed 6–7–85; 8:45 am]

BILLING CODE 4310–40–M

New Mexico; Notice of Filing of Plat of Survey

May 30, 1985

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Sante Fe, New Mexico, effective at 10:00 a.m. on May 30, 1985.

The dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines of Township 14 North, Range 4 West, New Mexico Principal Meridian, New Mexico, under Group 807 NM.

This survey was requested by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85–14198 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Application for Permit; Atlanta Zoological Park et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amened (16 U.S.C. 1531, et seq.):

PRT–695185

Applicant: Atlanta Zoological Park, Atlanta, GA

The applicant requests a permit to import one captive-hatched gharial (*Gavialis gangeticus*) from the Atagawa Tropical and Alligator Farm, Shizuoka, Japan, for enhancement of the propagation of the species.

PRT–695144

Applicant: Dr. Margaret R. Clarke, Kenner, LA.

The applicant requests a permit to import up to 75 blood samples from wild howler monkeys [*Alouatta palliata* (*villosa*)] in Costa Rica for the purpose of scientific research.

PRT–690573

Applicant: Lincoln Park Zoo, Chicago, IL.

The applicant requests a permit to import a female Afghanistan leopard (*Panthera pardus saxicolor*) from the Doha Zoological Garden, Doha, Qatar, for the purpose of enhancement of propagation.

PRT–695179

Applicant: Arden Glen Mohwinkel, Anchorage, AK.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled from the captive herd of C.J. Retief, Harrismith, South Africa, for the purpose of enhancement of propagation.

PRT-693026

Applicant: Louisiana Dept. of Wildlife & Fisheries, Grand Chenier, LA.

The applicant requests a permit to take (capture, band, release and monitor) 50–100, 8–11 week-old brown pelicans (*Pelecanus occidentalis carolinensis*) within Louisiana for scientific research.

PRT-694894

Applicant: Michael P. Yoder-Williams, University of California, Truckee, CA

The applicant requests a permit to take a single herbarium specimen of the Truckee barberry [*Mahonia* (=*Berberis*) sonnei] at each new population site discovered in the eastern Sierra Nevada region of CA and NV for scientific research.

PRT-695468

Applicant : National Park Service, Golden Gate National Recreation Area, San Francisco, CA.

The applicant requests a permit to take (capture, band, release) five peregrine falcons (*Falco peregrinus*) and five bald eagles (*Haliaeetus leucocephalus*) at Pt. Diablo on the recreation area for scientific research.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 7, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–14129 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 10:00 a.m. (PST) on Saturday, June 22, 1985 at West Marin School, Point Reyes Station, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Mr. Charles Gould
Mr. Daphne Greene
Ms. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams.

The main agenda items are grazing in the Golden Gate National Recreation Area and Point Reyes, and bicycles and trails in the Point Reyes area.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent John H. Davis, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by July 22, 1985, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: June 3, 1985.

Howard Chapman,

Regional Director, Western Region.

[FR Doc. 85–14117 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–70–M

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held June 18–19, 1985, beginning at 1:30 p.m. on June 18 and at 8:30 a.m. on June 19 at the Starved Rock Lodge, Starved Rock State Park, Utica, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the June 18 meeting will include an orientation for the commission members regarding legislation, the concept plan, and an explanation of the terminology and support services concerning contracts and vouchers. On June 19, there will be a discussion regarding the commission, its organization, and the offices to be filled which will then be followed by an election of officers.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: June 3, 1985.

David H. Shonk,

Acting Regional Director, Midwest Region.

[FR Doc. 85–14116 Filed 6–11–85; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–211]

Certain Electrical Connectors; Commission Determination Not To Review Initital Determination Terminating Respondent On the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of respondent on the basis of a settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating the above-captioned investigation as to respondent Allied Corporation of the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International

Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On April 19, 1985, complainant Thomas & Betts Corporation and respondent Allied Corporation filed a joint motion to terminate the above-referenced investigation as to Allied Corporation on the basis of a settlement agreement. The Commission investigative attorney filed a response joining the joint motion. On May 7, 1985, the presiding administrative law judge issued an ID granting the joint motion and terminating the investigation as to Allied Corporation on the basis of the settlement agreement. Notice to the ID was published in the Federal Register of May 15, 1985, 50 FR 20301. No petition for review of the ID were filed, nor were any comments received from Government agencies or the public.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (49 FR 46.123 (November 23, 1984), to be codified at 19 CFR 210.53).

Copies of the public versions of the initial determination and settlement agreement and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: June 4, 1985.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14147 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–195]

Certain Cloisonne Jewelry; Commission Issuance of General Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of a general exculsion order.

SUMMARY: Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having reviewed the written submissions filed on remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission has determined to issue a general exclusion order prohibiting entry into the United States, except under license of the copyright owner, of cloisonne jewelry which infringes U.S. Copyright Registration Nos. VA 108–466, VA 108–465, VA 107–361, VA 105–485, VA 116–449, VA 137–741, VA 137–743, VA 116–448, VA 137–749, VA 137–758, VA 116–451, VA 137–748, Va 137–747, VA 116–447, VA 137–757, VA 137–744, VA 137–755, VA 137–740, or VA 116–450.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On March 6, 1985, the administrative law judge issued an initial determination that there is a violation of section 337 in the importation and sale of certain cloisonne jewelry by reason of copyright infringement. On April 8, 1985, the Commission determined not to review the administrative law judge's determination as to violation of section 337. 50 FR 15235 (April 17, 1985). The parties were requested to file written submissions on remedy, the public interest, and bonding. Complainant Laurel Burch, Inc., and the Commission investigative attorney have submitted briefs on remedy, the public interest, and bonding. The U.S. Customs Service has filed a submission on the issue of remedy. No other submissions were received.

Copies of the Commission's Action and Order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: June 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14136 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–197]

Certain Compound Action Metal Cutting Snips; Commission Decision Not To Review Initial Determination; Deadline for Filing Written Submissions on Remedy; the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination that there is a violation of section 337 in the above-captioned investigation. The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

SUMMARY: On April 18, 1985, the presiding ALJ issued an initial determination that there is a violation of section 337 in the unauthorized importation and sale of certain compound action metal cutting snips and components thereof. No petitions for review or agency comments were filed. Having examined the record in this investigation, including the initial determination of the presiding officer, the Commission has determined not to review the initial determination. Consequently, the initial determination has become the Commission determination on violation of section 337 in the investigation.

Authority

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1984); to be codified at 19 CFR 210.53–210.56).

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1626.

SUPPLEMENTARY INFORMATION:

Written Submissions

Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, that should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles like or directly competitive with those that are the subject of the investigation, and (4)

U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

The parties to the investigation, interested Government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day that is 14 days after publication of this notice in the **Federal Register.** Written submissions in reply to the submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day that is 21 days from the date this notice appears in the **Federal Register**.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection in the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on July 18, 1984 (49 FR 29160).

Copies of the ALJ's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: June 5, 1985.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14137 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–211]

Certain Electrical Connectors; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: ODU–Kontakt GmbH & Co. KF and Otto Dunkel GmbH.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination is this matter was served upon the parties on June 6, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: June 6, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14138 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–223]

Certain Key Telephone Systems and Components Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 1, 1985, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Crest Industries, Incorporated, 6922 North Meridian, Puyallup, Washington 98371. The complaint alleges unfair methods of competition and unfair acts in the importation of certain key telephone systems into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 4,132,860 and (2) false and deceptive advertising. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., or Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1272 or 202–523–4877, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 29, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain key telephone systems and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 4,132,860 and (2) false and deceptive advertising, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Crest Industries, Inc., 6922 North Meridian, Puyallup, Washington 98371.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Universial Appliances, Ltd., 41 Man Yul Street, Kowloon, Hong Kong
TT Systems Corporation, 9 East 37th Street, New York, New York 10016

(c) Juan Cockburn, Esq., and Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Roon 128 and Room 122, respectively, Washington, D.C. 20436, shall be the Commission investigative attorneys, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, as amended, 49 FR 46123). Pursuant to §§ 201.16(d) (19 CFR 201.16(d), as amended, 49 FR 32571) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

Issued: June 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14140 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–203]

Certain Floppy Disk Drives and Components Thereof; Commission Decision To Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

Authority

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1983); to be codified at 19 CFR 210.53.–210.56).

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0490.

SUPPLEMENTARY INFORMATION: On April 26, 1985, the presiding administrative law judge issued an initial determination terminating the investigation based on the lack of a causal nexus between any alleged injury to complainant Tandon Corporation and respondents' imports of the subject disk drives.

After examining the initial determination, the Commission has concluded that there is an issue that warrants review. Specifically, the Commission will review the following question:

Whether the importation or sale of respondent's floppy disk-drives has caused substantial injury, or has the tendency to substantially injure, or has prevented the establishment of an "industry . . . in the United States."

The Commission's review will be limited to the above issue. No other issues will be considered.

Written Submissions and Commission Hearing

The parties to the investigation and interested Government agencies are encouraged to file written submissions on the legal issue under review by June 20, 1985. Reply briefs must be filed not later than the close of business on July 1, 1985. The Commission does not intend to hold a public hearing.

Notice of this investigation was published in the **Federal Register** of September 6, 1984 (49 FR 32,257).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: June 4, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14139 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–193]

Certain Portable Electronic Calculators; Extension of Time for Commission Decision on Whether To Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must

decide whether to review the initial determination (ID) finding that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C.1337) in the above-captioned investigation has been extended from June 5, 1985, to June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202–523–3395.

SUPPLEMENTARY INFORMATION: On April 18, 1985, the administrative law judge issued an initial determination (ID) in the above-captioned investigation finding that there is no violation of section 337. Pursuant to § 210.53(h) of the Commission's rules, the ID becomes the Commission's determination on June 5, 1985, unless the Commission decides to review the ID or extends the deadline for that decision.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: June 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14141 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–206]

Certain Surgical Implants for Fixation of Bone Fragments; Commission Decision Not To Review initial Determination Terminating Respondent of the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of respondent on the basis of a consent order.

SUMMARY: Notice is hereby given that the Commission has determined not to review the administrative law judge's (ALJ) initial determination (ID) terminating this investigation as to respondent DePuy, Inc., on the basis of a consent order and granting a joint motion to change the name of DePuy, Inc., to Boehringer Mannheim Corp. (DePuy Division).

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493.

SUPPLEMENTARY INFORMATION: On Feburary 1, 1985, complainant Synthes, Ltd., respondent DePuy, Inc., and the Commission investigative attorney jointly moved to terminate the investigation as to DePuy on the basis of a consent order. On May 7, the ALJ issued an ID granting the motion. No petition for review has been filed and no comments from other government agencies or the public have been received. The Commission has determined not to review the ID. The Commission has also determined to grant a joint motion by the same three parties to change the name of DePuy to Boehringer Mannheim Corp. (DePuy Division).

Termination of the investigation as to this respondent on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

The authority for the Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and §§ 210.53–210.56 of the Commission's rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1984), to be codified at 19 CFR 210.53–210.56).

Issued: June 4, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14142 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–206]

Certain Surgical Implants for Fixation of Bone Fragments; Commission Decision Not To Review Initial Determination Terminating Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review the administrative law judge's (ALJ) initial determination (ID) terminating the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493.

SUPPLEMENTARY INFORMATION: On May 7, 1985, the ALJ issued an ID terminating the investigation. The ID is based on the ALJ's findings that the respondents to the investigation have modified the design of the allegedly infringing implants, the respondent that has entered into a consent order is the exclusive importer of the subject implants, and there is no evidence of any other importation or sale of allegedly infringing implants. No petition for review of the ID was filed.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: June 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14143 Filed 6–11–85; 8:45 am]

BILLING CODE 7020–02–M

[332–210]

Conditions Relating to the Importation of Softwood Lumber Into the United States

AGENCY: International Trade Commission.

ACTION: Extension of investigation and scheduling of public hearing.

SUMMARY: The Commission has extended investigation No. 332–210, Conditions Relating to the Importation of Softwood Lumber Into the United States, by 3 months and scheduled a hearing to be held in connection therewith. The study extension and public hearing will provide interested parties additional time for the preparation of submissions to the Commission and the opportunity to present their views directly to the Commission in a public forum.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Ruggles or Mr. Thomas Westcot, Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–724–1766 or 202–724–0095, respectively.

Background

The U.S. Trade Representative (USTR) in a letter dated March 6, 1985, requested, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of updating the Commission's April 1982 study entitled *Conditions Relating to the Importation of Softwood Lumber Into the United*

States (investigation No. 332–134), and reporting on all significant factors affecting the competitive status of the U.S. and Canadian softwood lumber industries. The notice of investigation appeard in the **Federal Register** of April 3, 1985 (50 FR 13291).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C., beginning at 10:00 a.m., on July 23, 1985. All interested persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, July 16, 1985.

Written Submissions

Owing to the 3 month extension of the investigation, written statements should be submitted at the earliest practicable date, but not later than July 16, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: June 4, 1985.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14144 Filed 6–11–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701–TA–248 (Preliminary) and Investigations Nos. 731–TA–259 and 260 (Preliminary)]

Offshore Platform Jackets and Piles From the Republic of Korea and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry[3] in the United States is materially injured by reason of imports from the Republic of Korea (Korea) of offshore jackets and piles,[4] provided for in item 652.97 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Korea (investigation No. 701–TA–248 (Preliminary)). We further determine,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry [3] in the United States is materially injured by reason of such imports from Korea and Japan, which are alleged to be sold in the United States at less than fair value (LTFV) (investigations Nos. 731–TA–259 and 260 (Preliminary)).

Background

On April 18, 1985,[5] and April 19, 1985,[6] petitions were filed with the Commission and, on April 19, 1985, with the Department of Commerce by counsel on behald of Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of offshore platform jackets and piles from Korea and LTFV imports of offshore platform jackets and piles from Korea and Japan. Accordingly, effective April 18, 1985, the Commission instituted preliminary countervailing duty investigation No. 701-TA–248 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–259 and 260 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 1, 1985 (50 FR 18582). The conference was held in Washington, DC, on May 13, 1985, and all persons who requested the opportunity were permit to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 3, 1985. The views of the Commission are contained in USITC Publication 1708 (June 1985), entitled "Offshore Platform Jackets and Piles from the Republic of Korea and Japan: Determinations of the Commission in Investigation No. 701–TA–248 (Preliminary) and Investigations Nos. 731–TA–259 and 260 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations.

Issued: June 3, 1985.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 85–14145 Filed 6–11–85; 8:45 am]

BILLING CODE 7020-02-M

[332–212]

Review of the Effectiveness of Trade Dispute Settlement Under the GATT and Tokyo Round Agreements

AGENCY: International Trade Commission.

ACTION: At the request of the Committee on Finance of the United States Senate, the Commission has instituted investigation No. 332–212 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332 (b)) concerning the effectiveness of dispute settlement under the General Agreement on Tariffs and Trade and the Tokyo Round agreements.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Lee Tuthill (202–523–4556), Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background

The Commission instituted the investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on May 2, 1985, of a request therefor from the Senate Committee on Finance. The Committee asked that the Commission examine the effectiveness of the dispute-settlement mechanisms provided in the General Agreement on Tariffs and Trade (GATT) and any agreements or "codes" negotiated under GATT auspices.

The Committee requested that the Commission's report (1) review the development of the GATT dispute-settlement mechanisms and their relationships to U.S. trade laws; (2) summarize disputes that have been addressed by the GATT and the code committees, including the process as perceived by major participants.

The Committee also stated that the Commission's assessment of the effectiveness of the dispute-settlement mechanisms should be based on, among other things, consideration of the types of products and trade barriers concerned, the pattern of individual countries' involvement, the conditions leading to success or failure of the process, and the record on implementation of the GATT and code

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern did not participate in the(se) investigation(s).

[3] Commissioner Eckes finds for the(se) preliminary investigation(s) that there are two like products and therefore two domestic industries.

[4] Offshore platform jackets, piles, appurtenances thereto, and subassemblies thereof that do not require removal from a transportation vessel and further U.S.-onshore assembly are included in these investigations.

[5] Countervailing duty and antidumping petitions with respect to imports of offshore platform jackets and piles from Korea.

[6] Antidumping petition with respect to imports of offshore platform jackets and piles from Japan.

committee findings. The Committee also requested that the Commission's report examine the differences in views of the major participants on the purpose of these mechanisms and on the manner in which the process should operate to achieve the desired goals.

The Committee asked that the Commission seek the views of interested parties during the course of the investigation and that the Commission transmit its final report not later than December 31, 1985.

Written Submissions

While there is no public hearing scheduled for this investigation, written submissions from interested parties are invited. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than September 23, 1985. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

Issued: June 7, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-14146 Filed 6-11-85; 8:45 am]

BILLING CODE 70201-02-M

INTERSTATE COMMERCE COMMISSION

Aero Mayflower Transit Company, Inc.; Predetermined Price Protection Tariff; Meeting

Time and Date: 2:00 p.m., Wednesday, June 19, 1985.

Place: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, D.C. 20423.

Status: Open Special Conference.

Matter to be Discussed: Aero Mayflower Transit Company, Inc., Predetermined Price Protection Tariff, Item.

Contact Person for More Information: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 85-14040 Filed 6-11-85; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Avenue NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension.
Bureau/Office: Office of Compliance & Consumer Affairs.
Title of Form: Request forRevocation of authority Granted.
OMB Form No: 3120-0104.
Agency Form No: OCCA-46.
Frequency: On occasion.
Respondents: Transportation Entities voluntarily applying for revocation of their operating rights.
No. of Respondents: 550.
Total Burden Hrs.: 275.

James H. Bayne,

Secretary.

[FR Doc. 85-14093 Filed 6-11-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of a Proposed Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 29, 1985, a proposed Consent Decree in *United States* v. *City of Garland and the State of Texas*, Civil Action No. 3-84-0168-G (Consol.) (N.D.Tex.) was lodged with the United States District Court for the Northern District of Texas.

The Complaint in this action alleged numerous violations of the Clean Water Act, various administrative orders, and the National Pollutant Discharge Elimination System (NPDES) permits for both of Garland's wastewater treatment plants. The Complaint also sought injunctive relief against the City to halt the violations and to impose a compliance schedule, as well as to impose civil penalties for past violations. The proposed Consent Decree provides for complete upgrading and expansion of the subject wastewater facilities on compliance schedules to insure compliance with the Clean Water Act, and interim control measures. The Decree also requires the payment of $150,000 in civil penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *City of Garland and the State of Texas*, Civil Action No. 3-84-0168-G (Consol.) (N.D.Tex.), D.J. Ref. No. 90-5-1-1-2060.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Federal Building and Courthouse, Room 16G28, 1100 Commerce Street, Dallas, Texas 75242, and at the Region VI office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. A copy of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-14192 Filed 6-11-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-36]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCS).

DATE AND TIME: June 27, 1985, 9:00 a.m. to 5:00 p.m.; June 28, 1985, 9:00 a.m. to 5:00 p.m. (closed).

ADDRESS: National Academy of Sciences, 2101 Constitution Avenue NW. (Lecture Room), Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, Code RS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2733).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next twenty years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members. The meeting will be open to the public for the stated time up to the seating capacity of the room (approximately 120 persons including Commission members and other participants).

This meeting will be closed to the public from 9:00 a.m. to 5:00 p.m. on June 28, 1985 for discussions relating to the national defense and foreign policy which are, in fact, properly classified pursuant to Executive Order closed to the public for this period of time. The remainder of the meeting will be open to the public. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open except for a closed session as noted in the agenda below.

Agenda

June 27, 1985

9:00 a.m.—Introductory Remarks.
9:30 a.m.—Communication Satellite Industry
10:30 a.m.—Young Astronaut Program.
1:30 p.m.—International Space Activities.
2:30 p.m.—Private Investment in Space.
3:30 p.m.—Soviet Activities in Space.
5:00 p.m.—Adjourn.

June 28, 1985

9:00 a.m.—Executive Session (Closed)
5:00 p.m.—Adjourn.

Dated: June 6, 1985

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85–14068 Filed 6–11–85; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 19, 1985.

ADDRESS: Send comments to Mr. Joseph Lackey, Office of Mangement and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503; (202–395–7316) In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506; (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: Extension of previously approved public use reports is requested. Each entry is issued by the Endowment and contains the following information: (1) The title of the paragraph; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what paragraph will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare reports. None of these entries are subject to 44 U.S.C. 3504(h).

Contract and Cooperative Agreement Paragraphs

Title: Section A—Scope of Work
Frequency of Collection: Annually, if applicable
Respondents: Individuals, organizations, small businesses
Use: NEA contracts and cooperative agreements
Estimated Number of Respondents: 21
Estimated Hours for Respondents to Provide Information: 8.

Title: Records and Audit
Frequency of Collection: Annually
Respondents: Individuals, organizations small businesses
Use: NEA contracts and cooperative agreements
Estimated Number of Respondents: 21
Estimated Hours for Respondents to Provide Information: 24.

Title: Method of Payment
Frequency of Collection: Monthly
Respondents: Individuals, organizations small businesses
Use: NEA contracts and cooperative agreements
Estimated Number of Respondents: 21
Estimated Hours for Respondents to Provide Information: 24.

Peter J. Basso,

Director of Administration, National Endowment for the Arts.

[FR Doc. 85–14069 Filed 6–11–85; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7455]

Finding of No Significant Impact; Amendment of Source Material License No. SMA–1018; Whittaker Corp. Former Whitaker M, Metals Production Site, Greenville, PA

The U. S. Nuclear Regulatory Commission (the Commission) is considering an amendment of Source Material License No. SMA–1018 held by Whittaker Corporation. Whittaker processed ores and scrap, containing licensable quantities of natural uranium and thorium, for the production of ferro-columbium and ferro-nickel alloys. The facility terminated operations involving source material in 1974 and has since that time been undergoing decontamination and decommissioning. The proposed amendment would (1) release a certain portion of the former processing site for unrestricted use, (2) require Whittaker to develop, within six months, a plan for the ultimate disposition of remaining waste materials located onsite, (3) require routine monitoring to identify any waste migration while the remaining material is stored in its present condition, and (4) restrict access to the stored wastes.

The Commission's Division of Fuel Cycle and Material Asessment related to the amendment of Source Material License No., SMA–1018. On the basis of this assessment, the Commission has concluded that the environmental Safety has prepared an Environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement.

Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301)427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 4th day of June, 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch: Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85–14122 Filed 6–11–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–400]

Carolina Power & Light Co., North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant, Unit 1); Exemption

I

On September 7, 1971, the Carolina Power & Light Company tendered an application for a license to construct Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4 (Harris or the facility) with the Atomic Energy Commission (currently the Nuclear Regulatory Commission or the Commission). Following a public hearing before the Atomic Safety and Licensing Board, the Commission issued Construction Permit Nos. CPPR–158, CPPR–159 CPPR–160 and CPPR–161 permitting the construction of the Units 1, 2, 3 and 4, respectively, on January 27, 1978. The facility is a pressurized water reactor, containing a Westinghouse Electric Company nuclear steam supply system, located at the applicant's site in Wake County, North Carolina.

On June 26, 1980, the applicant tendered an application for Operating Licenses for the facilities, currently in the licensing review process. By letter dated September 3, 1981, the Carolina Power & Light Company transmitted an application for amendments to the Construction Permits for Shearon Harris Nuclear Power Plants, Units 1, 2, 3 and 4 to add the North Carolina Municipal Power Agency Number 3 (Power Agency) as a co-owner. The staff, by letter dated November 3, 1981, amended the Construction Permits to reflect the above changes in ownership. Subsequently, by letter dated December 18, 1981, Carolina Power & Light Company notified the staff of the cancellation of Harris, Units 3 & 4. By letter dated August 1, 1983 Carolina Power & Light Company filed an application for an amendment to the Construction Permits for Harris, Units 1 & 2, to reflect the name change of the co-owner from North Carolina Municipal Power Agency Number 3 to North Carolina Eastern Municipal Power Agency. The Construction Permits were amended to show the name change by NRC letter dated June 11, 1984. The Carolina Power & Light Company by letter dated January 23, 1984, informed the staff of the cancellation of Harris, Unit 2.

II

The Construction Permit issued for constructing the facility provides, in pertinent part, that the facility is subject to all rules, regulations and orders of the Commission. This includes General Design Criterion (GDC) 4 of Appendix A to 10 CFR Part 50. GDC 4 requires that structures, systems and components important to safety shall be designed to accommodate the effects of, and to be compatible with, the environmental conditions associated with the normal operation, maintenance, testing and postulated accidents, including loss-of-collant accidents. These structures, systems and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, discharging fluids that may result from equipment failures, and from events and conditions outside the nuclear power unit.

In a submittal dated January 14, 1985, and a supplemental letter dated April 19, 1985, the applicants enclosed Westinghouse Report WCAP–10699 (Reference 1) containing the technical basis for their request to: (1) Eliminate the need to design for pipe whip, jet impingement, and other dynamic effects (including asymmetric effects) of reactor cavity pressurization and primary component subcompartment pressurization due to postulated primary loop pipe breaks, (2) eliminate the need for pipe whip restraints (including shims) and jet impingement shields associated with the primary loop pipe breaks defined in the Final Safety Analysis Report (FSAR), and (3) eliminate the dynamic loading effects associated with the primary loop pipe breaks defined in the FSAR on primary loop piping, branch lines and their supports and maintenance access platforms (branch line postulated pipe breaks are retained for design). The applicants also stated in their submittals that the exemption request does not apply to the containment design bases, the emergency core cooling sysetm, or environmental qualification, engineered safety features systems response, or the design of the RCS heavy components supports.

The applicants' submittals also contain the results of an analysis of the occupational radiation dose reduction which provides the value-impact analysis for Shearon Harris, Unit 1. The technical information contained in reference (1) together with the value-impact analysis, provided a comprehensive justification for requesting a limited exemption from the requirements of GDC.

From the deterministic fracture mechanics analysis contained in the technical information furnished, the applicants concluded that postulated breaks up to and including the double-ended quillotine breaks (DEGB) of the primary loop coolant piping in Shearon Harris 1 need not be considered as a design basis for installing protective structures, such as pipe whip restraints and jet impingement shields, to guard against the dynamic effects associated with such postulated breaks. However, the applicants proposed to continue to postulate the equivalent area of a DEGB as the design basis for the containment, the ECCS, the engineered safety systems response, for environmental qualification and the design of the RCS heavy components supports.

III

The Commission's regulations require that applicants provide protective measures against the dynamic effects of postulated pipe breaks in high energy fluid system piping. Protective measures include physical isolation from postulated pipe rupture locations if feasible or the installation of pipe whip restraints, jet impingement shields or compartments. In 1975, concerns arose as to the asymmetric loads on pressurized water reactor (PWR) vessels and their internals which could result from these large postulated breaks at discrete locations in the main primary coolant loop piping. This led to the establishment of Unresolved Safety Issue (USI) A–2, "Asymmetric Blowdown Loads on PWR Primary Systems."

The NRC staff, after several review meetings with the Advisory Committee on Reactor Safeguards (ACRS) and a meeting with the NRC Committee to Review Generic Requirements (CRGR), concluded that an exemption from the

regulations would be acceptable as an alternative for resolution of USI A–2 for sixteen facilities owned by eleven licensees in the Westinghouse Owners' Group (one of these facilities, Fort Calhoun has a Combustion Engineering nuclear steam supply system). This NRC staff position was stated in Generic Letter 84–04, published on February 1, 1984 (Reference 2). The generic letter states that the affected licensees must justify an exemption to GDC 4 on a plantspecific basis. Other PWR applicants or licensees may request similar exemptions from the requirements of GDC 4 provided that they submit an acceptable technical basis for eliminating the need to postulate pipe breaks.

The acceptance of an exemption was made possible by the development of advanced fracture mechanics technology. These advanced fracture mechanics techniques deal with relatively small flaws in piping components (either postulated or real) and examine their behavior under various pipe loads. The objective is to demonstrate by deterministic analsysis that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before the flaws can grow to critical or unstable sizes which could lead to large break areas such as the DEGB or its equivalent. The concept underlying such analyses is referred to as "leak-before-break" (LBB). There is no implication that piping failures cannot occur, but rather that improved knowledge of the failure modes of piping systems and the application of appropriate remedial measures, if indicated, can reduce the probability of catastrophic failure to insignificant values.

Advanced fracture mechanics technology was applied in topical reports (References 3, 4, and 5) submitted to the staff by Westinghouse on behalf of the licensees belonging to the USI A–2 Owners' Group. Although the topical reports were intended to resolve the issue of asymmetric blowdown loads that resulted from a limited number of discrete break locations, the technology advanced in these topical reports demonstrated that the probability of breaks occurring in the primary coolant system main loop piping is sufficiently low such that these breaks need not be considered as a design basis for requiring installation of pipe whip restraints or jet impingement shields. The staff's Topical Report Evaluation is included as a part of Reference 2.

Probabilistic fracture mechanics studies conducted by the Lawrence Livermore National Laboratories (LLNL) on both Westinghouse and Combustion Engineering nuclear steam supply system main loop piping (Reference 6) confirm that both the probability of leakage (e.g., undetected flaw growth through the pipe wall by fatigue) and the probability of a DEGB are very low. The results given in Reference 6 are that the best-estimate leak probabilities for Westinghouse nuclear steam supply system main loop piping range from 1.2×10^{-6} to 1.5×10^{-7} per plant year and the best-estimate DEGB probabilities range from 1×10^{-12} to 7×10^{-12} per plant year. Similarly, the best-estimate leak probabilities for Combustion Engineering nuclear steam supply system main loop piping range from 1×10^{-5} per plant year to 3×10^{-5} per plant year, and the best-estimate DEGB probabilities range from 5×10^{-14} to 5×10^{-13} per plant year. The results do not affect core melt probabilities in any significant way.

During the past few years it has also become apparent that the requirement for installation of large, massive pipe whip restraints and jet impingement shields is not necessarily the most cost effective way to achieve the desired level of safety, as indicated in Enclosure 2, Regulatory Analysis, to Reference 2. Even for new plants, these devices tend to restrict access for future inservice inspection of piping; or if they are removed and reinstalled for inspection, there is a potential risk of damaging the piping and other safety-related components in this process. If installed in operating plants, high occupational radiation exposure (ORE) would be incurred while public risk reduction would be very low. Removal and reinstallation for inservice inspection also entail significant ORE over the life of a plant.

IV

The primary coolant system of Shearon Harris, described in Reference 1, has three main loops each comprising a 33.9 inch diameter (outside) hot leg, a 37.5 inch diameter crossover leg and 32.4 inch diameter cold leg piping. The materials in the primary loop piping are wrought stainless steel pipe with cast stainless steel fittings and associated welds. In its review of Reference 1, the staff evaluated the Westinghouse analyses with regard to:

—The location of maximum stresses in the piping, associated with combined loads from normal operation and the SSE;
—Potential cracking mechanisms;
—Size of through-wall cracks that would leak a detectable amount under normal loads and pressure;
—Stability of a "leakage-size crack" under normal plus SSE loads and the expected margin in terms of load;
—Margin based on crack size; and
—The fracture toughness properties of wrought and thermally-aged cast stainless steel piping and weld material.

The NRC staff's criteria for evaluation of the above parameters are delineated in its Topical Report Evaluation, Enclosure 1 to Reference 2, Section 4.1, "NRC Evaluation Criteria", and are as follows:

(1) The loading conditions should include that static forces and moments (pressure, deadweight and thermal expansion) due to normal operation, and the forces and moments associated with the safe shutdown earthquake (SSE). These forces and moments should be located where the highest stresses and the lowest material toughness are coincident for base materials, weldments and safe-ends.

(2) For the piping run/systems under evaluation, all pertinent information which demonstrates that degradation or failure of the piping resulting from stress corrosion cracking, fatigue or water hammer is not likely, should be provided. Relevant operating history should be cited, which includes system operational procedures; system or component modification; water chemistry parameters, limits and controls; resistance of material to various forms of stress corrosion, and performance under cyclic loadings.

(3) A through-wall crack should be postulated at the highest stressed locations determined from (1) above. The size of the crack should be large enough so that the leakage is assured of detection with adequate margin using the minimum installed leak detection capability when the pipe is subjected to normal operational loads.

(4) It should be demonstrated that the postulated leakage crack is stable under normal plus SSE loads for long periods of time; that is, crack growth, if any, is minimal during an earthquake. The margin, in terms of applied loads, should be determined by a crack stability analysis, i.e., that the leakage-size crack will not experience unstable crack growth even if larger loads (larger than design loads) are applied. This analysis should demonstrate that crack growth is stable and the final crack size is limited, such that a double-ended pipe break will not occur.

(5) The crack size should be determined by comparing the leakage-

size crack to critical-size cracks. Under normal plus SSE loads, it should be demonstrated that there is adequate margin between the leakage-size crack and the critical-size crack to account for the uncertainties inherent in the analyses, and leakage detection capability. A limit-load analysis may suffice for the purpose, however, an elasic-plastic fracture mechanics (tearing instability) analysis is preferable.

(6) The materials data provided should include types of materials and materials specifications used for base metal, weldments and safe-ends, the materials properties including the J-R curve used in the analyses, and long-term effects such as thermal aging and other limitations to valid data (e.g. J maximum, maximum crack growth).

V

Based on its evaluation of the analysis contained in Westinghouse Report WCAP–10699 (Reference 1), the staff finds that the applicants have presented an acceptable technical justification, addressing the above criteria, for not installing protective devices to deal with the dynamic effects of large pipe ruptures in the main loop primary coolant system piping of Shearon Harris, Unit 1. This finding is predicated on the fact that each of the parameters evaluated for Shearon Harris is *enveloped* by the generic analysis performed by Westinghouse in Reference 3, and accepted by the staff in Enclosure 1 to Reference 2. Specifically:

(1) The loads associated with the highest stressed location in the main loop primary system piping are 1781 kips (axial), 33150 in-kips (bending moment) and result in maximum stresses of about 82% of the bounding stress used by Westinghouse in Reference 3. Further, these loads are approximately 76% of those established by the staff as limits.

(2) For Westinghouse plants, there is no history of cracking failure in reactor primary coolant system loop piping. The Westinghouse reactor coolant system primary loop has an operating history which demonstrates its inherent stability. This includes a low susceptibility to cracking failure from the effects of corrosion (e.g. intergranular stress corrosion cracking), water hammer, or fatigue (low and high cycle). This operating history totals over 400 reactor-years, including five (5) plants each having 15 years of operation and 15 other plants with over 10 years of operation.

(3) The leak rate calculations performed for the Shearon Harris plant using an initial through-wall crack of 7.5 inches are identical to those of Enclosure 1 to Reference 2. The Shearon Harris plant has an RCS pressure boundary leak detection system which is consistent with the guidelines of Regulatory Guide 1.45, and it can detect leakage of one (1) gpm in one hour. The calculated leak rate through the postulated flaw results in a factor of at least 10 relative to the sensitivity of the Shearon Harris plant leak detection system.

(4) The margin in terms of load based on fracture mechanics analyses for the leakage-size crack under normal plus SSE loads is within the bounds calculated by the staff in Section 4.2.3 of Enclosure 1 to Reference 2. Based on a load-limit analysis, the load margin is about 2.6 and based on the J-limit, the margin is at least 1.5.

(5) The margin between the leakage-size crack and the critical-size crack was calculated by a limit load analysis. Again, the results demonstrated that a margin of at least 4 on crack size exists and is within the bounds of Section 4.2.3 of Enclosure 1 to Reference 2.

(6) As an integral part of its review, the staff's evaluation of the properties data of Reference 7 is enclosed as Appendix I to this exemption. In Reference 7, data for ten (10) plants are presented and lower bound or "worst case" materials properties were identified and used in the analysis performed in the Reference 1 report by Westinghouse. The applied J for Shearon Harris in Reference 1 was substantially less than 3000 in-1b/in ^{2}. Hence, the staff's upper bound 3000 in-1b/in ^{2} on the applied J (refer to Appendix I, page 6) was not exceeded.

In view of the analytical results presented in the Westinghouse Report for Shearon Harris (Reference 1) and the staff's evaluation findings related above, the staff concludes that the probability of large pipe breaks occurring in the primary coolant system loops of Shearon Harris, is sufficiently low such that pipe breaks and their associated dynamic loading effects as indicated in the applicants' submittals need not be considered as design basis for requiring pipe whip restraints and jet impingement shields. These dynamic loading effects include pipe whip, jet impingement, asymmetric pressurization transients, and break associated dynamic transients in unbroken portions of the main loop and connected branch lines. Eliminating the need to consider these dynamic loading effects for this particular application does not in any way affect the design bases for the containment, the emergency core cooling system, the design of RCS heavy component supports, the engineered safety features systems response, or the environmental qualification for Shearon Harris.

However, in order to provide the Commission with an opportunity to consider the long term aspects of the NRC staff's recent acceptance of the "leak-before-break" approach, this limited exemption is restricted to a period extending until the completion of the second refueling outage of Shearon Harris Unit 1, pending the outcome of Commission rulemaking on this issue.

The staff also reviewed the value-impact analysis provided by the applicants in their submittal for not providing protective structures against postulated reactor coolant system loop pipe breaks to assure as low as reasonably achievable (ALARA) exposure to plant personnel. Consideration was given to design features for reducing doses to personnel who must operate, service and maintain the Shearon Harris instrumentation, controls, equipment, etc. The Shearon Harris value-impact analysis shows that the elimination of protective devices for RCS pipe breaks will save an occupational dose for plant personnel of over 400 person-rem over their operating lifetime. The staff review of the analysis shows it to be a reasonable estimate of dose savings. Therefore, with respect to occupational exposure, the staff finds that there is a radiological benefit to be gained by eliminating the need for the protective structures.

VI

In view of the staff's evaluation findings, conclusions, and recommendations above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the following exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby approves the requested schedular limited exemption from GDC 4 of Appendix A to 10 CFR Part 50, to permit the applicants to: Eliminate the dynamic loading effects associated with the postulated primary loop pipe breaks defined in the FSAR. These dynamic loading effects include pipe whip, jet impingement, asymmetric pressurization transients and break associated dynamic transients in the main loop piping and branch lines and their supports. This should (1) eliminate the need to design for pipe whip, jet impingement, and other dynamic effects (including asymmetric effects) of reactor cavity pressurization and primary component subcompartment pressurization due to postulated primary

loop pipe breaks, (2) eliminate the need for pipe whip restraints (including shims) and jet impingement shields associated with the primary loop pipe breaks defined in the Final Safety Analysis Report (FSAR), and (3) eliminate the dynamic loading effects associated with the primary loop pipe breaks defined in the FSAR on primary loop piping, branch lines and their supports and maintenance access platforms. Branch line LOCA loads, including their dynamic effects, would be retained in the design basis. This exemption will expire upon completion of the GDC 4 rulemaking changes but no later than the second refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 21673).

The exemption will become effective upon date of issuance.

Dated at Bethesda, Maryland this 5th day of June, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Appendix I—Evaluation of Westinghouse Report WCAP 10456, "The Effects of Thermal Aging on the Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems"

Introduction

The primary coolant piping in some Westinghouse Nuclear Steam Supply Systems (NSSS) contain cast stainless steel base metal and weld metal. The base metal and weld metal are fabricated to produce a duplex structure of delta (w) ferrite in an austenitic matrix. The duplex structure produces a material that has a higher yield strength, improved weldability and greater resistance to intergranular stress corrosion cracking than a single phase austenitic material. However, as early as 1965 (Ref. 1), it was recognized that long time thermal aging at primary loop water temperatures (550 °F–650 °F) could significantly affect the Charpy impact toughness of the duplex structured alloys. Since the Charpy impact test is a measure of a material's resistance to fracture, a loss in Charpy impact toughness could result in reduced structural stability in the piping system.

The purpose of Report WCAP 10456 is to evaluate whether cast stainless steel base metal and weld metal containing postulated cracks will be sensitive to unstable fracture during the 40 year life of a nuclear power plant. In order to determine whether a piping system will behave in such a fashion, the pipe materials' mechanical properties, design criteria and method of predicting failure must be established. In this evaulation, we will assess the mechanical properties of thermally aged cast stainless steel pipe materials, which are reported in Report WCAP 10456.

Discussion

1. *Weld Metal.* Report WCAP 10456 refers to test results reported in a paper by Slama, et al. (Ref. 2) to conclude that the weld metal in primary loop piping would not be overly sensitive to aging and that the aged cast pipe base metal material would be structurally limiting. In the Slama report eight (8) welds were evaluated. The tensile properties were only slightly affected by aging. The Charpy V-notch impact energy in the most highly sensitive weld decreased from 7daJ/cm^2 (40 ft-lbs) to near 4daJ/cm^2 (24 ft-lbs) after aging for 10,000 hours at 400 °C (752 °F). This change was not considered significant. The relatively small effect of aging on the weld, as compared to cast pipe material was reported to be caused by a difference in microstructure and lower levels of ferrite in the weld than in the cast pipe material.

2. *Cast Stainless Steel Pipe Base Metal.* Report WCAP 10456 contains mechanical property test results from a number of heats of aged cast stainless steel material and a metallurgical study, which was performed by Westinghouse, to support a statistically based model for predicting the effect of thermal aging on the Charpy impact test properties of cast stainless steel. As a result of these tests and the proposed model, Westinghouse concludes that the fracture toughness test results from one heat of material tested represents end-of-life conditions for the ten (10) plants surveyed. The ten (10) plants surveyed are identified as Plants A through J.

a. *Mechanical Property Test Results Reported in WCAP 10456.* Mechanical property test results on aged and unaged cast stainless steel materials which were reported in a paper by Landerman and Bamford (Ref. 3), Bamford, Landerman and Diaz (Ref. 4), Slama et al. (Ref. 2) were discussed in Report 10456. In addition, Westinghouse performed confirmatory Charpy V notch and J-integral tests on aged cast stainless steel material, which was tested and evaluated by Slama et al.

The results of these tests indicate that:

(1) The fatigue crack growth rate of aged or unaged material in air and pressurized water reactor environments were equivalent.

(2) Tensile properties were essentially unaffected except for a slight increase in tensile strength and a decrease in ductility.

(3) J-integral test results indicated that the J_{IC} and tearing modulus, T, are affected by aging.

b. *Mechanism Study in WCAP 10456.* The tests and literature survey conducted by Westinghouse indicate that the proposed mechanism of aging occurs in the range of operating temperatures for pressurized water reactors and the data from accelerated aging studies can be used to predict the behavior at operating temperatures.

c. *Cast Stainless Steel Pipe Test.* The materials data discussed in the previous section of this evaluation were obtained from small specimens. As a consequence, the J–R results are limited to relatively short crack extensions. To investigate the behavior of cast stainless steel in actual piping geometry, Westinghouse performed two experiments, one of which was with thermally aged cast stainless steel and the other test was identical except that the steel was not thermally aged.

Each pipe tested contained a throughwall circumferential crack to the extent specified in WCAP 10456. The pipe sections were closed at the ends, pressurized to nominal PWR operating pressure and then bending loads were applied.

The results of the tests were very similar, in that both pipes displayed extensive ductility, and stable crack extension. There was no observed unstable crack extension or fast fracture.

The results of the Westinghouse pipe experiments indicate that cast stainless steel, both aged and unaged, can withstand crack extensions well beyond the range of the J–R results with small specimens. However, if crack extension is predicted in an actual application of thermally aged cast stainless steel in a piping system, we believe that it is prudent to limit the applied J to 3000 in-lbs/in^2 or less unless further studies and/or experiments demonstrate that higher values are tolerable. Loss of initial toughness due to thermal aging of cast stainless steels at normal nuclear facility operating temperatures occurs slowly over the course of many years; therefore, continuing study of the aging phenomenon may lead to a relaxation of this position. Conversely, in the unlikely event that the total loss of toughness and the rate of toughness loss are greater than those projected in this evaluation, the staff will take appropriate action to limit the values to that which can be justified by experimental data. Because the aging is a slow process, the staff believes there

would be sufficient time for the staff to recognize the problem and to rectify the situation. However, the staff believes this situation is highly unlikely because the staff has accepted only the lower bounds of data that were gathered among ten plants encompassing the range of materials in use.

d. *Effects of Thermal Aging on Westinghouse Supplied Centrifugally Cast Reactor Coolant Piping Reported in WCAP 10456.* The reactor coolant cast stainless steel piping materials in the plants identified in WCAP 10456 as A through J, were produced to the specification SA–351, Class CF8A as outlined in ASME Code Section II, Part A and also to Westinghouse Equipment Specification G–6768864, as revised. For these materials, Westinghouse has calculated the predicted end-of-life Charpy V-notch properties, based on their proposed model. The two (2) standard deviation end-of-life lower limit value for all the plants surveyed was greater then the Charpy V notch properties of the aged reference materials, which Westinghouse indicates represents end-of-life properties for all the plants. As a result, Westinghouse concluded that the amount of embrittlement in the aged reference material exceed the amount projected at end-of-life for all cast stainless steel pipe materials in Plants A through J.

Conclusions

Based on our review of the information and data contained in Westinghouse Report WCAP 10456, we conclude that:

1. Weld metal that is used in cast stainless steel piping system is initially less fracture resistant than the cast stainless steel base metal. However, the weld metal is less susceptible to thermal aging than the cast stainless steel base metal. Hence, at end-of-life the cast stainless steel base metal is anticipated to be the least fracture resistant material.

2. The Westinghouse proposed model may be used to predict the relative amount of embrittlement on a heat of cast stainless steel material. The two standard deviation lower confidence limit for this model will provide a useful engineering estimate of the predicted end-of-life Charpy impact properties for cast stainless steel base metal.

3. Since there is considerable scatter in J-integral test data for the heats of material tested, lower bound values for J_{ic} and T should be used as engineering estimates for the fracture resistance of the aged reference material. We believe these values should also provide a lower bound for the fracture resistance of aged and unaged weld metal. If crack extension is predicted in an actual application of cast stainless steel in a piping system, we conclude that the applied J should be limited to 3000 in-lbs/in^2 or less unless further studies and tests demonstrate that higher values are tolerable. The Westinghouse pipe tests demonstrate that this may be possible.

4. Since the predicted end-of-life Charpy impact values for the materials in Plants A through J are greater than the value measured for the aged reference material, the lower bound fracture properties for aged reference material may be used to determine the fracture resistance for the cast stainless steel material in Plants A through J.

References

(1) F.H. Beck, E.A. Shoefer, J.W. Flowers, M.E. Fontana, "New Cast High Strength Alloy Grades by Structural Control," ASTM STP 369 (1965)

(2) G. Slama, P. Petrequin, S.H. Masson, T.R. Mager, "Effect of Aging on Mechanical Properties of Austenitic Stainless Steel Casting and Welds," presented at SMIRT 7 Post Conference Seminar 6—Assuring Structural Integrity of Steel Reactor Pressure Boundary Components, August 29/30, 1983, Monterey, CA.

(3) E.I. Landerman and W.H. Bamford, "Fracture Toughness and Fatigue Characteristics of Centrifugally Cast Type 316 Stainless Steel After Simulated Thermal Service Conditions." Presented at the Winter Annual Meeting of the ASME, San Francisco, CA., December 1978 (MPC–8 ASME)

(4) W.H. Bamford, E.I. Landerman and E. Diaz, "Thermal Aging of Cast Stainless Steel and Its Impact on Piping Integrity." Presented at ASME Pressure Vessel and Piping Conference, Portland, Oregon, June 1983. To be published in *ASME Trans.*

[FR Doc. 85–14178 Filed 6–11–85: 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request dated February 17, 1983, as supplemented and revised July 12, 1983, and January 8, February 7 and March 18, 1985, for an amendment to Facility Operating License No. DPR–54 issued to Sacramento Municipal Utility District (the licensee), for operation of the Rancho Seco Nuclear Generating Station, located in Sacramento County, California. Notice of consideration of issuance of this amendment was published in the **Federal Register** on June 23, 1983, 48 FR 28765; December 21, 1983, 48 FR 56510; and April 23, 1985, 50 FR 16012.

The licensee proposed a specification to established operability requirements for the essential heating, ventilation and air conditioning (HVAC) systems for the Nuclear Service Electrical Building. As set forth in the Commission's related Safety Evaluation, this change was denied because the proposed operability requirements for the essential HVAC system are less stringent than the operability requirements for the system it serves. The Commission's position is that a system is only operable if all the auxiliaries necessary for its operation are also operable. In addition, the Commisson denied the licensee's proposed change to Specification 6.9.5, Special Reports, because of possible ambiguities that could be created by an incomplete list of references.

Other portions of the amendment request were granted and are the subject of a separate notice.

By July 12, 1985 the licensee may file a request for a hearing with respect to the denial described above and any person whose interest may be affected by this denial and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for hearings and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

For further details with respect to this action, see (1) the application for amendment dated February 17, 1983, as revised and supplemented July 12, 1983, and January 8, February 7 and March 18, 1985, and (2) the Commission's Safety Evaluation issued with Amendment No. 68 to Facility Operating License No. DPR–54 dated June 4, 1985 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C and at the Sacramento City-County Library, 828 I Street, Sacramento, California.

Dated at Bethesda, Maryland, this 4th day of June, 1985.

For the Nuclear Regulatory Commission

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 85–14174 Filed 6–11–85; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 411–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Licenses for the Use of Radioactive Materials in Servicing Preregistered Gauges, Measuring Devices, and Sealed Sources Used in Such Devices" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the revised NRC Form 313 for preparing license applications for the use of radioactive material in servicing gauges and measuring devices.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by August 12, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 5th day of June 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85–14175 Filed 6–11–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–13674]

Application and Opportunity for Hearing; First Chicago Corporation

June 5, 1985

Notice is hereby given that First Chicago Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Chemical Bank under an existing indenture and an indenture of the Applicant dated as of January 15, 1985, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as trustee under either of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) Chemical Bank currently is acting as trustee under an indenture in which the Applicant is the obligor. The indenture dated as of July 1, 1984 (the "1984 Indenture"), provides for the issuance, from time to time, of the Applicant's unsecured subordinated notes in one or more series (the "Subordinated Notes"). The 1984 Indenture was filed as Exhibit 4(a) to Applicant's registration statement on Form S–3, File No. 2–92143 filed under the Securities Act of 1933, as amended, and has been qualified under the Trust Indenture Act of 1939. The Subordinated Notes registered pursuant to said registration statement were to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended. On July 24, 1984, the Applicant issued $125,000,000 principal amount of Floating Rate Subordinated Notes Due 1996, Series A (the "1984 Notes") under the 1984 Indenture. The 1984 Notes were offered by a Prospectus Supplement dated July 17, 1984, supplemental to a Prospectus dated July 16, 1984.

(2) The Applicant is not in default in any respect under the 1984 Indenture or under any other existing indenture.

(3) On February 7, 1985, Chemical Bank entered into an indenture with Applicant dated as of January 15, 1985 (the "1985 Indenture") pursuant to which there were issued $200,000,000 principal amount of the Applicant's Floating Rate Subordinated Capital Notes Due February 1997 (the "1985 Notes"). The 1985 Notes, if enforced against the Applicant, would rank on a parity with the obligations evidenced by the Subordinated Notes (including the 1984 Notes). The 1985 Notes were not registered under the Securities Act of 1933 and the 1985 Indenture was not qualified under the Trust Indenture Act of 1939 because the 1985 Notes were offered and sold under circumstances reasonably designed to preclude distribution or redistribution within, or to nationals of, the United States (except to United States bank branches located outside the United States in circumstances not involving a public offering).

(4) The obligations of the Company under the 1984 Indenture and the 1985 Indenture are wholly unsecured and aside from differences among these two Indentures and the securities issued thereunder as to amounts, interest rates, maturity dates, redemption dates and redemption powers, certain covenants relating to United States taxation, and differences in form between the 1984 Indenture and the 1985 Indenture, the terms of said indentures are substantially similar.

Such differences as exist between the 1984 Indenture and the 1985 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as Trustee under either of said indentures.

(5) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549.

Notice Is Further Given that any interested person may, not later than July 1, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, purusant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14187 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-706]

Application and Opportunity for Hearing; 500 Grant Street Associates Limited Partnership

June 5, 1985.

Notice is hereby given that 500 Grant Street Associates Limited Partnership ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from registration under Section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than July 1, 1985, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14184 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14558 (File No. 812-6031)]

GTE Finance Corporation; Application for Order

June 5, 1985.

Notice is hereby given that GTE Finance Corporation, a Delaware corporation ("Applicant"), c/o Herbert F. Market, Esq., GTE Corporation, One Stamford Forum, Stamford, Connecticut 06904, filed an application on January 24, 1985, and amendments thereto on March 27, 1985 and May 28, 1985, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicant states that it is a wholly owned subsidiary of GTE Corporation ("GTE", and together with its subsidiaries other than the Applicant, the "GTE Companies") which is a reporting company under the Securities Exchange Act of 1934. Applicant states that GTE Finance N.V., a subsidiary of GTE incorporated in the Netherlands Antilles in 1978 ("Finance N.V."), has to date been used by GTE as an overseas financing subsidiary. Applicant states that GTE proposes to cause the transfer of the shares of Finance N.V. to Applicant. As Finance N.V.'s debt is retired, the assets of Finance N.V. will be transferred directly to Applicant. The primary purpose of Applicant will be to obtain funds in the international capital markets for GTE and other GTE Companies essentially in the same manner as Finance N.V. has heretofore raised capital for such companies.

Applicant claims that, because of, among other things, the size of Finance N.V. and the conservative debt-equity ratios maintained, Finance N.V. was independently creditworthy and earned a credit rating for its debt offerings. Accordingly, commencing in 1980 and continuing thereafter, its long term debt was not directly guaranteed by GTE or any of the other GTE Companies. Applicant represents that, to the best of its knowledge, Finance N.V.'s mode of

operations is unique in that no other off-shore finance company with a United States parent offered publicly its debt securities overseas without the guarantee of the parent or a major operating affiliate.

In connection with the proposed organization of the Applicant, the financial community was advised by GTE that the Applicant would serve the same financing function as Finance N.V. and was expected to operate in the off-shore financial markets in the same manner as Finance N.V. had operated; that is, without parental guarantee. The Applicant, as the functional successor of Finance N.V., represents that it feels bound to honor this undertaking and believes strongly that it would be confusing to the market and inequitable to the existing holders of publicly offered debt securities of Finance N.V. for Applicant to offer publicly its debt securities overseas with a parental guarantee.

For these business reasons, among others which are also stated in the application, Applicant desires to continue off shore borrowings as nearly as possible in the manner in which they were previously conducted by Finance N.V. Accordingly, GTE does not propose that the off-shore public borrowings of the Applicant will be guaranteed by GTE. With this exception Applicant represents that it will operate in compliance with Rule 3a-5 under the Act as from time to time authoritatively interpreted. However, because of this exception, Rule 3a-5 under the Act will not be applicable to exempt the Applicant from the requirements under that Act.

Applicant represents that there has not been and undertakes in the future that there will not be any public offering either within or outside the United States of its common shares or any other of its equity securities. Applicant currently proposes to issue and sell in the United States short term negotiable promissory notes of the type generally referred to as commercial paper in offerings exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") by virtue of Sections 3(a)(2), 3(a)(3) or 4(2) thereof. Applicant undertakes that any commercial paper offered to the public will be unconditionally guaranteed by its parent as contemplated by paragraphs (a)(1) and (a)(3) of Rule 3a-5 under the Act.

Applicant also states that it intends in the future to offer debt securities for public sale outside the United States to persons other than nationals or residents of the United States, and the measures employed in connection with the sale of such securities will be reasonably designed to preclude distribution and redistribution of the securities within, or to nationals or residents of, the United States. Such measures will typically include in accordance with the current practice in the Eurodollar market a "look up" pursuant to which each issue of securities is represented by a single temporary global security until 90 days after the completion of the distribution at which time definitive securities may be obtained by persons entitled thereto upon certification that they are not U.S. persons.

Applicant states that it may also make borrowings from United States or foreign banks or privately place debt securities with institutional investors in the United States or abroad. Applicant represents that while it may in the future wish to register its debt securities under the 1933 Act for public offering in the United States, it represents that it will not do so without prior consultation with the Commission and, if deemed necessary by the Commission, after an appropriate amendment to Applicant's order under section 6(c) of the Act which the application seeks to obtain.

Applicant represents that at all times the aggregate of the repayment obligations of the GTE Companies in respect of their borrowings from Applicant will be sufficient to enable Applicant to meet its obligations on its borrowings from unaffiliated third persons. All borrowings by any of the GTE Companies from Applicant will be evidenced by validly issued and legally binding notes or other debt securities of the borrower which will set forth all the terms of the borrowing. Applicant submits that while its creditors generally will have no direct right of action against any of the GTE Companies (unless Applicant should issue publicly offered commercial paper bearing the parent's guarantee), in the event of the bankruptcy or receivership of Applicant, the trustee in bankruptcy or the receiver could assert the claims evidenced by the debt securities of the GTE Companies owned by Applicant against such GTE Companies for the benefit of Applicant's creditors.

Applicant asserts that it is not a person which was intended to be covered by the Act. Applicant maintains it is a special purpose company organized solely for the purpose of obtaining funds for the use of the other GTE Companies in financing their business operations. Applicant asserts that the operating companies within the GTE Companies would be permitted to issue and sell their own commercial paper and to issue and sell their long term debt securties without compliance with the Act, and submits that it is appropriate that Applicant, which will serve merely as a conduit for financing the business operations of the GTE Companies, should be exempted from the requirements of the Act.

Notice is further given any interested person wishing to request a hearing on the application may, not later than June 28, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any of fact or law tht are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14179 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14564 (File No. 812-6033)]

Shelter Resource Fund II et al; Application and Opportunity for Hearing

June 6, 1985.

Notice is hereby given that Shelter Resource Fund II (the "Partnership"), a California limited partnership, and its general partners, Shelter Resource Corporation ("SRC") and Wilfred N Cooper ("Cooper") (collectively, "General Partners," and together with the Partnership "Applicants"), 3880 Michelson Drive, Suite 200, Irvine, California 92715, filed a application on February 25, 1985, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, the Partnership intends to offer 1000 units ("Units"), at a price of $2,000 per Unit, each unit consisting of two limited

partnership interests ("Interests") and four warrants exercisable during the periods from January 1, 1986 to January 25, 1986 and January 1, 1987 to January 25, 1987, respectively. Each warrant entitles an investor to purchase the related Interests for $1,000 each, the equivalent price per Interest acquired pursuant to the purchase of a Unit. It is also stated that in the event that any Warrant is not exercised, the respective Interests may be sold by the Partnership to other qualified offerees.

Applicants state that the Partnership will operate as a "two-tier" partnership, i.e., the Partnership will invest primarily in other limited partnerships ("Local Limited Partnerships") which, in turn, will be engaged in the development, building and operation of to-be-constructed and existing housing projects for low and moderate income persons. Applicants represent that the Partnership will invest not less than 75 percent of the net amount available for investment in Local Limited Partnerships which own or lease government assisted housing projects or other housing projects.

Applicants represent that the Partnership is organized as a limited partnership because the form of organization is the ony one which provides an investor with liability limited to his capital investment and the right to claim on his individual tax return the deductions, losses, credits and other tax items a partnership can pass through to its partners.

The application states that the Partnership will be controlled by the General Partners pursuant to the Partnership Agreement and that the Limited Partners, consistent with their Limited liability status, will not be entitled to participate in the control of the Partnership's business. Applicants assert however, that a majority in Interest of the Limited Partners will have the right to amend the Partnership Agreement, dissolve, remove one or both of the General Partners and elect successor general partners, and continue the Partnership upon the death, insanity, retirement, or bankruptcy of a General Partner. Applicants represent that also under the Partnership Agreement, each Limited Partner or his representative will be entitled to review the records of the Partnership at reasonable times, including the register of the names, addresses, and number of Limited Partnership Interests owned by each other Limited Partner.

Appliants state that no subscription for Units or Interests will be accepted unless it is approved by the General Partners, which approval shall be conditioned upon representations as to suitability of the investment to each such subscriber, including a representation in writing that each subscriber: (i) Has (A) a net worth (exclusive of home, furnishings, and automobiles) of at least $30,000 and (B) an annual gross income of at least $30,000 or (ii) has a net worth (exclusive of home, furnishings, and automobiles) of at least $200,000 or is purchasing in a fiduciary capacity for a person or entity which has such net worth and annual gross income as set forth in clause (i) or such net worth as net forth in clause (ii), and that he is aware of the risks involved in investing in the Partnership. Further, he must be subject to Federal income tax at the rate of 38 percent or more and anticipate that some part of this income for the next three years will, but for the effect of his investment in the Local Limited Partnership Interests or other tax shelters, be taxable at such rate. Applicants represent that the suitability requirements described in the preceding two sentences also were imposed on purchasers of Units. Applicants further represent that the Partnership Agreement requires that each transferee of Units must, as a condition to being admitted to the Partnership as a substituted Limited Partner, represent that he meets the same suitability standards as those set forth above.

Applicants state that the General Partners will be entitled to receive 1 percent of the Partnership's profits, losses and distributions subject to the condition that their 1 percent share of net cash flow will be reduced each year by the amount of annual management fees which are paid or payable to them in that year. Applicants further state that in addition to that 1 percent participation in the Partnership's profits, losses and distributions, the General Partners will receive fees for managing the conduct of the affairs of the Partnership and the Local Limited Partnerships and the continuing operation of each project owned by each Local Limited Partnership. Applicants represent that these fees are in substantial conformity with the standards imposed by the North American Securities Administrators Association, Inc. and the California Corporations Commission, and that to the best of their knowledge all such fees are in compliance with the current rules promulgated by such authorities. Applicants further represent that the Partnership Agreement delineates with precision all compensation to be paid to the General Partner.

Applicants, without conceding that the Partnership is an "investment company" as that term is defined in the Act, request that the Partnership be exempt from all provisions of the Act. Applicants assert that the requested exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. Applicants state that investment in subsidized low and moderate income housing is not economically suitable for private investors without the tax and organizational advantages of the limited partnership from and that it is the only way of bringing private equity capital into government-assisted housing. Applicants assent that to discourage the two-tier limited partnership arrangements by application of the Act would result in elimination of the best available means of attracting private equity capital into government assisted housing and would frustrate the national policy, declared by Congress, "to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income families."

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 1, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon it own motion.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–14188 Filed 6–11–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22112; SR-Amex-85-21]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Listing Guidelines for Real Estate Investment Trusts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1985, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as decribed in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend section 114 of the Amex Company Guide to raise the level of aggregate annual expenses which may be incurred by a real estate investment trust

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule change

(1) Purpose

In October 1971, the Amex adopted special requirements for the original listing of securities of real estate investment trusts ("REITs") together with special listing standards dealing with possible conflicts of interest between REITs and their advisers. The provisions on conflicts of interest were largely patterned after a 1970 Statement of Policy of the Midwest Securities Commission's Association which sets forth recommended requirements for its 24 member states.

Among the more significant provisions adopted was a limit on the aggregate annual expenses which could be paid or incurred by a REIT. Presently, section 114(d)(C) of the Company Guide provides that these expenses, including fees paid to the REIT's adviser, cannot exceed the greater of 1½% of the average net assets of the trust or 25% of the net income of the trust, but in no event more than 1½% of the total invested assets.

In 1981, the North American Securities Administrators Association, Inc. ("NASAA"), the umbrella organization for all 50 State Securities Commissions, endorsed a series of recommended guidelines for the States to following processing REIT offerings. Included in thes guidelines is a provision permitting REITs to have total operating expenses, including advisory fees, of up to 2% of their average invested assets or 25% of their net income. This 2% ceiling is now regarded as the industry standard.

The Exchange is therefore proposing to amend section 114 along the lines of the new NASAA guidelines by adopting a 2% ceiling on aggregate expenses with the right on the part of the independent trustees to raise such limits for unusual or non-recurring instances. These changes will further uniformity of regulation throughout the industry and facilitate the processing of REIT listing applications by the Exchange.

(2) *Basis*

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 in general, and section 6(b)(5) in particular, in that is will update an Exchange guideline which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition. Rather, by conforming Amex rules to the current industry standards it will simplify the process of Exchange listing for certain REITs thereby removing a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested temporary accelerated approval of the proposed rule change for a 60 day period because the proposed rule change is intended to conform to the 1981 NASAA Guidelines relating to REIT offerings. The Amex notes that, when first adopted in 1971, the Amex guideline on REIT expenses reflected the then current industry norm, and that the guideline was never changed after the 1981 REIT guidelines were adopted by NASAA and is therefore out-of-date. The Amex states in its filing that it is prepared to apply the revised guideline immediately to REITs that make application to list.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in that the proposed rule change is intended to update the Amex guidelines and conform them to current NASAA guidelines relating to REIT offerings. In addition, the Commission's accelerated approval of the proposed rule change extends only for 60 days from the date of this order to allow for a period of public comment prior to Commission action on the proposal to make the rule change permanent.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[1] This release provides temporary accelerated approval of the proposed rule change for 60 days. The Commission has issued a separate notice on the proposed rule change to provide for public comment prior to approval of the proposal on a permanent basis. See Securities Exchange Act Release No. 22081, May 28, 1985, re (SR-Amex-85-13).

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by July 3, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14185 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22106; File No. SR-CBOE-85-18]

Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1985, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. the Commisison is publishing this notice to solicit comments on the proposed rule change from interested persons.

The CBOE proposes not to charge book, transaction or trade match fees in classes of options on the over-the-counter ("OTC") stocks for the first 90 days after options on OTC stocks are opened for trading.[1] CBOE states that this proposal is a "competitive response" to the Commission's decision to permit options on OTC stocks to be traded by more than one exchange.[2] According to CBOE, this waiver of fees will permit market quality, rather than differentials in transaction charges, to be the determinative factor in the competition among markets for these options. CBOE states that the statutory basis for the proposed rule change is sections 6(b)(5) and 6(b)(8) of the Act.

The foregoing change was effective on filing with the Commission pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may abrogate summarily such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in futherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission by July 3, 1985. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. References should be made to File No. SR-CBOE-85-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those which may be withheld form the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the CBOE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-14183 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22113; File No. SR-MCC-85-3]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving Proposed Rule Change

On March 6, 1985, Midwest Clearing Corporation ("MCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). MCC filed amendments to the proposal on April 10 and 22, 1985. Notice of the proposal was published in the **Federal Register** on May 3, 1984.[1] The Commission received no public comment on the proposal. This Order approves the proposal.

MCC's proposal, as amended, clarifies current MCC Correspondent Delivery and Collection Service ("CDCS") procedures governing recovery of interest costs from participants using CDCS. The proposal also amends MCC's CDSC procedures to eliminate same-day credit to a CDCS participant for securities deliveries valued at $50,000 or more.

Under CDSC, MCC may deliver participant securities to non-participants against payment. In accordance with industry custom, however, MCC will deliver securities to non-participants, and credit participants' accounts, prior to receiving payment from receiving non-participants.[2] In some instances, those non-participants have failed to pay MCC on the day of delivery. Because MCC already has credited participants, these payment delays result in interest expense to MCC that increases until MCC actually receives payment. MCC does not recover this interest expense in the fees charged to participants for processing CDSC transactions. MCC's proposal clarifies MCC procedures to specify that this interest expense will be recovered from participants through MCC's monthly debit of participants positions for miscellaneous charges.

To minimize interest expenses incurred by MCC through operation of CDCS, MCC's proposal establishes a credit limit for participants delivering securities to non-participants through CDCS. Specifically, if the CDCS movement is valued at $50,00 or more, MCC will not credit the delivering participant until payment is received from tne non-participant. For CDCS deliveries less than $50,000 in value, MCC will continue to credit delivering participants on the day of delivery to non-participants, prior to receiving payment.[3]

MCC believes that the proposal provides an efficient procedure for settling securities transactions and collecting funds, consistent with section 17A(a)(1) of the Act. MCC further believes that the proposal equitably allocates fees and expenses associated with CDCS among the participants whose CDCS activities result in such

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[1] On May 31, 1985, the Commission approved CBOE's proposal to trade options on OTC stocks, subject to CBOE's agreement not to commence trading such options until June 3, 1985. Securities Exchange Act Release No. 22104, May 31, 1985.

[2] Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310.

[1] 50 FR 18952.

[2] Industry customs allows verification and count of delivered securities prior to payment.

[3] If the receiving party fails to pay MCC on the day of delivery, MCC then will pass on its interest expenses to the delivering participant as described above.

expenses, consistent with section 17A(a)(3) of the Act.

The Commission agrees with MCC that the proposal is consistent with the Act in general, and Section 17A in particular, and therefore believes that the proposal should be approved. Specifically, the Commission agrees with MCC tht the recovery of interest expense from participants whose CDCS activities result in the expense is equitable. MCC fees for its CDCS service are not structured to recover MCC interest expenses, and therefore an additional charge when interest expenses are incurred is appropriate. Further, participants delivering securities to non-participants through CDCS by contractual agreement may pass on these costs to non-participants whose delayed payment causes the expense.

Even though all MCC CDCS interest expenses are charged to the appropriate participant under MCC proposed procedures, MCC still faces important financial exposure until it actually receives payment for delivered securities. The Commission agrees with MCC that MCC may take appropriate steps to limit this exposure. Specifically, the Commission believes that MCC's decision to limit CDCS credits in advance of receipt of payment to less than $50,000 is reasonable and is consistent with MCC's duties under the Act to safeguard funds and securities in its possession or control or for which it is responsible.

For the reasons discussed above, the Commission finds the proposed rule change consistent with the Act and, in particular, section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 5, 1985.

John Wheeler,

Secretary.

[Release No. 34-22116; SR-NSCC-85-3]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving on a Permanent Basis a Proposed Rule Change

The National Securities Clearing Corporation ("NSCC") on April 4, 1985, submitted a proposed rule change to the Commission pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). NSCC's proposal would implement Phase V of its Municipal Bond Comparison System. The Commission, on May 1, 1985, issued an Order approving NSCC's proposal on an acceleration basis for a 30-day period and requesting comment on the proposal.[1] No comment has been received. For the reasons stated in its May 1, 1985 Temporary Approval Order, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that NSCC's proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

Dated: June 5, 1985.

[FR Doc. 85-14180 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22111; Filed No. SR-PSDTC-85-3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change of the Pacific Securities Depository Trust Company

June 3, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the rule change described herein. The Commission is publishing this notice to solicit public comment on the rule change.

The proposed rule change increases PSDTC's charges for providing lists which identify participants for whom PSDTC retains securities in its nominee name. PSDTC is increasing its charges for furnishing nominee listings to more accurately reflect PSDTC's costs for providing this services. PSDTC's revised fee schedule imposes new weekly, monthly and quarterly subscription rates and imposes different charges for one-time special requests, depending on whether the request is for current or past information.[1]

PSDTC states in its filing that the proposed rule change is consistent with the Act in general and with Section 17A in particular. Specifically, PSDTC maintains that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges and will not impose any burden on competition.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register**. Notice of this proposed rule change is expected to be published during the week of June 3, 1985. Please refer to File No. SR-PSDTC-85-3, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal offices of the Pacific Securities Depository Trust Company.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14186 Filed 6-11-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange Incorporated

June 6, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and

[1] *See* Securities Exchange Act Release No. 22004 (May 1, 1985), 50 FR 19510 (May 6, 1985), for a full description and discussion of NSCC's proposal.

[1] PSDTC is imposing new subscription fees of $1,500.00 per year for weekly reports; $400.00 per year for monthly reports; and $200.00 per year for quarterly reports. PSDTC is also imposing a fee of $50.00 per special request for a current report and $100 per special request for past information.

Rule 12f–1 thereunder, for unlisted trading privileges in the following security:

Safeguard Business Systems, Inc.
Common Stock, $.10 par value (File No. 7–8437)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 26, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–14182 Filed 6–11–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

First American Capital Funding, Inc.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

[License No. 09/09–5332]

Notice is hereby given that First American Capital Funding, Inc., 9872 Chapman Avenue, Suite 216, Garden Grove, California 92641, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903 (1985)) for approval of a conflict of interest transaction.

Subject to SBA approval, First American Capital Funding, Inc. proposes to invest in Oxnard Pharmaceutical Corporation (DBA Leon's Pharmacy), 801 Cooper Road, Oxnard, California 93030.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Mr. Richard X. Nguyen, President of Oxnard Pharmaceutical Corporation, and Ms. Cuong Nguyen, Secretary of Oxnard Pharmaceutical are close relatives of Mr. Ba Xuan Nguyen, a shareholder and former director of First American Capital Funding, Inc.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Oxnard, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 6, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–14220 Filed 6–11–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–5165]

S.L.C. Investment Corp.; License Surrender

Notice is hereby given that S.L.C. Investment Corporation, 152 Rollins Avenue, Suite 208, Rockville, Maryland 20852 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). S.L.C. Investment Corporation was licensed by the Small Business administration of February 8, 1984.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on June 4, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 6, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–14219 Filed 6–11–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/860]

Overseas Security Advisory Council; Meeting

Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), dated October 6, 1972, the Department of State announces a meeting of the Overseas Security Advisory Council on July 1, 1985, at 8:30 A.M., Room 1105 N.S., U.S. Department of State. Under the provision of the United States Code Title 5, section 553b(c) (1) and (4) and Executive order =12356, it has been determined the meeting will be closed to the public. This decision relates to the anticipated disclosure of matters that are to be kept secret in the interest of national defense and foreign policy, and items of a privileged commercial nature. The agenda calls for discussions of current security/terrorist threats, exchange of information, and coordination between U.S. organizations and foreign governments.

Dated: June 5, 1985.

David C. Fields,

Deputy Assistant Secretary for Security.

[FR Doc. 85–14120 Filed 6–11–85; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

[Docket 41035]

Dominion Intercontinental Airlines, Inc., Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 25, 1985, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, D.C. before the undersigned Administrative Law Judge.

Dated at Washington, D.C., June 6, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85–14119 Filed 6–11–85; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB May 7, 1985–May 30, 1985

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period May 7, 1985–May 30, 1985, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT:

John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–1887.

or
Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from May 7, 1985–May 30, 1985:

Dot No: 2564
OMB No: 2127–0050
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 574, Tire Identification and Recordkeeping
Form: None
Frequency: On occasion—recordkeeping
Respondents: Businesses—small businesses

[Need/Use: This regulation requires the tire manufacturers to collect and record the names and addresses of the first purchasers of new tires, so that the manufacturers can directly notify those persons if the tires are recalled.

Dot No: 2565
OMB No: 2127–0019
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 537, Automotive Fuel Economy Reports
Forms: None
Frequency: Semi-annually
Respondents: Businesses or other for profit
Need/Use: Major domestic and foreign automobile manufacturers provide NHTSA with technical and fuel economy performance information which is examined to see if and how the manufacturer will comply with applicable average fuel economy standards. The information is also used for reports to Congress, response to inquiries, and evaluation of future standards.

DOT No: 2566
OMB No: New
By: Maritime Administration
Title: Effectively U.S. Controlled Fleet (EUSU)/Parent Company
Forms: N/A
Frequency: Annually
Respondents: Ship owners, ship operators.

Need/Use: The EUSC file is used for contingency defense planning primarily to establish a source for ships capable of moving essential oil and bulk cargoes.

DOT No: 2567
OMB No: 2115–0089
By: U.S. Coast Guard
Title: Recordkeeping/Recording Requirements for Ships Carrying Bulk Hazardous Materials
Forms: None
Frequency: On occassion
Respondents: Principally chemical tanker operators

Need/Use: The Coast Guard is responsible for ensuring safe shipment of bulk liquid hazardous cargoes under 46 U.S.C. 3703. The information is used by the Coast Guard technical offices evaluating vessel design, the Coast Guard port safety and marine inspection personnel responsible for enforcing the regulations, by the crewmembers in operations related to the cargoes, and by those other people boarding the vessels to avoid danger from cargo operations. The vessel safety laws would be extremely difficult and costly to enforce without these requirements.

DOT No: 2568
OMB No: 2120–0026
By: Federal Aviation Administration
Title: Flight Plans (Domestic/International)
Forms: FAA Forms 7233–1, 7233–4
Frequency: On occasion
Respondents: Pilots

Need/Use: Federal Aviation Act of 1958, section 307 (49 U.S.C. 1348) authorizes regulations governing the flight of aircraft. 14 CFR Part 91 prescribed requirements for filing domestic and international flight plans. Information is collected to provide protection to aircraft in flight, persons and property on the ground.

DOT No: 2569
OMB No: 2115–0517
By: U.S. Coast Guard
Title: Records of Testing, Repair, Drydocking and Certification
Forms: CG–835, 841, 854, 858, 948, 3753, 4678
Frequency: On occasion
Respondents: The affected public consists of owners, operators, and masters of U.S. commercial vessels.

Need/Use: The above listed records or reporting requirements provide the vessel owner, operator, and master with an established certification process, established periods of inspection for various sizes and types of vessels, documentation of repairs and alterations, temporary operation of vessels until certain repairs are completed, and an appeals process. Due to the international nature of the industry, these recordkeeping/reporting requirements are the most efficient and accurate method of obtaining the desired information.

DOT No: 2570
OMB No: 2125–0038
By: Federal Highway Administration
Title: Description of motor carrier operations
Forms: MCS–137
Frequency: On occasion
Respondents: Motor carriers

Need/Use: For FHWA to identify the motor carriers subject to Federal Motor Carrier Safety and Hazardous Materials Regulations and for the motor carriers to provide FHWA with the necessary data in its effort to carry out these regulations.

DOT No: 2571
OMB No: 2115–0090
By: U.S. Coast Guard
Title: Production Test Records for Lifesaving Devices (Flotation Devices)—46 CFR Subchapter Q
Forms: None
Frequency: Annually
Respondents: The affected public is lifesaving appliance manufacturers (Flotation Devices).

Need/Use: This recordkeeping requirement is needed by the Coast Guard to ensure that the manufacturer's quality control is adequate to meet the required standards for life-saving appliances. The records are reviewed by Coast Guard or Coast Guard recognized independent laboratories to determine that production stock of life-saving devices will be identical to those that were originally tested and approved.

DOT No: 2572
OMB No: 2132–0513
By: Urban Mass Transportation Administration
Title: Letter of Credit Application
Forms: 1193 and 1194
Frequency: On occasion
Respondents: State and Local Governments

Need/Use: The information is used to establish a letter of credit for a particular grantee or other qualifying recipient of Federal funds. It provides UMTA with data on the organization authorized to execute requests for payments under the letter of credit.

DOT No: 2573
OMB No: 2115–0132
By: U.S. Coast Guard
Title: Servicing Records for Lifesaving Equipment
Forms: None
Frequency: Recordkeeping
Respondents: The affected public is USCG approved servicing facilities.

Need/Use: These rafts are required to be serviced annually at an approved servicing facility. The servicing facility is required to maintain a complete record of each life raft it services. The recordkeeping requirement is needed to determine (1) that the liferaft has been serviced and (2) that the liferaft has met the applicable requirements and can be relied upon for safe escape of personnel from a vessel or drilling unit in case of an emergency. The information is used by the Coast Guard inspection personnel who issues a servicing certificate.

DOT No: 2574
OMB No: 2125–0039
By: Federal Highway Administration
Title: Highway Planning and Research Program Administration
Forms: None
Frequency: Quarterly/Annually
Respondents: State Highway agencies

Need/Use: To determine how FHWA highway planning and research funds will be utilized by State highway agencies and if proposed work is eligible for Federal participation.

DOT No: 2575
OMB No: 2127–0043
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 556, Manufacturer Identification
Forms: None
Frequency: Only once

Respondents: Manufacturers of motor vehicles and motor vehicle equipment are required to submit their names, addresses, and a brief summary of the type of vehicle or equipment they manufacture to the agency.

DOT No: 2576 Not Used

DOT No: 2577
OMB No: 2130–0500
By: Federal Railroad Administration
Title: Accident/Incident Reporting and Recordkeeping Requirements
Forms: FRA–F–6180.45; 54; 55; 55a; 56 and 57.
Frequency: On occasion, Monthly, Annually and Recordkeeping
Respondents: Railroads

Need/Use: FRA needs this information to identify hazardous conditions on the railroads and uses it to assure compliance with the Railroad Safety Act.

DOT No: 2578
OMB No: 2130–0035
By: Federal Railroad Administration
Title: Railroad Operating Rules
Forms: None
Frequency: Recordkeeping on occasion
Respondents: Railroads

Need/Use: FRA uses this information to determine the condition of operating rules and practices with respect to trains and the instructions that railroads provide to their employees.

DOT No: 2579
OMB No: 2127–0516
By: National Highway Traffic Safety Administration
Title: 49 CFR 571.126, Truck Camper Loading
Forms: None
Frequency: On occasion
Respondents: Manufacturers of truck-slide-in-campers

Need/Use: Manufacturers of truck-slide-in campers must affix a label to each camper that contains information relating to certification, identification, and proper loading. Also, the manufacturer must provide more detailed loading information in the owner's manual.

Issued in Washington, D.C. on June 6, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85–14118 Filed 6–11–85; 8:45 am]

BILLING CODE 4910–62–M

Maritime Administration

[Docket No. S–767]

Participation by Vessels Built With Construction-Differential Subsidy in the Carriage of Crude Oil in the Domestic Trade; Application of ARCO Transportation

Notice is hereby given that by application of May 28, 1985, ARCO Transportation Company (ARCO) requested permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), and Part 250 of Title 46 of the Code of Federal Regulations, for its owned vessel, ARCO SPIRIT, to operate for six months in the Alaskan oil trade. The 262,000 deadweight ton ARCO SPIRIT which was built with construction-differential subsidy (CDS), would carry crude oil from Valdez, Alaska, to Panama. The vessel would be under time charter to SPC Shipping, Inc., a division of Standard Oil Company (Sohio) during the six-month period and would commence Alaskan service on or about July 1–15, 1985.

Sohio stated in a May 28, 1985 letter to ARCO that it has a need for the vessel to adequately schedule movement of its Alaskan crude. Based on information provided by Sohio, ARCO indicates that suitable Jones Act vessels of competitors will not be available for the carriage of this oil.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration Room 7300 A, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590.

Any person, firm, or corporation who is a "competitor," as defined in section 250.2 of the regulations as set forth in 46 CFR Part 250 published in the **Federal Register** issue of June 29, 1977 (42 FR 33035), and desires to protest such application for carriage of oil in the domestic trade from Alaska to Panama should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20590.

Protests must be received within five working days after the date of publication of this Notice in the **Federal Register**. If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Maritime Administrator. Within five working days after the due date for applicant's response, the Maritime Administrator will advise the applicant, as well as

those submitting protests, of the action explanation of such action. If no protest is received, concerning the application, the Maritime Administrator will take such action a may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidy (CDS))

By Order of the Maritime Administrator.

Dated: June 7, 1985.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-13920 Filed 6-11-85; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

[85-1]

Tank Cars; General American Transportation Co.; Possible Noncompliance With Hazardous Material Regulations

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise interested persons that tank cars without required padding for attachments may not be used for transportation of any hazardous material that is required to be carried in a specification tank car.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Olekszyk, Deputy Associate Administrator for Safety, U.S. Federal Railroad Administration (RRS-12), 400 Seventh Street S.W., Washington, D.C. 20590, telephone (202) 426-0897.

SUPPLEMENTARY INFORMATION: Sections 179.100-16 and 179.200-19 of the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) require that Department of Transportation (DOT) class 103, 104, 105, 109, 111, 112, and 114 tank car tanks, constructed after December 30, 1971, have (1) reinforcing pads (not less than ¼ inch in thickness) between external brackets and shells if attachment welds exceed 6 linear inches of ¼ inch fillet or equivalent weld per bracket or bracket leg, (2) each corner of a pad rounded to a 1 inch minimum radius, and (3) each pad attached to a tank by continuous fillet welds except for venting provisions. The ultimate shear strength of the bracket to reinforcing pad weld must not exceed 85 percent of the ultimate shear strength of the reinforcing pad to tank weld. The purpose of the reinforcement pads is to distribute stresses and to prevent punctures and tearing of a tank by attachments.

Recent investigations by the National Transportation Safety Board and the U.S. Federal Railroad Administration indicate that between 7,000 and 8,000 specification marked tank cars may have been constructed by the General American Transportation Company in nonconformance with 49 CFR 179.100-16 or 179.200-19. If these cars are not in conformance with Part 179 of the HMR, they are not DOT specification tank cars and may not be reloaded with any hazardous material that is required to be shipped in a DOT specification tank car. These cars may be used to transport non-regulated commodities authorized in non-DOT specification tank cars, provided that any markings or certifications indicating compliance with DOT specification tank car requirements are removed.

(49 U.S.C. 1804(c), 1805(a) and 1808(d)(3))

Issued in Washington, D.C. on June 5, 1985 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-14107 Filed 6-11-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: June 6, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0030
Form Number: ATF F 4483-A (5300.11)
Type of Review: Extension
Title: Quarterly Firearms Manufacturing and Exportation Report

OMB Number: 1512-0098
Form Number: ATF F 5520.2 (1695)
Type of Review: Extension
Title: Annual Report of Concentrate Manufacturer

Clearance Officer: Howard Hood, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C 20503

Internal Revenue Service

OBM Number: 1545-0029
Form Number: IRS Forms 941, 941E, 941PR and 941SS
Type of Review: Extension
Title: Employer's Quarterly Federal Tax Return; Quarterly Return of Withheld Income Tax; Record of Federal Backup Withholding Tax Liability

OBM Number: 1545-0197
Form Number: IRS Form Schedule T (Form 5300)
Type of Review: Revision
Title: Supplemental Application for Approval of Employee Benefit Plans TEFRA, TRA 1984 and REA

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

[FR Doc. 85-14108 Filed 6-11-85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 7, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

OMB Number: 1515-0053
Form Number: Customs Form 3299
Type of Review: Extension

Title: Declaration for Free Entry of Unaccompanied Articles
Clearance Officer: Vince Olive, (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Internal Revenue Service

OMB Number: 1545–0016
Form Number: IRS Form 706–A
Type of Review: Revision
Title: United States Additional Estate Tax Return
OMB Number: New
Form Number: IRS Form 8396
Type of Review: New
Title: Mortgage Interest Credit
OMB Number: New
Form Number: IRS Form M–7183
Type of Review: New
Title: Library Program Participant Profile
Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,
Departmental Reports Managment Office.
[FR Doc. 85–14109 Filed 6–11–85; 8:45 am]
BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 23]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Midland Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Midland Insurance Company, New York, New York, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27256, July 2, 1984.

With respect to any bonds currently in force with Midland Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service (formerly Bureau of Government Financial Operations), Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2319.

Dated: May 31, 1985.

W.E. Douglas,
Commissioner, Financial Management Service.
[FR Doc. 85–14112 Filed 6–11–85; 8:45 am]
BILLING CODE 4810–35–M

[Dept. Circ. 570, 1984 Rev., Supp. No. 22]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Mission Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Mission Insurance Company, of Los Angeles, California, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27257, July 2, 1984.

With respect to any bonds currently in force with Mission Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2319.

Dated: June 3, 1985.

W.E. Douglas,
Commmissioner, Financial Mangement Service.
[FR Doc. 85–1410 Filed 6–11–85; 8:45 am]
BILLING CODE 4810–35–M

[Dept. Circ. 570, 1984 Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Puritan Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Puritan Insurance Company, of Providence, Rhode Island, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27259, July 2, 1984.

With respect to any bonds currently in force with Puritan Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2319.

Dated: May 31, 1985.

W.E. Douglas,
Commissioner, Financial Management Service.
[FR Doc. 85–1443–Filed 6–11–85; 8:45 am]
BILLING CODE 4810–35–M

[Dept. Circ. 570, 1984 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Worldwide Underwriters Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Worldwide Underwriters Insurance Company, Wausau, Wisconsin, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27262, July 2, 1984.

With respect to any bonds currently in force with Worldwide Underwriters Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2349.

DatedL June 3, 1985.

W.E. Douglas,
Commissioner, Financial Management Service.
[FR Doc. 85–14111 Filed 6–11–85; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 113
Wednesday, June 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ENERGY REGULATORY COMMISSION

June 6, 1985.

TIME AND DATE: June 13, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 815th Meeting—June 13, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 4796-010, Niagara Mohawk Power Corporation and Glen Park Associates

CAP-2.
Project No. 4939-002, Brownville Power Company

CAP-3.
Project No. 7187-004, Pankratz Lumber Company

CAP-4.
Project No. 8506-001, Charles M. Howe

CAP-5.
Project No. 4026-003, Androscoggin Reservoir Company and Central Maine Power Company

CAP-6.
Project Nos. 6611-001 and 002, Boulder River Power Company

CAP-7.
Project Nos. 6600-001, 002, 003 and 004, Eagle Power Company
Project Nos. 3503-003, 004, 005, 006, and 008, James B. Howell
Project No. 3783-003, Rocky Brook Electric, Inc.
Project No. 3908-003, Catalyst Slate Creek Hydro Electric
Project No. 4283-003, Fred N. Sutter, Jr.
Project Nos. 5069-002 and 003, Douglas S. Marr
Project Nos. 5080-001 and 002, Donnie McFadde, et al.
Project Nos. 5573-001 and 002, Cook Electric, Inc.
Project No. 5646-002, Kenneth T. Meredith
Project Nos. 5650-001 and 002, Gary and Catherine Wright
Project No. 5652-001, George and Melvin Osborne
Project No. 5731-002, Rocky Mountain Embryos
Project Nos. 5978-001 and 002, Gary A Cromwell
Project No. 5979-001, W.A. and K.A Powers
Project No. 6057-002, F.L. and W.F. Flog
Project No. 6062-001, Norma Ross and Mary E. Burgess
Project No. 6117-001, City of Ephraim, Utah
Project No. 6208-001, Trout Company, Inc.
Project No. 6271-001, White Water Ranch
Project No. 6283-003, G & B Water Users
Project No. 6331-001, McGowan Properties
Project No. 6367-001, Western Hydro Electric, Inc.
Project Nos. 6437-002, 003 and 004, Western Hydro Electric, Inc.
Project No. 6443-001, T.L. and R.R. McCauley
Project No. 6458-001, Everand Jensen
Project Nos. 6501-001 and 002, James J. May, et al.
Project No. 6555-002, John A. Webster, Jr.
Project No. 6631-002, F. and C. Audette
Project No. 6633-001, General Plastics Manufacturing Company
Project No. 6636-001, Idaho Falls Family YMCA
Project Nos. 6663-001 and 002, J.A. Moyle
Project No. 6701-001, Frederick Lindauer
Project No. 6802-001, Snowbird, Ltd.
Project No. 7086-002, Confederated Salish and Kootenai Tribes, Flathead Reservation
Project Nos. 3590-004 and 005, Northern Resources, Inc.
Project No. 4241-003, Hydro Development, Inc.
Project Nos. 4435-004 and 006, Damnation Peak Power Company
Project Nos. 4437-005 and 007, Glacier Energy Company
Project No. 5130-003, Floyd N. Bidwell
Project No. 5206-004, David H. Scott
Project No. 5214-003, Hyder Hydro Company
Project Nos. 5248-001 and 005, West Slope Power Company
Project No. 5250-004, West Slope Power Company
Project No. 5447-004, D. William Saulsberry
Project Nos. 5554-002 and 003, Hurn Shingle Company
Project No. 5585-005, Southern Pacific Land Company
Project No. 5756-006, Resources Investments
Project No. 5766-003, Frank B. Nichols
Project No. 5861-003, West Slope Power Company
Project Nos. 5862-001 and 003, West Slope Power Company
Project No. 5871-004, Columbus Development Corporation
Project No. 6029-002, Southern Pacific Land Company
Project Nos. 6089-003 and 004, Rainsong Company
Project Nos. 6092-004 and 006, Western Hydro Electric, Inc.
Project Nos. 6151-004, 005 and 007, Rainsong Company
Project No. 6167-005, Ronald Rulofson
Project No. 6262-002, Southern Pacific Land Company
Project Nos. 6375-001 and 002, Russell Biggs, Sr.
Project No. 6409-002, Southern Pacific Land Company
Project Nos. 6450-001 and 002, Cogeneration, Inc.
Project Nos. 6616-001 and 002, Olympus Energy Corporation
Project Nos. 6661-003 and 005, Frontier Technology, Inc.
Project Nos. 6764-001 and 004, BMB Enterprises
Project No. 6765-003, BMB Enterprises
Project No. 6788-001, Dan D. Hydson
Project No. 6791-002, Stoney Creek Hydro Company
Project No. 6792-003, Stoney Creek Hydro Company
Project No. 6793-002, Stoney Creek Hydro Company
Project No. 6794-001, Stoney Creek Hudro Company
Project No. 6850-001, Water-Watts, Inc.
Project No. 6920-003, DCH Development Company
Project No. 6932-001, B.R. and C.E. Barkdull
Project No. 9649-001, Pacific Lumber Company
Project No. 6959-002, Pacific Hydro, Inc.
Project No. 6987-002, Roy F. Fulton
Project No. 7006-001, Neocene Explorations
Project Nos. 7057-001 and 002, Mega Hydro, Inc.
Project No. 7077-002, Frontier Land & Power
Project No. 7089-002, Alfred Tuefil Nursery
Project Nos. 7097-001 and 002, Olympus Energy Corporation
Project Nos. 7098-001 and 002, Olympus Energy Corporation
Project Nos. 7192-001 and 002, Steven W. Picketts
Project Nos. 7211-001 and 003, V.L. and F.L. Herzinger

Project Nos. 7276–001 and 003, Donald S. Benson
Project No. 7342–002, Manti City Corporation
Project No. 7352–002, S.E. Ericson
Project No. 7371–002, D.K. and F.S. Butler
Project No. 7452–002, Resources Investments, Inc.
Project Nos. 7530–002 and 003, William Arkoosh
Project Nos. 7754–001 and 002, Thomas K. and Jody L. Budde
Project Nos. 5338–004,and 006, Western Power
Project Nos. 5341–004 and 005, Western Power
Project Nos. 5677–004 and 005, Swanson Mining
Project Nos. 5829–003 and 004, Robert H. Sharman
Project Nos. 6231–007 008, 009 and 010, Lester Kelley, et al.
Project Nos. 6301–005 and 006, Woods Creeks, Inc. and Murry-Pac
Project Nos. 6348–004 and 005, Rainsong Company
Project Nos. 6524–003, 004 and 005, Hy Tech Company
Project Nos. 6611–001 002 and 005, Boulder River Power Company
Project Nos. 6617–002, 003 and 004 Olympus Energy Corporation
Project Nos. 6830–004 and 005, Woods Creek, Inc. and Burlington
Project No. 6154–006, David G. Demera
Project No. 7010–002, Xenophon Enterprises, Inc.
Project No. 7422–001, Paul N. Zeller
Project No. 7804–002, Gerald and Glenda OHS
Project No. 7805–002, Gerald and Glenda OHS
Project Nos. 6803–002 and 003, Snowbird, Ltd.
Project No. 4595–003, Hat Creek Hydro, Inc.
Project No. 4627–005, Albert and Betty Hunt
Project No. 5020–003, Mac Hydro-Power Company, Inc.
Project No. 5108–002, Homestake Consulting and Investments, Inc.
Project No. 5123–002, Mac Hydro-Power Company, Inc.
Project Nos. 5545–003 and 004, Stephen J. Gaber
Project Nos. 5792–002 and 004, Lawrence J. McMurtrey & Jay R. Bingham
Project No. 5864–001, West Slope Power Company
Project Nos. 6015–006, 007 and 008, Charles D. Howard
Project Nos. 6144–001 and 002, Castle Power Association
Project Nos. 6205–001 and 002, Western Hydro Electric, Inc.
Project No. 6215–001, Western Hydro Electric, Inc.
Project No. 6251–002, A & J Construction, Inc.
Project Nos. 6273–001 and 002, Western Hydro Electric, Inc.
Project Nos. 6287–001 and 003, Rainsong Company
Project Nos. 6297–002 004, Alpine Power Company
Project Nos. 6298–002, 003 and 004, Alpine Power Company
Project No. 6329–002, Intermountain Power Corporation
Project No. 6359–001, Southern California Edison Company
Project Nos. 6361–001 and 002, Lawrence J McMurtrey
Project Nos. 6388–002 and 003, Lawrence J. McMurtrey
Project No. 6389–002, Lawrence J. McMurtrey
Project Nos. 6390–002, and 003, Lawrence J. McMurtrey
Project Nos. 6393–002, and 003, Lawrence J. McMurtrey
Project Nos. 6397–002, and 003, Lawrence J. McMurtrey
Project No. 5786–001, Lawrence J. McMurtrey
Project Nos. 6402–001 and 002, Western Hydro Electric, Inc.
Project Nos. 6403–001 and 002, Western Hydro Electric, Inc.
Project Nos. 6408–002 and 003, Hydro-Cor
Project Nos. 6434–002, 003 and 004, Thomas A. Nelson
Project Nos. 6435–002, 003 and 004, Joseph B. Nelson
Project Nos. 6448–001 and 002, Western Hydro Electric, Inc.
Project Nos. 6628–001 and 003, Waterfall Electric, Inc.
Project Nos. 6635–001, 002 and 003, New Generation Power Company
Project Nos. 6758–002 and 004, Holden Village, Inc.
Project Nos. 6824–001, 002 and 003, Colenergy, Inc.
Project Nos. 6825–001, 002 and 003, Colenergy, Inc.
Project No. 6839–003, Piedmont Camp Fire Council and Lake Vera Water Company
Project Nos. 6840–001 and 003, Olympus Energy Corporation
Project No. 6995–002, Patrick Funk
Project Nos. 7111–002 and 003, Chris Williams
Project No. 7120–002, Stewart Ranches, Inc.
Project Nos. 7225–001 and 002, Little Salmon River Estates, Inc.
Project No. 7315–002, Paul J. Daniels
Project Nos. 7393–001 and 003, Alpine Power Company
Project No. 7656–001, John A. Dodson
Project No. 7806–002, Richard and Georginia Wilkinson
Project No. 7864–001, Mac Hydro-Company
Project Nos. 7878–001 and 002, William A. Curtis
Project Nos. 7930–001 and 002, Larry Hensley
Project Nos. 7931–002, Larry Hensley
Project Nos. 7940–001 and 002, Steven J. Gaber
Project No. 7981–001, Merrill Bates, et al.
Project No. 7982–001, Donald A. Smith and Margaret E. Evans
Project Nos. 8013–001 and 003, Small Hydro East
Project No. 8042–001, Rubi Hydro Partners
Project No. 3912–003, City of Haines, Oregon
Project Nos. 4599–002, 003 and 004, Steven J. Gaber
Project Nos. 4600–002, 003 and 004, Steven J. Gaber
Project No. 4792–006, Mac Hydro-Power Company, Inc.
Project No. 5192—003, Lind Associates
Project No. 5446–001, Steven J. Gaber
Project Nos. 5547–002, 003 and 004, Steven J. Gaber
Project No. 6097–005, Douglas Regan
Project No. 6451–003, Thornton N. Snyder
Project No. 6468–002, North Hydro Inc.
Project No. 6488–005, Alternate Energy Resources, Inc.
Project Nos. 6583–002 and 003, Mountain West Hydro, Inc.
Project Nos. 7241–001 and 002, White Chuck Water Company
Project No. 7258–004, China Flat Company
Project No. 7537–001, George Arkoosh
Project No. 7611–003, Iron Mountain Mines, Inc.
Project No. 7623–002, D&D Stauffer, Inc.
Project No. 7891–002, Frederick E. Pickering
Project No. 7898–001, Snowmass Company
Project No. 7944–003, Great Western Power & Light, Inc.
Project No. 8082–001, John and June Cotten
Project No. 8122–002, R&D Power Company
Project No. 8152–001, Town of Lake City
Project No. 8191–001, BMB Enterprises, Inc.
Project No. 8192–001, BMB Enterprises, Inc.
Project No. 8202–001, Henry A. Young
Project No. 8220–002, Wise Investments
Project No. 8224–001, Merle Jore & His Sons
Project No. 8230–002, Great Western Power & Light, Inc.
Project No. 8250–002, Alan J. Amy
Project No. 8253–001, William A. Worf and Frederick F. Burnell
Project No. 8279–002, Big Wood Canal Company
Project Nos. 8281–001 and 002, Western Hydro Electric, Inc.
Project No. 8324–002, Marshall E. Saunders
Project No. 8359–002, Chester and Irene Allen
Project No. 4714–002, Forward Power and Energy Company
Project No. 3580–002, Hi-Head Hydro, Inc.
Project No. 3247–002, Henwood Associates
Project No. 3948–002, Bailey Creek Ranch
Project No. 4182–003, Cogeneration, Inc.
Project No. 4658–001, Eugene J. McFadden
Project No. 4794–002, Robert I. Thompson
Project No. 4796–002, S & S Limited Partnership
Project No. 4949–001, Lewis Company PUD No. 1
Project No. 5055–001, Richard E. Akin
Project No. 5067–001, Tule River Indian Reservation
Project No. 5306–002, Mega Hydro, Inc.
Project No. 5955–001, Edward and Gwyneth Burgess
Project No. 5991–002, Gordon Foster and Sarena Falls School
Project No. 6142–002, Robert T. Suter
Project No. 6168–001, Richard L. Bean and Fred G. Castagna
Project No. 6384–001, Redwood Trails R.V. Park
Project No. 6550–002, Frank M. Biber and Steven Spellenberg
Project No. 6629–001, Thomas K. and Jody L. Budde
Project No. 6952–001, McMillan Hydro Company
Project No. 7591–001, James D. Cisco
Project No. 6090–000, Rainsong Company

Project No. 5294–001, Hydro Resource Company
Project No. 5324–000, Capital Development Company
Project No. 5948–000, Public Utility District of Lewis County, Washington

CAP–8.
Project No. 2113–008, Wisconsin Valley Improvement Company

CAP–9.
Project No. 2030–009, Portland General Electric Company

CAP–10.
Docket No. ER84–679–002, Florida Power Corporation

CAP–11.
Docket Nos. ER85–451–000 and ER85–473–000, Southern California Edison Company

CAP–12.
Docket No. ER85–459–000, Consolidated Edison Company of New York, Inc.

CAP–13.
Docket No. QF85–304–000, The Amalgamated Sugar Company and Small Power Production and Cogeneration Facilities—Qualifying Status

CAP–14.
Docket No. QF85–311–000, Cogeneration National Corporation

CAP–15.
(A) Docket No. RE81–106–003, Florida Power Corporation
(B) Docket No. RE84–7–002, Niagara Mohawk Power Corporation
(C) Docket No. RE80–56–000, Otter Tail Power Company
(D) Docket No. RE80–19–004, Pacific Power and Light Company
(E) Docket No. RE84–12–001, Savannah Electric and Power Company
(F) Docket No. RE84–14–002, Tennessee Valley Authority
(G) Docket No. RE84–13–002, Virginia Electric Power Company

CAP–16.
Docket No. RE80–24–001, Cincinnati Gas & Electric Company
Docket No. RE80–54–001, Cleveland Electric Illuminating Company
Docket No. RE84–8–000, Columbus & Southern Ohio Electric Company
Docket No. RE81–83–002, Dayton Power & Light Company
Docket No. RE81–29–001, Ohio Edison Company
Docket No. RE84–9–000, Ohio Power Company
Docket No. RE81–37–002, Toledo Edison Company

CAP–17.
Docket No. EL82–3–002, City of Oakland, California v. Pacific Gas & Electric Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM85–2–001, Rules of Practice and Procedure: Commission review of remedial orders

CAM–2.
Docket No. RM79–76–165, (Kansas - 2), high-cost gas produced from tight formations

CAM–3.
Docket No. GP80–90–000, State of Kansas, section 108 NGPA determination, Amoco Production Company, Eyman Gas Unit "B" No. 1 well, FERC JD No. 80–04663

CAM–4.
Docket No. GP83–59–000, Texas Railroad Commission, William Perlman, Section 107 NGPA Determination, AdA Cauthorn No. 4–1 Well, FERC No. JD82–41108

CAM–5.
Docket No. GP84–24–000, State of Kansas, section 108 NGPA determination, Gould Oil Inc., Z-Bar No. 1 well, FERC No. JD84–09856

CAM–6.
Docket No. GP84–54–000, Hawthorne Oil & Gas Corporation, et al.

CAM–7.
Docket No. RO84–9–000, Walter J. Scott and Benjamin J. Agajanian, oil producers, William J. Scott and Walter J. Scott, d.b.a. Scott Oil Company

CAM–8.
Docket No. RO85–2–000, Echo Drilling, Inc.

Consent Gas Agenda

CAG–1.
Docket No. TA83–2–47–004, MIGC, Inc.

CAG–2.
Docket Nos. RP83–35–034, 035, RP81–109–000, RP82–37–000 and RP74–41–061, Texas Eastern Transmission Corporation

CAG–3.
Omitted

CAG–4.
Docket Nos. TA83–1–37–003, TA83–2–37–003, TA84–1–37–004, TA84–2–37–010, TA85–1–37–004, TA85–2–37–007 and RP82–56–000, Northwest Pipeline Corporation

CAG–5.
Docket No. TA83–2–31–007, Arkansas Louisiana Gas Company, Division of Arkla, Inc.

CAG–6.
Docket Nos. TA83–2–31–005, 006, TA84–1–31–002, TA84–2–31–002 and 003, Arkansas Louisiana Gas Company, Division of Arkla, Inc.

CAG–7.
Docket No. RP82–54–017, Colorado Interstate Gas Company

CAG–8.
Docket No. RP85–63–000, Northwest Pipline Corporation v. Cascade Natural Gas Corporation
Docket No. RP85–103–000, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation

CAG–9.
Docket No. RP85–36–000, ANR Pipeline Company

CAG–10.
Docket Nos. ST83–634–001, ST84–101–001 and ST83–429–001, et al., Producer's Gas Company

CAG–11.
Docket Nos. ST85–10–000, ST82–17–000 and 001, Cranberry Pipeline Corporation

CAG–12.
Docket Nos. RI74–188–052 and RI75–21–047, Independent Oil & Gas Association of West Virginia

CAG–13.
Docket No. CI80–70–002, Phillips Petroleum Company v. McCulloch Gas Processing Corporation and McCulloch Interstate Gas Corporation, Dinah Conrad, MHF Enterprises, Inc., DOL Resources, Inc., the Hawks Company and K.A. Thomas

CAG–14.
Docket No. CI64–26–012 (Force Majeure), Gulf Oil Corporation

CAG–15.
Docket No. CI84–355–000, Exchange Oil & Gas Corporation and Shore Oil Corporation

CAG–16.
Docket No. CI85–303–000, Coastal Oil & Gas Corporation

CAG–17.
Docket No. CI85–385–000, Energy Marketing Exchange, Inc.

CAG–18.
Docket Nos. TC85–16–000, and 001, Colorado Interstate Gas Company

CAG–19.
Docket No. CP77–410–006, Sea Robin Pipeline Company

CAG–20.
Docket No. CP77–410–007, Sea Robin Pipeline Company

CAG–21.
Docket Nos. CP84–543–001, CP85–150–001 and CP85–151–001, Equitable Gas Company, a division of Equitable Resources, Inc.

CAG–22.
Docket Nos. CP84–709–000, 001 and CP79–473–005, Alabama-Tennessee Natural Gas Company

CAG–23.
Docket No. CP85–291–000, United Gas Pipe Line Company

CAG–24.
Docket No. CP85–300–000, Colorado Interstate Gas Company

CAG–25.
Docket Nos. CP85–487–000, 001, 002, 003, CP85–488–000, 001 and 002 (not consolidated), Distrigas of Massachusetts Corporation

I. Licensed Project Matters

P–1.
Project No. 7350–000, Cameron A. and Deanna E. Curtiss

P–2.
Project No. 7042–001, Cities of Minden, Natchitoches and Ruston, Louisiana

II. Electric Rate Matters

ER–1.
Docket No. ER82–483–000, Middle South Services, Inc.
Docket No. ER–82–616–000, Middle South Energy, Inc.

ER–2.
Docket No. ER82–616–003 (remand), Middle South Energy, Inc.

ER–3.
Omitted

ER–4.
Docket No. EL85–21–000, Numaineco Corporation

Miscellaneous Agenda

M–1.
Docket No. RM85–6–000, waiver of the water quality certification requirement of section 401(A) of the Clean Water Act

M-2.
Reserved
M-3.
Reserved
M-4.
Omitted

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA85-4-5-000, 001 and RP85-147-000, Midwestern Gas Transmission Company
RP-2.
Docket Nos. TA82-1-21-001, TA82-2-21-000, TA83-1-21-001, 002, TA83-2-21-000, TA84-1-21-001, TA84-2-21-001, TA85-1-21-000 RP82-120-000, 004, TA81-1-21-003 and TA81-2-21-006 (severed cutback issues), RP84-75-000, CP84-2-000, RP81-83-000, RP82-88-000 and GP82-41-000, Columbia Gas Transmission Corporation
Docket Nos. RP81-82-000, RP82-119-000 and RP84-74-000, Columbia Gulf Transmission Company
Docket Nos. CP84-209-000 through 013, Lawrenceburg Gas Corporation and Texas Gas Transmission Corporation
Docket No. CP84-763-000, Columbia Gas Transmission Corporation v. Consolidated Gas Transmission Corporation
Docket No. CP85-191-000, Cincinnati Gas and Electric Company
Docket No. CP84-630-000, Lawrenceburg Gas Transmission Corporation
Docket No. CP84-631-000, Lawrenceburg Gas Transmission Corporation
Docket No. CP84-533-000, Columbia Gas Transmission Corporation v. Transcontinental Gas Pipe Line Corporation
Docket Nos. CP84-429-000 and 001, Texas Eastern Transmission Corporation
Docket Nos. RP83-8-000 and CP84-441-000 through 003, Tennessee Gas Pipeline Company, Division of Tenneco Inc.
RP-3.
(A) Docket Nos. RP82-75-000 and RP82-76-000, Arkansas Louisiana Gas Company, a division of Arkla, Inc.
(B) Docket No. RP82-117-000, Midwestern Gas Transmission Company
RP-4.
Docket No. RP83-66-000, Mississippi River Transmission Corporation
RP-5.
Docket Nos. OR79-1-000 and 022 (Phase I), Williams Pipe Line Company

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. RP71-29-029 (Phase II), United Gas Pipe Line Company
CP-2.
Docket Nos. RP71-29-003 and RP71-120-000 (Phase III), United Gas Pipe Line Company
CP-3.
Omitted
CP-4.
Docket Nos. CP84-393-000 and 001, Panhandle Eastern Pipe Line Company
CP-5.
Docket No. RP83-8-000, et al., Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket Nos. CP84-441-000, 001 and 002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP85-264-000, et al., Transcontinental Gas Pipe Line Corporation
CP-6.
Docket No. CP85-464-000, Southern Natural Gas Company

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-14218 Filed 6-7-85; 5:00 pm]
BILLING CODE 6717-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 5, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting. This copy of the Board's May 28, 1985, notice was made and resubmitted to the **Federal Register** on June 7, 1985.

Dated: May 28, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-14216 Filed 6-7-85; 4:56 pm]
BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 17, 1985.

PLACE: Marriner S. Eccles Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 7, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-14217 Filed 6-7-85; 4:56 pm]
BILLING CODE 6210-01-M

4

LEGAL SERVICES CORPORATION

Board of Directors Meeting Cancellation

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published May 30, 1985, 50 FR 23103.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., Wednesday, June 12, 1985.

EXPLANATION OF CHANGE: The Presidential Search Committee will not conclude their meetings of June 10 through June 12, 1985 and therefore will not be ready to make a report to the Board of Directors on June 12. Because the agenda of the previously announced meeting called for only one action item, the meeting is cancelled since there will be no report from the Presidential Search Committee.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Dated issued: June 10, 1985.

D. Clifford Crook, III,
Assistant to the President, Chief of Staff.
[FR Doc. 85-14225 Filed 6-10-85; 10:09 am]
BILLING CODE 6820-35-M

5

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Monday, June 17, 1985.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Central Liquidity Facility Lines of Credit for State Credit Union Share Insurance Corporations. Closed pursuant to exemption (8).
3. Budget Authorization for FY 1986. Closed pursuant to exemptions (2) and (6).

4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (10).

5. Special Assistance to Prevent Liquidation under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–14253 Filed 6–10–85; 2:31 pm]

BILLING CODE 7535–01–M

5

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Cancellation of Previously Announced Closed Meeting

The National Credit Union Administration Board has cancelled its previously announced closed meeting, scheduled for June 12, 1985 at the Parkview Hilton in Hartford, CT.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.

2. Notice of Intent to Terminate Insured Status for State Chartered Credit Union. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Special Assistance to prevent Liquidation under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–14254 Filed 6–10–85; 2:31 pm]

BILLING CODE 7535–01–M

7

POSTAL RATE COMMISSION

TIME AND DATE: 9:00 a.m., June 28, 1985.

PLACE: Room 300, 1333 H Street, NW., Washington, DC 20268–0001.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Docket No. RM85–1, Publication of the Domestic Mail Classification Schedule.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, D.C. 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 85–14223 Filed 6–10–85; 10:04 am]

BILLING CODE 7715–01–M

federal register

Wednesday
June 12, 1985

Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1985

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of June 1, 1985, of 244 rescission proposals and 71 deferrals contained in the first nine special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, March 22, and May 16, 1985.

Rescissions (Table A and Attachment A)

As of June 1, 1985, there were two rescission proposals pending before the Congress. Attachment A shows the history and status of the 244 rescissions proposed by the President in 1985.

Referrals (Table B and Attachment B)

As of June 1, 1985, $4,767.6 million in 1985 budget authority was being deferred from obligation and $8.7 million in 1985 outlays was being deferred from expenditure. Attachments B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday, January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410, Thursday, March 7, 1985
Vol. 50, FR p. 12504, Thursday, March 28, 1985
Vol. 50, FR p. 21014, Tuesday, May 21, 1985

David A. Stockman,

Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)	
Rescissions proposed by the President	$1,843.3	
Accepted by the Congress	0	
Rejected by the Congress	1,805.9	a/
Pending before the Congress	37.4	

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TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)	
Deferrals proposed by the President	$14,872.6	
Routine Executive releases through June 1, 1985 (OMB/ Agency Releases of $10,376.0 million and cumulative adjustments of $279.7 million)	-10,096.3	
Overturned by the Congress	0	
Currently before the Congress	$ 4,776.3	b/

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a/ Rescission proposals transmitted with the FY 1986 Budget were released on April 25, 1985, the day following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

b/ This amount includes $8.7 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of June 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1	[illegible]		2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program	R85-2	5,168		2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses	R85-3	1,231		2-6-85		1,231	4-25-85	
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4	[illegible]		2-6-85		838	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5	114		2-6-85		114	4-25-85	
Departmental Administration Departmental Administration	R85-6	149		2-6-85		149	4-25-85	
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7	497		2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General	R85-8	41		2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel	R85-9	24		2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service	R85-10	1,313		2-6-85		1,313	4-25-85	
Buildings and facilities	R85-11	16,950		2-6-85		16,950	4-25-85	
	R85-12	20,950		2-6-85		20,950	4-25-85	
Cooperative State Research Service Cooperative State Research Service	R85-13	151		2-6-85		151	4-25-85	
Extension Service Extension Service	R85-14	10		2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library	R85-15	11		2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses	R85-16	205		2-6-85		206	4-25-85	
Economic Research Service Salaries and expenses	R85-17	132		2-6-85		132	4-25-85	
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18	32		2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service	R85-19	424		2-6-85		424	4-25-85	
Office of International Cooperation and Development Salaries and expenses	R85-20	52		2-6-85		52	4-25-85	
Scientific activities overseas (special foreign currency program)	R85-21	9		2-6-85		9	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22	100		2-6-85		100	4-25-85	
Dairy indemnity program	R85-23	[illegible]		2-6-85		88	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24	1,906		2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25	31		2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses	R85-26	36		2-6-85		36	4-25-85	
Rural Electrification Administration Salaries and expenses	R85-27	288		2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28	215,964		2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock	R85-29	30,000		2-6-85		30,000	4-25-85	

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Farmers Home Administration								
Salaries and expenses	R85-30	1,315		2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations	R85-31	5,174		2-6-85		5,174	4-25-85	
River basin surveys and investigations	R85-32	235		2-6-85		235	4-25-85	
Watershed planning	R85-33	133		2-6-85		133	4-25-85	
Watershed and flood prevention operations	R85-34	918		2-6-85		918	4-25-85	
Great plains conservation program	R85-35	126		2-6-85		126	4-25-85	
Resource conservation and development	R85-36	164		2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37	1,464		2-6-85		1,464	4-25-85	
Federal Grain Inspection Service								
Salaries and expenses	R85-38	94		2-6-85		[illegible]	4-25-85	
Agricultural Marketing Service								
Marketing services	R85-39	150		2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation	R85-40	18		2-6-85		[illegible]	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses	R85-41	2,473		2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration	R85-42	684		2-6-85		[illegible]	4-25-85	
Food stamp program	R85-43	8,762		2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44	34		2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45	117		2-6-85		117	4-25-85	
Agricultural Cooperative Service								
Salaries and expenses	R85-46	50		2-6-85		[illegible]	4-25-85	
Forest Service								
Forest research	R85-47	923		2-6-85		923	4-25-85	
State and private forestry	R85-48	463		2-6-85		463	4-25-85	
National forest system	R85-49	12,134		2-6-85		12,134	4-25-85	
Construction	R85-50	1,922		2-6-85		1,922	4-25-85	
Land acquisition	R85-51	68		2-6-85		[illegible]	4-25-85	
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52	3,700		2-6-85		3,700	4-25-85	
	R85-53	499		2-6-85		[illegible]	4-25-85	
Economic Development Administration								
Salaries and expenses	R85-54	120		2-6-85		120	4-25-85	
Economic development assistance programs	R85-55	24,000		2-6-85		24,000	4-25-85	
	R85-56	179,000		2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses	R85-57	241		2-6-85		241	4-25-85	
Periodic censuses and programs	R85-58	791		2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses	R85-59	433		2-6-85		433	4-25-85	
International Trade Administration								
Operations and administration	R85-60	2,783		2-6-85		2,783	4-25-85	
	R85-60A	18,750		2-6-85		18,750	4-25-85	
Participation in United States expositions	R85-61	6		2-6-85		[illegible]	4-25-85	
Minority Business Development Agency								
Minority business development	085-62	305		2-6-85		305	4-25-85	
United States Travel and Tourism Administration								
Salaries and expenses	R85-63	468		2-6-85		[illegible]	4-25-85	
	R85-63A	3,417		2-6-85		3,417	4-25-85	

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National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R85-64	4,140		2-6-85		4,140	4-25-85	
	R85-64A	100,200		2-6-85		100,200	4-25-85	
Fisheries loan fund	R85-65	1,550		2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses	R85-66	1,472		2-6-85		1,472	4-25-85	
National Bureau of Standards								
Scientific and technical research and services	R85-67	1,019		2-6-85		1,019	4-25-85	
National Telecommunications and Information Administration								
Salaries and expenses	R85-68	183		2-6-85		183	4-25-85	
Public telecommunications facilities, planning and construction	R85-69	32		2-6-85		32	4-25-85	
	R85-69A	9,968		2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations	R85-70	2,000		2-6-85		2,000	4-25-85	
Construction, general	R85-71	4,000		2-6-85		4,000	4-25-85	
Operation and maintenance, general	R85-72	8,000		2-6-85		8,000	4-25-85	
General expenses	R85-73	1,200		2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries	R85-74	1,000		2-6-85		1,000	4-25-85	
Revolving fund	R85-75	3,900		2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs	R85-76	80,000		2-6-85		80,000	4-25-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants	R85-77	30,000		2-6-85		30,000	4-25-85	
Office of Postsecondary Education								
Higher education	R85-78	59,750		2-6-85		59,750	4-25-85	
Departmental Management								
Salaries and expenses	R85-79	4,189		2-6-85		4,189	4-25-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities	R85-80	8,280		2-6-85		8,280	4-25-85	
Energy Programs								
General science and research activities	R85-81	38		2-6-85		38	4-25-85	
Energy supply, research and development activities	R85-82	2,676		2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83	[illegible]		2-6-85		[illegible]	4-25-85	
Fossil energy research and development	R85-84	3,276		2-6-85		3,276	4-25-85	
	R85-84A	860		2-6-85		860	4-25-85	
Naval petroleum and oil shale reserves	R85-85	181		2-6-85		181	4-25-85	
Energy conservation	R85-87	931		2-6-85		931	4-25-85	
Strategic petroleum reserve	R85-88	156		2-6-85		156	4-25-85	
Energy Information Administration	R85-89	846		2-6-85		846	4-25-85	
Emergency preparedness	R85-90	51		2-6-85		51	4-25-85	
Economic regulation	R85-91	156		2-6-85		156	4-25-85	
Federal Energy Regulatory Commission	R85-92	204		2-6-85		204	4-25-85	
Alternate fuels production	R85-93	23		2-6-85		23	4-25-85	

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Power Marketing Administration								
Operation and maintenance, Alaska Power Administration	R85-94	29		2-6-85		29	4-25-85	
Operation and maintenance, Southeastern Power Administration	R85-95	15		2-6-85		15	4-25-85	
	R85-243		23,402	5-16-85				
Operation and maintenance, Southwestern Power Administration	R85-96	243		2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97	432		2-6-85		432	4-25-85	
Departmental Administration								
Departmental administration	R85-98	2,786		2-6-85		2,786	4-25-85	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Salaries and expenses	R85-99	2,194		2-6-85		2,194	4-25-85	
Health Resources and Services Administration								
Health resources and services	R85-100	2,263		2-6-85		2,263	4-25-85	
Indian health	R85-101	161		2-6-85		161	4-25-85	
Centers for Disease Control								
Disease control	R85-102	2,261		2-6-85		2,261	4-25-85	
National Institutes of Health								
National Cancer Institute	R85-103	4,362		2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	R85-104	1,401		2-6-85		1,401	4-25-85	
National Institute of Dental Research	R85-105	166		2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106	1,171		2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders	R85-107	462		2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases	R85-108	428		2-6-85		428	4-25-85	
National Institute of General Medical Sciences	R85-109	211		2-6-85		211	4-25-85	
National Institute of Child Welfare and Human Development	R85-110	309		2-6-85		309	4-25-85	
National Eye Institute	R85-111	173		2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences	R85-112	542		2-6-85		542	4-25-85	
National Institute on Aging	R85-113	196		2-6-85		196	4-25-85	
Research resources	R85-114	250		2-6-85		250	4-25-85	
John E. Fogarty International Center	R85-115	241		2-6-85		241	4-25-85	
National Library of Medicine	R85-116	354		2-6-85		354	4-25-85	
Office of the Director	R85-117	182		2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R85-118	3,972		2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health								
Public health service management	R85-119	493		2-6-85		493	4-25-85	
Health Care Financing Administration								
Program management	R85-120	1,540		2-6-85		1,540	4-25-85	
Human Development Services								
Human development services	R85-121	1,334		2-6-85		1,334	4-25-85	
Family social services	R85-122	396		2-6-85		396	4-25-85	
Community services block grant	R85-123	34		2-6-85		34	4-25-85	
Departmental Management								
General departmental management	R85-124	1,246		2-6-85		1,246	4-25-85	
Office of the Inspector General	R85-125	496		2-6-85		496	4-25-85	

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payments for operation of low income housing projects	R85-126	253,138		2-6-85		253,138	4-25-85	
Management and Administration								
Salaries and expenses	R85-127	6,919		2-6-85		6,919	4-25-85	
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources	R85-128	5,778		2-6-85		5,778	4-25-85	
Oregon and California grant lands	R85-129	679		2-6-85		679	4-25-85	
Working capital fund	R85-130	2,951		2-6-85		2,951	4-25 85	
Minerals Management Service								
Minerals and royalty management	R85-131	1,764		2-6-85		1,764	4-25 85	
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology	R85-132	546		2-6 85		546	4-25-85	
Abandoned mine reclamation fund	R85-133	333		2-6-85		333	4-25-85	
	R85-133A	2,900		2-6-85		2,900	4-25-85	
Bureau of Reclamation								
Construction program	R85-134	2,571		2-6-85		2,571	4-25-85	
General investigations	R85-135	709		2-6-85		709	4-25-85	
Operation and maintenance	R85-136	1,540		2-6-85		1,540	4-25-85	
General administrative expenses	R85-137	1,468		2-6-85		1,468	4-25-85	
Geological Survey								
Surveys, investigations and research	R85-138	4,519		2-6-85		4,519	4 25 85	
Bureau of Mines								
Mines and minerals	R85-139	1,355		2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service								
Resource management	R85-140	3,869		2-6-85		3,869	4-25-85	
Construction	R85-141	40		2-6-85		40	4-25-85	
National Park Service								
Operation of the national park system	R85-142	8,598		2-6-85		8,598	4-25-85	
National recreation and preservation	R85-143	94		2-6-85		94	4-25-85	
Construction	R85-144	397		2-6-85		397	4-25-85	
Land acquisition and state assistance	R85-145	52		2-6-85		52	4-25-85	
	R85-146	30,000		2-6-85		30,000	4-25-85	
Bureau of Indian Affairs								
Operation of Indian programs	R85-147	5,570		2-6-85		5,570	4-25-85	
Office of Territorial Affairs								
Administration of territories	R85-148	107		2-6-85		107	4-25-85	
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses	R85-149	166		2-6-85		166	4-25-85	
Working capital fund	R85-150	3,000		2-6-85		3,000	4-25-85	
Legal Activities								
Salaries and expenses, General Legal Activities	R85-151	470		2-6-85		470	4-25-85	
Salaries and expenses, Antitrust Division	R85-152	65		2-6-85		65	4-25-85	
Salaries and expenses, United States Attorneys and Marshals	R85-153	889		2-6-85		889	4-25-85	
Fees and expenses of witnesses	R85-154	309		2-6-85		309	4-25-85	
Salaries and expenses, Community Relations Service	R85-155	43		2-6-85		43	4-25-85	
Federal Bureau of Investigation								
Salaries and expenses	R85-156	3,505		2-6-85		3,505	4-25-85	

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Drug Enforcement Administration Salaries and expenses	R85-157	876		2-6-85		876	4-25-85	
Immigration and Naturalization Service Salaries and expenses	R85-158	947		2-6-85		947	4-25-85	
Federal Prison System Salaries and expenses	R85-159	451		2-6-85		451	4-25-85	
National Institute of Corrections	R85-160	894		2-6-85		894	4-25-85	
Buildings and facilities	R85-161	13		2-6-85		13	4-25-85	
Office of Justice Programs Justice assistance	R85-162	2,031		2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration Program administration	R85-163	218		2-6-85		218	4-25-85	
	R85-163A	1,703		2-6-85		1,703	4-25-85	
Training and employment services	R85-164	11,447		2-6-85		11,447	4-25-85	
	R85-164A	244,291		2-6-85		244,291	4-25-85	
Labor-Management Services Administration Salaries and expenses	R85-165	1,678		2-6-85		1,678	4-25-85	
Employment Standards Administration Salaries and expenses	R85-167	1,635		2-6-85		1,635	4-25-85	
	R85-167A	600		2-6-85		600	4-25-85	
Occupational Safety and Health Administration Salaries and expenses	R85-168	1,694		2-6-85		1,694	4-25-85	
Mine Safety and Health Administration Salaries and expenses	R85-169	1,776		2-6-85		1,776	4-25-85	
Bureau of Labor Statistics Salaries and expenses	R85-170	765		2-6-85		765	4-25-85	
	R85-170A	5,000		2-6-85		5,000	4-25-85	
Departmental Management Salaries and expenses	R85-171	728		2-6-85		728	4-25-85	
Inspector General salaries and expenses	R85-172	3,766		2-6-85		3,766	4-25-85	
Special foreign currency program	R85-173	20		2-6-85		20	4-25-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs Salaries and expenses	R85-174	2,432		2-6-85		2,432	4-25-85	
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration Motor carrier safety	R85-175	164		2-6-85		164	4-25-85	
National Highway Traffic Safety Administration OPerations and research	R85-176	767		2-6-85		767	4-25-85	
Trust fund share of operations and research	R85-177	408		2-6-85		408	4-25-85	
Highway traffic safety grants	R85-178	250		2-6-85		250	4-25-85	
Federal Railroad Administration Office of the Administrator	R85-179	100		2-6-85		100	4-25-85	
Railroad research and development	R85-180	170		2-6-85		170	4-25-85	
Rail service assistance	R85-181	90		2-6-85		98	4-25-85	
Railroad safety	R85-182	140		2-6-85		140	4-25-85	
Northeast corridor improvement program	R85-183	200		2-6-85		200	4-25-85	
Urban Mass Transportation Administration Urban mass transportation fund, administrative expenses	R85-184	265		2-6-85		265	4-25-85	
Federal Aviation Administration Operations	R85-185	18,888		2-6-85		18,888	4-25-85	
Headquarters administration	R85-186	1,065		2-6-85		1,065	4-25-85	
Operation and maintenance, Washington metropolitan airports	R85-187	17		2-6-85		17	4-25-85	

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Facilities and equipment (Airport and airway trust fund)	[illegible]	10,000		2-6-85		10,000	4-25-85	
Coast Guard								
Operating expenses	R85-189	14,724		2-6-85		14,724	4-25-85	
Acquisition, construction and improvements	R85-190	500		2-6-85		500	4-25-85	
Reserve training	R85-191	441		2-6-85		441	4-25-85	
Research, development, test, and evaluation	R85-192	135		2-6-85		135	4-25-85	
Maritime Administration								
Operations and training	R85-193	888		2-6-85		888	4-25-85	
Office of the Inspector General								
Salaries and expenses	[illegible]	300		2-6-85		300	4-25-85	
Office of the Secretary								
Salaries and expenses	R85-195	435		2-6-85		435	4-25-85	
Transportation planning, research and development	[illegible]	65		2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
Salaries and expenses	R85-197	969		2-6-85		969	4-25-85	
Office of Revenue Sharing								
Salaries and expenses	[illegible]	[illegible]		2-6-85		[illegible]	4-25-85	
Federal Law Enforcement Training Center								
Salaries and expenses	R85-199	75		2-6-85		75	4-25-85	
Financial Management Service								
Salaries and expenses	[illegible]	972		2-6-85		972	4-25-85	
Bureau of Alcohol, Tobacco and Firearms								
Salaries and expenses	[illegible]	397		2-6-85		397	4-25-85	
United States Customs Service								
Salaries and expenses	R85-202	1,223		2-6-85		1,223	4-25-85	
Bureau of the Mint								
Salaries and expenses	R85-203	87		2-6-85		87	4-25-85	
Bureau of the Public Debt								
Administering the public [illegible]	R85-204	52		2-6-85		52	4-25-85	
Internal Revenue Service								
Salaries and expenses	[illegible]	198		2-6-85		198	4-25-85	
Processing tax returns and executive direction	R85-206	781		2-6-85		781	4-25-85	
Examinations and appeals	R85-207	1,588		2-6-85		1,588	4-25-85	
Investigation, collection, and taxpayer service	[illegible]	1,633		2-6-85		1,633	4-25-85	
United States Secret Service								
Salaries and expenses	[illegible]	1,465		2-6-85		1,465	4-25-85	
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210	1,863		2-6-85		1,863	4-26-85	
Research and development	R85-211	4,125		2-6-85		4,125	4-26-85	
Abatement, control, and compliance	R85-212	7,413		2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R85-213	3,204		2-6-85		3,204	4-25-85	
Personal Property Activities								
Operating expenses	R85-214	[illegible]		2-6-85		300	4-25-85	
General supply fund	R85-215	30,848		2-6-85		30,848	4-25-85	
Office of Information Resources Management								
Operating expenses	[illegible]	45		2-6-85		45	4-25-85	
Consumer information center fund	R85-217	63		2-6-85		63	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of June 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal telecommunications fund.....	R85-218	415		2-6-85		415	4-25-85	
Automatic data processing fund.....	R85-219	145		2-6-85		145	4-25-85	
Federal Property Resources Activities Operating expenses.....	R85-220	207		2-6-85		207	4-25-85	
Expenses, disposal of surplus real and related personal property.....	R85-221	1,832		2-6-85		1,832	4-25-85	
General Activities General management and administration, salaries and expenses.....	R85-222	403		2-6-85		403	4-25-85	
Office of the Inspector General.....	R85-223	35		2-6-85		35	4-25-85	
Allowances and staff for former Presidents.....	R85-224	19		2-6-85		19	4-25-85	
Working capital fund.....	R85-225	8		2-6-85		8	4-25-85	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management.....	R85-226	4,000		2-6-85		4,000	4-25-85	
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227	1,161		2-6-85		1,161	4-25-85	
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....	R85-228	3,781		2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care.....	R85-229	10,261		2-6-85		10,261	4-25-85	
Medical and prosthetic research.....	R85-230	323		2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses.....	R85-231	2,109		2-6-85		2,109	4-25-85	
General operating expenses.....	R85-232	4,334		2-6-85		4,334	4-25-85	
Construction, minor projects.....	R85-233	377		2-6-85		377	4-25-85	
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234	1,139		2-6-85		1,139	4-25-85	
Corporation for Public Broadcasting Public broadcasting fund.....	R85-244		14,000	5-16-85				
Federal Emergency Management Agency Salaries and expenses.....	R85-235	786		2-6-85		786	4-25-85	
Emergency management planning and assistance.....	R85-236	1,287		2-6-85		1,287	4-25-85	
National Archives and Records Administration Operating expenses.....	R85-237	166		2-6-85		166	4-25-85	
National Labor Relations Board Salaries and expenses.....	R85-238	1,070		2-6-85		1,070	4-25-85	
National Science Foundation Research and related activities.....	R85-239	2,002		2-6-85		2,002	4-25-85	
Nuclear Regulatory Commission Salaries and expenses.....	R85-240	4,329		2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241	1,538		2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses.....	R85-242	433		2-6-85		433	4-25-85	
Subtotal, rescissions.....		1,805,913	37,402			1,805,913 1/		

1/ Recission proposals transmitted with the FY 1986 Budget were released on April 25, 1985, the day following expiration of the 45 day clock on recissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of June 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	4,458,500				481,000
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,834,233				345,500
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	704,145				97,125
International military education and training.....	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations.....	D85-1A	7,000		1-4-85	7,000				0
African Development Foundation									
African Development Foundation.....	D85-4B	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,784		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-1Y	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	380,000		10-1-84					
	D85-6A		906,322	11-29-84	887,671			80,894	398,753
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	120,390				110,400
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	190			135	1,137
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply research and development.....D85-70		15,000		5-16-85					15,000
Uranium Supply and Enrichment Activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	10,760				37,637
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation.....	D85-30	3,398		11-29-84					
	D85-30A		2,374	3-22-85					5,772
Strategic petroleum reserve.....	D85-31	481		11-29-84					
	D85-31A		270,337	2-6-85					270,738
SPR petroleum account.....	D85-42	827,028		2-6-85					827,028

Attachment B - Status of Deferrals - Fiscal Year 1985

As of June 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-85
Energy security reserve and alternative production	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					1,238
	D85-32B		89	3-22-85					
Power Marketing Administration									
Southeastern Power Administration, Operation and maintenance	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					
	D85-18B		2,000	5-16-85					32,300
Departmental Administration									
Departmental administration	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration									
Program management	D85-66	4,271		1-22-85					4,271
Social Security Administration									
Limitation on administrative expenses (construction)	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85					15,712
Limitation on administrative expenses (information technology systems)	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)	D85-10	49		10-1-84					[illegible]
National Park Service									
Construction (trust fund)	D85-45	38,172		2-6-85	38,172				[illegible]
Land Acquisition	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs									
Construction	D85-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration									
Salaries and expenses	D85-46	3,890		2-6-85					3,890
Legal Activities									
Support of United States prisoners	D85-47	5,319		2-6-85					5,319
Federal Prison System									
Buildings and facilities	D85-19	44,534		10-31-84					44,534
Office of Justice Programs									
Justice assistance	D85-60	13,026		3-1-85					13,026
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					3,767
	D85-34A			3-1-85					37,000
	D85-62	37,000		3-1-85					

Attachment B - Status of Deferrals - Fiscal Year 1985

As of June 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-85
Unemployment trust fund (veterans employment and training).....	D85-43	119		3-1-85					119
Pension Benefit Guaranty Corporation Pension Benefit Guaranty Corporation.....	D85-44	220		3-1-85					220
Bureau of Labor Statistics Salaries and expenses.....	D85-35	5,000		11-29-84	5,000				0
DEPARTMENT OF STATE									
Other United States emergency refugee and migration assistance fund.....	D85-28 D85-28A	32,928	153	10-31-84 1-4-85	24,905				8,175
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration Limitation on general operating expenses...	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration Rail service assistance.....	D85-49	413		2-6-85					413
Northeast corridor improvement program.....	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds.....	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration Research, training and human resources.....	D85-52	25,206		2-6-85					25,206
Federal Aviation Administration Construction, metropolitan Washington airports.....	D85-53	910		2-6-85					910
Facilities and equipment (airport and airway trust).....	D85-11 D85-11A D85-11B	537,205	652,957 93,731	10-1-84 1-4-85 2-6-85	163,000			163,000	1,283,894
Maritime Administration Operations and training.....	D85-38	8,500		2-6-85					8,500
Office of the Secretary Salaries and expenses.....	D85-55	800		2-6-85					800
Payments to air carriers.....	D85-39	14,741		3-22-85					14,741
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....	D85-12 D85-13	55,400 19,900		10-1-84 10-1-84	32,458 11,186			31,395 33	54,337 8,747
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting Grants and expenses.....	D85-21	4,408		10-1-84	4,408				0
National Archives and Records Service Operating expenses.....	D85-36	4,700		11-29-84					4,700
National Science Foundation Science and engineering education activities.....	D85-56	31,450		2-6-85					31,450
Panama Canal Commission Operating expenses.....	D85-37	6,346		11-29-84	6,346				0
Pennsylvania Avenue Development Corporation Land acquisition and development fund.....	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board Milwaukee railroad restructuring, administration.....	D85-15 D85-15A	108	7	10-1-84 2-6-85					115
Limitation on administration.....	D85-57	3,098		2-6-85					3,098

Attachment B - Status of Deferrals - Fiscal Year 1985

As of June 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-85
Limitation on Railroad Unemployment Insurance Administration fund.....	D85-58	502		2-6-85					502
Tennessee Valley Authority Tennessee Valley Authority fund.....	D85-71	9,000		5-16-85					9,000
U. S. Information Agency Salaries and expenses.....	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program.....	D85-23	852		10-31-84					852
U.S. Institute of Peace U.S. Institute of Peace.....	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS.....		8,001,489	6,871,133		10,375,994	0		279,657	4,776,286

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.

[FR Doc. 85-14249 Filed 6-11-85; 8:45 am]

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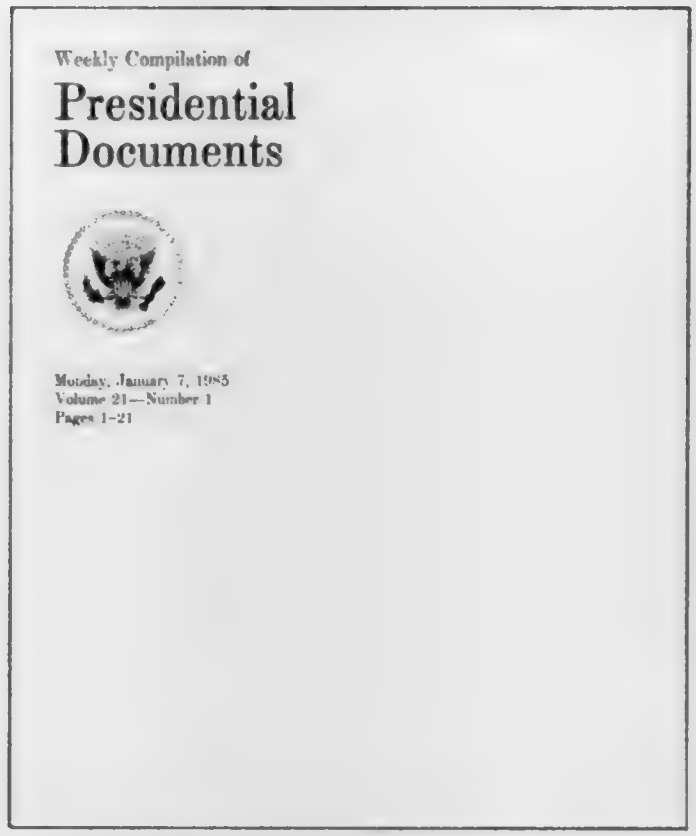
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Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

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Air Pollution Control
Environmental Protection Agency

Fisheries
National Oceanic and Atmospheric Administration

Government Procurement
General Services Administration

Health Insurance
Personnel Management Office

Investment Companies
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Marine Safety
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Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Occupational Safety and Health
Occupational Safety and Health Administration

Radio Broadcasting
Federal Communications Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Water Pollution Control
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement amendments to the Federal Employees Health Benefits (FEHB) law under the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615. These regulations describe the conditions under which former spouses of civil service employees and retirees may enroll in the FEHB Program.

DATES: Interim rule effective May 7, 1985. Comments must be received on or before August 12, 1985.

ADDRESS: Written comments may be sent to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044, or delivered to OPM, Room 4351, 1900 E Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 254–7052.

SUPPLEMENTARY INFORMATION: On November 8, 1984, Congress enacted the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98–615). Under this Act, certain former spouses of civil service employees and annuitants may qualify to enroll in a health benefits plan under the Federal Employees Health Benefits Program (FEHBP) effective on or after May 7, 1985.

A former spouse who was married to an employee or retiree on or after May 7, 1985, may enroll in a health benefits plan under the FEHBP if he or she (1) does not remarry before age 55; (2) was enrolled in an FEHB plan as a family member at any time during the 18 months preceding the date of divorce or annulment; and (3) currently receives, or has future title to receive, (i) a portion of annuity payable to the employee upon retirement, based on a qualifying court order under 5 U.S.C. 8345(j), (ii) survivor annuity benefits based on a qualifying court order under 5 U.S.C. 8341(h), (iii) a survivor annuity based on an election by the employee under 5 U.S.C. 8339(j)(3), or (iv) similar benefits under another retirement system for Government employees.

Former spouses of employees who separate from Federal service before becoming eligible for an annuity beginning immediately after separation may enroll only if dissolution of the marriage to the employee occurred before the employee left Federal service.

A former spouse who was married to an employee who retired before May 7, 1985, may also be entitled to health benefits coverage if (1) the former spouse does not remarry before age 55, (2) the former spouse was enrolled in a health benefits plan as a family member at any time during the 18 months preceding the dissolution of the marriage, and either (3) the retiree elects before May 9, 1986, to provide a survivor annuity to the former spouse or, (4) the retiree declines to elect survivor benefits for a former spouse or died on or before May 7, 1985, and the former spouse satisfies certain conditions for a survivor annuity under section 4(b)(1)(B) of Pub. L. 98–615.

Generally, an eligible former spouse must file a written application for coverage within 60 days after the dissolution of the marriage. However, if the marriage dissolved *after* the employee's retirement, the former spouse may apply for coverage either within 60 days after the dissolution of marriage *or* within 60 days after the retired employee elects to provide a survivor annuity for the former spouse, whichever is later. In addition, the former spouse of an employee who retired *before* May 7, 1985, may apply for health benefits coverage (1) within 60 days after the retiree elects to provide a former spouse annuity under 5 CFR 831.621 or (2) within 60 days after the date of the OPM notice of entitlement to a former spouse annuity under 5 CFR 831.622.

A former spouse may elect a self-only or family enrollment but such family coverage is limited to the former spouse and eligible children of that spouse *and* the employee, former employee, or annuitant.

The Act requires the former spouse to pay the full cost (both the employee and Government share) of the health benefits enrollment. When the former spouse has *future* title to annuity, premium payments are to be made to the employing office of the agency which employed the Federal employee at the time the marriage was dissolved. If the former spouse is *receiving* an annuity, the responsible retirement system will make available a means for direct withholding of the premium from the former spouse's annuity check. Consistent with current regulations governing retirees and survivor annuitants, the enrollment will be terminated if the annuity is insufficient to cover the cost of the enrollment and the former spouse does not or cannot change to a plan with a cost that can be covered by the annuity.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the effective date of the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, is May 7, 1985.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend health benefits coverage to qualified former spouses of certain service employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913.

2. Section 890.101 is amended by revising paragraphs (a)(5) and (a)(9) to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

(5) "Employing office" means the office of an agency to which jurisdiction and responsibility for health benefits actions for an employee or an eligible former spouse of an employee have been delegated. For enrolled annuitants, including survivor annuitants and former spouse annuitants who are not also eligible employees, "employing office" is the office which has authority to approve payment of annuity or workmen's compensation for the annuitant concerned. For former spouses not receiving an annuity, "employing office" is the agency that employed the Federal employee at the time the marriage was dissolved.

* * * * *

(9) "Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. "Pay period" as it relates to a former spouse who is not actively receiving an annuity means the regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the former spouse have been delegated as provided by paragraph (a)(5) of this section. "Pay period" for annuitants means the period for which a single installment of annuity is customarily paid.

* * * * *

3. Section 890.104 is amended by revising paragraph (a) to read as follows:

§ 890.104 Initial decision and reconsideration.

(a) *Who may file.* An employee, annuitant, or former spouse may request OPM to reconsider a decision of an employing office or an initial decision of OPM refusing to permit registration for or change of enrollment or refusing to permit enrollment of an individual as a family member.

* * * * *

4. Section 890.301 is amended by revising paragraphs (d)(2), (e), (f), (h), (i), (k), (n), and (u) to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(d) * * *

(2) An enrolled employee, annuitant, or former spouse may change to another plan, another option, or from self alone to self and family, or may make any combination of these changes.

(e) *Change in family status.* (1) Other than a former spouse, an enrolled employee or annuitant may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, and an employee, if registered not to be enrolled, may register to be enrolled, at any time during the period beginning 31 days before a change in marital status and ending 60 days after the change in marital status. Other than a former spouse, an enrolled employee or annuitant may change enrollment from self alone to self and family within 60 days after any other change in family status.

(2) An enrolled former spouse may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, within 60 days after the birth or acquisition of a child who is a qualified family member under § 890.804(a) of this part.

(f) *Change to self alone.* (1) An employee, annuitant, or former spouse may register at any time to change enrollment from self and family to self alone. If an employee, annuitant, or former spouse changes his or her enrollment to self alone, any family members who lose coverage are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract.

(2) Other than a former spouse, an employee or annuitant who is covered by the enrollment of another under this part may elect self alone coverage within 31 days after a change in the covering enrollment has been filed under authority of this paragraph.

* * * * *

(h) *Move from area served by comprehensive medical plan.* If a comprehensive medical plan limits full service to a geographic area, an employee, annuitant, or former spouse enrolled in that plan who moves outside the full service area or, if already living outside the full service area, moves further from the full service area, may register at any time after the move, to be enrolled in another health benefits plan.

(i) *Termination by employee organization plan.* An employee, annuitant, or former spouse who is enrolled in a health benefits plan sponsored or underwritten by an employee organization and whose membership in the employee organization is terminated, may register to be enrolled in another plan under the following conditions:

(1) Health benefits enrollment is terminated by the plan; and,

(2) Registration to enroll in another plan is submitted within 31 days after termination of enrollment in the employee organization plan.

The employee, annuitant, or former spouse may not change enrollment from self alone to self and family under this paragraph.

* * * * *

(k) *Termination of plan in which enrolled.* If a plan is discontinued in whole or part, each employee, annuitant, and former spouse whose enrollment is thereby terminated may enroll in another plan. If the discontinuance is at the end of a contract period which is immediately preceded by an open season, the time for enrollment is the open season. Otherwise, OPM will establish a time and effective date for enrollment. Persons who fail to change enrollment within the time set are considered to have canceled the plan in which enrolled, except that if one option of a plan is discontinued, enrolled employees, annuitants, and former spouses who do not change plans will be considered enrolled in the remaining option of the plan.

* * * * *

(n) *On becoming eligible for coverage under Title XVIII of the Social Security Act.* An enrolled employee, annuitant, or former spouse with a high option enrollment may register, at any time after the 31st day before he or she is eligible for coverage under Title XVIII of the Social Security Act (Medicare), to change enrollment to the low option of any available plan under this part.

* * * * *

(u) *Child's coverage ends.* An employee, annuitant, or former spouse may register to change enrollment from self alone to self and family within 31 days after an eligible child loses coverage under another enrollment under this part.

* * * * *

5. Section 890.302 is amended by revising paragraphs (d) and (e) to read as follows:

§ 890.302 Coverage of family members.

* * * * *

(d) *Child incapable of self-support.* When an employee, annuitant, or former spouse enrolls for a family which includes a child who has become 22 years of age and is incapable of self-support, the employing office will require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

(1) State that the child is incapable of self-support because of a physical or mental disability that existed before the child became 22 years of age and that can be expected to continue for more than 1 year;

(2) Include a statement of the name of the child, the nature of the disability, the period of time it has existed, and its probable future course and duration; and,

(3) Be signed by the Physician and show the physician's office address. The employing office will require the employee, annuitant, or former spouse to submit the certificate on or before the date the child becomes 22 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity not timely filed.

(e) *Renewal of certificates of incapacity.* The employing office will require the employee, annuitant, or former spouse who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

* * * * *

6. Subpart H is added to read as follows:

Subpart H—Benefits for Former Spouses

Sec.

890.801 Introduction.
890.802 Definition.
890.803 Who may enroll.
890.804 Coverage.
890.805 Enrollment Time Limitations.
890.806 Effective dates of coverage.
890.807 Termination of enrollment.
890.808 Employing office responsibilities.

Subpart H—Benefits for Former Spouses

§ 890.801 Introduction.

This subpart explains how former spouses of Federal employees and retirees may acquire health benefits coverage in accordance with the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98–615). It describes enrollment eligibility for former spouses, coverage of family members, enrollment procedures, and when health plan coverage terminates. It also informs Federal agencies how to implement the Act.

§ 890.802 Definition.

In this subpart, "Qualifying court order" means a qualifying court order as described in § 831.1704 of this title.

§ 890.803 Who may enroll.

(a) Except as specified in paragraph (b) of this section, a former spouse is eligible to enroll in a health benefits plan under this part provided that—

(1) The former spouse whose marriage to an employee or employee annuitant is dissolved has not remarried if under age 55; and

(2) The former spouse was enrolled in a health benefits plan under this part as a family member at any time during the 18 months preceding the date of the dissolution of marriage; and

(3)(i) The former spouse was married to an employee or employee annuitant on or after May 7, 1985, and currently receives, or has future title to receive, (A) a portion of annuity payable to the employee upon retirement, based on a qualifying court order for purposes of 5 U.S.C. 8345(j), (B) survivor annuity benefits based on a qualifying court order for purposes of 5 U.S.C. 8341(h), or (C) a survivor annuity elected by the employee under 5 U.S.C. 8339(j)(3) (or benefits similar to those under this paragraph under another retirement system for Government employees); *or*

(ii) The former spouse was married to an employee who retired before May 7, 1985, and the employee annuitant (A) elects before May 9, 1986, to provide a survivor annuity to the former spouse under procedures prescribed in § 831.621 of this title, or (B) does not elect to provide a survivor annuity as described in paragraph (a)(3)(ii) (A) of this section, or died on or before May 7, 1985, *and* the former spouse satisfies all of the conditions for a survivor annuity in § 831.622 of this title.

(b) A former spouse of an employee who separates from Federal service before becoming eligible for immediate annuity is eligible to enroll only if the former spouse's marriage to the employee dissolved before the employee left Federal service.

§ 890.804 Coverage.

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self alone or for self and family. A family enrollment covers only the former spouse and any unmarried dependent natural or adopted child of both the former spouse and the employee, former employee or employee annuitant, provided such child is not otherwise covered by a health plan under this part. An unmarried dependent child must be under age 22 or incapable of self-support because of a mental or physical disability existing before age 22. No person may be covered by two enrollments.

(b) *Proof of dependency.* (1) A child is considered to be dependent on the former spouse, or the employee, former employee, or employee annuitant if he or she is:

(i) A legitimate child;

(ii) An adopted child;

(iii) A recognized natural child who lives with the former spouse, or the employee, former employee or employee annuitant in a regular parent-child relationship.

(iv) A recognized natural child for whom a judicial determination of support has been obtained, or

(v) A recognized natural child to whose support the former spouse, or the employee, former employee, or employee annuitant makes regular and substantial contributions in accordance with § 890.302(b)(2).

(c) *Exclusions from coverage.* Coverage as a family member may be denied:

(1) If evidence shows that the former spouse, employee, former employee or annuitant did not recognize the child as his or her own, despite a willingness to support the child, or

(2) If evidence calls the child's paternity or maternity into doubt, despite the former spouse's, employee's, former employee's, or employee annuitant's recognition and support of the child.

(d) *Child incapable of self-support.* When a former spouse enrolls for a family enrollment which includes a child who has become 22 years of age and is incapable of self-support, the employing office shall determine such child's eligibility in accordance with § 890.302 (d), (e) and (f).

(e) *Meaning of unmarried.* A child, under age 22 or incapable of self-support, who has never married or whose marriage has been annulled, or a child who is divorced or widowed is considered to be unmarried.

§ 890.805 Enrollment time limitations.

(a)(1) Former spouses of employees who retire on or after May 7, 1985, must apply for coverage: (i) Within 60 days after dissolution of the marriage to the Federal employee or employee annuitant, or (ii) if the marriage dissolved after retirement, within 60 days after dissolution of the marriage or, if later, 60 days after the retired employee elects to provide a survivor annuity for the former spouse.

(2) Former spouses of employees who retire before May 7, 1985, must apply for

coverage: (i) Within 60 days after the employee annuitant elects to provide a former spouse annuity under § 831.621 or (ii) within 60 days after the date of the OPM notice of entitlement to a former spouse annuity under § 831.622.

§ 890.806 Effective dates of coverage.

(a) *Generally.* The effective date of enrollment or change of enrollment is the first day of the pay period after the date of receipt by the employing office of the registration form and satisfactory proof of eligibility.

(b) *Change required because of insufficient annuity.* When a former spouse annuitant changes to a lower cost enrollment as provided by § 890.301(q) of this title, the change is effective immediately upon loss of coverage under the prior enrollment.

§ 890.807 Termination of enrollment.

(a) *Former spouse.* (1) If the annuity of a former spouse is not sufficient to pay the withholdings for the plan in which enrolled, and the former spouse annuitant does not, or cannot, elect a plan under § 890.301(q) at a cost not in excess of the annuity, the employing office will terminate the enrollment effective the end of the last period for which withholding was made. Each former spouse annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) A former spouse's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs:

(i) Court order ceases to provide entitlement to survivor annuity or portion of retirement annuity under a retirement system for Government employees.

(ii) Former spouse remarries before age 55.

(iii) Former spouse remarries the employee, separated employee, or annuitant on whose service the benefits are based.

(iv) Former spouse dies.

(v) Employee on whose service the benefits are based dies and no survivor annuity is payable.

(vi) Separated employee on whose service the benefits are based dies before the requirements for deferred annuity have been met.

(vii) Employee on whose service benefits are based leaves Federal service before establishing title to deferred annuity.

(viii) Refund of retirement monies is paid to the separated employee on whose service the health benefits are based.

(3) A former spouse whose enrollment is terminated under this paragraph may not reenroll.

(b) *Coverage of members of the family.* The coverage of a member of the family of a former spouse terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) The day on which the individual ceases to be an eligible family member.

(2) The day the former spouse ceases to be enrolled, unless the family member is entitled, as a survivor annuitant, to continued enrollment, or is entitled to continued coverage under the enrollment of another.

(c) *Cancellation.* A former spouse may cancel enrollment at any time by filing with the employing office a properly completed health benefits form. The cancellation becomes effective on the last day of the pay period after the pay period in which the health benefits form canceling the enrollment is received by the employing office. The former spouse and family members, if any, are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits. A former spouse who cancels his or her enrollment may not later reenroll.

§ 890.808 Employing office responsibilities.

(a) *Applications for benefits.* (1) The employing office will set up a method for accepting applications for enrollment and, if the former spouse is not receiving annuity, direct payment for the former spouse. The method will include procedures for verifying the eligibility requirements under § 890.803(a) (1) and (2). The employing office will accept OPM documentation that the former spouse meets the additional requirement under § 890.803(a)(3) (i) or (ii). The employing office will maintain a health benefits file for the former spouse as a file separate from the personnel records of the employee or former employee.

(2) The application from the former spouse must be filed in a manner prescribed by OPM. The former spouse will be required to certify that he or she meets the requirements listed in § 890.803 and that he or she will notify the employing office within 31 days of an event that results in failure to meet one or more of the requirements.

(b) *Qualifying court order.* Subject to a 31-day extension period for conversion, the duration of health benefits coverage will coincide with any period specified in the qualifying court order providing for an annuity. A court order not meeting the requirements under § 831.1707(c) or § 831.1709 will not be used to establish or continue entitlement to a former spouse's health benefits coverage.

(c) *Premium payments.* (1) The former spouse must remit to the employing office the full subscription charge for the enrollment for every pay period during which the enrollment continues. Payment must be made in accordance with a schedule established by the employing office. If the employing office does not receive payment within 31 days after the due date, the employing office will notify the former spouse by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after the receipt of the notice. An individual who fails to remit payment within the specified time frame will be deemed to have cancelled his or her enrollment.

(2) The employing office will submit all premium payments collected from former spouses along with its regular health benefits payments to OPM. The full subscription charge for former spouses will be classified as "withholdings" and included in the "Withholding" section of the SF 2812, Journal Voucher and Report of Withholdings and Contributions For Health Benefits, Group Life Insurance, and Civil Service Retirement.

(d) Withholding from annuity. The retirement system acting as employing office for a former spouse will establish a method for withholding the full subscription charge from the former spouse's annuity check. When the annuity is insufficient to cover the full amount of health benefits premium due, the retirement system will require the former spouse to register to be enrolled in another plan as provided by § 890.301(q).

[FR Doc. 85-14322 Filed 6-12-85; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 348]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 348 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 14–June 20, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 348 (§ 908.648) is effective for the period June 14–June 20, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on June 4, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand is slow, particularly for small size fruit, and prices are likely to decline in the next few weeks due to significant competition from deciduous fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after the publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing Agreements and Orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.648 is added to read as follows:

§ 908.648 Valencia Orange Regulation 348.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 14, 1985, through June 20, 1985, are established as follows:

(a) *District 1:* 240,000 cartons;
(b) *District 2:* 360,000 cartons;
(c) *District 3:* Unlimited cartons.

Dated: June 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–14233 Filed 6–12–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 925

Expenses and Assessment Rate for Grapes Grown in a Designated Area of Southeastern California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures of the California Desert Grape Administrative Committee and establishes the assessment rate under Marketing Order 925 for table grapes grown in southeastern California for the 1984–85 fiscal year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: December 1, 1984–November 30, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the California Desert Grape Administrative Committee, established under the order, and upon other information. It is found that the expenses and assessment rate, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled from the beginning of such period. To enable the committee to meet current fiscal obligations, approval of the expenses and rate of assessment is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 925

Marketing agreements and orders, grapes, California.

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 925.204 is added to read as follows (this section prescribes the annual expenses and assessment rate of the California Desert Grape Administrative Committee and will not be published in the Code of Federal Regulations):

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.204 Expenses and assessment rate.

Expenses of $38,000 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.003 per 22-pound container of grapes is established for the fiscal year ending November 30, 1985. Unexpended funds may be carried over as a reserve.

Dated: June 10, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-14301 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[IC-14559]

Amendment to Pricing Rule and Adoption of Rule on Pricing of Redemptions

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule and rule amendment.

SUMMARY: The Commission is adopting a rule and rule amendment under the Investment Company Act of 1940. These actions limit the days on which a registered investment company is required to price its redeemable securities to customary United States business days and provide that an investment company will not have suspended the right of redemption if it prices a redemption request by computing net asset value under the amended rule. The rule and rule amendment will simplify and clarify pricing and redemption requirements for all funds especially those with portfolio securities trading in foreign markets. The Commission also is amending staff Guidelines to Form N-1A to reflect these actions.

EFFECTIVE DATE: June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Forrest Foss, Special Counsel or Jay Gould, Attorney, (202) 272-2107, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 22c-1 and a new Rule 22e-2 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "1940 Act"), relating to the computation by an investment company of the value of its redeemable securities for purposes of sales and redemptions (commonly called "pricing").

The changes were proposed in Investment Company Act Release No. 14244 (November 21, 1984).[1] The amendment to Rule 22c-1 will require investment companies to price their redeemable securities at least once every week day (Monday through Friday) except on: (i) Customary national, local, or regional business holidays disclosed in the prospectus; (ii) days when no security is tendered for redemption and no customer order is received; or (iii) days when changes in the value of the investment company's portfolio securities do not affect the current net asset value of the investment company's redeemable securities. New Rule 22e-2 will make clear that an investment company is not required to price redemption requests on days when pricing is not required under Rule 22c-1.

Five commentators submitted views on the proposal and unanimously supported limiting the days on which pricing is required to customary United States business days. The commentators contended, however, that the Commission should also permit funds to forego pricing on local and regional holidays and days when emergency weather conditions cause a fund to halt operations. Commentators also argued that the disclosure conditions of the proposal were unnecessarily burdensome. As discussed below, the Commission has made several changes in the rule amendment in response to the comments. Also, in response to a technical comment, the caption of new Rule 22e-2 has been revised.

Local and Regional Holidays

Commentators unanimously supported the proposal to require pricing on weekdays only, that is, Monday through Friday. They were also supportive of the proposal to permit an investment company to forego pricing on customary United States business holidays. However, they argued that the specific term—"United States business holidays"—used in the proposal was ambiguous, and recommended that the Commission expand Rule 22c-1 to permit a fund to forego pricing on customary local and regional holidays.

Commentators cited the same administrative and financial burdens described in the proposing release with respect to Saturday and holiday pricing as justification for eliminating required pricing on local and regional holidays. It was also pointed out that local Federal Reserve wire transfer systems, banks, tranfer agents, pricing services, and other support organizations may be closed or unavailable on local holidays, making pricing on these days difficult. In addition, it was argued that investor orders which a fund receives on a local or regional holiday would be limited, in many cases (even if the fund were to remain open) to mail orders because banks are generally closed and, as a result, wire transfers cannot be received. As stated in the proposing release with regard to Saturday pricing, orders received through the mail generally do not reflect an attempt to trade on market events which occur on the day the mail order is received.

The Commission has decided to expand the amendment to include local and regional holidays among the days on which pricing will not be required. Nonetheless, an investment company which closes its facilities and decides not to price on local or regional holidays must list these holidays in its prospectus. It should also be pointed out that the amended rule prescribes minimum requirements and will not preclude an investment company from pricing its redeemable securities on local holidays or weekends.[2] A fund which chooses to calculate its net asset value on days not required by the amended rule, however, must do so consistently and for both the purchase and sale of its redeemable securities.

Disclosure

The proposal would have required investment companies to specifically state in the prospectus the holidays on which pricing would not occur. Commentators criticized this approach as burdening the prospectus with unnecessary disclosure. Instead, commentators recommended that a fund be permitted to use a more general description of its closing days in the prospectus and to place any required specific disclosure in the Statement of Additional Information. Suggestions for appropriate general descriptions of holiday policies included statements to the effect that pricing will take place "everyday the New York Stock Exchange is open" for trading, or that pricing will not be done on "days the New York Stock Exchange is closed," or on "any federal holiday." One commentator indicated that specific prospectus disclosure of holiday closings would be appropriate where the holidays went beyond those observed by the New York Stock Exchange.

The rule as adopted incorporates many of these suggestions. Although the rule requires a description in the prospectus of the customary national business holidays observed by the fund, it eliminates the requirement that all holidays be specifically listed in the

[1] 49 FR 46558 (November 27, 1984).

[2] This could be done by the investment company remaining open on weekends or on any holiday(s) or by segregatign orders received on such days for separate pricing.

prospectus. A fund could use the types of descriptions referred to above or others which convey the necessary meaning about the customary national business holidays on which orders will not be priced. Where the fund is closed on local or regional holidays, the rule requires that the prospectus contain a listing of these additional holiday closings. In the Commission's view, this specific disclosure is required because investors in areas of the country distant from a fund may not be aware of the local and regional holidays. Where the customary national business holidays on which the fund is closed are only described generally in the prospectus, they must be specifically listed in the Statement of Additional Information. If all holiday closings are specifically listed in the prospectus, the list need not be repeated in the Statement of Additional Information.

Three commentators addressed the statement in the proposing release that "to the extent that a fund's pricing practices may limit investor access to the fund on days when significant trading in the fund's portfolio securities may occur, the Commission would expect the fund to explain the consequences of its pricing practices in its prospectus." One commentator suggested that due to the technical nature of the information and its applicability to funds whose portfolios trade primarily on foreign markets, the disclosure should be placed in the Statement of Additional Information. Two other commentators argued that this disclosure be deleted altogether.

The Commission has considered these comments and decided that, where disclosure of the consequences of a fund's holiday closing policy on fund pricing practices is necessary, it may be in the Statement of Additional Information. Appropriate disclosure about the impact of a fund's closing policies on investors depends, of course, on the nature of the fund. For example, funds with portfolio securities primarily listed on foreign exchanges which trade on Saturdays or other customary United States business holidays would be expected to disclose to their investors, if the fund does not price on these days, that the portfolio will trade and the net asset value of the fund's redeemable securities may be significantly affected on days when the investor has no access to the fund. In other cases, where for example the fund's portfolio trades only on the New York Stock Exchange and the fund is closed only on days when that exchange is closed, the fund could forego discussion of the consequences of its closing policy on investors.

The Commission is amending guideline 28 of the Guidelines to Form N–1A to reflect the amendment to Rule 22c–1 and the foregoing disclosure requirements.[3]

Emergency Closings

In response to criticism by commentators, the Commission is clarifying the staff's position on pricing requirements when funds are closed due to emergencies such as snow storms. As indicated in the proposing release, where a fund is unable, due to emergency conditions, to complete the mechanical process of pricing on a day when it would normally be required to do so under Rule 22c–1, the price for that day may be calculated subsequently and applied to sales, redemptions, and repurchases that were in fact received in the mail or otherwise on that same day. A number of commentators recommended that Rule 22c–1 be expanded to include "emergency days" as days on which pricing need not occur. As justification, commentators cited the same administrative and financial burdens associated with weekend pricing, and also suggested that it may be difficult or impossible to discern on which day mail orders are actually received during emergency conditions.

The Commission believes that clarification of the existing staff interpretation will address the practical problem raised by commentators. Under that interpretation, a mail order is considered received by the fund if the postal service has delivered it to the fund's place of business or transfer agent on a given day even if, because of an emergency closing, neither the fund nor its transfer agent is able to perform the mechanical processing of pricing on that day. The fund is expected to make every effort to price investor orders for purchase and redemption on the day the order is actually received,[4] and to establish procedures so as to reasonably be able, following an emergency closing, to insure that investor orders can be given the price that, but for the emergency, would have been computed on the day of actual receipt.[5] Nonetheless, if the fund is unable to segregate orders received on the emergency closed day from those received on the next day the fund is open for business, the fund may give all these orders the next price calculated after operations resume. This approach may be used where, for example, as a result of a snowstorm, local authorities declare a state of emergency, businesses are required to close, and only emergency travel is permitted. A fund relying on this exception, of course, must process purchase orders on the same basis as requests for redemption.

Effective Date

The rule and rule amendment are effective upon publication in the **Federal Register**. An investment company which determines to change its pricing practices to take advantage of the rule changes (for example, a fund with securities trading on Saturday which now will forego Saturday pricing), must amend its disclosure in accordance with applicable requirements. The staff anticipates that generally funds could make the appropriate changes by use of a "sticker" under Rule 497(d). A fund which does not change its pricing practices in response to the rule changes may make any necessary changes in its disclosure at the time it files its annual update by post-effective amendment.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendment

Part 270 of Chapter II, Title 17 of the Code of Federal Regulations is amended as follows.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54; Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89, 80a–22(c), 80a–22(e), 80a–6(c), 80a–37(a) * * *

2. Paragraph (b)(1) of § 270.22c–1 is revised to read as follows:

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

* * * * *

(b) For the purposes of this section, (1) the current net asset value of any such security shall be computed no less frequently than once daily, Monday

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[3] The Guidelines to Form N–1A are a compilation of Commission releases and staff interpretations intended to assist registrants prepare registration statements and comply with applicable requirements.

[4] When orders are not processed on the day of receipt, but nonetheless use that day's price, there is a potential for dilution of the interests of the fund's other shareholders.

[5] These emergency closings are to be distinguished from situations where a fund or its transfer agent experience computer failures or other operational problems. Where operational problems unrelated to an emergency closing result in transactions being processed on an "as of" basis, the adviser, transfer agent or another responsible party may be liable to the fund for any resulting dilution.

through Friday, at the specific time or times during the day that the board of directors of the investment company sets at least annually, except on (i) days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities, (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company, or (iii) customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus;

* * * * *

3. By adding § 270.22e–2 to read as follows:

§ 270.22e–2 Pricing of redemption requests in accordance with Rule 22c–1.

An investment company shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of Rule 22c–1.

4. Guideline 28, of Guidelines for Form N–1A, beginning at paragraph 9, is amended to read as follows:

* * * * *

Item 7 requires a statement in the prospectus as to when calculations of net asset value are generally made. The current net asset value of redeemable securities should be computed at least once each day whenever there is enough trading in the investment company's portfolio securities to materially affect the current net asset value of the investment company's redeemable securities and on which an order for purchase, redemption, or repurchase of its securities is received. Calculations of net asset values should be made at such specific time or times during the day as set by the directors of the investment company, at least once a year. An investment company need not compute net asset value on (i) a day when no order to purchase or sell such security was received or was on hand, having been received since the last previous computation of net asset value or (ii) customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus.[**]

Under Item 7, a fund must identify in a general manner or list the customary national business holidays on which it will (or will not) price. For this purpose, a fund could indicate, for example, that pricing will take place "every day the New York Stock Exchange is open for trading" or "Monday through Friday exclusive of federal holidays" or the fund may use some other general description which conveys the necessary meaning about the customary national business holidays on which orders will (or will not) be priced. A fund which will be closed on local or regional holidays must specifically list these holidays under Item 7 of the prospectus. Where national holidays on which the fund will be closed are only generally described in the prospectus, they must be specifically listed in the Statement of Additional Information. If all holiday closings are specifically listed in the prospectus, the list need not be repeated in the Statement of Additional Information.

Where a fund's closing policy may have a significant impact on investor access to the fund, this should be explained in the Statement of Additional Information under Item 19. The necessity for and appropriate level of disclosure under Item 19 depends on the nature of the fund. For example, funds with portfolio securities primarily listed on foreign exchanges which trade on Saturdays or other customary United States national business holidays would be expected to disclose to their investors, if the fund does not price on these days, that the portfolio will trade and the net asset value of the fund's redeemable securities may be significantly affected on days when the investor has no access to the fund. On the other hand, a fund need not discuss the consequences of its pricing policies if the fund's portfolio securities trade only on the New York Stock Exchange and the fund is closed only on days when that exchange is closed.

The prospectus disclosure regarding sales charges should make clear that the term "offering price" as used throughout the prospectus includes the sales charge, if any.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which the Commission prepared in accordance with 5 U.S.C. 603 regarding the amendment to Rule 22c–1 and new Rule 22e–2, was published in Investment Company Act release No. 14244. No comments were received on this analysis and the Commission has prepared a Final Regulatory Flexibility Act Analysis. Copies of the Final Regulatory Flexibility Analysis may be obtained by contacting Jay Gould in the manner specified above.

By the Commission.

John Wheeler,

Secretary.

June 6, 1985.

[FR Doc. 85–14227 Filed 6–12–85; 8:45 am]

BILLING CODE 8010–01–M

[**] Investment Company Act Release No. 10827 [August 13, 1979] [44 FR 48660 [August 20, 1979]]; Investment Company Act Release No. 14559 (June 6, 1985).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 629

Job Training Partnership Act (JTPA); Single Unit Charge Agreements Involving Training of Youths

Correction

In FR Doc. 85–10181, beginning on page 16473 in the issue of Friday, April 26, 1985, make the following correction: On page 16474 in the first column, in § 629.38, the seventh line of paragraph (e)(2)(iii)(B) should have read "unsubsidized employment or the".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85–37]

Special Local Regulations; Fourth of July Coney Island Air Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Fourth of July Coney Island Air Show. This event is sponsored by the Coney Island Chamber of Commerce. The event will be held on July 4, 1985 off Coney Island Beach, New York. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation becomes effective on July 4, 1985 from 12:30 p.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: LT D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until May 29, 1985 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project

Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Fourth of July Coney Island Air Show is sponsored by the Coney Island Chamber of Commerce. The Canadian Air Force Snowbirds Jet Aerobatic Team will put on a special air show during the effective period from 1:30 p.m. to 2:00 p.m. over the waters off Coney Island in Brooklyn, New York. This show is well known to the boaters and residents alike in this area, as similar events have been held in past years. The Federal Aviation Administration requires that all vessels be kept out of the area under the flight line (show area). The Coast Guard expects a very large spectator fleet for this popular event. The regulated area is a rectangular area 6,000 feet long along the shore and extends out 3,000 feet offshore. The 2 offshore corners of the regulated area will be marked by special purpose buoys. In order to provide for the safety of both participants and spectators, the Coast Guard will close the regulated area to all traffic.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary Section 100.35–318 to read as follows:

§ 100.35–318 Fourth of July Coney Island Air Show, New York.

(a) *Regulated Area.* Atlantic Ocean, off Coney Island, New York in the rectangular area north of a line connecting latitude 40 degrees 33 minutes 47.0 seconds north, longitude 73 degrees 59 minutes 22.0 seconds west and latitude 40 degrees 33 minutes 52.8 seconds north, longitude 73 degrees 58 minutes 04.0 seconds west.

(b) *Effective Period.* This regulation will be effective from 1:00 p.m. to 3:00 p.m. on July 4, 1985.

(c) *Special Local Regulations.* (1) The regulated area will be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless authorized by the sponsor or the Coast Guard Patrol Commander.

(2) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(3) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 4, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85–14267 Filed 6–12–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 5–85–03]

Special Local Regulations: Regatta; Elizabeth River Power Boat Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Elizabeth River Power Boat Race. This event will be held on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. It will consist of 35 outboard powered boats 13 feet to 19 feet in length racing a triangular course at the junction of the Eastern and Southern branches of the Elizabeth River. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 12:30 pm, 21 July 1985 and terminate at 5:30 pm, 21 July 1985. In case of inclement weather causing the event to be postponed, these regulations become effective at 12:30 pm, 28 September 1985 and terminate at 5:30 pm, 28 September 1985. If the event is postponed, the Patrol Commander will issue a Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804–398–6202).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 29 April 1984, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Cammander Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations:

The following organizations are jointly sponsoring the Elizabeth River Power Boar Race:

1. Norfolk FESTEVENTS, INC.
2. City of Portsmouth.
3. Portsmouth Power Boat Association.

The event will consist of six (06) classes of boats running two (02) heats per class. Closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations:

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary paragraph is added to § 100.35 to read as follows:

§ 100.35–502 Elizabeth River, Norfolk, Virginia.

(a) *Regulated Area.* The waters of the Elizabeth River and its branches from shore to shore, bounded by the Midtown Tunnel on the north, the Downtown Tunnel on the south, and the Berkley Bridge on the east.

(b) *Special Local Regulations.* Except for participants in the Elizabeth River Power Boat Race, or persons or vessels authorized by the Coast Guard Patrol Commander, no persons or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(d) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the West side of Otter Berth, Town Point Park.

(e) The Coast Guard Patrol Commander has been authorized to stop the race to allow the transit of backed up marine traffic through the regulated area.

(f) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

Dated: May 14, 1985.

James C. Irwin,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 85-14268 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 157

[CGD 82-28]

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tankships of 20,000 DWT or More but Less Than 40,000 DWT Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of a record of decision.

SUMMARY: The implementing regulations for the National Environmental Policy Act require a record of decision to be made available to the public for rulemakings for which an Environmental Impact Statement was filed with the Environmental Protection Agency. The Coast Guard is hereby providing notice that the record of decision for the regulations amending certain pollution prevention regulations in Title 33, Code of Federal Regulations, Part 157, in order to implement 46 U.S.C. 3705(c) and 3706(d) is available. The record of decision briefly discusses the environmental impacts of these regulations and the alternatives considered.

ADDRESSES: Copies of the record of decision may be obtained by writing: Commandant (G-CMC/21), (CGD-82-28), U.S. Coast Guard Headquarters, Washington, D.C. 20593. This document is available for examination and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LCDR Jeffrey G. Lantz, Project Officer, (202) 426-4431.

Dated: June 10, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-14269 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 3-85-29]

Safety Zone Regulations; Vermont, Lake Champlain, Burlington Harbor

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Lake Champlain, Burlington Harbor, Vermont. This zone is needed to protect vessels from possible safety hazards associated with a fireworks display on Lake Champlain. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective on July 3, 1985 at 9 p.m. It terminates on July 4, 1985 at 12:30 a.m. (Rain date is July 4, 1985 at 9 p.m. It terminates on July 5, 1985 at 12:30 a.m.)

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York (212)-668-7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and is to be made effective in less than 30 days after **Federal Register** publication. Publishing an NRPM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG M. O'Malley, Project Officer for the Captain of the Port, and Ms. M. A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with fireworks display in the Lake Champlain.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Part 165 is amended by adding § 165.T346 to read as follows:

§ 165.T346 Safety Zone: Lake Champlain, Burlington Harbor.

(a) *Location.* The following area is a safety zone: the waters of Vermont, Lake Champlain, Burlington Harbor, within a radius of 200 yards from the city of Burlington, Vermont's south breakwater, position 44°28'21"N 73°13'32"W.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 24, 1985.

A.E. Henn,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 85-14270 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 166

[CGD 81-040]

Ports and Waterways Safety, Shipping Safety Fairways, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Final Rule; Correction.

SUMMARY: This document corrects an error in the geographical description of a fairway as published in the **Federal Register** on Thursday, May 23, 1985 (50 FR 21261). In the first column of page 21263, paragraph (d)(14)(ii), Aransas Pass to Calcasieu Pass, the twenty-fourth geographical position [28°44'39", 96°04'22"] is incorrect. The correct position is [28°44'39", 95°04'22"].

FOR FURTHER INFORMATION CONTACT: Ltjg D. Reese, Project Manager, Office of Navigation, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202) 245–0108.

Accordingly, the Coast Guard is correcting 33 CFR 166.200 (d)(14)(ii) to read as follows:

§ 166.200 Shipping Safety Fairways and Anchorage Areas, Gulf of Mexico.

* * * * *

(d) Designated areas * * *

(14) Coastwise Safety Fairways. * * *

(ii) *Aransas Pass to Calcasieu Pass.* The areas between rhumb lines joining points at:

Latitude	*Longitude*
27°43'00"	96°55'27"
27°44'09"	96°53'25"
27°45'22"	96°51'19"
27°51'46"	96°40'12"
28°11'24"	96°06'06"
28°12'30"	96°04'12"
28°42'24"	95°12'00"
28°44'52"	95°07'43"
28°45'58"	95°05'48"
28°47'42"	95°02'42"
29°07'42"	94°27'48"
29°10'17"	94°22'30"
29°29'30"	93°58'24"
29°32'03"	93°46'44"
29°33'00"	93°46'26"
29°32'52"	93°43'00"
29°37'32"	93°21'25"

with rhumb lines joining points at:

27°40'36"	96°55'30"
27°42'47"	96°51'39"
27°44'35"	96°48'31"
28°10'06"	96°04'42"
28°11'13"	96°02'46"
28°43'32"	95°06'18"
28°44'39"	95°04'22"
29°06'24"	94°26'12"
29°06'24"	94°23'55"
29°07'41"	94°22'23"
29°09'06"	94°20'36"
29°27'40"	93°57'18"
29°30'39"	93°43'41"
29°31'13"	93°41'04"
29°33'56"	93°28'35"
29°32'57"	93°17'00"

Dated: June 10, 1985.

H.H. Kothe,

Chief, Office of Navigation (Acting).

[FR Doc. 85–14271 Filed 6–12–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 14

Violation of Penal Statutes

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: This final regulation amendment modifies the internal handling of Veterans Administration (VA) matters involving violations of penal laws. The creation of the VA Inspector General (IG) under the Inspector General Act (Pub. L. 95–452), agreements between the VA IG and the Department of Justice, and discussions between the Office of the VA General Counsel and the IG have made the IG a part of the criminal referral process in cases involving fraud within the VA. This amendment formalizes the IG roles. Additional changes are primarily editorial.

EFFECTIVE DATE: This regulation amendment is effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Audley Hendricks (023), Assistant General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389–5030.

SUPPLEMENTARY INFORMATION: On February 1, 1985, the VA published in the **Federal Register** (50 FR 4708–4709) a proposed amendment to 38 CFR 14.560. Interested persons were given 30 days in which to submit written comments, suggestions or objections. No comments were received during the comment period and the amended regulation is hereby being published as a final rule.

Executive Order 12291

The Administrator has determined that these regulations are non-major as that term is defined by Executive Order 12291. The proposed regulations will apply to internal Agency procedures. The regulations will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation or on the ability of the United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility

The Administrator has certified that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this amendment will affect only the Agency's internal handling of matters relating to violations of penal laws. It will, therefore, have no significant direct impact on small entities (i.e., small business, small private and non-profit organizations, and small governmental jurisdictions).

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Foreign relations, Lawyers, Organization and functions (Government agencies), Tort claims, Veterans.

Approved: May 17, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 14—[AMENDED]

38 CFR Part 14, GENERAL COUNSEL, LEGAL SERVICES, is amended by revising § 14.560 and its title to read as follows:

§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).

(a) Allegations of crimes against the person or property, or other non-fraudulent criminal matters will be referred by the District Counsel, within whose jurisdiction the alleged offense appears to have been committed, to the appropriate U.S. Attorney, FBI, or local law enforcement agency, according to local practice. (38 U.S.C. 210(c)(1))

(b) Allegations of fraud, corruption or other criminal conduct involving programs and operations of the VA will be referred to the Office of the Inspector General. (38 U.S.C. 210(c)(1); sec. 4, Pub. L. 95–452)

(c) The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrent prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the District Counsel will cooperate as may be requested. The District Counsel will promptly bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any case where action has been inordinately delayed; and any case which would cause significant publicity or notoriety. (38 U.S.C. 210(c)(1))

[FR Doc. 85–14257 Filed 6–12–85; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 21

Veterans Education; Increased Rates of Educational Assistance Veteran's Benefits Improvement Act of 1984

AGENCY: Veterans Administration.

ACTION: Final regulations; correction.

SUMMARY: This document corrects a table published in a final rule in the **Federal Register** of May 13, 1985 concerning increased rates of educational assistance for veterans education under the Veterans' Benefits Improvement Act of 1984.

FOR FURTHER INFORMATION CONTACT: Celia Fasone (202) 389–2340.

SUPPLEMENTARY INFORMATION: This document corrects a table which appeared in FR Doc. 85–11410, as a final rule in the **Federal Register** of May 13, 1985. In the 3rd column on page 19935, a percentage increase for educational assistance allowance for correspondence courses, taken under 38 U.S.C. ch. 35, and the cite therefore were omitted when § 21.4137(a) was published. The footnotes were rearranged during GPO printing. The chart in paragraph (a) is corrected to read as set forth in this document

Dated: June 10, 1985.

Nancy C. McCoy,

Chief, Directives Management Division.

In FR Doc. 85–11410, the table in § 21.4137(a) is corrected to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1984:

Type of courses	Monthly rate
[illegible]	
Full time	$376
¾ time	$283
½ time	$188
Less than ½ but more than ¼ time [3]	$188
¼ time or less [3]	$94
Cooperative, other than farm cooperative (full time only).	$304
Apprentice or On-Job (full time only but see footnote 1 below) Payment designated training assistance allowance	
First 6 months	$274
Second 6 months	$205
Third 6 months	$136
Fourth 6 months and succeeding periods.	[illegible]
Farm cooperative	
Full time	$304
¾ time	$228
½ time	$152
Correspondence	55 percent of the established charge for number of lessons completed by eligible spouse and serviced by the school [2] Allowance paid quarterly (38 U.S.C. 1732, 1786, Pub L. 97-35)

[1] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser. Eligible spouses or surviving spouses who enroll before September 2, 1980 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. Those spouses and surviving spouses who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons. (Pub. L. 97-35, sec. 2004(b))

[3] If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $188 or $94 as appropriate per month, if the maximum allowance is not initially authorized (38 U.S.C. 1732(c)(3), Pub. L. 95–202, Pub. L. 96–466, Pub. L. 98–543)

* * * * *

[FR Doc. 85–14234 Filed 6–12–85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2849-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice approves a revision to the legal authority portion of the Ohio State Implementation Plan (SIP) and a site-specific SIP revision for the Southerly Wastewater Treatment Plant in Columbus, Ohio. The legal authority provision grants local governments the authority to establish air pollution control requirements that are least as stringent as those of the State, except that less stringent requirements are permitted for burning certain waste materials at construction sites. The Southerly revision reduces the amount of total suspended particulate (TSP) that will be emitted from sewage sludge incineration at the plant. The revision is in accordance with the Federal enforceability requirements of the "Emission Offset Interpretive Ruling," Appendix S, 40 CFR Part 51, (44 FR 3274; January 16, 1979). USEPA has determined that approval of these revisions will not jeopardize attainment of the TSP National Ambient Air Quality Standards.

EFFECTIVE DATE: This final rulemaking becomes effective July 15, 1985.

ADDRESSES: Copies of this revision are available at the following addresses:

U.S. Environmental Protection Agency, Regulatory Analysis Section, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of the Federal Register, 1100 L Street, NW., Washington, D.C.

U.S. Environmental Protection Agency, Public Information and Reference Unit, Room #2922, 401 M Street SW., Washington, DC 20460.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886–6038.

SUPPLEMENTARY INFORMATION: In a September 21, 1982, **Federal Register** notice (47 FR 41584), USEPA proposed to conditionally approve the State of Ohio's overall Part D State Implementation Plan (SIP) to attain the primary and secondary TSP standards. In that notice, USEPA also proposed to approve certain legal authority portions of the SIP and a site-specific SIP revision for the Southerly Wastewater Treatment Plant (Southerly), in Columbus, Ohio. USEPA's final action today will only focus on the legal authority portions of the SIP and the site-specific revision for Southerly. USEPA did not take final action on these revisions at an earlier date because of the State's intent to submit a new draft TSP SIP to USEPA and the need for USEPA to reevaluate, at that time, whether the legal authority and Southerly revisions could be processed separately or if their approval was contingent upon the approval of the new Ohio TSP SIP. On March 18, 1985, the State submitted a new draft TSP SIP to USEPA. USEPA has determined that processing of the legal authority and Southerly revisions can be performed independently and, therefore, final action is being taken on these revisions. USEPA must propose action on the new draft TSP SIP and this will be addressed in a separate rulemaking action.

USEPA received one comment from

an environmental group regarding the proposed action taken on the legal authority portion of the SIP and that comment and USEPA's response are discussed below under Section I. No comments were received on Southerly.

I. Legal Authority—Amendment to § 3704.11 of the Ohio Revised Code

Section 11 of Chapter 3704 of Title 32 of the Ohio Revised Code (section 3704.11) is part of the Ohio SIP. As part of the SIP, it defines the enforcement and promulagation authority delegated to political subdivisions relative to the prevention, control and abatement of air pollution. Generally, it provides a political subdivision with the authority to promulgate its own ordinances or regulations provided that ". . . every such local ordinance or regulation . . . " shall include emission standards and regulations which are not less stringent than the emission standards and other regulations adopted pursuant to division (E) of section 3704.3 of the Revised Code (section 3704.3(E)).

On July 1, 1980, the Governor of Ohio submitted to USEPA, as a revision to the Ohio SIP, amended House Bill 101 (H.B. 101) which amends section 3704.11 by adding new subparagraph (C). This subparagraph expands the authority given to a political subdivision in relation to certain open burning activities. In particular, section 3704.11(C) allows a political subdivision to permit a construction contractor to burn, on the construction site, natural wood, lumber, paper, cardboard and wooden boxes. The contractor is not allowed to burn any product with a rubber or petroleum base. Section 3704.11(C) also provides a political subdivision with authority to promulgate its own rules for the issuance of a construction open burning permit. It specifically prohibits open burning during an air pollution alert, warning or emergency episode for the area of the contruction site.

According to the existing Ohio SIP, open burning of construction materials such as those allowed by section 3704.11(C) is prohibited by rules 01 through 05 of Chapter 3745–19 of the Ohio Administrative Code (Rules 3745–19–01 through 05). These rules were promulgated by the State pursuant to Section 3704.3(E) and, except for Rules 3745–19–03(D)(1) and 04(D)(1), were approved by USEPA in their entirety in the February 3, 1978 **Federal Register** (43 FR 4611). USEPA interprets Section 3704.11(C) as superseding Rules 3745–19–01 through 05 in those instances where a political subdivision either: (a) Issues an open burning permit to a contractor or (b) adopts permit regulations for such open burning activities.

Proposed Action

Approval.

Public Comments

USEPA received a public comment from an environmental group regarding the proposed approval of this rule.

Comment: The environmental group commented that, because open burning results in emissions at the ground level, this SIP revision will result in localized ground level air quality problems.

Response: Although open burning emissions will have their greatest impact in the vicinity of the burning, these emissions are not expected to lead to local exceedances of the National Ambient Air Quality Standards (NAAQS). This is because: (1) Relative emissions (compared to those of the overall area—see response to next comment) are not expected to be substantial and (2) open burning is expected to occur on an intermittent basis and mainly during the daylight hours, when air pollutant dispersion rates are generally at a maximum. Since emissions will occur mainly during daylight hours, the ground level nature of the emissions will be negated to some extent by the higher dispersion rates during these time periods. Consequently, USEPA believes that open burning emissions are unlikely to cause exceedances of the NAAQS.

Comment: Although Ohio's particulate strategy does not rely on a prohibition of open burning for demonstration of attainment, the commentor is concerned that open burning of construction waste could interfere with attainment. Additionally, the commentor feels that because the proposed Ohio TSP SIP does not demonstrate attainment of the particulate NAAQS in portions of the State, any activity that would not lead to an improvement in air quality must be disapproved.

Response: An estimate of the impact of this revision was made by considering the national per capita consumption of construction materials and estimating the emissions which would occur. Based on USEPA's estimate for an urban area of 2 million population, the annual rate of particulate emissions would be approximately 152–300 tons of particulate per year. Review of the "1977 National Emissions Report" (EPA–450/4–80–005) indicates that a major urban area has particulate emissions in the range of 37,000–350,00 tons/year. Therefore, areawide particulate emissions form open burning at construction sites will be negligible compared to the total areawide particulate emissions. Further discussion of this analysis is contained in the technical support document for this revision.

Final Action

Approval.

II. Site-Specific Revision for Southerly Wastewater Treatment Plant

On March 16, 1982, the State submitted as a SIP revision requests an operating permit for the Southerly Wastewater Treatment Plant in Columbus, Ohio. This revision reduces the allowable emissions from the source's New Source Performance Standards limit of 1.3 lbs/ton of dry sludge combusted to 1.12 lbs/ton of dry sludge combusted. The State is crediting the offset from this emission reduction to the City of Columbus Refuse-Coal Fired Municipal Electric Plant. This offset revision complies with the Federal enforceability requirements of the "Emission Offset Interpretive Ruling", Appendix S 40 CFR Part 51 (44 FR 3274, January 16, 1979).

Proposed Action

Approval.

Public Comment

We received no comments regarding this revision.

Final Action

Approval.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged in later proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director in the **Federal Register** on July 1, 1982.

This notice is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: May 8, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended.

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7410.

2. Section 52.1870 is amended by adding new paragraphs (c) (71) and (72) to read as follows:

§ 52.1870 Identification of Plan

* * * * *

(c) * * *

(71) On July 1, 1980, the State of Ohio submitted a revision to its State Implementation Plan amending § 3704.11 of the Ohio Revised Code. This revision expands the authority given to a political subdivision in relation to certain open burning activities. Additional information for the revision was also submitted on September 30, 1980 and January 16, 1981.

(72) On March 16, 1982, the State of Ohio submitted a revision to its State Implementation Plan for TSP for the Southerly Wastewater Treatment Plant in Columbus, Ohio.

* * * * *

[FR Doc. 85-13857 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2805-2]

Standards of Performance for New Stationary Sources; Amendment to Method 9; Decision in Response to Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of amendment to rule.

SUMMARY: On February 2, 1984 (49 FR 6458), EPA amended Reference Method 9 (40 CFR Part 60, Appendix A), along with the promulgation of standards of performance for metallic mineral processing plants. Subsequently, the American Iron and Steel Institute (AISI) submitted a Petition for Reconsideration requesting the Administrator to withdraw the amendment to Method 9. This petition has been evaluated, and EPA has decided to withdraw the amendment.

EFFECTIVE DATE: June 13, 1985.

ADDRESSES: *Docket.* Docket number A-81-03 contains information considered by EPA in developing the February 21, 1984, rulemaking published at 49 FR 6458 and the Petition for Reconsideration to which this notice is responding. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Shirley Tabler, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION:

I. Background

Standards of performance for metallic mineral processing plants were promulgated in the **Federal Register** on February 21, 1984 (49 FR 6458). The promulgated standards apply to new, modified, or reconstructed metallic mineral processing facilities for which construction was commenced after August 24, 1982. Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources," was also amended concurrently with the promulgation of the new source performance standard (NSPS). Under 40 CFR 60.11, Method 9 is used for determining compliance with all NSPS's that contain opacity limitations. Method 9 is contained in Appendix A of 40 CFR Part 60.

The purpose of the amendment to Method 9 was to provide more specificity on the application of Method 9 in determining the opacity of process fugitive emissions. During the data collection in support of the metallic minerals processing standard, observers trained in the use of Method 9 followed the method in observing visible process fugitive emissions. In response to comments on the proposed metallic minerals processing standard, EPA decided to provide clarification of the use of Method 9 for sources of this type. The amendment to Method 9 was considered to be a technical clarification, and, for this reason, EPA determined that it was not necessary to provide an opportunity for public comment.

II. Summary of AISI Petition for Reconsideration

On April 20, 1984, the AISI filed with the U.S. Court of Appeals (D.C. Circuit) a petition for review of the amendment to Reference Method 9. On May 24, 1984, AISI filed with EPA a petition for reconsideration of the amendment. The D.C. Circuit has stayed the litigation pending EPA action on the petition for reconsideration. The following discussion summarizes AISI's major arguments concerning the amendment to Method 9 in its petition for reconsideration.

A. The AISI asserted that prior to the February 21, 1984, amendment, Method 9 could be used only for measuring the opacity of emissions from stacks and similar ducted emission sources. Method 9 was promulgated on December 23, 1971, and the instructions in the method were phrased in terms of measuring the opacity of the plume of emissions from a stack. On November 12, 1974, EPA amended Method 9 to clarify procedures for determining the opacity of emissions from sources whose plumes contain condensed water vapor and to define better the position of the observer with respect to the plume. According to AISI, it had not been suggested prior to the February 21, 1984, amendment that Method 9 was capable of being used to measure the opacity of fugitive (i.e. nonducted) emission sources.

B. The AISI argued that the February 21 amendment to Method 9 expanded the applicability of the method to measurement of fugitive emissions from all sources, including nonducted emission sources. When the NSPS for metallic mineral processing plants was proposed, EPA indicated that it intended to measure fugitive emissions from those facilities and that observers collecting data had employed Method 9. The EPA did not indicate that the observers had made modifications in the method. After proposal, several commenters questioned the applicability of Method 9 to metallic minerals processing plant fugitive emissions and suggested that the fugitive emission limit in the NSPS be deleted. Under the amendment to Method 9, AISI argued that EPA has formally sanctioned the use of Method 9 for measuring fugitives not only from metallic mineral processing plants but also, for NSPS and State Implementation Plan (SIP) purposes, from a variety of other sources operating under various conditions.

C. The AISI also argued that EPA failed to provide adequate notice and opportunity for comment. The amendment was promulgated in conjunction with the final NSPS for the metallic minerals processing plants. The Agency gave no suggestion in the proposed NSPS that Method 9 might be amended. The AISI further argued that

Method 9 is used to determine compliance with opacity limits for sources subject to NSPS and SIP emission limitations, other than metallic minerals processing plants, under 40 CFR 60.11 and 40 CFR 52.12(c)(1). The AISI asserted that these sources had no notice and opportunity for comment on the amendment, that no plausible argument was made that notice and comment would have been impracticable, or contrary to the public interest with regard to the amendment to Method 9, and that the amendment to Method 9 cannot be considered to be sufficiently minor to make notice and comment unnecessary because the amendment extends the reach of Method 9 to provide for measurement of emissions from unducted emissions sources. In addition, AISI alleges that the Agency is inconsistent in its claim that the amendment to Method 9 is a minor change or clarification because in the preamble to the promulgated rule the Agency acknowledged that the method, as written, did not provide sufficient guidance for the measurement of opacity levels from process fugitive emission sources.

Finally, AISI argued that because EPA failed to satisfy the notice and comment requirements in promulgating the amendment to Method 9, the Agency should withdraw the Amendment and provide notice and an opportunity for public comment.

III. Response to AISI Petition for Reconsideration

The following discussion responds to AISI's major arguments regarding the amendment to Method 9.

A. In its petition, AISI claimed that, prior to the amendment, Method 9 could be used only for measuring the opacity of emissions from stacks and similar ducted emission sources. In the past, Method 9 has been consistently used to measure the opacity from fugitive sources, similar to those found in the metallic minerals processing industry, in several NSPS's. The NSPS in 40 CFR Part 60 that currently contain opacity limitations for fugitive emission sources are: Portland cement plants (Subpart F), asphalt concrete plants (Subpart I), secondary lead smelters (Subpart L), primary lead smelters (Subpart R), coal preparation plants (Subpart Y), ferroalloy production facilities (Subpart Z), electric arc furnaces at steel plants (Subpart AA), grain elevators (Subpart DD), phosphate rock plants (Subpart NN), and asphalt processing and asphalt roofing manufacturer (Subpart UU). These 10 NSPS's have been promulgated over a long period, dating back to the early 1970's. As previously stated, these NSPS's all contain fugitive emission sources similar to those found in the metallic minerals processing industry, and the opacity is measured, as specified in 40 CFR 60.11(b), by Method 9. For example, affected facilities such as conveyor transfer points; bulk loading and unloading systems; raw material and finished product storage; and truck, barge, ship, and railcar loading and unloading stations are examples of sources of fugitive emissions contained in these NSPS's that are measured by Method 9. Thus, it is clear that application of Method 9 to fugitive sources for NSPS purposes is a longstanding practice.

B. The foregoing discussion also clearly demonstrates the incorrectness of the petitioner's claim that the amendment to Method 9 expanded the applicability of the method to measurement of fugitive emissions from nonducted sources. As specified in the General Provisions for all standards of performance for stationary sources (40 CFR 60.11), Method 9 is the longstanding method for the determination of opacity. Method 9 does not differentiate between measurement of opacity from fugitive (nonducted) sources and measurement of opacity from stack (ducted) sources. The purpose of the amendment was to provide more detail on how the method should be applied. The amendment was not intended to, nor did it, expand the scope of the procedures or applicability of the method. It simply emphasized the positioning of observers in relation to the visible fugitive emissions being observed.

C. The Agency has, on several occasions, promulgated technical revisions to reference methods without providing public notice and comment. The decision as to whether to provide notice and an opportunity for comment is a case-by-case judgment. The AISI's assertion that EPA's statement in the rulemaking notice concerning the sufficiency of guidance in Method 9 amounts to an admission that an opportunity for notice and comment was required is simply a misreading of the notice, and the basis for dispensing with notice and comment. The AISI's assertion seems to suggest that the amendment here amounts to a substantive change to the method itself, which it clearly is not. The Agency intended to indicate in the notice that it would be appropriate, but not necessary, to include more precise specifications in Method 9 as to certain aspects of the positioning of an observer taking measurements of a fugitive emission source. The Agency decided to amend Method 9 to provide such specifications as a technical clarification. Such specifications did not change the general provisions of the method, but simply provided details on its precise application. This was viewed then, as now, as a ministerial act, with notice and comment unnecessary.

While EPA does not believe that notice and opportunity for comment was required with respect to the amendment to Method 9, EPA has decided to withdraw the amendment because of the outstanding petition for review, the issue of notice to interested parties since EPA does not believe that litigation of this issue would be an appropriate use of Agency or judicial resources, and also because EPA does not consider the amendment to Method 9 necessary. This withdrawal does not change the applicability of Method 9, including its application to fugitive emission sources.

As is demonstrated by past practice, Method 9 has, as a longstanding practice, been used for measurement of opacity of fugitive emissions prior to this amendment, and will continue to be sufficient for this purpose after withdrawal of the amendment.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify readily and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials [Section 307(d)(7)(A)].

B. Office of Management and Budget Reviews

1. *Paperwork Reduction Act.* There are no information collection requirements associated with this rulemaking.

2. Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This final rulemaking is not major because it withdraws an amendment to a test method and, therefore, results in none of the significant adverse economics effects described in the Order. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are included in Docket No.

A–81–03. This docket is available for public inspection at EPA's Central Docket Section that is listed under the **ADDRESSES** section of this notice.

C. Regulatory Flexibility Act Compliance

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Agency has reviewed the impact of this withdrawal of the amendment to Method 9 on small entities. This rulemaking action merely withdraws an amendment that was made to a test method. Such withdrawal has no effect on the scope or applicability of Method 9. I hereby certify that this rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: May 31, 1985.

Lee M. Thomas,

Administrator.

1. The authority for Part 60 continues to read:

Authority: 42 U.S.C. 7411, 7414, 7601A.

2. Appendix A of 40 CFR Part 60 is amended by removing paragraph 2.3.3 in Method 9 as follows:

Appendix A—Reference Methods

* * * * *

Method 9—Visual Determination of the Opacity Emissions from Stationary Sources

* * * * *

2. Procedures

* * * * *

2.3 * * *

2.3.3 [Removed]

* * * * *

[FR Doc. 85–13746 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6602

[I–15306, I–15307]

Idaho: Modification of Stock Driveway Withdrawals

Correction

In FR Doc. 85–10559, appearing on page 18487 in the issue of Wednesday, May 1, 1985, the date "April 24, 1985" should have accompanied the signature.

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

[Docket No. FEMA–FIA]

National Flood Insurance Program; Assistance to Private Sector Property Insurers; Correction

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule: correction.

SUMMARY: This correction relates to the final rule that was published in the **Federal Register** on April 25, 1985 (50 FR 16236–16261), regarding changes in the National Flood Insurance Program's assistance to private sector property insurers under the "Write-Your-Own" (WYO) Program.

Under the WYO Program, the Standard Flood Insurance Policy may be issued by private sector insurers signatory to Financial Assistance/Subsidy Arrangements (the Arrangement) entered into by and between the Federal Insurance Administrator and private sector insurers. The final rule set forth the Arrangement in Appendix A to 44 CFR Part 62, with Section B of Article III of the Arrangement containing a provision for the amount of operating and administrative expenses that insurers are entitled to withhold from their written premiums. On line 16 of Section B of Article III of the Arrangement, appearing in the left-hand column of page 16246, a date in parenthesis was inadvertently included. This parenthetical date, "(1982)", is not only unnecessary in light of the qualifier, "the latest available (as of March 15 of the prior Arrangement year)", appearing on lines 13 and 14 of this Section B, but would also be contradictory to this qualifier. Therefore, this parenthetical date, "(1982)", should be deleted.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472; telephone number (202) 646–3419.

Accordingly, in FR Doc. 85–9747, appearing on pages 16236–16261 in the issue of April 25, 1985, the following correction is made in Appendix A to 44 CFR Part 62:

Appendix A—[Corrected]

1. On page 16246 in the left-hand column, line 16 of Section B of Article III is corrected by removing the phrase, "(1982)".

Issued at: Washington, D.C.

Jeffrey S. Bragg,

Federal Insurance Administration.

[FR Doc. 85–14235 Filed 6–12–85; 8:45 am]

BILLING CODE 6718–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 533, 552 and Appendix B

[APD 2800.12 CHGE 10]

General Services Administration Acquisition Regulation; Protests, Disputes, and Appeals

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add Subpart 533.1, Protests, in order to supplement the Federal Acquisition Regulation (FAR) by providing agency procedures for processing protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA). This change cancels Acquisition Letter V–84–5 and incorporates the contents of Acquisition Circular AC–84–8 regarding the arrangement of documents in appeal files, into the regulation. The intended effect is to implement the protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369).

EFFECTIVE DATE: May 14, 1985.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4764.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1985, the General Services Administration published in the **Federal Register** (49 FR 10276) GSAR Notice No. 5–82g inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No public comments were received. Comments received from various organizational elements within GSA have been analyzed, reconciled, and incorporated, when appropriate, in this GSAR final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule has minimial impact outside of the agency. It establishes internal procedures for the processing of protest and appeals. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Ch. 5.

Government procurement.

1. The authority citation for 48 CFR, Parts 533 and 552 continue to read as follows:

Authority: 40 U.S.C 486(c).

2. The title of Part 533 is revised to read as follows:

PART 533—PROTESTS, DISPUTES, AND APPEALS

3. The table of contents for Part 533 is amended by removing section 533.014 and by adding new Subparts 533.1 and 533.2 and related sections to read as follows:

* * * * *

Subpart 533.1—Protests

Sec.
533.102 General.
533.103 Protest to the agency.
533.104 Protests to GAO.
533.105 Protests to GSBCA.
533.106 Solicitation provision.

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

Authority: 40 U.S.C. 486(c).

4. Section 533.000 is revised to read as follows:

533.000 Scope of part.

This part sets forth procedures for processing protests and for processing those contract disputes and appeals to be decided by the GSA Board of Contract Appeals.

533.014 [Redesignated as 533.214.]

5. Section 533.014 is redesignated as section 533.214.

6. Subpart 533.1 is added to read as follows:

Subpart 533.1—Protests

533.102 General.

(a) Personnel concerned with processing protests must also consult FAR Subpart 33.1.

(b) Solicitations shall instruct interested parties to deliver a copy of any protest filed with the General Accounting Office (GAO) or the GSA Board of Contract Appeals (GSBCA) to the contracting officer *and* the appropriate Assistant General Counsel, as follows:

Office of Information Resources Management
Assistant General Counsel (LK), General Services Administration, Washington, D.C. 20405
Public Buildings Service
Assistant General Counsel (LB), General Services Administration, Washington, D.C. 20405
Office of Federal Supply and Services
Assistant General Counsel (LP), General Services Administration, Washington, D.C. 20406
Federal Property Resources Services
Assistant General Counsel (LD), General Services Administration, Washington, D.C. 20405
Staff offices
Assistant General Counsel (LG), General Services Administration, Washington, D.C. 20405

(c) Except as indicated in this subpart, the Office of General Counsel (OGC) is responsible for all contacts with the GAO or GSBCA, potential contractors, attorneys, and any other persons, concerning protests of GSA contract actions filed with the Comptroller General or GSBCA.

533.103 Protests to the agency.

The contracting officer shall consider those protests which are filed 5–31–85 with the agency. The protestor shall be notified in writing of the contracting officer's final decision.

533.104 Protests to GAO.

(a) *General.* (1) In addition to the requirements of FAR 33.104(a)(2), the agency report shall contain the GAO protest number (GAO case file number), the solicitation or contract number, the full corporate name of the protesting organization and other firms involved, and a statement indicating whether the protest was filed before or after award. If the protest is filed after award, the report shall contain the identity of the awardee, the date of award, the contract number, the date and time of bid opening (including a statement when the date of bid opening was extended by subsequent amendments), the total number of bidders, a complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken), and any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identifed within the text of the position statement, alphabetically or numerically; e.g., Tab A, Exhibit 1, etc.)

(2) GAO protests must be handled on a priority basis. The appropriate Assistant General Counsel shall prepare a report for signature of the General Counsel responding to GAO protests. These reports are to be based upon a statement of fact and position prepared by the responsible contracting officer and approved by the contracting director. When requested by the appropriate Assistant General Counsel, the Regional Counsel shall prepare a statement of legal position analyzing the merits of a protest concerning a regional procurement.

(3) The following procedures shall be followed in handling protests:

(i) When a protest is received by the agency, the Assistant General Counsel (AGC) shall telephonically notify the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. If the contracting activity or Regional Counsel receives a copy of a protest before being notified thereof by the Assistant General Counsel, they shall immediately notify the appropriate Assistant General Counsel.

(ii) After receiving the formal protest, which has been filed with GAO, the AGC shall formally request a statement of fact and position from the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. The contracting officer shall immediately notify the affected bidders or offerors that a protest has been received.

(iii) The contracting officer shall notify assigned counsel and begin preparing a documented statement of fact and position immediately upon receiving a protest of notice thereof.

(iv) When completed, the statement of fact and position must be concurred in by the contracting director; and on

regional procurements by the Office of Regional Counsel. In appropriate cases, the Assistant General Counsel may request the Regional Counsel to prepare a legal position analyzing the merits of a protest against a regional procurement. In such cases, the contracting officer's statement of fact and position should be included as a referenced attachment thereto.

(v) The Regional Counsel's legal position, when requested, and the contracting officer's statement of fact and position, must be transmitted to the appropriate Assistant General Counsel, in triplicate. If other interested parties are involved, additional copies may be requested. The statement is due in the Office of the Assistant General Counsel no later than 10 workdays after the date on which the Assistant General Counsel originally received the protest from the GAO. This time period may be reduced if GAO invokes the express option. If a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate Assistant General Counsel shall promptly be notified, by telephone, or by reasons for the delay and of the additional time needed. Additional time may be granted if it is determined that the specific circumstances of the protest require a longer time. A request for extension is appropriate only if the factual or legal issues affecting the resolution of a protest are so complex that an adequate report cannot be prepared on a timely basis; the necessity of coordinating the report with other agencies, or with activities in a remote or a distant location, makes it impossible to prepare an adequate report on a timely basis; or other compelling circumstances prevent the timely preparation of an adequate report. Upon request of the Assistant General Counsel, the contracting officer shall confirm any oral requests for extensions in writing. The contracting director shall occur in the request and send a copy to the HCA. A request for an extension, which will delay submission of the agency's report to GAO beyond 25 workdays from GSA's original receipt of the protest, may only be granted by the GAO. The Assistant General Counsel will notify the Central Office contracting activity or Regional Counsel of the GAO's decision.

(vi) After submitting the statement to the Assistant General Counsel, the contracting officer or Regional Counsel shall advise the Assistant General Counsel of all subsequent developments which may have a bearing on the case.

(vii) All documents transmitted under these procedures must be sent by the fastest means possible.

(viii) In addition to the requirements of FAR 33.104(a)(5)(ii), a copy of any comments is sent to the Assistant General Counsel.

(4) The Office of General Counsel (OGC) shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC shall be responsible for promptly advising the GAO of any change in the designated officials.

(5) The format for notification required by FAR 33.104(a)(3) is as follows:

Name
Address

A protest concerning Solicitation No. ——— has been filed with the General Accounting Office (GAO).

The protest was filed by *(Insert the name and address of the protester, and the name of the person signing the protest.)* on *(Date)*.

Copies of the protest may be obtained from this office or from the protester at the address above.

You may submit your views and relevant information regarding the protest directly to the General Accounting Office within 7 calendar days of receipt of this notice. A copy of any submission to the GAO should be provided to this office.

Contracting Officer's signature.

(b) *Protests before award.* In accordance with FAR 33.104(b), the HCA may determine in writing that the supplies or services to be contracted for are urgently required, delivery or performance will be unduly delayed by failure to make award promptly, or a prompt award will otherwise be advantageous to the Government. A written determination and findings (D&F) must be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the Assistant General Counsel who will notify GAO of the agency's intended action.

(c) *Protests after award.* The procedures in paragraphs (a) and (b) shall apply to the handling of protests after award. Contract performance need not be suspended pending resolution of a protest unless suspension is required by FAR 33.104(c).

533.105 Protests to GSBCA.

(a) *Notification procedure.* After receiving of a protest, the contracting officer shall notify the following:

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegation official in the Office of Information Resources Management. When giving such notification, the contracting officer should follow these procedures:

(i) Avoid interpreting or characterizing the nature of the protest.

(ii) Use appropriate electronic means in order to ensure delivery to all such firms by the workday after the date of filing with the GSBCA. The Standard Form 14, Telegraphic Message, is to be used when sending notices through the GSA Communications Center. When preparing the Standard Form 14, the text should be double spaced, typed in upper case letters, and the priority "Immediate" assigned. Each address on the mailing list must contain a street address and a zip code. If available, a fax, teletype, or TWX number should also be included as the first line of each address.

(iii) Use the following format:

Name
Address

A protest concerning Solicitation No. ——— has been filed with the General Services Administration Board of Contract Appeals (GSBCA).

The protest was filed by (*Insert the name and address of the protester, and the name of the person signing the protest.*) on *(Date)*.

The protest has been purportedly filed pursuant to Section 2713 of the Competition in Contracting Act, Pub. L. 98–369.

Copies of the protest may be obtained from the Office of the Clerk of the GSBCA, 18th & F Streets NW, Washington, D.C. 20405, from the contracting officer, or from the protester at the address above.

Contracting officer's signature.

(2) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, must be forwarded to the agency by appropriate means to ensure next day delivery.

(3) Assigned counsel (e.g., LK, LB, LP, etc.). If the protester failed to provide the appropriate Assistant General Counsel a copy of the protest as required by the solicitation, a copy of the protest complaint, including all attachments, must be forwarded to the appropriate Assistant General Counsel by appropriate means to ensure next day delivery. Assigned counsel will work with the Assistant General Counsel, Claims and Litigation Division (LC) on all protests to the GSBCA.

(4) The Board, *through LC,* within 5 workdays after the date of filing with the GSBCA, that the notices described in paragraphs(a) (1) and (2) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice shall be provided.

(b) *Protest file.* In order to ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receipt of the protest by the contracting activity. The protest file shall be forwarded to LC by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. LC will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, LC will advise the contracting officer accordingly. The following rules govern the assembly of protest files:

(1) *Format.* Protest file exhibits are true, legible, and complete copies. They must be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and indicate which exhibits, if any, have been filed with the Board in camera (see (b)(3) below) or otherwise not served on every other party.

(2) *Contents.* In addition to the items required by FAR 33.105(b), the contents should include those items required by GSBCA Rule 4(a), when appropriate. (See 48 CFR 6101.4(a).)

(3) *Confidential, privileged, or proprietary information.* The protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary, or privileged. When such information is required to be included in the protest file, it is to be placed *only* in the copies going to the Board and to LC. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the number and identity of the offerors whose proposals are included in the copies of the protest file going to LC and the GSBCA, and should include an identifying statement; e.g., "proposals being considered for award."

(c) *Protest conference.* Within 6 working days of the filing of a protest, a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or trial is desired, and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(d) *Procedure following decision of the GSA Board of Contract Appeals.* (1) Upon a Board decision (oral or written) to suspend procurement authority pending a decision on the merits of a protest, the Contracting Officer, in conjunction with the appropriate Assistant General Counsel, shall comply with the suspension decision.

(2) If the Board suspends performance of a contract for automatic data processing goods and services, the Contracting Officer shall take immediate action to comply with the suspension decision (40 U.S.C. 759(h)(3)(B)). Such suspension will be effective as directed by the Board.

(3) If the Board revokes, suspends, or revises procurement authority after the award of a contract for ADP resources, the contracting officer shall consider the contract valid as to all goods or services delivered and accepted before such Board decision (40 U.S.C. 759(h)(6)(B)).

533.106 Solicitation provision.

The contracting officer shall insert the provision at GSAR 552.233–2, Service of Protest (May 1985) (Deviation FAR 52.233–2), in all solicitations for other than small purchases.

7. Subpart 533.2 is added to read as follows:

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

The contracting officer shall insert the clause at GSAR 552.233–70, Disputes (Utility Contract), in solicitations and contracts for utility services. This clause supplements the Disputes clause at FAR 52.233–1.

8. Section 533.7001 is revised to read as follows:

533.7001 Rules of the GSA Board of Contract Appeals.

The Rules of the GSA Board of Contract Appeals (GSA Order BCA 2806.1), which were issued November 30, 1984, by the Chief Judge and Chairman of the Board, appear in their entirety in the Code of Federal Regulations, Title 48, Chapter 61.

9. Section 533.7101 is revised to reads as follows:

533.7101 Notice of appeal.

(a) Notices of appeal are to be addressed to the GSA Board of Contract Appeals along with a copy to the contracting officer. Final decisions must be appealed within 90 calendar days from the date the decision of the contracting officer is received. Any request for an extension of the 90-day appeal period will be denied.

(b) If the notice of appeal was mailed or otherwise submitted to the contracting officer in an untimely manner, a separate letter, signed by the contracting director, shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of the contracting officer's final decision, and shall be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

10. Section 533.7102 is revised to read as follows:

533.7102 Contents of notices of appeal.

A notice of appeal must be in writing and should indicate that an appeal is thereby intended, should indentify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal shall be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

11. Section 533.7103 is amended to revise paragraph (a) to read as follows:

533.7103 Appeal files.

(a) Appeal files must be prepared in accordance with this section and forwarded, after concurrence by assigned counsel, to LC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed unless LC advises that the Board requires a shorter period under its small claims procedures. In the event the time for submission of the appeal file can not be met, the contracting officer shall submit in writing a full explanation and a request for additional time to the Assistant General Counsel, Claims and

Litigation Division (LC), before expiration of the designated time.

* * * * *

12. Section 533.7103–1 is amended by revising paragraph (a), (b) (1) and (2), and (c) to read as follows:

533.7103–1 Preparation of the appeal file.

(a) *General.* Appeal files must be prepared in quadruplicate. Each file is identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the document included in the first appeal file, but shall make reference to the appeal file which contained such documents, including the docket and item numbers. However, if changes to such documents occur subsequent to preparation of the original file, these changes must be included, appropriately identified, in the later appeal file. Such files must also include any documents pertinent to the later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file must be assembled by using a two-piece red pressboard binder 11 by 8½ inches punched with a 3-inch capacity fastener (NSN 7510–00–582–4201). A gummed label (NSN 7510–00–264–5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files must not be more than 1 inch thick. If the file will be more than 1 inch thick, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

* * * * *

(c) *Arrangement of documents.* (1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number, the date and a brief description of the document and shall indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. The exhibits shall be arranged in chronological order, earliest document first (as exhibit 1), and be separated by tabs for identification. For example:

	Exhibit	Date
Copy of basic contract, including referenced terms and conditions and any amendments	1	5/20/84
Notice of award	2	5/20/84
Notice to proceed and facsimile of Post Office receipt	3	6/5/84
Contractor's request for final decision or other documents of claim in response to which the decision was issued	4	8/5/84
Contracting officer's final decision letter applicable to the dispute and facsimile of Post Office receipt	5	8/25/84
Notice of Appeal with attachment, if any	6	9/10/84
Board of Contract Appeals acknowledgement of contractor's Notice of Appeal	7	9/15/84

(2) In addition to the exhibits listed in (c)(1) above, other pertinent exhibits, such as the following, should be included and exhibited as applicable, in chronological order:

(i) Copy of the repurchase contract, including referenced terms and conditions.

(ii) Copies of specifications/drawings applicable to the dispute.

(iii) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(iv) Copy of letter assessment, including worksheet showing calculation of excess costs and/or other damages including administrative costs.

(v) Copies of defaulted purchase/delivery orders.

(vi) Copies of purchase/delivery orders issued under the repurchase contract.

(vii) Proof of payment and a detailed disbursement listing, annotated and certified, if applicable.

Note.—The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing, annotated with the check number and date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finance division official whose title and date of signature will also be shown.

(viii) Evidence of certification of the claim or claims, as applicable.

(ix) All other correspondence between the Government and the contractor relevant to the appeal.

(x) All documents and other physical evidence on which the contracting officer relied in making a decision.

13. Section 533.7103–2 is amended by revising paragraph (a) and (b) to read as follows:

533.7103–2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to LC by a transmittal letter from the contracting director. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which must be concurred in by assigned counsel who shall also prepare and attach a statement of legal position. In addition, a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision must be prepared. A point of contact must be given to LC; name of individual, position, title, and telephone number.

(b) The contracting officer shall retain one copy of the appeal file.

* * * * *

14. Section 533.7104 is revised to read as follows:

533.7104 The contracting officer's memorandum of position.

The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position is submitted to LC simultaneously with the appeal file, but as a separate document; i.e., it will not be included as part of the appeal file or included in the index. Although no particular form is prescribed, the statement must identify the contract, state the nature of the contractor's claim, cite pertinent portions of the contract, state the contracting officer's decision with citations to pertinent contract provisions and a supporting explanation, and set out any new facts which may have developed since the decision was made. The contracting officer shall sign the memorandum of position.

15. Section 533.7105 is amended by revising paragraph (a), (b), and (d) to read as follows:

533.7105 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board will be promptly implemented. However, it must be recognized that the contractor may decide to appeal a Board decision in the United States Court of Appeals for the Federal Circuit, or the United States Claims Court, as appropriate. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision. If further appeal of decision or a motion for reconsideration of a decision is contemplated, the implementation of the decision may be postponed; if the issue is over quantum, however, consideration should be made to making payment of the undisputed amount to minimize interest to be paid the contractor.

(b) The contracting officer need not take any further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Financial Management Division, Office of Finance (BCF), or regional counterpart, as appropriate, will normally pursue the necessary collection.) Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

* * * * *

(d) In appeals brought under the Contract Disputes Act of 1978, when the Board does not uphold the contracting officer's original decision and the Board's decision awards the contractor an amount of money, and LC informs the contracting officer that the Government will not move for reconsideration of the Board's decision or appeal it to the United States Court of Appeals for the Federal Circuit, the contracting officer must complete the Certificate of Finality attached to the copy of the Board's decision and return it to the Board. The Board will forward the Certificate of Finality, completed by both parties, and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the contractor.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The table of contents for Part 552 is amended by adding section 552.233–2 and revising 552.233–70 as set forth below:

* * * * *

Sec.

552.233–2 Service of protests.

522.233–70 Disputes (Utility Contract).

* * * * *

Authority: 40 U.S.C. 486(c).

17. Section 552.233–2 is added to read as follows:

552.233–2 Service of protest.

As prescribed in GSAR 533.106, insert the following provision:

Service of Protest (May 1985) (Deviation FAR 52.233–2)

A copy of any protest, as defined in FAR 33.101, that is filed within the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer, ————*, and the Assistant General Counsel ————**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within one day of filing a protest with the GAO.

(End of Provision)

*Insert the address of Contracting Officer or refer to the number of the block on the Standard Form 33 or 1442, etc., where the address of the Contracting Office is identified.

**Insert the full title and address of the appropriate Assistant General Counsel. (See § 533.102(b).)

18. Section 552.233–70 is amended to revise the introductory paragraph to read as follows:

552.233–70 Disputes (utility contract).

As prescribed in GSAR 533.214, insert the following clause:

* * * * *

19. Section 552.236–70 is amended to revise the introductory paragraph to read as follows:

552.236–70 Definitions.

As prescribed in GSAR 536.570–1, insert the following :

* * * * *

20. Section 552.236–71 is amended to revise the introductory paragraph to read as follows:

552.236–71 Authorities and limitations.

As prescribed in GSAR 536.570–2, insert the following :

* * * * *

21. Section 552.236–72 is amended to revise the introductory paragraph to read as follows:

552.236–72 Specialist.

As prescribed in GSAR 536.570–3, insert the following clause:

* * * * *

Appendix B. [Removed and Reserved]

22. Appendix B of the regulation is removed in its entirety and reserved.

Dated: May 14, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–14308 Filed 6–12–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155–4175]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of modification of fishing restrictions.

SUMMARY: NOAA modifies that portion of the **Federal Register** notice which announced fishing restrictions on Pacific ocean perch caught in ocean waters off Washington, Oregon, and California. Pacific ocean perch are regulated under the Pacific Coast Groundfish Fishery Management Plan (FMP). This modification provides consistent regulations between State and Federal fishery agencies.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; or Mr. E.C. Fullerton Director, Southwest Region, NMFS), 213–548–2575.

SUPPLEMENTARY INFORMATION: At its April meeting, the Pacific Fishery Management Council (Council) recommended that the trip limit for Pacific ocean perch taken in the Pacific coast groundfish fishery should be 20 percent (by weight) of all fish on board, or 5,000 pounds, whichever is less. This action was accepted by the Secretary of Commerce (Secretary) and published in the **Federal Register** (50 FR 18668, May 2, 1985).

The Council also recommended that landings of Pacific ocean perch up to 1,000 pounds per trip would be unrestricted, regardless of the percentage of these fish on board. This tolerance was suggested so that vessels unexpectedly forced into port (by breakdowns or bad weather) could offload their catch without violating the percentage limit for Pacific ocean perch as long as no more than 1,000 pounds of that species was on board. Otherwise, fishermen forced to shore prematurely might have to discard Pacific ocean perch in order to comply with the 20 percent limit.

This 1,000 pound tolerance was omitted from the State of Washington and Federal regulations, but was included by the State of Oregon. The State of Washington has agreed to adopt this tolerance.

Secretarial Action

The Secretary concurs with the Council's recommendation and revises the trip limit for Pacific ocean perch (50 FR 18668, May 2, 1985) as follows—

(1) For Pacific ocean perch caught north of Cape Blanco, Oregon (42°50' N. latitude), no more than 5,000 pounds or 20 percent (in round weights) of all fish on board, whichever is less, may be taken and retained, or landed, per vessel per fishing trip, with the following exception. Up to 1,000 pounds (round weight) of Pacific ocean perch may be taken and retained or landed, per vessel per fishing trip, without regard to the 20 percent limitation.

(2) These restrictions apply to all Pacific ocean perch taken and retained in ocean water (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Classification

The Director, Northwest Region, has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the FMP, the Magnuson Fishery Conservation and Management Act, and other applicable law.

There will be no change in environmental impact as a result of this notice from that determined in the environmental impact statement prepared for the FMP.

A regulatory impact review and regulatory flexibility analysis prepared as part of the FMP described the estimated ranges of impacts and the effects on small businesses from its implementation. There will be no change in impacts from those previously determined as a result of this notice.

This is a minor modification of a prior notice which relieves a restriction and as such is not a rulemaking requiring review under Executive Order 12291.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: June 7, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–14255 Filed 6–10–85; 2:48 p.m.]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 114
Thursday, June 13, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of June through August 1985 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The association claims that the action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

DATE: Comments are due June 20, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered for June through August 1985:

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

All persons who want to sent written data, views or arguments about the proposed suspension should sent two copies to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include June 1985 in the suspension period if this is found necessary.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for the months of June through August 1985 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants.

Michigan Milk Producers Association (MMPA), which represents producers supplying the market, requested the suspension.

MMPA expressed concern that the market is in an unsettled state for several reasons, which makes it unlikely that it will be able to meet the 50 percent requirement. The following items were cited as reasons why a suspension is requested:

—Milk production in the Southern Michigan marketing area has substantially increased since the termination of the milk diversion program on March 31, 1985.
—MMPA processes most of the surplus milk for the market into butter, condensed milk and milk powder.
—MMPA anticipates a reduction in the Class I utilization for this market to as low as 35–40 percent during June through August.
—The relaxation of the pooling requirements should not attract additional milk supplies to the market because blend prices in nearby markets are substantially higher.

The association said that the suspension is needed to avoid the inefficient handling of milk merely to assure pooling of supply plants and to ensure that dairy farmers who have been historically associated with the Southern Michigan market will continue to share in the fluid milk sales of the market.

Accordingly, MMPA requests the suspension of the aforesaid provisions for the months of June through August 1985.

List of Subjects in 7 CFR Part 1040

Milk Marketing Order, Milk, Dairy Products.

The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, D.C., on: June 7, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85–14232 Filed 6–12–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 5, 35 and 385

[Docket No. RM78–11–000, et al. Order No. 424]

Termination of Rulemaking Dockets; Institute for Public Interest Representation, et al.

Issued: June 7, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Withdrawal of proposed rules and denial of petitions for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating four rulemaking dockets. In particular, the Commission is withdrawing two Notices of Proposed Rulemaking (NOPRs) issued in Docket Nos. RM79–41–000 and RM82–12–000, and denying two petitions for rulemaking issued in Docket Nos. RM78–11–000 and RM83–59–000. The NOPRs proposed changes that are now either unnecessary or inconsistent with Commission policy. The petitions fail to state a convincing case for revising current Commission policy. The bases for these actions are explained in detail by individual docket number in the order.

DATE: This rule will be effective June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Adelia S. Maddox, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8540.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

In the matter of Institute for Public Interest Representation, Docket No. RM78–11–000; Affiliate Purchases; Federal Power Act Fuel Adjustments, RM79–41–000; Equal Access to Justice, RM82–12–000; New England Environmental Mediation Center, RM83–59–000.

Issued: June 7, 1985.

The Federal Energy Regulatory Commission (Commission) is terminating four rulemaking dockets. In particular, the Commission is withdrawing two Notices of Proposed Rulemaking (NOPRs) because a final rule in those proceedings is either unnecessary or inconsistent with Commission policy. In addition, the Commission is denying two petitions for rulemaking because the petitioners fail to state a convincing case for revising current Commission policy.

I. Withdrawal of Notices of Proposed Rulemakings

RM82–12–000: Equal Access to Justice Act

The Commission is withdrawing its proposed regulations[1] designed to implement the Equal Access to Justice Act, 5 U.S.C. 504 (1981) (EAJA). The expiration of the EAJA has eliminated the need for any regulations.

Section 504 provided that a Federal agency must award attorney's fees and expenses to an eligible party that prevails over the agency in an "adversary adjudication," unless the agency's position was substantially justified or special circumstances make an upward unjust. 5 U.S.C. 504(a)(1).[2] Since authorization of the EAJA expired on September 30, 1984, the Commission is withdrawing the proposed regulations designed to implement it as they are now unnecessary.

The Commission notes that according to the terms of section 203(c) of the EAJA, the requirements of the section continue to apply through final disposition of any adversary adjudication initiated before October 1, 1984. The number of pending Commission proceedings that will be subject to this provision is limited because the vast majority of Commission proceedings are not "adversary adjudications." In those instances where the provision continues to apply, the case-by-case approach that has been used by the Commission to comply with EAJA in the past will be adequate. The Commission is committed to meet fully its remaining obligations under the EAJA. However, the number of cases in which it may still apply does not warrant expending the resources necessary to promulgate a rule implementing a statute which has expired.

It is not clear at this time whether the EAJA will be reauthorized.[3] If it is, the Commission will then consider whatever regulations may be necessary to implement the provisions of the new statute.

RM79–41–000: Affiliate Purchases; Federal Power Act Fuel Adjustments

In 1979, the Commission proposed to amend its regulations under the Federal Power Act, relating to fuel cost adjustment clauses.[4]

First, it proposed to amend § 35.14(a)(7) to require utilities to file, as rate schedules, all contracts for fuel purchases from company-owned or company-controlled sources, regardless of whether the price is subject to the jurisdiction of a regulatory body. Section 35.14(a)(7) of the Commission's current regulations provides, in part, that if a regulatory body has jurisdiction over the price of fuel purchased by a utility from an affiliated source, the cost of such fuel shall be deemed to be reasonable, and may be included in the fuel cost adjustment clause. However, if there is no jurisdictional regulatory body overseeing the contracts of fuel purchases from an affiliated source, the utility must file the contracts with the Commission when the utility files its fuel cost adjustment clause. The amendment to § 35.14(a)(7) was proposed to effect the Commission's cost-based policy, which required Commission review of these contracts, regardless of review elsewhere, to determine the factors that went into the price.

Subsequent to the issuance of this NOPR, the Commission, in Option No. 133, affirmed an initial decision which approved a market-price test of reasonableness of the utility's cost of coal purchased from its partially-owned subsidiary.[5] With the departure in Commission policy from a cost-based standard of reasonableness for affiliate transactions to a test based on a market-price standard, the filing of affiliate contracts as rate schedules to determine the reasonableness of a specific cost item is no longer necessary. Therefore, the proposed amendment to § 35.14(a)(7), generically requiring Commission review as rate schedules of contracts subject to review by other regulatory bodies, is also unnecessary. Insofar as such contracts are relevant to a case-specific market price determination, they will be sufficiently accessible through the discovery process.

Secondly, the Commission proposed to amend § 35.14(a)(6) to clarify that certain cost items included in the invoice price of fuel purchased from company-owned or company-controlled sources are inappropriate for automatic flow through under the fuel cost adjustment clause, and therefore will be

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[1] Rules Implementing Equal Access to Justice Act, 47 FR 4313 (Jan. 29, 1982) (Notice of Proposed Rulemaking).

[2] An "adversary adjudication" is an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for granting or renewing a license. 5 U.S.C. 504(b)(1)(C).

[3] Last year, President Reagan vetoed a bill that would have reauthorized the EAJA in an amended form. At that time, he issued a memorandum indicating that he was committed to the principles of equal access to justice and looked forward to approving an acceptable reauthorization bill. Memorandum of Disapproval of H.R. 5479 (November 8, 1984).

[4] Revision of Fuel Cost Adjustment Clause Regulations Relating to Fuel Purchases from Company-Owned or Company-Controlled Sources, 44 FR 28,683 (May 16, 1979), FERC Stat. & Reg. (Proposed Reg.) ¶ 32,022.

[5] Public Service Company of New Mexico, 17 FERC ¶ 61,123 (Nov. 9, 1981), Docket No. ER78–338, *affirming* Public Service Company of New Mexico: Phase II, 13 FERC ¶ 63,041 (Nov. 28, 1980), and Phase I, 11 FERC ¶ 63,002 (Apr. 2, 1980).

excluded from any fuel cost adjustment clause calculation. The proposed amendment would codify the Commission's policy enunciated in *Southern California Edison Company*, issued on April 26, 1978.[6] The Commission will continue to disallow such cost items, but it is not necessary to amend § 35.14(a)(6) to do so. These items can currently be identified on a case-by-case basis or in the Commission's audit of company records.

Since the proposed changes are not necessary or do not conform to current Commission policy, they are being withdrawn.

II. Disposition of Petitions for Rulemaking

RM82–59–000: New England Environmental Mediation Center

On March 10, 1983, the New England Environmental Mediation Center petitioned the Commission to establish mediation procedures for hydroelectric licensing procedures. Petitioners argue that these procedures will help resolve conflicts between applicants and advocates of competing waterway uses. Petitioners suggest, in the alternative, that the Commission issue a Notice of Inquiry to examine the issues involved in mediation and its usefulness at the Commission.

The Commission agrees that mediation on environmental issues among interested parties in a license application proceeding may expedite resolution of the controversy. However, the Commission believes that mediation among the parties should begin before the applicant and those contesting use of the waterway come before the Commission. The Commission's procedures for handling a license application are designed to build a consensus on how best to accommodate competing uses of a waterway. These procedures, as set forth in Part 4 of the Commission's regulations, encourage negotiation before and after an application is filed. Thus, the parties to a proceeding have sufficient opportunity to reach agreement on the issues before the Commission decides the application.

For example, the Commission's regulations permit Commission staff to advise potential licensees on the requirements for filing an application. 18 CFR 4.32(g) (1985). In fact, staff routinely provides guidance on the sufficiency of an application for a preliminary permit or a license. The Commission's regulations also require an applicant, before filing with the Commission, to consult with all Federal, state and local resource agencies on the environmental effects. This ensures that the applicant has conformed with applicable law. *See, e.g.*, 18 CFR 4.38 (1985). Additionally, after a license application is filed, Commission staff conducts technical reviews and, in some cases, holds conferences with applicants and interested intervenors to resolve any disputes among the parties. As a result of these processes, the Commission receives the benefit of negotiations and discussions among the interested parties regarding the proposal's environmental and natural resource implications. The Commission agrees with the petitioner that a formal mediation process will provide the parties with another opportunity to air their concerns. However, as discussed above, this additional step is unnecessary.

The Commission also believes that a formal mediation process is an inappropriate substitute for its procedures. The Commission is required by statute to determine whether a project is best adapted to the improvement or development of the waterway and in the public interest. Federal Power Act section 10(a), 16 U.S.C. 803(e) (1976). The Commission therefore must consider all interests affected by development of a hydroelectric project, and believes that the proposal of the petitioner, by focusing on the actual disputants, will instead emphasize the narrow interests of the parties to the mediation.

Because the Commission believes its procedures for handling disputed license applications are adequate, the Commission is denying the petition from the New England Environmental Mediation Center.

RM78–11–000: Institute for Public Interest Representation

On April 28, 1978, the Institute for Public Interest Representation petitioned the Commission to promulgate regulations relating to communications between outside parties and Commission personnel during informal rulemaking proceedings. The rule sought by the petitioners would require the Commission to establish, after issuance of a NOPR, a file for public inspection to include: (1) All subsequent communications concerning the NOPR, including summary records of oral communications and those relating to routine requests for information or other procedural matters; and (2) all communications concerning the merits of the subject matter of the NOPR which occurred prior to issuance but after Commission staff should have had reason to believe a proposed rule was forthcoming.

The Administrative Procedure Act[7] details specific instances in which *ex parte* communications are prohibited. Such prohibitions only apply to adjudications and formal rulemakings that must be decided "on the record" after an opportunity for an evidentiary hearing.[8] These *ex parte* prohibitions do not apply to informal rulemakings in section 553. Although courts have extended the *ex parte* prohibitions on due process grounds to informal rulemakings that resolve conflicting claims to valuable government privileges, *e.g. Home Box Office, Inc.* v. *FCC*, 567 F.2d 9, 54 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977); *Action for Children's Television* v. *FCC*, 564 F.2d 458, 475 (D.C. Cir. 1977), the more recent decisions, issued since the petition was filed, have taken the view that it is neither necessary nor desirable for regulators engaged in general policymaking to be isolated from industry, other affected groups, Congress or members of the general public. *See Sierra Club.* v. *Costle*, 657 F.2d 298, 400–401 (D.C. Cir. 1981).

The Commission is mindful of the need to protect the integrity of the regulatory process, particularly after the public comment period has ended; however, the Commission does not believe that the rigid procedures proposed are appropriate for the informal rulemaking process. Instead, its current procedures are much more conducive to successfully implementing its organic statutes.

Open and flexible communication procedures are necessary in an informal rulemaking proceeding, and the Commission is reluctant to impose a formal, restrictive communication procedure between it and participants through a rule such as the petitioners recommend. The Commission prefers an approach that is more open and flexible yet maintains procedural fairness.

The Commission maintains public files for all rulemaking proceedings. When a document is received, it is placed in the public file for that proceeding and is available to the public for inspection and comment through the Commission's Division of Public

[6] Southern California Edison Company, 3 FERC ¶ 61,075, 61,210 (1978).

[7] 5 U.S.C. 551–706 (1982).

[8] *See* 5 U.S.C. 557(d)(1), 557(a), 556(a), 554(a), and 553(c) (1982).

Information. In addition, the Commission believes it is advisable to make a notation in the docket whenever a significant oral communication relating to a pending rulemaking is received from an outside party.

(Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12,009, 3 CFR 142 (1978); Federal Power Act, as amended, 16 U.S.C. 791–825 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982), Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).)

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Pipeline, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission withdraws the Notices of Proposed Rulemaking in Docket Nos. Rm82–12–000 and RM79–41–000 and denies the petitions for rulemaking filed in Docket Nos. RM83–59–000 and RM78–11–000. These dockets are being terminated as of the date of issuance of this order.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14214 Filed 6–12–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 85–13376 beginning on page 24234 in the issue of Monday, June 10, 1985, make the following correction: On page 24235, in the first column, in the **Authority** citation, the second line should read "4204(a)(6)."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Public Comment and Opportunity for Public Hearing on a Modification to the Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is reopening the public comment period on the substantive adequacy of a revised program amendment resubmitted by the State of Arkansas as a modification to the Arkansas Permanent Regulatory Program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment would establish a program for the training, examination and certification of blasters. The amendment would also amend performance standards for the use of explosives.

This notice sets forth the times and locations that the Arkansas program and proposed amendment are available for public inspection and the comment period during which interested persons may submit written comments on the proposed program elements.

DATE: Comments not received on or before 4:00 p.m., July 15, 1985 will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745–7927

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Arkansas program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the Tulsa Field Office listed below.

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103

Office of Surface Mining, Reclamation and Enforcement, 1100 "L" Street, NW., Washington, D.C. 20240

Department of Pollution Control and Ecology, State of Arkansas, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after July 15, 1985, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

II. Background on the Arkansas State Program

Concerning the proposed blasters certification program, on March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all person who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rules at 30 CFR Part 850, whichever is later.

On December 17, 1984, Arkansas submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Arkansas regulatory program which would establish a blaster training and certification program and would amend performance standards for the use of of explosives.

On March 7, 1985, OSM requested public comment on the proposed program amendment [50 FR 9286]. No public comments were received during the comment period.

On April 4, 1985, OSM sent a letter (AR–283) to the State of Arkansas' Department of Pollution Control and Ecology informing the State that OSM had reviewed the amendments and had identified certian deficiencies. The State of Arkansas was provided the opportunity to respond within 30 days to address OSM's concerns.

On May 10, 1985, Arkansas submitted to OSM revised proposed program amendments for blaster certification program and performance standards for the use of explosives (AR–289). In the amendment, Arkansas is proposing changes at 816.61–S and 816.61–U regarding the use of explosives and Part 850 regarding establishing the requirements and procedures for blaster training, examination, and certification program.

Therefore, OSM is seeking comment on the States proposed amendments to establish a program for the training, examination and certification of blasters, and to amend performance standards for the use of explosives.

If the Director determines that the proposal modifications are in accordance with SMCRA and no less effective than the Federal regulations, the amendment will become part of the Arkansas permanent regulatory program.

III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption for sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs.

Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior had determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.))

Dated: June 6, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–14248 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85–31]

Regatta; National Sweepstakes Regatta, Redbank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the National Sweepstakes Regatta. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be received on or before July 15, 1985.

ADDRESS: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt D. R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting written comments should include their names and addresses, identify this notice (CGD3 85–31) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rule making process.

Drafting Information

The drafters of this notice are Lt D. R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The annual National Sweepstakes Regatta is a powerboat race event to be held on the Navesink River. This event is sponsored by the National Sweepstakes Regatta Association of Red Bank, N.J. This two day event is traditionally held each year on the third weekend (Saturday and Sunday) in August. Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Each year the Coast Guard will provide the public full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. It is sanctioned by the American Powerboat Association and is well known to the boaters and residents of this area. The race track oval will be approximately 1.25 miles in length. Races will be held on both days on a section of the Navesink River just east of the N.J. Route 35 Bridge. Race heats will run both days from approximately 10:00 a.m. to 6:00 p.m. with up to 100 inboard/hydroplane powerboats participating each day. The sponsor will place several temporary buoys on the river to mark both the race course and spectator areas. There will be 2 race committee boats anchored within the oval course, one on each end with turn judges and press onboard. The U.S. Coast Guard will assist the sponsor and local authorities in providing a safety patrol during this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement and establish spectator areas prior to and during the races. Vessels desiring to transit the area will be given an opportunity to do so several times during each day in between race heats as directed by the Coast Guard Patrol Commander.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under

Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. The Coast Guard shall ensure that the regulated area is opened periodically to allow transiting vessels to pass through without undue delay.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.307 to read as follows:

§ 100.307 National Sweepstakes Regatta, Redbank, N.J.

(a) *Regulated Area.* That portion of the Navesink River in Redbank, N.J. between the N.J. Route 35 Bridge and a line running across the Navesink River connecting Guyon and Lewis Points.

(b) *Effective Period.* This regulation will be effective from 8:00 a.m. to 6:00 p.m. on both August 17 and 18, 1985, and thereafter annually on the third weekend (Saturday and Sunday) in August unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** notice.

(c) *Special Local Regulations.* (1) The regulated area shall be intermittently closed to all vessel traffic during the effective period, except as may be allowed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area while it is closed unless participating in or authorized by the event sponsor or Coast Guard patrol personnel.

(3) Vessels awaiting passage through the regulated area shall be held in unmarked anchorages in the area to the east of the N.J. Route 35 Bridge and in the vicinity of Lewis Point.

(4) No transiting vessels shall be allowed out onto or across the regulated area without Coast Guard escort.

(5) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Spectator vessels shall be held behind (north of) a line of buoys provided by the sponsor running approximately west to east starting .25 miles east of the N.J. Route 35 Bridge.

(ii) A second spectator area shall be marked by a curved line of sponsor provided buoys centered on a line drawn approximately due south from Jones Point, running through Can Buoy # 21. All spectator craft shall stay to the east of this string of buoys.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 5, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-14266 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-10-FRL 2839-3]

Designation of Areas for Air Quality Planning Purposes, Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Correction.

SUMMARY: In FR Docket 85-9343 which was published on April 18, 1985 (50 FR 15463), the Grants Pass, Oregon, central business district which is proposed to be redesignated as a nonattainment area for carbon monoxide is corrected to read as follows:

beginning at the intersection of B Street and Fifth Street, extending easterly along B Street to Eighth Street; thence southerly along Eighth Street to M Street; thence westerly along M Street to Fifth Street; thence northerly along Fifth Street to the starting point.

ADDRESS: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue M/S 532, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue M/S 532, Seattle, Washington 98101, Telephone: (206) 442-4233, FTS: 399-4233.

Dated: May 14, 1985.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 85-14327 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 123

[OW-7-FRL-2850-7]

Kansas Application To Extend Its NPDES Program to Federal Facilities Located Within the State

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of application, public comment period on program approval.

SUMMARY: On June 28, 1974, the Environmental Protection Agency (EPA) approved a request by the State of Kansas to administer the National Pollutant Discharge Elimination System (NPDES), under section 402 of the Clean Water Act. Kansas has now applied to EPA to extend its authority to

administer the NPDES program to federal facilities located in the State.

The application received from Kansas is complete and is now available for inspection and copying. Public comments are requested, and a public hearing will be held if there is sufficient public interest.

DATES: Comments and requests for a public hearing must be received on or before July 15, 1985.

ADDRESSES: Comments and requests for a public hearing should be addressed to Larry B. Ferguson, Chief, Water Compliance Branch (WACM), U.S. EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2817, Attention Ralph Summers.

FOR FURTHER INFORMATION CONTACT: Ralph Summers, U.S. EPA, Water Compliance Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2817.

SUPPLEMENTARY INFORMATION: In 1977, Congress amended section 313 of the Clean Water Act [33 U.S.C. 1251, et. seq.] to authorize states to regulate federally owned or operated facilities under their water pollution control programs. Prior to the amendments, states, including those authorized pursuant to section 402(b) of the Clean Water Act to participate in the NPDES program, were precluded from regulating federal facilities. Therefore, EPA, in approving state programs under section 402(b), reserved the authority to issue NPDES permits to federal facilities. Since the passage of the 1977 amendments, EPA has been approving extensions of authority to administer the NPDES program to federal facilities.

The Kansas federal facilities submission contains a letter from the State requesting approval, an Attorney General's statement, a copy of Kansas statutes providing authority to carry out the program, and a copy of the Memorandum of Agreement (MOA) executed between the State Director of the Kansas Department of Health and Environment and the Regional Administrator, EPA Region VII. EPA has determined that the existing MOA does not need to be changed in order for Kansas to assume authority over federal facilities.

After the close of the public comment period and after the public hearing, if any, the Regional Administrator, with the concurrence of the Assistant Administrator for Water and the Associate General Counsel for Water, will decide whether to approve or disapprove Kansas' request for authority to regulate federal facilities.

The decision to approve or disapprove Kansas' request for extension of its NPDES authority to federal facilities will be based upon the requirements of sections 313 and 402 of the Clean Water Act and 40 CFR Part 123. If Kansas' request for authority is approved, the Regional Administrator will so notify the State. Notice will be published in the **Federal Register** and, as of the date of approval, EPA will suspend issuance of NPDES permits to federal facilities in Kansas. The State's program will implement Federal law and operate in lieu of the EPA-administered program. However, as with the basic NPDES program, EPA will retain the right, among other things, to object to NPDES permits proposed to be issued by the state to federal facilities, and to take enforcement actions for violations. If the Regional Administrator dissapproves the Kansas request for federal facilities authority, he will notify the State of the reasons for disapproval and of any revisions or modifications which are necessary to obtain approval.

The Kansas federal facilities submission may be reviewed by the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas or at the Environmental Protection Agency office in Kansas City, Kansas, at the address appearing earlier in this notice. Copies of the submission may also be obtained (at a cost of 20 cents/page) by appearing in person at either of those offices, or by writing to EPA or the Kansas Department of Health and Environment at the addresses listed.

All comments received by EPA, Region VII by July 15, 1985, or, presented at the public hearing, if any, will be considered by EPA before taking final action on the Kansas' request for federal facilities authority.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Dated: May 31, 1985.

Morris Kay,

Regional Administrator, Environmental Protection Agency, Region VII.

[FR Doc. 85–14272 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

FIRMR Regulation on Obsolescence and Reuse of Federal Automatic Data Processing Equipment

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed Federal Information Resources Management Regulation (FIRMR) that addresses the issue of obsolescence in the Federal automatic data processing equipment (ADPE) inventory and revises provisions regarding reuse of obsolescent and obsolete ADPE within the Government. The regulation also establishes a special type of compatibility limited requirement for certain situations, called an equipment technology update. The purpose is to address the obsolescence issue including the aging ADPE inventory problem, responsive to the Comptroller General's Report AFMD–81–9 of December 15, 1980. The intent of these changes to acquisition and use provisions is to provide additional means and incentives for agencies to reduce the economic obsolescence of Federal ADPE as well as management paperwork burdens and thereby increase economy and efficiency of automatic data processing in the Government.

DATE: Comments are due July 15, 1985.

ADDRESS: Comments should be submitted to the General Services Administration (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Policy Branch, Ofice of Information Resources Management, Telephone (202) 566–0194 or FTS 566–0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 27, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure benefits to Federal agencies. This is a Government-wide procurement and management regulation that will have little or no cost effect on society.

List of Subjects in 41 CFR Chapter 201

Government information resources activities, Government procurement.

Authority: Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c)

Dated: May 6, 1985.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85-14304 Filed 6-12-85; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-268; RM-4605, RM-4818]

FM Broadcast Stations in Tama, IA

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: Action taken herein denies the requests by Douglas J. Neatrour and by Jacobson Broadcasting Company, Inc., to allot Channel 296A to Tama, Iowa and Dysart, Iowa, respectively.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Tama, Iowa) (MM Docket No. 84-268, RM-4605, RM-4818).

Adopted: May 22, 1985.

Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 10314, published March 20, 1984, in response to a petition filed by Douglas J. Neatrour ("petitioner"), requesting the allotment of FM Channel 296A to Tama, Iowa, as that community's first local FM service. Petitioner filed supporting comments reaffirming his intention in applying for the channel. Jacobson Broadcasting Company, Inc., ("Jacobson") licensee of Stations KLIR-AM/FM, submitted a counterproposal; a petition for reconsideration; and a supplement to petition for reconsideration. In addition, comments and an alternative proposal were filed late by Harold A. Jahnke ("Jahnke").[1]

2. Jacobson proposes the allotment of Channel 296A to Dysart, Iowa, instead of Tama. The counterproposal was returned as unacceptable for filing due to short spacings to Station KROC-FM (Channel 297), Burlington, Iowa, causing an excessive site restriction. In the petition for reconsideration and the supplement thereto, Jacobson states that since its counterproposal was filed in response to a petition filed prior to the effectiveness of the new spacing requirements in BC Docket No. 80-90, allowing the 16 kilometers (10 miles) buffer zone, this zone should not apply.[2] After further consideration of the counterproposal using the spacing requirements in effect before implementation of BC Docket No. 80-90, it has been determined that an excessive site restriction of 13.3 kilometers (8.3 miles) still exists. Jacobson has failed to demonstrate city-grade coverage (70 dBu) from this distance. Therefore, the counterproposal is unacceptable.

3. The allotment of 296A to Tama, Iowa would require a site restriction of 12.6 kilometers (7.8 miles) east of the city. As stated in the *Notice*, this site restriction may make it difficult for the channel to provide a city-grade signal to Tama. Therefore, the petitioner was requested to provide information that a site is available that will meet the minimum spacing requirements and at the same time provide a city-grade signal to the community. Petitioner states he has located a suitable tower site and has filed the information with his consulting engineer, but failed to disclose the location to the Commission. Therefore, we shall deny the proposal to allot Channel 296A to Tama, Iowa.

4. In view of the foregoing, it is ordered, that the petition for reconsideration filed by Jacobson Broadcasting Company, Inc., is denied.

5. It is further ordered, that the petition of Douglas J. Neatrour is denied.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-14163 Filed 6-12-85; 8:45 am]

BILLING CODE 6712-01-M

[1] The late-filed comments of Jahnke were not considered herein. In addition the request to have Channel 296A allotted to Toledo, Iowa is unacceptable as a new petition due to short spacings to Station KCCQ (Channel 296A), Ames, Iowa and Station KGRS (Channel 297), Burlington, Iowa causing an excessive site restriction.

[2] See *Memorandum Opinion and Order*, BC Docket No. 80-90, 97 FCC 2d 279 (1984).

47 CFR Part 73

[MM Docket No. 85-39]

Deletion of AM Application Acceptance Criteria Regarding AM Station Assignment Standards and Relationship Between AM and FM Broadcast Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects the comment/reply comment dates as appearing in the *Preamble* of the Notice of Proposed Rulemaking in this proceeding concerning the deletion of AM Application Acceptance Criteria, published on February 28, 1985 (50 FR 8169).

DATES: The correct dates (as shown in the text of the proposed rule on FR page 8171) are: June 14, 1985 (Comments) and July 15, 1985 (Reply comments).

ADDRESS: Federal Communications Commission Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan David, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-14245 Filed 6-12-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting Regulations

Correction

In FR Doc. 85-13402, beginning on page 23470, in the issue of Tuesday, June 4, 1985, make the following corrections:

1. On page 23472, third column, third line of § 32.12(p)(1), "woodstock" should have read "woodcock".

2. On page 23476, first column:

a. The fifteenth line of amendatory instruction 4 should have read: "paragraph (i)(5) introductory text;" and in the forty-first line "(11)(l)" should have read "(ll)(1)".

3. On page 23477, second column, § 32.32(r)(6) should have read:

"(6) Tensas River National Wildlife Refuge. * * *"

4. On page 23477, third column, in § 32.32(x), twenty-five lines from the bottom of the page, "* * * * *" should have appeared as "(3) * * *".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Document No. 50587-5087]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

Correction

In the document beginning on page 24242 in the issue of Monday, June 10, 1985, make the following correction:

On page 24250, the file line was omitted and should have appeared at the bottom of the page as follows:

[FR Doc. 85-13959 Filed 6-6-85; 10:21 am]

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 50, No. 114
Thursday, June 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: On November 21, 1984, the Forest Service published a proposed policy (49 FR 45889) which would change the procedures by which the agency administers the Small Business Timber Sale Set-Aside Program. Upon consideration of comments received, the Forest Service gives notice of the adoption of new procedures that will apply to the program. The new procedures recognize Regional differences in relation to (1) timber supply and demand, (2) dependence on National Forest timber, and (3) market fluctuations in recent years. The new procedures revise methods for determining small business shares for each marketing area, develop measures to credit volume to small and large businesses for volume purchased by non-manufacturers, limit the maximum amount of timber sale volume set aside in a given period, advance the time period for set-aside sale selection, provide for Regional differences in the manufacturing requirements for set-aside sale volume to be processed in small business manufacturing facilities, and eliminate volume included in the Special Salvage Timber Sale Program (SSTS) from inclusion in the regular timber set-aside program.

EFFECTIVE DATE: This policy will become effective upon issuance of instructions to Forest Service personnel through the Forest Service Manual. Issuance is expected in about 4 weeks.

FOR FURTHER INFORMATION CONTACT: Address questions about this policy to: Charlie Fudge, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 475-3754.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations at 13 CFR Part 121 and Forest Service Manual Chapter 2436 set forth current policy and procedures for the administration of the timber sale set-aside program on National Forest System lands. The basic objective of the program is to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of the sales of National Forest timber.

Public Comment on Proposed Changes and Adoption of Final Policy

On November 21, 1984, the Forest Service published proposed changes in the timber sale set-aside program and invited public comment (49 FR 45889). The proposed changes would have revised: (1) The method of establishing and changing the small business share in each marketing area; (2) the process for selection of set-aside sales; (3) manufacturing requirements for logs harvested from set-aside sales; and (4) operation of the Special Salvage Timber Sale Program (SSTS). The Forest Service received about 140 written comments on the proposed changes. Comments came from individual large and small business firms (103), associations representing the interests of each business group (16), members of Congress (8), Office of Inspector General (USDA), Small Business Administration, city government (1), and Regional and Forest offices of the Forest Service (10). A summary of the major comments received, along with the agency's response, follows.

A. Establishment of Small Business Shares

1. *Definition of Structural Change.* The final policy defines structural change, which was not in the proposed policy. This was needed in order to provide a common definition for use in recomputation of market shares. A structural change occurs during a recomputation period when a small or large business firm, that purchased at least 10 percent of the total sawlog volume during the last recomputation period, discontinues operations, or changes ownership (i.e., small business purchased by large business or vice versa). When this structural change occurs, the small business share will be recomputed in accordance with the appropriate procedure, as described in the sections relating to 1981–1985 structural changes, or future structural changes. The necessity for the recomputation of shares due to structural change will be determined by the Forest Supervisor, in consultation with the SBA representative.

There are two conditions that will determine structural change:

1. Change in the size class of the firm(s);

2. The discontinuance of the operation of the firm(s).

In making decisions concerning structual changes, judgment must be exercised about what constitutes "discontinued operations." A mill closing must be carefully evaluated in terms of intent to resume operations. Cessation of operations due to natural disasters beyond the control of a firm must be evaluated in terms of the declared intent to reconstruct and resume operations.

Examples of the factors that should be evaluated in determining whether a firm has discontinued operations are: statement of intent to resume operations; changes in physical site conditions which include the dismantling and/or sale of physical assets; indicated intent to harvest Forest Service timber volume under contract; market and general economic conditions; and planned mill reconstruction.

2. *Limit on Shares.* The timber set-aside program is designed to ensure that small business firms have the opportunity to purchase a fair proportion of the timber offered for sale in each marketing area. The small business share defines the proportion of the planned timber sale program that will be assured to small business over a 5-year period. When the small business share changes in a market area, the change results in a change in "share percentage points." For example, the small business share may change from 45 percent to 50 percent of the timber sale program within a market area. The proposed policy would have limited small business shares to no greater than 80 percent of the planned timber sale program and would have retained the current policy that shares can not decrease to less than 50 percent of the original base share established in 1971.

The current policy permits small business shares of 100 percent, of the planned timber sale program in a market area, which does not represent a fair proportion.

The proposed change received substantial support, although a few individuals suggested some variation in upper and lower share limits. Upon consideration, the Forest Service adopts the provisions of proposed policy and will implement these provisions at the time of the recomputation in FY 1986.

This revision provides a fair market share to small business, permits large business an opportunity to participate in all market areas, and provides the Forest Service an opportunity to enhance utilization through a wider group of potential users.

3. *Recomputation of Shares in FY 86—Region 8 (Southern), Region 9 (Eastern) and Region 10 (Alaska).* Under the proposed policy, current procedures would remain in effect, subject to an upper limit on small business shares of 80 percent, and shares in Regions 8 and 9 would be recomputed in FY 1986 based on the small business purchase history for FY 1981–1985.

Comments were near unanimous in support of retaining the present procedure. A few respondents favored no change in the existing procedure, wanted a different effective date, or desired different years of purchase history.

The agency agrees with these comments and has decided not to change the existing procedure, other than to implement the 80 percent upper limit at the time of the FY 1986 recomputation of small business shares in Regions 8 and 9. Continuation of current procedures recognizes the relatively stable marketing situation in Regions 8 and 9 during the current recomputation period.

4. *Recomputation of Shares in FY 86—Region 1 (Northern), Region 2 (Rocky Mountain), Region 3 (Southwestern), Region 4 (Intermountain), and the following National Forests in Region 6 (Pacific Northwest): Wallowa-Whitman NF, Colville NF, Ochoco NF, Malheur NF, and Umatilla NF.* The proposed policy would have calculated a new small business share in these areas at the end of FY 1985 based on the arithmetic average of the small business purchase and harvest history for 1975–1984.

Substantial comment from small business opposed changing recomputation procedures this late in the current period and argued for retaining existing procedures. Some respondents wanted some National Forests in the eastern part of Region 6 included. Some respondents wanted recognition of structural changes which occurred in the industry during FY 1981–1985. A few respondents also wanted to include all of Region 5 in this calculation of shares approach rather than under the approach proposed for that Region. Some large businesses favored use of harvest history as the sole basis for establishing new shares for small purchasers in these Regions. They felt harvest history better reflected the actual needs of small business firms rather than purchase history.

The agency agrees with those who favored retaining existing procedures for recomputing the small business share. Overall, market disruptions did not distort purchase and harvest patterns to the extent that resulted in Region 5 and western Forests of Region 6. The five eastern Forests of Region 6 had marketing patterns more closely associated with those of Regions 1–4 and, therefore, fit the small business share recomputation procedures now used. Conversely, the marketing patterns of Region 5 more closely fit those of western Forests in Region 6. The agency also recognizes the need to provide for structural changes in the industry and for unique changes which the current procedure would not effectively represent.

Under the adopted policy, the procedure for share establishment in these areas for use during the period FY 1986–1990 will use small business purchase history from the period FY 1981–1985. When a share changes 5 share percentage points or less, surplus or deficit volumes accrued during the 5-year period will carry forward. Where a share change exceeds 5 share percentage points, one half of the surplus or one half of the deficit volume will be carried forward. This procedure will dampen the impact of market fluctuations during the 5-year period. Where a share change exceeding 5 share percentage points occurs in a market area where salvage operations have significantly disrupted normal purchase patterns, the full surplus or deficit volume may be carried forward.

Where structural changes occur in industry size classes during the period and the recomputed share changes over 5 share percentage points from the previous share, the surplus or deficit volumes will be dropped and not carried forward to the next computation period. Where the recomputed share changes less than 5 percentage points from the previous share, the surplus or deficit volumes will be carried forward to the next computation period.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations. Examples of unique circumstances include catastrophic natural events which disrupt normal operations or an event which causes substantial damage to a processing facility results in abnormal delay in repairs.

Implementation of this policy recognizes and provides for the geographic similarity of market conditions during the 5-year period recognized structural changes which occurred.

5. *Recompuatation of Shares in FY 86—Region 5 (Pacific Southwest) and Remaining National Forests in Region 6 (Pacific Northwest).* The proposed policy would have compared shares established in 1981 in these Regions with the small business harvest history for 1975–1979. The shares would have been maintained, except where the difference exceeded 10 percent. Then the new share would have been set halfway between the current share and the harvest history for that period. Structural changes in the industry since 1980 would have followed the same policy as for Regions 1–4.

Generally, large business firms felt that the proposed policy recognized the market distortion which occurred during FY 1981–1985 and that the proposed procedure would represent a more stable situation. About one third of small business respondents agreed with this rationale, including two associations who represent small business firms. Those small business respondents who opposed the proposed policy either wanted no change in the program or felt that data from other years would better reflect actual market conditions. Some small business firms and the associations representing small business argued for the need to use recent data for recognizing structural changes in the industry during FY 1981–1985. A few small business firms in Region 5 felt that a more stable situation existed in that Region during FY 1981–1985 and that purchase history or purchase and harvest history for that period would better reflect actual market conditions.

The Forest Service agrees that the FY 1981–1985 period distorted the market patterns which normally occur in Region 5 and the remaining portion of Region 6, and that adoption of the proposed policy would better recognize a more normal situation. The agency agrees with those who propose a special procedure to

recognize structural changes in the industry between FY 1981–1985.

Therefore, under the adopted policy the shares established for use in Region 5 and the remainder of Region 6 during the period FY 1986–1990 will generally remain the same as those established in 1981, which used small business purchase history from the period FY 1976–1980. However, in market areas where the small business harvest history for FY 1975–1979 differed from the established share by more than 10 percentage points, the small business share will be set half way between the current share and the small business harvest history for that period.

Where structural change occurred during the period 1981–1985, recomputation of the small business share will be based on the small business purchase and harvest history during this period. Surplus and deficit volumes will be carried forward when shares change 5 percentage points or less. Surplus and deficit volumes will be dropped when shares change over 5 percent.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations.

This policy recognizes the market distortions during the FY 1981–1985 period which caused abnormal purchase and harvest operations. It serves to stabilize the market shares to the previous period, which was a more normal 5-year period, except where recognized structural changes have occurred.

B. Future Share Changes

1. *Regions 8, 9, and 10.* The proposed policy would have continued the current system of establishing shares and have commissioned a two-year study by Forest Service and SBA to determine the need to change the program in Regions 8 and 9. In Region 10, the set-aside program would have continued to operate based upon a volume quota basis.

This proposal received little comment, except support for completing the study promptly and to ensure that the study does not lead to adoption of restrictive conditions.

The Forest Service and SBA will complete a study within the next two years which will determine whether changes are needed for future share recomputations in these Regions.

2. *All Other Regions.* The proposed policy would have stabilized shares at current levels in all market areas. However, where a structural change occurred, shares would have been adjusted at the start of the 6-month period beginning at least 12 months after the change occurred. The basis of change would have been the average of the percentages of purchase and harvest history for the past 5 years. No further recomputations would have occurred.

Large business strongly supported these proposed changes. Large business desired prompt recognition of structural change, generally 12 to 18 months after it occurred, and supported use of purchase and harvest data for the 5 years preceeding the change. Some individuals suggested various options which use different data and time periods. Small business uniformly opposed this proposal or suggested a changed procedure. Small business emphasized that the small business share belongs to the small business community-at-large and not to individual entities. Assigning a share to individual mills would add value to them and encourage speculation. Many small business respondents supported a recomputation procedure jointly developed by two of the associations which represent small business. The procedure developed by the associations would have based recomputation of small business shares on a combination of small business purchase history and weighted average small business purchase and harvest history. The process would compare both small and large business share and carryover volume amounts.

The Forest Service agrees with both large and small business respondents who propose use of both purchase and harvest history to recompute the small business share. This reflects the relationship of volume of timber purchased to actual need over a 5-year period. The agency agrees with those elements of the recomputation procedure proposed by small business which deal with harvest to purchase performance. However, the agency disagrees with the desirability of making a comparison between the performance of large and small business firms. The Forest Service also agrees with the need to recognize structural change in market area industries and to reflect the change with an adjustment period shorter than 5 years. Also, recomputation procedures must recognize unique situations mentioned by some respondents and provide for them.

In consideration of these views, the final policy will apply the following procedure for recomputing the small business share for a market area to scheduled recomputations and to those following structural changes in the industry between regular recomputation periods:

a. *Regular Scheduled Recomputations.* Normally, a scheduled recomputation will occur every 5 years and will use the past 5 years record of sawtimber purchase and harvest data as a basis.

Small business shares will be recomputed using the weighted average purchase and harvest history for small business firms in each market area. For purposes of share calculation, harvest history is based on actual deliveries of sawlog timber to small or large business firms for processing. Data for this calculation will be obtained from the 6-month reports submitted by purchasers for log export control. Carryover of surplus or deficit volumes from the previous period will be based on small business harvest performance. Exhibit 1 displays how harvest performance, calculated as a ratio of harvest to purchase, will be used to adjust carryover volumes.

b. *Recomputation Due to Structural Change.* Shares will be recomputed following structural change. Use exhibit 1 to adjust carryover volumes. The procedure is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop. Ordinarily, small business shares will be recomputed approximately 3 years after a structural change occurs, based on the purchase and harvest history for that 3-year period. When a recomputation for a structural change would occur within a year of a scheduled recomputation, the scheduled recomputation would be skipped.

3. *Special Recomputations.* Unique situations may develop which require special recomputations and departure from the established procedure. In such cases the Forest Supervisor, in consultation with the SBA Representative, may propose procedures necessary to adapt to the situation. The Forest Supervisor will solicit the views of firms operating within the market area before submitting a proposal to deviate from the normal recomputation process to the Regional Forester for approval.

In periods of significant market decline, Forest Supervisors will monitor harvest patterns of both small and large business by comparing harvest to purchase volume. Where both follow a similar pattern, the Forest Supervisor will adjust the effects of harvest performance criteria on carryover

volume in conjunction with share establishment.

Departure from the standard procedure may also be warranted in the event volumes harvested by either large or small firms vary significantly from normal patterns in the market area as a result of salvage operations, a switch of harvest operations between market areas or ownerships, or other factors. Where such departure from the standard procedure is warranted, it may be achieved by adjusting carryover volumes, adjusting the time period, or by other means.

Implementation of policies in paragraph 2 (a) & (b), and (3) above will moderate the impact of short-term purchase and harvest fluctuations and their influence on the small business share. Inclusion of harvest history in recomputation recognizes the balance needed between purchase and harvest experience in share establishment. Use of both elements more accurately reflects actual raw material needs. The procedure permits recognition of structural change. The policy also helps stabilize market area shares in a responsive manner, and identifies unique situations which require special consideration.

C. Purchases by Non-Manufacturers

1. *Regions 8, 9, and 10.* Under the proposed policy the Forest Service would have retained the current procedure for allocating purchases by non-manufacturers to large and small businesses based on the anticipated size of the processor.

Nearly all comments supported the current procedures for allocating purchases by non-manufacturers. Sale procedures in Regions 8 and 9 provide for purchase of sales based on pre-sale measurement with no further measurement to determine actual harvest volume. The current method of anticipating delivery of sale volume to the respective size class of the processor best applies.

The Forest Service will retain the current procedure. Part of the planned Forest Service-Small Business Administration study will include review of this procedure and evaluation of alternatives which may more accurately identify delivery source.

This policy recognizes the current method used to offer sales in Regions 8 and 9 and its relationship to tracking non-manufacturer volume to small and large firms. The policy also recognizes the need to evaluate these procedures, particularly in light of the manufacturing requirements discussed in paragraph F.3 below.

2. *Regions 1–6.* The proposed policy would credit harvest volumes in the 6-month program analysis based on actual deliveries to small or large business from open sales purchased by non-manufacturers.

Both large and small business support the proposal to credit sale volume purchased by non-manufacturers based on harvest records of delivery. Some large businesses wanted volume credited to the size class of the company processing the timber at the end of the period. Small businesses generally suggested a 3-year rolling average for harvest deliveries. A lesser number suggested use of an overall average with periodic corrections.

The new policy will use current reporting requirements for export control to monitor non-manufacturers' delivery of volume. Use of a 2-year rolling average, updated every 6 months, will develop the percentage of sawtimber which non-manufacturers deliver to each manufacturer size class. For each 6-month period, application of the calculated percentage to open sale volume purchased by non-manufacturers will develop the volume accrued to small business in order to determine set-aside needs for the next 6-month period.

This policy will result in more accurate assignment of non-manufacturer-purchased sale volumes and guard against short-term cyclic changes in deliveries.

D. Triggering of Set-Aside Sales

1. The proposed policy would have retained current procedures for triggering a set-aside program when small business firms fail to purchase their share by 10 percent or more. However, under the proposed policy, only a fractional change over 10 percent would not have triggered a set-aside program.

Both large and small business strongly supported continuance of the current procedure for initiating set-aside sales. However, small business strongly objected to dismissing a set-aside trigger if it occured by only a fractional amount. They argued that use of the 10 percent figure precisely defines the thresholds and avoids further interpretation.

The Forest Service agrees with these comments and will continue the current policy of initiating a set-aside program whenever small business fails to purchase their share by 10 percent or more and has dropped the fractional amount provision. Use of an exact percent amount will simplify administration of the set-aside program.

2. The current policy places no limit on the timber volume set-aside during each 6-month period. The proposed policy would have retained the existing process of setting aside a volume of timber equal to the small business share plus the accumulated deficit volume. However, at lest 20 percent of the timber volume in each 6-month period would have been open sales.

Comments supported setting aside the deficit plus the small business share when the need to establish a set-aside program resulted and to provide at least 20 percent of the volume in a 6-month set-aside period as open sales. Some large businesses favored setting aside only the deficit. However, analysis has shown that this would not provide assurance that small business firms would have the opportunity to purchase the established small business share in a market area.

Therefore, the policy will be implemented as proposed. However, the Forest Supervisor may elect to use two 6-month periods to eliminate the deficit volume situation. If not eliminated by this time, the Forest Supervisor will act to eliminate it in the next 6-month period, subject to the 20 percent of open sale volume limitation.

This policy continues to recognize the advisability of eliminating a trigger situation requiring set-aside sales as rapidly as possible. It also recognizes the need to provide opportunities for larger business to participate in the market each period.

E. Selection of Set-Aside Sales

The proposed policy would have continued the current procedure where the Foret Supervisor selects set-aside sales with the concurrence of the local SBA representative. Under the proposal, the tentative selection of set-aside sales in case of a triggered program would occur 60 days prior to the start of the next 6-month period.

This proposal received significant support, although a few large businesses wanted sale selection only by the Forest Service.

The final policy adopts the proposed sale selection process. Forest Supervisors will initiate the selection of tentative set-aside sales early enough to reach agreement with the local SBA representative 60 days prior to the start of the next 6-month period. If agreement cannot be resolved at the local level, the SBA may seek review by the Regional Forester. If not resolved at that level, the issue will be submitted to the Washington Office of the two agencies for resolution. Following review, the Chief of the Forest Service will make the decision.

This procedure will result in early selection of set-aside sales, help establish a firm timber sale program at the beginning of the 6-month period, allow development of a more orderly sale program well in advance of each 6-month period, and should avoid delays in sale offerings.

F. Manufacturing Requirements on Set-Aside Sales

1. Current policy requires that 70 percent of advertised volume from set-aside sales be processed in a small business facility. The proposed policy would have continued enforcement of the 70/30 rule except in Regions 8 and 10.

There was strong support for enforcement of the 70/30 rule.

The policy will continue for all Regions except Regions 8 and 10. Purchasers of set-aside sales may deliver no more than 30 percent of advertised sawtimber sale volume from set-aside timber sales to large businesses for manufacture. Continuance of the policy permits needed flexibility for purchasers to market their products.

2. The proposed policy would have continued the 50/50 rule for set-aside sale timber in Region 10 and received limited, but highly favorable, comment. Therefore, in Region 10, purchasers of set-aside sales may deliver up to 50 percent of advertised volume of a set-aside sale to a large business for processing. This policy recognizes the greater marketing flexibility needed in this unique market environment.

3. The proposed policy would have required a 100 percent rule for set-aside sale softwood sawtimber and a 70/30 rule for hardwood sawtimber in Region 8. Currently, the 70/30 rule applies to all sawtimber.

An association which represents small business in Region 8 supported the proposed policy on manufacturing requirements for softwood and hardwood sawtimber. However individual comments from some large businesses and ⅓ of individual small business respondents operating in the Southern Region opposed 100 percent delivery of set-aside softwood sawtimber volume to small business manufacturers. Arguments against 100 percent delivery included inability of some purchasers to dispose of all softwood sawtimber products, reduced opportunity to let special products seek an appropriate level of product use, and elimination of log trading between large and small mills to obtain special raw materials used by each. The Forest Service believes that adequate markets exist with small business firms to provide competitive markets for southern pine sawtimber. The 70/30 rule which applies to all other species of sawtimber will permit marketing flexibility. Therefore, in Region 8, the adopted policy will require that purchasers deliver 100 percent of the southern pine sawtimber purchased on set-aside sales to small business processing facilities, but the 70/30 rule will apply to all other coniferous species and to all hardwoods. For these, purchasers of set-aside sales may deliver up to 30 percent of the advertised sawtimber volume to large business processing facilities.

This policy assures delivery of set-aside volume to small business facilities, makes enforcement of requirements for processing of set-aside sale volume easier where southern pine species prevail, and yet provides marketing flexibility for hardwoods and other coniferous species.

Of the few who commented on enforcement provisions to ensure strict compliance with new manufacturing requirements, nearly all supported strong enforcement and prompt penalties for violations.

The Forest Service will work with SBA to develop enforcement through agency policy and small business qualification process. In addition, the Forest Service will examine contractual provisions which require reporting of log delivery and will develop appropriate measures to deal with violations.

G. Special Salvage Timber Sale Program (SSTS)

The current policy places undue restriction on the Special Salvage Timber Sale Program (SSTS). The proposed policy would have removed the 70/30 manufacturing requirement for sales set-aside under the special salvage program. Also, timber volume from this program would not have been included in calculations for the regular timber set-aside program.

Large business strongly supported the proposal to discontinue inclusion of the special salvage program with the regular set-aside program and to eliminate the 70/30 manufacturing requirement. Small business substantially supported the proposal. Comments against it cited the need to assure that small business facilities receive a meaningful supply of timber.

On February 15, 1985, following publication of the Forest Service proposed policy changes, the SBA published a final rule at 50 FR 6337 which eliminated the 70/30 manufacturing requirement for the special salvage program. The Forest Service will not include the SSTS program volume in its operation of the regular set-aside program or in recomputation of shares after the scheduled recomputation at the end of fiscal year 1985.

This policy permits maximum flexibility for small operators to market their products. It also eliminates recordkeeping for the recomputation process and operation of the 6-month set-aside program.

Impacts

This policy has been reviewed against the objectives and criteria of Executive Order 12291 and it has been determined that these changes in policy will not result in any of the economic or regulatory impacts associated with a major rule. The discretion available to the Secretary is in selecting administrative procedures to facilitate operation of the set-aside program. This change in policy will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this final policy would not have significant economic impact on a substantial number of small entities. The policy will continue to protect the interests of small business timber industry firms and to assure them of the opportunity to obtain a fair proportion of National Forest timber sales. The policy requires the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This final policy will not significantly affect the environment. Therefore, an environmental impact statement has not been prepared. Furthermore, the final policy will not result in additional information collection requirements and, therefore, it has not been submitted for review under the regulations at 5 CFR Part 1320 which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The policy revises procedural methods of conducting and administering the Small Business Timber Set-Aside Programs in response to a Forest Service-SBA Joint Review of the Small Business Timber Sale Set-Aside Program which identified key procedures in the current program which needed revision in order to make the set-aside program operate more

effectively. Substantial public involvement with associations representing both timber industry size groups, individuals from both large and small business firms, and from government entities helped shape the initial proposed changes. As noted above, substantial comments to the proposed changes published in the **Federal Register** have influenced the final policy. The final policy to be implemented has substantial support in the agency record, viewed as a whole, and full attention has been given to the comments of persons directly affected by the policy in particular. The revised program will be set forth in a forthcoming revision of the Forest Service Manual.

Dated: June 6, 1985.

R.M. Housley,

Acting Chief.

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES

Small business weighted average purchase and harvest percent causes	Small business harvest to purchase ratio of	Result on share and carryover volume
1. Increase over current share which exceeds 5 share percentage points.	A. .90 ratio or more	Adopt weighted average purchase and harvest percent. Drop surplus carryover
	B. Less than .90 ratio	Adopt weighted average purchase and harvest percent. Retain ½ surplus carryover
2. Decrease from current share which exceeds 5 share percentage points.	A. .90 ratio or more	Adopt weighted average purchase and harvest percent. Retain ½ surplus carryover
	B. Less than .90 ratio	Adopt weighted average purchase and harvest percent. Drop deficit carryover.
3. Increase or decrease from current share of 5 share percentage points or less.	A. .90 ratio or more	Retain current share. Drop all carryover
	B. Less than .90 ratio	Retain current share. Retain ½ surplus carryover

[FR Doc. 85-14241 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Environmental Impact; Upper Quaboag River Watershed, MA, Supplemental Watershed Plan No. 6

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Quaboag River Watershed, Supplemental Watershed Plan No. 6, Worcester, Hampden and Hampshire Counties, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Rex O. Tracy, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts, 01002, telephone (413) 256-0441.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rex O. Tracy, State Conservationist, has determined that the preparation and review of the environmental impact statement are not needed for this project.

The project involves reducing the problems associated with erosion and sediment and animal waste management and includes reducing the impact on water quality from agricultural non-point pollution in the Upper Quaboag River Watershed.

The planned works of improvement includes installation of erosion control measures on 860 acres of eroding cropland and of animal waste management systems on about 15 farms in the watershed. These systems usually include animal waste storage structures, milkhouse waste facilities and barnyard runoff control measures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rex O. Tracy.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 31, 1985.

Rex O. Tracy,

State Conservationist.

[FR Doc. 85-13655 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-16-M

Okanogan National Forest Grazing Advisory Board; Meeting

The Okanogan National Forest Grazing Advisory Board will meet at 7:30 p.m., July 16, 1985 at the Supervisor's office, 1240 South Second Avenue, Okanogan, WA 98840. The agenda for the meeting is to finalize and approve By-Laws and continue discussion about allotment boundary fence ownership and required construction by permittees.

The meeting will be open to the public. Persons who wish to attend should notify Don Pridmore at the above address or call 509-422-2704. Issues to present to the Board must be in writing and may be filed with the committee before or after the meeting.

The committee has establised the following rules for public participation: Public comments will be heard during the first 30 minutes of the meeting.

Rollin Whited,

Acting Forest Supervisor.

June 6, 1985.

[FR Doc. 85-14309 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-404]

Oil Country Tubular Goods From Mexico; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review

and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on oil country tubular goods from Mexico. The review covers the period from October 1, 1984. The petitioners and other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest from domestic interested parties provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Long or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47054) a countervailing duty order on oil country tubular goods from Mexico.

The petitioners, Lone Star Steel Company, CF&I Steel Corporation, and LTV Corporation, and other domestic interested parties, U.S. Steel Corporation, Babcock and Wilcox, and Armco, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of oil country tubular goods currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on oil country tubular goods from Mexico provide a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the domestic parties, there is good cause (as requried by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on oil country tubular goods from Mexico effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of oil country tubular goods from Mexico which were entered, or withdrawn from warehouse for consumption prior to October 1, 1984 and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested. Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41 355.42).

Dated: June 6, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–14256 Filed 6–12–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Exxon company, U.S.A. From Objection of the California Coastal Commission to Santa Ynez Unit Development and Production Plan

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Stay of Appeal.

SUMMARY: Effective March 1, 1985, the Secretary of Commerce (Secretary) granted the request of Exxon Company, U.S.A. (Exxon) to stay, for an indefinite period, further consideration of Exxon's appeal to the Secretary from the California Coastal Commission's objection to Option A of Exxon's proposed Oil and Gas Development and Production Plan for the Santa Ynez Unit, Santa Barbara Channel, California.

The Secretary's decision to grant the stay was based on the progress made by Exxon, the County of Santa Barbara and the California Coastal Commission in resolving their differences regarding the development of the Santa Ynez Unit. The appeal was filed pursuant to subparagraphs (A) and (B) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456 (c)(3) (A) and (B), and implementing regulations at 15 CFR Part 930, Subpart H.

The appeal is stayed until dissolved at the Secretary's discretion. In such event, notice will be provided setting forth the schedule for further consideration of the appeal, including the opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Joan M. Bondareff, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235; (202) 254–7512.

SUPPLEMENTARY INFORMATION: For further information regarding Exxon's appeal, see the notices published in the **Federal Register**, November 19, 1984 (49

FR 45637); October 12, 1984 (49 FR 40072); March 6, 1984 (49 FR 8274); August 31, 1983 (48 FR 39483); and August 5, 1983 (48 FR 35692).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: June 6, 1985.

Timothy R.E. Keeney,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85-14221 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by National Welders Supply Company From Objection of the North Carolina Department of Natural Resources and Community Development to Proposed Wetlands Fill

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Stay of Consideration.

SUMMARY: On May 21, 1985, National Welders Supply Company (National Welders) appealed to the Secretary of Commerce (Secretary) from an objection by the North Carolina Department of Natural Resources and Community Development. (DNRCD) to National Welders' proposed welding supply store and industrial gas transfill plant requiring an Army Corps of Engineers permit to fill approximately 0.5 acre of wetland near the Cape Fear River, Wilmington, North Carolina. This appeal has been filed pursuant to subparagraph (A) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations at 15 CFR Part 930,
Subpart H.

Concurrent with its consistency appeal, National Welders requested that the Secretary stay consideration of the appeal pending its negotiations with DNRCD to resolve the consistency objection. The Secretary has granted National Welders' request, and the appeal is stayed until August 5, 1985 unless the stay is dissolved earlier at the Secretary's discretion. At such time as the stay is dissolved, notice will be provided setting forth the schedule for further consideration of the appeal, including the opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Joan M. Bondareff, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235; (202) 254-7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: June 6, 1985.

Timothy R.E. Keeney,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85-14222 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-08-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries and Sovereign Authorities of the Netherlands

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Initiation of Proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under Section 914 of 17 U.S.C. to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517-9 and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On June 3, 1985, the Patent and Trademark Office received a request from the Government of the Netherlands for the issuance of an interim order complying with the aforementioned guidelines. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding with respect to the Netherlands for consideration of the issuance of an interim order.

In the interests of time and because of the rapidly approaching July 1, 1985, registration cut-off date for chips first commercially exploited on or after July 1, 1983, a date is being set for the submission of comments in accordance with paragraph F(a).

DATE: Comments must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on June 18, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231.

Materials submitted will be available for public inspection in Room 11C28 Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded: (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10 year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection: (A) On substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works: (i) Of owners who are, on the date on which the mask works are registered under section

908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, Section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On June 3, 1985, a petition for the issuance of an interim order under 17 U.S.C. 914 was received from the Government of the Netherlands. The petition, including supplemental information, is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice. Two annexes to the petition are not published as part of this notice; a letter from the Netherlands Ministry of Justice to Dr. Arpad Bogsch, Director General of the World Intellectual Property Organization, dealing with copyright protection of computer programs; and a report from the Netherlands Public Prosecutions Department dated August, 1984, dealing with piracy of copyrighted works. These annexes are available for public inspection as part of the record of this proceeding in the Patent and Trademark Office.

In remarks in the *Congressional Record* of October 3, 1984 at page S12919 and of October 10, 1984, at page E4434 both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress . . ., the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity." Further, they both acknowledged that for the issuance of an interim order for "those countries already having a system allowing mask work protection . . . expedited action may be particularly appropriate to encourage and facilitate international comity."

I am considering issuing an interim order on an expedited basis extending the protection of the SCPA to the nationals, domiciliaries and sovereign authorities of the Netherlands, in accordance with the suggestion that such action would be appropriate in instances where a nation has "a system allowing mask work protection." Public comment on the request of the Government of the Netherlands and the supporting material will be considered if received in the Office of the Commissioner of Patents and Trademarks on or before 5:00 P.M., June 18, 1985.

Dated: June 10, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

May 16, 1985.

Commissioner of Patents and Trademarks,
Box 4, Washington, D.C. 20231

Dear Sir, On 3 January 1985 the Semiconductor Chip Protection Act of 1984 (hereafter referred to as "the Act") entered into force in the United States of America. It provides for a new form of protection for mask works of semiconductor chips against, inter alia, unauthorized reproduction.

Under section 902 of the Act, the protection is made available to US nationals and domiciliaries as well as to nationals, domiciliaries or sovereign authorities of a foreign nation that is a party to the treaty affording protection to mask works to which the United States is also a party.

By presidential proclamation the protection can also be extended to citizens of a foreign nation whenever the President finds that this nation extends protection to mask works of owners who are nationals or domiciliaries of the United States on (A) substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation or (B) on substantially the same basis as does the Act.

In section 914 of the Act a transitional provision has been included permitting the Secretary of Commerce to issue, upon the petition of any person or upon the Secretary's own motion, an order extending protection to such foreign nationals, domiciliaries and sovereign authorities for 3 years from the Act's enactment if he finds

(1) That the foreign nation is making good faith efforts and reasonable progress toward:

(a) Entering a treaty with the United States on the subject, or

(b) Enacting legislation of a kind on which the President could later rely to extend the protection of this Act indefinitely, and

(2) That the nationals, domiciliaries and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works, and

(3) That issuing the order would promote the purposes of the Act and international comity with respect to the protection of mask works.

Due to the urgent need for the chip industry in The Netherlands to be in the position to protect its mask works under the U.S. Semiconductor Chip Protection Act of 1984, I would ask you on behalf of the Netherlands Government to issue an order extending protection under the Act to nationals, domiciliaries and authorities of The Netherlands.

Having regard to the conditions formulated in section 914 of the Act and in the Guidelines for the submission of applications for interim protection of mask works under 17 U.S.C. 914, The Netherlands Government is of the opinion, on the following grounds, that the privilege of interim protection can in any case be extended to nationals, domiciliaries and authorities of The Netherlands.

With regard to the first condition formulated in the Act and in the aforementioned Guidelines (the foreign nation is making progress—either by treaty or by legislative enactment—toward a regime of mask work protection generally similar to that under the Act) I would make the following observations.

Under both Dutch legislation (notably the Copyright Act of 1912 and article 1401 of the Civil Code) and Dutch case law, mask works that are fixed in semiconductor chips are eligible for protection comparable to that provided under the Semiconductor Chip Protection Act. It is true that no statutory regulations in The Netherlands relate specifically to mask works fixed in

semiconductor chips, but both the Copyright Act of 1912 and the law of tort based on article 1401 of the Civil Code provide scope for protection of such works corresponding to that provided under the Semiconductor Chip Protection Act.

As regards the Copyright Act of 1912 (an English translation of which is enclosed) and the case law based upon it, I would state the following. Article 1 defines copyright as the exclusive right of the author of a literary, scientific or artistic work, or of his assignees, to make such work public and to reproduce it. Copyright terminates on the expiration of a term of 50 years from the first of January of the year following the year of the death of the author (article 37).

In accordance with the Berne Convention, no formality has to be completed for a work to be protected by copyright. The act of creating the work is sufficient for the author's copyright to subsist. The Copyright Act does not explicitly state what requirements a work must meet in order to be eligible for copyright protection, but a number of such requirements have crystallised in case law. For example, the work must be in a form in which it is directly or indirectly perceptible to the senses, although this need not be a material form. In its ruling of 28 June 1946 (Nederlandse Jurisprudentie, hereafter referred to as Dutch Law Reports 1946, 712) the Supreme Court of The Netherlands, the highest court in the land, stated that only the outward form which expresses that which inspired the author to undertake his work is subject to copyright. Thus where there is no outward form there is no "work" as referred to in article 1 of the Copyright Act. The work should thus have an individual or personal character. This requirement of originality expresses the idea that the work must be the result of the author's creative activity, in however slight a degree. A "work" is deemed to subsist if it is the result of a personal decision by the author to express his ideas in a particular manner.

The requirement that the work should be of an individual and personal character and should express what inspired the author to undertake it (Supreme Court of The Netherlands, 28 June 1946, Dutch Law Reports 1946, 712) does not mean that the work must possess artistic merit. The question of whether a work is of literary, scientific or artistic significance is irrelevant for the purposes of establishing whether that work is protected by copyright.

Article 10, paragraph 1, of the Copyright Act (see enclosed copy) enumerates some of the works which are included in the definition of "literary, scientific or artistic work" for the purposes of the Act. Among them are books, pamphlets, newspapers, periodicals and all other writings, drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like, photographic and cinematographic works and works produced by analogous processes. The fact that the list is not intended to be comprehensive is apparent from the closing words of the paragraph in which it appears: ". . . and genereally any production in the literary, scientific or artistic fields, irrespective of the mode or form of its expression". Thus the types of work mentioned by name in article 10 are intended purely as examples of what may be regarded as literary, scientific and artistic works.

Because the term "work" is not precisely defined in the Copyright Act, new and previously unknown types of work which originate from scientific and technological advances are not excluded from copyright protection provided that they meet the general requirements of perceptibility and originality. In the event of a dispute between the author of a particular work and a third party on the question of whether the work falls within the purview of the Copyright Act, the matter will have to be submitted to the judgment of a court, which will base its deliberations on the norms of case law and legal doctrine set forth above. The same in fact applies in respect of works of a type amongst those enumerated in article 10.

An illustrative example of a new type of work which, according to case law, is eligible for protection under the Copyright Act is computer software. Since 1981 it has been established case law that software can be protected. (President of Zwolle District Court, 22 July 1983, Kort Geding (hereafter referred to as Interlocutory Injunctions) 1983, 246; Assen District Court, 28 July 1981, Dutch Law Reports 1982, 74; 's-Hertogenbosch District Court, 30 January 1981 and 14 May 1982, Bijblad Industriële Eigendom ((B.I.E.: Industrial Property Supplement) 1983, no. 98, p. 323, GRUR Int. 1983, 669; President of Utrecht District Court, 10 March 1982, B.I.E. 1983, no. 99; President of Amsterdam District Court, 8 October 1982, B.I.E. 1983, no. 100; President of Amsterdam District Court, 24 March 1983, B.I.E. 1983, no. 101; Amsterdam Court of Appeal, 31 March 1983, Tijdschrift voor Auteursrecht en Mediarecht (Copyright and Media Law Journal) 1983, p. 56; Amsterdam Court of Appeal, 21 June 1984, Computerrecht (Computer Law) 1984, 3, p. 21; President of Roermond District Court, 20 August 1984, Interlocutory Injunctions 1984, 266; Arnhem Court of Appeal, 27 October 1983, Dutch Law Reports 1984, 80; Amsterdam District Court, 19 December 1984, Computerrecht no. 4, p. 31).

For your information, a copy of a letter of 19 October 1983 from the Netherlands Minister of Justice to Dr A. Bogsch, Director-General of the World Intellectual Property Organization is enclosed. It explains the legal situation in the Netherlands as regards to protection of computer software, citing some of the above rulings.

Those rulings confirm that computer programmes are in principle copyright works. However, in each individual case it will be for the court to determine whether the programme meets the general requirements of perceptibility and originality laid down in the Copyright Act. In the cases listed above, the courts concerned found that these requirements had been met.

With regard to the requirement of perceptibility I would further refer to a consideration from the above interlocutory judgement by 's-Hertogenbosch District Court of 30 January 1981, stating that the fact "that the form of a computer programme is of little importance does not alter the fact that the programme imparts a perceptible form to an intellectual production, which form, despite the relative insignificance it may be found to possess, nonetheless has the protection of copyright". The contentious issue in the case in question was whether a standard logbook intended for data point computers had been reproduced. The defendant admitted having seen the inclusions of the plaintiff's programme but not the sources.

The question of whether a computer programme may be deemed to constitute an original work in an individual case has been answered in the affirmative in case law, sometimes on the basis or reports by experts. The relevant case law has dealt with the protection not only of software itself but also of the associated manuals (e.g. President of Roermond District Court, Interlocutory Injunction of 20 August 1984, Interlocutory Injunctions 1984, 266). Such manuals are naturally covered by copyright.

In addition to the broad concept of a "work" as being subject to protection, the Copyright Act also uses the term "make public" and "reproduce", both of which can likewise be interpreted broadly and which are the exclusive rights of the author or his assignees. The Copyright Act does not contain an exhaustive list of the actions which may be subsumed under these terms. "To make public" and "to reproduce" are pormanteau terms which may cover numerous actions.

The way in which the Copyright Act operates is as follows: it uses the terms "make public" and "reproduce" in their everyday sense, without defining them. Articles 12 to 14 give examples of actions which are deemed for the purposes of the Act to be covered by the two terms although they may not be so covered according to everyday usage. Pursuant to the first paragraph of article 12, publication of a literary, scientific or artistic work includes the publication of a reproduction of all or part of the work, the distribution of all or part of a work or of a reproduction thereof, so long as the said work has not appeared in print, and the public recitation, performance or presentation of all or part of a work or of a reproduction thereof. Pursuant to article 13 of the Copyright Act, the reproduction of literary, scientific or artistic work includes translation, arrangement of music, cinematographic adaptation or dramatization, and generally any partial or total adaptation or imitation, in a modified form, which cannot be regarded as a new and original work.

Article 14 further specifies that the reproduction of a literary, scientific or artistic work includes the recording of all or part of the work on an article intended for causing a work to be heard or seen.

The list of actions—albeit not exhaustive—deemed pursuant to articles 13 and 14 to fall under the definition of reproduction implies, inter alia, that the copyright-holder has the exclusive right to convert a two-dimensional preliminary form into a three-dimensional form and vice versa. In this respect the definition of "reproduction" in the Netherlands Copyright Act is comparable, for example, to that given in section 48 (1) of the British Copyright Act: "Reproduction, in the case of a literary, dramatic or musical work, includes a reproduction in the form of a

record or of a cinematograph film and, in the case of an artistic work, *includes a version produced by converting the work into a three-dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form*, and references to reproducing a work shall be construed accordingly". The relevance of this to the protection of mask works is obvious.

In this connection I would refer to a judgement by the President of Zwolle District Court of 22 July 1983 (B.I.E. 1983, no. 102). The case in question related to the pirating of a cattle recognition system. The defendant had produced in imitation of the plaintiff's cow transmitter. The electronic part thereof, the "print" (printed circuit board) with the components mounted on it, was, as the defendant admitted, an exact copy (save for a few minor details) of the corresponding components of the plaintiff's cow transmitter.

The plaintiff applied for an interlocutory injunction, alleging, inter alia, that the defendant had infringed the plaintiff's copyright on the print and the associated diagrams and drawings. The defendant had given a written undertaking not to copy and/or place at the disposal of third parties the diagrams and drawings of the cow transmitters, but had failed to honour that undertaking.

The President of the District Court ruled that it could not be denied that a certain amount of creativity had gone into the print with the components. "It is a well-known fact that in electronics many roads lead to Rome, and that there is no obvious reason to take one rather than another, so that it is easy but by no means necessary to choose the same route as another designer. This is again apparent from the fact that the defendant required some six months to develop a print which at first sight was different but in which the basic requirements for a cow transmitter nevertheless remained unchanged."

On the basis of these considerations, the President concluded that, as an industrial design, the print with the components was in principle subject to copyright.

The system followed in the Netherlands Copyright Act, with its open terminology subject to broad interpretation, differs from most foreign legislation on copyright, which generally lays down the rights of copyright-holders explicitly and in the same manner defines the works which are subject to protection. An advantage of the Dutch system is that new exploitation techniques made possible by present-day technological developments can be included in the rights of the copyright-holder without the necessity of amending legislation. The case law cited above concerning the protection of computer software is a good example of this.

In view of the deliberate decision of the legislature in 1912 to opt for a system of open concepts such as "work", "make public" and "reproduce", to be defined in practice by case law, the Netherlands Government takes the view that there is no reason at the present moment to assume that mask works are not eligible for protection under the Netherlands Copyright Act of 1912; a protection which is certainly no less than that provided under the Semiconductor Chip Protection Act. In taking this view, the Netherlands Government assumes that designers of mask works face choices and make decisions which entail a certain measure of creativity and bear a personal character.

The Netherlands Government would observe that the Netherlands Copyright Act, unlike its United States counterpart, does not exclude useful articles from the protection of copyright (cf. 17 USC 101). This removes one of the main problems which faced the United States legislature in seeking to protect mask works buy copyright. See in this context pages 5 and 6 of report 98–781, House of Representatives, 98th Congress, 2nd Session, where it is observed that "copyright law has always considered a mask work to be purely utilitarian, and therefore outside the scope of copyright protection". The aforementioned article 10 of the Netherlands Copyright Act states that the term "literary, scientific or artistic works" includes works of applied art, drawings and industrial designs. Like any other copyright works, these must meet the criterion of originality.

In the view of the Netherlands Government, the fact that the application of copyright law to mask works takes copyright law into the industrial sphere is no reason to assume that the Copyright Act is inapplicable to such works. No such dividing line is drawn under Dutch case law. Aircraft designs, for example, which bear a personal character, are covered by copyright.

On the above grounds, the Netherlands Government believes that under the terms of the Netherlands Copyright Act a mask work can be defined as a "work" for the purposes of the Act, and a mask work fixed in a semiconductor chip as a "reproduction" as referred to in the aforementioned article 1. All this means that authors of mask works who are of foreign nationality are protected by the Netherlands Copyright Act in the same way as authors of mask works who are Netherlands nationals.

Given the open concepts employed in the Copyright Act, it should be noted that in the event of a dispute in the matter of whether a specific mask work is a copyright work within the meaning of the Copyright Act and of legal proceedings being brought to decide the issue, the court will be required to give a ruling as in the case of the protection of computer software.

The above issue has not so far been considered by a Dutch court. In view of the case law cited above with regard to the protection of computer software and of an electronic circuit implemented in a printed circuit board provided with electronic components and the flexibility of the Netherlands Copyright Act—which is apparent, inter alia, in the case law cited—the Netherlands Government anticipates that the above view as to whether mask works are eligible for copyright protection will be the generally accepted one.

If the applicability of copyright to mask works nevertheless should prove in practice to be uncertain or to give rise to particular problems, the Netherlands Government will certainly give thought to the possibility of amending the Copyright Act so as to resolve matters. The Government takes the same approach to the possible results of the international activities described below, notably those pursued within the framework of the European Economic Community and the World Intellectual Property Organization.

The law of torts pursuant to article 1401 of the Civil Code may also be of relevance to the protection of mask works in addition to or in lieu of copyright law. Article 1401 reads: "Any unlawful act as a result of which damage is caused to another person gives rise to an obligation on the part of the person through whose fault that damage has been caused to make restitution."

According to the case law of the Supreme Court of the Netherlands, using or profiting from the work or efforts of another person is in principle not unlawful provided that no statutory exclusive rights such as patent rights and copyright are infringed (Supreme Court, 26 June 1953, Dutch Law Reports 1954, no. 90; Supreme Court, 23 June 1961, Dutch Law Reports 1961, 423). Under certain circumstances, however, such action may nonetheless constitute a tort.

Such special circumstances may include:

(a) Copying in respects in which a different course could equally well have been followed without impairing the usability of a product or its suitability for the purpose for which it is intended;

(b) A disproportionate difference between the costs of the producer and those of the imitator;

(c) The other person's masterial was obtained in a manner which is illegal or morally reprehensible (e.g. involving the use of secrets known to an ex-employee by virtue of his former employment or sold to an unauthorised third party).

Proceedings pursuant to article 1401 have proved in practive to constitute an effective means of taking action against unauthorised copying of computer software and hardware.

In this connection the ionterlocutory judgement of the Vice-President of Amsterdam District Court (published in Interlocutory injunctions 1982, no. 194) is illustrative. In the case in question the plaintiff, Apple Computer Inc., alleged that the exterior of the computer marketed by the defendant was a virtually identical copy of the Apple II computer marketed by the plaintiff, and that this impression was further reinforced by the similar cream colours of the casing and the similarity of the plates bearing the trademarks. According to the plaintiff, the interior of the defendant's computer was likewise an exact copy of that of the plaintiff's Apple II computer. The defendant had presented this computer and the associated software at a trade fair.

The court took the view that the conduct of the defendant constituted unfair competition with the plaintiff and displayed a lack of the due care which thej defendant should have observed in competing against the plaintiff on the computer market. It was accepted by the court that the defendant was marketing a product, or intended to market a product, which was an exact copy of the plaintiff's Apple system both in its external design and in its technical specifications. Thus the defendant had created an unnecessary danger of confusion as a result of which the plaintiff had suffered damage (or was liable to suffer damage), it having already been

established to the court's satisfaction that the defendant's computer could have been designed differently both as regards the exterior, the similarity of which alone constituted sufficient grounds to justify a prohibition on the marketing of the product, and as regards the technical specifications, regardless of whether the plaintiff could be deemed to hold the copyright.

On the basis of the above, slavishly copying a mask work constitutes a tort, and an interlocutory injunction can be sought from the President of the District Court, possibly on pain of forfeiture of a recognizance by the defendant. (The injunction procedure is a summary civil procedure.) In practice this has been found to be a very effective means of taking action against unlawful acts by third parties.

On the above grounds, the Netherlands Government takes the view that b th copyright law and case law on torts provide effective and adequate protection for mask works. The Government will nonetheless closely follow developments at national level (in case law and doctrine) and international level (notably in the EEC and WIPO) and will consider whether, in the light of these developments, there are grounds for amending the Copyright Act 1912 or taking other legislative measures. In particular, the results of the talks which are expected to be held shortly in the EEC and WIPO may influence its thinking on this point.

As regards the second condition (nationals, domiciliaries and sovereign authorities of the foreign nation and persons controlled by them are not engaged in the misappropriation, unauthorized disribution or commercial exploitation of mask works) I would observe that the Netherlands Government has no evidence that any such misappropriation, unauthorized distribution or commercial exploitation of mask works has concurred in the Netherlands or that Dutch nationals, domiciliaries or authorities have engaged in such practices. Nor does case law in the Netherlands indicate any such practices.

Dutch industry, and particularly Philips—a major producer of semiconductor chips in the Netherlands and Europe—has urged the Netherlands Government to take measures to protect the interests of the Dutch semiconductor chip industry in the light of developments in the USA (see enclosed letter of 23 November 1984). In the enclosed letter of 1 May 1985 from the Council of Central Entrepreneurial Organisations, this question was again brought to the attention of the Netherlands Government.

During the contacts which were established with representatives of Philips while preparing the present application, the second condition was also discussed. Philips said that they were not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works in the Netherlands and that they had not encountered practices which compelled them to take court action (see enclosed letter of 3 May 1985).

It may be noted here that an interministerial working party established by the Minister of Justice and including two representatives of the Public Prosecutions Department issued a report on piracy of copyright works in August 1984. Among the points which it considered in its report was piracy of computer software. During the hearings held by the working party in order to prepare its report, at which representatives of producers of semiconductor chips were also heard, no evidence was found that the above practices occur in the Netherlands in relation to these products.

It may be observed in this connection that the abovementioned report on piracy of copyright works contains proposals concerning policy on investigating and prosecuting offence under the Copyright Act 1912 and concerning the criminal provisions currently incorporated in the Act. The proposed amendments, like the criminal provisions currently in the Act, are couched in general terms, and would thus relate to all literary, artistic or scientific works and to all forms of publication or reproduction in violation of copyright. Among the working party's proposals is that the maximum penalties currently provided for by the Copyright Act should be made more severe. Another important proposal by the working party is that violation of copyright in a commercial or occupational capacity should be made a separate offence. A major proposal in the sphere of civil law is that it be made possible to ask a court to order a violator of copyright to pay to the plaintiff all profits accruing from the violation of the plaintiff's copyright. This proposal is in line with the civil law sanction provided for in section 911(b) of the Semiconductor Chip Protection Act. An English translation of the working party's report is enclosed. In the course of this year the Netherlands Government will make an official statement on the subject of the working party's proposals.

In this connection it may be added that insofar as piracy of products protected by intellectual property rights occurs in practice, the present aim of policy on investigation and prosecution is to combat this practice so far as possible. Many judgments have accordingly been given by the courts, notably in the field of video software. Such problems as arise in connection with the investigation and prosecution of offences under Copyright Act have been noted by the working party, and its report contains proposals for dealing with them.

In addition to criminal law, civil law also provides adequate scope for combating piracy. For example the Copyright Act provides for the seizure of works made public or reproduced in violation of copyright (article 28). The interlocutory injunction procedure provides a rapid and effective means of obtaining a court injunction restraining offenders from continuing to violate copyright (possibly on pain of forfeiture of a recognizance, which can be a considerable sum of money). Civil law procedures have proved to be an effective means of combating piracy in recent years.

At international level the Netherlands takes an active part in discussions in the various international forums concerned with piracy of works protected by intellectual property rights. In this connection mention may be made, inter alia, of the Council of Europe, the European Economic Community and the World Intellectual Property Organization. The Commission of the Europe an Communities will be publishing a green book on copyright in the course of 1985, which will deal with piracy among other subjects. The Netherlands Government looks forward with interest to the exchange of ideas which will take place among the EEC Member States after the publication of this document.

The protection of semiconductor chips is receiving ample attention internationally. The Commission of the European Communities very recently issued a paper on the protection of integrated circuits and on the Semiconductor Chip Protection Act 1984 in particular. The paper suggests that the Community instrument relating to the statutory protection of integrated circuits be drafted in the very near future. In February 1985 the meeting of Directors-General for Industry approved this proposal. The Netherlands Government intends to be active in the work arising from the implementation of the proposal. The European Commission recently sent its comments on the Semiconductor Chip Protection Act to the United States authorities. It had also sent a note verbale to the Department of State on 28 September 1984. The Netherlands Government fully endorses the Commission's observations in these documents, notably as regarded the question of reciprocity.

The protection of integrated circuits is also under study within the framework of the World Intellectual Property Organization. A working paper on this subject is currently under preparation to implement a recommendation made in 1983 by the Committee of Experts on the Legal Protection of Computer Software (cf. LPCS–11/6, 17 June 1983, Annex 1, p. 2). At the meeting of the Group of Experts on the Copyright Aspects of the Protection of Computer Software in February 1985, the Director-General of WIPO stated that the drafting of this document would shortly be completed and that a meeting would be devoted to the subject in October of this year.

Representatives of the Netherlands Government will certainly participate in this discussion. The Government intends to examine the results of the international developments described above in order to decide whether there are grounds for introducing specific legislation to protect integrated circuits.

The Netherlands Government hopes that the present letter contains sufficient information on the legal situation with regard to the protection of mask works in the Netherlands.

On the grounds of the above, the Netherlands Government is of the opinion that legislation and the administration of justice in the Netherlands meet the requirements formulated in section 914 of the Semiconductor Chip Protection Act and in the Guidelines for the Submission of Applications for Interim Protection of Mask Works under 17 USC 914.

This being the case, I would ask you to issue an order extending protection under the

Act to nationals, domiciliaries and authorities of the Netherlands.

The Minister of Justice and the Minister for Economic Affairs, both of whom bear responsibility for the matter in question and the former for questions of copyright in particular, are prepared at any time to provide any further information which you may require in connection with this petition for interim protection.

Yours faithfully,

Minister for Foreign Affairs.

Corporate Patents and Trademarks

To the Minister of Justice,
Mr. F. Korthals Altes, P.O.B. 20301, 2500 EH The Hague.

AA82[b] (040) 743288 1984–11–23
NL
GALA/Ed

Re.: Chip design protection

Your Excellency, On November 8, 1984 the President of the United States signed the "Semiconductor Chip Protection Act of 1984" as a new "Chapter 9" of the Copyright Act".

This sui generis protection for chip designs comprises a form of protection which includes both elements of the copyright and elements of the patent right. The fact that this Act is not included among any of the existing international treaties in the field of the intellectual or industrial property means that special attention is needed for the question of reciprocity. Apart from a form of interim protection provided for in the Act for non-USA-citizens, protection according to the new Act for "mask works" which are first exploited commercially outside the United States will apply to non-USA-citizens only if their own States permit a reciprocal form of protection for USA-citizens.

Your special attention is asked as regards the consequences and the measures to be taken for the Dutch chip industry. At short notice it is desired to assume a point of view as to how the interest of the Dutch chip industry is to be protected.

Questions which arise in this connection are:

—Can the Netherlands ask for a Presidential Proclamation based on comparable protection for chip designs in the Netherlands?

—Are the Netherlands to use the interim arrangement and to file a request required therefor?

All this has already come up for discussion in the Industrial Circles in UNICE and has already resulted in contacts on these questions made with the European Committee (Mr. Charpentier). Contact has also been made with the Council of Dutch Employer's Unions VNO and NCW (inter alia through the Study Committee Industrial Property).

Since it will be endeavoured by UNICE already on January 21 next to form an idea of the situation and opinions, respectively, existing on this subject in the various European countries, we would request you to ascertain within your Ministry the extent to which orientation on this matter can take place at short notice.

In order to expedite matters, the undersigned has sent a copy of this letter, with some documents for further information on the subject, to Mr. E. Lukács of your Ministry.

The same letter has been sent to the Minister of Economic Affairs so that attention on this matter is also ensured from that side already at an early step.

Awaiting your reply,

Yours faithfully,

Philips International B.V.,
Corporate Patents and Trademarks.

Ir. J.E.M. Galama

N.V. Philips' Gloeilampenfabrieken

To the Minister of Justice,
Postbox 20301, 2511 EX The Hague.

(040) 7 3rd May 1985

Re: Semiconductor chip protection.

Your Excellency, With respect to the request to the U.S. Secretary of Commerce by the Government of the Netherlands for the issuance of an order to extend protection under the semiconductor chip protection act of 1984 to foreign materials, domiciliaries and sovereign authorities I herewith inform you that N.V. Philips' Gloeilampenfabrieken and its subsidiaries (hereafter "Philips") insofar as can be determined, are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works in the Netherlands and that they were not confronted with practices which compelled Philips to take court action.

Copy of this letter will be sent to the Secretary of the Department of Economic Affairs.

Yours faithfully,

J.H.M. Paulussen,
General Secretary, N.V. Philips' Gloeilampenfabrieken.

Council of Central Entrepreneurial Organisations (RCO)

To His Excellency F. Korthals Altes,
Minister of Justice, Postbus 20301, 2500 EH The Hague

Ref. 13.629/SB/Kd 1 May 1985
Re: protection of mask works of semiconductor chips

Your Excellency, On 1 January 1985, the Semiconductor Chip Protection Act 1984 entered into force in the United States of America. This makes the USA the first country to have a special Act to provide legal protection for mask works of semiconductor chips. Pursuant to the Act, protection of mask works can only be extended to non-residents of the USA under certain conditions. This is intended to encourage other countries to take measures to provide equivalent protection for American chips. It is clear that the Act has significant consequences for those sections of Dutch industry which produce and use chips.

The RCO understands that your Ministry and the Ministry of Economic Affairs are currently studying the Act. For the record, we for our part would like to emphasize that we consider it most important that measures be taken to protect Dutch industry without delay. It would for example be possible to take advantage of the interim protection available under the US Act upon application to the Secretary of Commerce.

Under the Act it is also possible to lodge a petition for a Presidential Proclamation. Petitions can be granted only if the petitioning country possesses legislation which provides adequate protection to mask works of semiconductor chips, including those on which residents of the USA own the intellectual property rights. The Netherlands Copyright Act, *inter alia*, would appear to offer such protection.

We would ask you to take steps to ensure that the Netherlands submits an application for interim protection as soon as possible. A study of the applicability of the Netherlands Copyright Act should be made, to provide a basis for a petition for a Presidential Proclamation to be lodged in due course as a follow-up to the interim arrangements.

The US Act naturally has consequences not only for the Netherlands but for other EC Member States as well. We regard it as highly desirable that consultations should be held at European level in order to arrive at a uniform approach to the protection of mask works of semiconductor chips at the earliest possible moment.

We are sending a similar letter to the Minister for Economic Affairs.

Yours faithfully,

J.A. Dortland,
Secretary, Council of Central Entrepreneurial Organisations (RCO).

National Legislation

Netherlands

The Copyright Act, 1912

(as last amended by the Law of October 27, 1972)*

Chapter I

Section 1.—Nature of copyright

Article 1.—Copyright is the exclusive right of the author of a literary, scientific or artistic work, or of his assignees, to make such work public and to reproduce it, subject to the limitations provided in the Law.

Article 2.—Copyright shall be deemed, personal property. It shall pass on by succession and shall be capable of transfer in whole or in part. Transfer of copyright in whole or in part may be effected only by an authenticated or private deed. The transfer shall comprise only those rights specifically mentioned in the deed of transfer or which are necessarily implied from the nature or purpose of the agreement.

The copyright belonging to the author of a work and, after his death, the copyright belonging to the person having acquired any unpublished work as heir or legatee of the author, shall not be subject to seizure.

Section 2.—Author of the work

Article 3.—[repealed]

Article 4.—In the absence of proof to the contrary, the person who is indicated as author in or on the work or, where there is no such indication, the person who, when the work is made public, is made known as the

* The basic Act is dated September 23, 1912. The Law of October 27, 1972, was published in the *Staatsblad*, 1972, No. 579.—WIPO translation.

author by the party who makes the work public, shall be deemed to be the author of the work.

If the author is not named, the person who delivers an oral address which has not appeared in print shall be deemed to be the author thereof, unless there is proof to the contrary.

Article 5.—If a literary, scientific or artistic work consists of separate works by two or more persons, the person under whose guidance and supervision the work as a whole has been made or, if these is no such person, the compiler of the various component works, shall be deemed to be the author of the whole work, subject to the copyright in each of the separate works.

Where a separate work in which copyright subsists is incorporated in a whole work, the reproduction or making public of each separate work, by any person other than the author thereof or his successor in title, shall be deemed to be an infringement of the copyright in the whole work.

Where such a separate work has not been previously made public, the reproduction or making public of the separate work by the author thereof or his successors in title, without mention of the whole work of which it is a part, shall be regarded as an infringement of the copyright in the whole work, unless otherwise agreed between the parties.

Article 6.—If a work has been produced according to the plan and under the guidance and supervision of another person, that person shall be deemed to be the author of the work.

Article 7.—Where work performed in the service of another person consists in the production of certain literary, scientific or artistic works, the person in whose service they were produced shall be deemed to be the author thereof, unless otherwise agreed between the parties.

Article 8.—Any public institution, association, foundation or partnership which makes a work public as its own, without naming any natural person as the author thereof, shall be regarded as the author of the work, unless it is shown that making the work public in such manner was unlawful.

Article 9.—If a work appearing in print does not mention the name of the author or does not mention his true name, the person mentioned in such work as the publisher or, where there is no such indication, the person whose name appears as the printer thereof may, on behalf of the copyright owner, assert the copyright in the work against third parties.

Section 3.—Works protected by copyright

Article 10.—For the purposes of this Act, the term "literary, scientific or artistic works" shall include:

(i) books, pamphlets, newspapers, periodicals and all other writings;

(ii) dramatic and dramatico-musical works;

(iii) lectures;

(iv) choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise;

(v) musical works, with or without words;

(vi) drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like;

(vii) geographical maps;

(viii) plans, sketches and three-dimensional works relating to architecture, geography, topography or other sciences;

(ix) photographic and cinematographic works, and works produced by analogous processes;

(x) works of applied art and industrial designs,[1] and generally any production in the literary, scientific or artistic fields, whatever may be the mode or form of its expression.

Reproductions of adaptations of a literary, scientific or artistic work, such as translations, arrangements of music, cinematographic adaptations and other alterations, as well as collections of different works, shall be protected as separate works, without prejudice to the copyright in the original work.

Article 11.—No copyright shall subsist in laws, decrees or ordinances issued by public authorities, or in judicial or administrative decisions.

Section 4.—Publication

Article 12.—The publication of a literary, scientific or artistic work shall include:

(i) the publication of a reproduction of all or part of the work;

(ii) the distribution of all or part of a work or of a reproduction thereof, so long as such work has not appeared in print;

(iii) the public recitation, performance or presentation of all or part of a work or of a reproduction thereof.

A recitation, performance or presentation in a private circle shall be deemed to be a public recitation except where such circle is confined to relatives or friends, or to persons who may be assimilated to relatives or friends, and where no fee of any kind is charged for admission to the recitation, performance or presentation. This provision shall apply also to an exhibition.

A recitation, performance or presentation which serves exclusively a scientific purpose, or education dispensed in the name of the public authorities or of a non-profit-making legal entity, shall not be deemed to be a public recitation, performance or presentation, provided that it is incorporated in the study program.

Simultaneous publication, by wire or otherwise, of a work made public by way of radio or television broadcast shall not be deemed to be seperate publication where it is carried out by the organization making the broadcast.

Section 5.—Reproduction

Article 13.—The reproduction of a literary, scientific or artistic work shall include also translation, arrangement of music, cinematographic adaptation or dramatization, and generally any partial or total adaptation or imitation, in a modified form, which cannot be regarded as a new and original work.

Article 14.—The reproduction of a literary, scientific or artistic work shall be understood to mean also the recording of all or part of the work on an article intended for causing a work to be heard or seen.

Section 6.—Limitations on copyright

Article 15.—Unless the copyright is expressly reserved, the reprinting in a daily or weekly newspaper or weekly or other periodical, without the authorization of the author or his successor in title, of articles, reports or other contributions, with the exception of novels and short stories, having appeared in another daily or weekly newspaper or weekly or other periodical, shall not be deemed to be an infringement of copyright, provided that the name of the daily or weekly newspaper or weekly or other periodical from which they were reprinted is clearly stated, as well as the name of the author, if given. In the case of periodicals, it shall be sufficient to make a general reservation of copyright in the heading of each issue. No reservation of copyright may be made in respect of articles on current political topics, news of the day and miscellaneous information.

The right of reprinting referred to in the preceding paragraph shall apply to foreign newspapers and periodicals only with respect to news of the day, miscellaneous information and articles on current economic, political or religious topics, provided that the last sentence of the preceding paragraph shall not apply with respect to articles on current political topics.

The provisions of this Article shall apply also to reproductions in a language other than that of the original article.

Article 15a.—Short quotations of articles, even in the form of press summaries, appearing in a daily or weekly newspaper or weekly or other periodical shall not be deemed to be an infringement of copyright on conditions that the name of the daily or weekly newspaper or weekly or other periodical from which they are taken is clearly stated, as well as the name of the author of the passages quoted, if given.

Article 15b.—Subsequent publication or reproduction of a literary, scientific or artistic work made public by or on behalf of the public authorities shall b deemed to be an infringement of the copyright in such work, unless the copyright is expressly reserved, either in a general manner by a law, decree or administrative order, or in a specific case by a notice appearing on the work itself or a communication made at the time of its publication. Even if no such reservation has been made, the author retains the exclusive right to cause those of his works which have been published by or on behalf of the public authorities to appear in the form of a collection.

Article 16.—It shall not be deemed to be an infringement of the copyright in a literary, scientific or artistic work:

(*a*) to reproduce, in whole or in part, in the original language or in translation, works already published (*uitgegeven*) in anthologies and other works clearly intended for use in education or for other scientific purposes, provided that:

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[1] Article Ia of the Law of October 27, 1972, contains the following provisions:

Article Ia.—Until the date of entry into force of the Benelux Uniform Law on Designs and Models, annexed to the Benelux Convention on Designs and Models, concluded at Brussels on October 25, 1966, the first paragraph of Article 10, under (x), should read as follows:

(x) works of applied art;

(i) reproduction is confined to a small number of brief portions of the work, or to a small number of short essays or poems by the same author and, in the case of works referred to in Article 10, first paragraph, under (vi), to some of those works, and that the reproductions differ appreciably in size or process of manufacture that, where two or more such works have been made public together, the reproduction of only one of them shall be permitted;

(ii) the provisions of Article 25 are respected;

(iii) the reproductions mention the original work and the name of the author if it is indicated therein or thereon;

(iv) equitable remuneration is paid to the author or to his successors in title;

(*b*) to quote, in the original language or in translation, parts of writings already made public, to quote parts of musical works already made public, and to incorporate reproductions of works of plastic are already made public in the texts of announcements of criticisms, polemic writings or scientific treatises, provided that:

(i) the number and length of the parts quoted or reproductions incorporated do not go beyond what is reasonably acceptable to social custom;

(ii) the provisions of Article 25 are respected;

(iii) the name of the author is mentioned if it is indicated on or the original work.

The right [of the Queen] to determine by administrative regulation what shall be understood, in first paragraph, under (*a*)(i), by "a smalll number of brief portions of the work or a small number of short essays or poems by the same author", and to determine what shall be understood, in the first paragrph under (*a*)(iv), by "remuneration", reserved.

A summary of a lecture which has been delivered in public without having previously appeared in print may contain quotations of the said lecture in the original language or in translation, provided that the number and length of such quotations do not go beyond what is reasonably acceptable to social custom and that the name of the speaker is indicated; the provisions of Article 25 shall be complied with.[2]

*Article 16*a.—It shall not be deemed to be an infringement of the copyright in a literary, scientific or artistic work to make a short recording, reproduction or presentation thereof in public in a photographic film, radio or television report, provided that this necessary to give a proper account of the current events which are the subject of the report.

*Article 16*b.—It shall not be deemed to be infringement of the copyright in a literary, scientific or artistic work to reproduce it in a limited number of copies for the sole purpose of the personal practice, study or use of the person who makes the copies or orders the copies to be made exclusively for himself.

Where the work is one of those referred to in Article 10, first paragrpah, under (i) including the score or parts of a musical work, the reproduction shall furthermore be confined to a small portion of the work, except in the case of:

(*a*) works of which, in all probability, no new copies are made available to third parties for payment of any kind;

(*b*) short articles, news items or other texts which have appeared in a daily or weekly newspaper or weekly or other periodical.

Where the work is one of those referred to in Article 10, first paragraph under (vi), the copy must differ appreciably in size or process of manufcture from the original work.

The provisions of the first paragraph concerning reproduction made to order shall not apply to reproduction made by recording a work or a part thereof on an article intended for causing the work to be heard or seen.

In the case of reproduction permitted under this Article, the copies made may not be transmitted to third parties without the consent of the copyright owner, except where such transmittal is effected for the purposes of a judicial or administrative proceeding.

An administrative regulation [isued by the Queen] may provide that with respect to the reproduction of works referred to in Article 10, fist paragraph, under (i), the provisions of one or several of the foregoing paragraphs may be waived for the operation of the public service and for the performance of the tasks incumbent on public service institutions. Directions and precise conditions may be fixed to this end.

The foregoing provisions of this Article shall not apply to the imitation of an architectural work.[3]

Article 17.—Without prejudice to the provisions of the foregoing Article, it shall not be deemed to be an infringement of the copyright in the works referred to in Article 10, first paragraph, under (i), to reproduce, on behalf of an enterprise, organization or other establishment, articles, information or other separate texts which have appeared in a daily or weekly newspaper or weekly or other periodical, or small portions of books, pamphlets or other writings, provided that they are scientific works and that the number of copies made does not exceed that which the enterprise, organization or establishment may reasonably need for the purposes of its internal activities. Copies may only be transmitted to persons employed by the enterprise, organization or establishment.

Any person who makes copies or orders the making of copies shall pay equitable remuneration to the author of the work thus reproduced or to his successors in title.

An administrative regulation [issued by the Queen] may fix provisions concerning the maximum number of copies, the maximum size of copies, the amount of remuneration, the mode of payment of remuneration and the number of copies in respect of which no remuneration is payable.[3]

*Article 17*a.—Provisions may be enacted by administrative regulation, in the general interest, to govern the exercise by the author or his successors in title of the copyright in a literary, scientific or artistic work with respect to the publication of such a work by means of the radio or television broadcasting of signs, sounds or images, or the distribution on a broader scale, by wire or otherwise, of a work made public in such a manner. The said administrative regulation may state that such a work may be made public in such a manner or be distributed on a broader scale without the prior consent of the author or his successors in title. Those who are thus entitled to make a work public or to distribute it on a broader scale shall nevertheless be bound to respect the rights of the author referred to in Article 25 and pay the author or his successors in title equitable remuneration which, failing agreement and at the request of the most diligent party, shall be fixed by the Court, which may at the same time order the payment of security.

The provisions of the foregoing paragraph shall apply accordingly to the production and distribution of articles, with the exception of cinematographic reproductions, designed to render all or part of a musical work audible by mechanical means, where in connection with the same musical work such articles have already been produced and distributed either by or with the consent of the author or his successors in title.

*Article 17*b.—Unless otherwise agreed, the right to make a work public by broadcasting on radio or television shall not imply the right to record the work.

The radio or television broadcasting organization entitled to the publication referred to in the foregoing paragraph shall nevertheless be permitted to record the work intended for broadcasting, using its own facilities and solely for the purpose of its own radio and television broadcasts, provided that the recording of sounds or images is destroyed within 28 days from the date on which the first radio or television broadcasting of the work took place, and in any event within six months following the date of the recording. The organization thus entitled to make the recording shall nevertheless be bound to respect the rights of the author referred to in Article 25.

An administrative regulation may provide that recordings thus made which posses exceptional documentary value may be kept in official archives, and may further determine the conditions applicable in such a case.

*Article 17*c.—It shall not be deemed to be an infringement of the copyright in a literary or artistic work when such work is performed vocally by a religious community and is

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Article II of the Law of October 27, 1972, contains the following provision:

Article II.—Article 16(*a*) shall not be applicable to anthologies and other works clearly intended for use in education or for other scientific purposes, and which are published unabridged in the same form as that in which they were published prior to the entry into force of this Law. Such anthologies and works shall remain subject to the law applicable prior to the entry into force of this Law.

[1] The second paragraph of Article IV of the Law of October 27, 1972, contains the following provision:

Articles 16 and 17 shall enter into force on a date which shall be determined by administrative regulation, but not later than July 1, 1974.

[1] The second paragraph of Article IV of the Law of October 27, 1972, contains the following provision.

Articles 16*b* and 17 shall enter into force on a date which shall be determined by administrative regulation, but not later than July 1, 1974.

provided with instrumental accompaniment in the course of a service.

*Article 17*d.—The administrative regulations referred to in Articles 16, second paragraph, 16*b*, sixth paragraph, 17, third paragraph, and 17*a*, first and second paragraphs, and the possible amendment of such regulations, as well as all decisions, directions or measures deriving therefrom shall not enter into force until two months have expired following the date of their publication in the *Staatsblad*.

Article 18.—It shall not be deemed to be an infringement of the copyright in a work referred to in Article 10, first paragraph, under (vi), which is permanently displayed in a public thoroughfare, to reproduce or publish a reproduction of such work, provided that the work does not constitute the main part of the reproduction, that the reproduction differs appreciably in size or process of manufacture from the original work and that, with regard to architectural works, only the exterior thereof is reproduced.[4]

Article 19.—The reproduction of a portrait by or on behalf of the person portrayed, or, after death, by or on behalf of his relatives, shall not be deemed to be an infringement of copyright.

If the portrait is of two or more persons, reproduction thereof by or on behalf of one of the persons portrayed shall not be lawful without the consent of the others or, during the ten years following their death, without the consent of their relatives.

It shall not be deemed to be infringement of copyright to reproduce a photographic portrait in a newspaper or periodical if the reproduction is made by one of the persons referred to in the first paragraph of this Article or with his consent, provided that the name of the photographer is indicated if it appears on the portrait.

This Article shall apply only to portraits which have been made pursuant to an order given to the author of the portrait by or on behalf of the persons portrayed.

Article 20.—Unless otherwise agreed, the owner of the copyright in a portrait shall not be entitled to make such portrait public without the consent of the person portrayed or during the ten years following his death without the consent of his relatives.

If the portrait is of two or more persons, reproduction thereof shall be lawful only with the consent of all the persons portrayed or, during the ten years following their death with the consent of their relatives.

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[4] Article III of the Law of October 27, 1972, contains the following provisions:

Article III.—The present version of Article 18 shall not be applicable to reproductions appearing in books or printed matter which are published unabridged in the same form as that in which they were published prior to the entry into force of this Law. Such books and printed matter shall remain subject, as far as reproductions are concerned, to Article 18 as worded prior to the entry into force of this Law.

Reproductions to which the first paragraph is not applicable and which, prior to the entry into force of this Law, were made under Article 18 without infringing any copyright, as well as unchanged copies of such reproductions, may be distributed during the five years following the entry into force of this Law.

The last paragraph of the preceding Article shall apply.

Article 21.—If a portrait is made without having been ordered by or on behalf of the person portrayed, the copyright owner shall be allowed to make it public only in so far as the person portrayed or, after his death, his relatives have no legitimate reason for opposing its being made public.

Article 22.—In the interest of public safety and for the purpose of judical inquiries, images of any nature may be reproduced publicly exhibited and distributed by, or by order of, the judicial authorities.

Article 23.—Unless otherwise agreed, the owners of a drawing or painting, a work of architecture, a sculpture or a work of applied art shall be entitled, without the consent of the copyright owner, to exhibit such work publicly or to reproduce it in a catalog for the purpose of sale.

Article 24.—Unless otherwise agreed, the author of a painting shall, notwithstanding the transfer of his copyright, be entitled to make further similar paintings.

Article 25.—Even after transfer of his copyright, the author of a work shall have the following rights:

(*a*) the right to object to publication of the work under a name other then his own, as well as any alteration of the name of the work or the indication of the author, if such name or indication appears on or in the the work or has been made public in conjunction with the work;

(*b*) the right to object to any other modification of the work, except where the nature of the modification is such that it would be unreasonable to object to it;

(*c*) the right to object to any distortion, mutilation or other modification of the work which would be prejudicial to the honor or reputation of the author or to his value as such.

The rights referred to under (*a*), (*b*) and (*c*) above shall accrue, after the death of the author and until the copyright expires, to the person whom the author shall have appointed by will or codicil.

The rights referred to under (*a*) and (*b*) above may be transferred when modifications are to be made to the work or to its name.

If the author of the work has transferred his copyright, he shall retain the right to make such modifications to the work as he may make in good faith in accordance with the rules established by social custom. As long as copyright subsists, the same right shall belong to the person whom the author has appointed by will or codicil, if it may reasonably be supposed that the author would have approved such modifications.

Article 25a.—For the purposes of this Section, "relatives "means the father and mother, spouse and children. Each of the relatives may exercise individually the rights accruing to him or her. In the event of dispute, the Court may render a decision which shall be binding on each of the parties.

Chapter II

Enforcement of Copyright and Criminal Provisions

Article 26.—Where the copyright and in a work belongs jointly to two or more persons, it may be enforced by any one of them, unless otherwise agreed.

Article 27.—Notwithstanding the transfer of his copyright in whole or in part, the author shall retain the right to institute an action for damages against infringers.

After the death of the author, the right to institute actions for damage as provided for in the first paragraph shall accrue to his heirs or legatees until the copyright expires.

Article 28.—Copyright shall confer the power to seize personal property, objects made public in infringement of that copyright and unlawful reproductions, in accordance with the provisions governing seizure under a prior claim, and either to claim ownership of them or to demand that they be destroyed or rendered unusable. The same powers of seizure and claim shall exist with respect to the entrance fees paid for admission to a recital, performance, exhibition or presentation which constitutes an infringement of copyright.

Where the surrender of the objects referred to in the first paragraph is demanded, the Court may order that such surrender be made only in return for compensation to be paid by the claimant.

The two foregoing paragraphs shall apply exclusively to personal property and to property which, by reason of its use, is regarded as real property.

With respect to real property other than that referred to in the preceding paragraph which is liable to be the subject of an infringement of copyright, the Court may, at the request of the owner of the right, order that the defendant introduce such changes as will remove the infringment of the copyright, and may order the defendant to pay a certain sum of money as compensation if, within a specified time, the Court order is not complied with.

These provisions shall not prejudice any right to institute criminal proceedings for infringement of copyright and civil proceedings for damages.

Article 29.—The right provided for in the first paragraph of the preceding Article shall not be exercised in respect of objects in the possession of persons who do not deal in similar objects and who have acquired them exclusively for their own use, unless they have themselves infringed the copyright.

A request under the fourth paragraph of the preceding Article may be made against the owner or possessor of real estate only when he is responsible for the infringement of copyright concerned.

Article 30.—If any person makes a portrait public without being entitled to do so, the provisions of Articles 28 and 29 on copyright shall be applicable with respect to the right of the person portrayed.

Article 30a.—The exercise, with or without gainful intent, of the profession of intermediary in matters of copyright in musical works, shall be subject to the permission of the Minister of Justice.

The following shall be deemed to be acts of an intermediary in matters of copyright in musical works: the conclusion or implementation, whether or not in the name of the intermediary, and on behalf of the authors of musical works or their successors

in title, of agreements concerning the public performance or the broadcasting on radio or television by signs, sounds or images of such works or reproductions thereof, in whole or in part.

The performance or radio or television broadcasting of dramatico-musicals works, choreographic works and entertainments in dumb show, and reproductions thereof, if such works are rendered audible without being shown, shall be assimilated to the performance and radio or television broadcasting of musical works.

Any agreement as referred to in the second paragraph which is entered into without the ministerial permission required under the first paragraph shall be null and void.

Further provisions shall be made by administrative regulation, concerning among other things the supervision of the person having obtained the permission of the Minister of Justice. The cost of supervision may be charged to that person.

The supervision referred to in the foregoing paragraph may only concern the way in which the intermediary carries out the duties assigned to him. Interested parties shall participate in the supervision.

Article 31.—Any person who intentionally infringes another's copyright shall be punishable by imprisonment not exceeding six months or by a fine not exceeding 25.000 guilders.

Article 32.—Any person who, knowing that a work constitutes an infringement of copyright, distributes it or publicly offers it for sale shall be punishable by a fine not exceeding 10.000 guilders.

Article 33.—The infringements referred to in Articles 31 and 32 shall be misdemeanors.

Article 34.—Any person who intentionally and unlawfully makes changes in a literary, scientific or artistic work protected by copyright, or in the title or the indication of the author of such work, or who performs another act derogatory to a work in a manner prejudicial to the honor or reputation of the author or his value as such, shall be punishable by imprisonment not exceeding six months or by a fine not exceeding 25.000 guilders.

Such act shall be a misdemeanor.

Article 35.—Any person who, without being authorized to do so, publicly exhibits a portrait or makes it public in any other manner shall be punishable by a fine not exceeding 10.000 guilders.

Such act shall be a minor offense.

Article 35a.—Any person who, without having obtained the required permission of the Minister of Justice, performs acts attributable to the exercise of the profession of intermediary as defined in Article 30a shall be punishable by a fine not exceeding 5.000 guilders.

Such act shall be a minor offense.

Article 35b.—Any person who deliberately supplies inaccurate or incomplete information in a written request or statement on the basis of which amounts due as royalties are determined, by the action of person who, with the permission of the Minister of Justice, intervenes in matters of royalties payable on musical works, shall be punishable by imprisonment not exceeding three months or by a fine not exceeding 1,000 guilders.

Such act shall be a minor offense.

Article 36.—Reproductions confiscated by virtue of a decision of the Criminal Court shall be destroyed; however, the Court may order in its decision that they be surrendered to the copyright owner if the latter applies to the Office of the Clerk of the Court within one month from the date on which the decision becomes final.

Upon such surrender, ownership of the copies shall pass to the copyright owner. The Court may order that such surrender take place only on payment by the copyright owner of compensation, which compensation shall accrue to the State.

Article 36a.—If an infringement is committed by a legal entity, society, association or foundation, or on its behalf, criminal action shall be instituted against, and sentences and other measures imposed on:

(i) either the legal entity, society, association or foundation in question,

(ii) or those who gave the order to perform the unlawful act or omission concerned or are directly responsible for it,

(iii) or against both.

An infringement is deemed to have been committed by a legal entity, society, association or foundation, or on its behalf, if it is committed by persons who, either by virtue of their duties or for another reason, act on behalf of the legal entity, society, association or foundation, irrespective of whether those persons have committed the infringement individually or whether their action was concomitant with the perpetration of the infringement.

Where criminal proceedings are brought against a legal entity, society, association or foundation, the latter shall be represented at the proceedings by its director or one of its directors. The director may be represented by an agent. The Court may order the personal appearance before it of a particular director, in which case it may order that he be summoned.

Where criminal proceedings are brought against a legal entity, society, association or foundation, Article 538(ii) of the Code of Criminal Procedure shall be applicable accordingly.

Article 36b.—Investigators shall have the right of access to any place for the investigation of facts associated with infringements in terms of this Act and for the seizure of objects which are liable to be associated with such infringement.

If access is denied them, they may gain entry, if necessary, with the assistance of the police.

They shall not enter a dwelling against the will of the occupier unless they present a special warrant or are accompanied by the Royal Prosecutor or the deputy of the Royal Prosecutor. They shall report on such entry within twenty-four hours.

Chapter III

Duration of Copyright

Article 37.—Copyright shall terminate on the expiration of a term of fifty years from the first of January of the year following the year of the death of the author.

The duration of the copyright belonging jointly to two or more persons in their capacity as co-authors of a work shall be counted from the first of January of the year following the year of the death of the last surviving co-author.

Article 38.—The copyright in a work with respect to which the author has not been indicated, or has not been indicated in such a way that his identity is beyond doubt, shall terminate on the expiration of a term of fifty years from the first of January of the year following that in the course of which the work was first made public by or on behalf of the copyright owner.

This provision shall be applicable also to a work of which a public institution, an association, a foundation or a partnership is deemed to be the author, and to a work published for the first time after the death of the author.

If the author discloses his identity prior to the end of the term mentioned in the first paragraph, the duration of the copyright in the respective work shall be calculated in accordance with the provisions of Article 37.

Article 39.—[repealed]

Article 40.—[repealed]

Article 41.—For the purposes of Article 38, a work which has appeared in instalments or episodes shall be deemed to have been made public only on the issue of the last instalment or episode.

In the case of a work consisting of two or more volumes, numbers or sheets, or which has appeared in print on different dates, and in the case of reports or communications published by associations or private persons, each volume, number, sheet, report or communication shall be deemed to be a separate work.

Article 42.—Notwithstanding the provisions of this Chapter, no claim may be made in the Netherlands to a copyright which has already terminated in the country of origin of the work.

Chapter IV

(Articles 43 and 44)

(contains modifications of the Bankruptcy Act and the Criminal Code)

Chapter V

(Article 45)

[repealed]

Chapter VI

Transitional and Final Provisions

Article 46.—With the entry into force of this Act, the Copyright Act of June 28, 1881 (*Staatsblad* No. 124), shall be repealed.

However, Article 11 of the aforementioned Act shall remain in force in respect of works and translations deposited prior to the said date.

Article 47.—This Act shall apply to all literary, scientific or artistic works published for the first time in the Netherlands either before or after its entry into force, by or on behalf of the author, or published in the Netherlands during the thirty days following first publication in another country, as well as to all such works not published, or not published under the same conditions, of which the authors are Dutch citizens.

A work shall be deemed to have been published within the meaning of this Article when it has appeared in print or, in general, when copies of the work, irrespective of their nature, have been made available to the public in sufficient quantity.

The performance of a dramatic, dramatico-musical or musical work, the presentation of a cinemotographic work, the recitation or radio or television broadcasting of a work and the exhibition of a work of art shall not constitute publication *(uitgave)*.

With regard to architectual works and works of plastic art constituting an integral part thereof, the construction of the architectural work or the incorporation of the work of plastic art shall constitute publication.

*Article 47*a.—This Act shall remain applicable to all literary, scientific or artistic works published for the first time by or on behalf of the author prior to December 27, 1949, in the Dutch East Indies or prior to October 1, 1962, in Dutch New Guinea.

Article 48.—This Act does not recognize copyright in works in which, at the time of its entry into force, copyright has expired under Article 13 or 14 of the Copyright Law of June 28, 1881 (*Staatsblad* No. 124), or in works in respect of which, on the said date, the right of reproduction has expired under Article 3 of the Law of January 25, 1817 (*Staatsblad* No. 5), relating to the rights exercisable in the Netherlands in respect of the printing and publication of literary and artistic works.

Article 49. Copyright obtained under the Copyright Act of June 28, 1881 (*Staatsblad* No. 124), and also the right to copy or any right of this nature obtained under earlier legislation and maintained by the said Act, shall continue after the entry into force of this Act.

Article 50.—[repealed]

*Article 50*a.—[repealed]

*Article 50*b.—The exclusive right of the composer of a musical work to manufacture instruments intended to render all or part of the work audible by a mechanical process, and the right of public preformance of such work by means of similar instruments, shall not be applicable to all or part of a musical work which was adapted for sound reproduction by mechanical means prior to November 1, 1912, in the Realm in Europe or in the Dutch East Indies.

Instruments as referred to in the foregoing paragraph which have been manufactured in one of the States of the International Union for the Protection of Literary and Artistic Works without the consent of the composer of the musical work, but without violating a legal provision currently in force in that State may be distributed, sold and used for public performances in the Netherlands.

*Article 50*c—Any person who, prior to September 1, 1912, without violating the provisions of the Copyright Act of June 28, 1881 (*Staatsblad* No. 124), or of any treaty in force in the Netherlands or in the Dutch East Indies, has published copies of a literary, scientific or artistic work, which do not constitute a reprinting of all or part of such a work as referred to in Article 10, under (i), (ii), (v) or (vii), shall not, as a result of the entry into force of this Act, lose the right to distribute and sell such copies made before or after that date. This right may be transferred in whole or in part by inheritance or assignment. The second paragraph of Article 47 shall apply accordingly.

The Court may, on written petition by the owner of the copyright in the original work, either revoke the right provided for in the first paragraph, in whole or in part, or award the petitioner an indemnity for the exercise of the said right, and in either case the provisions of the following two Articles shall apply.

*Article 50*d.—The petition for total or partial revocation of the right set forth in Article 50c may only be made if a new edition of copies has been made since November 1, 1915. The second paragraph of Article 47 shall apply accordingly.

The petition shall be filed with the Court of Amsterdam before the end of the calendar year following that in the course of which publication took place. The Clerk of the Court shall summon the parties at an appropriate date to be specified by the Court. The case shall be heard in the Council Chamber.

The Court shall accede to the petition for revocation of the right only if and to the extent that it finds that the moral rights of the petitioner are injured by the distribution and sale of the copies. If the petition is not filed by the author of the original work, the Court shall refuse it if there is good reason to believe that the author has consented to the publication of the copies. The Court shall also refuse the petition where the petitioner has made an effort to obtain an indemnity from the persons who exercise the right. It may refuse the petition if revocation of the right would unduly prejudice the interests of the persons exercising the right as compared with the interests of the petitioner which have to be safeguarded. If the Court revokes the right in whole or in part, it shall set the date on which such revocation shall take effect.

In arriving at a decision, the Court shall make such provisions as it deems just in consideration of the interests of both parties and other interested persons. It shall assess the costs incurred by both parties and shall determine what portion thereof is to be paid by each. No appeal from judicial decisions rendered pursuant to this Article shall be admissible. No court clerk's fees shall be charged for proceedings under this Article.

*Article 50*e.—An indemnity may be awarded for the exercise of the right set forth in Article 50*c* only where a new edition of copies has been published since May 1, 1915. The second paragraph of Article 47 shall apply accordingly.

The second and fourth paragraphs of the preceding Article shall apply.

*Article 50*f.—[repealed]

Article 51.—[repealed]

Article 52.—This Act may be cited as "The Copyright Act, 1912".

Article 53.—This Act shall enter into force in the Realm in Europe on the first day of the month following that in which it is promulgated.

Correspondence

Letter From the Netherlands

By S. GERBRANDY*

Important amendments were made recently to the 1912 Copyright Act, which in substance continues to govern this subject.

While referring the reader to our 1965 "Letter",[1] we shall give a brief summary here of the system underlying the Act.

I. Prerogatives of the author

Under Netherlands law the author has only two prerogatives: the right of publication and the right of reproduction. We should give a concise explanation of these two concepts.

1. Publication

The 1912 legislator assumed a "natural meaning" of this concept, which in his view corresponded more or less (but not fully) to the concept of publishing, that is, of placing material copies of the work at the disposal of the public. He did not see fit to define this first meaning in the Act.

The other meanings which the publication concept can have are, on the other hand, defined in the Act: public recitation, performance or presentation of the work. The legislator was careful to choose his words well, in such a way that the performance, etc., of an adapation (cinematographic or other) is equivalent to the performance of the work itself.

A distinction should therefore be made between publication

(a) by means of the distribution of copies (books, records, photographs, etc.),

(b) by any other means.

2. Reproduction

Here too, the legislator assumed a "primary meaning" of this concept, that is, the act of making one or more copies of the work (one copy = the photograph of a sculpture or painting; several copies = the printing of the manuscript of a book, or the recording on a disc of a vocal composition).

This is followed by the other meanings (these being specified non-exhaustively in the Act): translation, musical, cinematographic or dramatic adaptation, etc.

(a) material reproduction (manufacture of one or more copies),

(b) immaterial reporduction (translation, adaptation and imitations of all kinds).

3. Reconciliation of the Two Concepts

Under the Netherlands system, therefore, the publishing of a book take place in two stages: *(a)* reproduction: the individual copies of books are printed on the basis of a manuscript; *(b)* publication : the books thus completed are put on sale. It follows that a Dutch national who assigns his "right of reproduction" (for instance, in the sense given to it by his national legislation: the right to make records) does not by the same token assign his right to put the copies on sale (right of publication in the sense attributed to it in the Netherlands). The foreign assignee publisher who enters into a contract to which

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* Counsellor at the Amsterdam Court of Appeal.

[1] *Copyright*, 1965, p. 41.

Netherlands law is applicable should therefore, in addition, have part of the right of publication assigned to him separately. Misunderstandings in this respect are bound to appear when Franco-Dutch proceedings are brought before Dutch courts.

II. Publication—Amendments Made to the Publication Concept (Article 12)

1. Broadening of the Concept of Public Performance

There is an intermediate area between the "private circle" or "closed circle" and the general public. The 1972 legislator has narrowed this area to the advantage of the public performance concept. From now on, the "closed circle" will be considered public whenever it is not a circle consisting of family, friends or any other persons who may be assimilated to family or friends. The last phrase is the result of retouching by Parliament, and in our opinion it obscures the meaning of the paragraph. The original Bill specified "circle consisting of family, friends or acquaintances". The preparatory work on the 1972 Law leaves no room for doubt that the purpose of the amendment was to limit this privileged circle as much as possible.

2. School; education

The recitation of poems and the reading of prose in class have always been regarded as permitted. The legislator has now expressly provided that recitation, performance and presentation for the benefit of education is free, on condition that it is incorporated in the study program of the establishment concerned.

This provision has not escaped criticism. It is accepted that the professor in charge of the class should be allowed to recite contemporary poems. But what of performances involving the use of videograms and other costly apparatus? Our compatriot, Franca Klaver, among others, pointed to the dangers of too extensive freedom in an exhaustive study.[2] Fully aware of these criticisms, the legislator considered that the current state of technology made it impossible to establish a rule at the present time on a subject still in the process of development.

3. Public Communication of a Broadcast Work

The "publication"—including broadcasting and communication by wire—of a broadcast work will not be permitted without the consent of the author unless two conditions are met:

(a) the "publication" must be simultaneous,

(b) the "publication" must be made by the same organization as the one which made the first broadcast.

Condition *(a)* is clear: the repetition of a broadcast (for instance, at 8 p.m. in the Netherlands and at midnight in Surinam) requires the consent of the author, even if the entity or organization which undertakes the second broadcasting is completely identical with the one which made the first.

Condition *(b)* calls for some explanation, however. By "organization", Netherlands law means *something different from "broadcasting organization"* in terms of Article 11[bis] of the Berne Convention. This is why, in the above paragraphs, we have spoken of "making" or "undertaking" broadcasting. What is meant is all the associations, firms and services which take care of the cultural, legal and technical aspects of broadcasting. In the Netherlands, these include at least: (i) one of our broadcasting organizations in terms of Article 11[bis] of the Berne Convention; (ii) the post, telephone and telegraph service, which provides very considerable technical assistance; and (iii) NOZEMA, the corporation which operates the transmitters.

The meaning of the provision is this: there has been a new act of "publication" not only if a third party communicates the broadcast work to the public—either by wire or by wireless—but also if one of the bodies mentioned under (i) to (iii) in the preceding paragraph does so alone.

This can indeed happen. The post, telephone and telegraph service operates radio transmitting networks and central television antenna systems. This constitutes a new act of "publication", even if it occurs at the same time as the technical contribution of the service to the original broadcast.[3]

III. Reproduction

1. Amendments Made to the Reproduction Concept (Articles 13 and 14)

No radical changes have been made here.

In Article 13, cinematographic adaptation is expressly mentioned as an example of reproduction. Article 14 has been made clearer; it has been modernized in such a way as to cover not only discs and sound tape recordings but also videograms and other similar apparatus.

2. The Right of Borrowing and the Right of Quotation

The old Article 16 was badly drafted and regulated these rights in a rather unsystematic way. The new drafting makes a clear-cut distinction and lays down quite elaborate rules for each of the two rights. It is not necessary to go into the details here.

3. The problems of Tapes and Photocopies (Articles 16b and 17)

This is an ultramodern problem which has caused concern to a great number of legislators. The preparation of the amendments was long and hard, and it was accompanied by what on paper were bitter quarrels between the parties concerned. For the moment, it seems that an acceptable solution has been found. The subject-matter is difficult, and some explanation is therefore necessary.

4. Main features: the three categories

First category: reproduction[4] confined to a few copies and intended solely for the personal practice, study or use of the person who makes the copies or orders the copies to be made exclusively for himself.

This category was already to be found in the old text, except for the person who "orders the copies to be made".

Second category: the reproduction of books, pamphlets, documents, etc., in the performance of duties within the public service or for the fulfillment of the tasks incumbent on public service institutions.

This category was created by the new Law. The rules written into Articles 16*b* and 17 are indeed rather harsh, and it seemed necessary to allow a degree of freedom, especially for institutions like the Patent Council, public libraries, etc.

Third category: reproduction of books, pamphlets, articles, etc., for the use of enterprises and similar institutions.

This is another newly-created category. There can be no doubt that, for industry in particular, the freedom to make photocopies has a very definite importance.

5. The rules in Articles 16b and 17

A special system has been introduced for each of the above categories.

First Category: Private Use

(i) Reproduction for private use, as defined above, is in principle free.

(ii) In the case of writings (books, pamphlets, articles, etc.), or sheet music, however, reproduction must be confined to "small portions" of the work, except for works which are out of print or short articles in periodicals.

(iii) The exemption for "ordered" works does not apply to sound or video tapes.

Second Category: Public Service and Public Service Institutions.

The Law itself contains no special rule in this respect but refers to an administrative regulation. This regulation does not yet exist.

Third Category: Enterprises

(i) Subject to the reservations specified under (iii) and (iv) the reproduction of articles appearing in newspapers or periodicals is free.

(ii) Subject to the same reservations, the reproduction of "small portions of books, pamphlets or other writings" is permitted. The reservations are the following:

(iii) *(a)* The articles or writings must be "scientific", and *(b)* the number of copies must not exceed what the enterprise may reasonably need.

(iv) The person who makes the copies or orders the making of the copies must pay equitable remuneration to the author or to his successors in title.

These then are the rules—summarized to an extreme—for the three categories referred to above. The summary would not be complete, however, if we did not mention *one rule which is common to the first and third*

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[2] "Video: A general survey", in *Copyright*. 1972. p. 89.

[3] A distinction should be made between "central antennas" and "collective antennas". The latter is only a technical installation designed to improve reception, whereas the former brings to a certain public broadcast which otherwise would not reach their receivers. See also Franca Klaver, "Current Developments in Wire Television", in *Copyright*. 1969. p. 56.

[4] From here on, the word "reproduction" means alternatively the act of reproducing or the copy produced. It is the same in the Act.

categories, and a highly important rule at that. Once the copies have been lawfully made, they must remain in the possession of the person who made them or ordered them. For instance, I would photocopy or cause to be photocopied all the articles on copyright appearing in the magazine *Gewerblicher Rechtsschutz und Urheberrecht*, without actually subscribing to it, thereby building up a rich specialized library. However, this library must on no account come into the possession of another person. The same would apply to tape recordings which I made for my own private use. Similarly, the enterprise possessing lawfully-made photocopies of scientific articles may only give these to "persons employed by" it, which for practical purposes means to persons who have an immediate need for them in connection with scientific research carried on as part of their duties within the enterprise.

6. Administrative law. International law. Entry into force

The set of rules is not yet complete. The Queen has yet to determine, by administrative regulation, the position of the public service and of public libraries (second category). Moreover, the legislative provisions on libraries still have to be completed by administrative provisions. This is why the entry into force of Article 16*b*, and 17 is postponed to July 1, 1974, at the latest.

This is not only reason, however. In accordance with the national treatment principle common to the two main international Conventions, the rules outlined above will also produce their effects at the international level: publishers who are nationals of one of the countries of the Berne Convention or of the Universal Convention will be entitled to "equitable remuneration" for copies made under the legal license granted to Dutch enterprises. How can this remuneration be collected? Obviously, we are also in need of a specialized body to undertake the collection and distribution of the sums owed by industry. Foreign publishers interested in this question would perhaps do well to contact the Royal Association of Netherlands Publishers *(KNUB—Koninklijke Nederlandse Uitgeversbond*, Herengracht 209, Amsterdam).

IV. Moral rights

For the first time since 1912, the legislator has devoted an entire article (Article 25) to moral rights. Until now the moral rights accorded to authors consisted of a few prerogatives in various places in the Act, but a systematic regulation of the question was lacking.

We shall not go into the details of the new provisions, which are to be found in Article 25 of the Law published above.

The Berne Convention (Brussels text) lays stress on the *right to claim authorship of the work*.

Our new Act seems, on the one hand, to afford more extensive protection and, on the other, to grant fewer rights.

The Act affords protection (Articel 25*(a)*) not only against publication of the work under a name other than that of the author (and other comparable infringements), but also under a title other than that chosen by the author.

On the other hand, the Netherlands legislator has not expressly conferred the right to demand that the name of the author be mentioned on copies of the work. A few years ago, this right was at issue in a dispute which aroused quite considerable interest (President of the Court of The Hague, January 25, 1965, *Nederlandse Jurisprudentie* 1965, 76; *Ars Aequi* XIV, 186, with note by Hirsch-Ballin; summary proceeding). The author of two chapters—out of eleven—of a book on economic history claimed the right to be mentioned as co-author on copies of the book, and his claim was dismissed. Are we then to assume that this decision has been sanctioned in the new text of the Act? It is hardly likely. For a start, the criticism by Professor Hirsch-Ballin, in the note referred to above, was so severe that a judge would need courage to render the same decision when another case came up. Moreover, the preparatory work on the new Article 25 provides no support for the argument that the legislator had deliberately sought not to grant the right in question.

For the same reason we do not believe that the level of protection in the Netherlands is lower than that of the Berne Convention. Professor Ulmer wrote: "Development has not finished. It is not possible at present to make an exhaustive enumeration of the prerogatives included among moral rights" *(Urheber-und Verlagsrect*, pp. 259 and 260). If, now, the Netherlands legislator recognizes the right of authorship in unambiguous terms, he is presumed to have accepted this right in its entirety, even if he has not specified all the prerogatives which such a right might embody.

Provision is then made (under *(b)*) for the right to object to any *modification* of the work. It is not required that the modification be "prejudicial to the honor or reputation of the author". There is restriction, however, in the provision according to which this right of the author may not be exercised when it would be unreasonable to object to the modification concerned. For a practical case, we refer the reader to *Copyright*, 1972, pp. 77 and 78.

This is followed by *(c)*, which deals with the protection against "any distortion, mutilation or other modification of the work which would be prejudicial to the honor or reputation of the author [this being based on Article 6bis of the Berne Convention] or to his value as such".

As far as *moral rights after the death of the author* are concerned, the system is not entirely satisfactory. In principle, moral rights subsist as long as pecuniary rights, yet the exercise of moral rights after the death of the author belong only to the person appointed by will. In the absence of a will, therefore, it is impossible to exercise the moral rights of the author after his death. This somewhat unfelicitous provision was introduced as a result of an amendment in the course of the debates in Parliament. The reason behind it is that, if the author has not taken the trouble to provide for his moral rights *post mortem*, it is not for the legislator to do so for him. The Chamber of Deputies seems to have overlooked the fact that sudden death can take the author by surprise, and that a work which seems of little importance during his lifetime can, after his death, acquire considerable value.

One more word on the English translation of this Article. It is provided that:

"The rights referred to under (*a*) and (*b*) above may be transferred when modifications are to be made to the work or to its name."

It should not be deduced from this that moral rights or parts thereof are transferable. This is not so. The original text uses the expression "*afstand doen van . . .*", which means "renounce". To give an example, the author of a novel who consents to the cinematographic adaptation of that novel may, by contract, undertake not to oppose the *modifications* which the authors of the cinematographic work might see fit to make in the dialogue or in the sequence of events embodied in the pre-existing work. On the other hand, the author's right to object to *distortion, mutilation*, etc., is reserved by a legislative provision which does not permit any derogation by contract.

V. International law

The Netherlands Copyright Act is applicable, according to its Article 47, "to all literary, scientific or artistic works published for the first time in the Netherlands".

This provision is not new. What is new is the definition of the concept of publication:

"A work shall be deemed to have been published within the meaning of this Article when it has appeared in print or, in general, when copies of the work, irrespective of their nature, have been made available to the public in sufficient quantity."

At first sight, this definition seems innocent enough. Yet the preparatory work on this amended text shows that the legislator wanted to deny protection under Netherlands law to the original text of a work published for the first time in translation in the Netherlands. We consider this an unhappy amendment. Moreover, it could be wondered whether the phrase quoted above is clear enough to rule out an interpretation which is quite the opposite of the legislator's intention.

VI. Prospects

The 1948 Brussels text of the Bruce Convention has been ratified by the Netherlands, which means that, in spite of the substantial advances we have made, we are still 25 years behind the times. We are aware of this, and the Minister of Justice has already taken steps to bring about the amendments in our domestic legislation which would enable us to accede to the Stockholm-Paris text.

This gives rise to a considerable number of questions. For instance, should a special régime for cinematographic works be introduced before accession is possible to the Berne Convention as revised at Stockholm (Articles 14 and 14 ^{bis})? For one thing, these Articles are applicable only in international situations, leaving national legislators completely free, and for another, the Articles appear to presuppose that countries of the Union determine in one way or another the status of cinematographic works. Our Law has never yet contained any express rules on

this. Points of law relating to cinematographic works have been resolved—and very satisfactorily too—by court decisions rendered on the basis of general legal principles. Is this sufficient for a country which wishes to accept Articles 14 and 14bis of the Berne Convention? And this is only one question among many.

The introduction of a completely new copyright legislation is generally a long drawn-out operation: in the Federal Republic of Germany, the *Referentenentwurfe* date back to 1954, but the new Act came out only in 1965. In France, the preparation of the 1957 Act began in 1944. Will the way to accession by the Netherlands to the most recent text of the Berne Convention lead over the mountain of a large-scale revision of domestic legislation? Or will the Netherlands legislator content himself for the moment with partial revisions? The choice has yet to be made.

[FR Doc. 85-14130 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 14, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On March 22, 1985 a notice was published in the **Federal Register** (50 FR 11533), which established an import restraint limit for women's, girls' and infants' trousers, slacks, and shorts in Category 648, produced or manufactured in Indonesia and exported during the ninety-day period which began on February 28, 1985 and extended through June 30, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for Category 648 during consultations, to limit its exports during the period which began on February 28, 1985 and extends through the end of the agreement year, June 30, 1985, to 361,844 dozen.

The notice also stated that merchandise in the category which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the prorated limit.

The United States Government has decided, inasmuch as no solution has been agreed concerning this category, to control imports at the designated limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textitle categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 14, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 648, produced or manufactured in Indonesia and exported during the period which began on February 28, 1985 and extends through June 30, 1985, in excess of 361,844 dozen.[1]

Textile products in Category 648 which have been exported to the United States during the previously established ninety-day period which began on February 28, 1985 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 29754), November 9, 1984 (49 FR 44782).

[1] The limit has not been adjusted to reflect any imports exported after February 27, 1985.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-14251 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Malaysia

June 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 14, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On December 3, 1984, the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 29, 1984, requested the Government of Malaysia to enter into consultations concerning exports to the United States of cotton sheeting in Category 313, produced or manufactured in Malaysia. While agreement has been reached, diplomatic notes have not been exchanged. The Government of the United States has decided, therefore, to control imports in this category at the prorated level of 5,392,870 square yards, provided under the consultation mechanism of the bilateral agreement for goods exported during the six-month period which began on December 31, 1984 and extends through June 30, 1985. Should the notes be exchanged between the Governments of the United States and Malaysia, further notice will be published in the **Federal Register**. The level has not been adjusted to reflect any imports exported during the period which began on December 31, 1984.

Such imports during the January-March period of 1985 have amounted to 444,024 square yards and will be charged. As the data become available further charges will be made to account for the period which began on April 1,

1985 and extends through the effective date of this action, as well as thereafter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984, (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1985

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 2, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 14, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 313 produced or manufactured in Malaysia and exported during the six-month period which began on December 31, 1984 and extended through June 30, 1985 in excess of 5,392,870 square yards.[1]

Textile products in Category 313 which have been exported to the United States prior to December 31, 1984 shall not be subject to this directive.

Textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-14250 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after December 30, 1984. Imports during the January-March 1985 period have amounted to 444,024 square yards.

Request for Public Comment on Bilateral Textile Consultations With Government of Malaysia To Review Trade in Category 613pt. (Polyester/Cotton Lightweight Fabric)

June 7, 1985.

On May 29, 1985, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 613pt. (currently under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059). This request was made on the basis of the agreement, as amended, between the Governments of the United States and Malaysia relating to trade in Cotton, Wool and Man-Made Fiber Textitles and Textile Products of December 5, 1980 and February 27, 1981. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consulations between the two governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 613pt., produced or manufactured in Malaysia and exported to the United States during the period which began on May 29, 1985 and extends through June 30, 1985.

The Government of the United States had decided, pending agreement on a mutually satisfactory solution concerning this category, to control imports during the prorated sixty-day consultation period (May 29, 1985 through June 30, 1985) at a level of 1,323,313 square yards. In the event the limit established for the prorated consultation period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 613pt. under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Malaysia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Commets or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 613 Pt.—Polyester/Cotton Lightweight Fabrics [1]

May 1985.

Summary and Conclusions

U.S. imports of Category 613Pt.—lightweight polyester/cotton fabrics—from Malaysia doubled during the year-ending March 1985 period to 8.9 million square yards. This increase accrued after Malaysia's

1 Until March 31, 1985, U.S. imports of these fabrics entered under TSUSA Nos. 338.5035, 338.5036, 338.5039 and 338.5041. From April 1, 1985, fabrics under this category have entered under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059. The TSUSA number assignments have been changed in order to bring the United States system into accordance with the Harmonized Code. Both the system in effect prior to April 1, and the new system cover all imports of polyester/cotton gray to printed plain weave fabrics weighing not over 5 ounces pet square yard. Imports of these fabrics directly impact the market for U.S. produced printcloth, batistes, broadcloths, yarn-dyed fabrics, and other lightweight, polyester/cotton fabrics which are produced for sale before finishing.

imports tripled in calendar year 1984. This is a sharp and substantial increase in imports into a sector already adversely affected by imports.

Approximately 86 percent of Malaysia's imports of these lightweight fabrics were entered under TSUSA No. 338.5035, polyester/cotton gray fabrics. Malaysia was the third largest supplier of this TSUSA number, accounting for 15 percent of the total year-ending March 1985 imports. Most of the remaining imports from Malaysia entered under TSUSA Nos. 338–5036 and 338.5041, polyester/cotton bleached and printed fabrics, respectively. These imports from Malaysia are entered at duty paid landed values which are below the U.S. producer price for comparable fabrics. These and other factors lead the United States Government to conclude that imports from Malaysia are creating a real risk of market disruption in the United States for such fabrics.

U.S. Market Share Loss

The U.S. producers' share of lightweight polyester/cotton fabric market declined from 67 percent in 1982 to 58 percent in 1983 and continued to drop in 1984 at 48 percent. The U.S. market for these fabrics expanded during this period, however, the increase in imports accounted for all the market growth from 1982 to 1984

U.S. Production

U.S. production of these fabrics produced for sale has trended downward since data became available in 1982. During 1982–1984, annual production of lightweight polyester/cotton fabrics for sale dropped in each year declining from 82.6 million square yards to 69.5 million, or an average decrease of 6.5 million square yards per year.

Imports

U.S. imports of Category 613 Pt. from all sources increased by 17.9 million square yards to a record level of 90.8 million square yards in the year-ending March 1985. Imports during the first quarter of 1985 were 23.5 million square yards, up 11 percent from the first quarter of 1984

Import Penetration

The ratio of imports to domestic production of lightweight polyester/cotton sales fabric has more than doubled in the past two years, rising from 50.4 percent in 1982 to 110.5 percent in 1984.

Import Values

Approximately 75 percent of total Category 613 imports from Malaysia were entered under TSUSA No. 338.5035, polyester/cotton gray plain weave fabrics weighing not over 5 ounces per square yard. The duty-paid values of these imports from Malaysia were below the U.S. producer price for comparable fabrics.

Committee for the Implementation of Textile Agreements

June 7, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 13, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 613pt.[1] produced or manufactured in Malaysia and exported during the prorated consultation period which began on May 29, 1985 and extends through June 30, 1985, in excess of 1,323,313 square yards.[2]

Textile products in Category 613pt. which have been exported to the United States prior to May 29, 1985 shall not be subject to this directive.

Textile products in Category 613pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–14287 Filed 6–12–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 613, currently under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338 5054, 338.5058, and 338.5059.

[2] The level of restraint has not been adjusted to reflect any imports exported after May 28, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices, Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m. Wednesday, 10 July and 8:30 a.m. Thursday 11 July 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: June 10, 1982.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–14236 Filed 6–12–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Application Notice for New Awards Under the Vocational Education Indian and Hawaiian Natives Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Applications are invited for new projects under the Vocational Education Indian and Hawaiian Natives Program. This application notice covers awards for Indian tribes and Indian organizations and does not apply to awards for Hawaiian natives.

The authority for this program is contained in section 103 of the Carl D. Perkins Vocational Education Act, Pub. L. 98–524.

This program awards grants to Indian tribes and Indian organizations which are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Educational Assistance Act of 1975, Pub. L. 93–638, (25 U.S.C. section 450 note) or under the Act of April 16, 1934 (25 U.S.C. sections 452–457). Awards are subject to section 102 of the Indian Self-Determination Act and the relevant provisions of sections 4, 5, and 6 of the Act of 1934.

The purpose of the awards is to provide opportunities to Indian tribes and Indian organizations to plan, conduct, and administer vocational education programs.

Closing date for transmittal of application: Applications for a new awards must be mailed or hand delivered on or before August 16, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (84.101) 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: Applications are accepted from Indian tribes and Indian organizations which are eligible to contract with the Secretary of the Interior for the Administration of programs under the Indian Self-Determination and Educational Assistance Act, Pub. L. 93–638, (25 U.S.C. section 450 note) or under the Act of April 16, 1934, (25 U.S.C. sections 452–457).

Proposed regulations under the Carl D. Perkins Vocational Education Act were published in 50 FR–3626–3667 on January 25, 1985. Poposed regulations covering this program, 34 CFR Parts 400 and 410, were included in these regulations. Applications are being accepted based on the proposed regulations. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Group applications: Under the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.127–75.129, eligible parties may apply as a group for a grant.

If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance by the applicant in the application.

The applicant shall submit the agreement with its application.

If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

Each member of the group is legally responsible for carrying out the activities it agrees to perform, in accordance with 34 CFR 75.127–75.129.

Application forms: Application forms and program information packages are expected to be available by June 17, 1985. These may be obtained by writing to the Special Programs Branch, Room 5052, ROB 3, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary is soliciting applications for awards of up to three years duration. Applications for multi-year awards must have the information required by 34 CFR 75.117, including a budget for the first year and an estimate of the Federal funds needed for each budget period of the project after the first budget period.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applicants not submit information that is not requested.

Available funds: It is expected that $1,638,371 will be available for new projects in fiscal year 1986 for Indian tribes and Indian organizations.

It is estimated that these funds could support up to 9 new projects.

The anticipated average award for each new project is approximately $180,000 per year.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: Regulations applicable to this program include the following:

(a) When adopted in final form, regulations governing the Vocational Education Indian and Hawaiian Natives Programs proposed to be codified in 34 CFR Parts 400 and 410.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact Harvey Thiel or Timothy Halnon, Program Specialists, Special Programs Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245–2774.

(20 U.S.C. 2303)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education—Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: June 6, 1985.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–14263 Filed 6–12–85; 8:45 am]

BILLING CODE 4000–01–M

Application Notice for Noncompeting Continuation Awards Under the Vocational Education Indian and Hawaiian Natives Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Applications are invited for noncompeting continuation awards under the Vocational Education Indian and Hawaiian Natives Program. This application notice is for Indian tribes and Indian organizations only.

The authority of this program is contained in section 103(b) of the Carl D. Perkins Vocational Education Act (Pub. L. 98–524).

Under this program the Secretary may award grants or contracts to Indian tribes and Indian organizations which are eligible to contract with the Secretary of Interior for the administration of programs the Indian Self-Determination Act of 1975, Pub. L. 93–638 (25 U.S.C. section 450 note) or under the Act of April 16, 1934 (25 U.S.C. section 452–457). Awards are subject to section 102 of the Indian Self-Determination Act, and the relevant provisions of sections 4, 5, and 6 of the Act of 1934.

The purpose of the award is to provide Federal support to Indian tribes and Indian organizations to plan, conduct, and administer vocational education projects or portions of projects that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

Closing date for transmittal of applications: To be assured of consideration for funding, an applicant for noncompeting continuation awards should mail or hand deliver their applications on or before September 30, 1985.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (84.101) 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: Applications that are hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Officer Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program information: Applications are accepted from Indian tribes and Indian organizations which are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act, Pub. L. 93–638 (25 U.S.C. section 450 note) or under the Act of April 16, 1934 (25 U.S.C. sections 452–457).

Available funds: It is expected that $7,007,268 will be available for 25 noncompeting continuation awards in Fiscal Year 1986 under the Vocational Education Program for Indian tribes and Indian organizations.

These estimates do not bind the Department of Education to a specific number of grants, or to the amount of any grants, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by June 17, 1985. They may be obtained by writing to the Special Programs Branch, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

Proposed regulations under the Carl D. Perkins, Vocational Education Act were published in 50 FR 3626–3667 on January 25, 1985. Proposed regulations covering this program, 34 CFR Parts 400 and 420, were included in those regulations. Applications are being accepted based on the proposed regulations. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary urges that applicants not submit information that is not requested. (Information collection data contained in the application form has been approved by the Office of Management and Budget under OMB control number 1830–0013).

Applicable regulations: Regulations applicable to this program include the following:

(a) When adopted in final form, regulations governing the Indian and Hawaiian Natives Program, proposed to be codified in 34 CFR Parts 400 and 410.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Further Information: For further information contact Harvey G. Thiel or Timonthy D. Halnon, Program Specialists, Special Programs Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone (202) 245–2774.

(20 U.S.C. 2303)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education—Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: June 6, 1985.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–14246 Filed 6–12–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

West Valley Demonstration Project: Availability of Project Plan and Nuclear Regulatory Commission Comments

AGENCY: Department of Energy.

ACTION: Notice of Receipt of the Nuclear Regulatory Commission's Comments on the Project Plan for the West Valley Demonstration Project and of the availability of the comments and plan for public inspection.

SUMMARY: The West Valley Demonstration Project Act, Pub. L. 96–368, (October 1, 1980) directs the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Nuclear Service Center in West Valley, New York. The purpose of the project is to demonstrate the solidification and preparation of high-level radioactive waste for placement in a Federal repository for permanent disposal. The Act requires the Department to submit to the Nuclear Regulatory Commission (NRC), for its review and comment, a plan for the solidification of the high-level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. The Act also specifies that upon receipt of the NRC's comments, the Department shall publish notice in the **Federal Register** of receipt of the comments and their availability for public inspection. In their comment letter of April 11, 1985, the NRC indicated support for the general approach being taken by the Department as discussed by the plan. The Project Plan and NRC comments are available for public inspection at the locations noted below.

Availability: Copies of the Nuclear Regulatory Commission's comments and the Project Plan are available for public inspection at the following locations:

U.S. Department of Energy, Freedom of Information Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, NW., Washington, D.C. 20585

U.S. Department of Energy, West Valley Demonstration Project Public Reading Room, Rock Spring Road, West Valley, New York 14171

FOR FURTHER INFORMATION CONTACT:

Dr. William H. Hannum, Director, West Valley Demonstration Project, U.S. Department of Energy, P.O. Box 191, West Valley, New York 14171

Mr. James a. Turi, Program Manager, West Valley Demonstration Project, U.S. Department of Energy, Mail Stop NE–25, GTN, Washington, D.C. 20545

Issued in Washington, D.C., June 3, 1985.

William R. Voigt, Jr.,

Acting Director, Office of Terminal Waste Disposal and Remedial Action, Office of Nuclear Energy.

[FR Doc. 85–14313 Filed 6–12–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order With Union Oil Company of California

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Union Oil Company of California (Union) shall be made final as proposed. The Consent Order resolves the issues of Union's compliance for the period June 1979 through January 1981 with the DOE's regulations regarding marginal and newly discovered crude oil. This matter was the subject of a Proposed Remedial Order (PRO). In settlement of the allegations contained in that PRO, Union will pay to the DOE $4.5 million, for distribution pursuant tp 10 CFR Part 205, Subpart V. Persons claiming to have been harmed by Union's alleged overcharges will then be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Union Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT:

Laurence J. Hyman, Office of Special Counsel, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On March 1, 1985, ERA published a Notice announcing a proposed Consent Order between DOE and Union which would resolve matters pertaining to Union's compliance with the regulations regarding marginal and newly discovered crude oil. (50 FR 8376.) The proposed Consent Order requires Union to pay $4.5 million for the settlement of alleged overcharges of $3.8 million excluding interest.

The March 1 Notice sets forth ERA's view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final.

II. Comments Received

ERA received three timely written comments and one late written comment.

All four coments addressed only the ultimate disposition or distribution of the Union settlement funds; none addressed the adequacy of the settlement amount or the terms and conditions of the proposed Consent Order. The four commenters were:

Air Transport Association of America, Washington, D.C.

Attorneys General of Arkansas,Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

Attorney General of Texas

Solar Station, Inc., Oakland, CA

III. Analysis of Comments

The March 1 Notice solicited written comments to enable the ERA to receive

information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected.

The comments received voiced no objection to the basis or adequacy of the settlement and were consistent with the use of the special refund procedures of Subpart V. Indeed, the Air Transport Association specifically agreed with the use of the Subpart V procedures, and the Attorneys General stated that the States should receive any funds remaining after distributions to identifiable injured parties. The Attorney General of Texas asserted that because ERA had failed to identify injured parties, restitution to the States would provide the most effective remeddy, but at the same time seemed to approve the use of Subpart V in the instant case. Solar Station, Inc., suggested that the monies be channeled through the California Energy Commission.

ERA has determined that the distribution of the settlement funds should be the subject of a separate Subpart V proceeding conducted by OSHA, to be initiated shortly after publication of this Notice. This is consistent with ERA's general policy that the special refund procedures of Subpart V are the best suited for cases, such as thiss, in which ERA cannot readily identify the injured parties or their relative amount of economic harm. The suggestion of Texas that it is appropriate now to distribute the monies to the States because injured parties have not yet been identified, fails to recognize that it is precisely this situation which Subpart V procedures were designed to address. The Subpart V process also provides an opportunity for publiic participation in the selection of the manner in which claims are considered and honored. ERA believes that the advantages of the Subpart V procedure in identifying meritorious claims and the fact that the monies will continue to earn interest up to the final disbursements strongly support the remedial provision of the proposed settlement. Comments on the actual disbursement of money will accordingly not be addressed here, but will be referred to OHA for consideration in the Union Consent Order claims proceeding.

The review and analysis of all the comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Union. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this Notice, and pursuant to 10 CFR 205.199j, the proposed Consent Order between Union and DOE executed on February 6, 1985, is made a final order of the Department of Energy, effective the date of publication of this Notice in the **Federal Register**.

Issued in Washington, D.C. on May 31, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR. Doc. 85-14314 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Recordkeeping Requirements

Correction

In FR Doc. 85-12877 beginning on page 21927 in the issue of Wednesday, May 29, 1985, make the following corrections:

1. On page 21928, in the table, above the "Economic Regulatory Administration" heading, insert the heading "DOE Energy Information Collections Extended"; also in the table, above the second "Federal Energy Regulatory Commission" heading, insert the heading "Reinstated DOE Energy Information Collections".

2. On page 21928, at the end of the table, insert the heading "DOE Energy Information Collections Discontinued or Allowed to Expire" and below it the entry "None".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

Oil Pipeline Tentative Valuation

June 10, 1985.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1981 Basic Report

Valuation Docket No. PV-1472-000—Sonat Oil Transmission Inc., P.O. Box 2563, Birminghan, Alabama 35202.

On or before July 18, 1985, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additonal parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85-14258 Filed 6-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-535-000 et al.]

Arkansas Oklahoma Gas Corporation et al.; Natural Gas Certificate Filings

June 10, 1985.

Take notice that the following filings have been made with the Commission:

1. Arkansas Oklahoma Gas Corporation

[Docket No. CP85-535-000]

Take notice that on May 22, 1985, Arkansas Oklahoma Gas Corporation (AOG), 115 North 12th Street, Fort Smith, Arkansas 72901, filed in Docket No. CP85-535-000 an application purusant to Sections 7(c) and 7(f) of the Natural Gas Act for a blanket certificate of public convenience and necessity pursuant to the Commission's Order No. 63 program and for a Commission determination of a service area for AOG in which it may enlarge or extend its facilities without further authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AOG proposes that the Commission designate portions of Haskill, Sequoyah, Latimer, and LeFlore Counties, Oklahoma and Crawford, Sebastian, Franklin, Logan, and Scott Counties, Arkansas as AOG's service area to allow the enlargement or extension of its facilities for the purpose of supplying increased market demands in such service area without further authorization. Furthermore AOG requests authorization under the Commission's Order No. 63 program

permitting the transportation and sale of natural gas in interstate commerce and the assignment of natural gas to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities under Sections 311 and 312 of the Natural Gas Policy Act of 1978.

AOG states that upon receipt of the requested determination it would connect certain existing facilities in Sequoyah and LeFlore Counties, Oklahoma with its interstate pipeline segment located in LeFlore County, Oklahoma to enable AOG to deliver newly discovered natural gas reserves for system supply. Currently, the two segments of AOG's system are separated by a blind plate; the connection would be accomplished by removing the blind plate and installing valves, meters and other necessary facilites, it is asserted. Upon receipt of the requested service area determination, AOG also states that it intends to construct two laterals consisting of a 1.2 miles 6-inch pipeline and a 2.5 miles 6-inch pipeline, as well as upgrade an existing compressor station located on AOG's interstate pipeline system in LeFlore County, Oklahoma. AOG asserts the that above facilities are necessary to attach approximately 11,570,000 Mcf of proven reserves to its system.

AOG further states that in the event its request for a determination pursuant to Section 7(f) of the Natural Gas Act is denied then it requests the Commission to deem the application in Docket No. CP85–535–000 as a request for a certificate of public convenience and necessity authorizing the construction of the above facilites.

Finally, AOG points out that it currently holds a certificate under the Commission's Order No. 60 program and Subpart G of Part 284 of the Regulations. In the event the Commission grants the requested service-area determination and the Order No. 63 authorization, AOG proposes to abandon its blanket certificate authorizing it to transport natural gas for the system supply of any other interstate pipeline as received by the Commission's order dated March 18, 1981, in Docket No. CP80–364.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corporation

[Docket No. CP81–188–006]

Take notice that on May 13, 1985 Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81–188–006 a petition pursuant to Section 7 of the Natural Gas Act to amend the order issued August 19, 1981, in Docket No. CP81–188, as amended, so as to authorize the continuation through October 31, 1986, of the transportation and delivery of natural gas to Niagara Mohawk Power Corporation (Niagara Mohawk), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant initially received certificate authorization in Docket No. CP81–188 to transport and deliver gas to Niagara Mohawk. It is explained that the subject gas is sold by Applicant to Niagara Mohawk in a direct sale and is used by Niagara Mohawk to generate electric power at its Albany, New York, steam plant. Applicant states that these certificated services were extended through October 31, 1985, by Commission order of October 4, 1984, 29 FERC ¶ 61,014. Applicant states that it and Niagara Mohawk have agreed to extend the present contractual arrangement for an additonal year, through October 31, 1986, and Applicant herein seeks an extension of the current certificate authorization.

Applicant proposes to continue charging Niagara Mohawk the same 100% load factor Rate Schedule RQ rate, subject to all purchased gas cost adjustments, as required by previous Commission orders.

According to the petition, the subject natural gas is and would be surplus to the needs of Applicant's present customers throughout the proposed one-year extension. Applicant avers that approval of its proposal would help it to maintain an appropriate level of demand sufficient to promote the development of long-term gas supplies, afford Applicant needed market flexibility, assist Applicant in maintaining an appropriate level of purchases from its pipeline and producer suppliers, and allow Niagara Mohawk to displace substantial amounts of No. 6 fuel oil as fuel at its Albany steam plant, thus providing a savings to Niagara Mohawk's customers.

Comment date: June 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Inter-City Minnesota Pipelines Ltd. Inc.

[Docket Nos. CP85–476–000 and CP85–513–000]

Take notice that on April 30, 1985, Inter-City Minnesota Pipelines Ltd. Inc. (Applicant), 910 Cloquet Avenue, Cloquet, Minnesota 55720, filed in Docket No. CP85–476–000 an application pursuant to section 3 of the Natural Gas Act for permission and approval to abandon a small section of pipeline and to construct and operate replacement facilities. Take further notice that on May 15, 1985, Applicant filed in Docket No. CP85–513–000 a related application pursuant to Executive Order Nos. 10485 and 12038, and Secretary of Energy Delegation Order No. 0204–112, for an amendment to its permit issued on August 10, 1970, in Docket No. CP70–288 for authority to construct, operate, maintain, and connect facilities at the international boundary between the United States and Canada for a proposed river crossing. Applicant's proposals are as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant proposes to install 3,557 feet of 12.75-inch pipeline to relocate its transmission line around the Baudette International Airport and approximately 700 feet of 12.75-inch pipeline to loop the Rainy River crossing from Baudette, Minnesota, to Rainy River, Ontario. Applicant states the relocation of the pipeline around the airport would involve the abandonment of a small section of pipeline.

Applicant states the total estimated cost of the proposed construction is $765,160 and Inter-City Gas Corporation, Applicant's parent, would provide interim financing.

Applicant states that airport taxi-ways cross Applicant's transmission line and that the Federal Aviation Administration (FAA) is concerned about the co-location of the high pressure pipeline and the airport. Applicant states the relocation of the pipeline is required by agreement with the Baudette International Airport Authority and the FAA. Further, Applicant states it desires to build a second river crossing at this time to increase the security of supply and to take advantage of cost savings by constructing the two projects concurrently.

Applicant further states that it is not owned wholly or in part by any foreign government or directly or indirectly subventioned by any foreign government and that it has no contracts with anyone which in any way relate to the control or fixing of rates for the purchase, sale or transportation of natural gas.

Comment date: June 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of American

[Docket No. CP85–519–000]

Take notice that on May 20, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–519–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of minor facilities to provide delivery and redelivery connections to the Tejas Copano Bay processing plant located in Aransas County, Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that since 1961, gas flowing through Applicant's Fulton Beach lateral from the Fulton Beach filed, and later also from Virginia and Nine Mile Point fields, has been processed for the producers' benefit at the Zoller gas plant in Refugio County, Texas. It is explained that the co-owners of the Zoller gas plant, Hunt Industries and Exxon Company U.S.A., desire to shut down permanently the plant and have entered into an agreement with Tejas Gas Corp. (Tejas) to process gas at Tejas' Copano Bay processing plant located about 12 miles upstream of the Zoller plant in Aransas County, Texas. Applicant states that since the Virginia field is downstream of the Copano Bay processing plant, gas from that field is not proposed to be processed at Copano Bay because the producer cannot justify a pipeline from the field to that plant.

Applicant proposes herein to install facilities consisting of a block valve and two side taps to connect and reconnect the Copano Bay plant to its 8-inch Fulton Beach lateral. The estimated cost of such facilities is $44,000, which cost would be reimbursed to Applicant by Tejas.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–438–000]

Take notice that on April 15, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–438–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to continue to transport natural gas for Georgia-Pacific Corporation (Georgia-Pacific), a low priority end-user of natural gas, through December 31, 1986, and for permission and approval to abandon such transportation service effective January 1, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it currently is authorized to provide this same transportation service for Georgia-Pacific through June 30, 1985, under authority granted in Docket No. CP85–242–000 pursuant to Section 157.205 of the Commission's Regulations and Applicant's blanket certificate issued in Docket No. CP82–401–000. Applicant states that, because of the uncertainty which currently exists regarding an extension of the Commission's end-user transportation program beyond June 30, 1985, Applicant is requesting authority to continue to transport natural gas in order to provide market assurance to Georgia-Pacific through December 31, 1986, at the same end-use location and within the maximum daily and annual volumes.

Applicant requests authority to continue to provide essentially the same transportation service in accordance with the same terms and conditions authorized in Docket No. CP85–242–000 with the following exceptions:

1. Applicant requests authority to continue to provide the transportation service authorized in Docket No. CP85–242–000 through December 31, 1986;

2. Applicant requests abandonment authorization of this proposed transportation service effective January 1, 1986;

3. Applicant requests a waiver of Section 284.122(b)(B)(ii) of the Commission's Regulations for all third-party transporters providing, under the self-implementing regulations established under Subpart C of Part 284 of the Commission's Regulations, incidental transportation to Applicant's proposed transportation herein; and

4. Applicant would continue to charge the same transportation rate authorized in Docket No. CP85–242–000; however, such rate would be based upon Applicant's system-wide average cost of service and allocation factor (4.65 cents per 100 miles of forward-haul plus 0.1 cent per Mcf for general and administrative expenses) derived from Applicant's settlement agreement in Docket No. RP82–71–000 approved by the Commission's order dated April 28, 1983. Such rate would not be charged pursuant to Applicant's Rate Schedule EUT–1 which also is due to expire on June 30, 1985, for low-priority end-user transportation services, it is explained.

Applicant requests that the Commission authorize its proposal irrespective of the actions taken by existing interstate pipelines providing incidental transportation in Docket No. CP85–242–000, since Applicant currently is authorized and is requesting continued authority to add new sources of supply, Applicant receipt points, and Applicant delivery points (subject to certain reporting requirements) which may not involve the incidental transporters currently identified in Docket No. CP85–242–000.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–511–000]

Take notice that on May 16, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–511–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas in accordance with the provisions of a General Rate Schedule, referred to as Rate Schedule GS–1, and to transfer existing volumes of firm entitlement from participating customers under existing firm rate schedules to proposed Rate Schedule GS–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to establish a new sales rate schedule, Rate Schedule GS–1, which is the result of negotiations in Applicant's proceedings in Docket Nos. RP82–71, TS83–1–59, TA841–59, and TA85–1–59 as detailed in the stipulation and agreement of settlement filed with the Commission on March 29, 1985. It is stated that the proposed rate schedule was established at the request of certain of Applicant's customers which annually experience cash flow problems during the summer months when sales of natural gas are reduced, and associated revenues received are less than expenses incurred. Applicant states that Rate Schedule GS–1 compliments Applicant's other existing firm rate schedules by offering a one-part rate available to a unique group of customers which experience unnecessary hardships resulting from purchasing natural gas under a two-part rate.

Applicant states that Rate Schedule GS–1 would be available to its distribution customers whose daily firm entitlement is 5500 Mcf of gas per day or less and whose system is connected to and receives natural gas from

Applicant's pipeline system. It is indicated that any of Applicant's distribution customers purchasing gas pursuant to Rate Schedule CD–1 desiring to purchase gas pursuant to the proposed Rate Schedule GS–1 would have the option to switch to this new rate schedule on March 27, 1985 or on November 27 of any subsequent year thereafter.

Applicant states that the firm entitlement available to be purchased under Rate Schedule GS–1 initially would be comprised of the sum of the respective distribution customer's firm entitlement under Rate Schedule(s) CD–1, SS–1, WPS, and PS–1 Rate Schedules of Applicant's FERC Gas Tariff, Third Revised Volume No. 1.

Applicant proposes to charge a one-part commodity rate for services provided under Rate Schedule GS–1. It is stated that such rate would be derived by dividing the participating customers' Docket No. RP82–71 settlement sales volumes into the revenue requirements which would have resulted if the Rate Schedule GS–1 customers had participated in its firm entitlement reduction program under the existing rate schedules. Applicant indicates that such rate currently is $4.4494.

Applicant states that for any new distribution customers or existing distribution customers seeking additional firm entitlement under Rate Schedule GS–1 subsequent to the issuance of an order herein, volumes available to be sold under this proposed rate schedule would be subject to negotiation between Applicant and the distribution customer and would be the subject of a separate Section 7(c) application.

Applicant states that the first year's notification of a customer's intent to participate in Rate Schedule GS–1 was required by April 1, 1985. It is indicated that as a result, the following customers have contracted for service under Rate Schedule GS–1: Municipal Gas System of Cascade, Iowa; City of Gilmore, Iowa; Kansas Power and Light Company; City of Ponca, Nebraska; City of Remsen, Iowa; City of Rolfe, Iowa; City of Stromsburg, Nebraska, and City of Tipton, Iowa.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP81–482–003]

Take notice that on May 20, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81–482–003 a petition to amend the order issued May 14, 1982, in Docket No. CP81–482–000, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to increase the maximum daily quantity of gas authorized to be transported by Tennessee for Amoco Production Company (Amoco), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Tennessee states that it is currently authorized to transport up to 45,000 Mcf of natural gas per day for Amoco from Amoco's Eugene Island Block 322 A platform to the inter-connections of Tennessee's facilities with those of Florida Gas Transmission Company (Florida) near Carnes, Mississippi, at the existing delivery point in St. Bernard Parish, Louisiana, and at a point of delivery in Calcasieu Parish, Louisiana. It is further stated that the gas transported by Tennessee is used by Amoco to assist it in meeting its warranty contract obligations to Florida and/or Florida Power and Light Company (FP&L).

Pursuant to an amended gas transportation agreement dated March 27, 1985, Tennessee proposes to increase the maximum daily transportation quantity from 45,000 Mcf of gas per day to 65,000 Mcf per day. On days when Amoco has designated a transportation quantity of 65,000 Mcf of gas per day, Tennessee further proposes to transport for Amoco, on an interruptible basis, an overrun quantity of up to an additional 25,000 Mcf per day. Tennessee indicates that no change in the existing authorized transportation rate for the transportation service is proposed except that Tennessee does propose to charge Amoco an excess demand charge equal to 3.22 cents multiplied by the excess transportation quantity for any volumes of overrun gas transported. Tennessee proposes no other change in the existing authorized transportation service.

Comment date: June 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14259 Filed 6–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. P–7122–001 et al.]

City of Las Cruces, New Mexico et al.; Surrender of Preliminary Permits

June 10, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. City of Las Cruces, New Mexico

[Project No. 7122–001]

Take notice that the City of Las Cruces, New Mexico, Permittee for the proposed Caballo Project No. 7122, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 31, 1983, and would have expired on July 31, 1985. The project would have been located on the Rio Grande in Sierra County, New Mexico. The Permittee states that a preliminary permit study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 30, 1985.

2. Merced Irrigation District

[Project No. 6593–001]

Take notice that Merced Irrigation District, Permittee for the proposed South Fork Merced River Project No. 6593, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 10, 1983, and would have expired on February 28, 1986. The project would have been located on South Fork Merced River in Mariposa County, California. The Permittee sates that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on May 9, 1985.

3. Ririe Idaho Associates

[Project No. 7790–001]

Take notice that Ririe Idaho Associates, Permittee for the Ririe Dam Project No. 7790, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7790 was issued April 23, 1984, and would have expired September 30, 1985. The project would have been located on Willow Creek in Bonneville County, Idaho.

The Permittee filed the request on May 13, 1985.

Standard Paragraphs:

I. The Preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14260 Filed 6–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF85–506–000 et al.]

East Orange General Hospital et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

June 10, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. East Orange General Hospital

[Docket No. QF85–506–000]

On May 23, 1985, East Orange General Hospital, (Applicant) of 300 Central Avenue, East Orange, New Jersey 07019, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the East Orange General Hospital at East Orange, New Jersey. It will consist of a natural gas fired engine coupled to a synchronous generator. Useful thermal energy will be produced by passing the exhaust gases from the engine through a waste heat boiler, and recovery through a heat exchanger from the engine lube oil and cooling system. The thermal output from the cogeneration system will provide heating, hot water and refrigeration services to the hospital on an "as demanded" basis. The primary energy source of the facility will be natural gas. The electric power production capacity will be 650 kW. The installation of the facility will begin on July 1, 1985.

2. Hartford Hospital

[Docket No. QF85–505–000]

On May 21, 1985, Hartford Hospital (Applicant) of 80 Seymour Street, Hartford, Connecticut 06106 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Hartford, Connecticut. The facility will contain two combustion turbine generator sets, two supplementary natural gas-fired heat recovery boilers and a steam turbine generator. The steam will be utilized in the Hospital's steam distribution system for space and water heating and also in the absorption chillers for air conditioning. The primary energy source will be natual gas. The net electrical power production capacity of the facility will be 8,666 kW. The faciltiy is expected to begin commercial operation in January 1987.

3. S.A.M. Partnership Jesse Rifkind

[Docket Nos. QF85–507–000, QF85–508–000, QF85–509–000]

On May 22, 1985, Mark Coppos et al. (Applicants) submitted for filing three applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. Correspondence and communications regarding these applications should be directed to the common agent of the applicants, Taxvest Wind Farms, Inc., 5950 Canoga Avenue, Suite 600, Woodland Hills, California 91367. No determination has been made that the submittal constitutes a complete filing.

Each small power production facility is located in an unincorporated section of Alamada County, California. Each facility consists of one Micon Viking 60/13 wind turbine generator which produce 66 kilowatts at 1,200 rpm and use wind as the energy source.

4. Texas A&M University Research & Extension Center

[Docket No. QF85–517–000]

On May 28, 1985, Texas A&M University Research & Extension Center, (Applicant), of Rt. 2, Box 589 Corpus Christi, Texas 78410 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 25 kilowatt wind facility will be located on Highway 44, Corpus Christi, Texas.

5. Veterans Administration Certral Office

[Docket No. QF85–511–000]

On May 24, 1985, Veterans Administration Central Office, (Applicant) of 810 Vermont Avenue NW., Washington, D.C. 20420, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Veterans Administration Medical Center, San Diego, California. It will consist of a recuperated turbine generator and waste heat recovery boiler. The steam produced by the waste heat recovery boiler will be introduced into the existing high pressure steam header and used principally for heating and cooling loads. The primary energy source of the facility will be natural gas. The electric power production capacity will be 880 kW. The installation of the facility will begin on November 1, 1985.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14261 Filed 6-12-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeal, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $322,748 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Northeast Petroleum Industries, Inc., a reseller-retailer of petroleum products. Northeast is located in Chelsea, Massachusetts.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0137.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The proposed Decision relates to a consent order entered into by Northeast Petroleum Industries, Inc. (Northeast) and the DOE. The consent order settled possible pricing violations in Northeast's sales of No. 6 residual fuel to customers during the period November 1, 1973 through June 30, 1975.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Northeast pursuant to be consent order. The DOE has tentatively decided that a portion of the consent order funds should be distributed to two first purchasers after each has filed an application for refund. The purchasers in this case were identified by a DOE audit and were alloted funds based on presumptions of injury which the DOE has utilized in past proceedings. However, applications for refund will also be accepted from purchasers not identified by the DOE audit. In the event that money remains in the Northeast escrow account after all first-stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: June 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 4, 1985.

Name of Firm: Northeast Petroleum Industries, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0137.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *See Office of Enforcement*, 9 DOE ¶ 82,508 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered with Northeast Petroleum Industries, Inc. (Northeast). Northeast is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Chelsea, Massachusetts. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to sales of No. 6 residual fuel during the period November 1, 1973 through June 30, 1975 (audit period). In order to settle all claims and disputes between Northeast and the DOE regarding the firm's sales of No. 6 residual fuel during the audit period, Northeast and the DOE entered into a consent order on June 19, 1979. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Northeast does not admit that it committed any such violations. Finally, according to the Northeast consent order, the alleged overcharges affected two classes of customers, and separate processes were established by which Northeast would make refunds. Initially, Northeast agreed to refund $167,252, including interest, directly to two end-user customers.[1] In addition, the firm agreed to place $322,748, which includes interest to date of deposit, in an escrow account for DOE to distribute to its other purchasers. The consent order funds were paid in full on April 30, 1982. This Decision concerns the distribution of the consent order funds that were deposited in the Northeast escrow account, plus accrued interest to date.[2]

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[1] Our records show that these refunds were made to New England Power Service Company and Boston Edison Company.

[2] Northeast has also deposited funds into three other escrow accounts. One account represented

Continued

II. Proposed Refund Procedures

The purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. 10 CFR Part 205, Subpart V. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a more precise determination with respect to the identity of the allegedly overcharged parties is possible.

During the DOE's audit of Northeast, two first purchasers were identified by ERA as having allegedly been overcharged. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of all possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong & Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit, or to their downstream purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.*, 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audits, along with the respective shares of the settlement amount alloted to each by ERA, are listed in the Appendix to this decision.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any or part of the alleged overcharges were passed on. In addition to using the information in the record at this time, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby facilitate the distribution of the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we propose to adopt a presumption of injury with respect to small claims.

There are a variety of reasons for adopting this presumption. *See, e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Northeast and were in the chain of distribution where the alleged overcharges occured. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption which we propose to adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order fund is relatively small, and the time period of the consent order is may years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. However, the information in the record has led us to conclude that the two firms listed in the Appendix are both reseller purchasers. Therefore, it appears that both firms have been authorized refunds larger than the amount that a purchaser may be entitled to receive under the small claims presumption we have proposed. Both of these purchasers will therefore be required to make a specific demonstration of injury prior to receiving the full refund allotted to it in the Appendix. As in previous special refund cases, we will require these firms to show that they did not pass the effects of Northeast's alleged regulatory violations through to their own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which they could make this showing, these firms should generally demonstrate that at the time they purchased Northeast products, market

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alleged overcharges on motor gasoline during the period November 1, 1973 through April 30, 1974, and has already been distributed in first and second stage refund proceedings. The two other accounts represent, respectively, Northeast's alleged overcharges on motor gasoline during the period May 1, 1974 through August 31, 1979 and Northeast's alleged overcharges on crude oil and residual fuel oil during the period January 1, 1973 through January 28, 1981. The procedures we are proposing below, however, apply only to the escrow account into which Northeast deposited the $322,748.

conditions would not permit them to pass the alleged overcharges on to their own customers in the form of higher prices. In addition, the firms must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85.014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

There may also have been first purchasers other than those identified by the ERA audit, as well as subsequent repurchasers, who may have been injured by the alleged overcharges and who therefore could be entitled to a portion of the consent order funds. In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the Northeast consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.* 12 DOE ¶ 85,069 (1984) and cases cited therein. We have concluded that end-users of Northeast petroleum products need only document their purchase volumes from Northeast to make a sufficient showing that they were injured by the alleged overcharges. If these or other additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the modest benefits of restitution in those situations. *See, e.g., Uban, supra*, at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases of No. 6 residual fuel from Northeast, or to submit a statement verifying that it purchased residual fuel from Northeast and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying the Northeast proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Northeast Petroleum Industries, Inc. pursuant to the consent order executed on June 19, 1979, will be distributed in accordance with the foregoing decision.

APPENDIX.—NORTHEAST PETROLEUM INDUSTRIES, INC.

First purchaser	Portion of settlement amount [1]
Exxon Company, U.S.A.	$30,534
Atlantic Richfield Company	292,214

[1] Includes interest through April 30, 1982.

[FR Doc. 85-14319 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $29,200 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Buck's Butane and Propane Service, Inc. of San Jose, California. The funds will be available to customers who purchased propane during the period March 1974 through January 28, 1981.

DATE AND ADDRESS: Applications for refund of a portion of the Buck's consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to Buck's Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0043.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Buck's Butane and Propane Service, Inc. (Buck's) of San Jose, California. The Consent Order settled possible pricing and allocation violations with respect to Buck's sales of propane and rental of propane tanks during the period March 1974 through January 28, 1981. Under the terms of the Consent Order, $29,200 has been remitted to the DOE by Buck's and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order fund was issued on March 12, 1985. 50 FR 12609 (March 29, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Application will be accepted from customers who purchased propane from Buck's during the period March 1974 through January 28, 1981. The specific information required in an application for refund is set forth in section IV of the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedures is completed.

Dated: May 31, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 31, 1985.

Name of Firm: Buck's Butane and Propane Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0043.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Buck's Butane and Propane Service, Inc. (Buck's) of San Jose, California.

I. Background

Buck's is a "retailer" of "propane," as these terms were defined in 10 CFR 212.31.[1] In conjunction with its retail sales of propane, Buck's rents propane tanks to its customers. The Federal Energy Administration (FEA), predecessor of the ERA, audited Buck's operations during the period November 1, 1973 through February 29, 1976 (the audit period) and found possible violations of the Mandatory Petroleum price Regulations.[2] In order to settle all claims and disputes between Buck's and the DOE regarding Buck's compliance with the DOE's price regulations in sales of propane and the rental of propane tanks during the period March 1974 through January 28, 1981 (the consent order period), the firm entered into a Consent Order with the DOE on June 26, 1981.[3] In accordance with the Consent Order, Buck's agreed to remit $29,200 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order states that Buck's does not admit to having violated the price regulations in sales of propane and the rental of propane tanks.

On March 12, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Buck's consent order fund. 50 FR 12609 (March 29, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Buck's pricing practices during the consent order period.

A copy of the PD&O was published in the **Federal Register** on March 29, 1985, and comments were solicited regarding the proposed refund procedures. While none of Buck's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, California, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments however, discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of propane from Buck's should submit in an Application for Refund in order to establish eligibility for a portion of the consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement,* 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[4] Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement

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[1] Although the Consent Order identifies Buck's as a reseller-retailer, our records indicate that Buck's sold propane only to residential, commercial, and industrial end-users. Accordingly, we have determined that Buck's should be classified as a retailer. *See* 10 CFR 212.31.

[2] In a Remedial Order (RO) issued to Buck's on April 21, 1977, the FEA found that during the audit period, Buck's had overcharged its customers by $95,488.65 in sales of propane and $62,909.82 in the rental of propane tanks. This RO was appealed, and in a Decision and Order issued on November 15, 1977, the OHA remanded the RO in part, requiring that the alleged overcharge amounts be reduced by the total amount of any refunds made by the firm to its customers. *Buck's Butane & Propane Service, Inc.,* 1 DOE ¶ 80,119 (1977). In a subsequent Decision, the OHA rescinded the portion of the RO relating to sales of propane. *Buck's Butane & Propane Service, Inc.,* 2 DOE ¶ 80,102 (1978). Consequently, the only outstanding violation for which Buck's was responsible involved the $62,909.82 in overcharges to customers who rented propoane tanks. The Remedial Order with respect to this violation was affirmed by a United States District Court. *Buck's Butane & Propane Service, Inc., v. Department of Energy,* Fed. Energy Guidlines, Court Decisions 1981–1984, ¶ 26,303 (D.C. Cal. 1981).

The amount Buck's was required to refund was subsequently reduced in a Decision and Order issued by the OHA on June 14, 1978. *Buck's Butane & Propane Service, Inc.,* 8 DOE ¶ 81,046 (1981). In that Decision, the OHA granted exception relief to Buck's permitting the firm to offset $46,888.08 of refunds previously made by the firm to its propane customers against the firm's tank rental overcharges. The OHA determined that this offset was appropriate since the firm's tank rental customers and those to whom it sold propane were virtually identical groups. As a result, the firm's refund obligation was reduced to $16,021.74, plus interest.

[3] The Buck's Consent Order settles all claims with respect to Buck's outstanding liability regarding tank rental transactions during the audit period, as well as all other claims and disputes that may have arisen regarding Buck's compliance with the DOE price regulations in sales of propane and the rental of propane tanks during the consent order period. Although the consent order period (March 1974 through January 28, 1981) does not cover the first four months of the audit period (November 1973 through February 1974), the FEA audit files clearly indicate that Buck's is not liable for any regulatory violations in its sales of propane and rental of propane tanks during those four months.

[4] It is not clear, however, that any of the States that filed comments, except for California, have a direct interest in this proceeding, since all of the sales involved were made in the area of San Jose, California.

agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Buck's consent order fund. We will therefore grant the ERA's petiton and assume jurisdiction over distribution of the fund.

III. Determination of Refund Amounts

As an initial matter, we will adopt our finding that Buck's customers, all of whom were end-users or ultimate consumers, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases.

For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that Buck's customers need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

As proposed in the PD&O, we will also adopt a presumption that any alleged overcharges by Buck's were dispersed equally in all sales of propane made by the firm during the consent order period. In the past, we have referred to this presumption as a volumetric refund amount. *See, e.g., Vickers*. As we stated in the PD&O, the information in the Buck's audit file provides an insufficient basis for computing refunds based on alleged overcharge amounts. Specifically, the consent order period (March 1974 through January 28, 1981) is not coterminous with the audit period (November 1973 through February 1976); the Consent Order covers alleged overcharges in sales of propane as well as tank rentals, while the Remedial Order, as affirmed, applied only to tank rental violations; and only a small percentage of Buck's customers during the consent order period are identified in the audit records. We have therefore determined that a volumetric refund presumption will provide the most efficient and equitable method for distributing the Buck's consent order fund.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.
> 10 CFR 205.282(e)

The volumetric refund presumption we are adopting in this proceeding assumes that any overcharges that occurred were spread equally over all gallons of propane marketed by Buck's. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[5]

As proposed in the PD&O, we will determine the volumetric factor by dividing the consent order fund by the estimated total volume of propane sold by Buck's during the consent order period.[6] In the present case, this results in a refund amount of $0.0007454 for each gallon of propane which an applicant purchased from Buck's. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations.[7] *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Refund Application Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the consent order fund. Accordingly, we shall now accept applications for refunds from customers who purchased from Buck's during the consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of propane purchased from Buck's for which it is claiming a refund. In addition, each applicant must state whether there has been a change in ownership of the firm since the consent order period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Buck's Consent Order Fund, Case No. HEF-0043. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is

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[5] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Buck's pricing practices during the consent order period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

[6] The present case is different from *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984), in which we based the volumetric refund level on the tank capacity of each claimant. The alleged overcharges in that case were attributable solely to tank rentals, whereas the alleged overcharges covered by the Buck's Consent Order are attributable to sales of propane as well as the rental of propane tanks. In addition, the record in *Buck's Butane & Propane Service, Inc.*, 1 DOE ¶ 80,119 (1977), shows that Buck's tank rental agreements required the firm's tank lessees to fill the tanks only with propane purchased from Buck's. *See* 1 DOE at 80,615. Accordingly, we find it reasonable in the present case to base the volumetric refund level on the volumes of propane sold by Buck's. We have calculated that volume figure by extrapolating available audit data, because the FEA audit files do not list the volumes of propane sold by Buck's during the entire consent order period.

[7] Under the volumetric refund level established in this proceeding, a Buck's customer must have purchased 20,123 gallons of propane during the consent order period in order to qualify for the minimum refund.

confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Buck's Butane and Propane Service, Inc. pursuant to the Consent Order executed on June 26, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay.

Director, Office of Hearings and Appeals.

May 31, 1985.

[FR Doc. 85-14317 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding $1,010,000 plus accrued interest in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Warren Holding Company.

DATE AND ADDRESS: Applications for refund must be postmarked by September 11, 1985, should conspicuously display a reference to case number HEF-0192, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the Warren Holding Company which settled alleged violations of DOE price regulations in the sales of motor gasoline and No. 2 heating oil made by several firms controlled by Warren Holding Company during the period November 1, 1973 through April 30, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by September 11, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: June 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 4, 1985.

Name of Firm: Warren Holding Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0192.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedureal regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Warren Holding Company (Warren).

Several corporations controlled by Warren Holding Company marketed petroleum products to resellers and end users located primarily in the States of New York, Connecticut, Rhode Island, and Massachusetts. The Warren firms were subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. An ERA audit of the firms' records revealed possible price violations with respect to the sales of motor gasoline and No. 2 heating oil from November 1, 1973 through April 30, 1974. The overcharges alleged by ERA were attributed to sales made by the following entities during the following periods:

Company	Product	Period
Mid-Valley Oil Co., Inc., Mid-Valley Petroleum Corp., Newburgh, N.Y.	Motor gasoline	Nov. 1 to Dec. 31, 1973; Jan. 7 to Mar. 31, 1974.
	No. 2 heating oil	Nov. 21, 1973; Dec 13 and Dec. 19, 1973
Kenyon Oil Co., Inc., North Grosvernordale, CT.	Motor gasoline	Nov. 16, 1973 to Feb 28, 1974; Mar. 4 to Apr. 30, 1974
Petroleum Marketers, Inc., North Grosvernordale, CT.	Motor gasoline	Nov. 1, 1973 to Jan 31, 1974; Mar. 1 to Apr. 30, 1974.
Drake Petroleum Co., Inc., Auburn, MA.	Motor gasoline	Nov. 1 1973 to Apr. 30, 1974.
Warren Petroleum Corp. Rhode Island Oil Co., Inc., Providence, RI.	Motor gasoline	Nov. 1, 1973 to Mar 31, 1974, Apr. 5 to Apr. 7, 1974.

In order to settle all claims and disputes between DOE and the Warren companies regarding the firms' sales of motor gasoline and No. 2 heating oil during the audit period, DOE and Warren Holding Company entered into a consent order on September 12, 1980, in which Warren Holding Company agree to remit $1,010,000 to DOE.[1] This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges.

On April 24, 1985, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute the money in the Warren escrow account to claimants who satisfactorily demonstrate that they were injured by Warren's alleged violations. 50 FR 18561 (May 1, 1985).

This decision establishes procedures for filing claims in the Warren refund proceeding. We will describe the information that a purchaser of Warren motor gasoline and No. 2 heating oil should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address issues raised by our April 24 proposal.

[1] The Warren consent order does not include sales made by any other subsidiary or affiliate of Warren Holding Company or any unnamed subsidiary of the above-mentioned entities.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such a proceeding with respect to the Warren consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Warren consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers

We have concluded that applications for refund should now be accepted from claimants who satisfactorily demonstrate that they were injured by Warren's alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of its purchases of motor gasoline and No. 2 heating oil for the applicable periods. If the motor gasoline and No. 2 heating oil was not purchased directly from one of the Warren companies listed above, the claimant will be required to include a statement setting forth its reasons for believing the product originated with Warren. In addition, a reseller or retailer that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement: In the Matter of Ada Resources, Inc.,* 10 DOE ¶ 85,029 at 88,125 (1982).

In addition, a reseller will have to provide some further evidence of injury. *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,215 (1982) (hereinafter cited as *Amoco*). A reseller can make this showing by demonstrating that the prices it paid to other suppliers for motor gasoline or No. 2 heating oil were lower than those it paid to Warren. *See, e.g., Tenneco Oil Co./Racetrac Petroleum, Inc.,* 10 DOE ¶ 85,023 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e). Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of motor gasoline and No. 2 heating oil marketed by the Warren companies during the periods covered by the consent order. This assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, because the impact on individual purchasers could vary, each purchaser is allowed to file an application based on a claim that the alleged overcharges had an actual impact greater than that presumed. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.,* 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less were injured by Warren's alleged overcharges. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.,* 11 DOE ¶ 85,226 (1984) and cases cited therein.[2] Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level.[3]

In addition to the presumptions we are adopting, we are making a finding that each end-use or ultimate consumer whose business is unrelated to the petroleum industry was injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroluem industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.,* 10 DOE § 85,072 (1983); *see also Texas Oil & Gas Corp.,* 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Warren motor gasoline and No. 2 heating oil that they purchased in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases of motor gasoline or No. 2 heating oil sold by the Warren companies, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 at 85,396–97 (1981). We

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[2] In *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

[3] Applicants whose refund claims exceed the sum of $5,000 but cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc., 10 DOE ¶ 85,029 at 88,122 (1982).

believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Warren motor gasoline and No. 2 heating oil. *See Amoco* at 88.200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.0149114 per gallon ($1,010,000 received from Warren divided by 67,733,412 gallons of motor gasoline and No. 2 heating oil sold by the Warren companies during the periods covered by the consent order), exclusive of interest. Refunds will be calculated by multiplying eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proporationate share of the interest accrued on the consent order fund since it was remitted to DOE. As of March 1, 1985, accrued interest will increase the per gallon refund amount by $.0089747 for a total per gallon amount of $.0238861. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it suffered a disproportionate share of the alleged overcharges may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Ubar Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

B. Application for Refund

An application must be in writing, signed by the applicant, and specify that it pertains to the Warren Consent Order Fund, Case Number HEF-0192. An applicant should indicate whether it purchased motor gasoline or No. 2 heating oil, and from whom the motor gasoline or No. 2 heating oil was purchased. If the applicant is not a direct purchaser from one of the Warren companies it should also indicate the basis for its belief that the motor gasoline or No. 2 heating oil which it purchased originated from one of the Warren companies. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Warren motor gasoline or No. heating oil, indicating whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973, through January 27, 1981. If the applicant is a reseller, it must also submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. An applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). In addition an applicant should state whether the applicant has received compensation for any alleged Warren overchanges (such as through a price rollback or refund from Warren, or through a private legal action). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, each applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

Each application for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Warren Holding Co. Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Warren consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF-0192 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Warren Holding Company pursuant to the consent order executed on September 12, 1980, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Date: June 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-14320 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 22 Through April 26, 1985

During the week of April 22 through April 26, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

James T. O'Reilly, 4/24/85; *HFA-0273*

James T. O'Reilly (O'Reilly) filed a submission entitled "Appeal from Remanded Disclosure" regarding a response by the Authorizing Official of the Oak Ridge Operations Office of the Department of Energy (DOE) to a remand order issued in *James T. O'Reilly*, 12 DOE ¶80,142 (1984). In his response, the Authorizing Official provided O'Reilly with the final version of a document, but withheld a draft of the document pursuant to Exemption 5 of the Freedom of Information Act (FOIA).

According to O'Reilly, the draft version of the document should be released because the final version has been greatly edited or altered. In considering O'Reilly's submission, the OHA found that O'Reilly failed to provide any supporting factual or legal basis for this contention. Accordingly, the Appeal was denied.

Darci L. Rock, 4/23/85; *HFA–0282*

Darci L. Rock filed an Appeal from a partial denial by a Deputy Director of the Office of Hearings and Appeals of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Deputy Director properly withheld the contested material pursuant to Exemption 5 of the FOIA. The DOE further concluded that discretionary release of the withheld documents would not be in the public interest. The Appeal was therefore denied. Important issues that were considered in the Decision and Order were (i) whether the contested material was deliberative and pre-decisional in nature, and (ii) whether the search for responsive materials was adequate.

Remedial Orders

ERA/Almarc Manufacturing, Inc., 4/22/85; HRW–0026

The Economic Regulatory Administration filed a motion to issue a Proposed Remedial Order (PRO) issued to Almarc Manufacturing, Inc. as a final Remedial Order. Almarc had not filed a Notice of Objection to the PRO with the Office of Hearings and Appeals. The DOE therefore determined that Almarc admitted the findings of fact and conclusions of law contained in the PRO and further consented to its issuance as a final order. The DOE further determined that the remedial provisions of the PRO should be modified to require that the money be distributed pursuant to the Special Refund Procedures of 10 CFR Part 205, Subpart V. The PRO as modified was issued as a final Remedial Order of the DOE.

Warrior Oil Company, 4/23/85; HRO–0182

The ERA alleged tat Warrior violated 10 CFR 212.10 and 212.93, by selling crude oil at prices in excess of maximum legal selling prices. Warrior objected on two grounds. First, Warrior claimed that its product was too heavy to be a liquid, and therefore was not crude oil under the regulatory definition of crude oil. However, based on the evidence, OHA determined that the product was a liquid upon extraction, and remained so until after its sale to Warrior's purchasers. Thus, OHA found that the product was crude oil.

Second, Warrior claimed that it was not a "reseller." According to Warrior, it was in the business of selling "gathering and transportation services," and the fact that it took title to the crude oil in question should be ignored. OHA found that Warrior was a "reseller" since it: (1) Took title to a covered product; (ii) did not substantially alter the product; and (iii) sold the product to a purchaser other than an ultimate consumer. Accordingly, the DOE issued a final Remedial Order to Warrior.

Petition for Special Redress

Great Lakes Electric Consumers Association, 4/26/85; HEG–0038

The Great Lakes Electric Consumers Association (GLECA) filed a Petition for Special Redress in which it requested that approximately 25 percent of the money remaining in escrow after the distribution of refunds in the first stage of special refund proceedings under 10 CFR Part 205, Subpart V, be made available to publicly-owned and consumer-owned electric utilities which submit plans for energy-related projects which benefit petroleum products customers. After considering the GLECA Petition, the Office of Hearings and Appeals (OHA) concluded that another more appropriate proceeding was available for electric utilities that want to be conduits for second-stage refunds. Specifically, the OHA determined that the utilities could file second-stage refund claims on an individual basis in those Subpart V proceedings in which they are able to show that their energy-related projects best serve the equitable and restitutionary goals of the Subpart V process. Accordingly, the GLECA Petition was dismissed without prejudice.

Request for Stay

Revere Petroleum Corporation, 4/26/85; HRS–0047

Revere Petroleum Corporation and Richard Dobyns (Revere) filed a submission with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) seeking a Stay of their obligation to file a Statement of Objections in a related Proposed Remedial Order (PRO) proceeding (Case No. HRO–0125). The basis for the Stay request was the referral by the DOE to the Department of Justice, for possible criminal prosecution, of certain issues in the PRO. According to Revere, following the referral, the DOE was merely gathering evidence for the possible criminal prosecution. Thus, Revere contends that the submission of its Statement of Objections may result in a violation of its constitutional privilege against self-incrimination. In considering Revere's application, the OHA determined that Revere's contentions were unfounded and speculative. Moreover, the OHA found that responding to the PRO would not violate Revere's constitutional privilege against self-incrimination. The OHA found that our procedure in previous cases, requiring submission of the Statement while allowing the party to assert constitutional violations where applicable, adequately protected the party's rights while expediting the underlying proceeding. Accordingly, the Application for Stay was denied.

Motion for Discovery

Doma Corporation, 4/26/85; HRD–0214, HRH–0214

The ERA issued a Proposed Remedial Order (PRO) alleging that Doma Corporation violated the DOE's pricing and certification regulations, 10 CFR 212.93 and 212.131, in resales of crude oil and related products. Doma sought discovery of all the material generated during the ERA's audit of the firm. OHA determined that the ERA has already supplied Doma with all the information needed to understand the legal and factual bases of the allegations set forth in the PRO, and to prepare an adequate defense thereto. Accordingly, OHA concluded that the firm was not in need of additional audit-related materials, and that its request should be denied.

Doma also contends that the PRO was issued only because the ERA auditor responsible for the Doma audit bore a grudge against the firm. In order to support this contention, Doma sought discovery of materials which it says would reveal the agency's motivation for initiating this proceeding. OHA held, as a matter of law, that the question of the ERA auditor's sentiments toward the firm were totally irrelevant to a determination of whether Doma had committed the violations alleged in the PRO. OHA also found that Doma had not supported its claims of improper agency action with a single piece of evidence. Accordingly, OHA denied these requests.

Interlocutory Order

Economic Regulatory Administration/Ozark County Gas, Inc., 4/24/85; HRZ–0239, HRZ–0240

The Economic Regulatory Administration filed Motions to Withdraw and Amend a Proposed Remedial Order issued to Ozark County Gas, Inc. (Case No. HRD–0239). In considering the motions, the DOE found that ERA's proposed amendment—adjusting the total amount of alleged overcharges in the PRO to correct previous calculation errors—would not unduly burden Ozark and would be the most efficient way to continue the enforcement proceeding in an orderly fashion. Therefore, ERA's Motion to Amend the PRO was granted and ERA's previous Motion to Withdraw the PRO was dismissed.

Supplemental Order

Revere Petroleum Corporation, et al., 4/23/85; *HRX–0119*

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Supplemental Order to Revere Petroleum Corporation, *et al.* In the order, issued pursuant to 10 CFR 205.199G of the DOE procedural regulations, the OHA rescinded the Motion to Strike granted in our January 24, 1985, Decision and Order. *Economic Regulatory Administration/Revere Petroleum Corp.*, 12 DOE ¶ 82,544 (1985). Accordingly, the materials stricken from the record in the *Revere* Proposed Remedial Order proceeding (Case No. HRO–0125) have been reinserted into the record.

Implementation of Special Refund Procedures

Glen Martin Heller, 4/25/85; *HEF–0088*

On April 25, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $7,914.90 (plus accrued interest) obtained as a result of a Memorandum and Order issued to Glen Martin Heller by the United States District Court for the District of Massachusetts on December 29, 1981. The funds will be available to customers who purchased motor gasoline from Heller's retail

service station during the period August 1, 1979 through December 1, 1979. Successful applicants will receive refunds proportionate to the volume of motor gasoline they purchased from Heller.

Mallard Resources, Inc., 4/22/85; *HEF-0474*

The DOE issued a Decision and Order concerning a Petition for Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in connection with a consent order with Mallard Resources, Inc. ERA requested that the OHA formulate a mechanism by which parties injured by Mallard's alleged violations of the Entitlements Program could apply for refunds. The Decision and Order determined that, because of the similarities between the violations alleged regarding Mallard and actual or alleged crude oil violations which affected the Entitlements Program covered by other refund proceedings, the application procedures formulated in the *Alkek, Adams,* and *A. Johnson* proceedings would be utilized. The Decision further determined that those parties who filed refund applications in those proceedings would be deemed to have filed an application for refund in the *Mallard* proceeding.

Refund Applications

Consolidated Gas Supply Corporation/C.M. Dining, Inc., 4/23/85; *RF77-0004*

C.M. Dining, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and Consolidated Gas Supply Corporation (Consolidated). The DOE determined that C.M. Dining's allocable share of the Consolidated consent order funds was below the $5,000 injury presumption threshold. Accordingly, the DOE determined that C.M. Dining would not be required to demonstrate injury, and that the firm would receive principal equal to its allocable share of $315. In addition, C.M. Dining received $204 interest accrued on that principal.

Gary Energy Corporation/Cal Gas Corporation, 4/23/85; *RF47-3*

Cal Gas Corporation filed an Application for Refund, seeking a portion of funds remitted by Gary Energy Corporation pursuant to a consent order that Gary Energy entered into with the DOE. In this Decision, the DOE found in general that Gary Energy charged Cal Gas prices for natural gas liquid products (NGLPS) in excess of average market prices. The DOE therefore granted Cal Gas $16,484.95 in refund plus accrued interest, which equals the share of the Gary Energy consent order fund allocated to Cal Gas on the basis of the firm's NGLPs purchase volume.

Standard Oil Co. (Indiana)/Hall's Standard Service, 4/26/85; *RF21-12391*

The Department of Energy (DOE) issued a Decision and Order that reduced a refund granted to Hall's Standard Service in a prior decision. *See Standard Oil Co. (Indiana)/Garfield Standard, et al.*, 11 DOE ¶ 85,031 (1983). The DOE determined that Hall's had overstated its total volume of purchase. Accordingly, the DOE directed Hall's to remit $148, representing the excess refund money Hall's had received, plus interest.

Waller Petroleum Co.; Inc./Naval Research Laboratory, 4/23/85; *RF78-0006*

The DOE issued a Decision and Order concerning one Application for Refund filed by the Naval Research Laboratory (NRL), an end-user of Waller fuel oil. The NRL applied for a refund based on the procedures for filing end-user claims outlined in *Waller Petroleum Co., Inc.*, 12 DOE ¶ 85,148 (1985). After examining the evidence submitted by the applicant, the DOE concluded that the NRL should receive a refund of $3,110, plus interest, based upon the total volume of its Waller fuel oil purchase.

Waller Petroleum Company, Inc./Space Petroleum & Chemical Bulk Sales Corporation 4/22/85; *RF78-0003, RF78-0004*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Space Petroleum & Chemical Co. and Bulk Sales Corporation. Both firms are resellers of Waller No. 2 heating oil. The claimants requested full refunds for their purchases from Waller but could not prove that they had been injured by Waller's pricing practices as required in the Waller decision. *Waller Petroleum Co., Inc.*, 12 DOE ¶ 85,148 (1985). Accordingly, the DOE decided to grant the firms' applications in part. The firms received refunds based on the $5,000 threshold figure for the presumption of injury for small claims as set forth in *Waller*. Each firm received a refund of $5,000 plus interest accrued after Waller deposited payment with the U.S. Treasury.

Dismissals

The following submissions were dismissed:

Name	Case No
Nance Gulf Station	RF40-2975
Scallop Petroleum Corp	RF21-8738

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 29, 1985.

[FR Doc. 85-14316 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 29 Through May 3, 1985

During the week of April 29 through May 3, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

International Brotherhood of Electrical Workers, 05/03/85; *HFA-0286*

The International Brotherhood of Electrical Workers, Local 125 (IBEW) filed an Appeal from a determination issued by a Contracting Officer of the Bonneville Power Administration denying a request for information which the IBEW had filed under the Freedom of Information Act (FOIA). IBEW had requested copies of payroll reports filed by two contractors. In considering the Appeal, the DOE found that the Contracting Officer had properly withheld the requested information under Exemption 6 of the FOIA, because the privacy interest of individuals identified by this information outweighed any public interest in release. Accordingly, the Appeal was denied.

Ivan Von Zuckerstein, 04/30/85; *HFA-0284*

Ivan Von Zuckerstein filed an Appeal from a partial denial by the Chicago Operations Office of the Department of Energy of a request for information which he had submitted under the Freedom of Information Act (FOIA). The appellant had requested a working copy of a report involving residential energy consumption, arguing that the ideas expressed in that report were not exempt from disclosure, since it was prepared for the DOE by a contractor. In considering the Appeal, the DOE found that a report prepared by a contractor is an agency record. The agency further found that the requested document, which contained stricken material and handwritten additions, was a draft document that was properly withheld under Exemption 5 of the FOIA. Accordingly, the Appeal was denied.

Request for exception

Phillips Petroleum Company, 04/30/85; *BEE-1588*

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR 211.69, the Entitlements Program clean-up regulations, in which the firm sought to file amended monthly ERA-49 forms for errors which it has made on those forms for a period prior to the cut-off date established by the clean-up regulations. In considering the request, the DOE found that the existence of a filing or accounting error does not in and of itself constitute a gross inequity or otherwise warrant exception relief. Accordingly, the application was denied.

Motion for Discovery

Empire Gas Corporation, 05/01/85; *HRD-0261, HRH-0261*

Empire Gas Corporation filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with the firm's Statement of Objections to a Proposed Remedial Order issued to the firm. Empire sought discovery and an evidentiary hearing

concerning the audit methodology and the use of the Special Refund Procedures set forth at 10 CFR Part 205, Subpart V. In considering Empire's Motion for Discovery, the DOE determined that the motion should be granted in part and that the ERA should supply the firm with a copy of the audit workpapers that show how the firm's purchases and sales were matched and how maximum lawful selling prices and alleged overcharges were computed. The DOE determined that in all other respects Empire's request for discovery was either insufficiently specific or involved issues that are not the proper subject for discovery, and should therefore be denied. In considering Empire's Motion for Evidentiary Hearing, the DOE found that Empire had failed to demonstrate that an evidentiary hearing would substantially assist in resolving any disputed factual issues. Accordingly, the motion was denied.

Motion for Evidentiary Hearing

Sun Company, Inc., 05/01/85; HRH-0033

Sun Company, Inc. filed a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm. In its Motion, Sun sought to introduce testimony in the following areas: (1) The meaning of the term "produced" in 10 CFR 212.79; (2) the pricing actions of other working interest owners involved in two properties; and (3) the impact on one Sun property of a global consent order between Getty Oil Company and the DOE. The Office of Hearings and Appeals denied the motion on the grounds that the requested hearing would not produce information which was relevant and material to the resolution of any contested factual issue raised in the underlying enforcement proceeding.

Refund Applications

Richards Oil Company/Pope & Talbot, Inc., et al., 05/02/85; RF70-1, et al.

The DOE issued a Decision and Order granting refunds to 26 end-user purchasers of fuel oil and residual fuel oil from the Richards Oil Company. The refunds to these firms totaled $596,982.31, representing $382,906.90 in principal and $214,075.41 in interest. Among the successful applicants was the State of Minnesota, and end-user of Richards' products, which was granted a total refund of $403,614.34.

Waller Petroleum Company, Inc./SMO, Inc., 04/29/85; RF78-0001

The DOE issued a Decision and Order concerning an Applications for Refund filed by SMO, Inc., a reseller of Waller No. 2 heating oil. The claimant applied for a refund based on the presumption of injury and procedures for filing small claims outlined in *Waller Petroleum Co.*, 12 DOE ¶ 85,148 (1985). After examining the evidence and supporting information submitted by SMO, the DOE concluded that the firm should receive a refund of $8,309 ($4,672 principal plus $3,637 interest) based upon the total volume of its Waller purchases.

Waller Petroleum Company, Inc./Tower Sales, Inc., 05/01/85; RF78-0008

The DOE issued a Decision and Order concerning an Applications for Refund filed by Tower Sales, Inc., a reseller of Waller No. 2 heating oil. The DOE determined that Tower experienced a competitive disadvantage with respect to its purchases of Waller No. 2 heating oil. Accordingly, the DOE concluded that Tower should receive a refund of $11,034 principal plus $8,591 accrued interest, based upon the total volume of its Waller No. 2 purchases.

Dismissal

The following submission was dismissed:

Name	Case No.
Sellers Oil Company	RF7-117

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 31, 1985.

[FR Doc. 85-14315 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of May 20 Through May 24, 1985

During the week of May 20 through May 24, 1985, the proposed decision and order summarized below was issued by the Qffice of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 5, 1985.

Transcontinental Oil Corp., Shreveport, Louisiana; HEE-0114, reporting requirement

Transcontinental Oil Corporation filed an Application for Exception seeking relief from the requirement that it file Form EIA-23 with the DOE Energy Information Administration. The exception request, if granted, would permit Transcontinental to be exempted from filing Form EIA-23 for Report Year 1984. On May 22, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part, permitting the firm to complete only those portions of Form EIA-23 for which the necessary data were readily available to the firm.

[FR Doc. 85-14318 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Proposed Allocations of Contingent Capacity and Associated Energy From the Boulder Canyon Project Uprating Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Allocations of Contingent Capacity and Associated Energy from the Boulder Canyon Project Uprating Program.

SUMMARY: The Western Area Power Administration's (Western) Boulder City Area Office requested applications in the **Federal Register** on January 18, 1985 (50 FR 2717), for power expected to be available beginning June 1, 1987, from the Boulder City Area Projects. The deadline for acceptance of the applications was March 15, 1985.

Applications for power from the Boulder Canyon Project Uprating

Program (Uprating Program) were requested from the Arizona Power Authority, the Colorado River Commission of Nevada, and qualified entities in California pursuant to the Hoover Power Plant Act of 1984 (Hoover Power Plant Act) (98 Stat. 1333) and the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (Conformed Marketing Criteria) published in the **Federal Register** on December 28, 1984 (49 FR 50582). As a result of the request for applications, the Boulder City Area Office received and reviewed applications for power from the Uprating Program from the Arizona Power Authority, the Colorado River Commission of Nevada, and seventeen entities in California. These proposed allocations of contingent capacity and associated energy (power) are a result of Western's review and analysis of the applications submitted.

"**SUPPLEMENTARY INFORMATION**" contains a brief statement of the major reasons and rationale for granting or denying allocations of the power from the Boulder Canyon Project Uprating Program.

Interested parties are invited to submit comments concerning the proposed allocations for the power from the Uprating Program to Western. Western will review and consider each comment prior to publishing final allocations of power from the Uprating Program in the **Federal Register**. Also to be included in that **Federal Register** will be responses to all major comments, criticisms, and alternatives offered during the comment period.

DATES: Written comments concerning the proposed allocations should be submitted on or before July 15, 1985. An opportunity will be given all interested parties to present written or oral statements at a public comment forum to be held on July 1, 1985, at the Plaza Room, Tropicana Hotel, in Las Vegas, Nevada, beginning at 1 p.m.

ADDRESS: Written comments concerning the proposed allocations of power from the Uprating Program should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293–8800.

Proposed Allocations: These proposed allocations of power are made in accordance with the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal power marketing authorities contained in Reclamation laws (43 U.S.C. 372 et seq. and all acts amendatory thereof or supplementary thereto), and the acts specifically applicable to the Boulder Canyon Project.

The Hoover Power Plant Act and the Conformed Marketing Criteria form the basis for the proposed allocations of power.

The contingent capacity and associated energy from the Uprating Program to be allocated pursuant to section 105(a)(1)(B) of the Hoover Power Plant Act and the Conformed Criteria are shown in them following Table 1:

TABLE 1.—CONTINGENT CAPACITY AND ASSOCIATED ENERGY

State	Contingent capacity (kW)	Firm Energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	[illegible]	148,000	64,000	212,000
California	127,000	[illegible]	43,364	143,214
Nevada	[illegible]	288,000	124,000	412,000
Total	[illegible]	[illegible]	231,364	767,214

The proposed allocations within each State are shown in Table 2. The availability of the allocated contingent capacity and associated energy is predicated upon the successful completion of the Uprating Program which will be constructed in stages and is currently scheduled to be completed in 1992. Power deliveries will vary during the construction period depending upon the actual capacity generated. Power contracts will become effective on June 1, 1987, and will contain an estimated schedule for power deliveries from the Uprating Program as each phase of the Uprating Program is completed. In the event that any part of the Uprating Program is not completed, or the capacity output is not sufficient to meet the allocated capacity or energy, the total amount of contingent capacity and associated energy initially allocated to contractors will be reduced on a proportional basis.

TABLE 2.—PROPOSED ALLOCATIONS

State	Contingent capacity (kW)	Firm Energy (thousands of kWh)		
		Summer	Winter	Total
Arizona:				
Arizona Power Authority	188,000	148,000	64,000	212,000
Nevada:				
Colorado River Commission	188,000	[illegible]	124,000	412,000
California:				
City of Anaheim	40,000	36,255	15,745	52,000
City of Azusa	4,000	3,486	1,514	5,000
City of Banning	2,000	1,394	606	2,000
City of Burbank	15,000	3,794	1,648	5,442
City of Colton	3,000	2,789	1,211	4,000
City of Glendale	2,000	2,894	1,257	4,151
City of Pasadena	9,000	2,525	1,096	3,621

TABLE 2.—PROPOSED ALLOCATIONS—Continued

State	Contingent capacity (kW)	Firm Energy (thousands of kWh)		
		Summer	Winter	Total
City of Riverside	[illegible]	27,191	11,809	[illegible]
City of Vernon	22,000	19,522	8,478	28,000
Total California	127,000	99,850	43,364	143,214
Total	[illegible]	535,850	231,364	767,214

In the event that a potential contractor fails to place power under contract in accordance with the terms and conditions offered by the United States or fails to provide contributed funds to the Department of the Interior, Bureau of Reclamation, for the Uprating Program within a reasonable time as determined by the United States, the amounts of power allocated to such potential contractor will be subject to reallocation pursuant to the Conformed Marketing Criteria.

SUPPLEMENTARY INFORMATION: Each application was reviewed as to eligibility under the Hoover Power Plant Act and Conformed Marketing Criteria. Once eligibility was determined, conflicting applications were reviewed, giving perference to States and municipalities. In addition, the following policy factors were considered in the allocation of the Uprating Program power:

1. Ability to receive and distribute the allocation of Federal power.
2. Operation of an electrical utility system.
3. The amount of other Federal resources available to an applicant.

The entities given the proposed allocation provided information supporting their eligibility under the Hoover Power Plant Act and Conformed Criteria. Each proposed allottee is a preference entity under the Boulder Canyon Project Act, has the ability to receive and distribute the allocated power, and owns and operates their own electrical utility system.

Those eligible preference entities with no other Federal resources were given priority as to allocation. The remaining available Uprating Program power was allocated to eligible preference entities with other Federal resources based on the amount of other Federal resources available to the entity and the entity's estimated percentage of load served by Federal resources.

The entities listed below were not selected for an allocation of power for the reasons stated:

Federal Agencies: The following Federal entities were not selected

because the Hoover Power Plant Act requires the Uprating Program to be undertaken with funds advanced by non-Federal purchasers and these Federal entities are not preference entities for Boulder Canyon Project resources in accordance with section 5 of the Boulder Canyon Project Act:

George Air Force Base.
Department of the Navy, Naval Public Works Center.

State Agencies: The University of California was not selected because its application was submitted by the University in its capacity as a constitutionally autonomous State University system and not in the sovereign capacity of the State of California and, as such, is not entitled to special preference contained in section 5 of the Boulder Canyon Project Act. Further, the University is not a municipality and, as such, is not preference entity under section 5 of the Boulder Canyon Project Act. Further, the University is not considered to be an electrical utility because it does not have electrical utility responsibility.

Investor-Owned Utilities: San Diego Gas and Electric was not selected because it is an investor-owned utility and as such is not a preference entity.

Irrigation and Water Districts: The following water districts were not selected because the water districts are not preference entities under the Boulder Canyon Project Act. Further, they do not own and operate an electrical utility system:

Las Virgenes Municipal Water District
Ramona Municipal Water District

The Imperial Irrigation District was not selected because the District is not a preference entity under the Boulder Canyon Project Act. Further, the District has an equitable proportion of Federal power resources compared to the other entities under consideration.

Municipalities: Th city of Needles was not selected because the city of Needles has a larger percentage of their load served by Federal resources than the other entities under consideration.

Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.), each agency, when required to publish a notice of public rule, shall prepare for public comments, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the allocation criteria and proposed allocations relate to electric services provided by Western. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules" within the meaning of the Act; therefore, Western believes that no flexibility analysis is required.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 and the Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE–EA–204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Allocation Criteria for the Boulder Canyon Project Uprating Program were addressed in the Criteria.

The Criteria Environmental Assessment addressed the impact of the offer of additional power from the Uprating Program. Western made a determination based upon environmental considerations of the final Criteria that this action is not a significant action in the context of the National Environmental Policy Act, and that it will not lead to any significant environmental impacts.

Additional Information

The following materials relative to the proposed allocation of Boulder Canyon Project power are available for inspection at the Boulder City Area Office:

1. Applications received requesting power from the Boulder Canyon Project Uprating Program.

2. **Federal Register** notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

3. **Federal Register** notice (50 FR 2717) dated January 18, 1985, publishing the "Request for Applications for Power from Boulder City Area Projects."

4. Environmental Assessment of General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, Western Area Power Administration, April 1983.

Issued at Golden, Colorado, June 5, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85–14321 Filed 6–12–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS 140061; FRL–2849–8]

Access to Confidential Business Information by Two Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide its contractors, Jellinek, Schwartz, Connolly, and Freshman (TSCF), of Washington, D.C., and Planning Research Corporation (PRC), of Chicago, Illinois, with access to information submitted to EPA or collected by the Agency under the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to CBI under these contracts will not take place prior to June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street SW., Washington, D.C. 20460. Toll-Free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. EPA must evaluate new chemicals (i.e., those not listed on the TSCA Inventory of Chemcial Substances) under section 5 of TSCA. Existing chemicals (i.e., those listed on the TSCA Inventory) are evaluated by EPA under sections 4, 6, 7, and 8 of TSCA.

Contract No. 68–02–4215 provides that JSCF, 1350 New York Avenue NW., Suite 400, Washington, D.C., will assist EPA's Economics and Technology Division (ETD) by providing policy analysis and information gathering support for ETD's regulatory activities under various sections of TSCA. Under this contract, JSCF will, among other things, analyze policy issues, formulate regulatory and non-regulatory options

and strategies, provide support for negotiations, analyze possible Agency responses to TSCA section 21 petitions, evaluate section 5 exemption applications, review and integrate technical, economic, and scientific documents, organize and conduct workgroups and conferences, and analyze international issues relating to the regulation of toxic chemicals. Under this contract, JSCF will be allowed access to CBI submitted under sections 4, 5, 6, and 8 of TSCA on a need-to-know basis. Access to such CBI may take place both at EPA and on JSCF premises in Washington, D.C.. EPA has approved JSCF's security manual and no TSCA CBI will be transferred to JSCF until EPA has inspected the JSCF facilities and approved them for storage and use of TSCA CBI. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1986.

EPA's Hazardous Waste Ground Water Task Force (HWGWTF) gathers information about hazardous waste and evaluates hazardous waste land disposal facilities to determine the adequacy of ground water monitoring systems. Contract No. 68–01–7037 provides that PRC, 303 East Wacker Drive, Suite 600, Chicago, Ill., will assist the HWGWTF by gathering, organizing, and categorizing information from EPA Regional offices, States, and other sources on ground water monitoring systems at various hazardous waste land disposal facilities. Among the materials PRC will review are documents and reports from EPA inspections. These inspections have been or will be conducted under the authority of the Resource Conservation and Recovery Act (RCRA). In the course of these inspections, the persons inspected may assert claims of confidentiality for information obtained by EPA inspectors during the inspections. In some cases, the persons have asserted that the information is TSCA CBI, even though the inspections were not carried out under the authority to TSCA, apparently in an attempt to constrain EPA's use of the information. Even though such information does not constitute TSCA CBI under EPA's regulations, since such claims have been asserted, EPA is treating the information as TSCA CBI until appropriate determinations have been made and the persons making the claims have been notified of the determinations. Accordingly, EPA has determined that, under this contract, PRC employees must be authorized for access to materials claimed as confidential from EPA RCRA inspections. Access to CBI under this contract may take place both on EPA premises and at PRC facilities in Chicago. EPA has reviewed and approved PRC's security plan and no information claimed as TSCA CBI will be transferred to PRC facilities until EPA has inspected and approved them for storage and use of TSCA CBI. Access to TSCA CBI under this contract is scheduled to expire on December 31, 1986.

In accordance with 40 CFR 2.306(j), EPA has determined that JSCF and PRC may require access to information claimed as confidential under TSCA to perform work successfully under these contracts. EPA is issuing this notice to inform submitters of information under TSCA that EPA may provide these contractors access, on a need-to-know basis, to the TSCA CBI materials described in the preceding paragraphs.

Any TSCA CBI materials reviewed at JSCF and PRC will be returned to EPA upon the completion of the contractors' review.

JSCF and PRC have been authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are authorized for access to TSCA CBI.

Dated: May 29, 1985.

E.F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85–14283 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[PP 5G3207/T494; FRL–2849–9]

Mycogen Corporation; Establishment of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established an exemption from the requirement of a tolerance for residues of the fungus *Alternaria cassiae* (hyphal fragments) to evaluate control of sicklepod *Cassia obtusifolia* on the crops soybean, peanut and cotton.

DATE: This temporary exemption from the requirement of a tolerance expires May 10, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 237, CM=2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1830).

SUPPLEMENTARY INFORMATION: Mycogen Corporation, 5451 Oberlin Dr., San Diego, CA 92121, has requested in pesticide petition PP 5G3207, the establishment of an exemption from the requirement of a tolerance for residues of the fungus *Alternaria cassiae* (hyphal fragments) to evaluate control of sicklepod *Cassia obtusifolia* on the crops soybean, peanut and cotton.

This temporary exemption from the requirement of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 53219–EUP–1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Mycogen Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing of safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires May 10, 1986. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use

permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerances levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 4, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–14282 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66119; FRL–2850–1]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: July 15, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No	Product name	Registrant	Date registered
150–26	Anderson's 18½% DDVP Concentrate	Anderson Chemical Co., P.O. Box 1041 Litchfield, MN	May 20, 1965.
655–4	Prentox * 50% Sabadilla Dust Concentrate	Prentiss Drug and Chemical Co., Inc., C.B. 2000 21 Vernon St., Floral Park, NY	May 24, 1948
1266–116	Rat-Rid Kills Rats and Mice	Malter International Corp., International Headquarters, P.O. Box 6099, New Orleans, LA	May 24, 1972
2204–2	Nopcocide * 130	Diamond Shamrock Chemicals Co., Porcess Chemicals Div., P.O. Box 2386–R, Morristown, NJ.	July 7, 1971
2204–6	Nopcocide * 150	do	Aug. 11, 1971.
2204–13	Nopcocide * 152	do	July 22, 1974.
2460–36	Gowan's 5% Malathion Dust	Howerton Gowen Co., Inc., P.O. Box 247, E. 11th St., Roanoke Rapids, NC	Aug. 15, 1960.
3509–95	Safe-Way Brand Fly Bait	Safe-Way Farm Products Co., Inc., 2519 East 5th St., Austin, TX	Aug. 6, 1975.
3837–33	Meth-O-Sect	LuBar Co., 1700 Campbell, P.O. Box 588, Kansas City, MO	June 5, 1973
4887–111	Warfarin Rat Bait Meal	Stephenson Chemical Co., Inc., P.O. Box 87188, College Park, GA	Nov. 2, 1982
5011–42	Carmel Food Protectant Formula F–7	Carmel Chemical Corp., P.O. Box 406, Westfield, IN	May 15, 1958
7122–76	Guardian Methoxychlor 2E	The Archem Corp., 1514 Eleventh St., Portsmouth, OH	Feb. 16, 1971.
8142–1	Vet-Aid Vapona Insecticide Fly Spray	Vet-Aid Industries, 459 West 78th St., Minneapolis, MN	July 5, 1963.
8590–48	60 Spray Oil Trithion E	Agway Inc., Chemical Div., P.O. Box 4741, Syracuse, NY	Feb. 15, 1965.
8590–178	Thiram-Trithion-9.6–6D	do	Sept. 9, 1965
8698–2	Parapet (Kills Fleas, Lice, and Ticks)	Eight In One Pet Products, Inc., 100 Emjay Blvd., Brentwood, NY	Apr. 22, 1965
8886–3	AVC Residual Insecticide	Ace Exterminating Co., 7666 B Production Dr., Cincinnati, OH	Aug. 7, 1974
9275–44	Bernen 15% Fermate Dust	Bernen Products Co., Inc., P.O. Box 725 Nashville, GA	Jan. 15, 1968.

The Agency has agreed that each cancellation shall be effective July 15, 1983 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue until the supply is exhausted, or for one year from the effective date of cancellation. Other persons may continue to sell and distribute these products until the supply is exhausted. Continued sale and use of such existing stocks has been determined to be in accordance with the provisions of FIFRA and must be consistent with the label and labeling approved by EPA. Production of these products after the effective date of cancellation is prohibited and would be a violation of FIFRA.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP–66119]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: (7 U.S.C. 136d).

Dated: June 4, 1985.

Steve Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–14281 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-59193B; FRL-2850-2]

Approval of Test Marketing Exemption; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–42. The test marketing conditions are described below.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613B, 401 M St., SW., Washington, DC 20460, (202–382–2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import a new chemical substance for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

EPA hereby approves TME–85–42. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–42. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain a copy of the bill of lading that accompanies each shipment of the TME substance.

T85–42

Date of Receipt: April 25, 1985.

Notice of Receipt: May 3, 1985 (50 FR 18919).

Applicant: Confidential.

Chemical: (G) Acrylate-substituted phenoxy resin.

Use: (G) Coating for open non-dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Four months. *Commencing on:* June 4, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Pubic Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 4, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–14280 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59194A; TSH–FRL 2851–1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for testing marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–44 and TME–85–45. The test marketing conditions are described below:

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–609C, 401 M Street, SW., Washington, D.C. 20460, (202–382–3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–44 and TME–85–45. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, uses, and number of customers must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–85–44 and TME–85–45. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME–85–44

Date of Receipt: May 2, 1985.

Notice of Receipt: May 10, 1985 (50 FR 19801).

Applicant: Confidential.

Chemical: (G) Halogen substituted alkyl polyalkyleneoxide.

Use: Confidential.

Production Volume: 7,727 Kg.

Number of Customers: Confidential.

Worker Exposure: Manufacture and use: a total of 35 workers at 1 site for 8 hours a day, 14 days.

Test Marketing Period: Nine months.

Commencing on: June 7, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME–85–45

Date of Receipt: May 2, 1985.

Notice of Receipt: May 10, 1985 (50 FR 19801).

Applicant: Confidential.

Chemical: (G) Halogen substituted alkylpolyalkyleneoxy sulfonic acid salt.

Use: Confidential.

Production Volume: 9,091 Kg.

Number of Customers: Confidential.

Worker Exposure: Manufacture: a total of 35 workers at 1 site for 8 hours a day, 14 days. Use: a total of 4 workers per site at 120 sites, 2 hours per site.

Test Marketing Period: Nine months.

Commencing on: June 7, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restructions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 7, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–14273 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59193A; FRL–2850–3]

Approval of Test Marketing Exemption; Certain Chemicals.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–41. The test marketing conditions are described below.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613B, 401 M St., SW., Washington, DC. 20460, (202–382–2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import a new chemical substance for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

EPA hereby approves TME–85–41. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–41. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain a copy of the bill of lading that accompanies each shipment of the TME substance.

T85–41

Date of Receipt: April 25, 1985.

Notice of Receipt: May 3, 1985 (50 FR 18919).

Applicant: Confidential.

Chemical: (G) Acrylate-substituted vinyl chloride copolymer resin.

Use: (G) Coating for open non-dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Four months.

Commencing on: June 4, 1995.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 4, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–14279 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–2850–4]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on June 26–27, 1985, in Conference Room 3906–3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:00 a.m. on June 26, 1985, and adjourn no later than 1:00 p.m. on June 27, 1985.

The principal purposes of the meeting will be (1) to review the scientific adequacy of a Draft Risk Assessment Document on Formaldehyde prepared by the Office of Toxic Substances and dated May 31, 1985; (2) to receive briefings from the Health Assessment Document Subcommittee and the Metals

Subcommittee; and (3) to discuss upcoming issues of current interest to the Committee.

For additional information on the Draft Risk Assessment Document on Formaldehyde, please contact Mr. Richard Hefter by phone at (202) 475-6712 or by mail to: Office of Toxic Substances (TS-778), 401 M Street, SW., Washington, D.C. 20460.

The meeting will be open to the public. Any member of the public wishing to attend or present information, or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, SW., Washington, D.C. 20460, no later than c.o.b. June 19, 1985.

Dated: June 5, 1985.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 85-14278 Filed 6-12-85; 8:45 am]

BILLING CODE [illegible]

[A-6-FRL-2850-5]

Approval of PSD Permits, Extension of PSD Permits, and Rescission of a PSD Permit; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD-TX-634—Koch Refining Company:* This permit, issued on January 9, 1985, authorizes the modification of the existing fluid catalytic cracking unit at the existing petroleum refinery located approximately ½ mile north of Interstate 37 on the Viola Turning Basin in Corpus Christi, Nueces County, Texas.

2. *PSD-LA-522—Placid Refining Company:* This permit, issued on January 17, 1985, authorizes the operation of Boiler B-902 at full capacity at the existing petroleum refinery located on the west bank of the Mississippi, approximately one mile north of Port Allen, West Baton Rouge Parish, Louisiana.

3. *PSD-TX-445M-2—Production Operators, Incorporated:* PSD-TX-445M-2 modifies PSD-TS-445M-1 by (1) deleting two 250 hp engines and two 1000 hp engines; (2) changing the sampling method from grab samples to continuous monitor sampling/analysis; and (3) eliminating the automatic air to fuel ratio controllers on each engine at the existing carbon dioxide recovery facility located approximately 3 miles north of Fort Stockton, Pecos County, Texas. This modified permit was issued on January 21, 1985.

4. PSD-TX-493M-1—CoGen Lyondell, Incorporated: PSD-TX-493M-1 modifies PSD-TX-493 to add supplemental natural gas firing capability to three of the five heat recovery steam generators covered by TX-493 at the existing synthetic organic chemical plant (Arco Chemical Company) located at 8520 Sheldon Road, approximately 2 miles north of Channelview, Harris County, Texas. This modified permit issued on February 8, 1985.

5. *PSD-TX-103M-2—Phillips Petroleum Company:* Sweeny petroleum refinery located at the intersection of State Highway 35 and FM Road 581 in Old Ocean, Brazoria County, Texas. PSD-TX-103M-2 modifies TX-103M-1 to inrease the opacity limitation on the heavy oil cracker to a maximum of 20 percent due to economic considerations involved in operating on a long term basis within the permitted 10 percent maximum opacity limit. This modified permit was issued on February 8, 1985.

6. *PSD-TX-641—Badische Corporation:* This permit, issued on February 12, 1985, authorizes the construction of an acrylic acid plant at the existing industrial facility located on State Highway 332, approximately one mile southeast of Clute, Brazoria County, Texas.

7. *PSD-TX-621—University of Texas at Austin:* This permit, issued on February 15, 1985, authorizes the construction of a gas turbine and waste heat boiler at the existing power plant located in 24th Street between Speedway Street and San Jacinto Boulevard in Austin, Texas County, Texas.

8. *PSD-TX-636—Exxon Corporation:* This permit, issued on February 19, 1985, authorizes the addition of 13 natural gas compressor engines and one dehydrator at the existing gas processing plant located approximately 5½ miles southeast of Conroe, Montgomery County, Texas.

9. *PSD-LA-518—Uniroyal Chemicals:* This permit, issued on February 26, 1985, authorizes by-passing the nitrogen oxide scrubber on the nitrosator vent in the Flexzone plant at the existing chemical manfacturing facility located on the eastern bank of the Missippi River, approximately 25 miles southeast of Baton Rouge in Geismar, Ascension Parish, Louisiana. By-passing the scrubber was approved because of an explosion in an identical scrubber. E.I. duPont Allied Technical Division and the Material Evaluation Laboratory recommended the safest method of operation to be atmospheric venting without the scrubber.

10. *PSD-TX-432M-2—Champlin Petroleum Company:* PSD.TX-532M-2 modifies PSD-TX-432M-1 to permit the installation of five 800 horsepower engines instead of one 2750 horsepower engine presently permitted at the existing cryogenic natural gas expander plant located on Highway 79, approximately 4 miles northwest of Carthage, Panola County, Texas. The modified permit was issued on March 12, 1985.

11. *PSD-TX-633—Power Systems Engineering, Inc.:* This permit, issued on March 14, 1985, authorizes the construction of a gas turbine cogeneration facility to be located on Battleground Road, LaPorte, Harris County, Texas.

12. *PSD-TX-642—Amoco Chemicals Corporation:* This permit, issued on March 19, 1985, authorizes the construction of a natural gas-fired turbine cogeneration unit at the existing Chocolate Bayou Plant located on FM Road 2004, approximately 15 miles southeast of Alvin, Brazoria County, Texas.

13. *PSD-TX-622—Superior Oil Company:* This permit, issued on March 19, 1985, authorizes the addition of 2 natural gas-fired reciprocating engines at the existing Portilla Gas Plant located approximately 5 miles northeast of Sinton, San Patricio County, Texas.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. *PSD-OK-218—Oklahoma Gas and Electric Company (OG&E).* This permit was issued on October 5, 1981, for the construction of two additional 550 MW coal-fired steam electric generators at the existing Sooner Station located on Highway 15, approximately 19 miles north of Stillwater in Noble County, Oklahoma. Construction has not commenced due to the reduction of growth in demand for energy for OG&E.

The extension was granted on March 25, 1985, to a new expiration date of July 28, 1986.

2. *PSD–NM–350—Southern Union Refining Company:* This permit was issued on October 5, 1981, to increase the capacity of the existing refinery located on Highway 18, approximately 5 miles south of Lovington, Lea County, New Mexico. Construction has not commenced due to the present economic conditions. The extension was granted on March 8, 1985, to a new expiration date of November 8, 1985.

3. *PSD–NM–418—Plains Electric Generation and Transmission Cooperative:* This permit was issued on December 29, 1981, for the installation of a new gas turbine electric generating unit at the existing Algodones Power Plant located on Highway 85, approximately 7.5 miles northeast of Bernalillo, Sandoval County, Mexico. Construction has not commenced due to significant declines in industrial and agricultural activities, therefore delaying the need for both new base load and peaking load generation. The extension was granted on March 8, 1985, to a new expiration date of July 4, 1986.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

Notice is hereby given that the Environmental Protection Agency (EPA) Region 6, rescinded the following Prevention of Significant Deterioration (PSD) permit:

1. *PSD–NM–215—Thomason Construction Company:* The permit was issued on July 27, 1979, for the construction of a new hot asphalt drum mix facility located approximately 1.5 miles west of Hobbs, Lea County, New Mexico. This source no longer constitutes a major stationary source since, under the new definition of "potential to emit", contained in 40 CFR 52.21 of the amended PSD regulations published in the **Federal Register** on August 7, 1980, the controlled emissions are not large enough to constitute a major stationary source or a major modification. Therefore, EPA determined that a PSD permit was no longer required for this facility and rescinded the permit.

A notice of EPA's proposed action to extend/rescind the PSD permits was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals for Texas and Louisiana and the Tenth Circuit Court of Appeals for Oklahoma and New Mexico within 60 days of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

FOR FURTHER INFORMATION CONTACT: Jack Divita at (214) 767–2746.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of Executive Order 12291.

Dated: May 29, 1985.

Dick Whittington, P.E.,

Regional Administrator, Region 6.

[FR Doc. 85–14277 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 7, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: 3060–0106
Title: Section 43.61, Reports of Overseas Telecommunications Traffic
Action: Revision
Respondents: Common carriers providing international telecommunications services
Estimated Annual Burden: 10 Responses; 1,000 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–14243 Filed 6–12–85; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 7, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 95–511.

Copies of these submissions are available from the Commission by calling Doris R. Peacock, (202) 632–7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB No. 3060–0127
Title: Assignment of Authorization
Form No.: FCC 1046
Action: Extension
Estimated Annual Burden: 6,000 Responses; 498 Hours.

OMB No.: 3060–0141
Title: Renewable Notice and Certification in the Private Operational Fixed Microwave Radio Service
Form No.: FCC 402–R
Action: Extension
Estimated Annual Burden: 2,900 Responses; 2,900 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–14244 Filed 6–12–85; 8:45 am]

BILLING CODE 6712–01–M

Telescan, Inc. Requests FCC Approval of System for Verification of TV Commercials; Pleading Cycle Established

June 10, 1985.

On May 7, 1985, TeleScan, Inc. submitted a request for FCC approval of a system for independent verification of broadcast of television commercials. The TeleScan system encodes advertiser identification information onto the broadcast television signals. A special monitoring receiver is used to decode and record this information, along with the date, time of day, length of commercial, and presence of audio and video signals. TeleScan intends to use

the recorded information to provide various reports for its advertiser clients. Telescan seeks approval to transmit the data signals for this system on line 22 of the television active video signal.

The Mass Media Bureau requests comments on this filing. Parties wishing to file formal comments on the issues raised therein may do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554, on or before July 5, 1985. Reply comments may be filed on or before July 15, 1985. Comments and reply comments should refer to the following number: MMP–1.

Copies of TeleScan's request for approval and any subsequently filed documents in this matter may be obtained from International Transcription Services, Inc., 4006 University Drive, Fairfax, Virginia 22030, (703) 352–2400/ (202) 296–7322. Any documents related to this matter will also be available for public inspection during regular business hours in the Commission's Mass Media Public Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, NW.).

For further information contact Alan Stillwell at (202) 632–6302.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–14242 Filed 6–12–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Southern California Savings & Loan Association, Beverly Hills, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southern California Savings and Loan Association, a Federal Savings and Loan Association, Beverly Hills, California, on June 7, 1985.

Dated: June 10, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–14324 Filed 6–12–85; 8:45 am]

BILLING CODE 6720–01–M

Community Federal Savings & Loan Association of Nashville, Nashville, TN; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 5(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Community Federal Savings and Loan Association of Nashville, Nashville, Tennessee, on June 7, 1985.

Dated: June 10, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–14325 Filed 6–12–85; 8:45 am]

BILLING CODE 6720–01–M

Magnolia Federal Savings & Loan Association, Knoxville, TN; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 5(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Magnolia Federal Savings and Loan Association, Knoxville, Tennessee, on June 7, 1985.

Dated: June 10, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–14326 Filed 6–12–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; International Movements, Inc.; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No	Names/Address	Date reissued
2168–R	International Movements, Inc., 4965 Mountain Road, Pasadena, MD 21122.	May 30, 1985

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85–13654 Filed 6–12–85; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003813–010.
Title: Honolulu Terminal Agreement.
Parties:
Department of Transportation of the State of Hawaii (Hawaii)
Matson Terminals, Inc. (Matson)
Synopsis: Agreement No. 224–003813–010 provides for: Hawaii to sell to Matson 22 pedestals (containing electric outlets for refrigerated containers) situated within Container Yard No. 2; the increase of the area of Easement A; the operational readiness of the tank farm facility; the increase of the areas of Easements E, E2 and E4; the increase of the amount of the ground rent; various deletions and additions to the other Easements; and the incorporation of Container Yard No. 6 into the common use area of the lease.

Agreement No.: 217–010651–001.
Title: Sea-Land Service, Inc./Hapag-Lloyd AG Transpacific Reciprocal Space Charter and Sailing Agreement.
Parties:
Sea-Land Service, Inc.
Hapag-Lloyd AG
Synopsis: The proposed amendment would modify the agreement to specify that cargoes subject to U.S. cargo preference laws may not be offered by one party to the other for carriage.

Agreement No. 224–010765.
Title: Oakland and Long Beach Terminal Agreement.
Parties:
The Shipping Corporation of New Zealand, Limited (SCNZ)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: Agreement No. 224-010765 permits SCNZ to obtain terminal services from Sea-Land at Sea-Land's terminal facilities in Oakland and Long Beach, California. Sea-Land will be paid by SCNZ for performing the terminal functions in accordance with charges set forth in the agreement. The terms of the agreement will comment on the day it becomes effective pursuant to the Shipping Act of 1984, and it will run for an initial period of two years from that date. It shall continue without a lapse thereafter from year to year until terminated by either party.

Dated: June 10, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-14284 Filed 6-12-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Grupo Financiero Popular, S.A., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the office of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Grupo Financiero Popular, S.A.*, Santo Domingo, Dominican Republic; to become a bank holding company by acquiring 48 percent of the voting shares of The Dominican Bank, New York, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Farmers and Merchants Corporation, Inc.*, Forest, Mississippi; to acquire at least 5 percent of the voting shares or assets of First Mississippi National Corporation and First Mississippi National Bank, both located in Hattiesburg, Mississippi.

2. *First National Corporation*, Covington, Louisiana; to acquire 100 percent of the voting shares or assets of CNB Bancshares Corporation and Century Bank of New Orleans, both located in New Orleans, Louisiana.

First National Corporation has also applied to acquire 100 percent of the voting shares or assets of Riverlands National Bank in LaPlace, LaPlace, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Prairie Bankshares, Inc.*, Georgetown, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Georgetown, Georgetown, Illinois.

2. *Old-First National Corporation*, Bluffton, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Old-First National Bank in Bluffton, Bluffton, Indiana.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Cosmos Bancorporation, Inc.*, Cosmos, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Cosmos, Cosmos, Minnesota.

Board of Governors of the Federal Reserve System, June 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14240 Filed 6-12-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement; Delegation of Authority

Notice is hereby given that the Secretary of Health and Human Services delegated to the Director, Office of Child Support Enforcement, pursuant to title IV-D and section 1132 of the Social Security Act, as amended, the authority to waive the two-year period requirement imposed under Section 1132 with respect to the filing of any claim arising under title IV-D of the Act if the Director determines (in accordance with regulations) that there was good cause for the failure by a State of file such claim. The Director may not redelegate this authority.

The delegation affirmed and ratified any actions taken by the Director prior to the effective date of the delegation which in effect involve the exercise of the authority delegated by the Secretary. The delegation became effective on May 13, 1985.

Dated: June 5, 1985.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-14238 Filed 6-12-85; 8:45 am]

BILLING CODE 4190-11-M

Public Health Service; Saint Elizabeths Hospital and District of Columbia; Mental Health Services Act; Delegation of Authority

Notice is hereby given that on May 13, 1985, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary under the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, Pub. L. 98-621, 98 Stat. 3369, as amended, concerning the mental health services delivery system of the District of Columbia. The delegation to the Assistant Secretary for Health excludes the authority under Section 4(d)(2) to establish a Labor Management Advisory Committee.

Dated: June 5, 1985.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-14237 Filed 6-12-85; 8:45 am]

BILLING CODE 4160-20-M

Human Development Services; Deficit Reduction Act of 1985—Pub. L. 98-369 and Section 1136 of the Social Security Act; Delegation of Authority

Notice is hereby given that on May 13, 1985, the Secretary of Health and Human Services delegated to the Assistant Secretary for Human Development Services, authority to review and approve applications for the establishment and conduct of pilot projects to demonstrate the use of

integrated service delivery systems for human services programs. Included in this delegation is the authority to review and approve assurances (Section 1136(c)(1) of the Social Security Act, as amended) and to review and approve grantee awards.

Authorities retained by the Secretary are:

1. Authority to approve requests for a waiver of certain legal requirements (Section 1136(d)(1) of the Social Security Act, as amended).

2. Authority to submit periodic progress reports to Congress concerning the current status of each approved pilot project (Section 1136(h) of the Social Security Act, as amended).

This delegation is subject to the reservation of authority to the Security as set forth in Part A, Chapter AA of the Departmental Organization Manual.

Dated: June 5, 1985.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-14239 Filed 6-12-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on the Honeoye Creek Wetland Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement on the Honeoye Creek Wetland Project in Ontario County, New York is available for public review. Comments and suggestions are requested. The New York Department of Environmental Conservation (DEC) proposes to acquire real property interests to approximately 800 acres of wetlands and a 100 foot buffer around the wetlands, and property now owned by the Nature Conservancy north of the wetlands. Beyond the immediate area of the wetland DEC would acquire sufficient interests in those parcels to give it control over activities which would adequately affect the wetland resource. These lands would be developed as a Wildlife Management Area used for both consumptive and non-consumptive outdoor recreation. DEC will likely use state monies and federal funds (Pittman-Robertson Act) for the acquisition.

DATES: Written comments are requested by August 15, 1985. A public meeting will be held in Avon, New York on July 2, 1985 at 7:00 PM at the Honeoye Central School Auditorium, Honeoye, New York.

ADDRESS: Comments should be addressed to Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158 (617) 965-5100, X382 or Mr. David C. Woodruff, New York DEC, 6274 East Avon-Lima Road, Avon, New York 14414 (716) 226-2466.

Individuals wishing copies of the DEIS should immediately contact either of the above individuals. Copies have been sent to all agencies and organizations who participated in the scoping process. Copies will be available for examination at FWS in Newton Corner, Massachusetts, NYDEC in Avon, New York and at the Town Hall in Richmond, New York.

SUPPLEMENTARY INFORMATION: This environmental impact statement addresses the acquisition and development of the Honeoye Creek wetland project area. It poses five alternative sets of actions, and discusses how each would address the goals of the Department of Environmental Conservation; it relates the pertinent environmental characteristics of the area and it projects how the environment would be affected with the implementation of each of the five alternatives.

The No Action alternative projects the future of the wetland were the Department of Environmental Conservation neither to acquire real property there nor to manage the area. The only protection afforded the wetland would be State and federal environmental laws, such as the New York Freshwater Wetlands Act and the federal Clean Water Act.

Within the project area at the present time, The Nature Conservancy is offering the Department of Environmental Conservatory title to a large parcel of land which covers the northern end of the wetland and beyond. This alternative, known as The Nature Conservancy Alternative involves accepting just this parcel and leaving the remainder of the wetland in private hands.

The Proposed Action Alternative includes: Acquisition of real property interests to approximately 800 acres of wetlands and a 100 foot buffer around the wetlands, property now owned by the Nature Conservancy north of the wetland and sufficient interests in adjacent upland parcels to give DEC sufficient control over activities which would adversely affect the wetland resource. A shallow impoundment would be created in the center of the project area alone. Public access, small parking areas and trails will be created.

An additional alternative involves similar land acquisition to the proposed action but with a smaller impoundment. With this alternative, fewer access points would be constructed. However, the same number of potholes, ponds, and nesting structures and islands would be placed on the site. The uplands would be managed to provide cover and food for wildlife. In addition, DEC would require conservation practices of permit-holders who would farm the slopes adjacent to the wetlands. This alternative is known as the Reduced Impoundment Alternative.

The Wetland Preservation Alternative includes DEC acquiring the wetland proper and a narrow, 100-foot, buffer about its perimeter. DEC could insure that the part of the project area, the most sensitive and valuable part, would be preserved forever. DEC would also develop access and parking areas to allow the public to enjoy the wetland resource. It would create no impoundment, potholes, nor implement other management practices to enhance the marsh environment. Additionally, it would not implement any conservation practices on the uplands.

Howard N. Larsen,

Regional Director.

[FR Doc. 85-14312 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Havre and Great Falls Resource Areas, Montana; Blaine, Hill, Chouteau, Liberty, Toole and Glacier Counties; Call for Coal and Other Resource Information

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Call for coal and other resource information for the West HiLine Resource Management Plan, Lewistown District, Montana.

SUMMARY: As stated in the Notice of Intent published December 6, 1983 (FR, Vol. 48, No. 235, 54723), the Lewistown District has initiated a Resource Management Plan for the public lands in the Havre Resource Area and portions of the Great Falls Resource Area of Montana. The Bureau, in accordance

with 43 CFR 3420.1–2, is formally soliciting indications of interest and information on the coal resource development potential for public lands and minerals in the West HiLine Area (Blaine, Hill, Chouteau, Liberty, Toole and Glacier counties). The BLM will not conduct any coal resource inventory in the planning area. Parties interested in Federal coal leasing and development will be expected to provide coal resource data for their area of interest. The adequacy and timing of the information received will determine the extent that the Federal coal resource and its development potential may be addressed in the RMP/EIS.

This notice also calls for indications of interest and resource information for other resources within planning area. This includes, but is not limited to: oil, gas, gold, wildlife, range and forest products. Identification of definite interests in resource development, substantiated with adequate resource data, at this time will allow addressing resource potentials in this plan and possibly avoid unnecessary work, delays, or near term revisions to the plan. Non-proprietary data and general comments should be submitted to: District Manager, Bureau of Land Management, Lewistown District, Airport Road, Lewistown, MT 59457.

Proprietary data marked as confidential may be submitted only to: Chief, Branch of Solids, Bureau of Land Management, Montana State Office, Box 36800, Billings, MT 59107.

DATES: Industry, state and local governments and the general public are encouraged to submit relevant information at any time during the planning process. However, information about coal and other resources will be most useful in focusing the Bureau's planning efforts if received prior to July 19, 1985.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager at (406) 538–7461 or write to: Lewistown District, Airport Road, Lewistown, Montana 59457.

Dated: June 6, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 85–14296 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–DN–M

Closure and Restriction Order; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with the Code of Federal Regulations (43 CFR Part 8364), public lands described as T.41S., R.14W., SLB&M., Sec. 34, Lots 3 and 4; Sec. 35, Lots 5–9, NESW, S2SENW, NWSE, totaling 325 acres are hereby closed to off-road vehicle use. Official vehicles necessary for land management purposes are exempt from this order.

SUMMARY: This closure is necessary to protect the natural environment and prevent excessive erosion until such time as a final recreation plan is effected for the Quail Creek Reservoir Recreation Area. The area described lies generally between Utah State Highway 9 and the Quail Creek Reservoir dike, on either side of the access roads.

DATES: Off-road vehicle use is restricted for a period of 2 years or until such time as the Quail Creek Recreation Area Management Plan becomes effective, whichever first occurs.

ADDRESS: Comments or questions should be directed to the Dixie Resource Area Office, Bureau of Land Management, 224 North Bluff, St. George, Utah 84770.

Dated: June 5, 1985.

Morgan Jensen,

District Manager.

[FR Doc. 85–14294 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–DQ–M

Public Notification of the Area of Critical Environmental Concern, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice that Certain Public Lands in the Bishop Resource Area, Bakersfield District, California Shall Be Managed as an Area of Critical Environmental Concern (ACEC).

SUMMARY: Pursuant to authority in the Federal Land Policy and Management Act of 1976 (Sec. 202(c)(3), 43 CFR Part 1610 and land use decisions developed in the Benton-Owens Valley Management Framework Plan (June 28, 1982), public lands in and around Fish Slough were designated as an Area of Critical Environmental Concern.

SUPPLEMENTARY INFORMATION: Notice of the designation of Fish Slough as an Area of Critical Environmental Concern and the availability of the draft management plan and environmental assessment for public review was published in the **Federal Register** on June 20, 1984. The completion of the final management plan calls for the management of Fish Slough as an Area of Critical Environmental Concern.

Fish Slough is located in Inyo and Mono Counties, in the Owens Valley, approximately seven miles north of Bishop, California. The Fish Slough management plan recognizes a number of significant resource values of the area, including endangered wildlife, sensitive plant species and populations, unique wetlands, significant cultural values, scenic quality, and the opportunity for primitive types of recreation.

The guidelines in the management plan were developed to minimize conflicts between the user public and to protect sensitive natural resources. Restrictions include (1) limiting vehicle use to designated and/or existing roads and trails, (2) constructing a 200-acre livestock exclosure for wildlife habitat protection, and (3) limiting construction activities so as not to detract from the natural landscape characteristics. A cooperative livestock grazing program is proposed as well as the establishment of a monitoring program.

The Area of Critical Environmental Concern designation provides the opportunity to minimize impacts from mineral entry through provisions in 43 CFR Part 3809. Approval of a plan of operations on mining claims is required on any operation, except casual use, prior to commencing operations in an Area of Critical Environmental Concern.

The Fish Slough Area of Critical Environmental Concern applies to the following described public lands:

Mount Diablo Meridian, California

T. 3 S., R. 32 E.,
  Sec. 27, S½;
  Sec. 28, S½;
  Secs. 33 & 34.
T. 4 S., R. 31 E.,
  Sec. 25, S½.
T. 4 S., R. 32 E.,
  Sec. 2, W½;
  Secs. 3, 4, 9, 10, 11, 14, 15, 21, 22, 23;
  Sec. 24, S½;
  Secs. 25 thru 28;
  Sec. 29, E½, SW¼;
  Sec. 30, S½;
  Secs. 31 thru 35.
T. 5 S., R. 32 E.,
  Secs. 1 thru 5;
  Sec. 8, N½, SE¼;
  Secs. 9 thru 12;
  Sec. 13, NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
  Secs. 14 & 15;
  Sec. 21, E½;
  Secs. 22 & 23;
  Sec. 24, NW¼, W½SW¼;
  Sec. 25, W½NW¼, SW¼;
  Secs. 26 & 27;
  Sec. 28, NE¼;
  Sec. 34, E½;
  Sec. 35.
T. 5 S., R. 33 E.,
  Secs. 6 & 7;
  Sec. 18, E½, E½W½;
  Sec. 19, E½, E½W½;

Secs. 30 & 31.
T. 6 S., R. 32 E.,
Secs. 1 & 2;
Sec. 11, E½;
Sec. 12, N½, SW¼, N½SE¼, SW¼SE¼
T. 6 S., R. 33 E.,
Sec. 6, E½, S½SW¼;
Sec. 7, E½, E½W½, SW¼NW¼, W½SW¼.

FOR FURTHER INFORMATION CONTACT: Jim Morrison, Bishop Area Manager, Bureau of Land Management, Bakersfield District, 873 N. Main St., Suite 201, Bishop, CA, 93514; (619) 872-4881.

Dated: June 6, 1985.

James S. Morrison,

Bishop Resource Area Manager.

[FR Doc. 85-14292 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-40-M

Additional Public Hearing; Draft Oregon Wilderness Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent of Conduct an Additional Public Hearing on the Draft Oregon Wilderness Environmental Impact Statement.

SUMMARY: In addition to the fourteen public hearings identified in the Federal Register on April 30, 1985 (50 FR 18321), a public hearing has been scheduled at the following time and location: July 15, 1985, 7:00 p.m. to 10:00 p.m., East Conference Room, Hall of Mirrors, 700 West State Street, Boise, Idaho. A one-hour informal discussion session will precede the hearing.

FOR FURTHER INFORMATION CONTACT: Jerry Magee (935), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, Telephone (503) 231-6867.

Dated: June 5, 1985.

Paul M. Vetterick,

Acting State Director.

[FR Doc. 85-14293 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-33-M

[CA 17208]

Geothermal Resources Lease Sale; Coso, Dunes, East Brawley, Glamis, Geysers, Lake City Surprise Valley, and Salton Sea KGRA's

Notice is hereby given that the geothermal lease sale scheduled for June 25, 1985, has been rescheduled and will be held July 17, 1985. Approximately 98,345.35 acres of land in 53 parcels within the Coso (23,271.83 acres), Dunes (3,280.47 acres), East Brawley (7,253.52 acres), Glamis (10,954.04 acres), Geysers (28,560.05 acres), Lake City Surprise Valley (13,823.52 acres), and Salton Sea (11,201.92 arces) KGRA's in Inyo, Imperial, Lake, Modoc, Mandocino, Napa, and Sonoma Counties, California, will be offered competitively for lease under the Geothermal Stram Act of 1970 through sealed bids to the qualified responsible bidder of the highest cash amount per parcel. Royalties payable to the United States will be at the rate of 12½% for the parcels within the Geysers KGRA and 10% for all the other parcels. The annual rental for the first through the fifth lease year will be at the rate of $2.00 per acre. For the sixth lease year and for each year thereafter prior to production, the rental will be in accordance with 43 CFR 3203.5. Bids will be received until 10:00 a.m. on July 17, 1985.

For further information contact the California State Office, Division of Operations, Room E-2605, 2800 Cottage Way, Sacramento, California. Phone (916) 484-4492.

Dated: June 5, 1985

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85-14298 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-84-M

Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Safford District Advisory Council.

DATE: Friday, July 19, 1985, 10:00 a.m.

ADDRESS: 425 E. 4th Street, Safford, Arizona.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held Friday, July 19, 1985 in Safford, Arizona at 10:00 a.m. at the Safford District Office, 425 E. 4th Street, Safford, Arizona.

Agenda for Meeting

1. BLM-State Land Exchange Progress.
2. BLM/Forest Service Interchange.
3. Gila Box Coordinated Resource Management Plan.
4. Issue Identification for Aravaipa Canyon Wilderness Management Plan.
5. Management Update.
6. Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the District Manager at the above address by July 18, 1985. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (within regular business hours) within 30 days following the meeting.

Dated: June 6, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-14295 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-32-M

Public Comment Period and Public Meetings, Owyhee Wild River Management Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that a public comment period on the draft Owyhee Wild River Management Plan will be held June 28 through July 29.

Public meetings to discuss the draft Owyhee Wild River Management Plan will be held: (1) July 8 in Portland, Oregon, beginning at 7:00 P.M. in the conference room of the Viscount Hotel, 1441 Northeast Second Avenue, (2) July 10 in Jordan Valley, Oregon, beginning at 7:00 P.M. at the Jordan Valley Lions Den, and (3) July 11 in Boise, Idaho, beginning at 7:00 P.M. in the first floor conference of the Boise BLM District Office, 3948 Development Avenue.

FOR FURTHER INFORMATION CONTACT: Copies of the draft Owyhee River Management Plan and additional information regarding the public meetings may be obtained by contacting Barry Rose, Vale BLM District, P.O. Box 700, Vale, Oregon 97918, (503) 473-3144.

Fearl M. Parker,

District Manager.

[FR Doc. 85-14297 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-33-M

[A-19079]

Arizona; Order Providing for Opening of Public Lands

June 3, 1985.

1. In a donation of land made under the provisions of section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364), the

following land has been reconveyed to the United States:

T. 6 S., R. 11 W., GSR Mer., Arizona
Sec. 7, S½NE¼, SE¼NW¼, W½SE¼, NE¼SE¼, NW¼SE¼SE¼.

The area described contains 250 acres in Yuma County.

2. At 9:00 a.m. on July 15, 1985, the land described in paragraph 1 will be opened to applications and offers under the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications and offers received prior to 9:00 a.m. on July 15, 1985 will be considered as simultaneously filed as of that date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

3. The above-described land will remain closed to all other forms of appropriation.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–14299 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–32–M

[N–38198]

Realty Action; Non-Competitive Sale, Public Lands in Eureka County, NV

The following lands have been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value. The lands will not be offered for sale until 60 days after the date of this notice.

Mount Diablo Meridian

T. 33 N., R. 51 E.,
Sec. 2, Lots 11 and 12, SW¼NW¼NE¼, NW¼SW¼NE¼, N½SW¼SW¼NE¼.

The above-described land comprising 34.67 acres will be offered as a direct sale to the Carlin Gold Mining Co. The lands were omitted from a sale of surrounding lands conducted in 1984 comprising 1,614.43 acres to allow excavation and mitigation of a significant archeological site at the James Creek Rock Shelter. The required actions concerning this mitigation as established in the land report/environmental assessment, have now been completed and the parcel is suitable for disposal. Disposal of the lands to Carlin Gold will allow expansion and development of the Gold Quarry Mine and Mill which is adjacent to their existing mining activities.

The sale of this remaining parcel will permit completion of the Carlin Gold Mine and Mill which will provide jobs and boost the economy of the surrounding area; therefore, the sale can be considered as having high public importance. Speculative bidding could jeopardize the project's timely completion and economic viability. In addition, substantial investment by Carlin Gold has already been made on the subject lands under the authority of the Mining Law of 1872 and the regulations contained in the 43 CFR Part 3809. Sale to another entity other than Carlin Gold could prove detrimental to their existing operation as well as their planned expansion and development of the Gold Quarry Mine and Mill.

The sale is consistent with the land use plan for the area in which the lands are located. The lands are not needed for any resource program and are not suitable for management by another Federal department or agency. The proposal has been reviewed and approved by the Eureka County Planning Commission.

The locatable and salable mineral estates have only nominal value and will be conveyed to the purchaser upon remittance of a $50.00 filing fee.

The purchaser agrees to take the land subject to the existing grazing use of Melvin Jones, holder of grazing authorization No. A084273. The rights of Melvin Jones to graze domestic livestock on the land shall cease on June 27, 1985. Upon conveyance of the lands, the purchaser will be entitled to receive grazing fees for the lands from Melvin Jones in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas and geothermal resources will be reserved to the United States.

And will be subject to:

1. Those rights granted by oil and gas lease N–35628, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of the said leases, and any authorized extension of those leases. Upon termination or relinquishment of said oil and gas leases, this reservation shall terminate.

Detailed information concerning the sale is available for review at the Elko District Office, Bureau of Land Management, 2002 Idaho Street, Elko, Nevada 89801. For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the District Manager at P.O. Box 831, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. If no action is taken by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 7, 1985.

Rodney Harris,

District Manager.

[FR Doc. 85–14306 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Reclamation

Carson Hill Mine, Calaveras County, CA; Intent To Prepare a Joint Environmental Impact Report—Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), and Section 21002 of the California Environmental Qualify Act, the Bureau of Reclamation, Department of the Interior, and Calaveras County, California, intend to prepare a joint Environmental Impact Report—Environmental Impact Statement (EIR–EIS). The EIR–EIS will address the impacts of the gold ore processing in leach ponds and use of Bureau of Reclamation water for processing. Alternative sources of water and leach pond locations will be analyzed in the joint EIR–EIS.

Physical failure of the proposed gold ore processing project could affect New Melones Reservior. Accordingly, the objectives and requirements of Presidential Executive Orders 11988 and 11990, and the Reclamation Instructions, Chapter 376.5, will be considered throughout the planning and preparation of the EIR–EIS. As a joint document, the

FIR–EIS will meet the requirements of both the National Environmental Policy Act and the California Environmental Quality Act.

A joint public meeting has been scheduled for 7:00 p.m. on June 20, 1985, in the Calaveras County Supervisor's Chambers, Government Center, 891 Mountain Ranch Road, San Andreas, California.

The Calaveras County contact for the EIR–EIS will be Eric Toll, Calaveras County Planning Department, Government Center, San Andreas, California 95249, Telephone (209) 754–3841.

The Federal contact person will be Joel Verner, Environmental Specialist, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4328.

Dated: June 11, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85–14376 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–09–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Conoco Inc.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1898, Block 148 (portion), South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted of June 5, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–14311 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Flathead River; Water Quality and Quantity Report

The International Joint Commission formally announces that it has been requested by the Governments of the United States and Canada, pursuant to Article IX of the Boundary Waters Treaty of 1909, to examine into and report upon the water quality and quantity of the Flathead River, relating to the transboundary water quality and quantity implications of the proposed coal mine development on Cabin Creek in British Columbia near its confluence with the Flathead River.

The Commission is to make recommendations which would assist Governments in ensuring that the provisions of Article IV of the said Treaty are honored. Article IV provides that the "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

Governments noted that on February 21, 1984, the Government of British Columbia announced that approval-in-principle had been granted to Sage Creek Limited for the proposed coal mine, thereby allowing the company to proceed with securing licenses, permits and final approvals under the provincial coal development review process. In granting this approval, the British Columbia Government acknowledged that the approval-in-principle is subject to action taken by federal authorities pursuant to their international obligations under the Boundary Waters Treaty.

In light of the above, the Governments requested that the Commission examine into and report upon the following matters regarding the Flathead River basin:

1. The present state of water quality and quantity at the border (including fluctuations) and the current water uses (including water dependent uses such as recreation) in the Flathead River basin;

2. The nature, location and significance of fisheries currently dependent on the waters of the Flathead River and its tributaries, Howell and Cabin Creek;

3. The effects on present water quality and quantity at the border and consequent effects on current water uses (including water dependent uses such as recreation) which would result from the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine; and

4. Such other matters as the Commission may deem appropriate and relevant to water quality and quantity at the border (including downstream effects in the United States) as occasioned by the proposed Cabin Creek coal mine.

Dated: June 10, 1985.

David A. LaRoche,

Secretary, U.S. Section, IJC.

These terms of reference were communicated to the Commission by letter from the U.S. Government dated December 19, 1984 and a similar letter from the Canadian Government dated February 15, 1985.

In accordance with its responsibilities under the reference, the Commission will conduct public hearings at the times and places noted below. Anyone, on his own behalf or in a representative capacity, may offer pertinent information to assist the Commission. Time may be limited so oral statements should not exceed 10 minutes. A longer statement may be submitted in writing for the record. If possible, 20 copies of each statement should be provided for distribution to the news media and for Commission purposes. The Commission encourages any interested parties who are not able to attend to send written comments to the Secretaries at the addresses below.

The Commission has established an international board to conduct the necessary technical investigations. The board has prepared a plan of study that will be finalized and approved by the Commission following the public hearings. Copies of the complete text of the reference from Governments, the Commission's directive to the board, and the board's plan of study are

available upon request to the Secretaries at the addresses below.

Tuesday, July 9, 1985
2:00 pm and 7:00 pm (local time)
Outlaw Inn, 1701 Highway 93 South, Kalispell, Montana

Wednesday, July 10, 1985
7:00 pm (local time)
Fernie Community Center, Fernie, British Columbia

Thursday, July 11, 1985
10:00 am (local time)
Fernie Community Center, Fernie, British Columbia

David A. LaRoche, Secretary, United States Section, International Joint Commission, 2001 S St., NW., Second Floor, Washington, D.C. 20440
David G. Chance, Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, 18th Floor, Ottawa, Ontario K1P 5M1

[FR Doc. 85-14228 Filed 6-12-85; 8:45 am]
BILLING CODE 4710-14-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-266 Through 268 (Preliminary)]

Certain Steel Wire Nails From the People's Republic of China, Poland, and Yugoslavia

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation Nos. 731-TA-266 through 268 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China, Poland, and Yugoslavia of one-piece steel wire nails made of round steel wire, provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States (TSUS), and similar steel nails of one-piece construction whether over or under 0.065 inch in diameter, provided for in item 646.30, two-piece steel wire nails, provided for in item 646.32 of the TSUS, and steel wire nails with lead heads, provided for in item 646.36 of the TSUS, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by July 22, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth (202-523-0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 5, 1985 by Atlantic Steel Co., Atlas Steel & Wire Corp., Continental Steel Corp., Davis-Walker Corp., Dickson Weatherproof Nail Co., Florida Wire & Nail Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Fabric Co., and Wire Products Co.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to an investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on June 26, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Abigail Eltzroth (202-523-0289) not later than June 24, 1985 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before June 28, 1985 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

All business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 7, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-13758 Filed 6-12-85; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Coal Rate Guidelines; Meeting

Time and Date: 9:30 a.m., Thursday, June 20, 1985.

Place: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, D.C. 20423.

Status: Open Special Conference.

Matter to be discussed: Ex Parte 347 (Sub-No. 1), Coal Rate Guidelines—Nationwide.

Contact person for more information: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275–7252.

James H. Bayne,

Secretary.

[FR Doc. 85–13897 Filed 6–12–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-295X)]

Burlington Northern Railroad Co.; Abandonment in Red Lake and Pennington Counties, MN; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 10.60-mile line of railroad between milepost 1.20 near Red Lake Falls and milepost 11.80 near St. Hilaire.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–13898 Filed 6–12–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket Nos. AB–52 (Sub-39X); AB–233 (Sub-1X)]

Fresno Interurban Railway Co. and Atchison, Topeka and Santa Fe Railway Co.; Abandonment and Discontinuance of Service in Fresno County, CA; Exemption

Applicants have filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon and discontinue service over the 10.9-mile line of railroad between milepost 6.0 near Cameo and milepost 16.9 near Belmont Avenue in Fresno County, CA.

Applicants certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment and discontinuance shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 15, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: Michael W. Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.[1]

Decided: June 4, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–14229 Filed 6–12–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No AB–251X]

Louisiana Midland Railway Co.; Abandonment in Concordia, Catahoula, La Salle, and Grant Parishes, LA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 65.95-mile line of railroad between milepost 1.75 West of Ferriday and milepost 67.70 Packton, LA.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line , and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] A request by Fresno County for a public use condition will be disposed of as a petition for reconsideration.

A copy of any petition filed with the Commission should be sent to applicant's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditional upon environmental or public use conditions.

Decided: June 4, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13759 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Decision—Notice OP3-MCF-299]

Motor Carriers; Julius Eiser et al.; Applications Filed

Decided: June 7, 1985.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and I.C.C. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exeception of those applications involving impediment (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decison is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protest as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC-F-16347, filed May 10, 1985. Julius Eisen, et al.—Continuance in Control—GL Bus Lines, Inc. (GL) (262 Monitor Street, Brooklyn, NY 11201) and Gray Line New York Tours, Inc. (Gray Line) (254 West 54th Street, New York, NY 10019). Representative: Michael J. Marzano, 99 Kinderkamack Road, Westwood, NJ 07675. Julius Eisen, Barnett Rukin, Irwin Flateman, and Eleanor Rukin seek authority to continue in control of Gray Line and GL, upon issuance of initial permanent motor common carrier authority to Gray Line in pending applications No. MC-180229 and Sub-No. 1 and to GL in No. MC-180074. The Commission has granted Gray Lines' lead and Sub-No. 1 applications and GL's lead application, subject to common control conditions. In No. MC-180229, Gray Line seeks authority to transport passengers, over irregular routes, in charter and special operations, between points in all States except Hawaii; the Sub-No. 1 seeks regular-route passenger rights. GL seeks authority identical to that in Gray Lines' lead request.

Petitioners also control through stock ownership noncarrier Short Line Terminal Agency, Inc. (Short Line), Limousine Rental Service, Inc. (LRS) (MC-115456), Chenango Valley Bus Lines, Inc. (Chenango Valley) (MC-141324), Colonial Coach Corp. (Colonial) (MC-39491 and MC-142799), Hudson Transit Corporation (HTC) (MC-133403), Hudson Transit Lines, Inc. (HTL) (MC-228), and International Bus Services, Inc. (International) (MC-155937). Common control of Chenango Valley, Colonial, HTC, HTL, International, and LRS has been approved by the Commission. All of the individual petitioners here are related by blood or marriage.

LRS owns 100 percent of the stock of Chenango Valley as well as 100 percent of GL's stock. Colonial's stockholders are Irwin Flateman, Barnett Rukin, Julius Eisen, and Susan Eisen. HTC's stockholders are Short Line, Donna Rukin, Julius and Susan Eisen trustees for Joshua, Andrew, and Cara Gail Eisen, Barnett Rukin custodian for William A. Rukin, Joshua Eisen, Andrew Eisen, and Julius Eisen. HTL's stockholders are Short Line, HTC, Julius Eisen, Barnett Rukin, Susan Eisen, Julius and Susan Eisen trustees for Joshua and Andrew Eisen, Barnett Rukin custodian for William A. Rukin, Joshua Eisen, Andrew Eisen, and YM-YWHA of Bergen County. International's stockholders are Irwin Flateman, Julius Eisen, Eleanore Rukin, and Barnett Rukin. LRS' stockholders are Irwin Flateman, Barnett Rukin, Eleanore Rukin, Susan Eisen, Julius Eisen, and Donna Lynn Rukin. Short Lines's stockholders are Irwin Flateman, Barnett Rukin, Julius Eisen, Susan Eisen, Donna Rukin, Julius Eisen custodian for Cara Gail Eisen, Donna Rukin custodian for Emily Rukin and William A. Rukin, Joshua Eisen, Andrew Eisen, Julius Eisen trustee for Joshua and Andrew Eisen, YM-YWHA of Bergen County, and The Dover Fund. Gray Line's stockholders are Julius Eisen, Irwin Flateman, Barnett Rukin, Bernard Flateman, and Charles Flateman.

[FR Doc. 85-14230 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-135)[1]]

Seaboard System Railroad, Inc.; Abandonment In Shelby County, TN; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 12.9 mile line of railroad between the Shell Plant (milepost 210.7) and Memphis, TN (milepost 23.6) in Shelby County, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 14353 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-40X)]

Railroads; the Atchison, Topeka & Santa Fe Railway Co.; Discontinuance of Trackage Rights; Over Burlington Northern Railway Co.; Exemption

The Atchison, Topeka and Santa Fe Railway company (Santa Fe) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue trackage rights over a Burlington Northern Railroad Company line extending from a point near Franklin and Water Streets to Iowa Junction, a distance of 2.9 miles, all in the City of Peoria, IL.

Santa Fe has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 10, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-14432 Filed 6-12-85; 12:00 pm]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

June 6, 1985.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on July 26, 1985.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to the first drafting of the Agency's 1987 budget to be submitted to the Office of Management and Budget.

The meeting will begin at 10:00 a.m. and will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., 1st Floor Conference Room (M-09), Washington, D.C. The meeting will be closed to the public pursuant to subsection (9)(B) of section 552b of Title 5, United States Code, because the Council will consider information that may disclose information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-14231 Filed 6-12-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421

OMB Desk Officer: Carlos Tellez, (202) 395-7340

Title: Survey of Biotechnology R&D Performance in Industry

Affected Public: Industry

Number of Responses: 150 responses; total of 300 burden hours.

Abstract: Quantitative information on science and technology (S&T) employment and funding in biotechnology related areas is needed to improve the capacity of the Federal Government to assess programs in these areas. NSF, OMB, OSTP, & Congress use the response of business leaders in companies with large biotechnology R&D programs to make timely decisions on S&T policy questions.

Dated: June 10, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85-14247 Filed 6-12-85; 8:45 am]

BILLING CODE 7555-01-M

[1] This notice was inadvertently published at 50 FR 24328, June 10, 1985, in advance of the service of the Commission's decision. The allotted 10 day period should be calculated instead from this current publication.

NATIONAL TRANSPORTATION SAFETY BOARD

Safety Recommendations: Amtrak, et al.; Availability

NATIONAL TRANSPORTATION SAFETY BOARD—SAFETY RECOMMENDATIONS ISSUED

Recommendation No.	Issued to	Date	Subject
Railroad			
R-85-13 and -14	Amtrak	Mar. 30, 1985	Interior design deficiencies of passenger cars and review of current quality control procedures.
R-85-15 and -16	Assn. of American Railroads	Mar. 20, 1985	Maintenance and design of traction motor support bearings.
R-85-17	General Motors Corp	do	Do.
R-85-18	General Electric Co	do	Do.
R-85-19 and -20	Consolidated Rail Corp	do	Absent or inoperative cab signals on trains.
R-85-21	Assn. of American Railroads	do	Provision for a second qualified locomotive operator while train is in service or between terminals.
R-85-2	Brotherhood of Locomotive Engineers	do	Do.
R-85-23	United Trans. Union	do	Do.
R-85-24	Railway Labor Executives' Association	do	Do.
R-85-25 thru -34	NY City Transit Authority	Mar. 28, 1985	Improvement of subway tunnel safety.
R-85-35	NY State Depart. of Transportation	do	Implementation of previous safety rec's made concerning subway fires.
R-85-36	New York Fire Dept	do	Improvement of communication with NYCTA; development of adequate maps of subway; third rail power safety.
R-85-37 thru -42	Burlington Northern R.R. Co	Apr. 24, 1985	Nighttime supervision of train operators, uniform interpretation of Rule G, information provision, training programs, crew alerters.
R-85-51	Federal Railroad Admin	May 16, 1985	Requirement that two crewmembers qualified to operate train be on locomotives of through trains.
R-85-52	Brotherhood of Locomotive Engineers/United Trans. Union/Assn. of American Railroads.	do	Do.
R-85-59 and -60	Federal Railroad Admin	May 17, 1985	Tank car anti-shift brackets.
Marine			
M-85-25	Nat'l Oceanic & Atmospheric Administration	Apr. 1 1985	Navigation guides for mariners navigating Western Rivers.
M-85-26	U.S. Army Corps of Engineers	do	Supplemental large scale charts for harbor areas and areas difficult to navigate in next edition of Upper Mississippi River Navigation Charts.
M-85-18 thru -24	U.S. Coast Guard	do	Difficult navigation; shore lighting, Popular Street Bridge, St. Louis Harbor.
M-85-27	Findett Transport Co	do	Establishment of records to ensure that operators of towing vessels have sufficient experience and local knowledge.
M-85-28	American Waterways Operators	do	Experience and local knowledge of towing vessel operators.
Highway			
H-85-1 thru -3	CA Yearly Mtg. of Friends	Mar. 20, 1985	Church—sponsored trips; itineraries, systematic maintenance programs.
H-85-4 thru -6	State Directors of Pupil Transportation/Governors of 50 States & DC.	Mar. 22, 1985	Schoolbus driver compliance with railroad crossing stop requirements; driver stress.
Pipeline			
A-85-4 and -5	Washington Gas Light Co	Apr. 19, 1985	Temporary bonding cables; installation during pipe cutting operations.
Aviation			
A-85-5 and -6	Federal Aviation Admin	May 14, 1985	Pratt & Whitney JT9D series engines.
A-85-26 and -27	do	Apr. 15, 1985	Windshear training program; cockpit resource management training.
A-85-28 thru -30	do	do	Eastern Aero Marine Model GA-12 flotation devices.
A-85-31	do	May 6, 1985	Attachment of intercoastals of wing extension assemblies to wing rib structure at wing station 195 on Model PA-60-611B, -601P, and -602P Piper Aerostar airplanes.
Intermodal			
I-85-2 thru -4	Harris Corporation	May 16, 1985	Hazardous waste shipping procedures.
I-85-5 and -6	Chemical Waste Management	do	Transportation of hazardous wastes.
I-85-7 and -8	Department of Transportation	do	Shippers of hazardous waste; responsibilities and audits of; compliance with the Hazardous Materials Transportation Act.
I-85-9	Environmental Protection Agency	do	Shipper responsibilities under the Hazardous Materials Transportation Act.
I-85-10 and -11	Research and Special Programs Administration.	do	Shipping of hazardous materials; adequacy of general shipping names and shipper responsibilities.
I-85-12	Nat'l Tank Truck Carriers	do	Instructions to drivers regarding hazardous waste transportation and proper loading procedures.
I-85-13 and -14	U.S. Dept. of Transportation	Apr. 19, 1985	Evacuation distances for rail tank cars carrying liquids or gases.
I-85-15	Internat'l Society of Fire Service Instructors/ Internat'l Assn. of Fire Chiefs/Internat'l Assn. of Chiefs of Police.	do	Do.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Alternate Federal Register Liaison Officer.

May 22, 1985.

[FR Doc. 85-14307 Filed 6-12-85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

Florida Power Corp. et al; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant located in Citrus County, Florida.

In accordance with the licensee's application dated April 25, 1985, the proposed amendment would revise the Technical Specifications (TSs) to support the operation of Crystal River Unit 3 at full rated power during the upcoming Cycle 6 operation. The proposed amendment requests changes in the following areas:

1. Reactor core safety limits and trip setpoints for reactor thermal power and axial power imbalance.
2. Minimum boric acid and borated water volumes.
3. Regulating and axial power shaping rod group insertion limits.
4. Axial power imbalance limits.
5. Reactor Protection System response time tesing requirements.
6. Deletion of specific requirements pertaining to Cycle 5.

In support of the license amendment request for operation of Crystal River Unit 3 during Cycle 6, the licensee submitted, as an attachment to the application, a Babcock & Wilcox (B&W) Report, BAW-1860, dated April 1985. A summary of the Cycle 6 operating parameters along with a safety analysis are included therein.

For Cycle 6, Crystal River Unit 3 will operate with 60 fresh fuel assemblies similar to the fuel used in Cycle 5. Additionally, Cycle 6 will incorporate longer less absorbing Inconel (gray) axial power shaping rods (APSRs) instead of silver-indium-cadmium (black) APSRs used previously.

The NOODLE code was used in determining core physics parameters and the LYNX-T code, which uses crossflow methods, in the thermal-hydraulic analyses. Other analytical methods have been used and accepted for previous cores.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of types of amendments not likely to involve significant hazards considerations is (iii), a change resulting from a nuclear core reloading if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved, assuming that no significant changes are made to the acceptance criteria for the TSs, that the analytical methods used to demonstrate conformance with the TSs and regulations ar not significantly changed, and that the NRC has previously found such methods acceptable.

This reload involves the Mark B fuel assembly previously accepted by the NRC. As of October 31, 1984, it has been used for eight B&W 177-fuel assembly plants and has proven adequate.

The Cycle 6 control rods differ from those in Cycle 5 in that grey APSRs are to be used instead of the previously used black APSRs. The grey APSRs were designed to improve creep life and have previously been approved by the Commission for use in similar reactors.

Thus, this core reload involves fuel assemblies and control rods that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The request for this amendment would change the TSs to reflect new operating limits based on the fuel and control rods to be inserted into the core. The parameters are based on the new core physics and fall within acceptable criteria.

In the analysis supporting this reload, there are no significant changes in acceptance criteria for the TSs.

Two changes were made in the analytical methods used and accepted for previous cores to demonstrate conformance with TSs and regulations. The NOODLE code was used to calculate reactor physics parameters. The licensee has compared the NOODLE code results with the previously used PDQ07 code results and found them to be as accurate. The NOODLE code had been previously reviewed and found acceptable by the Commission.

The licensee provided additional information regarding use of the LYNX-T code (which uses crossflow methodology) at a meeting on May 17, 1985. It was stated that LYNX-T was used for steady-state conditions only and that the previously approved RADAR code was used for transient analysis. It was shown that LYNX-T produces results equivalent to the TEMP code used for the previous cycle at this facility. The LYNX-T code is under review by the NRC staff and has not yet been formally approved, but its use for steady-state conditions has been found acceptable. Crossflow methodology has been utilized in the licensing of other B&W reload cores.

Based on the above, the reload and the proposed license amendment reflecting it appear to be encompassed by example (iii), and the Commission's staff proposes to determine that these proposed changes do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 15, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the

petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petitions and/or requests, that the petitioner has made a substantial showing of good cause for the granting of a late petitions and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Crystal River-Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Dated at Bethesda, Maryland, this 7th day of June 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 85–14285 Filed 6–12–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- River assessment study.
- Anadromous fish section—Hydro Assessment Study.
- Tribal values study.
- FERC update.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: June 18, 1985. 10:00 a.m.

ADDRESS: The meeting will be held at the Ramada Airport Inn, Empire Room, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–14303 Filed 6–12–85; 8:45 am]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

Postal Visits; California

June 7, 1985.

Notice is hereby given that Commissioner Bonnie Guiton will visit the following postal facilities, on the dates and time shown, to observe mailing operations:

San Francisco Bulk Mail Center, Richmond, California, on June 11, 1985, at 9:30 a.m.

Main Post Office Facility, Management Sectional Center, Oakland, California, on June 11, 1985, at 1:00 p.m.

General Mail Facility, Management Sectional Center, San Francisco, California, on June 12, 1985, at 10:00 a.m.

A report of the visits will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 85-14224 Filed 6-12-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22122; SR-MSRB-85-12]

Self-Regulatory Organizations; Proposed Rule Changes by Municipal Securities Rulemaking Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1985, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed amendments to rule A-13 (hereinafter sometimes referred to as the "proposed rule changes"). The text of the proposed rule changes is as follows:[1]

Rule A-13. Underwriting Assessment for Municipal Securities Brokers and Municipal Securities Dealers

(a) In addition to the fees prescribed by other rules of the Board, each municipal securities broker and municipal securities dealer shall pay a fee to the Board equal to [.001% ($.01 per $1,000)] *.002% ($.02 per $1,000)* of the par value of all municipal securities which are purchased from an issuer by or through such municipal securities broker or municipal securities dealer, whether acting as principal or agent, as part of a new issue which has an aggregate par value of $1,000,000 or more and which has a final stated maturity of not less than two years from the date of the securities; provided, however, that if such municipal securities broker or municipal securities dealer is a member of a syndicate or similar account formed for the purchase of such securities, such fee shall be calculated on the basis of the participation of such municipal securities broker or municipal securities dealer in the syndicate or similar account. Such fee must be received at the office of the Board in Washington, D.C. not later than 30 calendar days following the date of settlement with the issuer. In the event a syndicate or similar account has been formed for the purchase of the securities, the fee shall be paid by the managing underwriter on behalf of each participant in the syndicate or similar account.

(b)–(c) No change.

(d) The fee prescribed in paragraph (a) shall be payable with respect to any new issue municipal security which a municipal securities broker or municipal securities dealer shall have contracted on or after [October 1, 1982] *July 1, 1985* to purchase from an issuer.

(e) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Rule A-13 requires each municipal securities dealer to pay to the Board a fee based on its placements of new issue municipal securities. The purpose of the fee is to provide a continuing source of revenue to defray the costs and expenses of operating the Board and administering its activities.

Municipal securities dealers are required to pay the underwriting assessment fee on all new issues purchased by or through them which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities. Prior to the proposed rule changes, the fee was calculated at the rate of $.01 per $1,000 of the par value of such securities. The proposed rule changes modify rule A-13 to provide that the fee payable with respect to new issues which a municipal securities dealer has contracted on or after July 1, 1985, to purchase from an issuer shall be calculated at the rate of $.02 per $1,000.

The Board has not changed the underwriting assessment fee rate since the rate was decreased from $.02 to $.01 per $1,000 on October 1, 1982; however, in light of the Board's declining fund balance and a projected decline in new issue volume, it has adopted an amendment to rule A-13 increasing the underwriting assessment fee rate from $.01 to $.02 per $1,000, effective July 1, 1985. Based on projections of the Board's revenues and expenses, raising the fee on July 1, 1985, should maintain the reserves at a level which should compensate for a significant decline in new issue volume and avoid increasing the underwriting assessment fee further.

(b) The Board has adopted the proposed rule changes pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will have any impact on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Comments have not been solicited or received on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

[1] Italics indicate new language; brackets indicate deletions.

the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1985.

Dated: June 6, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14290 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22124; File No. SR-NASD-85-14]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers Relating to a New Section 66 to the Uniform Practice Code

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new Section to its Uniform Practice Code which would set a time by which syndicate accounts must be closed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to add a new section to its Uniform Practice Code which would require syndicate accounts to be closed out within 120 days after the syndicate settlement date. Syndicate accounts are ordinarily formed by underwriting groups to process the income and expenses of the syndicate. An informal study by the NASD of syndicate settlement practices revealed lengthly settlement delays were a common occurrance. NASD members have commented there is no reason why the syndicate account should not be closed within 120 days and several members expressed a view that 90 days would be adequate to accomplish this. It is because of these lengthy and often costly delays that the NASD is proposing this new section.

These changes are consistent with Section 15A(b)(6) of the Securities Exchange Act, which requires that the Association's rules promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden On Competition

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited and eight NASD members and the Municipal Securities Rulemaking Board responded. All comment letters received from NASD members strongly supported the NASD proposal.

Six of the eight NASD members who commented stated they believe the 120 day settlement period could easily be reduced to 90 days without any undue burden on syndicate managers. The Municipal Securities Rulemaking Board commented that under its rules syndicate account settlements must occur within 60 days.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450—5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

June 6, 1985.

[FR Doc. 85-14288 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22123; SR-OCC-85-2]

Self-Regulatory Organizations; the Options Clearing Corp.; Order Approving Proposed Rule Change

The Options Clearing Corporation ("OCC") on February 15, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of

the Securities Exchange Act of 1934. The proposal would enable foreign broker-dealers to qualify for OCC membership.[1] On March 15, 1985, the Commission published notice of the proposal in the **Federal Register** to solicit public comment.[2] No comment has been received. For reasons discussed below, the Commission is approving OCC's proposal.

Introduction

Currently, foreign broker-dealers participate in the domestic options markets indirectly, through OCC's Clearing Members.[3] Some Clearing Members maintain offices overseas to facilitate foreign broker-dealer business. Typically, a foreign broker-dealer arranges with an OCC Clearing Member to execute trades on the U.S. options exchanges, to clear and maintain U.S. market positions and to perform certain back-office functions. The OCC Clearing Member undertakes the responsibility for all overseas communications and for meeting OCC margin and clearing fund deposits. For these services, foreign broker-dealers pay domestic Clearing Members commissions and other costs and expenses.

To reduce those expenses, some foreign broker-dealers have sought direct OCC membership. Those firms plan not to seek membership in, or a physical presence on the floor of, any domestic options exchange; they will continue to use domestic broker-dealers to execute orders. The foreign firms, however, intend to conduct their own options clearance and settlement operations through OCC after OCC assigns the trades to their accounts through use of OCC's Clearing Member Trade Assignment ("CMTA") Procedure.[4]

The Proposed By-Law and Rule Changes

OCC proposes to change its By-Laws to make a "Foreign Securities Firm"[5] eligible to become an OCC "Foreign Clearing Member" ("FCM").[6] OCC's definition of "Foreign Securities Firm" limits the universe of potential FCMs to firms that are subject in its home country to some governmental, self-regulatory, or other independent regulatory authority under governmental oversight. OCC believes that the existence of some regulatory authority over the Foreign Securities Firm in its home nation should provide some assurance that an applicant is subject to financial and operational discipline. OCC also believes that this should aid OCC's surveillance and crisis management of an FCM experiencing financial or operational difficulties.[7]

OCC's definition also excludes Foreign Securities Firms that are required to register as U.S. broker-dealers under the Act.[8] Such firms already are eligible to be domestic Clearing Members and must meet the same requirements as other domestic OCC Clearing Members. Generally, the proposal would enable Foreign Securities Firms doing business only with foreign customers, *i.e.*, firms that are not required to register as broker-dealers under the Act, to become OCC Clearing Members even though they are engaged in options transactions that are executed through U.S. broker-dealers on U.S. options exchanges.

Financial Requirements

OCC, in general, is imposing the same financial requirements for admission and continuing participation on FCMs that it currently imposes on domestic Clearing Members. As proposed, Article V of OCC's By-Laws, which relates to Clearing Member qualifications and conditions to admission, expressly provides for such equal treatment with a few minor modifications. OCC's Interpretations and Policies concerning operational capability would be modified only insofar as they would permit a foreign firm to maintain its books and records in a manner or format different from domestic Clearing Member applicants. However, a foreign firm's books and records, regardless of format, would be required to reflect accurately the firm's net capital, aggregate indebtedness, and debt-equity total, as defined and computed in accordance with Commission Rule 15c3–1 (17 CFR 240.15c3–1). Any foreign firm not maintaining its records to reflect accurately those amounts in accordance with Rule 15c3–1 could not qualify to become or remain a Foreign Clearing Member. In addition, FCMs would be subject to section 3(g) of Article V of OCC's By-Law, which provides that each OCC Clearing Member must agree to permit OCC's inspection of the Clearing Member's books and records at all times to furnish OCC with any information relating to the Clearing Member's business and transactions required by OCC or its officers.[9]

FCMs, like domestic Clearing Members, will be required by OCC Rule 306 to report financial information to OCC by filing FOCUS reports with OCC. If OCC determines from these reports that an FCM is not in compliance with Rule 15c3–1, OCC can suspend the FCM or restrict its transactions or positions under OCC Rule 305. Moreover, FCMs will be required to file annually under OCC Rule 308 financial statements audited by an independent public accountant that is satisfactory to OCC.

Furthermore, OCC Rule 310 would be amended to require that all FCM financial reports, *e.g.*, FOCUS reports and audited financial statements, conform in all respects to U.S. accounting practices and standards, *e.g.*, Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, and Commission accounting and financial reporting requirements. If an FCM fails to comply with these provisions, OCC could: (1) Impose any sanctions or restrictions available under its By-laws and Rules, including suspension from membership under Chapter XI of OCC's Rules, variation margin under OCC Rule 609 and business restrictions under OCC

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[1] Several foreign firms, all of which are English or Canadian broker-dealers, have expressed interest in becoming OCC Clearing Members.

[2] 50 FR 10569 (March 15, 1985).

[3] Under OCC's current rule, only a "person registered as a broker-dealer under the Securities Act of 1934, as amended," is eligible to be an OCC Clearing Member.

[4] The CMTA Procedure enables an OCC Clearing Member, with OCC's approval, to authorize another Clearing Member (an "authorized Exchange member") to execute and compare trades on the first Clearing Member's behalf upon notification to OCC. Under the CMTA Procedure, the Foreign Clearing Member will clear those trades through its own OCC clearing account and will be responsible for satisfying all settlement and margin requirements arising from such transactions.

[5] OCC defines a "Foreign Securities Firm" as a securities firm: (1) formed and operating under the laws of a foreign country; (2) with its principal place of business in that country; and (3) that is subject to the regulatory authority of that country's government or an agency or instrumentality thereof, or subject to the regulatory authority of an independent organization or exchange in that country that is subject to the regulatory authority of that government or an agency or instrumentality thereof. *See* proposed OCC By-Law, Article 1, §1(rrr).

[6] A "Foreign Clearing Member" means a Foreign Securities Firm that has been admitted to OCC membership in accordance with OCC's By-Laws and Rules. *Id.*

[7] Pursuant to revised OCC Rule 1102, OCC will notify this foreign regulatory authority if OCC suspends the FCM because of financial or operational difficulties. OCC also will notify the Commission in case of suspension or disciplinary action against an FCM because the Commission will be the FCM's "appropriate regulatory agency" ("ARA") as defined in section 3(a)(34)(C)(iv) of the Act. This status gives the Commission the full powers and responsibilities regarding OCC-FCM relationships granted to ARAs under the Act, including those related to clearing agency summary suspensions under section 17A(b)(5)(C) and final membership, service limitations, and disciplinary actions under Sections 19 (d) and (e).

[8] OCC By-Law Article I, section 1(rrr).

[9] OCC and the Philadelphia Stock Exchange Inc. ("Phlx") currently are discussing a proposal that would authorize the Phlx's London Office to inspect the books and records of English FCMs on OCC's behalf.

Rule 305(a); or (2) require further assurances of financial responsibility for its protection, *e.g.*, additional clearing fund and OCC margin deposits under OCC Rule 310.

The proposed rule change also imposes some additional requirements on FCMs to ensure that FCMs are treated the same as domestic Clearing Members. Section 3(i) of Article V of OCC's By-Laws would require FCMs with respect to customer option accounts to comply with Section 7 of the Act and Regulation T [10] promulgated thereunder by the Board of Governors of the Federal Reserve System.[11] In addition, subparagraph (j) of that By-Law would require an FCM to comply with NASD maintenance margin rules. OCC believes that compliance with these requirements should reduce the likelihood of FCM insolvencies resulting from the erosion of customer positions. Section 3(j) also would require an FCM to comply with NASD rules regarding cut-off times for submitting exercise notices to customers. This requirement will place foreign and domestic Clearing Members on an equal footing regarding the timing for submitting exercise notices.

Operational Requirements

OCC is requiring that each FCM demonstrate to OCC's satisfaction that its communications with OCC would be reliable and operated by capable personnel. Moreover, the FCM would be required to demonstrate sufficient back-up systems. OCC, however, proposes to waive with respect to FCMs OCC Rule 201's requirement that Clearing Members maintain an office in the vicinity of one of OCC's offices, provided the FCM establishes other acceptable arrangements for transacting business with OCC. OCC believes that existing overseas communication systems are highly reliable and could be used satisfactorily by FCMs and OCC.

Finally, proposed Section 3(k) of By-Law Article V would require an FCM to consent to the jurisdiction of Illinois courts and to the application of United States law in any dispute arising from OCC membership.[12] OCC's proposal also requries FCMs to appoint a domestic agent for service of process. OCC believes that these provisions are necessary to protect OCC in view of disparate foreign broker-dealer regulatory schemes and commercial laws. Moreover, this provision should help to ensure evenhanded treatment of domestic and Foreign Clearing Members.

OCC intends this proposal to encourage increased foreign participation in U.S. capital markets and to reduce foreign broker-dealers' costs of clearing U.S. options trades. OCC believes that the proposed rule change generally affords equal treatment to domestic and foreign securities firms to comply with OCC's By-Laws and Rules concerning OCC's margin and clearing fund requirements, clearance of exchange transactions, premium settlement, financial and operational requirements, financial reporting requirements and further assurances. In sum, OCC believes that the proposed rule change is consistent with section 17A of the Act because it protects OCC and its members while not permitting unfair discrimination in the admission of participants or among participants in their use of OCC services.

Discussion

The Commission is approving OCC's proposal because, consistent with section 17A of the Act, it will promote the prompt and accurate clearance and settlement of options transactions while ensuring the safeguarding of funds and securities in OCC's custody and control, or for which it is responsible. By enabling foreign broker-dealers to become direct OCC Clearing Members,[13] OCC's proposal has the potential to enhance the efficiency and accuracy of clearing and settling Foreign Securities Firms' U.S. options transactions. By eliminating the domestic Clearing Member intermediary between the FCM and OCC, the proposal will remove a processing layer, which, in turn, should reduce the possibility of transmission errors. Moreover, by removing that layer, clearance and settlement of FCM options transactions should be effected quicker than in the past.[14] In addition, FCMs no longer will need to pay fees to domestic Clearing Members for performing a broad array of clearance and settlement services. Thus, the Commission concludes that the proposal should promote the prompt, accurate and efficient clearance and settlement of securities transactions under section 17A(b)(3)(F) of the Act.

Section 17A(b)(3)(F) further contemplates eliminating undue financial or operational risk to National System participants by compelling all clearing agency participants to meet appropriate clearing agency safeguarding requirements. The Commission believes that OCC's proposal requires FCMs to meet appropriate financial and operational standards and gives OCC ample authority to protect itself and its members from FCM non-compliance or default.

By requiring FCMs to meet generally the same financial and operational standards as domestic OCC Clearing Members, the Commission believes that OCC's proposal imposes appropriate safeguarding requirements on FCMs without permitting unfair discrimination in the admission or activity of participants. First, OCC's proposal imposes on FCMs the full panoply of OCC's safeguarding mechanisms, including OCC margin deposits, clearing fund contributions, financial reporting, and operational requirements. Moreover, the proposal gives OCC the same flexibility regarding FCMs as it currently has over domestic Clearing Members when they experience financial or operational difficulties. For example, under the proposal, OCC will be able to require additional clearing fund deposits, margin deposits and variation margin from FCMs or to impose other sanctions as OCC deems necessary.

Second, the proposal requires FCMs to consent to the jurisdiction of Illinois courts and to the application of United States law on any issue arising from OCC membership. These provisions should eliminate to the extent possible under international law potential confusion of the parties' rights and obligations if disputes arise. Furthermore, requiring by contract that a FCM appoint a U.S. agent for service

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[10] 12 CFR 220.1 *et seq.*

[11] FCMs failing to comply with Article V, § 3(i) would be subject to the full range of OCC's disciplinary sanctions under Chapter XII of OCC's Rules, including censure, suspension, expulsion or limitation of activities, functions or operations.

[12] As in the case of domestic Clearing Members, Article VI, section 9(c) of OCC's By-Laws provides that the rights and obligations of OCC and its Clearing Members are governed by Articles 8 and 9 of the Uniform Commercial Code of Delaware, including the conflict of laws rules. However, Interpretation and Policy .01 to section 9(c) notes that, notwithstanding the above provision "questions regarding the perfection of security interests in options may be governed by laws other than the law of Delaware."

[13] The Commission believes that admitting FCMs to direct OCC membership under OCC's proposed safeguards is appropriate under the Act. Although Section 17A(b)(3)(B) does not require clearing agencies to admit foreign broker-dealers, section 17A does not prohibit clearing agencies from exercising their independent judgment to make foreign broker-dealers, or other appropriate classes of entities eligible for admission. The overall thrust of section 17A reflects the intent of Congress to expand participation in the National Clearance and Settlement System ("National System") to include financial institutions that may benefit from participation in the National System, rather than to restrict participation to statutorily designated categories of financial institutions.

[14] Increased clearance and settlement efficiencies should facilitate FCM participation in U.S. options markets.

of process will facilitate legal action by OCC.

Finally, OCC's requirement that FCMs comply with Regulation T margin requirements should help to ensure that OCC will be able to safeguard funds and securities pursuant to Section 17A of the Act. Although Regulation T does not apply to a foreign broker-dealer transacting securities business outside the jurisdiction of the United States.[15] OCC contends that should not impose a significant burden on FCMs. It notes that Regulation T margin is already required of foreign firms by domestic broker-dealers that execute foreign firms' trades on U.S. options exchanges. For Regulation T purposes, those foreign firms are "customers" of the domestic broker-dealer.[16] In addition, while foreign branches of domestic broker-dealers generally are exempted from Regulation T margin requirements with respect to wholly foreign transactions, domestic broker-dealers, according to an informal OCC survey, generally require their foreign branches to follow the same practices as their domestic branches, including obtaining Regulation T margin from all customers. Accordingly, the Commission does not believe that OCC should be precluded from imposing Regulation T on FCMs and their customers by contract. This should serve to reduce the possibility that FCMs will be unable to meet their OCC obligations because of undercollateralized FCM customer option positions.[17] Thus, the proposed Regulation T requirement should not impose an unnecessary or inappropriate burden on competition as prohibited by section 17A(b)(3)(I), but rather should aid OCC in safeguarding funds and securities as required by Section 17A of the Act.

OCC's By-Laws and Rules will be required to meet all of OCC's substantive standards of financial responsibility, operational capability, experience and competence under section 1 of Article V of OCC's By-Laws. In addition, OCC represents that its Membership Committee, in determining which Foreign Securities Firms qualify as FCMs, will weigh other relevant factors, such as (1) the firm's home country regulatory scheme; (2) the degree of communication possible between OCC and the applicant's home country regulatory entity; and (3) any material adverse conditions that might affect the applicant's ability to satisfy its OCC-related obligations. As with the initial foreign firms interested in becoming FCMs, the Commission expects that OCC's staff and Membership Committee will conduct extensive educational and investigative discussions with foreign firm applicants and their regulators. Such efforts should include, among other things, explaining U.S. accounting policies, net capital and margin requirements, and the proper completion of FOCUS reports.

In summary, OCC's proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and should ensure the safeguarding of funds and securities in OCC's custody and control. Moreover, OCC's proposal opens direct OCC membership to foreign firms, helping to internationalize the U.S. securities markets. Accordingly, the Commission is approving OCC's proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that OCC's proposed rule change be, and thereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-14289 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22117; File No. SR-Phlx-83-27]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change

On January 5, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder[2] to permit the trading on Phlx of standardized options on securities that are not listed and registered on a national securities exchange under Section 12(a) of the Act[3] but are designated as National Market System Securities ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4]

At a public Commission meeting held on April 16, 1985, the Commission decided that Phlx's proposal would be consistent with the Act if Phlx eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that Phlx (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the Phlx amended its Rule 132 to state that that Rule[6] will not apply to any transaction through the facilities of NASDAQ in any option admitted to trading both on the Phlx and on NASDAQ on a stock that was traded through the facilities of NASDAQ at the time that option was admitted to trading on Phlx.[7] The Phlx also has agreed not to apply the "Options Allocation Agreement"[8] to options excepted from Rule 132.[9] The Phlx also committed to amending the Options Allocation Agreement pursuant to section 19(b)(1) in the near future.[10]

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[15] *See* section 30(b) of the Act.

[16] Some foreign regulatory organizations (*e.g.*, the London International Financial Futures Exchange, which regulates British options firms) currently only require members to charge clearing house margin to their customers. Thus, in some instances, the foreign broker-dealer may make Regulation T margin deposits with a domestic broker-dealer but only require domestic clearing house margin of its customers. Under OCC's proposal, FCMs would agree Regulation T margin on their customers.

[17] Furthermore, OCC states that the foreign broker-dealers currently contemplating becoming FCMs have not objected to this requirement on competitive grounds.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 78l(a) (1982).

[4] 17 CFR 240.11Aa2-1(b)(1) (1984). The proposed rule change (File No. SR-Phlx-83-27) was noticed in Securities Exchange Act Release No. 26090, January 6, 1984, 49 FR 7684.

[5] The Commission made the same finding with respect to proposals by the American ("Amex"), Boston, New York ("NYSE"), and Pacific ("PSE") Stock Exchanges, and the Chicago Board Options Exchange, Inc. ("CBOE"), to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22028, May 8, 1985 ("OTC Options Release"), 50 FR 20310. In that release, the Commission also made clear that once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR at 20331 n. 214. The Amex, CBOE, NYSE and PSE subsequently amended their rules to comply with this finding, and the Commission has approved those exchange respective proposals to trade options on Tier I NMS stocks. Securities Exchange Act Release Nos. 22094, 22098, 22103, 22104, May 31, 1985.

[6] Phlx Rule 132, in general, prohibits Phlx members from effecting over-the-counter ("OTC") transactions in securities listed on Phlx.

[7] File No. SR-Phlx-85-11. This filing also amended Phlx Rule 132 so that that rule does not apply to options on indexes composed entirely of OTC stocks. Securities Exchange Act Release No. 22044, May 17, 1985, 50 FR 21532.

[8] The Option Allocation Agreement consists of a uniform set of rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[9] Letter from Barbara Rothenberg, Senior Vice President and General Counsel, Phlx, to Alden Adkins, Attorney, Division of Market Regulation, dated May 31, 1985.

[10] Letter from Barbara Rothenberg, Senior Vice President and General Counsel, Phlx, to Alden Adkins, Attorney, Division of Market Regulation, dated May 24, 1985.

The Commission finds that the Phlx's previously approved proposal to amend Phlx Rule 132 (File No. SR-Phlx-85-11), as well as Phlx's agreement regarding the Allocation Agreement, effectively eliminate Phlx's barriers to the multiple trading of options on Tier 1 MMS stocks listed on Phlx. With this amendment to Phlx's rules, the Phlx's agreement regarding the Allocation Agreement,[11] for the reasons stated in the OCT Options Release, the Commission finds the Phlx proposal to trade options on NMS stocks (File No. SR-Phlx-83-27) is consistent with the Act.

The Commission also finds that Phlx has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[12] The Phlx also has agreed not to commence trading any option on an NMS stock earlier than June 10, 1985, after the date of this order and the announcement on May 29, 1985, of the Exchange's intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-Phlx-83-27 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-14291 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35:)

SSS Form No. and Title

21—Claim Documentation Form—Administrative
23—Claim Documentation Form—Divinity Student
24—Claim Documentation Form—Hardship
25—Claim Documentation Form—Minister
26—Claim Documentation Form—Alien or Dual National
27—Claim Documentation Form—Postponement
109C—College Student Certificate
109D—Divinity Student Certificate
109H—High School Student Certificate
130—Request for Relief From Training and Service in the Armed Forces of the United States
151—Statement of Intention to Participate in Alternative Service Employment Roster
254—Application for Voluntary Induction
350—Registrant Travel Reimbursement Request

Copies of any of the above identified forms can be obtained upon written request to: Selective Service System, Reports, Clearance Officer, Washington, D.C. 20435.

Written comments and recommendations for the proposed forms should be sent within 60 days of this notice, to: Selective Service, Reports Clearance Office, Washington, D.C. 20435.

Send a copy of the comments to: OMB Reports, Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.

Dated: June 7, 1985.

Thomas K. Turnage,

Director.

[FR Doc. 85-14252 Filed 6-12-85; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-5-134]

Fitness Determination of Executive Air Charter; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 85-5-134, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Executive Air Charter is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Objections shall be filed no later than June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-5-134 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85-5-134 to that address.

Dated: May 31, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-14246 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-85-15]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 24, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

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[11] Although the Commission believes that the Phlx's agreement regarding the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes the Phlx should undertake, in coordination with the other Agreement participants, to prepare formal rule changes as soon as practicable. Phlx has stated that it intends to do so *See* text accompanying note 10, *supra*.

[12] Phlx has indicated that this plan can be implemented by June 10, 1985. Trading cannot commence, of course, until the plan is operational.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 6, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITION FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
24055-1	Port of Call Travel	14 CFR 91.303	To allow petitioner to operate eight Stage 1 Boeing 707 aircraft until hush kits are installed.
24135-1	Icelandair	14 CFR 91.303	To allow petitioner to operate four Stage 1 DC-8 aircraft until hush kits are installed.
24356-1	Trans Global Airlines, Inc	14 CFR 91.303	To allow petitioner to operate two Stage 1 DC-8-55 aircraft until hush kits are installed.
24368-1	Minerve	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-62-F aircraft until hush kits are installed.

[FR Doc. 85-14226 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Mount Union Borough, Huntingdon County, PA

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement/section 4(f) evaluation will be prepared for a proposed highway project in Huntingdon County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: George J. Catselis, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone (717) 782-3411 or Dwayne Boor, Project Manager, Pennsylvania Department of Transportation, North Juniata Street, Hollidaysburg, Pennsylvania, 16648 Telephone (814) 696-7173.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, (PennDOT) will prepare an environmental impact statement/section 4(f) evalution on a proposal to relieve traffic congestion and safety problems on Traffic Route 522 in the Borough of Mt. Union, located in south central Pennsylvania. The proposed project is 1.9 miles in length and may consist of reconstruction of existing borough streets with minor right of way imvolvements, or a relocation of Traffic Route 522 on a new alignment adjacent to the eastern borough limits. The project begins just south of Mt. Union on a portion of T.R. 522 (recently reconstructed) and extends north 1.9 miles through the borough crossing the Juniata River, and ending at the intersection of T.R. 522 with existing U.S. 22. The purpose of this project is to relieve traffic congestion and delays currently occurring along existing T.R. 522 within the borough limits. The project has possible involvements with the East Broad Top Railroad National Historic Landmark and the Sharrar House (and a portion of the Pennsylvania Canal), recently determined to be eligible for the National Register of Historic Places.

Six basic alternatives will be considered in conjunction with the project: Four alternatives utilizing much of the existing borough street system (included in a Section 4(f) avoidance alternative); a 1.9 mile relocation alternative; and a do-nothing alternative. For each of the alternatives under study, the following areas will be investigated: Traffic, preliminary design and cost, air, noise, socioeconomic and land use, community impacts, historic resources, archaeological resources, water quality, floodplains and stormwater management, vegetation and wildlife (wetlands), and water resources. Since this project was originally advanced as an environmental assessment, numerous public meetings and public officials meetings were held in 1983 and 1984. The plan of study (POS) was sent to the appropriate federal, state and local agencies on January 10, 1984. An addendum to the POS will be forwarded to these agencies in June, 1985, noting that the project will now be processed with an environmental impact statement. Public involvement (via public hearing) and interagency coordination will be maintained throughout the development of the environmental impact statement/section 4(f) evaluation. Scoping meetings are planned with the concerned agencies for June, 1985.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the environmental impact statement/section 4(f) evaluation should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and federally assisted programs and projects apply to this program)

Issued on: June 7, 1985.

George L. Hannon,

Assistant Division Administrator.

[FR Doc. 85-14302 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[BS-Ap-No. 2291]

The Atchison, Topeka and Santa Fe Railway Co.; Reconsideration

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has petitioned the Federal Railroad Administration (FRA) for reconsideration of the agency's denial of

its request to discontinue the intermittent inductive automatic train stop system on two segments of its Los Angeles Division: (i) Between Milepost 81.3 near San Bernardino, California, and Milepost 124.2 near Arcadia, California, on the Second District, and (ii) between Milepost 736.7, near Daggett, California, and Milepost 746.4, near Barstow, California, on the Needles District. This proceeding is identified as FRA Block Signal Application No. 2291.

After examining Santa Fe's petition for reconsideration and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on July 30, 1985, in City Council Chambers for the City of San Bernardino, 300 North D Street, San Bernardino, California.

In accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), the hearing will be informal and will be conducted by a representative designated by the FRA. Strict rules of evidence will not apply, and cross-examination will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. Then each person in attendance will be permitted to make an initial statement. After all the initial statements are completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. In addition, written statements or other documents may be submitted at the hearing for inclusion in the record of this proceeding. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on June 10, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-14265 Filed 6-12-85; 8:45am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 15-85]

Treasury Notes of May 31, 1987; Series V-1987

Correction

In FR Doc. 85-12236 beginning on page 21160 in the issue of Wednesday, May 22, 1985, make the following corrections:

On page 21160, third column, paragraph 2.1, fifth line, "May 3" should read "May 31".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

Schedule of Productivity Improvement (A-76) Reviews for the Department of Medicine and Surgery

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A-76 and the September 27, 1984, memorandum to the President's Council on Management Improvement, the Veterans Administration, Department of Medicine and Surgery will be conducting productivity reviews and A-76 cost comparisons at various field stations to determine the most efficient organization (MEO) and the feasibility of contracting out specific commercial activities to private contractors.

Two schedules of commercial activities are shown: (1) A schedule of productivity (MEO) reviews which will not be cost compared with private industry; (2) a schedule of A-76 reviews which will undergo cost comparison with private industry. Activities are listed first by commercial activity, second by region and third by field facility. Most efficient organization reviews will be performed by Veterans Administration employees. Specific invitations for bids or requests for proposals will be announced in the Commerce Business Daily (CBD) to ascertain bidder interest in contracting with the Government to perform the commercial activities scheduled for an A-76 cost comparison. No later than the deadline provided in the CBD advertisement two or more responsible business firms must indicate their interest in order for the review to proceed to a full cost comparison. If two or more potential bidders express interest, competitive bids will be solicited. These bids will be based upon VA's specifications called a performance work statement (PWS). Also, Government contracting procedures will be followed. Concurrently, using the same PWS, the VA will prepare an in-house cost estimate. Formal bids received from interested firms will be cost compared with the VA bid in accordance with OMB's Cost Comparison Handbook, supplement to OMB Circular A-76 and 38 U.S.C. 5010.

VA employees adversely affected or separated as a result of the conversion to contract must be offered the right of first refusal for employment openings under the contract for which they are qualified.

Should it become necessary to substantially change this schedule, appropriate notice will be posted herein.

FOR FURTHER INFORMATION CONTACT: Questions relating to the schedule of reviews for the Department of Medicine and Surgery may be directed to Mr. John M. Bradley at (202) 389-2706.

Requests for single copies of the schedule should be made in writing to: Director, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Questions relating to local matters about "contracting out" should be referred to the Director of the VA medical facility concerned.

Dated: June 4, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Aministrator.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Housekeeping Services			
Region No. 1:			
Bedford, MA	Oct. 1985	Feb. 1986	May 1986
Boston, MA	do	do	Do.
Brockton, MA	do	do	Do.
Manchester, NH	do	do	Do
Northampton, MA	do	do	Do
Providence, RI	do	do	Do
Togus, ME	do	do	Do
White River Junction, VT	do	do	Do

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Albany, NY	Jan. 1986	May 1986	Aug. 1986.
Batavia, NY	do	do	Do.
Bath, NY	do	do	Do
Buffalo, NY	do	do	Do.
Canandaigua, NY	do	do	Do.
Syracuse, NY	do	do	Do.
Bronx, NY	June 1986	Oct. 1986	Jan. 1987
Brooklyn, NY	do	do	Do.
Castle Point, NY	do	do	Do.
Montrose, NY	do	do	Do
Newington, CT	do	do	Do
New York, NY	do	do	Do
Northport, NY	do	do	Do
San Juan, PR	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2:			
Coatesville, PA	Jan. 1987	May 1987	Aug. 1987
East Orange, NJ	do	do	Do
Lebanon, PA	do	do	Do.
Lyons, NJ	do	do	Do
Philadelphia, PA	do	do	Do.
Wilkes Barre, PA	do	do	Do
Wilmington, DE	do	do	Do.
Altoona, PA	July 1987	Nov. 1987	Feb. 1988.
Butler, PA	do	do	Do.
Clarksburg, WV	do	do	Do.
Erie, PA	do	do	Do.
Pittsburgh (UD), PA	do	do	Do.
Baltimore, MD	Oct. 1985	Feb. 1986	May 1986.
Ft. Howard, MD	do	do	Do
Martinsburg, WV	do	do	Do.
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do
Beckley, WV	July 1987	Nov. 1987	Feb. 1988
Hampton, VA	do	do	Do.
Huntington WV	do	do	Do
Salem, VA	do	do	Do
Richmond, VA	do	do	Do
Asheville, NC	Jan. 1986	May 1986	Aug. 1986.
Fayetteville, NC	do	do	Do.
Mountain Home, TN	do	do	Do.
Salisbury, NC	do	do	Do.
Region No. 3:			
Augusta, GA	July 1987	Nov. 1987	Feb. 1988.
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur) GA	do	do	Do.
Dublin, GA	do	do	Do
Biloxi, MS	July 1986	Nov. 1986	Feb. 1987.
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Montgomery, AL	do	do	Do.
Tuscaloosa, AL	do	do	Do
Tuskegee, AL	do	do	Do.
Lexington, KY	July 1987	Nov. 1987	Feb. 1988
Louisville, KY	do	do	Do
Memphis, TN	do	do	Do
Murfreesboro, TN	do	do	Do
Nashville, TN	do	do	Do
Bay Pines, FL	Jan. 1988	May 1988	Aug. 1988.
Gainesville, FL	do	do	Do
Lake City, FL	do	do	Do.
Miami, FL	do	do	Do.
Tampa, FL	do	do	Do
Alexandria, LA	Oct. 1987	Feb. 1988	May 1988
Fayetteville, AR	do	do	Do.
Little Rock, AR	do	do	Do
New Orleans, LA	do	do	Do.
Region No. 4			
Chillicothe, OH	Oct. 1985	Feb. 1986	May 1986
Cincinnati, OH	do	do	Do.
Cleveland, OH	do	do	Do
Dayton, OH	do	do	Do
Allen Park, MI	Jan. 1987	May 1987	Aug. 1987
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Saginaw, MI	do	do	Do.
Danville, IL	May 1987	Sept. 1987	Dec. 1987
Ft. Wayne, IN	do	do	Do
Indianapolis, IN	do	do	Do
Iron Mountain, MI	Apr. 1987	Aug. 1987	Nov. 1987
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do.
Wood, WI	do	do	Do.
Chicago (LS), IL	Dec. 1987	Apr. 1988	July 1988.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do
Columbia, MO	July 1987	Nov. 1987	Feb. 1988

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Marion, IL	do	do	Do
Poplar Bluff, MO	do	do	[illegible]
St. Louis, MO	do	do	[illegible]
Region No. 5:			
Fargo, ND	Nov. 1987	Mar 1988	June 1988
Minneapolis, MN	do	do	Do
Sioux Falls, SD	Sept 1987	Jan. 1988	Apr 1988
St. Cloud, MN	Nov. 1987	Mar 1988	June 1988
Bonham, TX	Sept. 1987	Jan 1988	Apr. 1988
Dallas, TX	Aug. 1987	Dec. 1987	Mar 1988
Houston, TX	do	do	[illegible]
Kerrville, TX	do	do	Do
Marlin, TX	do	do	[illegible]
Muskogee, OK	do	do	[illegible]
Oklahoma City, OK	do	do	Do
San Antonio, TX	do	do	[illegible]
Temple, TX	do	do	Do
Waco, TX	do	do	[illegible]
Kansas City, MO	do	do	Do
Leavenworth, KS	do	do	[illegible]
Topeka, KS	June 1987	Oct. 1987	Jan 1988
Wichita, KS	do	do	[illegible]
Des Moines, IA	Apr. 1987	Aug. 1987	Nov 1987
Ft. Meade, SD	do	do	Do
Grand Island, NE	do	do	Do
Hot Springs, SD	do	do	Do
Knoxville, IA	do	do	[illegible]
Lincoln, NE	do	do	Do
Omaha, NE	do	do	[illegible]
Cheyenne, WY	Mar. 1987	July 1987	Oct 1987
Denver, CO	do	do	Do
Ft. Harrison, MT	do	do	Do
Ft. Lyon, CO	do	do	[illegible]
Grand Junction, CO	do	do	Do
Miles City, MT	do	do	Do
Salt Lake City, UT	do	do	Do
Sheridan, WY	do	do	Do
Region No. 6:			
Albuquerque, NM	Feb. 1987	June 1987	Sept. 1987
Amarillo, TX	do	do	Do
Big Spring, TX	do	do	Do
Phoenix, AZ	do	do	Do
Prescott, AZ	do	do	Do
Tucson, AZ	do	do	Do
Loma Linda, CA	Jan. 1987	May 1987	Aug. 1987
Long Beach, CA	do	do	Do.
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do
West Los Angeles, CA	do	do	Do
Fresno, CA	Dec. 1987	Apr. 1988	July 1988
Livermore, CA	do	do	Do
Martinez, CA	do	do	Do
Palo Alto, CA	do	do	Do
Reno, NV	do	do	Do
San Francisco, CA	do	do	Do
American Lake, WA	Nov. 1987	Mar. 1988	June 1988
Boise, ID	do	do	Do
Portland, OR	do	do	Do
Roseburg, OR	do	do	Do
Seattle, WA	do	do	Do
Spokane, WA	do	do	Do
Walla Walla, WA	do	do	Do
White City, OR	do	do	Do
Plant Maintenance			
Region No. 1:			
Bedford, MA	Jan 1986	May 1986	Aug 1986
Boston, MA	do	do	Do
Brockton, MA	do	do	Do
Manchester, NH	do	do	Do
Northampton, MA	do	do	Do
Providence, RI	do	do	Do
Togus, ME	do	do	Do
White River Junction, VT	do	do	Do
Albany, NY	July 1986	Nov 1986	Feb 1987
Batavia, NY	do	do	Do
Buffalo, NY	do	do	Do
Canandaigua, NY	do	do	Do
Syracuse, NY	do	do	Do
Bronx, NY	Sept 1986	Jan 1987	Apr 1987
Brooklyn, NY	do	do	Do
Castle Point, Ny	do	do	Do
Montrose, NY	do	do	Do
New York NY	do	do	Do
Northport, NY	do	do	do
San Juan, PR	do	do	Do
West haven, CT	do	do	Do
Region No. 2			
Coatesville, PA	July 1987	Nov 1987	Feb 1988
East Organge, NJ	do	do	Do

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Lebanon, PA	do	do	Do
Lyons, NJ	do	do	Do
Philadelphia, PA	do	do	Do
Wilkes Barre, PA	do	do	Do
Butler, PA	Aug. 1988	Dec. 1988	Mar. 1989
Pittsburg (UD), PA	do	do	Do
Baltimore, MD	Feb 1966	June 1986	Sept. 1986
Ft. Howard, MD	do	do	Do
Martinsburg, WV	do	do	Do
Perry Point, MD	do	do	Do
Washington, DC	do	do	Do
Hampton, VA	Jan 1988	May 1988	Aug. 1988
Huntington, WV	do	do	Do.
Richmond, VA	do	do	Do
Salem, VA	do	do	Do
Asheville, NC	July 1986	Nov. 1986	Feb 1987
Fayetteville, NC	do	do	Do.
Mountain Home, TN	do	do	Do.
Salisbury, NC	do	do	Do
Region No. 3			
Augusta, GA	Jan. 1988	May 1988	Aug. 1988.
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do
Dublin, GA	do	do	Do.
Biloxi, MS	Jan. 1987	May 1987	Aug. 1987
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do
Montgomery, AL	do	do	Do.
Tuscaloosa, AL	do	do	Do.
Tuskegee, AL	do	do	Do.
Louisville, KY	Jan. 1988	May 1988	Aug. 1988.
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	July 1988	Nov. 1988	Feb. 1989.
Gainesville, FL	do	do	Do.
Lake City, FL	do	do	Do.
Miami, FL	do	do	Do
Tampa, FL	do	do	Do.
Alexandria, LA	June 1988	Oct. 1988	Jan. 1989.
Little Rock, AR	do	do	Do.
New Orleans, LA	do	do	Do.
Region No. 4:			
Chillicothe, OH	Feb. 1986	June 1986	Sept. 1986.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	July 1987	Nov. 1987	Feb. 1988.
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Saginaw, MI	do	do	Do
Danville, IL	Jan. 1989	May 1989	Aug. 1989.
Indianapolis, IN	do	do	Do.
Iron Mountain, MI	Dec. 1988	Apr. 1989	July 1989
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do.
Wood, WI	do	do	Do.
Chicago (CS), IL	May 1988	Sept. 1988	Dec. 1988.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	Mar. 1988	July 1988	Nov. 1988.
Marion, IL	do	do	Do.
Popular Bluff, MO	do	do	Do
St. Louis, MO	do	do	Do.
Region No. 5:			
Fargo, ND	Apr. 1988	Aug. 1988	Nov. 1988
Minneapolis, MN	do	do	Do.
Sioux Falls, SD	May 1988	Sept. 1988	Dec. 1988.
Bonham, TX	do	do	Do.
Dallas, TX	Apr. 1988	Aug. 1988	Nov. 1988
Houston, TX	do	do	Do.
Kerrville, TX	do	do	Do
Marlin, TX	do	do	Do.
Muskogee, OK	do	do	Do.
Oklahoma City, OK	do	do	Do
San Antonio, TX	do	do	Do.
Temple, TX	do	do	Do.
Waco, TX	do	do	Do.
Kansas City, MO	do	do	Do.
Leavenworth, KS	do	do	Do.
Topeka, KS	Feb. 1988	June 1988	Sept. 1988.
Wichita, KS	do	do	Do.
Des Moines, IA	Dec. 1987	Apr. 1988	July 1988
Grand Island, NE	do	do	Do.
Hot Springs, SD	do	do	Do.
Knoxville, IA	do	do	Do.
Omaha, NE	do	do	Do
Denver, CO	do	do	Do

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Ft Lyon, CO	July 1987	Nov 1987	Feb 1988
Salt Lake City, UT	do	do	Do
Sheridan, WY	do	do	Do
Region No. 6			
Albuquerque, NM	June 1987	Oct 1987	Jan 1988
Amarillo, TX	do	do	Do
Big Spring, TX	do	do	Do
Phoenix, AZ	do	do	Do
Prescott, AZ	do	do	Do
Tucson, AZ	do	do	Do
Loma Linda, CA	May 1987	Sept 1987	Dec 1987
Long Beach, CA	do	do	Do
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do
West Los Angeles, CA	do	do	Do
Fresno, CA	Apr 1987	Aug 1987	Nov 1987
Livermore, CA	do	do	Do
Martinez, CA	do	do	Do
Palo Alto, CA	do	do	Do
Reno, NV	do	do	Do
San Francisco, CA	do	do	Do
American Lake, WA	Mar 1987	July 1987	Oct 1987
Boise, ID	do	do	Do
Portland, OR	do	do	Do
Roseburg, OR	do	do	Do
Seattle, WA	do	do	Do
Spokane, WA	do	do	Do
Walla Walla, WA	do	do	Do
Region No. 1:			
Bedford, MA	July 1986	Nov 1986	Feb 1987
Boston, MA	do	do	Do
Brockton, MA	do	do	Do
Manchester, NH	do	do	Do
Northampton, MA	do	do	Do
Providence, RI	do	do	Do
Togus, ME	do	do	Do
White River Junction, VT	do	do	Do
Albany, NY	Sept 1986	Jan 1987	Apr 1987
Batavia, NY	do	do	Do
Bath, NY	do	do	Do
Buffalo, NY	do	do	Do
Canandaigua, NY	do	do	Do
Syracuse, NY	do	do	Do
Bronx, NY	Jan 1987	May 1987	Aug 1987
Brooklyn, NY	do	do	Do
Castle Point, NY	do	do	Do
Montrose, NY	do	do	Do
Newington, CT	do	do	Do
New York, NY	do	do	Do
Northport, NY	do	do	Do
San Juan, PR	do	do	Do
West Haven, CT	do	do	Do
Region No. 2			
Coatesville, PA	July 1987	Nov 1987	Feb 1988
East Orange, NJ	do	do	Do
Lebanon, PA	do	do	Do
Lyons, NJ	Jan. 1988	May 1988	Aug 1988
Philadelphia, PA	do	do	Do
Wilkes Barre, PA	do	do	Do
Wilmington, DE	do	do	Do
Altoona, PA	do	do	Do
Butler, PA	do	do	Do
Clarksburg, WV	do	do	Do
Erie, PA	do	do	Do
Pittsburgh (UD), PA	do	do	Do
Baltimore, MD	Nov 1986	March 1987	June 1987
Ft Howard, MD	do	do	Do
Martinsburg, WV	do	do	Do
Perry Point, MD	do	do	Do
Washington, D.C.	do	do	Do
Beckley, VA	July 1987	Nov 1987	Feb 1988
Hampton, VA	do	do	Do
Huntington, WV	do	do	Do
Richmond, VA	do	do	Do
Salem, VA	do	do	Do
Asheville, NC	Jan 1978	May 1987	Aug 1987
Fayetteville, NC	do	do	Do
Mountain Home, TN	do	do	Do
Salisbury, NC	do	do	Do
Region No. 3:			
Augusta, GA	July 1988	November 1988	February 1989
Charleston, SC	do	do	Do
Columbia, SC	do	do	Do
Atlanta (Decatur), GA	do	do	Do
Dublin, GA	do	do	Do
Biloxi, MS	July 1987	November 1987	February 1988
Birmingham, AL	do	do	Do
Jackson, MI	do	do	Do
Montgomery, AL	do	do	Do

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Tuscaloosa, AL	do	do	Do
Tuskegee, AL	do	do	Do
Lexington, KY	July 1988	November 1988	February 1989
Louisville, KY	do	do	Do
Murfreesboro, TN	do	do	Do
Nashville, TN	do	do	Do
Bay Pines, FL	January 1989	May 1989	August 1989
Gainesville, FL	do	do	Do
Lake City, FL	do	do	Do
Miami, FL	do	do	Do
Tampa, FL	do	do	Do
Alexandria, LA	do	do	Do
Fayetteville, AR	do	do	Do
Little Rock, AR	do	do	Do
New Orleans, LA	do	do	Do
Region No. 4			
Chillicothe, OH	August 1986	December 1986	March 1987
Cincinnati, OH	do	do	Do
Cleveland, OH	do	do	Do
Dayton, OH	do	do	Do
Allen Park, MI	January 1988	May 1988	August 1988
Ann Arbor, MI	do	do	Do
Battle Creek, MI	do	do	Do
Saginaw, MI	do	do	Do
Danville, IL	May 1988	September 1988	December 1988
Ft. Wayne, IN	January 1989	May 1989	August 1989
Indianapolis, IN	May 1988	September 1988	December 1988
Iron Mountain, MI	April 1988	August 1988	November 1988
Madison, WI	do	do	Do
Tomah, WI	do	do	Do
Wood, WI	do	do	Do
Chicago (LS) IL	May 1989	September 1989	December 1989
Chicago (WS) IL	do	do	Do
North Chicago, IL	do	do	Do
Hines, IL	do	do	Do
Columbia, MO	September 1988	January 1989	April 1989
Marion, IL	do	do	Do
Poplar Bluff, MO	do	do	Do
St. Louis, MO	do	do	Do
Region No. 5			
Fargo, ND	November 1988	March 1989	June 1989
Minneapolis, MN	do	do	Do
Sioux Falls, SD	December 1988	April 1989	July 1989
St. Cloud, MN	November 1988	March 1989	June 1989
Bonham, TX	December 1988	April 1989	July 1989
Dallas, TX	do	do	Do
Houston, TX	do	do	Do
Kerrville, TX	do	do	Do
Muskogee, OK	do	do	Do
Oklahoma City, OK	do	do	Do
San Antonio, TX	do	do	Do
Temple, TX	do	do	Do
Waco, TX	do	do	Do
Kansas City, MO	do	do	Do
Leavenworth, KS	do	do	Do
Topeka, KS	September 1988	January 1989	April 1989
Wichita, KS	do	do	Do
Des Moines, IA	August 1988	December 1988	March 1989
Ft. Meade, SD	do	do	Do
Grand Island, NE	do	do	Do
Hot Springs, SD	do	do	Do
Knoxville, IA	do	do	Do
Lincoln, NE	do	do	Do
Omaha, NE	do	do	Do
Cheyenne, WY	July 1988	November 1988	February 1989
Denver, CO	do	do	Do
Ft. [illegible], CO	do	do	Do
Ft. Lyon, CO	do	do	Do
Grand Junction, CO	do	do	Do
Miles City, MT	do	do	Do
Salt Lake City, UT	do	do	Do
Sheridan, WY	November 1988	March 1989	June 1989
Region No. 6			
Albuquerque, NM	October 1988	February 1989	May 1989
Amarillo, TX	do	do	Do
Big Spring, TX	do	do	Do
Phoenix, AZ	do	do	Do
Prescott, AZ	do	do	Do
Loma Linda, CA	September 1988	January 1989	April 1989
Long Beach, CA	do	do	Do
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do
West Los Angeles, CA	August 1988	December 1988	March 1989
Fresno, CA	July 1988	November 1988	February 1989
Livermore, CA	do	do	Do
Martinez, CA	do	do	Do
Palo Alto, CA	do	do	Do
Reno, NV	do	do	Do
San Francisco, CA	do	do	Do

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
American Lake, WA	June 1988	October 1988	January 1989
Boise, ID	do	do	Do.
Portland, OR	do	do	Do.
Roseburg, OR	do	do	Do.
Seattle, WA	do	do	Do.
Spokane, WA	do	do	Do.
Walla Walla, WA	do	do	Do.
White City, OR	do	do	Do
Medical Information			
Region No. 1:			
Boston, MA	October 1986	February 1987	May 1987
Brockton, MA	do	do	Do.
Albany, NY	November 1986	March 1987	June 1987
Buffalo, NY	do	do	Do.
Bronx, NY	June 1987	October 1987	January 1988
Brooklyn, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do
West Haven, CT	do	do	Do.
Region No. 2:			
Baltimore, MD	September 1987	January 1988	April 1988
Washington, DC	March 1987	July 1987	October 1987
Asheville, NC	July 1987	November 1987	February 1988.
Region No. 3:			
Augusta, GA	January 1989	May 1989	August 1989
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Biloxi, MS	June 1988	October 1988	January 1989.
Birmingham, AL	January 1988	May 1988	August 1988.
Lexington, KY	July 1988	November 1988	February 1989.
Miami, FL	July 1989	November 1989	February 1990.
Tampa, FL	do	do	Do.
Alexandria, LA	October 1986	January 1987	April 1987
Region No. 4:			
Cincinnati, OH	January 1987	May 1987	August 1987
Cleveland, OH	do	do	Do
Dayton, OH	do	do	Do.
Allen Park, MI	July 1988	November 1988	February 1989.
Battle Creek, MI	do	do	Do.
Wood, WI	November 1986	March 1987	June 1987.
Chicago (LS), IL	October 1986	February 1987	May 1987.
Chicago (WS), IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	June 1986	October 1986	January 1987
St. Louis, MO	do	do	Do.
Region No. 5:			
Minneapolis, MN	October 1986	February 1987	1987.
Houston, TX	September 1986	January 1987	April 1987
San Antonio, TX	do	do	Do.
Region No. 6:			
Albuquerque, NM	January 1986	May 1986	August 1986.
Long Beach, CA	September 1986	January 1987	April 1987
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	do	do	Do.
Portland, OR	March 1986	July 1986	October 1986
Office Operations			
Region No. 1:			
Boston, MA	December 1986	April 1987	July 1987.
Brockton, MA	do	do	Do
Providence, RI	October 1986	February 1987	May 1987.
Albany, NY	February 1987	June 1987	September 1987
Buffalo, NY	do	do	Do.
Bronx, NY	November 1987	March 1988	June 1988
Brooklyn, NY	do	do	Do.
Montrose, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
San Juan, PR	do	do	Do.
West Haven, CT	do	do	Do
Region No. 2:			
Coatesville, PA	July 1988	November 1988	February 1989.
East Orange, NJ	do	do	Do
Lyons, NJ	do	do	Do
Wilkes Barre, PA	do	do	Do
Pittsburgh (UD), PA	do	do	Do
Martinsburg, WV	September 1987	January 1988	April 1988
Perry Point, MD	do	do	Do
Washington, DC	do	do	Do
Richmond, VA	December 1987	April 1988	July 1988
Salem, VA	June 1988	October 1988	January 1989
Asheville, NC	January 1988	May 1988	August 1988
Mountain Home, TN	do	do	Do
Region No. 3:			
Augusta, GA	July 1989	November 1989	February 1990
Charleston, SC	do	do	Do
Columbia, SC	do	do	Do
Atlanta (Decatur), GA	do	do	Do
Biloxi, MS	July 1988	November 1988	February 1989

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Birmingham, AL	do	do	Do
Jackson, MI	do	do	Do.
Tuskegee, AL	do	do	Do.
Lexington, KY	January 1989	May 1989	August 1989
Louisville, KY	do	do	Do.
Memphis, TN	do	do	Do
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do
Bay Pines, FL	September 1989	January 1990	April 1990
Gainesville, FL	do	do	Do
Miami, FL	do	do	Do
Tampa, FL	do	do	Do.
Little Rock, AR	do	do	Do
New Orleans, LA	do	do	Do.
Region No. 4			
Chillicothe, OH	July 1987	November 1987	February 1988
Cincinnati, OH	do	do	Do
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do
Allen Park, MI	January 1989	May 1989	August 1989.
Ann Arbor, MI	do	do	Do
Battle Creek, MI	do	do	Do.
Indianapolis, IN	October 1986	February 1987	May 1987
Madison, WI	November 1986	March 1987	June 1987.
Wood, WI	May 1986	September 1986	December 1986
Chicago (LS), IL	do	do	Do
Chicago (WS), IL	do	do	Do
North Chicago, IL	do	do	Do
Hines, IL	do	do	Do
Columbia, MO	December 1986	April 1987	July 1987
St. Louis, MO	do	do	Do.
Region No. 5			
Minneapolis, MN	December 1986	April 1987	July 1987.
Dallas, TX	January 1987	May 1987	August 1987
Houston, TX	do	do	Do.
Oklahoma City, OK	September 1986	January 1987	April 1987
San Antonio, TX	January 1987	May 1987	August 1987
Temple, TX	September 1986	January 1987	April 1987
Waco, TX	do	do	Do
Kansas City, MO	do	do	Do
Topeka, KS	December 1985	April 1986	July 1986
Des Moines, IA	January 1986	May 1986	August 1986.
Denver, CO	do	do	Do.
Region No. 6			
Albuquerque, NM	November 1985	March 1986	June 1986
Phoenix, AZ	do	do	Do.
Tucson, AZ	do	do	Do.
Loma Linda, CA	do	do	Do
Long Beach, CA	December 1986	April 1987	July 1987
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do
West Los Angeles, CA	do	do	Do
Palo Alto, CA	March 1986	July 1986	October 1986
San Francisco, CA	do	do	Do
Seattle, WA	September 1986	January 1987	April 1987
Portland, OR	do	do	Do

SCHEDULE OF A 76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Chauffeur Services						
Region No. 1						
Brockton, MA	May 1986	October 1986	March 1986	April 1987	August 1987	October 1987
Bath, NY	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Region No. 2						
East Orange, NJ	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988
Lyons, NJ	do	do	do	do	do	Do
Pittsburgh (CD), PA	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Region No. 3						
Miami, FL	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988
Little Rock, AR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Region No. 4						
Cleveland, OH	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Dayton, OH	December 1986	May 1986	October 1986	November 1986	March 1987	May 1987
Battle Creek, MI	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
North Chicago, IL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
St. Louis, MO	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Region No. 5						
Leavenworth, KS	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Region No. 6						
West Los Angeles, CA	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Design/Drafting Services						
Region No. 3:						
Little Rock, AR	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Data Entry/Keypunching Services						
Region No. 6:						
West Los Angeles, CA	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987.
Fire Protection						
Region No. 1:						
Northhampton, MA	September 1985	February 1985	July 1986	August 1986	December 1986	February 1987.
Bath, NY	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Canadaigua, NY	do	do	do	do	do	Do.
Castle Point, NY	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Montrose, NY	do	do	do	do	do	Do.
Northport, NY	do	do	do	do	do	Do.
Region No. 2:						
Coatsville, PA	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Lyons, NJ	do	do	do	do	do	Do.
Butler, PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Martinsburg, WV	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Perry Point, MD	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987
Hampton, VA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Region No. 3:						
Tuskegee, AL	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Murfreesboro, TN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Alexandria, LA	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Little Rock, AR	do	do	do	do	do	Do.
Region No. 4:						
Chillicothe, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Cleveland, OH	do	do	do	do	do	Do.
Battle Creek, MI	do	do	do	do	do	Do.
Marion, IN	do	do	do	do	do	Do.
Tomah, WI	do	do	do	do	do	Do.
Hines, IL	do	do	do	do	do	Do.
Marion IL	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Region No. 5:						
Minneapolis, MN	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Leavenworth, KS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Ft. Meade, SD	do	do	do	do	do	Do.
Knoxville, IA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Ft. Harrison, MT	do	do	do	do	do	Do
Ft. Lyon, CO	do	do	do	do	do	Do.
Sheridan, WY	do	do	do	do	do	Do.
Region No. 6:						
Livermore, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
American Lake, WI	do	do	do	do	do	Do
White City, OR	do	do	do	do	do	Do.
Region No. 1:						
Furniture Repair						
San Juan, PR	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Grounds maintenance						
Region No. 1:						
Canandaigua, NY	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Brooklyn, NY	do	do	do	do	do	Do.
Region No. 2:						
Coatesville, PA	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987.
Lebanon, PA	do	do	do	do	do	Do
Mountain Home, TN	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Region No. 3:						
Biloxi, MS	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Murfreesboro, TN	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Bay Pines, FL	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Region No. 4:						
Cleveland, OH	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Dayton, OH	do	do	do	do	do	Do.
Battle Creek, MI	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987.
Wood, WI	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
North Chicago, IL	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
St. Louis, IL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Region No 5:						
Minneapolis, MN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Dallas, TX	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Houston, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do
Ft. Lyon, CO	do	do	do	do	do	Do
Region No. 6:						
Long Beach, CA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
West Los Angeles, CA	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987
Interior Design						
Region No. 6:						
West Los Angeles, CA	April 1986	September 1986	February 1987	March 1987	July 1987	September 1987.
Laundry and Drycleaning Services						
Region No.1:						
Bedford, MA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Brockton, MA	do	do	do	do	do	Do

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Northampton, MA	do	do	do	do	do	Do
Bath, NY	do	do	do	do	do	Do
Buffalo, NY	do	do	do	do	do	Do
Canadaqua, NY	do	do	do	do	do	Do
Syracuse, NY	do	do	do	do	do	Do
Brooklyn, NY	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Jaun, PR	do	do	do	do	do	Do
West Haven, CT	do	do	do	do	do	Do
Region No. 2						
Coatsville, PA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Lebanon, PA	do	do	do	do	do	Do
Lyons, NJ	do	do	do	do	do	Do.
Wilkes Barre, PA	do	do	do	do	do	Do
Pittsburgh (UD), PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Martinsburg, WV	do	do	do	do	do	Do
Perry Point, MD	do	do	do	do	do	Do
Hampton, VA	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Richmond, VA	do	do	do	do	do	Do
Salem, VA	do	do	do	do	do	Do
Asheville, NC	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Mountain Home, TN	do	do	do	do	do	Do
Salisbury, NC	do	do	do	do	do	Do
Region No. 3						
Augusta, GA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Biloxi, MS	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Tuscaloosa, AL	do	do	do	do	do	Do
Tuskegee, AL	do	do	do	do	do	Do
Louisville, KY	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Murfreesboro, TN	do	do	do	do	do	Do
Bay Pines, FL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Lake City, FL	do	do	do	do	do	Do
Miami, FL	do	do	do	do	do	Do
Alexandria, LA	do	do	do	do	do	Do
Little Rock, AR	do	do	do	do	do	Do
Region No. 4						
Chillicothe, OH	August 1985	January 1986	June 198	July 1986	November 1986	January 1987
Cleveland, OH	do	do	do	do	do	Do.
Dayton, Oh	do	do	do	do	do	Do
Battle Creek, MI	do	do	do	do	do	Do
Marion, WI	do	do	do	do	do	Do
Madison, WI	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Toman, WI	do	do	do	do	do	Do.
Wood, WI	do	do	do	do	do	Do.
North Chicago, IL	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Hines, IL	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
St. Louis, MO	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Region No. 5						
Minneapolis, MN	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987
Sioux Falls, SD	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987
St. Cloud, MN	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987
Dallas, TX	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Houston, TX	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Oklahoma City, OK	do	do	do	do	do	Do
San Antonio, TX	do	do	do	do	do	Do
Waco, TX	do	do	do	do	do	Do
Lincoln, NE	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Omaha, NE	do	do	do	do	do	Do
Denver, CO	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Salt Lake City, UT	do	do	do	do	do	Do.
Region No. 6						
Phoenix, AZ	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Diego, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do
American Lake, WA	do	do	do	do	do	Do
Portland, OR	do	do	do	do	do	Do.
Mail-Messenger Services						
Region No. 6						
West Los Angeles, CA	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Printing/Reproduction Services						
Region No. 4						
Cincinnati, OH	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Switchboard Services						
Region No. 1						
Brockton, MA	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987
Brooklyn, NY	April 1986	September 1986	February 1987	March 1987	July 1987	September 1987
New York, NY	do	do	do	do	do	Do
Region No. 2						
East Orange, NJ	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Washington, DC	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Richmond, VA	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Region No. 3						
Augusta, GA	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988
Memphis, TN	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Miami, FL	do	do	do	do	do	Do
Little Rock, AR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Region No. 4						
Cleveland, OH	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987
Wood, WI	September 1985	February 1986	July 1986	August 1986	[illegible] 1987	February 1987
Hines, IL	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Region No. 5						
Minneapolis, MN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Houston, TX	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Transcription Services						
Region No. 2:						
Pittsburgh (UD), PA	October 1986	March 1987	August 1987	September 1987	January 1988	March 1988
Richmond, VA	November 1986	April 1987	September 1987	October 1987	February 1988	April 1988
Salisbury, NC	October 1986	March 1987	August 1987	September 1987	January 1988	[illegible] 1988
Region No. 3:						
Tuskegee, AL	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Louisville, KY	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988
Nashville, TN	do	do	do	do	do	Do.
Miami, FL	do	do	do	do	do	Do.
Little Rock, AR	December 1986	May 1987	October 1987	November 1987	March 1988	May 1988.
New Orleans, LA	do	do	do	do	do	Do.
Region No. 4:						
Cleveland, OH	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Allen Park, MI	do	do	do	do	do	Do.
Tomah, WI	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Wood, WI	do	do	do	do	do	Do.
Hines, IL	do	do	do	do	do	Do.
Region No. 5:						
Minneapolis, MN	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Houston, TX	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987
San Antonio, TX	do	do	do	do	do	Do.
Denver, CO	do	do	do	do	do	Do.
Region No. 6						
Long Beach, CA	October 1986	March 1987	August 1987	September 1987	January 1988	March 1988.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Portland, Or	do	do	do	do	do	Do.
Seattle, WA	do	do	do	do	do	Do.
VCA Food Services						
Region No.1.						
Bedford, MA	August 1985	Janauary 1986	June 1986	November 1986	Janaury 1987	
Boston, MA	do	do	do	do	do	Do.
Brockton, MA	do	do	do	do	do	Do.
Providence, RI	do	do	do	do	do	Do.
Togus, ME	do	do	do	do	do	Do.
Albany, NY	do	do	do	do	do	Do.
Buffalo, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Montrose, NY	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988.
New York, NY	do	do	do	do	do	Do.
Northport, NY	do	do	do	do	do	Do.
San Juan, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No. 2						
Coatesville, PA	October 1985	March 1986	August 1986	September 1986	January 1987	[illegible] 1987
East Orange, NJ	do	do	do	do	do	Do.
Lyons, NJ	do	do	do	do	do	Do.
Wilkes Barre, PA	do	do	do	do	do	Do.
Pittsburgh (HD), PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Pittsburgh (UD), PA	do	do	do	do	do	Do.
Martinsburg, WV	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Washington, DC	do	do	do	do	do	Do.
Richmond, VA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Salem, VA	do	do	do	do	do	Do.
Asheville, NC	do	do	do	do	do	Do.
Fayetteville, NC	do	do	do	do	do	Do.
Mountain Home, TN	do	do	do	do	do	Do.
Region No. 3:						
Augusta, GA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Charleston, SC	do	do	do	do	do	Do.
Columbia, SC	do	do	do	do	do	Do.
Atlanta (Decatur), GA	do	do	do	do	do	Do.
Biloxi, MS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Birmingham, AL	do	do	do	do	do	Do.
Jacksonville, MI	do	do	do	do	do	Do.
Lexington, KY	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Memphis, TN	do	do	do	do	do	Do.
Nashville, TN	do	do	do	do	do	Do.
Bay Pines, FL	do	do	do	do	do	Do.
Gainesville, FL	do	do	do	do	do	Do.
Miami, FL	do	do	do	do	do	Do.
Tampa, FL	do	do	do	do	do	Do.
Little Rock, AR	do	do	do	do	do	Do.
New Orleans, LA	do	do	do	do	do	Do.

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Region No. 4						
Cincinnati, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	do	do	do	do	do	Do.
Ann Arbor, MI	do	do	do	do	do	Do.
Danville, IL	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987.
Indianapolis, IN	do	do	do	do	do	Do.
Wood, WI	April 1986	September 1986	February 1987	March 1987	July 1987	September 1987.
Hines, IL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Columbia, MO	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
St. Louis, MO	do	do	do	do	do	Do.
Region No. 5						
Minneapolis, MN	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Houston, TX	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Oklahoma City, OK	do	do	do	do	do	Do.
San Antonio, TX	do	do	do	do	do	Do.
Temple, TX	do	do	do	do	do	Do.
Kansas City, KS	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Leavenworth, KS	do	do	do	do	do	Do.
Topeka, KS	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987.
Des Moines, IA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Iowa City, IA	do	do	do	do	do	Do.
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Region No. 6						
Phoenix, AZ	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Tucson, AZ	do	do	do	do	do	Do.
Loma Linda, CA	do	do	do	do	do	Do.
Long Beach, CA	do	do	do	do	do	Do.
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Fresno, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
American Lake, WA	do	do	do	do	do	Do.
Portland, OR	do	do	do	do	do	Do.
Seattle, WA	do	do	do	do	do	Do.
Warehouse Services:						
Region No. 1:						
Brockton, MA	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Buffalo, NY	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Brooklyn, NY	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
New York, NY	do	do	do	do	do	Do.
Northport, NY	do	do	do	do	do	Do.
San Juan, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No. 2:						
East Orange, NJ	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Pittsburgh (UD), PA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Washington, DC	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988
Richmond, VA	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Mountain Home, TN	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Region No. 3:						
Augusta, GA	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Columbia, SC	do	do	do	do	do	Do.
Biloxi, MS	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Tuskegee, AL	do	do	do	do	do	Do.
Lexington, KY	do	do	do	do	do	Do.
Memphis, TN	do	do	do	do	do	Do.
Murfreesboro, TN	do	do	do	do	do	Do.
Bay Pines, FL	do	do	do	do	do	Do.
Tampa, FL	do	do	do	do	do	Do.
Little Rock, AR	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987.
New Orleans, LA	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Region No. 4						
Cincinnati, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Cleveland, OH	do	do	do	do	do	Do.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	do	do	do	do	do	Do.
Battle Creek, MI	do	do	do	do	do	Do.
Indianapolis, IN	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988.
Wood, WI	do	do	do	do	do	Do.
North Chicago, IL	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Hines, IL	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987.
St. Louis, IL	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Region No. 5						
Minneapolis, MN	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Houston, TX	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Oklahoma City, OK	do	do	do	do	do	Do.
San Antonio, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do.
Region No. 6						
Long Beach, CA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Portland, OR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Seattle, WA	do	do	do	do	do	Do.

[FR Doc. 85-14007 Filed 6-12-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 114
Thursday, June 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50–110–24083.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Monday, June 17, 1985.

CHANGES IN THE MEETING:

1. 9:00 AM (Eastern Time), Monday, June 17, 1985
2. The following matter was not discussed at the June 11, 1985 Commission Meeting and is being carried over to the June 17, 1985 Commission Meeting:
"Proposed Commission Decision"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: June 11, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued June 11, 1985.

[FR Doc. 85–14386 Filed 6–11–85; 3:08 pm]

BILLING CODE 6750–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 18, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization; GC Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: June 11, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued June 11, 1985.

[FR Doc. 85–14387 Filed 6–11–85; 3:08 pm]

BILLING CODE 6750–06–M

3

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 6–85]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, and Time, and Subject Matter

Wed., June 26, 1985 at 10:30 a.m.—Consideration of Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96–606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claim Settlement Commission, 1111–20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C., on June 5, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 85–14310 Filed 6–10–85; 8:45 am]

BILLING CODE 4410–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 18, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,249–NR (Amendment)—First National Bank of Carrington, Carrington, North Dakota

Case No. 46,252–SR—Republic Bank of Kansas City, Kansas City, Missouri

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive

Secretary of the Corporation, at (202) 389–4425.

Dated: June 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 85–14360 Filed 6–11–85; 12:17 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 18, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–14361 Filed 6–11–85; 12:17 pm]

BILLING CODE 6714–01–M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 18, 1985. 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO DE DISCUSSED: Compliance. Litigation. Audits. Personnel. Request for status report on Presidential primary audits.

DATED AND TIME: Thursday, June 20. 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of furture meetings
Correction and approval of Minutes
Eligibility for candidates to receive Presidential
Primary matiching funds
Draft advisory opinion 1985–17
  Richard Rossi, Co-Chairman
  Barbara Harris, Co-Chairman
  Congressional Youth Leadership Council
Announcement of effective date: Repayments by publicly financed Presidential candidates
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–14396 Filed 6–11–85; 3:41 pm]

BILLING CODE 6715–01–M

7

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, July 10, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of June, 1985.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

Date of notice: June 6, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 85–14305 Filed 6–10–85; 4:15 pm]

BILLING CODE 7550–01–M

8

POSTAL SERVICE

(Board of Governors)

Notice of Vote to Close Meeting

At its meeting on June 4, 1985, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for July 8, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General Carlin; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to

public observation, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 85-14330 Filed 6-11-85; 10:28 am]

BILLING CODE 7710-12-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 17, 1985.

An open meeting will be held on Tuesday, June 18, 1985, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, June 18, 1985, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, June 18, 1985, at 10:00 a.m., will be:

1. Consideration of whether to adopt a new exemptive regulation, Regulation AFDB, which would specify the periodic and other reports which would be required to be filed by the African Development Bank as a result of primary distribution of securities in the United States. For further information, please contact Martin Meyrowitz at (202) 272-3250.

2. Consideration of whether to issue a release adopting Securities Exchange Act Rule 3b-9 which excludes from the definition of "bank" as found in Section 3(a)(6) of the Securities Exchange Act of 1934, banks which engage in certain securities activities. For further information, please contact Amy Natterson Kroll at (202) 272-2848.

The subject matter of the closed meeting scheduled for Tuesday, June 18, 1985, at 2:30 p.m., will be:

Formal orders of investigation.
Subpoena enforcement action.
Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Regulatory matter regarding financial institutions.
Consideration of *amicus* participation.
Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman at (202) 272-2468.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14368 Filed 6-11-85; 12:21 pm]

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Part II

Environmental Protection Agency

40 CFR Parts 30 and 33
Asbestos Hazard Abatement (Schools) Program; Deviation From Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[OA-FRL 2847-2]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from 40 CFR 30.308 of its General Regulation for Assistance Programs to permit recipients of assistance under the Asbestos Hazards Abatement (Schools) Program to be reimbursed for certain preagreement costs. Such reimbursement will be limited to those projects on which abatement action is completed after December 31, 1983, as authorized by the Asbestos School Hazard Abatement Act of 1984. This class deviation will permit recipients to be reimbursed for preagreement costs incurred for: Obtaining architectural or engineering services, or other expert advice from qualified abatement contractors, industrial hygienists, or other professional abatement consultants, for asbestos abatement consultation activities, project planning activities, and technical advice; carrying out actual abatement project work; and ensuring that the project is completed in conformance with the project plan, design drawings and specifications.

DATE: The class deviation becomes effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5292.

Dated: May 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13610 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 33

[OA-FRL 2847-3]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from 40 CFR Part 33, Subpart G, Protests, of its Procurement Under Assistance Agreements regulation. This deviation will apply only to recipients of financial assistance under EPA's Asbestos Hazard Abatement (Schools) Program (Catalog of Federal Domestic Assistance Number 66.702) for projects where the recipient anticipates issuing a notice to its contractor to proceed with construction in June, July or August 1985. This class deviation provides that procurement protest determinations by recipients will be subject to appeal to EPA only for matters related to noncompetitive practices between firms (40 CFR 33.230(b)(1)) and organizational conflicts of interest (40 CFR 33.230(b)(2)).

DATE: The class deviation became effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 382-5292.

Dated: May 17, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13611 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 33

[OA-FRL 2847-1]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from the Public Notice provisions of its regulation for Procurement Under Assistance Programs (40 CFR Part 33) for recipients of financial assistance under EPA's Asbestos Hazard Abatement (Schools) Program (Catalog of Federal Domestic Assistance Number 66.702) during Fiscal Year 1985. Deviation from 40 CFR Part 33, Appendix A, paragraphs (b)(3) and (b)(4) permits a recipient to provide as few as 14 calendar days, rather than at least 30 days, between the date when it first provides public notice of a solicitation of bids or requests for proposals and the date by which bids or proposals must be submitted.

DATE: The class deviation became effective on June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, Washington, DC 20460 (202) 382-5292.

Dated: May 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13612 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 33

[OA-FRL 2846-9]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from the provisions of 40 CFR 33.250, 33.305 and 33.310 of its Procurement Under Assistance

Agreements regulation to permit recipients of assistance agreements for EPA's Asbestos Hazard Abatement (Schools) Program to use the Small Purchase Procurement procedures of 40 CFR Part 33 where appropriate if the aggregate amount involved in any one procurement transaction does not exceed $25,000 including overhead and profit. The deviation from 40 CFR 33.250 extends only to transactions not exceeding $25,000. The deviation is limited to procurements to be funded under agreements entered into during Fiscal Year 1985.

DATE: The class deviation became effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM–216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5292.

Dated: May 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Assistant Administrotor for Pesticides and Toxic Substances.

[FR Doc. 85–13613 Filed 6–12–85; 8:45 am]

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Adverse Physical Impact; Permanent Program Performance Standards; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Adverse Physical Impact; Permanent Program Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend that portion of its regulations applicable to the definition of adverse physical impact, and the performance standards pertaining to remining operations. This action is the result of an order by the U.S. District Court for the District of Columbia on December 3, 1984, in *In Re: Permanent Surface Mining Regulation Litigation II.* The amended regulations would (1) remove the definition of adverse physical impact; and (2) remove the limitations imposed by 30 CFR 816.106(b) and 817.106(b). The effect of these changes would be to require all persons conducting remining operations to use all reasonably available spoil in the immediate vicinity of the remining operation to backfill the highwall to the maximum extent technically practical.

DATES:

Written comments: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on August 22, 1985.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on August 15, 1985. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern time on August 1, 1985.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of Permit and Environmental Analysis, OSM, Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: (202) 343–1507 Commercial or FTS.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Actions
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should only address issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should notify Ray Aufmuth, at the address given under "**FOR FURTHER INFORMATION CONTACT**", either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on July 25, 1985. If no one has contacted Mr. Aufmuth to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by different operations. See 30 CFR Part 700 *et seq.*

In the final rule promulgated September 16, 1983 (48 FR 41720), OSM revised various portions of its regulations having to do with the performance standards applicable to remining operations. The effect of these changes was that remining operations which had no adverse physical impact upon a pre-existing highwall were not required to use all reasonably available spoil in the immediate vicinity of the remining operations to backfill the highwall to the maximum extent technically practical.

These regulatory revisions were challenged in Round III of *In Re: Permanent Surface Mining Litigation II,* Civil Action No. 79–1144 (D.D.C.). However, before that portion of the case was decided, the Secretary in a joint motion with the environmental plaintiffs (the National Wildlife Federation et al.), agreed to suspend the definition of adverse physical impact as well as certain rules related to the definition. The court entered an order approving the motion on December 3, 1984.

As a result of the court order, 30 CFR 816.106(b), 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 were suspended on January 3, 1985, (50 FR 257).

III. Discussion of Proposed Actions

OSM is now proposing to remove the previously suspended rules. The effect of the proposed rule would be to require all persons conducting remining operations to use all reasonably available spoil in the immediate vicinity of the remining operations to backfill the highwall to the maximum extent technically practicable.

This proposed rule is consistent with the Interior Board of Surface Mining Appeals decision in *Miami Springs Properties* v. *OSM*, 2 IBSMA 399 (Dec. 23, 1980) and *Cedar Coal Co.* v. *OSM*, 1 IBSMA 145 (April 20, 1979). These cases stand for the proposition that in a remining situation, OSM has jurisdiction to require complete elimination of only the portions of highwalls which were adversely affected by the operator. Having reanalyzed the situation, OSM has concluded that an operator who affects any portion of a highwall may properly be required to use all the spoil generated by his remining operation, and all other reasonably available spoil in the vicinity, to eliminate the highwall to the maximum extent technically practical. Such a rule would be more easily implemented than the previous rule, since it would require reclamation of every affected highwall without a threshold determination of adverse affect. Although, the proposal could potentially subject operations to additional reclamation obligations, an operator would not be required to eliminate highwalls completely, where a lack of reasonably available spoil material renders that task techincally impractical.

The office solicits comments with respect to any economic and/or environmental impact that may result from the removal of these rules.

IV. Procedural Matters

Federal Paperwork Reduction Act

This proposed rule contains no new information collections requirements to be submitted to the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. This rule would impose only minor costs on the coal industry, since relatively few operations will be affected. Likewise, the impact upon coal consumers will be negligible.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule would not have a significant economic impact on a substantial number of small entities, and would impact a relatively small number of coal operators, the majority of which would not be small entities. To the extent that such small entities are affected, the economic impact would not be significant.

National Environmental Policy Act

OSM has determined that the proposed rule is covered adequately by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM EIS–1: Supplement," and that the preparation of additional environmental documents under section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), is not required.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Dated: April 25, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

Accordingly, it is proposed to amend 30 CFR Parts 701, 816 and 817 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the definition of "Adverse physical impact".

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

§ 816.106 [Amended]

4. Section 816.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

§ 817.106 [Amended]

6. Section 817.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

[FR Doc. 85–14262 Filed 6–12–85; 8:45 am]
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Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1952

Kentucky State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-009]

Kentucky State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart Q of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Kentucky State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Kentucky plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector, employment at Tennessee Valley Authority facilities and on all military bases within the State, as well as any other properties ceded to the United States government. Federal jurisdiction remains in effect with respect to the Federal government employers and employees.

EFFECTIVE DATE: June 13, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and .4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal Enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for reveiw of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An additional requirement for approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan state the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Kentucky Plan

On November 27, 1972, Kentucky submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on March 5, 1973, a notice was published in the **Federal Register** (38 FR 5955) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Comments were received from the United States Steel Corporation. In response to these comments, as well as to OSHA's review of the plan submission, the State made changes in its plan which were discussed in the notice of initial approval. On July 31, 1973, the Assistant Secretary published a notice granting initial approval of the Kentucky plan as a developmental plan under section 18(b) of the Act (38 Fr 20322). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Secretary of the Kentucky Labor Cabinet (formerly the Kentucky Department of Labor) is designated as having responsibility for administering the plan throughout the State. The plan provides for the adoption by Kentucky of standards which are at least as effective as Federal occupational safety and health standards, including emergency temporary standards. The plan requires employers to do everything necessary to protect the life, safety and health of employees and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with standards applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. The State at on time included coverage of private sector maritime employment

within the scope of its plan. However, effective January 2, 1985, Kentucky indicated its intent to discontinue coverage of the maritime issue. The State continues to provide coverage to State and local government employees engaged in maritime activities. Appeals of citations, penalties and abatement periods are heard by the Kentucky Occupational Safety and Health Review Commission. Decisions of the Review Commission may be appealed to the Franklin Circuit Court.

The notice of initial approval noted one major distinction between the Federal and Kentucky programs. Under the Kentucky program, employees have the right to contest terms and conditions of citations as well as abatement dates, whereas Federally employees may only object to the established abatement periods.

The Assistant Secretary's initial approval of the Kentucky developmental plan, a general description of the plan, a schedule of required developmental steps and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart Q; 38 FR 20322 (July 31, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending July 31, 1976. These "developmental steps" included amendments to the Kentucky Occupational Safety and Health Act, promulgation of State occupational safety and health standards and program regulations, development of a public employee program, etc. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, field operations manuals, management information system, merit staffing system, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Kentucky subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.234).

During 1974, OSHA entered into an operational status agreement with the State of Kentucky. A Federal Register notice was published on January 8, 1975 (40 FR 1512), announcing the signing of the agreement. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Kentucky plan.

On February 8, 1980, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Kentucky had satisfactorily completed all developmental steps (45 FR 8596). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not ential findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

History of the Benchmarks Issue and the Proposed Revised Benchmarks for Kentucky

The 1980 Benchmarks

Section 18(c)(4) of the Act and 29 CFR 1902.3(h) require State plans to provide a sufficient number of adequately trained enforcement personnel necessary for the enforcement of standards. OSHA implements this requirement by calculating for each State plan State a required staffing level or "benchmark." A 1978 Court of Appeals decision and resulting District Court order place special requirements upon OSHA in determining what staffing levels are appropriate in a particular plan State. Prior to 1978, OSHA's criterion for staffing required that States maintain a level of enforcement staffing "at least as effective as" that which OSHA could provide in the State if no plan were in effect. In 1974, the AFL–CIO challenged this criterion in the U.S. District Court for the District of Columbia. The District Court initially held that OSHA's "at least as effective as" test for State staffing was appropirate under the Act (*AFL–CIO* v. *Brennan*, 390 F. Supp. 972 (D.D.C., 1975)). However, in 1978 the U.S. Court of Appeals for the District of Columbia Circuit reversed this Ruling (*AFL–CIO* v. *Marshall*, 570, F. 2d 1030 (D.C. Cir., 1978)). The Court of Appeals, noting the absence from sections 18(c)(4) and (5) of the Act of the "at least as effective as" language found elsewhere in section 18(c), and calling attention to legislative history anticipating that States would provide the staffing and funding "necessary to do the job," found that the direct State-to-Federal numerical comparisons previously used to calculate benchmarks were inappropirate. Instead, the Court held, the Secretary must establish "criteria that are part of an articulated plan to achieve a fully effective enforcement effort at some point in the foreseeable future." 570 F. 2d. 1042. The case was remanded to the District Court for entry of an order directing the development of benchmarks consistent with the Court of Appeals decision, attainment of which would be required for final approval of State plans under section 18(e). The District Court order, issued December 5, 1978, directed the Secretary *inter alia* to develop benchmarks for "fully effective" staffing taking into account certain factors set forth in the order; to develop for each State a timetable for reaching these benchmarks within five years; and to develop procedures and criteria for future revisions of benchmarks in light of new data, information, or other considerations. The Court retained jurisdiction for period of five years to reveiw action taken by the Secretary in implementing the Order. The case was dismissed in 1984 but the substantive provisions of the Order pertaining to benchmarks remain in effect.

The first benchmarks produced by OSHA under the Court Order were the result of a two-year project culminating in the filing of a Report to the Court on April 25, 1980. The AFL–CIO stipulated at that time that OSHA's Report, including the basic formula for deriving the benchmarks, was a "satisfactory response" to the Court's Order.

The 1980 Report set forth a detailed description of the methods and data sources used in calculating the benchmarks. An important feature of the Report is the basic benchmark formula, under which estimates of the number of each type of inspection (general schedule, mobile, complaint, accident, follow-up, public sector) required annually are added together; the sum of these inspections is then divided by a "utilization factor" (the number of hours an inspector has available to devote to enforcement activities) to produce the required number of inspectors. Supplying the data necessary for each of the "building blocks" in this formula is a complex process. Some of the required

information is essentially objective and performance-related. In 1980, some of this data was derived from State-specific sources but in many instances data reflecting Federal historical experience rather than State experience was used. Since 1980, the methods and assumptions on which the data for calculating these initial benchmarks were based have been the subject of intense examination by OSHA, the National Advisory Committee on Occupational Safety and Health (NACOSH), the U.S. Congress and individual State plan States.

The methodology used in 1980 assumed a need for universal coverage, i.e. general schedule inspections in every single worksite in every industry within a State regardless of hazardousness or past inspection history; such coverage is not required by the 1978 Court Order, is not consistent with the intent of the Occupational Safety and Health Act of 1970, and is not justified in light of the actual experience of OSHA and the States in designing effective enforcement programs. (The majority of serious injuries and illnesses occur within a relatively small subset for the nation's workplaces.) Moreover, in many States the resulting benchmarks were so high that sufficient numbers of qualified personnel were not likely available nationwide to meet the combined States' increased staffing requirements. Finally, important components of a fully effective enforcemen program, such as special emphasis programs for high-hazard local industries, or exemption programs for participation in consultation or voluntary compliance programs, were not factored into the 1980 benchmark formula.

The 1984 Benchmark Revision Process

Based on its own analysis and the concerns raised by NACOSH and the individual States, OSHA determined in 1983 that a comprehensive review and revision of the 1980 benchmarks was warranted. The District Court's December 5, 1978 order in *AFL–CIO* v. *Marshall* directed OSHA, in developing a comprehensive plan for calculating benchmarks, to provide a "procedure for revision of these benchmarks and funding criteria to reflect new data, information or other relevant considerations, including Congressional action in response to benchmarks previously established, which indicates that different levels should be set in a State, several States or all States." In compliance with the Court Order, the 1980 *Report to the Court* described in some detail several possible means of revising benchmarks. These include unilateral revision by the Department of Labor (and indeed the Department stated its intent to initiate such a revision in light of whatever new data or experiences might become available during the first two years of implementation of the new benchmarks (pp. 34–5)), and revision in response to petitions by individual States for change in their benchmarks and State requests for revision based upon State-specific information (p. 22). The revision undertaken by OSHA involved a joint effort by OSHA and the State plan States, and is in effect a hybrid of the two types of revisions just discussed.

Legal authority for the present revision project is derived from the District Court's 1978 order, and therefore the criteria applicable to the revisions are the same as those applicable to the 1980 benchmarks. In particular, the revision process is consistent with the "fully effective" concept announced by the Court of Appeals in *AFL–CIO* v. *Marshall* and incorporated in the 1978 District Court order. Comparison of Federal and State staffing patterns—the "at least as effective as" methodology rejected by the Court of Appeals—has been carefully avoided at all steps of the process. Instead, the focus of the revision process has been to design and construct a realistic and reliable measure of the enforcement needs of each State.

The 1978 Court Order requires that benchmarks be determined on the basis of the "best information and techniques currently available," and that OSHA provide an explanation of the assumptions, techniques and sources used in calculating them. Factors set forth in the order as required to be considered include the number of employers and employees in the State; the anticipated number of accident, complaint, and follow-up inspections required; and the number of inspections an inspector can reasonably be required to perform. The Court Order provides relatively broad discretion and requires extensive application of professional judgement by OSHA in evaluating the need for general schedule inspections within a State, requiring OSHA to determine the number of general inspections that should be conducted annually "to provide proper coverage" both in safety and health. In determining an appropriate annual number of general schedule safety inspections, the Court Order specifies that consideration is required of the State's ability to allocate inspectors efficiently according to a scheduling system which analyzes past injury experience to ascertain those employers or groups of employers most likely to have hazards which could be eliminated by inspection. In health similar consideration must be given to the State's ability to allocate inspectors based on the potency and toxicity of substances in use in the State, the extent of employee exposure to and use of toxic substances by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection.

The Benchmark Formula

In order to effect a comprehensive review and revision of the benchmarks, in August, 1983, the State plan designees formed a Benchmark Taskgroup to work with OSHA. The Taskgroup consisted of the members of the Board of Directors of the Occupational Safety and Health State Plans Association (OSHSPA) or their representatives from five States: Hawaii, Wyoming, Michigan, Washington and South Carolina.

From its inception, the Taskgroup in accord with the terms of the 1980 Report agreed that the basic benchmark formula used in 1980 was conceptually sound. However, certain modifications to the data inputs used in 1980 were necessary to incorporate, wherever available, State-specific data and to build flexibility into the formula to accommodate differences among States. The Taskgroup decided on an approach that established initial general schedule fixed site safety and health inspection universes for each State that would provide proper program coverage for high hazard establishments within a State. These universes would be calculated in the same manner for all States but would be based on State-specific data. For safety, the Taskgroup chose an initial general schedule inspection universe of large establishments (greater than ten employees) in private sector manufacturing Standard Industrial Classifications (SICs) whose State-specific Lost Workday Case Injury Rate (LWCIR) as determined by the Bureau of Labor Statistics Annual Survey of Occupational Injuries and Illnesses was higher than the overall State LWCIR. These establishments were to be inspected biennially. For health, the Taskgroup chose an initial general schedule inspection universe of large establishments (greater than ten employees) with potential for exposure to health hazards based on a ranking system incorporating the most current available data on industrial exposures to regulated substances (the National Occupational Hazards Survey (NOHS) published in 1977), and number of

workers exposed to such health hazards in each State's industries. These establishments were to be inspected once every three years. After the establishment of these initial fixed site inspection universes, the universes could be adjusted by each State in accordance with a number of different adjustment factors (additions and subtractions), the burden being on each State to justify the adjustments it chose to make using State-specific data and rationales. However, in no case could the State reduce the absolute size of the initial universe.

OSHA believes this approach is appropriate because it is based on uniform methodology yet incorporates State-specific data and policies to reflect differences among the States. Because of the wide variety among States in program experience, policies, and data used to identify hazardous establishments, the adjustment factors are defined in a manner sufficiently flexible to accommodate this diversity and ensure that the benchmarks accurately reflect the best available information from each State. This approach also allows States to allocate sufficient staff for additional special program emphases beyond those required for proper program coverage, that are responsive to local needs and philosophies.

All other components of the proposed benchmark formula are as they were in 1980 except that accident inspections are added as a separately calculated component rather than being subsumed within general schedule inspections. The major difference is that the computation of each component is based on State-specific data rather than Federal averages. The benchmarks are developed in terms of full-time equivalent Safety and Health Compliance Personnel, as the Taskgroup recognized that many inspection functions could be performed by qualified technicians and cross-trained personnel. (Supervisory personnel, except to the extent that they spend time doing actual field inspections, cannot be used to fulfill the benchmark requirements.)

The Benchmark Timetable

As provided by the 1978 Court Order, OSHA included in the 1980 *Report to the Court*, a schedule which required States, not yet meeting the benchmarks, to allocate additional staff each year equivalent to 20% of the difference between existing staff levels and benckmark levels (in effect, a mandatory five-year timetable for reaching the "fully effective" staffing levels (pp. 30–32)). However, as a matter of practical necessity, the 1980 Report also provided that States were required to complete an annual "benchmark step" only when additional funds were made available by Congress to fund the Federal share of such staffing increase. Absent such additional funding, the timetable would in effect be recalculated and the time for full implementation of the benchmarks proportionately delayed. Since 1980, there has been no increase in the amount of funding made available by Congress for State staff, and thus the five-year timetable projected in 1980 never began to run. The above described provisions of the 1980 Report will continue to apply to any approved revisions to the benchmarks. States which do not meet the revised benchmarks will still be required to move toward benchmark levels in annual increments amounting to 20% of the difference between existing staff and the revised benchmarks, subject to the availability of matching Federal funds.

Proposed Revised Benchmarks for Kentucky

Pursuant to the initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Kentucky reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. In September 1984 Kentucky in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Kentucky (staff of 35 safety and 53 health compliance officers). This reassessment resulted in a proposal to OSHA, of a revised compliance staffing benchmark of 23 safety and 14 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Kentucky and the resultant eligibility of the Kentucky State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2454). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Kentucky plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Kentucky operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982–March 1984 Evaluation Report of the Kentucky plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record (Ex. 3–4). Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

The January 16 **Federal Register** also contained notice of the Occupational Safety and Health Administration's proposal to approve revised compliance staffing benchmarks for Kentucky. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Kentucky was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T–009), Kentucky's detailed submission containing both a narrative explanation and supporting data. A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T–018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region IV Office in Atlanta, Georgia, and the office of the Kentucky Labor Cabinet in Frankfort. Summaries of the January 16 proposal, with an invitation for public

comments were published in Kentucky on/or before January 26, 1985 (Ex. 5).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL–CIO) written comments and views regarding the Kentucky plan, whether the proposed revised compliance staffing benchmarks should be approved, and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Five comments were received in response to these notices. All five comments were from organized labor. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Kentucky plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and regarding the proposed revised compliance staffing benchmarks for Kentucky.

In response to the January 16 **Federal Register** notice, OSHA received comments from the Kentucky State Building and Construction Trades Council—AFL–CIO, Jerry Hammond, Executive Secretary (Ex. 4–2); United Steelworkers of America—AFL–CIO (Local No. 1865, USWA), Garry E. Massie, President, and Homer B. Moore, Jr., Chairman, Safety Committee (Ex. 4–3); Ashland Area Labor Council—AFL–CIO, Bob Kirtz, President (Ex. 4–4); American Federation of Labor Congress and Industrial Organizations (AFL–CIO), Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (Ex. 4–5); United Steelworkers of America, AFL–CIO (USWA), Mary Win O' Brien, Assistant General Counsel (Ex. 4–6). Secretary of the Kentucky Labor Cabinet, John C. Wells, responded to the public comments (Ex. 4–7).

Three State labor organizations, affiliated with the AFL–CIO, Kentucky State Building and Construction Trades Council; United Steelworkers of America (Local No. 1865, USWA); and Ashland Area Labor Council, expressed their general support for approval on the grounds of State competence, responsiveness, and specific knowledge of local conditions (Exs. 4–2; 4–3 and 4–4). The State Building and Construction Trades Council praised the Kentucky program for its efficiency and effectiveness. Local No. 1865, USWA, commented on the Kentucky program's success in tailoring its efforts to fit the needs of Kentucky workers. In addition, the USWA local union supported approval of Kentucky's proposed revised benchmarks as meeting or exceeding the requirements of the Court Order and providing the staff necessary for an effective program in Kentucky. The Ashland Area Labor Council expressed support of Kentucky's efforts and indicated that the workers of Kentucky will be better served under State enforcement authority.

The United Steelworkers of America, commented extensively on the benchmark revision process with particular reference to Kentucky's proposed revision. Although the USWA opposed approval of the revised benchmarks, they nevertheless indicated their support of Local No. 1865's, USWA, conclusion that the actual operation of the State Program is considered effective.

The AFL–CIO indicated opposition to approval of the proposed revised benchmarks for Kentucky and therefore opposed the granting of final State plan approval. Some of the AFL-CIO's comments were directed toward OSHA's system for monitoring and evaluation of State plans and the requirements that a State must meet to be eligible for final approval.

The evaluation of the Kentucky plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL–CIO expressed concern that Federal OSHA's monitoring system with its reliance on statistical indicators fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made.

The AFL–CIO also commented on specific State performance issues. These comments are addressed in the appropriate sections of the Findings and Conclusions portion of this notice. Kentucky State designee, John C. Wells, responded to the concerns expressed by the AFL–CIO and the United Steelworkers on both the benchmark issue and State-specific performance.

The majority of comments from the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the United Steelworkers of America (USWA or "Steelworkers") dealt with their objections to the benchmark revision process. While a portion of these comments specifically addressed the Kentucky benchmarks, their principal focus of concern was the formula developed by OSHA and the Benchmark Taskforce as described in its 1984 Report for determining the proposed revised benchmarks.

At several points in their comments both the AFL–CIO and the Steelworkers criticized the benchmark formula as permitting the States too much discretion in determining which industries, in addition to those in the initial universe, should be included in the State's total inspection universe. This discretion, the unions assert, may result in coverage which is "unequal" and "diverse" from State to State (Ex. 4–5; 4–6). The formula used in deriving the revised benchmarks properly requires all States to assume a uniform workload (coverage of the initial universe is required of all States) while at the same time permitting States which can demonstrate special enforcement needs to address those needs. It must be emphasized that the 1984 formula does not, as the comments assert, leave the States free to extend or constrict basic universal coverage at random. All proposed adjustments to initial universe coverage must be justified by the State submitting the proposal for OSHA's approval, and the absolute size of the initial universe may not be reduced (1984 Benchmark Report, pp. 26, 36). The formula does indeed provide a uniform methodology for determining proper program coverage for specific industries within a State, by requiring use of objective data such as State-specific injury rates or the number and type of violations found by the State in previous inspections of that industry.

Such a State-by-State adjustment procedure is not a new idea in the benchmark proceedings and, in fact, the need for a State specific adjustment was pointed out by OSHA in the 1980 Report to the Court (*1980 Benchmark Report*, pp. 35–37). The adjustment procedure

used in the present benchmark revision procedure is entirely consistent with the District Court's order in *AFL–CIO* v. *Marshall* (Ex. 2). Indeed, the order provides that different levels may be set for "a State, some States, or all States" (p. 3). The failure of the earlier benchmark formula to accommodate the special program needs of States or to take into account State-specific data clearly demonstrating such needs has repeatedly been criticized and was a major reason for OSHA's decision to undertake the present revision. The unions object that under the 1984 formula an industry group may be included in the routine inspection universe in one State but excluded in another. However, States differ not only in industrial mix but, within a given SIC-code, States may differ widely in average establishment size, type of processes used, age of facilities, and a host of other details which are not reflected in a worksite's SIC-code designation. As a result, the injury/illness experience in an industry may also vary from State to State. Such differences are, in OSHA's judgement, a valid reason for relying on State-specific data whenever available in determining the makings of a State's general schedule inspection universe. The makings of each State's universe necessarily will vary but in OSHA's view, identical coverage is not a prime criterion under the 1980 District Court order. Instead, the order requires that benchmarks be based on "the best currently available information and techniques" and must take into "consideration a State's ability to allocate inspectors efficiently according to a scheduling system which analyzes past injury experience to ascertain those employers or groups of employers most likely to have hazards which could be eliminated by inspection" (*Order*, pp. 1–2).

The AFL–CIO criticizes the initial inspection universe posited by the 1984 benchmark formula as providing inadequate coverage and as being a "radical alteration of earlier methods of calculating benchmarks" (AFL–CIO, pp. 3–5). The basic concept used in the present revision process—determination of a uniform "initial universe" for each State, with subsequent State-specific adjustments to reflect specific conditions and needs shown to exist in that State—is indeed a departure from the 1980 methodology. The changes in benchmark methodology, however, reflect the increased sophistication with which occupational safety and health professionals—whether Federal or State—approach the task of scheduling workplaces for inspection. An assumption widely held in the 1970's was that compliance with occupational safety and health standards could be attained and illness and injury rates reduced by conducting general schedule inspections at worksites randomly selected from as large as possible a universe, without regard to the relative hazardousness of particular workplaces or industries or the likelihood that violations might be found or corrected as a result of a compliance inspection. By the early 1980's, however, the concept of universal coverage has largely been replaced as a basis for planning scheduled inspections for several reasons. Years of experience in managing safety and health enforcement programs, both State and Federal, have shown that inspections of worksites in low hazard categories frequently achieve no meaningful results; typically, fewer serious hazards are found and corrected than would have been the case in a workplace shown to be in a higher-hazard category. OSHA, as well as most State programs has rejected this "universal coverage" concept in favor of far more precise targeting systems which permit general schedule inspection resources to be devoted to workplaces where an inspection is most likely to result in the correction of serious hazards. The trend toward increased selectivity in enforcement scheduling is appropriately reflected in the 1984 benchmark methodology. Identifying for each State an initial universe of high-hazard industries where regular scheduled inspections should be conducted is a necessary and rational first step in determining the enforcement workload which the State plan must undertake.

But it is quite erroneous to assume, as the comments seem to do, that exclusion of an industry group from this baseline inspection-planning universe means that no inspection can or will be conducted therein. First, decisions reached or assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in scheduling specific employers for an enforcement visit. The initial universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards. (See *1980 Report to the Court*, pp. 27–28; *1984 Benchmark Report*, pp. 17–18.) Second, the 1984 benchmark formula specifically provides for "add-ins" to the initial inspection universe where injury rates or prior enforcement experience in an industrial category in the State demonstrate that general schedule coverage would be appropriate (*1984 Benchmark Report*, pp. 26–28). Finally, it should be remembered that the general schedule inspection universe relates only to routine inspection. All State plan States retain the responsibility for responding to hazards identified by employees who file safety and health complaints, as a result of accidents, etc., without regard to whether or not the workplace is subject to general schedule inspections.

The AFL–CIO and Steelworker comments express the similar concern that revised benchmarks are in most cases lower than the staffing levels allocated by the States in 1980 as well as those projected by the 1980 benchmarks and that the revised benchmarks fail to provide a "fully effective" enforcement program as that term was used in the District of Columbia Circuit's decision in *AFL–CIO* v. *Marshall*. The Court of Appeals' decision provides no specific criteria against which any State's benchmarks can be measured. The District Court's order on remand, however, provides general guidance on procedures to be used and factors which must be considered in developing benchmarks. OSHA conducted the 1984 revision process according to the procedures set forth in the District Court order, and proper consideration was given to the factors identified in that order as being relevant.

The order directed OSHA to take into consideration such factors as the number of employers and employees in a State, the number of hazardous industries in a State, and the anticipated number of accident, complaint and follow-up inspections required. All of the factors enumerated in the order have been addressed as described in the *1984 Benchmark Report*.

The union comments imply that because in many cases the revised benchmarks are lower they are not "fully effective" within the meaning of the District Court's order. However, the order does not assume or require that the initial benchmarks or any revision thereto provide a comparative increase over past levels. The sufficiency of the revised benchmarks to provide proper coverage cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement staffing levels. Such direct numerical comparison of staffing levels is no more valid than was the comparison of State to Federal staffing under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the

Court was, in sum, to measure the workload assumed by each State plan and to determine, using the best available information and techniques, but avoiding direct numerical comparison, the staffing needed for fully effective coverage. During the revision process, scrutiny of each State's injury and illness data, industrial demography and enforcement experience has been far more detailed than was the case in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting which concentrates resources in the relatively small number of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic staffing requirements resulting from the 1984 revision process.

Both the AFL–CIO and the Steelworkers were critical of the formula's use of the National Occupational Hazards Survey (NOHS) in determining the initial health general schedule inspection universe. Their comments noted that OSHA no longer uses NOHS data for its health targeting program and that as a result certain industries they believe to be hazardous were omitted from the States' initial universes. OSHA currently schedules health inspections based on previous Federal inspection experience as recorded in OSHA's Integrated Management Information System. This system can accurately assess Federal experience but such data does not reflect the States' experience and is, therefore, not appropriate for use in the States' benchmark revision process. The NOHS was and still is the most current available national data on industrial exposures to regulated substances and on the number of workers exposed to such health hazards in each State's industries. The NOHS data was used in developing the 1980 benchmark staffing levels for health with the concurrence of the AFL–CIO.

Certain other factors which the AFL–CIO and Steelworkers assert should have been included in the revision process are in fact outside the scope of the benchmark requirements set forth by the District Court. The AFL–CIO asserts benchmark levels should include staffing for "whole new emerging areas of occupational health concern," musculoskeletal injuries caused by poor job design, and clean-up of hazardous waste dumps (*AFL–CIO*, pp. 6–9; see also *USWA*, p. 3). The objective of the revision process was to make a reasonable calculation of the workload to be undertaken by a State to provide proper program coverage under its State plan. It would be difficult if not impossible to gauge what, if any, effect on inspection resources might be created by future health standards. In OSHA's experience, newly promulgated Federal standards have never required additional Federal compliance staff, only supplementary training of existing staff. In any case, the Court order does not require, as part of the benchmark process, consideration of health issues for which there are as yet no standards for the States to enforce.

Certain of the union comments deal with issues specific to Kentucky's benchmarks. John C. Wells, Secretary of the Kentucky Labor Cabinet, responded to many of these comments. For example, the Steelworkers questioned the exclusion of 309 low-hazard establishments from the initial health universe based on the State's experience of finding no serious violations in such industries, in light of the 18(e) Evaluation Report's finding that Kentucky found a low percentage of serious violations due to a procedural error. The State, in its response, points out that the procedural problem in health was not one of improperly classifying violations but of grouping them and thus, the State experience of finding no serious health violations in these industries is valid.

The AFL–CIO questioned the exclusion of certain industries from Kentucky's initial general schedule inspection universe for safety and health. The union asserts that injury rates above the State average in some, though not all, of those industries as well as the presence of specific health hazards, should make general schedule safety and health inspections appropriate. OSHA believes that Kentucky has appropriately analyzed State-specific data to ascertain what groups of employers are or are not likely to have hazards which can be eliminated by inspections. In safety, the few industries with injury rates above the State average are in non-manufacturing. Studies based on three years of State enforcement data show that the majority of injuries incurred in those industries involved causes such as motor vehicle collisions, or sprains and strains resulting from lifting or overexertion, and hence were unlikely to involve violations of OSHA standards. In health, Kentucky has found that inclusion in the initial universe of the various industries mentioned in the comments would be unnecessary. The majority of these industries are included in the safety universe and will receive wall-to-wall inspection coverage by safety compliance officers cross-trained in the recognition of health hazards. Where complex health hazards are identified, a health inspection would result. Moreover in these industry groups, like all workplaces covered by the Kentucky plan, the State will respond to employee complaints of unsafe or unhealthful conditions. OSHA concurs with the State's findings that inclusion of these industries in the initial universe is not required for proper program coverage.

The AFL–CIO asserts that Kentucky's allocation of enforcement resources to health inspections in the public sector and to the construction industry, because calculated in accordance with the State actual enforcement history in those areas, is inadequate. The union argues that these industries have not been adequately covered in the past, but provides no data in support of that conclusion. Kentucky has submitted State-specific data which, although admittedly not definitive, show that illness rates in construction and in public employment are extremely low, and thus the best available information does not suggest that additional emphasis beyond the State's present enforcement levels is required for proper coverage. Moreover, actual coverage of the industries is somewhat more extensive than the comments assume. In construction, for example, the State actually responds to EPA referrals regarding asbestos; and cross-trained safety compliance officers make referrals of potential health problems. OSHA finds that the percent of the enforcement resources allocated to construction and public sector worksites is sufficient for fully effective program coverage in Kentucky.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Kentucky is lower than the staffing levels allocated by the State in 1980 or projected for it by the benchmarks issued by OSHA in its first effort to implement the *AFL–CIO* v. *Marshall* Court Order. As indicated earlier, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels but rather, whether, using the best available information and techniques, they provide the staffing levels needed for a fully effective program. In addition, Kentucky indicates in its response, the

more efficient scheduling of its current staff has resulted in a level of inspections equivalent to that produced by a somewhat larger staff in 1980 as well as an increase in the number of serious violations cited.

For these reasons, and in light of other comments by groups and individuals more directly affected and knowledgeable about safety and health enforcement needs in Kentucky, OSHA believes application of the current benchmark formula for Kentucky has resulted in staffing levels which result in fully effective enforcement in the State of Kentucky.

Findings and Conclusions

Kentucky Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall,* Kentucky, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Kentucky. OSHA has reviewed the State's proposed revised benchmarks and supporting documentation and carefully considered the public comments received with regard to this proposal, and determined that compliance staffing levels of 23 safety and 14 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Kentucky Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Kentucky State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of October 1982 through March 1984 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows.

(1) Standards

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Kentucky State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Kentucky plan provides for the adoption of standards and amendments thereto which are identical to or at least as effective as Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2–2 and 2–3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the January 16, 1985 **Federal Register** notice, Kentucky has generally adopted standards which are identical to Federal standards and additionally has adopted State standards for conditions, not covered by Federal standards, such as Changing and Charging Automotive Batteries, Receiving and Unloading Bulk Hazardous Liquids. Kentucky has adopted a Hazard Communication Standard identical to the Federal.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Kentucky likewise adopts standards interpretations, which are identical to Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in Kentucky.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Kentucky program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) Variances

A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Kentucky State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the January 16 notice, Kentucky had no requests for permanent or temporary variances during the evaluation period. However, past years' experience indicates that the State's procedures were properly applied when granting permanent and temporary variances.

Accordingly, OSHA finds that the Kentucky program effectively grants variances from its occupational safety and health standards.

(3) Enforcement.

Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Kentucky law (KRS 338.031 and 338.061) and implementing regulations previously approved by OSHA establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in

the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the January 16, 1985 **Federal Register** notice Kentucky follows a policy of responding to all employee complaints by conducting inspections. Data contained in the 18(e) Evaluation Report indicates that 99.3% of the safety complaints and 88.9% of the health complaints resulted in inspections (Evaluation Report, p. 8). The AFL–CIO in its written comments indicates its agreement that the State effectively responds to complaints (Ex. 4–5).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). The 18(e) Evaluation Report indicates that 99.4% of State programmed safety and 89.5% of programmed health (general schedule) inspections during October 1982 through March 1984 were conducted in high-hazard industries which exceeds the Federal average and therefore compares favorably with Federal performance. During the evaluation period Kentucky utilized a State-developed high hazard list to schedule programmed inspections. Kentucky's State-developed list was based on both lost workday case rates and lost workday rates (Ex. 2–11). The State does not conduct records inspections, a policy with which the AFL–CIO expresses agreement in its written comments (Ex. 4–3).

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. The 18(e) Evaluation Report indicates that employee representatives accompanied Kentucky's compliance officers in 15% of the State's initial inspections. There was no data available on the number of employees interviewed. However, previous evaluation reports show that the State utilizes employee interviews extensively and OSHA has concluded that employee representation is properly provided in State inspections.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices, (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Kentucky requires that a poster, which was previously approved by OSHA (41 FR 21774), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard. The 18(e) Evaluation Report indicates posting violations were cited in 219 inspections (Evaluation Report, p. 10). Federal OSHA evaluation concluded that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Kentucky law and regulations provide for discrimination protection which is at least as effective as the Federal. The State received and investigated 20 complaints during the evaluation period. The State settled administratively the three complaints found meritorious. Average lapse time between receipt of a complaint and the notification to the complainant of the investigation results by the State was 90 days. Federal evaluation of the cases indicates that the State action was satisfactory (18(e) Evaluation Report, p. 18).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations, (29 CFR 1902.4(c)(2)(vii)) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were 7 imminent danger situations identified and that the situations were properly handled (Evaluation Report, p. 8). No Complaints About State Program Administration (CASPA's) have been received concerning trade secrets.

(e) *Right of Entry: Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Section 338.101 of the Kentucky Occupational Safety and Health Act authorizes the Labor Cabinet Secretary to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. In addition, § 338.101(2) authorizes the Labor Cabinet Secretary to petition the Frankin Circuit Court for an order to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The Kentucky law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. The 18(e) Evaluation Report shows that Kentucky received 41 denials of entry and warrants were obtained for 38 of these refusals. The 18(e) Evaluation Report shows that there were five instances of advance notice. The State's use of its procedures was found to be proper (Evaluation Report, p. 10).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and emplyees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Kentucky plan through its law, regulations and field operations manual, which have all been previously approved by OSHA, has established a system similar to the

Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure to abate notices and appropriate penalties (29 CFR 1902.37(b)(13)). Comparison of Federal and State data, as discussed in the 18(e) Evaluation Report shows that the State finds a comparable number of violations per initial inspection (1.4). Additionally, data showed State percentages of not-in-compliance programmed inspections for safety (51.4%) and health (65.4%) were comparable to or exceeded Federal OSHA (Evaluation Report, p.6). The AFL–CIO in its written comments asserted that Kentucky may not be adequately identifying and citing hazards as demonstrated by the lower percentage of serious violations being cited (Ex. 4–5). The report showed that Kentucky's procedures are identical to the Federal and concluded that the lower percentage of serious violations cited resulted from a difference in interpretation of established procedures for classifying violations. As also indicated in the report, the State agreed to change its interpretation to more closely mirror Federal OSHA's interpretations. As a result of this reinterpretation, the report indicates that the State's percentages of serious violations cited have increased (safety 23%, health 13.7%) and are now much closer to Federal performance. In addition, monitoring has indicated that the State does effectively identify and cite violations, and that inspectors recognize and properly classify violations (Evaluation Report, p. 12). Kentucky, in its written response to the AFL–CIO's comments, also indicates that the issue is not the identification and abatement of hazards, but rather a procedural difference which has now been eliminated. The State points out that more recently available data show Kentucky's percentage of serious violations in health to be within the acceptable ranges.

The AFL–CIO's written comments suggest that a shortage of adequate staff is a factor in the State's longer time from inspection to issuance of citation and proposed penalty (22 days for safety; 35 days for health) (Ex. 4–5). The 18(e) Evaluation Report attributed the longer citation issuance time to factors such as mail delays due to the fact that compliance officers work out of their homes and citations must be mailed to the office for processing and the practice of delaying issuance of all citations until the more complex ones are completed. Kentucky in its written response expresses agreement with Federal OSHA's evaluation as mentioned above, and indicates that the State's participation in OSHA's new Integrated Management Information System (IMIS) will eventually help reduce lapse time in citation processing. Kentucky concludes that although each of the aforementioned issues has some bearing on its lapse time, the size of its staff, as purported by the AFL–CIO, has nearly no bearing on this issue. The 18(e) Evaluation Report concludes that the States' overall performance relative to this area is satisfactory and as effective as the Federal OSHA program (p. 19).

Neither the data nor any comments suggest that the State has any problem in adequately documenting inspections to support citations.

During the 18(e) evaluation period penalty levels for serious violations were higher than Federal ($289 safety, $374 health). Kentucky conducts a higher proportion of follow-up inspections than does Federal OSHA (20% of not-in-compliance inspections). Abatement periods are generally shorter than Federal (10.6 days for safety, 16.9 days for health). Kentucky attempts to document abatement within 30 days for all serious, willful and repeat violations. The 18(e) Evaluation Report indicates acceptable performance. (pp. 12–14).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Kentucky's procedures for contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding and are substantially identical to the Federal procedures with the exception of the expanded employee right to contest citations as well as abatement dates. Appeals of citations, penalties and abatement periods are heard by the Kentucky Occupational Safety and Health Review Commission and may be further appealed to the Franklin Circuit Court. Sixty-three inspections during October 1982 through March 1984 resulted in contests. OSHA evaluation of these cases supported the conclusion that the State's enforcement actions are adequately supported (Evaluation Report, p. 16).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the Kentucky plan effectively review contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Kentucky plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) Public Employee Program

Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

Kentucky's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During the evaluation period, the State conducted 18 inspections in the public sector and cited 24 violations with appropriate penalty for serious violations. The proportion of inspections dedicated to the public sector (.5% of total inspections during the evaluation period) was considered appropriate to the needs of public employees (Evaluation Report, p. 5). Injury and illness rates in the public sector in Kentucky are much lower than those in

the private sector (6.3 combined State and local government all case rate and 3.0 combined State and local government lost workday case rate in 1982). Kentucky's response indicates that published data show public sector injury/illness rates in Kentucky are "not now nor have they ever been higher than the private sector rates." The AFL–CIO's comment that the rates in the public sector were higher than those for the private sector is in error (Ex. 4–5).

Because the State treats the public sector in the same manner as the private sector, as evidence by its written procedures, which are applicable to all covered employees, public or private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Kentucky program meets the criterion in 29 CFR 1902.3(j).

(5) Staffing and Resources

Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

Kentucky has committed itself to funding the State share of salaries for 24 safety inspectors and 14 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequent FY 1985 application. These compliance staffing levels exceed the revised benchmarks proposed for Kentucky.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for Kentucky (45 FR 8596) all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S.C Civil Service Commission.

The State provides continuing training for its staff. The 18(e) Evaluation Report noted that the State provided formal training for all professional employees (Evaluation Report, p. 4).

Because Kentucky has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra*, are being met by the Kentucky plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Kentucky plan was funded at $3,953,269 in FY 1984. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the Evaluation Report, Kentucky's funding appears sufficient in absolute terms; moreover, the State compares favorably to Federal OSHA with respect to expenditures per covered employee (Evaluation Report, p. 19). On this basis, OSHA finds Kentucky has provided sufficient funding for the various activities carried out under the plan.

(6) Records and Reports

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Kentucky's employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the January 16 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Kentucky has met the requirements of sections 18(c)(7) and (8) of the Act on employer and State reports to the Secretary.

(7) Voluntary Compliance Program

A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

During the 18(e) evaluation period, Kentucky provided training to 2390 employers and supervisors and 6535 employees. Of the employees trained, 56% were in high hazard industries (Evaluation Report, p. 4).

Kentucky provides public and private sector on-site consultative services to employers under its approved State plan. During the 18(e) evaluation period, 368 on-site consultative visits were conducted in Kentucky.

Accordingly, OSHA finds that Kentucky has established and is administering an effective voluntary compliance program.

(8) Injury and Illness Statistics

As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics Annual Occupational Safety and Health Survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)). As noted in the 18(e) Evaluation Report, Kentucky's reportable injury and illness rates in absolute terms are slightly higher than Federal averages. It should be noted, however, that this comparative difference existed at the time of the inception of the Kentucky plan in 1973. The overall trend in worker safety and health injury and illness rates since the State began enforcement of its plan compares favorably to that under the Federal program. For example, from 1973 through 1982, the injury and illness all case rate declined 27% for all industry, and 28.6% for manufacturing employment.

The AFL–CIO's comments expressed concern regarding Kentucky's higher injury and illness all case rate and lost workday case rate in manufacturing and noted that the decline in the State's all industry injury and illness all case rates has been slower than the national average (Ex. 4–5). While the rates do slightly exceed Federal rates when directly compared, a decreasing trend is evident as noted above.

As noted in the 18(e) Evaluation Report, the manufacturing lost workday case incidence rate did not decrease quite as fast as the Federal rate for the reporting period. However, the report explained that within the manufacturing sector, employment decreased more in industries not considered high hazard, than it did in high-hazard manufacturing. Thus, proportionately, more workers were employed in the highly hazardous industries than before, slowing the generally observed effect of reduced employment in lowering rates of injury and illness (Evaluation Report, p. 20).

Kentucky, in its response to the AFL–CIO's comments, noted that the mix of industries within a State should be considered when making direct comparison among jurisdictions; that the State's manufacturing rates exceeded the national rates even prior to the initiation of the State plan; and that the more recently available 1983 data show a State decline exceeding the national

rates in both all industry and manufacturing.

Considering the State's overall substantial decline in injury and illness rates, OSHA finds a favorable comparison between Kentucky's trends in injury and illness statistics and those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that (1) the revised compliance staffing levels proposed for Kentucky meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) that the Kentucky State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR 1902. Therefore, the revised compliance staffing benchmarks of 23 safety and 14 health are approved and the Kentucky State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective June 13, 1985.

Under this 18(e) determination, Kentucky will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Kentucky must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Kentucky plan terminates OSHA authority for Federal enforcement of its standards in Kentucky, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Kentucky plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement in December 1974.)

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private sector maritime employment, employments at Tennessee Valley Authority facilities and on all military bases, since these issues are excluded from coverage under the Kentucky plan. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart Q of Part 1952 to reflect the final approval of the Kentucky plan.

A new § 1952.233, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Kentucky.

A new § 1952.234, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new section contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

Newly redesignated § 1952.235, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.232, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on December 30, 1974. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Kentucky, and the Operational Status Agreement is no longer in effect. § 1952.235 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart Q has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.230, to clearly identify the 1973 initial plan approval decision to which it relates. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.236.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Kentucky under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, D.C. this 13th day of June 1985.

Robert A. Rowland,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart Q of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

2. Section 1952.230 is amended by revising the heading to read:

§ 1952.230 Description of the plan as initially approved.

§§ 1952.231, 1952.232, 1952.233, and 1952.234 [Redesignated as 1952.236, 1952.235, 1952.231, and 1952.232 Respectively]

3. Section 1952.231 Redesignated as § 1952.236

4. Section 1952.232 Redesignated as § 1952.235

5. Section 1952.233 Redesignated as § 1952.231

6. Section 1952.234 Redesignated as § 1952.232

7. The Table of contents for Part 1952, Subpart Q is revised to read as follows:

Subpart Q—Kentucky

Sec.

1952.230 Description of the plan as initially approved.
1952.231 Developmental schedule.
1952.232 Completion of developmental steps and certification.
1952.233 Compliance staffing benchmarks.
1952.234 Final approval determination.
1952.235 Level of Federal enforcement.
1952.236 Where the plan may be inspected.

8. New §§ 1952.233 and 1952.234 are added to read as follows:

§ 1952.233 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

§ 1952.234 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Kentucky State plan for a period of at least one year following certification of completion of developmental steps (45 FR 8596). Based on the 18(e) Effectiveness Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Kentucky's occupational safety health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Kentucky plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective June 13, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Kentucky except for private sector maritime, employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the United States Government.

(c) Kentucky is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

9. Newly redesignated §§ 1952.235 and 1952.236 are revised to read as follows:

§ 1952.235 Level of Federal Enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Kentucky plan under section 18(e) of the Act, effective June

13, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Kentucky plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(b) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments), employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the United States Government. Federal jurisdication is also retained with respect to Federal government employers and employees. In addition, any hazards, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdication for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Kentucky State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.236 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30309; and Office of the Secretary, Kentucky Labor Cabinet, U.S. Highway 127 South, Frankfort, Kentucky 40601.

[FR Doc. 85–13534 Filed 6–12–85; 8:45 am]

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 520]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 345,000 cartons during the period June 16–22, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATE: Effective for the period June 16–22, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 11, 1985, at Sherman Oaks, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 910.820 is added to read as follows:

§ 910.820 Lemon Regulation 520.

The quantity of lemons grown in California and Arizona which may be handled during the period June 16, 1985 through June 22, 1985, is established at 345,000 cartons.

Dated: June 12, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–14463 Filed 6–13–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Amendment of Subpart—Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends rules and regulations pertaining to procedures for cherry growers' applications to divert cherries from reserve pool participation, and methods of sale by which cherries are released from reserve pools. The revisions are designed to enable growers to make management decisions with respect to diverting or placing cherries in the reserve pool, and handlers to make necessary decisions pertaining to the sale of reserve pool cherries.

DATES: Effective date: June 14, 1985. Comments due by July 15, 1985.

ADDRESS: Send two copies of comments to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

These rules and regulations are issued under Marketing Order 930 (7 CFR Part 930), regulating the handling of tart cherries grown in eight states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendation and information

submitted by the Cherry Administrative Board (hereinafter referred to as the "Board") and upon other available information, at its April 10, 1985 meeting. It is hereby found that this action will tend to effectuate the declared policy of the act.

This interim final rule amends §§ 930.101, 930.102, 930.103, and 930.591 under Subpart—Rules and Regulations issued under M.O. 930. Section 930.101 pertaining to producers' diversion applications, is amended to provide that each producer who elects to divert cherries by other than leaving them unharvested, when making application to the Board for such alternate means of diversion, shall specify the percentage of such cherries to be so diverted in relation to total deliveries packed and utilized, rather than the approximate number of pounds of cherries to be diverted as is now required. The Board recommended this change recognizing that producers often do not know the actual number of pounds of cherries which they will want to divert prior to harvest, but they do know the relative percentage of their total cherry deliveries which they want to divert. Section 930.102 pertaining to producers' diversion fees, which are based on the total acres of cherry trees diverted, is amended to exempt blocks of cherry trees aged 4 years or younger. Likewise, § 930.103 pertaining to methods of accomplishing diversion is amended to provide that blocks of cherry trees 4 years or younger shall not be designated by the Board in its approval of cherry trees eligible for diversion. The Board recommended such amendments to §§ 930.102 and 930.103 because cherry trees 4 years or younger are either nonbearing or are not commercially significant in production and they should not be included in calculating diversion fees. Section 930.591, which establishes conditions governing the sale of reserve pool cherries by the Board, is amended to provide an additional method of selling such cherries, and also makes minor changes pertaining to the time periods which the Board must notify handlers of cherry purchases, and which handlers must notify the Board of their desire to purchase second offering cherries. This action was recommended by the Board to help assure that reserve pool cherries will be returned to the market at market clearing prices in years of undersupply.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this interim final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the act. The harvesting of cherries is expected to begin on or about mid June, and the rule should be in effect sufficiently prior to such date to enable growers and handlers to make any necessary decisions prior to harvest. Interested persons were given an opportunity to submit information and views on the specified requirements for the 1985 season cherry crop at an open meeting at which the committee without opposition recommended implementation of such requirements.

Cherry growers and handlers have been apprised of the provisions of the amended rules and regulations to be in effect for the 1985 season cherry crop. The rule provides a 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need to be received within 30 days, so that any necessary changes can be made promptly in the regulatory requirements. All comments received will be considered prior to finalization of this rule. It is found that this rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 930

Marketing agreements and orders, Cherries.

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 930.101 is amended by revising paragraph (c) to read as follows:

§ 930.101 Diversion application.

* * * * *

(c) Each producer who elects to divert cherries by other than leaving such cherries unharvested, shall include with such producer's application for diversion, a copy of an agreement between such producer and the processor to whom such producer will deliver diverted cherries. Such agreement, signed by the producer and the processor (or such processor's designated representative) shall indicate the method of diversion to be utilized, the percentage of delivered cherries to be diverted, and the processor's agreement to supply the Board with documentation sufficient to prove that such percentage of the total deliveries were packed and utilized in the indicated manner.

3. Section 930.102 is amended by revising the introductory text in paragraph (a) to read as follows:

§ 930.102 Diversion fees.

(a) Each producer who makes application to divert cherries pursuant to § 930.56 shall pay to the Board the direct cost of supervision of the diversion as specified in the order: *Provided*, That no costs shall be incurred for blocks of cherry trees aged 4 years or younger. Such direct costs are hereby established as follows:

* * * * *

4. Section 930.103 is amended to read as follows:

§ 930.103 Diversion.

Diversion shall be accomplished by: Processing restricted percentage cherries into juice or juice concentrate by pressing such cherries fresh or freezing them unpitted; processing restricted percentage cherries into dried products; or leaving restricted percentage cherries unharvested: *Provided*, That such cherries shall remain on the tree until final inspection and shall not be removed from the premises other than by record approval: *Provided further*, That unless an alternate method of tree selection is requested by an applicant and is approved by the Board, the trees involved with non-harvest shall be designated on a random basis by the Board through its authorized representatives. Trees involved with non-harvested diversion shall not be designated by the Board from blocks of trees aged 4 years or younger. Diversion may also be accomplished by exporting restricted percentage cherries to foreign countries other than Canada or Japan.

5. Section 930.591 is amended to read as follows:

§ 930.591 Conditions governing the sale of reserve pool cherries.

The procedure set forth in this section shall be applicable to cherries released from the reserve pool as a result of a revision of percentages pursuant to § 930.53(a) or release of reserve pool cherries pursuant to § 930.53(b).

(a) The Board, prior to any 10 day reserve pool release period, shall notify each handler of record by telephone, which notification shall be confirmed by registered letter, of the: method of sale; time and date of the release period; quantity of said handler's share of the reserve pool release which may be purchased by such handler; specific prices of such cherries if determined in

advance, and the terms of the sale. Such terms of sale may include, but are not limited to: A delayed payment schedule; a discount based on the percentage of a handler's total share purchased; or a percentage allowance for brokerage fees. This shall be designated as the first offering.

(b) *Method of purchasing first offering cherries.* (1) If the price for first offering cherries has been established by the Board, each handler wishing to purchase such reserve pool cherries shall notify the Board, in person or by telephone, of the number of 30-pound containers or the percentage of this portion of reserve pool cherries such handler desires to purchase. Such handler shall confirm this offer in writing by letter or telegram at the Board's office or at such other location as may be designated by the Board. The confirmation shall be accompanied by a deposit of an amount to be determined by the Board, but not to exceed 30 percent of the estimated value of such cherries, for each 30 pounds of cherries such handler offers to purchase. Both the confirmation and the deposit must be received at the office of the Board or at other locations within the production area as designated by the Board, within the first 72 hours of the release period. The total amount of the purchase price of such cherries shall be due within the payment schedule established by the Board. No cherries shall be released by the Board until after it has received payment of the full amount due for such cherries. If the full amount is not paid within the payment schedule established by the Board, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool.

(2) If the method of sale is by bid basis, each handler wishing to purchase first offering reserve pool cherries shall notify the Board in person or by telephone, and confirm in writing by letter or telegram, of the number of 30 pound containers of reserve pool cherries such handler desires to purchase and the price per pound such handler offers to pay. Such bids shall be accompanied by a deposit of an amount to be determined by the Board, but not to exceed 30 percent of the estimated value of such cherries, for each 30 pounds of cherries such handler offers to purchase. Both the bids and the deposit must be received at the office of the Board or at other locations within the production area as designated by the Board, within the first 72 hours of the release period. After this period the Board shall specify the minimum acceptable price per pound of reserve pool cherries. All bids equal to or higher than the minimum acceptable price shall be confirmed at such minimum price. Deposits for bids lower than such minimum price shall be promptly returned to the handlers making such unaccepted bids. The total amount of the purchase price of all confirmed sales of cherries shall be due within the payment schedule established by the Board. No cherries shall be released by the Board until after it has received payment of the full amount due for such cherries. If the full amount is not paid within the payment schedule established by the Board, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool.

(c) In the event there remains for sale a portion of first offering cherries, the Board shall, in the next 96 hour period within the 10 day release period, notify all handlers who purchased their portion of first offering reserve pool cherries, by telephone or telegram, of the quantity, the price, the grade composition of cherries remaining for purchase, and the terms of sale. Such terms of sale may include, but are not limited to: A delayed payment schedule; a discount based on the volume of cherries purchased, or a percentage allowance for brokerage fees. This shall be designated as the second offering.

(d) Each such handler who desires to purchase second offering cherries may do so within the remaining 72 hours of the 10 day release period. Such offer shall be made in the same manner as such handler's offer to purchase first offering cherries or at the minimum price established by the Board and the deposit amount established by the Board shall also apply to the offer to purchase second offering cherries. If the full amount is not paid within the aforesaid payment schedule, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool. In the event offers to purchase exceed the quantity of cherries offered, the quantity each handler may purchase shall be prorated in accordance with the handler's participation in the reserve pool as compared with the total participation in the reserve pool by all handlers who have made an offer to purchase second offering cherries: *Provided,* That if the proportion of any handler exceeds the quantity such handler desires to purchase, such excess shall be apportioned on the foregoing basis among the remaining handlers who have expressed a desire to purchase second offering cherries.

(e) All monies due to handlers from any allowance or discount shall be refunded to such handlers after distribution of reserve pool proceeds in accordance with § 930.109.

Dated: June 11, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-14398 Filed 6-13-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 114

[Docket No. 85-041]

Viruses, Serums, Toxins, and Analogous Products; Amendment To Production Requirements for Biological Products; Expiration Date and Reprocessing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These revisions will amend the production requirements pertaining to establishing and extending expiration dates and reprocessing biological products. Currently, the earliest date of harvest and the date of a satisfactory potency test are used to establish and to extend the expiration date of a product. Current regulations only permit the reprocessing of product which is in liquid form. The revision will: Delete the use of the harvest date in computing the expiration date; relax the current restrictions on the movement of biological products between licensed establishments for the purpose of relabeling; and permit reprocessing of biological products in other than liquid form.

EFFECTIVE DATE: These amendments will become effective June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 836, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7760.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

As presently written, the date of harvest for any component of a biological product and the date of satisfactory potency test are the major considerations in 9 CFR 114.13 for establishing the dating period for a product in accordance with procedures contained in the Outline of Production. In the case of components which are stored prior to production of a biologic, the date such components are removed from storage may also be used as a starting point in determining the expiration date. In this case, the length of storage has always been considered to be a critical factor. At the time the regulations were written, the length of storage which relates back to the harvest date was thought to have a significant influence on quality of the product. Improvements in storage conditions and increased accuracy of test methods employed to monitor product potency have made the storage factor much less important. When production materials are properly stored, it can be expected that a reasonable length of storage would not adversely affect the quality of the final product. If improper storage adversely affects a product, this can be detected through potency tests which are required for each serial or subserial. Therefore, it is not necessary to use the date of harvest in establishing the maximum allowable dating for the product. This amendment deletes the requirement that the harvest date or storage time be used in computing expiration date. Determination of the expiration date will be based on potency testing. Accordingly, all references to harvest date are deleted from 9 CFR 114.13. The definition of harvest date, which appeared in that section, is moved to 9 CFR 101.3.

Currently, the initial dating permitted in the Outline of Production of nonviable biological products is confirmed by potency testing samples of the prelicense serials on or after the stated expiration date. Subsequent changes in expiration date may be granted based on potency tests on five consecutive serials at least 6 months beyond the date requested. Originally the five consecutive serial testing requirement was adopted because potency tests in use were thought to be inadequate to detect minor losses. Satisfactory testing 6 months beyond the dating requested was considered necessary before an increase of the dating period specified in the Outline of Production could be authorized. This requirement is amended to provide for greater flexibility of test procedures by only requiring that statistically valid data be presented to support subsequent changes in the expiration date. This permits greater flexibility of test procedures and would permit acceptance of data from less serials if valid. Research and development have resulted in improved potency tests that can detect adverse changes. Therefore, satisfactory results of potency tests performed on samples stored through the dating requested is sufficient to authorize an increase in the dating period. In order to provide a method of confirming the initial expiration date, as a minimum the serials presented in support of licensure will be tested at release and at the approximate expiration date. A subsequent revision of the expiration date will be based on statistically valid data supporting such revision. The revision will relax the regulations by incorporating this change.

The current regulations in 9 CFR 114.14(a)(2) limit the movement of licensed products for relabeling between two licensed establishments to those owned or operated by the same person. The Agency published in the **Federal Register** on November 21, 1984, (49 FR 45845) a revision of 9 CFR 114.3 which will allow the movement of partially prepared or completed product between licensed establishments. The revision of 9 CFR 114.14 makes this section consistent with the change in 9 CFR 114.3.

When the regulations in 9 CFR 114.18 were adopted, products eligible for reprocessing were limited to those in liquid form. New products and new or revised test standards have been developed which make reprocessing of products in other forms feasible. Examples include desiccated Brucella Abortus Vaccine and certain diagnostic test kits. In the case of Brucella Abortus Vaccine, a recent amendment of 9 CFR 113.65 requires that each serial of vaccine contain between 3 and 10 billion viable organisms per dose. Serials containing more than 10 billion organisms per dose when freshly prepared are declared unsatisfactory. Organism counts in these serials can be reduced by storage under specified conditions without adverse effects. This procedure is considered to be a reprocessing step and will be permitted to avoid rejection of a potentially satisfactory serial. Certain diagnostic test kits require that specific matching antigen and antibody lots be used in the preparation of a serial. In the event of an unsatisfactory potency test, a serial could feasibly be reprocessed by replacement of one of the components. This revision of 9 CFR 114.18 deletes the words "in liquid form." The mixing and filling provisions of 9 CFR 114.18(b) are deleted. Paragraph (c) is amended by changing "required tests" to "appropriate tests" and is redesignated as (b). Paragraphs (d) and (e) are redesignated as (c) and (d).

Comments Received

On January 10, 1985, a notice of proposed rulemaking was published in the **Federal Register** at 50 FR 1230 discussing these revisions and soliciting comments.

Comments were received from eight licensed manufacturers and one Department testing laboratory. Six of the licensed manufacturers agreed with the changes as proposed. The others agreed in principle with the proposed rulemaking but suggested some changes.

Concerning 9 CFR 114.13, two comments suggested the acceptable methods used to demonstrate stability should be listed. Another comment indicated that in the introductory paragraph the relationship between the requirement to demonstrate stability prior to licensing and potency test is unclear as written. It was further suggested that a statistically valid stability record should be defined. The Agency purposely used the wording in the regulatory language to avoid being too restrictive in the requirements. A

licensee has an opportunity to present and discuss test methods and results which may be used to satisfy the requirements. One or more serials of product manufactured and stored prior to licensing for approximately the dating period requested could be tested for potency and if the results are satisfactory could be used to determine an initial dating period. As another example, three prelicensing serials could be subject to accelerated stability tests such as incubation for various periods of time. Provided the results are satisfactory, this data could be used to estimate the initial dating at the time of license to be confirmed at the end of the expiration period. The licensee would consider such factors as cost, time, equipment, etc., in developing test methods. Many test procedures have been demonstrated to be acceptable for the purpose intended. Many of these methods are published in the Standard Requirements. The licensee has the choice of using any number of these.

The Agency's concern is that the tests are credible and reproducible. A statistically valid stability record would depend on such factors as the product, number of serials produced in a given time, number of unsatisfactory serials in that total, and many others. The inherent nature of certain materials may require additional testing especially in new combination products. It is necessary to consider the history and the combination of the product. The requirement does not insist that a multiple component product be retested for stability each time a new fraction is added. This would only be necessary if the new fraction does not have a correlated serial potency test and an established stability record and/or if there are reasons to suspect that adding a new fraction may interfer with the stability of other components in the new combination product. The language used in the regulation permits flexibility. However, the introductory paragraph has been reworded to read as follows: "Unless otherwise provided for in a Standard Requirement or filed Outline of Production, the expiration data for each product shall be computed from the date of the initiation of the potency test. Prior to licensure, stability of each fraction shall be determined by methods acceptable to Veterinary Services. Expiration dates based on this stability data shall be confirmed as follows:" This is done to clarify the intent of the regulation.

Another comment concerning 9 CFR 114.13 suggested that establishing a valid stability record should be the same for viable and nonviable products. With few exceptions, an *in vivo* test is used to measure potency of nonviable products. Such tests measure the protective quality of a product, and therefore, are more reliable measures of efficacy. In the case of viable products, *in vitro* potency test measure antigen content or number of organisms in the product. The number of organisms or titer has been correlated with efficacy in the immunogenicity test. Certain live products may have a tendency to loose titer early and then stabilize. Thus, it may be necessary to test more than the three prelicensing serials to determine the degree of the titer loss and serial stability. The alternative would be to increase the amount of testing of nonviable products. The Agency believes that this is unnecessary.

Concerning 9 CFR 114.14, one comment suggested deleting the restriction limiting movement of products between establishments and permit movement between licensed establishments, distribution points, warehouses, etc. The Agency gave an opinion with adequate explanation in final rulemakings amending Part 114 published in the **Federal Register** at 48 FR 31009, July 6, 1983, and 49 FR 45845, November 21, 1984. The opinion of the Agency has not changed since these final rulemakings were published.

In 9 CFR 114.13(b), the section heading "inactivated biological products" is changed to read "Nonviable biological products." This change broadens the definition to provide for consideration of other products such as antiserums, antitoxins, normal serums, synthetics, and extracted products.

After due consideration of all relevant matters, including the proposal set forth in the above notice and under authority in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), the amendment of Part 14, Subchapter E, Chapter 1, Title 9 of the Code for Federal Regulations, as published in the above notice, is hereby adopted as follows:

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 114

Animal biologics.

PART 101—DEFINITIONS

1. The authority citation for Part 101 is revised to read as follows and all authority citations appearing at the end of subparts of Part 101 are removed:

Authority: 21 U.S.C. 151–158; 37 FR 28477, 28846; 38 FR 19141.

2. 9 CFR Part 101 is revised by adding § 101.3(l) to read as follows:

§ 101.3 Biological products and related terms.

. . . . . .

(l) *Harvest date.* Unless otherwise specified in a filed Outline of Production, the harvest date shall be the date blood or tissues are collected for production or the date cultures of living microorganisms are removed from production incubators.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

3. The authority citation for Part 114 is revised to read as follows and all authority citations appearing at the end of subparts of Part 114 are removed:

Authority: 21 U.S.C. 151–158.

4. 9 CFR Part 114 is amending by revising §§ 114.13, 114.14, and 114.18 to read as follows:

§ 114.13 Expiration date determination.

Unless otherwise provided for in a Standard Requirement of filed Outline of Production, the expiration date for each product shall be computed from the date of the initiation of the potency test. Prior to licensure, stability of each fraction shall be determined by methods acceptable to Veterinary Services. Expiration dates based on this stability data shall be confirmed as follows:

(a) *Products consisting of viable organisms.* Each serial shall be tested for potency at release and at the approximate expiration date until a statistically valid stability record has been established.

(b) *Nonviable biological products.* Each serial presented in support of licensure shall be tested for potency at release and at or after the dating requested.

(c) Subsequent changes in the dating period for a product may be granted, based on statistically valid data submitted to support a revision of the Outline of Production.

§ 114.14 Extension of expiration date for a serial or subserial.

(a) Unless otherwise provided for in a filed Outline of Production for the product, the expiration date shall not be extended:

(1) If all fractions of the product are not evaluated for potency by tests designated in the filed Outline of Production for such product in accordance with § 113.4(b) of this subchapter.

(2) For any serial or portion of any serial which has left licensed premises: *Provided,* That product which has been shipped from one licensed premises to another licensed premises shall be exempt from this requirement.

(3) For a serial or portion of a serial if the expiration date has been extended previously, unless otherwise authorized in accordance with § 114.1.

(b) An extension of the expiration date may be granted by Veterinary Services if a request from the licensee is substantiated by valid test data which demonstrate the potency of the product meets or exceeds the requirements for release. The new expiration date shall be calculated from the date the latest satisfactory potency test was initiated. The extension of the expiration date shall not exceed the maximum dating allowed in the filed Outline of Production.

(1) Serials are approved for redating under the condition that Veterinary Services may require the firm to retest the redated serial for potency during the extended dating period and if found unsatisfactory require it be removed from the market by the licensee.

* * * * *

§ 114.18 Reprocessing of biological products.

The Deputy Administrator may authorize a licensee to reprocess a serial of completed product subject to the conditions prescribed in this section.

(a) Reprocessing shall not include any method or procedure which would be deleterious to the product.

(b) All appropriate tests for purity, safety, potency, and efficacy for the product shall be conducted on the reprocessed product. A serial found unsatisfactory by a required test shall not be released.

(c) The reprocessed serial shall be identified by a new serial number and the records for the serial shall accurately reflect the action taken.

(d) Test samples of the reprocessed serial and test reports for all tests conducted shall be submitted to Veterinary Services. The licensee shall not release the serial until notified by Veterinary Services that the serial is eligible for release.

Done at Washington, D.C., this 10th day of June 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-14373 Filed 6-13-85; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 113

[Docket No. 85-040]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Tetanus Toxoid and Tetanus Antitoxin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking will revise the Standard Requirements for the production of Tetanus Toxoid and Tetanus Antitoxin by changing the criteria for a valid test. The current Standards require that the controls must die with clinical signs of tetanus. The revision will provide for terminating the test by euthanasia when the animals are manifesting clinical signs from which recovery is highly improbable.

EFFECTIVE DATE: These amendments will become effective June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This final rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

This final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

In addition, this final rule is the result of a cyclical review of 9 CFR 113.99 and 113.251. This review is required by Executive Order 12291.

Certification Under the Regulatory Flexibility Act

The Administration of the Animal and Plant Health Inspection Service has determined that this section will not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

The present Standard Requirements for Tetanus Toxoid and Tetanus Antitoxin provide for each serial to be potency tested in guinea pigs. For a test to be valid, the control animals must die with clinical signs of tetanus described in the Standard Requirements. The National Veterinary Services Laboratories has analyzed data accumulated over a period of 3 years including results of 69 tests. These data were evaluated to determine if the tests could have been terminated when controls developed specific clinical signs of tetanus without altering the validity of the test system. The results showed that the final outcome would not have changed if judged by the criteria as set forth in these revisions. Therefore, 9 CFR 113.99(c)(4) and 113.251(d)(6) are amended to allow for terminating the tests by euthanasia after the development of specific definitive clinical signs.

Other amendments are made to clarify and update the regulations. In 9 CFR 113.99(c), "adult" is deleted and a weight range is added. A correction is made to reflect that "each dilution of pooled serum" is used. This is consistent with the requirements in 9 CFR 113.251 and accepted international standards for Tetanus Toxoid and Tetanus Antitoxin. In 9 CFR 113.251(d), the period of observation has been changed from "approximately 96 hours" to "60 to 120 hours." In the last sentence of paragraph 113.251(d)(4), "expected unit value" is changed to "labeled unit value, one dilution at 10 percent above and one dilution at 20 percent above." This change is consistent with paragraph 113.251(a)(2) of this section. It assures an adequate number of units in all final containers of Tetanus Antitoxin throughout a dating period. This is the common practice used in the industry to establish dating at 1 year and 3 years, respectively. Other minor changes in working have been made to clarify and update these Standards without changing the meaning or intent of the regulations.

Comments Received

APHIS published a notice of proposed rulemaking in the the **Federal Register** on Thursday, December 20, 1984 (49 FR 49478) discussing this revision and soliciting comments.

Comments were received from five licensed manufacturers and from the Chairman of the Anaerobic Product Committee, Veterinary Biologicals Section, Animal Health Institute. All favored the proposed revision. Some offered comments and suggested changes.

Three of the comments recommended that the time before euthanasia could be shortened even more than that proposed. One comment suggested that using only two clinical signs of tetanus would be sufficient cause to euthanize. As indicated in the proposed rulemaking, the Agency was partially prompted to recommend changes because of its concern for humane treatment of laboratory animals. The Agency is also responsible for providing guidelines to ensure a valid test. Based on the evaluation of the clinical signs observed in 69 tests over a 3 year period, the Agency believes that the recommendation in the proposed rulemaking is necessary to ensure a valid test. It is the intent that all guinea pigs in the test (both controls and test animals) should be euthanized when they reach the point where they are down and unable to rise or stand under their own power. Therefore, the amendment will remain as proposed.

Two of the comments received suggested that the term "labeled unit value" may be confusing as used in proposed changes to 9 CFR 113.251(d)(4). Currently, the regulation requires testing at the expected unit value, one dilution above and one dilution below, to assure the test is endpointed. This test is done on bulk material. After the unit value per ml is determined, the product is then filled with a volume to assure the labeled unitage plus desired overage for potency through dating is present. The labeled unit value is determined by multiplying the fill of final container times the number of antitoxin units per ml. There is also concern that the change in 9 CFR 113.251(d)(4) would impose an additional test. In order to further clarify, some word changes have been made. Title 9, CFR 113.251(d)(4) will now read: "A sample from each serial of antitoxin shall be prepared as was the Standard Toxin-Antitoxin mixture; except to the amount of antitoxin shall be based on an estimation of the expected potency. When testing is done on bulk material, the final container fill shall reflect the endpoint value plus 10 percent overage for 1 year dating and 20 percent overage for 3 year dating." Paragraph (d)(5)(ii) was also changed by deleting ". . . of three dilutions . . ." for consistency and clarity. In paragraph (d)(7) . . . new antitoxin . . ." is changed to ". . . unknown" antitoxin. . . ."

Another comment suggested deleting the test of pooled serum at a 1:10 dilution in 9 CFR 113.99(c)(2) and placing the test in paragraph (c)(9) under conditions for retesting. This suggestion is unacceptable. Testing at both a 1:10 and 1:20 dilution provides criteria for retesting. Further the only change to paragraph (c)(2) in the proposed rulemaking was to specify weight range for test animals.

The Agency has carefully reviewed all comments received and made appropriate changes consistent with the intent of the regulations. After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), the amendment of Part 113, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as published in the above notice, is hereby adopted as follows:

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

1. The authority citation for Part 113 continues to read as follows:

Authority: 21 U.S.C. 151–158; 37 FR 28477, 28646; 38 FR 19141.

2. 9 CFR Part 113 is amended by revising § 113.99 (c) to read as follows:

§ 113.99 Tetanus Toxoid.

* * * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency. A group of at least 10 guinea pigs, consisting of an equal number of males and females weighing 500 grams ± 10 percent shall each be injected subcutaneously with 0.4 of the dose recommended on the label for a horse.

(1) Six weeks after injection all surviving guinea pigs shall be bled and equal portions of serum, but not less than 0.5 ml from each, shall be pooled. Serum from not less than eight animals shall be used.

(2) The pooled serum shall contain at least 2.0 Antitoxin Units (A.U.) per ml as determined by titrating it in the manner prescribed for Tetanus Antitoxin in 9 CFR 113.251. A 1:10 and a 1:20 dilution of the serum shall be made. The dilutions shall be held at 20° to 25° C for 30 minutes prior to combining with a test does of Standard Toxin. The test dose of Standard Toxin shall be mixed in proper proportion with each dilution of pooled serum, incubated at 20° to 25° C for 1 hour and injected subcutaneously into two guinea pigs weighing between 340 and 380 grams.

(3) The test dose of the Standard Toxin shall be verified against 0.1 of a unit to Standard Antitoxin in two guinea pigs weighing 340 to 380 grams which serve as control animals.

(4) Controls shall be observed until they are down and are unable to rise or stand under their own power. At this time they are euthanized and the time of death is recorded in hours. For a valid test the controls must reach this point with clinical signs of tetanus within 24 hours of each other and within an overall time of 60 to 120 hours. The clinical signs to be observed are increased muscle tonus, curvature of the spine, asymmetry of the body outline when the resting animal is viewed from above, generalized spastic paralysis, particularly of the extensor muscles, inability to rise from a smooth flat surface when the animal is placed on its side, or any combination of these signs. If the control guinea pigs do not respond in this manner, the test is invalid and shall be repeated. In a valid test, if the titer is at least 2.0 A.U. per ml, the serial is satisfactory. If the titer is at least 1.0, but less than 2.0 A.U. per ml, the retest provided for by paragraph (c)(5) of this section may be conducted. If the titer is less than 1.0. A.U. per ml, the serial is unsatisfactory and may not be retested.

(5) Serials with titers of at least 1.0 A.U. per m1, but less than 2.0 A.U. per m1 in the initial test may be retested, but if the retest is not conducted the serial is unsatisfactory. The retest shall be conducted in the same manner as the initial test except that at least 20 guinea pigs, consisting of an equal number of males and females weighing 500 grams ±10 percent, shall be used as vaccinates and serum from not less than 18 animals shall be pooled for the toxin-antitoxin titration. In the retest, the pooled serum from vaccinated guinea pigs is diluted 1:25. If the retest titer is less than 2.5 A.U. per m1, the serial is unsatisfactory.

3. 9 CFR Part 113 is amended by revising § 113.251(d) to read as follows:

§ 113.251 Tetanus Antitoxin.

* * * * *

(d) *Potency test.* Bulk or final container samples of completed product from each serial shall be assayed to

calculate the units of Tetanus Antitoxin in each final container. A comparative toxin-antitoxin neutralization test shall be conducted using a standard antitoxin and a standard toxin. All dilutions shall be made in M/15 phosphate buffered (pH) 7.4 physiological saline with 0.2 percent gelatin.

(1) One ml of the Standard Antitoxin shall be diluted before use so the final volume contains 0.1 unit per ml. The dilution shall be held at 20° to 25 °C for 30 minutes prior to combination with a test does of toxin.

(2) The Standard Toxin test dose is that amount which when mixed with 0.1 unit of Standard Antitoxin, incubated at 20° to 25 °C for 1 hour, and injected subcutaneously into a 360 to 380 gram guinea pig, results in death of that guinea pig within 60 to 120 hours with clinical signs of tetanus. The toxin shall be diluted so the test dose shall be in 2.0 ml.

(3) A mixture of diluted Standard Toxin and diluted Standard Antitoxin shall be made so that 0.1 unit of antitoxin in 1 ml is combined with a test dose of toxin. This Standard Toxin-Antitoxin mixture shall be held at 20° to 25 °C for 1 hour before injections of guinea pigs are made.

(4) A sample from each serial of antitoxin shall be prepared as was the Standard Toxin-Antitoxin mixture: except the amount of antitoxin shall be based on an estimation of the expected potency. When testing is done on bulk material, the final container fill shall reflect the endpoint value plus 10 percent overage for 1 year dating and 20 percent overage for 3 year dating.

(5) Normal guinea pigs weighing within a range of 340 to 380 grams shall be used. Pregnant guinea pigs must not be used.

(i) Each of two guinea pigs (controls) shall be injected subcutaneously with a 3 ml dose of the Standard Toxin-Antitoxin mixture. Injections shall be made in the same order that toxin is added to the dilutions of antitoxins. These shall be observed parallel with the titration of one or more unknown antitoxins.

(ii) Two guinea pigs shall be used as test animals for each dilution of the unknown antitoxin. A 3.0 ml dose shall be injected subcutaneously into each animal.

(6) Controls shall be observed until they are down and are unable to rise or stand under their own power. At this time they are euthanized and the time of death is recorded in hours. For a satisfactory test, the controls must reach this point with clinical signs of tetanus within 24 hours of each other and within an overall time of 60 to 120 hours. The clinical signs to be observed are increased muscle tonus, curvature of the spine, asymmetry of the body outline when the resting animal is viewed from above, generalized spastic paralysis, particularly of the extensor muscles, inability to rise from a smooth surface when the animal is placed on its side, or any combination of these signs. If the control guinea pigs do not respond in this manner, the entire test shall be repeated.

(7) Potency of an unknown antitoxin is determined by finding the mixture which will protect the test animal the same as the Standard Toxin-Antitoxin mixture. Test animals dying sooner than the controls indicate the unit value selected in that dilution was not present, whereas those living longer indicate a greater unit value.

Done at Washington, D.C., this 10th day of June 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-14372 Filed 6-13-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM85-12-000]

Amendments to FERC Form No. 1; Notice of Effective Date

Issued June 11, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of effective date.

SUMMARY: On May 8, 1985, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM85-12-000, 50 FR 19912 (May 13, 1985) which, among other things, deleted certain schedule pages from FERC Form No. 1. This notice states that OMB has approved these changes and sets forth the effective date of the change in the form.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8504.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1983), require that OMB approve certain information collection requirements imposed by agency rule. On June 5, 1985, OMB approved the information collection requirements of FERC Form No. 1, which is required by 18 CFR 141.1, under the existing Control Number 1902-0021 for that section. Therefore, this aspect of the final rule in Docket No. RM85-12-000 is effective as of June 12, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14402 Filed 6-13-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 440 and 448

[Docket No. 83N-0378]

Antibiotic Drugs; Deletion of Safety Test

Correction

In FR Doc. 85-11467 beginning on page 19917, in the issue of Monday, May 13, 1985, make the following corrections:

1. On page 19918, in the third column, under Part 440, in the ninth line of amendatory instruction number 6, "440.19(a)(1)(iv)" should read "440.19(a)(1)(ii)"; and in the tenth line, "440.19a(a)(1)(ii)" should read "440.19a(a)(1)(iv)".

2. On page 19920, in the second column, under Part 448, in the eighth line of amendatory instruction number 32, "448.121(a)(3)(*a*)" should read "448.121(a)(3)(i)(*a*)"; also in the eighth and ninth lines, "448.310b(a)(i)(3) (*a*), (*b*), and (*c*)" should read 448.310b(a)(3)(i) (*a*), (*b*) and (*c*).

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 20

[Docket No. R-85-1240; FR-1349]

Rules of the Board of Contract Appeals

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises the procedures of the Department of Housing and Urban Development Board of Contract Appeals. The revision is

required by the Contract Disputes Act of 1978 (41 U.S.C. 601–613). This interim rule adopts, in substantial part, the Uniform Rules of Procedure for Boards of Contract Appeals issued by the Office of Federal Procurement Policy.

DATES: *Effective Date:* July 26, 1985.
Comments Due: August 13, 1985.

ADDRESS: Comments should be sent to: Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David T. Anderson, Chairman, Board of Contract Appeals, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410–5000, telephone (202) 755–0132. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Contract Disputes Act of 1978 (41 U.S.C. 601–613) was enacted on November 1, 1978. This Act required the Office of Federal Procurement Policy (OFPP) to issue guidelines for the procedures of the agency Boards of Contract Appeals. The goal of these guidelines was to promote uniformity in the various rules of practice for agency Boards of Contract Appeals. OFPP published these guidelines on March 7, 1979 (44 FR 12519) with additional changes published on June 14, 1979 (44 FR 34227). OFPP indicated that agency Boards of Contract Appeals would be expected to adopt these uniform rules except where minor variances are justified because of an individual Board's size of the nature of its docket.

This interim rule revises and updates the rules of practice and procedure applicable to the processing of administrative appeals before the Department of Housing and Urban Development Board of Contract Appeals (HUDBCA), 24 CFR Part 20. This rule conforms to the guidelines promulgated by OFPP. As revised, Subpart A of Part 20 incorporates Parts I and II to the preface to the uniform rules. Existing rules in Subpart A which govern the scope of the part, the establishment of the Board, the Board's jurisdiction over matters other than contract appeals, and the powers of the Board are retained. Existing provisions in Subpart A that relate to the interpretation or effect of the current procedural rules of the Board are eliminated.

The existing procedural rules of the Board in Subpart B have been eliminated. In their place, new Subpart B substantially adopts the text (and numeration) of the uniform rules. The subjects discussed in Parts III and IV to the preface to the uniform rules are discussed in rules 35 and 36, respectively. These two provisions are included with a retitled rule 34 under a new heading "Miscellaneous Procedures". Subpart C, which governs bid protest procedures for National Housing Act contracts, is retained unchanged.

HUDBCA's interim rules make minor revisions and editorial changes to the uniform OFPP rules. The most significant are discussed below:

1. Section 20.3(b) generally follows Part II of the preface to the uniform rules. Section 20.3(b), however, more accurately describes the composition of the Board and indicates the number of Board members generally assigned to a panel to hear an appeal.

2. Section 20.10 has no corresponding provision in the uniform rules. This section discusses the scope of the rules. Additionally, to provide alternate procedures where the Board's rules prove to be inadequate, this section permits the application of the Federal Rules of Civil Procedure.

3. Uniform rule 1(a) provides that the notice of appeal shall be furnished to the contracting officer. This requirement is eliminated from HUDBCA rule 1(a). The contracting officer will be notified of the appeal by the Board's written notice of docketing under rule 3. Uniform rule 1(c) provides that a contractor may file a notice of appeal in a matter involving a claim of $50,000 or more if the contracting officer has failed to issue a decision within a reasonable time. HUDBCA's rule 1(c) provides that the contractor may file a notice of appeal if the contracting officer has, within 60 days of the submission of the claim, failed to issue a final written decision or to advise the contractor of a date when the final written decision would be issued. A new paragraph has been added permitting the contractor to request the Board to direct the contracting officer to issue a final written decision within a specified period of time in the event of an undue delay on the part of the contracting officer.

4. Uniform rule 2 contains the content requirements for the notice of appeal. In addition to the requirements stated in the uniform rule, HUDBCA's rule 2 provides that notice of appeal from a contracting officer's decision involving a claim in excess of $50,000 must state that certification has been made as required under section 6(c)(1) of the Contract Disputes Act of 1978 [41 U.S.C. 606(c)(1)]. Section 6(c)(1) requires the contractor to certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable. This additional requirement will ensure that all the statutory prerequisites for the submission of a claim are met.

5. To provide all concerned parties with notice of the appeal, rule 3(a) adds HUD's Office of General Counsel to the list of entities that receive notice of the docketing of the appeal (*Compare* uniform rule 3(a)).

6. Uniform rule 4(a) states that the time period for a contracting officer to transmit the appeal file to the Board will commence with the receipt of the appeal or the notice that the appeal has been filed. HUDBCA's rule 4 states that this time period will commence upon the contracting officer's receipt of notice from the Board that an appeal has been docketed. This change provides a more definite description of when the appeal period will begin and eliminates the possibility that the time limit would be deemed to commence upon a party's informal indication of intent to file an appeal. HUDBCA's rule 4(a) also requires the contracting officer to submit three copies of the complete appeal file to the Board (through HUD's Office of the General Counsel). Upon receipt, the Board is required to furnish the copies of the appeal file to the appellant and HUD's Office of the General Counsel. This change will ensure that all parties will have copies of all necessary items in the appeal file. Uniform rule 4(e) permits a party to object to the consideration of a particular document in the appeal file reasonably in advance of hearing, or if there is no hearing, reasonably in advance of settling the record. HUDBCA's rule 4(e) provides that this objection must be made within 30 days of receipt of the document, unless good cause is shown for later objection.

7. Rule 6 of the uniform rules states that the Board will serve a copy of the complaint on the government and a copy of the answer to the complaint on the appellant. The Board believes that the burden of service should fall upon the party initiating a pleading. Accordingly, these requirements have been deleted from rule 6 and the service of the complaint and answer will be governed by rule 16. Since the Board will not be required to serve complaints and

answers, the requirements that parties must file multiple copies of these pleadings with the Board are eliminated.

8. With the exception of limited provisions governing motions for reconsideration (uniform rule 29) and motions to dismiss for lack of subject matter jurisdiction (uniform rule 5), the uniform rules contain few provisions governing motions. To provide guidance concerning the Board's treatment of other motions, interim rule 8(b) incorporates existing rule 8(c) as contained in Part 20. Minor changes to the text of existing rule 8(c) have been made to eliminate redundancy and to clarify the rule.

9. The uniform rules require the Administrative Judge to make written summaries of the results of the prehearing or presubmission conferences (uniform rule 10), and require the Administrative Judge to provide copies of orally rendered decisions on the merits (uniform rules 12.2(c) and 12.3(c)). The following changes have been made: (1) HUDBCA's rule 10 would permit the Administrative Judge to elect to have conferences transcribed for the record rather than provide a written summary, and (2) HUDBCA's rules 12.2(c) and 12.3(c) would permit the Administrative Judge to elect to provide a hearing transcript rather than a typed copy of the oral decision. These changes will minimize the administrative burdens on the Board.

10. Uniform rule 11 provides that either party may elect to waive a hearing and submit its case upon the record before the Board. The Department has revised this rule to make it clear that a party may waive the right to appear at a hearing but that this waiver will not deprive the other party of the right to an oral hearing before the Board.

11. Uniform rule 12.3, which governs the accelerated procedure, has been revised to eliminate redundant matters.

12. Uniform rule 14(f) has been eliminated because it duplicates rule 21(a)(1) governing the issuance of subpoenas for depositions.

13. Uniform rule 15 states ". . . Any discovery engaged in under this rule will be subject to rule 14(a) with respect to general policy and protective orders and rule 33 with respect to sanctions." This provision has been deleted from rule 15, but retained in part in rule 14(a).

14. Uniform rule 16 governs the service of papers other than subpoenas. HUDBCA's rule 16 eliminates the requirement that copies of complaints, answers and briefs must be filed with the Board, because these requirements are stated in rules 6, 9, and 23. HUDBCA's rule 16 also explains when papers will be deemed to be filed with the Board and requires the party filing any paper with the Board to simultaneously serve a copy of the paper on the opposing party and file a certificate of the service with the Board. These changes will eliminate arguments concerning the date a pleading is filed with the Board and will ensure that parties will posess a complete record of the proceeding.

15. The Department believes that 15 days' notice of the date set for hearing as required under uniform rule 18 is not adequate to provide the parties with sufficient time to prepare. Accordingly, HUDBCA's rule 18 expands the notice period to a minimum of 20 days. HUDBCA's rule also requires the Board to notify the parties of a hearing by certified mail (return receipt requested). This requirement will permit the elimination of the requirement in uniform rule 18 that parties must acknowledge receipt of the notice of hearing.

16. Uniform rule 19 provides that where a party has an unexcused absence from a hearing, the hearing will proceed and the case will be regarded as submitted on the record by the absent party. The Board has found that appellants often indicate that they do not intend to prosecute an appeal and simply fail to appear at the hearing, rather than withdraw from the proceeding. HUDBCA rule 19 permits the Board to dismiss an appeal under these circumstances without conducting the "show cause" procedures stated in rule 31.

17. Under uniform rule 20(a), the parties may offer "such evidence as they deem reasonable and appropriate under the circumstances and as would be admissible under the Federal Rules of Evidence." Given the informality of hearings before the Board, HUDBCA's rule 20(a) permits the introduction of any other evidence deemed reliable and relevant by the presiding Administrative Judge. Additionally, HUDBCA's rule 20(b) requires, rather than permits, the Board to advise witnesses of the penalties for false representation when the testimony of the witness is not given under oath or affirmation.

18. HUDBCA's rule 21 governs subpoenas and contains three revisions to the uniform rules. First, HUDBCA's rule 21(f) permits service by personal delivery *or* by certified mail (return receipt requested). This change provides greater procedural flexibility and reduces the costs involved in the defense and prosecution of proceedings before the Board. Second, HUDBCA's rule 21(f)(2) does not include the uniform rule provision that permits the Board to strike testimony or evidence if a party has failed to pay witness fees and mileage or the cost of serving a subpoena. HUDBCA believes that the recitation of this sanction is improperly included at this place. Finally, HUDBCA's rule 21(g) does not state that the failure to obey an order of a court requiring a person to appear before the Board may be punishable by the court as contempt. This provision, while appropriate in the court's rules of procedure, is inappropriate in the Board's rules.

19. Under uniform rule 23, posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the Administrative Judge. Under this provision, it is possible for one party to unilaterally prevent the submission of necessary posthearing briefs. Accordingly, HUDBCA's rule 23 gives the presiding Administrative Judge the discretion to order posthearing briefs.

20. Transcripts of proceedings are addressed in rule 24. The uniform rule requires a transcript unless waived by the Board, and states that waiver may be especially suitable for hearings under the expedited procedure. HUDBCA's rule eliminates the advisory language addressing waiver of transcripts under the expedited procedure. Uniform rule 24 also provides that the Board shall supply transcripts or copies of the proceedings to the parties at the actual cost of duplication. To avoid infringing on the commercial rights of the hearing reporter and to avoid imposing unnecessary duplication responsibilities on the Board's staff, HUDBCA's rule 24 provides that the Board may supply the parties with extra transcripts in the Board's posession. If the Board has no extra transcripts, the parties may obtain copies from the hearing reporter.

21. Uniform rule 26 provides that a corporate appellant may appear before the Board by one of its officers and that a partnership or joint venture may appear by one of its members. HUDBCA's rule 26 provides that representatives of such parties must be *duly authorized* by the appellant to appear before the Board.

22. The requirement for authentication of copies of decisions forwarded to the parties by the Board, as required by uniform rule 28, has been deleted from HUDBCA's rules. The Board believes that this requirement serves no useful purpose.

23. HUDBCA's rule 31 clarifies that dismissals for failure to prosecute or defend are *with prejudice*. (*Compare* uniform rule 31.)

24. Uniform rule 32, which governs cases remanded to the Board by the courts, states that the parties shall, within 20 days of the remand, submit a report to the Board recommending procedures to be followed to comply with the court's order. HUDBCA rule 32 makes it clear that the Board must consider the reports only if they are timely filed.

25. Part III to the preface of the uniform rules, which governs time computation and extensions, is adopted at HUDBCA's rule 35 with one revision. This revision would require that extension requests must be filed before the due date, unless excused.

26. HUDBCA's rule 36 is based on the provisions of 24 CFR 26.4 involving ex parte communications. (Part 26 applies to certain HUD proceedings presided over by a hearing officer.) The Department believes that these revised provisions more satisfactorily address the subject of ex parte communications than does Part IV to the preface of the uniform rules.

Because these interim rules substantially conform to the OFPP uniform rules that were promulgated following an extensive opportunity for public participation and comment, and because HUDBCA has been operating under the uniform rules informally since May, 1979, the Department has determined that it is unnecessary to provide an opportunity for public comment before this rule's issuance. However, public comments are invited for 60 days following publication of this interim rule. These comments will be considered in the adoption of a final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule," as that term is defined in section 1(b) of Executive Order 12291 issued by the President of February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employement, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is procedural in nature and should impose few economic burdens on parties to actions before HUDBCA.

This rule was listed as item 4 on the Department's Semiannual Agenda of Regulations published April 26, 1985 (50 FR 17286 at 17287), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance includes no program covering this Part.

List of Subjects in 24 CFR Part 20

Adminstrative practice and procedure, Government Contracts, Organization and Functions (Government agencies), Government procurement.

Accordingly, Title 24 of the Code of Federal Regulations is amended as follows:

1. The table of contents for Part 20 is revised to read as follows:

PART 20—BOARD OF CONTRACT APPEALS

Subpart A—Department of Housing and Urban Development Board of Contract Appeals

Sec.
20.1 Scope of part.
20.2 Establishment of Board.
20.3 Organization and location of the Board.
20.4 Jurisdiction of the Board.
20.5 Board powers.

Subpart B—Rules of the Department of Housing and Urban Development Board of Contract Appeals

Sec.
20.10 Rules.

Preliminary Procedures

Rule
1. Appeals, how taken.
2. Notice of appeal, contents of.
3. Docketing of appeals.
4. Preparation, content, organization, forwarding, and status of appeal file.
5. Dismissal for lack of jurisdiction.
6. Pleadings.
7. Amendments of pleadings or record.
8. Hearing election and motions.
9. Prehearing briefs.
10. Prehearing or presubmission conference.
11. Submission without a hearing.
12. Optional small claims (Expedited) and accelerated procedures. (These procedures are available solely at the election of the appellant.)
12.1 Elections to utilize small claims (Expedited) and accelerated procedure.
12.2 The small claims (Expedited) procedure.
12.3 The accelerated procedure.
12.4 Motions for reconsideration in Rule 12 cases.
13. Settling the record.
14. Discovery—depositions.
15. Interrogatories to parties, admission of facts, and production and inspection of documents.
16. Filing and service of papers other than subpoenas.

Hearings

17. Where and When held.
18. Notice of hearings.
19. Unexcused absence of a party.
20. Hearings: nature; examinations of witnesses.
21. Subpoenas.
22. Copies of papers.
23. Posthearing briefs.
24. Transcript of proceedings.
25. Withdrawal of exhibits.

Representation

26. The appellant.
27. The Government.

Decisions

28. Decisions.

Motion for Reconsideration

29. Motion for reconsideration.

Dismissals and Defaults

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20.25 Effect of judicial proceedings.

Authority: The Contract Disputes Act of 1978, (41 U.S.C 601–613); Section 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. The text of Subpart A of Part 20 is revised to read as follows:

Subpart A—Department of Housing and Urban Development Board of Contract Appeals

§ 20.1 Scope of part.

This part establishes a Board of Contract Appeals, sets forth its function, policies and procedures regarding matters to be considered by the Board, and prescribes the rules of the Board.

§ 20.2 Establishment of Board.

There is established in the Office of the Secretary, the Housing and Urban Development Board of Contract Appeals ("the Board").

§ 20.3 Organization and location of the Board.

(a) *Location.* The Board's address is U.S. Department of Housing and Urban Development, Board of Contract Appeals, Room 2158, 451 Seventh Street, SW., Washington, D.C. 20410–5000. The telephone number is (202) 755–0132. (This is not a toll-free number.)

(b) *Organization.* The Board shall be comprised of a Chief Administrative Judge, who shall be the Chair, an Administrative Judge, who shall be the Vice-Chair, and such other Administrative Judges as may be appointed by the Secretary. All members of the Board shall be attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. All members shall be selected and appointed to serve in accordance with section 8(b)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 608(b)(1)). Except as otherwise provided, appeals are assigned to a panel of at least three members who decide the case by a majority vote. Board members are designated Administrative Judges.

§ 20.4 Jurisdiction of the Board.

(a) *Contract appeals.* The Board shall consider and determine appeals from decisions of contracting officers under the Contract Disputes Act of 1978 (41 U.S.C. 601–613) relating to contracts entered into by (1) the Department of Housing and Urban Development or (2) any other executive agency when that agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

(b) *Other matters.* The Board or its individual members shall have jurisdiction over other matters assigned to it by the Secretary. Determinations in other matters shall have the finality provided by the applicable statute, regulation or agreement.

§ 20.5 Board powers.

(a) *Board powers.* The Board shall employ support personnel, as needed, and shall have all powers necessary and incident to the proper performance of the duties assigned to it.

(b) *Disqualification.* No Administrative Judge may act for the Board or participate in a decision if, prior to the time the appeal was filed, he or she had participated in the matter in any manner on behalf of an interested party.

3. The text of Subpart B of Part 20 is revised to read as follows:

Subpart B—Rules of the Department of Housing and Urban Development Board of Contract Appeals

§ 20.10 Rules.

These rules govern the procedure in all matters before the Department of Housing and Urban Development Board of Contract Appeals, unless otherwise provided by applicable law or regulation. The Federal Rules of Civil Procedure may be applied where procedures are not otherwise provided in these rules.

Preliminary Procedures

Rule 1. *Appeals, how taken.*

(a) *General.* Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a final written decision of the contracting officer.

(b) *Contracting officer's failure to act-claim of $50,000 or less.* Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not issued the decision, the contractor may file a notice of appeal as provided in paragraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) *Contracting officer's failure to act-claim in excess of $50,000.* Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed, within 60 days of submission of the claim, to issue a final written decision, or to advise the contractor of a date when the final written decision would be issued, the contractor may file a notice of appeal as provided in paragraph (a) above, citing the failure to issue a decision.

(d) *Unreasonable delay by contracting officer.* A contractor may request the Board to direct a contracting officer to issue a final written decision within a specified period of time, as determined by the Board, in the event of an unreasonable delay on the part of the contracting officer.

(e) *Stay of proceedings.* Upon docketing of appeals filed under paragraph (b) or (c) above, the Board may stay further proceedings pending issuance of a final decision by the contracting officer within the period of time determined by the Board.

Rule 2. *Notice of appeal, contents of.*

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency involved in the dispute, the final written decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint. A notice of appeal from a final written decision of a contracting officer involving a claim in excess of $50,000 shall state that certification has been made as required under section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 606(c)(1)).

Rule 3. *Docketing of appeals.*

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. A written notice of docketing shall be given to the appellant with a copy of these rules, to the contracting officer, and to HUD's Office of General Counsel.

Rule 4. *Preparation, content, organization, forwarding, and status of appeal file.*

(a) *Duties of contracting officer.* Within 30 days of receipt of notice from the Board that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board (through HUD's Office of General Counsel) three copies of an appeal file consisting of all documents relevant to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and relevant amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Upon receipt of the appeals file, the Board shall furnish the appellant and HUD's Office of General Counsel with true and exact copies of the appeal file.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained in the appeal file which are relevant to the appeal, and furnish two copies of these documents to the government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals, legible facsimiles, or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party

files with the Board a document for which waiver has been granted, he or she shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party shall object, for reasons stated, to consideration of a particular document or documents within 30 days of receipt, unless good cause is shown for later objection. If an objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) *Waiver of filing of documents.* Notwithstanding the foregoing, the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. *Dismissal for lack of jurisdiction.*

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard on the issue.

Rule 6. *Pleadings.*

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file a complaint with the Board. The complaint shall set forth simple, concise and direct statements of each of the appellant's claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Should the complaint not be received within 30 days, appellant's notice of appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed its complaint and the Government shall be so notified.

(b) *Government.* Within 30 days from receipt of the complaint, the Government shall file an answer with the Board. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Should the answer not be received within 30 days, the Board may enter a general denial on behalf of the Government, and the appellant shall be so notified.

Rule 7. *Amendments of pleadings or record.*

The Board, upon its own initiative or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, with the permission of the Board, they shall be treated in all respects as if they have been raised in the pleadings. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet this evidence.

Rule 8. *Hearing election and motions.*

(a) *Hearing election.* After the filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

(b) *Motions.* (1) The Board may entertain any timely motion for an appropriate order. Application to the Board for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds for the motion and shall set forth the relief or order sought.

(2) The Board may, on its own motion, initiate any action by notice to the parties.

(3) Unless otherwise specified by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt of the motion. The Board may require the presentation of briefs or arguments. The Board shall issue a decision on each motion that is appropriate and just to the parties.

(4) Affidavits in support of motions shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. When a motion is made and supported as provided in this rule, a party opposing the motion who is represented by counsel may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, must show that there is a genuine issue of fact or of law for decision. Should it appear from the affidavits of a party opposing the motion that for reasons stated he cannot present by affidavit facts essential to justify his opposition, the Board may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

Rule 9. *Prehearing briefs.*

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth in the pleadings, the Board may require the parties to submit prehearing briefs. If the Board does not require prehearing briefs, either party may upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party.

Rule 10. *Prehearing or presubmission conference.*

(a) *Conference.* Whether the case is to be submitted under Rule 11, or heard under Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Adminstrative Judge for a conferene to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissiona, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses or avoidance of cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) *Results of conference.* The Administrative Judge shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of the conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or the conference shall be transcribed. The writing or the transcript shall constitute a part of the record.

Rule 11. *Submission without a hearing.*

Either party may elect to waive its right to appear at a hearing and to submit its case upon the record before the Board, as settled under Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board's record. The Board may permit submissions to be supplemented by oral argument (transcribed, if requested) and by briefs in accordance with Rule 9 or Rule 23.

Rule 12. *Optional small claims (Expedited) and accelerated procedures. (These procedures are available solely at the election of the appellant.)*

Rule 12.1 *Elections to utilize small claims (Expedited) and accelerated procedure.*

(a) *Election-dispute involving $10,000 or less.* In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a Small Claims (Expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in section 12.2 of this Rule.

(b) *Election-dispute involving $50,000 or less.* In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an Accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in section 12.3 of this Rule.

(c) *Notice of election.* The appellant's election of either the Small Claims (Expedited) procedure or the Accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless this period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) *Determination of amount in dispute.* In deciding whether the Small Claims (Expedited) procedure or the Accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2 *The small claims (Expedited) procedure.*

(a) *Document submission and prehearing conference.* In cases proceeding under the Small Claims (Expedited) procedure, the following time periods shall apply. (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the Small Claims (Expedited) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place for the hearing; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) *Pleadings, discovery and other prehearing activity.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Decision by Board.* The written decision by the Board in cases processed under the Small Claims (Expedited) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may at the conclusion of the hearing and after entertaining oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of the oral decision (or a copy of the transcript of the hearing) for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) *Effect of decision.* A decision against the Government or the contractor shall have no value as precedent and, in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Rule 12.3 *The accelerated procedure.*

(a) *Waiver of pleadings, discovery and briefs.* In cases proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) *Pleadings, discovery, and other prehearing activity.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board may shorten time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, and may reserve up to 30 days for preparation of the decision.

(c) *Decision by Board.* Written decisions by the Board in cases processed under the Accelerated procedure will normally be short and contain only summary findings of fact and conclusions. In cases where the amount in dispute is $10,000 or less where the Accelerated procedure has been elected and where there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of the oral decision (or a copy of the transcript of the hearing) for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

Rule 12.4 *Motions for reconsideration in Rule 12 cases.*

Motions for reconsideration of cases decided under either the Small Claims (Expedited) procedure or the Accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly to fulfill the intent of this Rule.

Rule 13. *Settling the record.*

(a) *Contents of record.* The record upon which the Board's decision will be rendered consists of the documents in the appeal file furnished under Rule 4 or 12 (unless removed by the Board) and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated to be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) *Closing of record.* Except as the Board may otherwise order, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. *Discovery—depositions.*

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure under this rule or rule 15, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for the purpose of discovery. The application for other shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until the testimony is offered and received in evidence at the hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In these instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

Rule 15. *Interrogatories to parties, admission of facts, and production and inspection of documents.*

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence.

Rule 16. *Filing and service of papers other than subpoenas.*

Papers shall be considered filed with the Board when mailed or otherwise furnished to the Board. Papers shall be served upon parties personally or by mail, addressed to the party upon whom service is to be made. Except as provided in rule 4(a), the party filing any paper with the Board shall simultaneously serve a copy of the paper upon the opposing party, and shall file a certificate of service with the Board indicating that a copy has been so served. Subpoenas shall be served as provided in Rule 21.

Hearings

Rule 17. *Where and when held.*

Hearings will be held at places determined by the Board to best serve the interest of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may adjust the date of a hearing.

Rule 18. *Notice of hearings.*

Parties shall be given not less than 20 days notice of the time and place for hearing, unless otherwise agreed. The notice of hearing shall be sent by certified mail (return receipt requested). In scheduling hearings, the Board will consider the convenience of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay.

Rule 19. *Unexcused absence of a party.*

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. Notwithstanding the provisions of Rule 31, in the event of an unexcused absence: (a) the appeal will be dismissed with prejudice for want of prosecution; or (b) the hearing will proceed and the case will be regarded as submitted on the record by the absent party.

Rule 20. *Hearings: nature; examination of witnesses.*

(a) *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as would be admissible under the Federal Rules of Evidence or as otherwise determined to be reliable and relevant by the presiding Administrative Judge. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of witnesses.* Oral testimony before the Board shall generally be given under oath or affirmation. However, if the testimony of a witness is not given under oath or affirmation, the Board shall advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency.

Rule 21. *Subpoenas.*

(a) *General.* Upon written request of either party filed with the Board or on the Administrative Judge's initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where he or she resides, is employed or transacts business in person, or at another location convenient for the witness is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers—the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected: (1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at the time and place specified in the subpoena. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign county, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall be responsible for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served: (i) By sending a copy of the subpoena by certified mail (return receipt requested) to the last known address of the party named in the subpoena, or (ii) by personal delivery of a copy of the subpoena to the party named in the subpoena, by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service shall include the tender of the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and for the costs of service of the subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member of the Board to give testimony or produce evidence or both.

Rule 22. *Copies of papers.*

When books, records, papers, or documents have been received in evidence, a true copy of this evidence or a copy of any material or relevant part of this evidence may be substituted during or at the conclusion of the hearing.

Rule 23. *Posthearing briefs.*

The presiding Administrative Judge may order the parties to submit post hearing briefs to the Board.

Rule 24. *Transcript of proceedings.*

Testimony and argument at hearings shall be reported *verbatim*, unless the Board otherwise orders. Extra transcripts or copies of the proceedings in the possession of the board may be supplied to the parties. Otherwise, the parties may obtain transcripts or copies of the proceedings from the hearing reporter.

Rule 25. *Withdrawal of exhibits.*

After a decision has become final the Board may, upon request and after notice to the other party, permit the withdrawal of original exhibits, or any part of original exhibits by the party entitled to the exhibits. The substitution of true copies of exhibits or any part of exhibits may be required by the Board as a condition of granting permission for the withdrawal.

Representation

Rule 26. *The appellant.*

An individual appellant may appear before the Board in person, a corporation by one of its duly authorized officers; and a partnership or joint venture by one of its duly authorized members; or any of these by an attorney at law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. *The Government.*

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board. This notice of shall file notices of appearance with the Board. This notice of appearance will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever an appellant and the Government are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Decisions

Rule 28. *Decisions.*

Decisions of the Board will be made in writing. Copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13. Oral decisions shall be rendered in accordance with Rules 12.2(c) and 12.3(c).

Motion for Reconsideration

Rule 29. *Motion for reconsideration.*

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Dismissals and Defaults

Rule 30. *Dismissal without prejudice.*

In certain cases, appeals docketed before the Board are required to be placed in a suspended status and the Board is unable to proceed with disposition for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be considered to be with prejudice.

Rule 31. *Dismissal or default for failure to prosecute or defend.*

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution of defense of an appeal, the Board may, in the case of such a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice or, in the case of a default by the Government, issue an order to show cause why the Board should not act under Rule 33. If good cause is not shown, the Board may take appropriate action.

Rule 32. *Remand from court.*

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of the remand, submit a report to the Board recommending procedures to be followed to comply with the court's order. The Board shall consider any timely filed reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, these orders shall conform to these rules.

Sanctions

Rule 33. *Sanctions.*

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct or dismissal of the appeal.

Miscellaneous Procedures

Rule 34. *Applicability.*

These rules shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979 or initiated thereafter, if the contractor elects to proceed under the Act.

Rule 35. *Time, computation, and extensions.*

(a) *General.* Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing and shall be filed before the due date, unless excused.

(b) *Computation.* In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Rule 36. *Ex parte communications.*

(a) *Definition.* An ex parte communication is any communication with a member of the Board, direct or indirect, oral or written, concerning the merits of matters in issue of any pending proceeding which is made by a party in the absence of any other party.

(b) *Prohibition of ex parte communications.* Ex parte communications are prohibited except where:

(1) The purpose and content of the communication have been disclosed in advance or simultaneously to all parties; or

(2) The communication is a request for information concerning the status of the case.

(3) The communication involves the Board's administrative functions or procedures.

(c) *Procedure after receipt of ex parte communications.* Any member of the Board who receives an ex parte communication that the member of the Board knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

Dated: June 6, 1985.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 85-14378 Filed 6-13-85; 8:45 am]

BILLING CODE 4210-32-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning July 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after July 1, 1985, and will enable the

PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 2006, 202–254–6476 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. With the exception of the months of September and January, the PBGC has published in the ensuing months new rates and factors for plans terminating during the months of August, 1984 through June, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, 50 FR 6342, 50 FR 10498, 50 FR 14700, 50 FR 20205).

Changes in the financial and annuity markets now require a decrease in the rates used for valuing benefits. Although the PBGC usually changes its rates by ¼ percent per month, rapid changes in financial markets have indicated that a decrease of ½ percent is warranted at this time. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after July 1, 1985, which set reflects a decrease of ½ percent in the interest rate to 9¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to the date circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as posssible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after July 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 57 of Appendix B is revised and Rate Set 58 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after—	Before—		k_1	k_2	k_3	n_1	n_2
• • •		•	•	•	•			
57	6-1-85	7-1-85	9.75	1.0900	1.0775	1.0400	7	8
58	7-1-85		9.25	1.0850	1.0725	1.0400	7	8

Royal S. Dellinger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-14300 Filed 6-13-85; 8:45 am]

BILLING CODE 7708-01-M

Proposed Rules

Federal Register
Vol. 50, No. 115
Friday, June 14, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 740, 746, 750, and 772

Surface Mining Coal Mining and Reclamation Operations; Permanent Regulatory Program; Application Fee for Permit To Conduct Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Mining Plan; Fee for Mid-Term Review of Surface Coal Mining and Reclamation Permit

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of Public Comment Period.

SUMMARY: the Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (the Department) reopens until July 26, 1985, the public comment period on the rule it proposed in the February 22, 1985, **Federal Register** (50 FR 7522). The proposed rule would govern the collection by OSM of application fees for permits to conduct surface coal mining and reclamation operations, and for permits to conduct coal exploration, as well as fees for processing mining plans and for mid-term review of surface coal mining and reclamation permits. Recipients of these services would be required to reimburse OSM for the actual cost incurred by the Department in providing the service.

The rule would apply to applications for mining on Indian lands, in Federal Program States (Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington), and on Federal lands in States not having State-Federal cooperative agreements. The rule would also require payment to the Department for costs the Department incurs in reviewing and approving mining plans.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on July 26, 1985.

ADDRESSES: Hand-deliver written comments to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C., 20240: Telephone: 202–343–5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSM proposed a rule in the February 22, 1985, **Federal Register** which would govern the collection by OSM of fees for certain activities related to the processing of permits and mining plans for surface coal mining and reclamation operations (50 FR 7522). That notice announced a public comment period on the proposed rule closing May 3, 1985. In response to a request for more time to submit public comments on this rule, OSM extended the closing date of the public comment period by 30 days to June 3, 1985. (50 FR 19037). OSM is today reopening the comment period to allow the addition to the Administrative Record of relevant information elicited at oversight hearings by the Senate Subcommittee on Natural Resources Development and Production, tentatively scheduled for July 9, 1985, which may involve issues discussed in this rule. Comments will now be accepted at the location given above ("**ADDRESSES**") until 5 p.m. eastern time on July 26, 1985.

Dated: June 7, 1985.

C.B. Kenahan,

Assistant Director, Program Operations and Inspections.

[FR Doc. 85–14374 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 584

[Docket No. 83–05; Notice 2]

Splash and Spray Suppression Devices; Extension of Comment Period

Correction

In FR Doc. 85–14127 appearing on page 24550 in the issue of Tuesday, June 11, 1985, make the following correction: In the second column, in the **DATE** paragraph, "enter date 60 days from the date this notice is published in the **Federal Register**" should read "August 12, 1984".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Leopard, Goral, and Serow in Nepal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service announces a review of the status, in the country of Nepal only, of three large mammals, the leopard, goral, and serow, each of which is currently classified as endangered pursuant to the Endangered Species Act of 1973, as amended. This review results from information provided by the Government of Nepal, suggesting that reclassification of these mammals to threatened status in Nepal, and issuance of special regulations allowing limited importation of trophies taken there by sport hunters, may be warranted. The Service hereby solicits relevant comments and information from all interested parties.

DATES: Comments and information must be received by December 11, 1985.

ADDRESSES: Comments and information should be sent to the Associate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, DC 20240. Materials

received are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION: The leopard (*Panthera pardus*) is a large cat that occurs in most of Africa and Asia. The goral (*Nemorhaedus goral*) and serow (*Capricornis sumatrensis*) are distant relatives of the sheep and goat, and are both found in western Asia. Each of these three large mammals is classified as endangered, at least with respect to wild populations in Asia, pursuant to the U.S. Endangered Species Act of 1973, as amended. Therefore, importation of these species into the U.S. is prohibited, except under permits for scientific purposes or to enhance propagation or survival.

The leopard was classified as endangered, throughout its range, in the **Federal Register** of March 30, 1972 (37 FR 6476). This measure was taken primarily because the species was being excessively exploited by the commercial fur trade, and also because of loss of suitable habitat.

The goral and serow were classified as endangered in the **Federal Register** of June 14, 1976 (41 FR 24062–24067). Their classification was simultaneous with that of 157 other animal taxa that were on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Appendix I includes all species that the member nations consider to be threatened with extinction, which are or may be affected by trade. According to the rule of June 14, 1976, the United States Government recognized the endangered status of the taxa on Appendix I, when it signed the Convention's Final Act, when the Senate gave its advice and consent, and when the President ratified the Convention.

Recently, the Service received a series of letters from the Department of National Parks and Wildlife Conservation of the Government of Nepal, requesting clarification of the status of the leopard, goral, and serow in that nation. These letters indicated that the three species are widely distributed in Nepal and not in immediate danger of extirpation by either habitat loss or poaching, that hunting and exportation of these species is carefully regulated in the country, that the number of trophies allowed to be taken per year (6 leopard, 12 goral, and 12 serow) will have no adverse effect on overall populations, and that sport hunting is actually indirectly beneficial to these species by bringing revenues to the Government that can be used for wildlife conservation. The Department also indicated, however, that it has not carried out extensive surveys or studies of the three species.

The Endangered Species Act provides that a species may be classified either as endangered (in danger of extinction) or threatened (likely to become endangered in the foreseeable future). According to section 4(d) of the Act, species classified as threatened shall be covered by regulations that are deemed necessary and advisable for their conservation. Section 3(3) of the Act defines conservation as the use of methods and procedures that are necessary to improve the status of a species. Since the leopard, goral, and serow in Nepal are currently classified as endangered, not threatened, they could not be covered by such special regulations. If, however, they were to be reclassified as threatened, special regulations could be issued, and these regulations could include provision for importation of trophies, if it could be demonstrated that such importation would be necessary and advisable for conservation. Indeed, in the **Federal Register** of January 28, 1982 (47 FR 4204–4211), the Service reclassified the leopard in parts of southern Africa from endangered to threatened, issued special regulations allowing limited importation of trophies from the areas where the threatened designation was applied, and indicated that such regulations would be beneficial to the conservation of the species.

The Service now announces a review of the status of the leopard, goral, and serow in Nepal, in order to assist in determining if one or more of those species may warrant reclassification to threatened status in that country, and if special regulations, allowing importation of trophies taken there by sport hunters, would be necessary and advisable for conservation. The Service welcomes all interested parties to submit any information, comments, or opinions relevant to these matters. All responses, along with any other pertinent data obtained by the Service, will be examined in arriving at a decision on whether to issue a proposed rule in the **Federal Register** regarding reclassification, and possibly special regulations, for any of the involved species in Nepal. If such a proposal is issued, a period of at least 60 days will be allowed for public comment.

The primary author of this notice is John L. Paradiso, Endangered Species Biologist, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 5, 1985.

J. Craig Potter,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–14341 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 23

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain wildlife and plant species. Appendices, I, II, and III to CITES list those species for which trade is controlled. This notice announces recent decisions by the Conference of Parties to CITES on amendments to Appendices I and II, and invites comments on whether the United States should enter reservations on any of the amendments. The effect of a reservation is to exempt a Party from implementing CITES for a particular species. The amendments described in this notice will enter into effect on August 1, 1985.

DATE: The Service will consider all comments received by July 15, 1985 in determining whether the United States should enter any reservations.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, Room 537 Matomic, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Dr. Charles W. Dane, at address given above, or telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are listed in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Difficulty in distinguishing specimens of currently or potentially threatened species from other species is the usual reason for such listings. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and interested intergovernmental bodies and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

Recent Decisions

The Fifth Meeting of the Conference of the Parties to CITES was held on April 22–May 3, 1985, in Buenos Aires, Argentina. At the meeting, the Parties considered 93 proposals to amend the appendices. These were listed in the **Federal Register** on December 14, 1984, for U.S. proposals (49 FR 48775), and on April 12, 1985, for proposals by other Parties (50 FR 14402). Results of voting by the Conference of the Parties are given in the following table.

Species	Proposed amendment	Proponent	Final decision of parties
Mammals:			
Order Primates			
Alouatta palliata (mantled howler monkey)	Remove from I	Costa Rica	Withdrawn
Pygathrix spp. (snubnosed monkeys)	Transfer from II to I	China	Approved
Loris tardigradus (slender loris)	do	India	Withdrawn
Presbytis entellus (gray or Hanuman langur)	Transfer from I to II	do	Do
Presbytis phayrei (dusky langur)	Transfer from I to II	do	Do.
Order Cetacea:			
Monodon monoceros (narwhal)	do	Federal Republic of Germany	Rejected.
Order Carnivora:			
Felis bengalensis bengalensis (leopard cat)	Transfer Chinese population from I to II	China	Approved.
Selenarctos thibetanus (Asiatic black bear)	Transfer from I to II	do	Withdrawn
Cystophora cristata (hooded seal)	Add to II	Sweden	Rejected.
Vulpes (Fennecus) zerda (fennec fox)	do	Tunisia	Approved.
Mirounga angustirostris (northern elephant seal)	Remove from II	U.S.A.	Withdrawn
Order Perissodactyla.			
Equus hemionus kiang (kiang, wild ass)	Transfer from II to I	India	Do
Order Artiodactyla			
Camelus bactrianus (Bactrian camel)	Add to I	China	Do.
Cervus albirostris (white-lipped deer)	do	do	[redacted]
Muntiacus crinifrons (black muntjac)	do	do	Approved.
Budorcas taxicolor (takin)	do	do	Approved as App. II
Birds:			
Order Ciconiiformes:			
Jabiru mycteria (jabira)	do	Costa Rica	Approved.
Order Flaconiformes:			
Falco jugger (laggar falcon)	Transfer from II to I	India	Do.
Falco rusticolus (gyrfalcon)	Transfer North American population from II to I	Denmark and Norway	Do.
Order Gruiformes:			
Gruidae spp. (cranes)	Add all species not yet listed to II	United Kingdom	Do.
Order Psittaciformes:			
Ara ambigua (great green macaw)	Transfer from II to I	Costa Rica	[redacted]
Ara macao (scarlet macaw)	do	do	Do
Reptiles:			
Order Crocodylia.			
Crocodylus niloticus (Nile crocodile)	Transfer from I to II	Malawi	Approved*.
Crocodylus niloticus (Nile crocodile)	Transfer Mozambique population from I to II	Mozambique	Not considered
Crocodylus porosus (saltwater crocodile)	Transfer Australian population subject to ranching from I to II.	Australia	Approved.
Crocodylus porosus (saltwater crocodile)	Transfer Indonesian population subject to ranching from I to II.	Indonesia	Approved**
Order Testudinata:			
Chelonia mydas (green sea turtle)	Transfer Indonesian population from I to II	do	Rejected
Chelonia mydas (green sea turtle)	Transfer Sunname population subject to ranching from I to II.	Suriname	Do
Chelonia mydas (green sea turtle)	Transfer Europa and Tromelin Islands populations subject to ranching from I to II.	France	Do
Chelonia mydas (green sea turtle)	Transfer captive population subject to ranching in Cayman Islands from I to II	United Kingdon	Do
Eretmochelys imbricata (hawksbill sea turtle)	Transfer Indonesia population from I to II	Indonesia	[redacted]
Eretmochelys imbricata (hawksbill sea turtle)	Transfer Seychelles population from I to II	Seychelles	[redacted]
Kachuga tecta tecta (Indian sawback turtle)	Transfer from I to II	Bangladesh and India	Do.
Lissemys punctata punctata (Indian flap-shell tortoise)	do	Bangladesh	Do
Trionyx gangeticus (Indian softshell turtle)	do	India	Withdrawn
Trionyx hurum (peacock softshell turtle)	do	do	[redacted]
Order Squamata			
Hoplocephalus bungaroides (broad headed snake)	Add to II	Australia	Approved.
Varanus bengalensis (Bengal monitor)	Transfer from I to II	Bangladesh	Not considered
Varanus flavescens (yellow monitor)	do	do	[redacted]
Amphibians:			
Order Anura.			
Bufo periglenes (Monteverde toad)	Transfer from I to III	Costa Rica	Approved
Rana hexadactyla (Asian bullfrog)	Add to II	Federal Republic of Germany	[redacted]
Rana tigrina (Indian bullfrog)	do	do	Do

Species	Proposed amendment	Proponent	Final decision of parties
Rheobatrachus spp. (platypus frog)	do	Australia	Do.
Molluscs			
Order Veneroida			
Hippopus hippopus (horse's hoof clam)	do	do	Do.
Hippopus porcellanus (china clam)	do	do	Do.
Tridacna crocea (crocus clam)	do	do	Do.
Tridacna maxima (small giant clam)	do	do	Do.
Tridacna squamosa (scaly clam)	do	do	Do.
Arachnids			
Brachypelma smithi (redkneed tarantula)	do	U.S.A.	Do.
Corals			
Acropora spp. (staghorn corals)	do	Australia	Do.
Euphyllia spp. (trumpet corals)	do	do	Do.
Favia spp. (brain corals)	do	do	Do.
Fungia spp. (mushroom corals)	do	do	Do.
Halomitra spp. (bowl corals)	do	do	Do.
Heliopora spp. (blue corals)	do	do	Do.
Lobophyllia spp. (brain corals)	do	do	Do.
Merulina spp. (merulinas)	do	do	Do.
Millepora spp. (fire corals)	do	do	Do.
Pavona spp. (cactus corals)	do	do	Do.
Pectinia spp. (lettuce corals)	do	do	Do.
Platygyra spp. (brain corals)	do	do	Do.
Pocillopora spp. (brush corals)	do	do	Do.
Polyphyllia spp. (feather corals)	do	do	Do.
Senatopora spp. (bird nest corals)	do	do	Do.
Stylophora spp. (cauliflower corals)	do	do	Do.
Tubipora spp. (organ-pipe coral)	do	do	Do.
Plants			
Family Caryophyllaceae			
Gymnocarpos przewalskii	Delete from I	Switzerland	Do.
Melandrium mongolicus	do	do	Do.
Silene mongolica	do	do	Do.
Stellaria pulvinata	do	do	Do.
Family Compositae			
Saussurea lappa (costus, kuth roots)	Transfer from II to I	India	Do.
Family Cupressaceae			
Fitzroya cupressoides (fitzroya, alerce)	Transfer population of Andes in Chile from I to II	Chile	Withdrawn.
Family Cycadaceae			
Cycas panzhihuaensis	Transfer from II to I	China	Do.
Family Haemodoraceae			
Anigozanthos spp. (kangaroo paws)	Delete from II	Australia	Approved.
Macropidia fuliginosa (black kangaroo paw)	do	do	Do.
Family Leguminosae			
Ammopiptanthus mongolicum	Delete from I	Switzerland	Do.
Thermopsis mongolica	Delete from II	do	Do.
Family Orchidaceae			
Cattleya aclandiae	Transfer from II to I	Brazil	Withdrawn.
Cattleya amethystoglossa	do	do	Do.
Cattleya dormaniana	do	do	Do.
Cattleya granulosa	do	do	Do.
Cattleya schilleriana	do	do	Do.
Cattleya schofieldiana	do	do	Do.
Cattleya velutina	do	do	Do.
Laelia tenebrosa	do	do	Do.
Family Pinaceae			
Cathaya argyrophylla	Add to I	China	Do.
Family Proteaceae			
Banksia spp. (banksias)	Delete from II	Australia	Approved
Conospermum spp. (smoke bushes)	do	do	Do.
Dryandra formosa (showy dryandra)	do	do	Do.
Dryandra polycephala	do	do	Do.
Xylomelum spp. (woody pears)	do	do	Do.
Family Rutaceae			
Crowea spp. (croweas)	do	do	Do.
Geleznowia verrucosa	do	do	Do.
Family Theacea			
Camellia chrysantha	Add to I	China	Approved as App. II.
Family Thymelaeaceae			
Pimelea physodes (qualup bell)	Delete from II	Australia	Approved.
Family Verbenaceae			
Caryopteris mongolica	do	Switzerland	Do.
Family Zamiaceae			
Ceratozamia spp.	Transfer from II to I	U.S.A.	Do.
Flora spp. listed in II	Inclusion of parts and derivatives***	do	Do.

Crocodylus niloticus populations only in the following countries are transferred to II, subject to annual export quotas for 1985, 1986, and 1987: Cameroon (20); Congo (1,000); Kenya (150); Madagascar (1,000); Malawi (500); Mozambique (1,000); Sudan (5,000); Tanzania (1,000); and Zambia (2,000)

**_Crocodylus porosus_ population of Indonesia is transferred to II, subject to an annual export quota for 1985, 1986, and 1987 of 2,000 animals.

***All parts and derivatives of Flora spp. listed in II are subject to CITES except for: (1) Seeds, spores and pollen (including pollinia) other than seeds of Cycadaceae spp., Stangeriaceae spp. and Zamiaceae spp.; (2) tissue cultures and flasked seedling cultures; (3) for particular plant species: (a) Cut flowers of artificially propagated Orchidaceae spp.; (b) separate leaves and parts and derivatives thereof of naturalized or artificially propagated *Aloe vera*; (c) fruits and parts and derivatives thereof of artificially propagated *Vanilla* spp.; (d) parts and derivatives, other than roots and readily recognizable parts thereof, of *Panax quinquefolius*, and (e) fruits and parts and derivatives thereof of naturalized or artificially propagated Cactaceae spp., and separate stem joints (pads) and parts and derivatives thereof of naturalized or artificially propagaged *Opuntia* (subgenus *Opuntia*) spp.

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (i.e., on August 1, 1985).

Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species. In the case of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the Parties voted to place the species in Appendix I or II. The Service requests comments on whether it should recommend that the United States enter a reservation on any of the recent

amendments. At present, the Service proposes not to recommend any reservations. It would do so only if evidence is presented to show that implementation of the amendment would be contrary to the interests or law of the United States.

Note.—The Department has determined that amendments resulting from proposals made by the United States are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347) and therefore, the preparation of an Environmental Impact Statement is not required. The Department also has determined that this is not a major rule under Executive Order 12291 and that it does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule would simply implement changes in the list of species in the CITES appendices that already have been approved by the Conference of the Parties, and that the United States is bound to accept unless it enters any reservations. Even if the United States were to enter reservations, non-reserving Parties would require U.S. documents equivalent to CITES permits for exports from this country, and under the Lacey Act (16 U.S.C. 3372), the United States would require CITES permits or their equivalent for imports from other countries.

This notice was prepared by DR. Richard L. Jachowski, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.)*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Regulations Promulgation

The Service proposes to amend the list of species contained in § 23.23 of Title 50 of the Code of Federal Regulations by incorporation all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the supporting statement of the present notice.

Dated: May 30, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–14343 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 115
Friday, June 14, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Notice of Meeting

June 10, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on July 12, 1985, at the Mayflower Hotel, Washington, D.C.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss "The Impact of a Strong Dollar on Agricultural Trade" should contact the Commission staff at (202) 488–1961.

Future meetings are scheduled as follows:

August 12—Denver, Colorado.
September 13—Fresno, California.

Kenneth L. Bader,
Chairman.

[FR Doc. 85–14375 Filed 6–13–85; 8:45 am]
BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of the Performance Review Board

AGENCY: U.S. Department of Agriculture.
ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 49 FR No. 118, pg. 24910.

EFFECTIVE DATE: June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250 (202/447–6905).

The membership of the U.S. Department of Agriculture's Performance Review Board is amended by adding the names of John R. Norton, Lawrence Bembry, and Samuel J. Cornelius.

Dated: June 11, 1985.

John R. Block,
Secretary.

[FR Doc. 85–14369 Filed 6–13–85; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Uinta National Forest Grazing Advisory Board; Meeting

The Uinta National Forest Grazing Advisory Board will meet at 9:30 a.m. on Thursday, July 18, 1985, at the Hobble Creek Cattle Association's corral in Hobble Creek Canyon at the mouth of Dry Canyon.

The purpose of this meeting is to have a field review of the current allotment management plans and discuss planning and utilization of the Range Betterment Fund.

The meeting will be open to the public. Those who participate will need to supply their own horse. Persons who wish to attend should notify Ward F. Savage, Uinta National Forest Supervisor's Office, P.O. Box 1428, Provo, UT 84601, telephone (801) 377–5780. Written statements may be filed with the Board before and after the meeting.

Dated: June 7, 1985.

Don T. Nebeker,
Forest Supervisor.

[FR Doc. 85–14345 Filed 6–13–85; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Marketing Data Form
Form Number: Agency—ITA–466P; OMB—0625–0047
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 50 respondents; 125 reporting hours
Needs and Uses: Allows participants in U.S. exhibitions overseas to indicate their marketing interests and needs to exhibition embassy staff. The information is used to produce exhibit brochures and directories, and to arrange meetings on behalf of the participant with prospective buyers, agents or government officials.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox 395–3785.

Agency: International Trade Administration
Title: Automated Information Transfer System (AITS) Company Registration Record
Form Number: Agency—ITA–720P; OMB—0625–0072
Type of Request: Revision of a currently approved collection
Burden: 1,425 respondents; 238 reporting hours
Needs and Uses: This form is used to collect and enter information into the AITS database of U.S. firms (manufacturers, exporters, export organizations, et. al.) which are actual or potential suppliers of goods and services. Foreign firms will be able to query this data through U.S. Commercial Service Posts abroad to ascertain the names, descriptions and bona fides of U.S. firms with whom they may want to do business.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–3785.

Agency: International Trade Administration
Title: Application for Foreign Excess Property (FEP) Import Determination
Form Number: Agency—ITA–302P; OMB—0625–0026
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 50 respondents; 125 reporting hours

Needs and Uses: The Federal Property and Administrative Services Act of 1949 prohibits the importation of foreign excess property unless the Secretary of Commerce determines that its import would relieve domestic sthortages or otherwise benefit the economy. The application form provides the information needed to make this statutory determination.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785.

Agency: International Trade Administration
Title: New Product Information Service/ International Market Search
Form Number: Agency—ITA–4963P, ITA—4091P; OMB—0625–0061
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 2,100 respondents; 700 reporting hours
Needs and Uses: Information provided through this collection is used to promote in overseas markets U.S. products available for export. Firms wishing to promote their products supply information on their products through this application form.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Office, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 7, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–14399 Filed 6–13–85; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishment of Multiestablishment Companies; Determination for Surveys

In conformity with Title 13, United States Code, sections 182, 224, and 225 and due notice or consideration having been published on April 1, 1985 (50 Fr 12843), I have determined that a 1985 Company Organization Survey is needed to update the multiestablishment companies in the Standard Statistical Established List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic locations, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

Report forms will be furnished to firms included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: June 10, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–14344 Filed 6–13–85; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–351–010]

Carbon Steel Wire Rod From Brazil; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination, to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on carbon steel wire rod from Brazil. The review covers the period from October 1, 1984. The petitioners to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. The revocation will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 52110–11) an antidumping duty order on carbon steel wire rod from Brazil.

In a letter dated May 9, 1985 (*see* Appendix A), Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel-Texas, Inc., Raritan River Steel Company, and Atlantic Steel Company, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod currently classifiable under item 607.17 of the Tariff Schedules of the United States. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on carbon steel wire rod from Brazil provides a reasonable basis for revocation of the

order. In light of the October 1, 1984 effective date for revocation requested by the petitioners, there is good cause (as requried by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on carbon steel wire rod from Brazil effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of carbon steel wire rod from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Scretary for Import Administration.

Appendix A

May 9, 1985.

Mr. Alan F. Holmer,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 3850, Washington, DC

Re: Outstanding Countervailing Duty and Antidumping Orders Concerning Wire Rod from Brazil

Dear Mr. Holmer: Paragraph 2(a)(1) of the Arrangement Concerning Trade in Certain Steel Products Between Brazil and the United States (the "Arrangement") which was confirmed as of February 26, 1985, requires the withdrawal of the countervailing duty and antidumping petitions described in paragraph 1 of Appendix A to the Arrangement including the countervailing duty petition filed on February 8, 1982, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company (or their predecessors) concerning carbon steel wire rod. Paragraph 2(a)(2) requires the United States to initiate the legal process to terminate those antidumping and countervailing duty orders described in paragraph 2 of Appendix A to the Arrangement including that resulting from the antidumping petition filed on September 30, 1982, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company concerning carbon steel wire rod.

On behalf of the companies that filed those petitions (hereinafter the "Petitioners"), you are hereby notified that, based on the Arrangement undertaking of Brazil to limit its annual exports of wire rod to the United States to 1.05 percent of U.S. apparent domestic comsumption for the duration of the Arrangement, and in reliance on the other understandings expressed herein, the Petitioners (i) withdraw the countervailing duty petition described in paragraph 1 of Appendix A and (ii) will not object to the initiation of legal process to terminate the antidumping order resulting from the petition described in paragraph 2 of Appendix A. The withdrawal and expression of no objection to the initiation of legal process are subject to assurance that the Brazilian Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning wire rod. Petitioners also understand that the United States does not plan to agree to any modifications of the Arrangement that would affect the Brazilian obligations concerning wire rod during the Arrangement term.

Petitioners do not intend to file petitions [as specified in paragraph 2(a)(3) of the Arrangement] seeking import relief with respect to wire rod from Brazil during the period of the Brazilian Arrangement provided that Arrangement proves to be an effective alternative to the results of unfair trade cases as defined by the remedial provisions (offsetting unfair trade practices) of the petition and order that will be terminated. To that end, Petitioners expressly do not waive any statutory rights to file such petitions as they may determine nor do they waive their right to take such other steps as may be provided by law.

It is Petitioners' understanding that the Arrangement with Brazil is a "bilateral arrangement" within the meaning of Section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to Section 805(a) of said Act. Pursuant to those provisions and the requirements and terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of wire rod from Brazil that (i) is not accompanied by an export certificate and (ii) is not issued consistent with the quantitative limitations specifically applicable to Brazil as defined by the Arrangement.

We request that this letter be published together with the **Federal Register** notices of (i) the withdrawal of the petition referenced in paragraph 2(a)(1) and (ii) the inititation of the process required by paragraph 2(a)(2) of the Arrangement. Petitioners will assume that the understandings contained herein are valid and, unless informed otherwise, will undertake to furnish the Department with such documentation as necessary to implement their expression of no objection to the initiation of the legal process and its conclusion.

Respectfully submitted,

Charles Owen Verrill, Jr., Esq.,

Robert E. Nielsen, Esq.,

Wiley & Rein, 1776 K Street, NW. Washington, D.C. 20006, (202) 429–7000.

Counsel for Petitioners: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc. Raritan River Steel Co.

David E. Birenbaum, Esq.,

Alan G. Kashdan, Esq.,

Fried, Frank, Harris, Shriver & Jacobson (A Partnership Including Professional Corporations), 600 New Hampshire Ave., NW., Washington, D.C. 20037, (202) 342–3500.

Counsel for Petitioner: Atlantic Steel Co.

[FR Doc. 85–14336 Filed 6–13–85; 8:45 am]

BILLING CODE 3310–DS–M

[Case No. 642]

Etang Chen, Individually and Doing Business as Eaton and Kings Corp., a/k/a ENK; Consent Order

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce, initiated an administrative proceeding pursuant to section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (1982)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1984)) (the Regulations) [1], against Etang Chen, individually and doing business as Eaton and Kings Corporation, also known as ENK, 167 Oak Street, Westwood, Massachusetts 02090, (hereafter collectively referred to as Chen), by issuing a Charging Letter alleging that Chen violated §§ 387.2,

[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

387.4, 387.5, 387.6 and 387.10 of the Regulations.

The Department and Chen have entered into a Consent Agreement whereby each party has agreed that the allegations of the Charging Letter and the transactions which Chen has disclosed to the Department concerning his involvement with Jenkins International will be settled: (1) By Chen's paying the Department a civil penalty in the amount of $30,000; and (2) by a denial to Chen of all export privileges for a period ending ten years from the date of this Order.

The Hearing Commissioner approves the Consent Agreement. It is therefore ordered.

First. Chen is assessed a civil penalty, purusant to section 11(c)(1) of the Act, in the amount of $30,000. Payment of $6,000 of the civil penalty will be made to the Department within 20 days of the service of this Order on Chen, in the manner specified in the attached instructions. Payment of the remaining $24,000 will be made in four equal installments of $6,000 each, which shall be due on or before March 1, 1986, March 1, 1987, March 1, 1988 and March 1, 1989, respectively.

Second. Chen, for a period ending ten years from the date of this Order, is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations. The last five years of the denial period set forth above is suspended in accordance with § 388.16(c) of the Regulations, and will be waived at the end of that period provided that Chen has committed no further violation of the Act, the Regulations or this Order.

B. Such denial of export privileges shall extend not only to Chen but also to his agent, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which Chen is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

C. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set out herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Chen or anyone who is now or may be subsequently named as a related party, or whereby Chen or any related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Chen or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

Third. The Charging Letter, the Consent Agreement and this Order shall be made available for public inspection, and this Order shall be published in the Federal Register.

Fourth. By Order of March 11, 1983 (48 FR 11479, March 18, 1983) (the TDO), Chen was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The TDO was to remain in effect until the final disposition of any administrative or judicial proceeding initiated against Chen. This Order concludes the administrative proceeding initiated by the Department against Chen as a result of its investigation relating to the matters which gave rise to the TDO. Accordingly, the TDO of March 11, 1983 is amended by deleting from the respondents named therein: Dr. Etang Chen, individually and doing business as Eaton and Kings Corporation, aka ENK Corporation, 167 Oak Street, Westwood, Massachusetts 02090.

This Order is effective immediately.

Dated: June 7, 1985, 10:15 pm e.d.t.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-14337 Filed 6-13-85; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. 667]

Order Temporarily Denying Export Privileges; Hans Wirth and Bruno Barbarits

In the matter of: Hans Wirth, individually and doing business as Cosmotrans AG, a/k/a Cosmotrans Ltd., Fracht West Building, Office 274, CH 8058, Zurich, Switzerland, and Bruno Barbarits, individually and doing business as Cosmotrans AG, Fracht West Building, Office 274, CH 8058, Zurich, Switzerland.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1985)) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Hans Wirth (Wirth), individually and doing business as Cosmotrans AG, also known as Cosmotrans Ltd. (Cosmotrans), and Bruno Barbarits (Barbarits), individually and doing business as Cosmotrans AG, collectively referred to as "respondents."

The Department states: (1) That, in order to carry out certain transactions, the respondents acted in concert with Robert J. Lambert, Dierk Hagemann and Albert Franz Kessler [1] to divert to Eastern bloc countries certain U.S.-origin electronic testing equipment that was originally approved by the Department's Office of Export Administration (OEA) for export to specified consignees in the free world, in

[1] On September 7, 1982, Lambert, Hagemann and Kessler were convicted in federal district court on counts which included conspiracy to export U.S.-origin equipment from the United States to Switzerland without the required validated export licenses. The individuals were fined and received and served prison sentences.

violation of the regulations, as described in greater detail in paragraphs (2), (3) and (4) below: (2) that Wirth and Barbarits, each individually and doing business as Cosmotrans AG, received in customs bonded warehouses operated in Switzerland by Cosmotrans U.S. origin goods shipped by Lambert (via Hagemann's freight forwarding company) allegedly enroute to various consignees in the free world for which individual validated licenses had been approved; (3) that Wirth and Barbarits, each individually and doing business as Cosmotrans AG, on numerous occasions prepared or caused to be prepared new shipping documents for U.S.-origin goods, including but not limited to, air waybills and invoices, showing new consignees, destinations and descriptions for the U.S.-origin goods exported by Lambert; and (4) that Wirth and Barbarits, each individually and doing business as Cosmotrans, on numerous occasions diverted or caused this equipment to be diverted to the German Democratic Republic (GDR), Bulgaria and the Union of Soviet Socialist Republics (U.S.S.R.), without authorization of the Office of Export Administration and contrary to the terms of the export licenses, thereby knowingly acting in violation of the Regulations.

The Department further states that respondents herein may in the future engage in similar conduct contrary to the Regulations, unless appropriate action is taken to preclude such attempts.

Based upon the showing made by the Department, I find that an order temporarily denying all export privileges to Hans Wirth and Bruno Barbarits, each individually and doing business as Cosmotrans AG, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)), and the Regulations.[2]

Anyone who is now or may in the future be dealing with the respondents and anyone who is now or may be subsequently named as a related party in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby Ordered:

I. All outstanding validated export licenses in which any respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Business organizations now known to be owned by the named respondents, and which are accordingly subject to the provisions of this Order, are:

Cosmotrans USA Inc., P.O. Box 30978, JFK International Airport, Jamaica, New York 11430

I–COWATEC LTD., Flughofstrasse 47, 8152 Glattbrugg, Switzerland

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, any respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room H6716, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This Order is effective immediately. It remains in effect until the final disposition of any administrative proceeding that might be initiated against the respondents based on the Department's allegations recited at the outset of this Order. A copy of this Order and Parts 387 and 388 of the Regulations shall be served upon each respondent and each related party.

Dated: June 7, 1985, 5:20 pm EDT.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–14338 Filed 6–13–85; 8:45 am]

BILLING CODE 3510–DT–M

[2] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by E.O. 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than July 5, 1985 to: Office of Export Trade Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificates of Review, application number 85–00010."

Applicant: Georgetown Export Trading, Incorporated (GETI), P.O. Box 2184, c/o National Center for Export-Import Studies, Washington, D.C. 20057, Telephone: (202) 625–6627

Application #: 85–00010

Date Deemed Submitted: May 31, 1985

Member: None

Summary of the Application

A. Export Trade

Products: All products including electronic microwave tubes, power transistors, indicator panels and light sensing electronic tubes, electronic components, and educational and training materials.

Export Services

Export management services and other export trade facilitation services including the provision of market research and information regarding the mechanics of exporting (such as arranging warehousing, shipping, transportation, export licensing, financing, advertising and distribution). GETI will also provide feasibility studies regarding the establishment of export trading companies ("ETC") between U.S. competitors.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

GETI may provide general export management services and other export trade facilitation services to domestic clients. GETI will also advise clients who may be U.S. competitors on whether an ETC is feasible based on information collected from such clients and, upon request, will organize and manage the ETC.

GETI seeks certification to enter into exclusive arrangements with clients, other trade intermediaries, distributors and foreign customers. In these agreements, GETI may act as broker, sales representative, or licensee or licensing agent for products and services in Export Trade. The Applicant may enter into exclusive agreements appointing distributors or sales agents in any Export Market or licensing products or services of U.S.-manufacturers to foreign concerns. GETI may enter into bidding arrangements with clients on orders received and enter with agreements with clients whereby GETI will submit a response to the bid invitation or request for quotation. GETI may enter into and terminate exclusive agreements with individual buyers in any Export Market to act as a purchasing agent with respect to particular transactions. Any agreement described above may contain territorial, customer, price and/or quantity restrictions for the Export Markets and may permit end-users to purchase all or part of their requirements of products and services from or through GETI.

Dated: June 10, 1985.

Douglas A. Riggs,

General Counsel.

[FR Doc. 85–14323 Filed 6–13–85; 8:45 am]

BILLING CODE 3510–DR–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Drexel University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 84–47. Applicant: Drexel University, Philadelphia, PA 19104. Instrument: Scanning Electron Microscope, Model JSM–35CF. Date of denial without prejudice to resubmission: March 12, 1985.

Docket No.: 84–182. Applicant: Cornell University, Geneva, NY 14456. Instrument: Kjel-Foss Automatic Protein-nitrogen Analyzer with Accessories. Date of denial without prejudice to resubmission: March 12, 1985.

Docket No.: 85–89. Applicant: Virginia Polytechnic Institute & State University, Blacksburg, VA 24061. Instrument: Excimer Laser, Model TE–861T–4 with Accessories. Date of denial without prejudice to resubmission: March 15, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–14339 Filed 6–13–85; 8:45 am]

BILLING CODE 3510–DS–M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; Specialty Plastics Corp. et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Specialty Plastics Corporation, 251 Roosevelt Drive, Derby, Connecticut 06418, producer of plastic parts for appliances, lighting fixtures and other electrical articles (May 1, 1985); (2) Canadian Chains, Inc., P.O. Box 428, Skowhegan, Maine 04976, producer of tire chains (May 2, 1985); (3) Olson Industries, Inc., 4550 Jackson Street, Denver, Colorado 80301, producer of camping equipment, slingshots, crossbows, fishing tackle and other sporting goods, (May 2, 1985); (4) Three Star Handbag Corporation, 16 West 32nd Street, New York, New York, producer of handbags and purses (May 3, 1985); (5) Texstyle Creators, Ltd., 30–30 Northern Boulevard, Long Island City, New York, producer of printed fabrics (May 3, 1985); (6) Photoreceptor Systems, Inc., P.O. Box 5, Canovanas, Puerto Rico 00629, producer of photocopy machine parts (May 7, 1985); (7) L.M. Rabinowitz & Company, 882 Third Avenue, Brooklyn, New York, 11232, producer of brassiere components (May 7, 1985); (8) The Scio Pottery Company, 38500 Crimm Road, Scio, Ohio 43988, producer of ceramicware (May 7, 1985); (9) National Clothespin Company, Inc., P.O. Box 427, Montpelier, Vermont 05602, producer of wood clothespins (May 7, 1985); (10) D. Seidmann's Sons, Inc., 4530 North 5th Street, Philadelphia, Pennsylvania 19140, producer of hats, legwarmers, scarves and other neckwear (May 7, 1985); (11) Reiner Garment Company, Inc., 500 South Clinton, Chicago, Illinois 60607, producer of women's dresses (May 9, 1985); (12) Acro Industries, Inc., 554 Colfax Street, Rochester, New York 14606, producer of components for copying machines and other equipment (May 9, 1985); (13) Gilmore & Tatge Manufacturing Company, Inc., P.O. Box 525, Clay Center, Kansas 67432, producer of agricultural equipment (May 10, 1985); (14) Tennessee Chemical Company, Copperhill, Tennessee 37317, producer of copper and chemicals (May 14, 1985); (15) Avalon Manufacturing Company, 339 Broadway, Long Branch, New Jersey 07740, producer of women's dresses (May 15, 1985); (16) Top Form Mills, Inc., 16 East 34th Street, New York, New York 10016, producer of women's lingerie, sleepwear and robes (May 21, 1985); (17) Verne Q. Powell Flutes, Inc., 70 Bow Street, Arlington, Massachusetts 02174, producer of flutes and piccolos (May 22, 1985); (18) Jefferies Associates, Inc., P.O. Box 430, Albemarle, North Carolina 28001, producer of fabric (May 22, 1985); (19) Philadelphia Tramrail Company, 2207 Ontario Street, Philadelphia, Pennsylvania 19134, producer of overhead cranes, industrial balers, compactors and flatrails (May 22, 1985); (20) Waverly Textile Processing, Inc., 40 East 34th Street, New York, New York 10016, producer of printed fabric (May 23, 1985); (21) Glenora Wine Cellars, Inc., Glenora-on-Seneca, Route 4, Dundee, New York 14837, producer of wine (May 28, 1985); (22) Wiesner Products, Inc., 350 Fifth Avenue, New York, New York 10118, producer of men's, women's and children's slippers (May 28, 1985); (23) Plating Processes, Inc., 59 Van Dam Street, Brooklyn, New York 11222, producer of electroplated giftwear, eyeglass parts and electronic parts (May 30, 1985); (24) Frank Noone Shoe Company, Inc., 437 Whittenton Street, Taunton, Massachusetts 02780, producer of golf shoes (June 3, 1985); (25) Suiza Dairy Corporation, GPO Box 3207, San Juan, Puerto Rico 00936, producer of milk and fruit juices (June 3, 1985); (26) Steinfeldt Thompson Company, Inc., 801 Griffin Road, Dania, Florida 33004, producer of tomato products (June 3, 1985); (27) Stephens Engineering Associates, Inc., 7030 220th Street S.W., Mountlake Terrace, Washington 98043, producer of radio communication equipment (June 4, 1985); (28) Paramount Products, Inc., 515 W. Mississippi, Denver, Colorado 80223, producer of household furniture and parts (June 4, 1985); (29) McIntosh Laboratory, Inc., 2 Chamber Street, Binghamton, New York 13903, producer of electronic audio equipment (June 4, 1985); (30) Mathers Controls, Inc., 902 N.W. Ballard Way, Seattle, Washington 98107, producer of marine propulsion systems and components (June 4, 1985); (31) Lamiglas, Inc., 1400 Atlantic Avenue, Woodland, Washington 98674, producer of fishing rods and blanks, arrow shafts and industrial tubing (June 5, 1985); (32) Precision Engine Specialists, Inc., 507 Mercer Street, Seattle, Washington 98109, producer of gasoline and diesel engines (June 5, 1985); (33) Raydot, Inc., 145 Jackson Avenue, Cokato, Minnesota 55321, producer of heat recovery and ventilation systems (June 5, 1985); (34) Tifton Textiles, Inc., P.O. Box 1187, Tifton, Georgia 31793–1187, producer of knitted fabric (June 5, 1985); and (35) Kelley-Perry, Inc., 7425 Ardmore, Houston, Texas 77025, producer of weighing and packaging machinery and parts (June 5, 1985).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, Room 4015A, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. In as far as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–14340 Filed 6–13–85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled two public workgroup meetings as follows:

June 17, 1985—The Council's committee on the Magnuson Fishery Conservation and Management Act reauthorization will meet at 10 a.m., in Anchorage, AK, at the Federal Building, Conference Room C121, 701 C Street, to review the current status of House and Senate reauthorization bills and to develop recommendations for the Council Chairmen's meeting in July.

June 18–19, 1985—A Council/industry workgroup on reducing salmon bycatch by trawlers in the Gulf of Alaska will begin its meeting at 10 a.m., on June 18 in Anchorage, AK, also at the Federal Building. For further information,

contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: June 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 85–14333 Filed 6–13–85; 8:45 am]

BILLING CODE 3510–22–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 84–1 83CD]

Clarification of Order Directing Partial Distribution of 1983 Cable Royalty Fees

In response to a motion filed jointly by all eight Phase I claimants in the 1983 cable distribution proceeding, the Copyright Royalty Tribunal (Tribunal) published an order in the **Federal Register** directing a 50% distribution of the 1983 cable royalty fees on June 27, 1985. *Order Directing Partial Distribution of 1983 Cable Royalty Fees (Order), 50 FR 23350 (June 3, 1985).* The 50% distribution was to have been based upon the final determination of Phase I of the 1982 cable distribution proceeding.

On June 5, 1985, the National association of Broadcasters (NAB) filed a request for correction of the *Order.* NAB argues that the Phase II percentage awards of the Phase I claimants is the only proper basis for the 50% distribution. Otherwise, NAB argues, there would be an overcompensation to Motion Picture Association of America (MPAA) of approximately $200,000, and a corresponding undercompensation to NAB of approximately $200,000. The Program Suppliers oppose NAB's request stating that it was in the Tribunal's discretion to order a partial distribution on whatever basis it considered reasonable so long as an amount sufficient to satisfy all claims remains in the 1983 cable royalty fund. The Program Suppliers also argue that using Phase I percentages is more equitable than Phase II percentages because of changes in the representation of various parties by MPAA and by NAB since 1982. Multimedia Entertainment, Inc. (Multimedia) a Phase II awardee, supports NAB's contention regarding basing the award on 1982 Phase II percentages, and believes it should be entitle to an immediate 50% distribution of its 1982 Phase II award.

Clarification

When the Tribunal ordered the 50% distribution, it listed the recipients, among others, as "Program Suppliers" and "Joint Sports Claimants." It was intended that all parties coming within those categories would get their portion of the 50% distribution after the checks were distributed to the designated agents. However, the Tribunal will now distribute separate checks to each of the Phase II parties within the Phase I categories unless otherwise authorized by the parties. We note that Spanish International Network (SIN), a Phase II recipient in the 1982 cable distribution proceeding, did not file a notice of intent to participate in this proceeding. SIN will be represented this year by MPAA in the Program Suppliers category, and it makes no claim to the award for Joint Sports. Therefore, in the percentages which follow, SIN's 1982 award for Program Suppliers has been added to MPAA and SIN's 1982 award for Joint Sports has been deleted. This year's Joint Sports claimants will receive the entire percentage of the 1982 Joint Sports Claimants category:

Program Suppliers	69.2982
(MPAA & SIN	68.1201)
(Multimedia	.6930)
(NAB	.4851)
Joint Sports Claimants	14.8496
Public Television claimants	5.1974
National Association of Broadcasters	4.4549
Music Claimants	4.2074
Devotional Claimants	1.0000
Canadian Claimants	0.7425
National Pubic Radio	0.2500
Total	100.0000

Dated: June 10, 1985.

Edward W. Ray,

Acting Chairman.

[FR Doc. 85–14377 Filed 6–13–85; 8:45 am]

BILLING CODE 1410–15–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Independent Product Verification of Defense Logistics Agency Managed Items

SUMMARY: Notice is hereby given that the Defense Logistics Agency (DLA) will be utilizing independent test laboratories for performing verification testing of DLA-managed items and Defense Contract Administration Services' administered contracts. Verification testing will be conducted on in-process and finished items on a spot check basis. Emphasis will be placed on items certified as meeting contract requirements but not manufactured by the supplier/vendor delivering material to the Government. The thrust of this policy is to maximize the use of testing services within the Government and Industry to assure product quality. Where the verification testing is to be performed in a nongovernment facility, test plans prepared by the Defense Supply Center responsible for a given commodity will be provided to the independent test laboratory under contract to perform the verification testing. Government laboratories and test facilities will be used to the maximum extent possible for performing the test function.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Smith, Quality Assurance Engineer, Defense Logistics Agency, Alexandria, VA 22304–6100 (202/274–6456).

R.F. Chiesa,

Executive Director, Contracting.

[FR Doc. 85–14357 Filed 6–13–85; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Gulf Oil Corp.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Gulf Oil Corporation (Gulf) shall be made final as proposed. The consent order resolves, with certain exceptions, matters relating to Gulf's compliance with the federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. Gulf will pay to the DOE $142 million, plus interest from the date of exeuction of the proposed consent order. Persons claiming to have been harmed by Gulf's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Gulf consent order final was made after a full review of written comments from the public and oral testimony received in a public hearing.

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4945.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On March 8, 1985, ERA issued a notice announcing a proposed consent order between DOE and Gulf which, with certain exceptions, would resolve matters relating to Gulf's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. (50 FR 9493, March 8, 1985). The proposed consent order, which requires Gulf to pay $142 million,[1] is for the settlement of Gulf's potential liability for $135 million in alleged overcharges plus attributable interest. The March 8 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on April 18, 1985.

II. Comments Received

ERA received seven written comments. One oral presentation was given at the April 18, 1985 hearing. All written and oral comments were considered in making the decision as to whether the proposed consent order should be made final.

The written and oral comments can be divided into two subject categories. One category consists of two comments that addressed the ultimate disposition or distribution of the Gulf settlement funds. The other category includes two comments directed at the adequacy of the settlement amount. Each of the two remaining comments address both subject categories.

Comments were received from the following groups or individuals that expressed views on the ultimate disposition of the funds to be paid by Gulf pursuant to the settlement:

Attorneys General for Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia
Attorney General of Texas
Southern California Edison

The comments submitted by these parties did not address the basis of the settlement or adequacy of the settlement amount, but only offered suggestions on the distribution of the settlement funds that were different from the consent order provisions requiring disbursement through the Office of Hearings and Appeals (OHA) administrative claim proceedings.

The two comments that addressed the basis and adequacy of the proposed settlement were submitted by:

Air Transport Association, Washington, D.C.
Controller, State of California

These commenters raised questions concerning the adequacy of the amount of funds to be paid by Gulf and the method by which Gulf's liability had been calculated by ERA.

The two comments that addressed both the distribution of the settlement funds and the adequacy of the settlement were submitted by:

Minnesota Department of Energy and Economic Development
Philadelphia Electric Company; National Freight, Inc.; RJG Cab, Inc.; Geraldine H. Sweeney

III. Analysis of Comments

The March 8 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed consent order should be finalized as proposed, modified or rejected. To ensure greater public understanding of the basis for the proposed settlement, the March 8 notice provided detailed information regarding Gulf's alleged overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This expanded settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

Some comments, relating to the ultimate distribution of the funds if the Gulf consent order is finalized, were not germane to the basis or adequacy of the settlement. The distribution of the settlement funds will be the subject of a separate administrative proceeding conducted by OHA, to be initiated after publication of this notice. This is consistent with ERA's general policy that the Subpart V procedures of 10 CFR Part 205 are best suited for cases such as Gulf where ERA could not readily identify the injured parties or their relative amounts of economic harm. Comments on the actual disbursement of money will not be addressed here, but will be referred to OHA for consideration in the Gulf consent order claims proceeding.

Among the concerns that ERA had in seeking public comment on the proposed settlement was the need to correct a possible misunderstanding over Gulf's real financial liability resolved by this proposed consent order. This misunderstanding centers on the difference between "overcharges" and "cost violations". As explained more fully in the March 8 notice, as well as this notice, Gulf's $430 million in alleged cost violations identified by ERA are *not* the equivalent of overcharges. These cost violations yielded overcharges of $11 million, excluding interest.[2] It is this overcharge amount, plus interest, that is the true maximum amount of Gulf's liability for the $430 million in alleged cost violations.

Several commenters questioned the settlement analysis and preliminary conclusion set forth in the March 8 notice. These comments were carefully reviewed and are discussed below.

The Air Transport Association, the State of California, the Minnesota Department of Energy and Economic Development, and Philadelphia Electric Company, National Freight, Inc., RJG Cab, Inc., and Geraldine H. Sweeney, in a joint comment, indicated that notwithstanding the substantial amount of information provided in the March 8 notice, they still lacked sufficient information upon which to base a judgment as to whether the settlement amount was adequate. Those comments expressed concern that Gulf's total maximum exposure as calculated by DOE and identified in the March 8 notice seemed small in light of the total alleged cost overstatements of over four hundred million dollars. However, even in response to specific questions at the public hearing, no commenter identified or provided any additional specific information that contradicted ERA's preliminary conclusions.

In the March 8 notice, ERA sought to provide the maximum amount of information possible. Statutory constraints on the release of proprietary data received from Gulf in the course of the audit, and the need to avoid hindering the prosecution of enforcement actions against other firms, placed some limitations on the disclosure of information concerning the

[1] The $142 million, plus interest accruing between the date the Consent Order was executed and the date of payment by Gulf of the Consent Order monies, will be disbursed to DOE within 30 days of publication of this Notice.

[2] As explained in the March 8, 1985 notice, Gulf may also be liable for approximately $96 million (plus interest) in alleged crude oil overcharges and $28 million (plus interest) or refunds related to ERA's allegations of unequal passthrough and erroneous May 15, 1973 transaction prices.

enforcement actions resolved by the proposed settlement. However, a further review of the scope of disclosure in the March 8 notice has resulted in ERA's continued belief that the March 8 notice provides sufficient information to assess its adequacy and the most information possible consistent with all of ERA's obligations and needs. This conclusion is reinforced by the inability of those who made comments on the point to identify any additional information that might be helpful.

As indicated in the March 8 notice, allegations that Gulf claimed excessive amounts of costs are to be distinguished from allegations that these excessive costs resulted in overcharges on a dollar-for-dollar basis in Gulf's sales of petroleum products. The former seek adjustments necessary to make the calculations of maximum lawful prices accurate. The latter allege the charging of a price in excess of that maximum lawful price. Since Gulf had substantial amounts of cost increases that it could have lawfully recovered but did not, even after substantial reductions of its claimed cost increases, the prices charged by Gulf for covered petroleum products during the period of controls would in many instances have been justified by the remaining available costs, even if such reduction had been made. This accounts for the sizable differences in the amount of alleged cost violations and the amount of overcharges resulting from those violations.

As explained in the March 8 notice, ERA determined what it believed to be Gulf's correct amounts of cost increases and then compared those costs, on a monthly basis, with the amount of increased costs Gulf actually recovered through price increases above the May 15, 1973 level. The result was the maximum amount of overcharges attributable to Gulf if the government eventually prevailed on all of the various issues regarding the correct amount of Gulf's cost increases.

The State of California questioned the appropriateness of considering Gulf's banks in calculating the overcharge liability resulting from the alleged violations, and it incorporated by reference the comments previously submitted by California and several other states on the Proposed Consent Order with Mobil Corporation. The comments correctly noted that there is a difference between the DOE's method of assessing Gulf's regulatory compliance and resulting potential overcharge liability as outlined in the March 8 notice and the analysis sometimes used in Subpart V proceedings by OHA for determining the extent to which overcharges were absorbed by the first purchaser, *i.e.*, the amount of harm incurred by a purchaser who may have paid an excessive price but who subsequently had an opportunity to "passthrough" some or all of that excess upon reselling the product. The comments seem to assume that these two analytical processes should be the same. The two approaches are not the same. In fact, the processes must be different because they serve different purposes.

Subpart V proceedings are designed to determine the amount of economic injury which potentially overcharged customers may have absorbed. In these proceedings, refiners making claims particularly have urged OHA to consider their "banks" of unrecouped costs as evidence conclusively demonstrating that they were injured by the full measure of overcharges they incurred. OHA has consistently maintained that the absence of banks simply shows that all cost increases by a firm (whether lawful or whether the result of overcharges) were passed on, and that the mere presence of banks means that only some cost increases (whether lawful or whether the result of overcharges) were not recovered as calculated under the regulatory scheme. In a number of cases OHA has found that lawful cost increases and alleged overcharges incurred by a purchaser were commingled and lost their identity. Accordingly, in the context of a proceeding conducted to make an equitable distribution of refunds, the mere fact that a refiner's banks exceeded the amount it was overcharged would not demonstrate the extent to which the refiner had been harmed.

OHA performs this analysis of banks and cost passthroughs in an effort to assure that first purchasers who are not end-users do not reap the benefits of consent orders at the expense of other persons who were economically injured further along in the distribution chain. In fact, if the mere existence of banks were proof that overcharges had been absorbed, each firm in the distribution chain that had such banks could each assert that they had absorbed the same overcharges.

In contrast, the liability phase of the enforcement process, whether through litigation or settlement, assesses potential overcharge liability in the context of the refiner pricing regulations which were in effect during the period of price controls. From an enforcement standpoint the principal question is the degree to which overcharges were committed by the seller, not the distribution of that harm throughout the purchasing distribution chain, as is the case in Subpart V proceedings.

Finally, one commenter expressed the view that Gulf be required to withdraw from *In Re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kansas), and *Diamond Shamrock Refining & Marketing Co.* v. *Standard Oil Co.* v. *Department of Energy*, C.A. No. C2–84–1432 (S.D. Ohio), or to reduce its crude oil costs to take into account any money it may receive from those cases. Pursuant to paragraphs 501(a) and 501(e) of the Consent Order, these cases, involving stripper well overcharges, are excluded from the scope of the Consent Order. In fashioning a consent order to resolve a company's compliance with the federal petroleum price and allocation regulations, DOE assesses a company's liability based upon DOE's audit findings and enforcement allegations. The settlement includes no consideration for potential recoveries or payments by Gulf in any pending proceeding excluded from the consent order, nor does it include consideration for additional payments Gulf may have to make in an action not brought by DOE. Any attempt to assess such exposure or recovery with respect to Gulf is far too speculative.

The review and analysis of all the written and oral comments did not provide any information that would support the modification or rejection of the proposed consent order with Gulf. However, ERA did raise additional points with Gulf which were not addressed by any of the commenters, and as a result of further negotiations with Gulf the proposed Consent Order has been modified in three respects. One modification increases Gulf's recordkeeping obligations, a second excludes from the settlement certain types of crude oil transactions which had been included previously, and the third makes a minor change to the period during which interim interest is calculated in the event DOE finalizes the Consent Order more than 135 days after it was executed.[3] The text of the

[3] First, Gulf agreed to modify paragraph 601, *Reporting, Recordkeeping Requirements and Confidentiality*. The revised paragraph 601 provides that Gulf retain records containing sales volumes and customer identification data until DOE's Office of Hearings and Appeals has issued a final order resolving all claims by direct purchasers from Gulf and, if requested, that Gulf make that information available to assist DOE in distributing the settlement monies. Accordingly, the Consent Order provisions are consistent with the requirements of the recordkeeping rule, 10 CFR 210.1, which was

Continued

modified paragraphs 501, 601, and 902 are appended to this Notice.

ERA concludes that the consent order, as modified, is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between Gulf and DOE executed on January 30, 1985, and modified on June 6, 1985, is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, D.C., on June 11, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Modification to Consent Order

1. Paragraph 501 of the Consent Order is hereby modified in part to read as follows:

(f) Gulf's obligation to respond to a subpoena issued at the request of DOE for documents of Cities Service Corporation in the possession of Gulf, said issue being now before the courts in *United States of America v. Gulf Oil Corporation*, No. CA H-84-553 (S.D.Tex), appeal pending, Dkt. No. 5-108 (TECA);

(g) The remaining issues or claims pending or arising out of the subject matter now before the courts in *Stertz, et al. v. Gulf Oil Corporation v. Department of Energy*, No. 78C1813 (E.D.N.Y.) and related appeals; and

(h) The issue of the lawfulness under DOE regulations of reciprocal crude oil transactions in which Gulf sold to, purchased from or exchanged controlled crude oil with another party or agent thereof pursuant to an agreement or understanding that such other party or agent thereof would sell to, purchase from, or exchange with Gulf certain volumes of uncontrolled crude oil, the purpose or effect of which was to increase the amount of consideration received by Gulf in the controlled crude oil transaction or to evade Gulf's obligations under DOE's crude oil cost equalization program.

2. Paragraph 601 of the Consent Order is hereby modified to read as follows:

VI. Reporting and Recordkeeping Requirements and Confidentiality

601. Upon completion of payment of the amount set forth in paragraph 402, Gulf shall be relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters resolved by this Consent Order, except as otherwise provided in this paragraph. Gulf shall maintain records sufficient to demonstrate compliance with the terms of this Consent Order. Gulf shall also maintain records that show sales volume data and customers' names and addresses for Gulf's arms-length sales of crude oil and refined petroleum products during the period covered by this Consent Order. Such records shall not include any records included in Gulf's sale of assets to unrelated entities prior to February 1, 1985. The retained records shall be maintained by Gulf until OHA has issued a final order resolving all claims by direct purchasers from Gulf in the proceeding under 10 CFR Part 205, Subpart V, to be requested pursuant to paragraph 403. Gulf shall provide such available information to OHA, if requested, to assist in the processing of such claims. Gulf will not be subject to any report orders, subpoenas, or other administrative discovery by DOE relating to Gulf's compliance with the federal petroleum price and allocation regulations relating to the matter resolved by this Consent Order for the period covered by this Consent Order; provided, however, that Gulf will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

3. Paragraph 902 of the Consent Order is hereby modified to read as follows:

902. Until the effective date, DOE reserves the right to withdraw consent to the Consent Order by written notice to Gulf, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Gulf, Gulf reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to DOE in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before June 15, 1985, interest pursuant to paragraph 404 shall not be deemed to be earned after May 30, 1985.

Dated: June 6, 1985.

I, the undersigned, a duly authorized representative of Gulf, hereby agree to and accept on behalf of Gulf the foregoing modifications to paragraphs 501, 601 and 902 of the Consent Order.

Alson R. Kemp, Jr.,

Gulf Oil Corporation.

Dated: June 6, 1985.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing modifications to paragraphs 501, 601 and 902 of the Consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy

[FR Doc. 85-14496 Filed 6-13-85; 8:45 am]

BILLING CODE 6450-01-M

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amended after the consent order terms were negotiated (50 FR 4957, Feb. 5, 1985). Gulf has also agreed to modify paragraph 501 *Issues Resolved* to exclude from this settlement reciprocal crude oil transactions in which Gulf sold to, purchased from or exchanged controlled crude oil with another party and received in return uncontrolled crude oil, if the purpose or effect of such transactions was to increase the amount of consideration received by Gulf or to evade Gulf's obligations under DOE's crude oil cost equalization program. As a result of the additional time necessitated by negotiating this exclusion, the DOE agreed to a modification of paragraph 902, *Effective Date*. This modification provides that if the consent order is not finalized by June 15, 1985, interest on the settlement funds shall not be deemed to be earned after May 30, 1985, which was the expiration date of the 120-day period during which Gulf had agreed it could not withdraw from the proposed agreement.

Federal Energy Regulatory Commission

[Docket Nos. ID-2179-000, et al.]

Interlocking Directorate Applications; Meredith R. Harlacher, Jr., et al.

June 11, 1985.

Take notice that the following filings have been made with the Commision:

1. Meredith R. Harlacher, Jr.

[Docket No. ID-2179-000]

Take notice that on May 16, 1985, Meredith R. Harlacher, Jr. (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President-Engineering—Atlantic City Electric Company

Vice President—Deepwater Operating Company

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Norman Robertson

[Docket No. ID-2199-000]

Take notice that on May 22, 1985, Norman Robertson (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Pennsylvania Power & Light Company

Senior Vice President and Chief Economist—Mellon Bank, N.A.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice

3. G. Christian Lantzsch

[Docket No. ID-2201-000]

Take notice that on May 22, 1985, G. Christian Lantzsch (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Duquesne Light Company

Director, Vice Chairman and Treasurer—Mellon Bank Corporation

Director, and Vice Chairman—Mellon Bank, N.A.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Russell A. Holden

[Docket No. ID-2177-000]

Take notice that on May 16, 1985, Russell A. Holden (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Chairman and Director—New England Transmission Corporation
Chairman and Director—New England Hydro-Transmission Corporation
Vice President—New England Power Company

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Avram Kronsberg

[Docket No. ID-2186-000]

Take notice that on May 17, 1985, Avram Kronsberg (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Edward C. Roberts

[Docket No. ID-2197-000]

Take notice that on May 17, 1985, Edward C. Roberts (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. W.R. Bruce

[Docket No. ID-2183-000]

Take notice that on May 17, 1985, W.R. Bruce (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Kenneth W. French

[Docket No. ID-2184-000]

Take notice that on May 17, 1985, Kenneth W. French (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Lawrence M. Gressette, Jr.

[Docket No. ID-2185-000]

Take notice that on May 17, 1985, Lawrence M. Gressette, Jr. (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Director—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company, Inc.
Director—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Betty C. Bissell

[Docket No. ID-2196-000]

Take notice that on May 17, 1985, Betty C. Bissell (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. James H. Young, Jr.

[Docket No. ID-2193-000]

Take notice that on May 17, 1985, James H. Young, Jr. (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. John M. Arthur

[Docket No. ID-2198-000]

Take notice that on May 22, 1985, John M. Arthur (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, Chairman and President—Duquesne Light Company
Director—Mellon Bank Corporation
Director—Mellon Bank, N.A.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Lance E. Cooper

[Docket No. ID-2180-000]

Take notice that on May 16, 1985, Lance E. Cooper (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President-Control—Atlantic City Electric Company
Vice President—Deepwater Operating Company

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. Arthur W. Williams

[Docket No. ID-2190-000]

Take notice that on May 17, 1985, Arthur W. Williams (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

15. Virgil C. Summer

[Docket No. ID-2181-000]

Take notice that on May 17, 1985, Virgil C. Summer (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Chief Executive Officer—South Carolina Electric & Gas Company
Chairman of Board—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.
Chairman—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

16. Thomas C. Nichols, Jr.

[Docket No. ID-2187-000]

Take notice that on May 17, 1985, Thomas C. Nichols, Jr. (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director and Officer—South Carolina Electric & Gas Company
Director and Officer—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

17. B.T. Horton, Jr.

[Docket No. ID–2195–000]

Take notice that on May 17, 1985, B.T. Horton, Jr. (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

18. John A. Warren

[Docket No. ID–2189–000]

Take notice that on May 17, 1985, John A. Warren (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
President and Chief Operating Officer—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.
Vice-Chairman—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

19. Robert W. Stedman

[Docket No. ID–2194–000]

Take notice that on May 17, 1985, Robert W. Stedman (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

20. William B. Timmerman

[Docket No. ID–2192–000]

Take notice that on May 17, 1985, William B. Timmerman (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Officer—South Carolina Electric & Gas Company
Officer—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

21. John E. Schacte

[Docket No. ID–2188–000]

Take notice that on May 17, 1985, John E. Schacte (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14303 Filed 6–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3062–003]

Schneider Lift Translator Corp.; Surrender of Conduit Exemption

June 10, 1985

Take notice that Schneider Lift Translator Corp., Exemptee for the Richvale Irrigation District Power Plant Project No. 3062, has requested that its exemption be terminated. The exemption was issued on September 3, 1980, and the project was located on a water conduit that diverts water from Oroville Thermalito Afterbay in Butte County, California. The Exemptee states that the project has been totally removed from the Richvale Irrigation District Power Plant site.

The Exemptee filed the request on April 26, 1985, and the exemption for Project No. 3062 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14401 Filed 6–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC85–15–000]

Resources Recovery (Dade County), Inc.; Application

June 12, 1985.

The filng Company submits the following:

Take notice that on June 11, 1985, Resources Recovery (Dade County), Inc. ("RRD"), tendered for filing an application pursuant to section 203 of the Federal Power Act for authorization for RRD to dispose of certain electric transmission facilities located in Dade County, Florida.

The transmission facilities which are the subject of the joint application are valued in excess of $50,000, thereby requiring Commission authorization under section 203. These facilities, presently owned and operated by RRD, are part of an integrated solid waste resource recovery plant operated by RRD. These facilities will be transferred to Metropolitan Dade County, which now owns the remainder of the integrated plant. That plant is a qualifying small power production facility within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 796 and 824*a*-3, and the Commission's implementing regulations.

The application has been submitted in accordance with the Commission's previous order waiving Part 33 of its regulations with regard to section 203 applications concerning the RRD qualifying small power production facility. *See Resources Recovery (Dade County), Inc.* (Docket No. ER82–225–003), 20 FERC ¶ 61,138 (August 3, 1982).

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and

procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before June 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14466 Filed 6-13-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59192A; FRL-2848-2]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-40. The test marketing conditions are described below.

EFFECTIVE DATES: May 22, 1985.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613-B, 401 M Street SW., Washington, DC. 20460 (202) 382-2252.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-40. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unresonable risk of injury to health or the environment. Production volume and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-40. A bill of lading accompying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 85-40

Date of Receipt: April 12, 1985.

Notice of Receipt: April 26, 1985 (50 FR 16540).

Applicant: Confidential.

Chemical: (G) Adduct of polymeric 4, 4'-phenylmethane diisocyanate and hydroxyester of terephthalic acid.

Use: (G) Insulation.

Production Volume: Confidential.

Number of Customers: 3.

Worker Exposure: Manufacture: dermal, total of 1 worker, up to 4 hours/batch, 48 manhours/year.

Test Marketing Period: 60 days.

Commencing on: May 22, 1985.

Risk Assessment: EPA identified potential adverse health effects and potential adverse effects on aquatic organisms with exposure to the TME substance. However, under the conditions outlined above and in the TME application, the estimated exposure to the test market substance will not be significant either to humans or the environment. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attentions which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 22, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 73862 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59717; FRL-2848-1]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-79, and 85-80—June 18, 1985.

Y 85-81, 85-82, 85-83, Y 85-84, 85-85, 85-86, and 85-87—June 19, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-79

Manufacturer. Spencer Kellogg Division of Textron, Inc.

Chemical. (G) Alkyd resin.
Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

Y 85–80

Manufacturer. Confidential.
Chemical. (G) Polyoxyalkylene modified dimethylsilicone.
Use/Production. (S) Surfactant for use in polyurethane foam. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85–81

Manufacturer. Confidential.
Chemical. (G) Propylene oxide, polymer with alkyl phenol, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–82

Manufacturer. Confidential.
Chemical. (G) Ethylene oxide, polymer with propylene oxide, alkyl phenol, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–83

Manufacturer. Confidential.
Chemical. (G) Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–84

Manufacturer. Confidential.
Chemical. (G) Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–85

Manufacturer. Confidential.
Chemical. (G) Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–86

Manufacturer. Confidential.
Chemical. (G) Ethylene oxide polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–87

Manufacturer. Confidential.
Chemical. (G) Ethylene oxide, polymer with propylene oxide, alkyl phenol, glycerol, formaldehyde and alkyl polycarboxylic acid.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: May 31, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–13863 Filed 6–13–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51574; FRL–2848–3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-three PMNs and provides a summary of each.

DATES: Close of Review Period:
P 85–999, 85–1000 and 85–1001—August 21, 1985.
P 85–1002, 85–1003, 85–1004, 85–1005, 85–1006, 85–1007, and 85–1008—August 25, 1985.
P 85–1009, 85–1010, 85–1011, 85–1012, 85–1013, 85–1014, 85–1015, 85–1016, 85–1017 and 85–1018—August 26, 1985.
P 85–1019, 85–1020 and 85–1021—August 27, 1985.
Written comments by:
P 85–999, 85–1000 and 85–1001—July 22, 1985.
P 85–1002, 85–1003, 85–1004, 85–1005, 85–1006, 85–1007, and 85–1008—July 26, 1985.
P 85–1009, 85–1010, 85–1011, 85–1012, 85–1013, 85–1014, 85–1015, 85–1016, 85–1017 and 85–1018—July 27, 1985.
P 85–1019, 85–1020 and 85–1021—July 28, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51574]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E–201, 401 M Street SW., Washington, DC 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460 (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–999

Manufacturer. Confidential.
Chemical. (G) Polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol.
Use/Production. (S) Industrial graphic arts printings plate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 85–1000

Manufacturer. Confidential.
Chemical. (G) Polyester from carbomonocyclic anhydride, alkanols and a substituted alkanoic acid.
Use/Production. (S) Site-limited intermediate. Prod. range: 8,000–240,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 34 workers, up to 8 hrs/da, up to 35 da/yr.
Environmental Release/Disposal. Trace of 51 kg/batch released to land. Disposal by incineration and landfill.

P 85–1001

Manufacturer. Confidential.
Chemical. (G) Functionally modified aliphatic polyester.
Use/Production. (G) Ingredient of industrially applied coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 34 workers, up to 8 hrs/da, up to 105 da/yr.
Environmental Release/Disposal. 6 to 90 kg/batch released to land. Disposal by incineration and landfill.

P 85–1002

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Aliphatic ester.
Use/Production. (S) Industrial and commercial can drawing lubricant for cupping operations. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 5 hrs/da.
Environmental Release/Disposal. 1 kg released to air and water. Disposal by publicly owned treatment works (POTW).

P 85–1003

Manufacturer. Confidential.
Chemical. (S) Humic acids, titanium salts.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water and land.

P 85–1004

Manufacturer. Confidential.
Chemical. (S) Humic acids, zinc salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water and land.

P 85–1005

Importer. Key-Fries, Inc.
Chemical. (G) Polyester resin.
Use/Production. (S) Industrial general coating for building products. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85–1006

Manufacturer. ANGUS Chemical Company.
Chemical. (S) Bis(2-amino-2-methylpropyl)amine.
Use/Production. (G) Chemical intermediate and curing agent. Prod. range: Confidential.
Toxicity Data. Acute oral: Male—1.0 g/kg, female—1.9 g/kg; Irritation: Skin—Corrosive, Eye—Cannot be classified.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1007

Manufacturer. Confidential.
Chemical. (G) Oxazaline.
Use/Production. (G) Emulsifier for industrial uses. Prod. range: Confidential.
Toxicity Data. Acute oral: $\leq$5.0 g/kg, Acute dermal: $>$2.0 g/kg; Irritation: Skin—Mild, Eye—Non-irritant.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1008

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (S) Propanoic acid. 3[N–$2C_{6-10}$ amido]ethyl} oxyethylamino, sodium salt.
Use/Production. (S) Industrial wetting agent and surfactant for metal cleaning. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Not a primary irritant, Eye—Moderate.
Exposure. Manufacture: dermal, a total of 105 workers, up to 8 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 10 kg/batch released to water. Disposal by POTW.

P 85–1009

Manufacturer. Confidential.
Chemical. (g) Polyhydroxyether diisocyanate acrylate polymer.
Use/Production. (S) Binder for magnetic media. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Confidential. Disposal by waste treatment facility.

P 85–1010

Manufacturer. Eastman Kodak Company.
Chemical. (S) 3-Bromopropanoyl chloride.
Use/Production. (G) Chemical intermediate. Prod. range: 3 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 2 workers, up to 0.4 hr/da, up to 2 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 85–1011

Manufacturer. Eastman Kodak Company.
Chemical. (S) Substituted bromopropanoic acid derivative.
Use/Production. (G) Chemical intermediate. Prod. range: 3 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 2 workers, up to 0.4 hr/da, up to 2 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 85–1012

Importer. Confidential.
Chemical. (S) 1-Hexanamine, 2-ethyl-N,N-bis(2-ethylhexyl)-.
Use/Production. Industrial solvent. Prod. range: Confidential.
Toxicity Data. Acute oral: $>$10 ml/kg; Irritation: Skin-Non-irritant, Eye—Non-irritant; Ames Test: Negative; LC_{50} 96 hr (Rainbow trout): $>$460 mg/l; EC_{50} (Daphnia magna): 0.129 mg/1.
Exposure. Confidential.
Environmental Release/Disposal. Released to water. Disposal by POTW.

P 85–1013

Manufacturer. Confidential.
Chemical. (G) Aliphatic diurethane acrylate ester.
Use/Production. (S) Industrial coating, ink and adhesive component. Prod. range: 40,000–50,000 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Irritant.
Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release. 5 to 20 kg/batch control technology. Disposal by incineration.

P 85–1014

Manufacturer. Confidential.

Chemical. (S) Polymer of methacrylic acid, succinic anhydride, (phenol, 4,4'-(methylethylidene)bis-(polymer with(chloromethyl) 2-methylimidazole.

Use/Production. (S) Commercial injection molding coating. Prod. range: 100,000–500,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure Manufacture and processing: dermal, a total of 5 workers, up to 4 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. Less than 10 lb/batch released to land. Disposal by landfill.

P 85–1015

Manufacturer. Confidential.

Chemical. (G) Vinyl chloride interpolymer containing hydroxyl and carboxyl groups.

Use/Production. (S) Component of thermosetting and thermoplastic coating and laminating adhesive formulations. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1016

Manufacturer. Texaco Chemical Company.

Chemical. (S) Ethanamine, 2,2'-oxybis-bis(aminoethyl) ether.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral: Male-1,118 mg/kg, Combined-961 mg/kg: Acute dermal: 3.55 mg/kg; Irritation: Skin—Irritant, Eye—Irritant; DOT skin corrosivity: Corrosive.

Exposure. Manufacture: dermal, a total of 1 worker, up to 0.1 hr/da, up to 100 da/yr.

Environmental Release/Disposal. Release to land. Disposal by underground injection.

P 85–1017

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzenesulfonate salt.

Use/Production (G) Open, non-dispersive use in a commercial product. Prod. range: 5,000–20,000 kg/yr.

Toxicity Data. Acute oral: >3,200 mg/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Low potential.

Exposure. Manufacture and processing: dermal, a total of 21 workers, up to 0.5 hr/da, up to 25 da/yr.

Environmental Release/Disposal. 0–5 kg/batch released to water. 2–5 kg/batch disposed of by biological treatment system.

P 85–1018

Importer. Rona Pearl.

Chemical. (S) 3-(4 methylbenzylidine) camphor.

Use/Import. (S) Consumer UV sun absorber primarily used in recreational sun-tanning formulations; concentration not exceeding 6% of final formulation and an industrial component of perfume formulations as a UV blocker; concentration not to exceed 10%. Import range: 1,000–3,500 kg/yr.

Toxicity Data. Acute oral: >16,000 mg/kg, Dog—>5,000 mg/kg; Irritation: Skin—No irritation, Eye—Non-irritant; Phototoxic: Not phototoxic; Photosensitizer: Not a photosensitizer; Skin sensitization: Non-sensitizer.

Exposure. Processing: dermal, a total of 210 workers, up to 1 hr/da.

Environmental Release/Disposal. No data submitted.

P 85–1019

Manufacturer. Confidential.

Chemical. (S) Humic acids, iron salts.

Use/Production. (G) Highly dispersive and an open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water and land.

P 85–1020

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyurethane ploymer.

Use/Production. (S) Polyurethane polymer for use in compound sealants and adhesives. Prod. range: 50,000–250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.

Environmental Release/Disposal. No release.

P 85–1021

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyurethane ploymer.

Use/Production. (S) Polyurethane polymer for use in compound sealants and adhesives. Prod. range: 50,000–250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.

Environmental Release/Disposal. No release.

Dated: May 31, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–13864 Filed 6–13–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51575; TSH-FRL 2851–2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P85–1022, 85–1023, 85–1024, 85–1025, 85–1026, 85–1027, and 85–1028—August 31, 1985.

P85–1029, 85–1030, 85–1031, 85–1032, 85–1033, and 85–1034—September 1, 1985.

P85–1035, 85–1036, 85–1037, 85–1038, 85–1039, and 85–1040—August 25, 1985.

P85–1041, 85–1042, 85–1043, 85–1044, 85–1045, 85–1046, 85–1047, 85–1048 and 85–1049—September 2, 1985.

P85–1050, 85–1051 and 85–1052—September 3, 1985.

Written comments by:

P85–1022, 85–1023, 85–1024, 85–1025, 85–1026, 85–1027, and 85–1028—August 1, 1985.

P85–1029, 85–1030, 85–1031, 85–1032, 85–1033 and 85–1034—August 2, 1985.

P85–1035, 85–1036, 85–1037, 85–1038, 85–1039 and 85–1040—July 26, 1985.

P85–1041, 85–1042, 85–1043, 85–1044, 85–1045, 85–1046, 85–1047, 85–1048 and 85–1049—August 3, 1985.

P85–1050, 85–1051 and 85–1052—August 4, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51575]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic

Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20450, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–1022

Manufacturer. Confidential.
Chemical. (G) Barium lithol pigment.
Use/Production. (G) Open, non-dispersive use. Prod. range: 90–480 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 6 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. No release.

P 85–1023

Manufacturer. Confidential.
Chemical. (G) Polyfluoroalkyl thiocyanate.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential
Toxicity Data. No data on the PMN substance submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 85–1024

Manufacturer. Confidential.
Chemical. (G) Polyfluoroalkyl sulfonamido propylamine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: Male and female—1.56 g/kg.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 85–1025

Manufacturer. Confidential.
Chemical. (G) Polyfluoroalkyl betaine.
Use/Production. (G) Surfactant in chemical specialties dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: Male and female—5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. Release to water and land. Disposal by publicly owned treatment works (POTW) and secure landfill.

P 85–1026

Manufacturer. Confidential.
Chemical. (G) Mercaptoalkylsiloxane.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral: >15.0 g/kg; Irritation: Skin—Non-irrirtant, Eye—Slight.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 4 hrs/da, up to 2 da/yr.
Environmental Release/Disposal. 1 kg/batch released to air and 5 kg/batch to land. 1 kg/batch incinerated and 5 kg/batch disposed of by landfill.

P 85–1027

Manufacturer. Confidential.
Chemical. (G) Polydimethylsiloxy, methyl-mercaptoalkyl siloxane copolymer.
Use/Production. (S) Component in a U. V. curable coating and fuser oil. Prod. range: Confidential
Toxicity Data. Acute oral: >15.0 g/kg; Irritation: Skin—Non-irrirtant, Eye—Slight.
Exposure. Manufacture: dermal, a total of 3 workes, up to 4 hrs/da, up to 2 da/yr.
Environmental Release/Disposal. 1 kg/batch released to air and 5 kg/batch to land. Disposal by 1 kg/batch incinerated and 5 kg/batch disposed of by landfill.

P 85–1028

Manufacturer. Confidential.
Chemical. (G) Polymethyl mercaptoalkyl siloxane polymer.
Use/Production. (G) Polymerization initiator. Prod. range: Confidential.
Toxicity Data. Acute oral >15.0 g/kg; Irritation: Skin—Non-irrirtant, Eye—Slight.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 2 hrs/da, up to 2 da/yr.
Environmental Release/Disposal. 1 kg/batch released to air and 5 kg/batch to land. 1 kg incinerated and 5 kg disposed of by landfill.

P 85–1029

Manufacturer. Confidential.
Chemical. (G) Polymer of alkane polyols, aromatic carboxylic acid, benzene dicarboxylic acids, polyamide resin, vegetable oil and vegetable oil acids.
Use/Production. (G) Polymeric binder for clean and pigmented finishes. Prod range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 85–1030

Manufacturer. Essex Specialty Products, Inc.
Chemical. (G) Polyurethane polymer.
Use/Production. (S) Polyurethane polymer for use in compound sealant and adhesives. Prod. range: 50,000–250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.
Environmental Release/Disposal. No release.

P 85–1031

Manufacturer. Confidential.
Chemical. (G) Alkenoic alkeneamide substituted propane.
Use/Production. (G) Fluid retention polymer. Prod. range: Confidential.
Toxicity Data. Acute oral: >2.5 g/kg but < 5.0 g/kg; Irritation: Skin—Slight/mild, Eye—Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1032

Manufacturer. Confidential.
Chemical. (G) Epoxy modified polyol.
Use/Production. (G) Urethane RIM polyol component basestock. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and use: dermal and ocular, a total of 10 workers.
Environmental Release/Disposal. No release. Disposal by 3 kg samples incinerated.

P 85–1033

Manufacturer. Confidential.
Chemical. (G) Epoxy modified polyol.
Use/Production. (G) Urethane RIM polyol component basestock. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and use: dermal and ocular, a total of 10 workers.
Environmental Release/Disposal. No release. Disposal by 3 kg samples incinerated.

P 85–1034

Importer. Confidential.
Chemical. (G) Nickel acylate complex.
Use/Import. (G) Rubber bonding agent. Import range: Confidential.

Toxicity Data. Acute oral: Males—4.8 g/kg. Females—4.3 g/kg. Combined—4.6 g/kg; Irritation: Skin—Well defined to moderate. Ames Test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85–1035

Manufacturer. Confidential.
Chemical. (S) Humic acids, zinc salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air water and land.

P 85–1036

Manufacturer. Confidential.
Chemical. (S) Humic acids, zinc salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manfacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air water and land.

P 85–1037

Manufacturer. Confidential.
Chemical. (S) Humic acids, iron salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air water and land.

P 85–1038

Manufacturer. Confidential.
Chemical. (S) Humic acids, iron salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air water and land.

P 85–1039

Manufacturer. Confidential.
Chemical. (S) Humic acids, iron salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air water and land.

P 85–1040

Manufacturer. Confidential.
Chemical. (S) Humic acids, iron salts.
Use/Production. (G) Highly dispersive and open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air water and land.

P 85–1041

Manufacturer. Essex Specialty Products, Inc.
Chemical. (G) Polyurethane polymer.
Use/Production. (S) Polyurethane polymer for use in compound sealants and adhesives. Prod. range: 50,000–250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.
Environmental Release/Disposal. No release.

P 85–1042

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1043

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1044

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1045

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1046

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1047

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1048

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release to air.

P 85–1049

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine salts of sulfonated, alkylated diphenyl oxide.
Use/Production.. (S) Commercial surfactants, adjuvants for agricultural products. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release to air.

P 85–1050

Manufacturer. Confidential.

Chemical. (G) Modified tall oil fatty acids amidoamine.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 24 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water and less than 0.5 kg/batch to land. Disposal by POTW and sanitary landfill.

P 85–1051

Manufacturer. Confidential.

Chemical. (S) Starch, 2-hydroxy-3-(trimethylammonio) propyl ether, chloride, phosphate.

Use/Production. (S) For wet end paper use to provide better drainage and wet strength. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5/kg; Irritation: Skin—Non-irritant, Eye—Mild.

Exposure. Manufacture: dermal and inhalation, a total of 8 workers, up to 8 hrs/da, up to 120 da/yr.

Environmental Release/Disposal. 10 kg/batch released to air and 829 kg/batch to water. Disposal by POTW.

P 85–1052

Importer. Uniglobe KISCO, Inc.

Chemical. (G) Perfluoroalkyl, alkyl, carboxysilane.

Use/Import. (G) Open system, non-dispersive application. Import range: 500–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 3 workers, up to .25 hr/da, up to 340 da/yr.

Environmental Release/Disposal. 107 lbs/yr released to air.

Dated: June 8, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–14276 Filed 6–13–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59718, TSH–FRL 2850–8]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85–88 and Y 85–89—June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW, Washington, DC 20460 (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–88

Manufacturer. Reichhold Chemical, Inc.

Chemical. (G) Polyester polymer.

Use/Production. (S) Industrial coating vehicle. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85–89

Manufacturer. C.J. Osborn Chemicals, Inc.

Chemical. (G) Polyester.

Use/Production. (S) Clear and pigmented baking finishes. Prod. range: 15,000–30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, ocular and ingestion, a total of 4 workers, up to 2 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. No release.

Dated: June 10, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–14275 Filed 6–13–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59196; TSH–FRL 2850–9]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: July 1, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59196]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

T 85–50

Close of Review Period. July 14, 1985.

Manufacturer. Aldrich Chemical Company, Inc.

Chemical. (S) N,N'-Diallyltartardiamide.

Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 1.5 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. Undetermined amount released to air, with 0.3 kg/batch to water.

Disposal by publicly owned treatment works (POTW).

T 85-51

Close of Review Period. July 19, 1985.

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (S) Saturated and unsaturated alkylcarboxylic acid diethanolamine/triethanolamine salt.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

Disposal by incineration or plant waste treatment system.

Dated: June 10, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-14274 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2851-6]

California; Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to American Forest Products Company (EPA Project Number SJ 83-04)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 2, 1985, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 10-megawatt, wood-fired cogeneration facility at the applicant's existing sawmill in Martell, Amador County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: Total Suspended Particulates (TSP) at 7.3 lbs/hr or 0.012 gr/dscf, whichever is more stringent, NO_x at 50.8 lbs/hr or 100 ppm, whichever is more stringent, CO at 172.2 lbs/hr or 560 ppm, whichever is more stringent, and Volatile Organic Compounds (VOC) at 20 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Robert Baker (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8923, FTS 454-8923.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of multiclones and an electrostatic precipitator and a grain loading of 0.012 gr/dcsf for TSP control, and staged air combustion for NO_x control.

Date: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by August 13, 1985.

Dated: June 3, 1985.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 85-14382 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2851-5]

California; Approval of Modification of Prevention of Significant Air Quality Deterioration (PSD) Permit to Guardian Industries (EPA Project Number SE 82-01)

AGENCY: Enivronmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 17, 1985, the Environmental Protection Agency issued a modified PSD permit (which was originally issued June 10, 1982 under EPA's federal regulations 40 CFR 52.21) to the applicant named above. The PSD permit grants approval to construct a float glass manufacturing facility in Victorville, San Bernardino County, California. EPA Region 9 is modifying the permit to require the use of ammonia injection for NO_x control, the installation of in-stack continuous monitors to measure NO_x concentrations and gas volumetric flow rates, and a new NO_x emission limit of 158 lbs/hr from the glass melting furnace. In addition, EPA Region 9 is extending the permit to January 31, 1986. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x at 158 lbs/hr and SO_2 at 33.5 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Robert Baker (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8923, FTS 454-8923.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of ammonia injection for NO_x control, and limiting the amount of saltcake ($NaSO_4$) in the batch formula to no more than 10 lbs. per 1000 lbs. of sand for SO_2 control.

Date: The PSD permit modification is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by August 13, 1985.

Dated: June 3, 1985.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 85-14383 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2851-7]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Shell California Production (EPA Project Number SJ 85-03)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 30, 1985, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct two gas turbines and waste heat boilers in the Belridge Oil Field, Kern County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x at 35 lbs/hr or 42 ppm, whichever is more stringent, and CO at 22 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Matt Haber (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8209, FTS 454-8209.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of water injection for NO_x control.

Date: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by August 13, 1985.

Dated: June 3, 1985.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 85-14381 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2851-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed June 3, 1985 through June 7, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850229, Final, FHW, CA, I-80 At-Grade Access Closure, Pedrick Road and Putah Creek, Construction, Solano County, Due: July 15, 1985, Contact: James Jelinek (209) 948-7987.

EIS No. 850230, Final, SCS, ID, Little Lost River Flood Prevention Plan, Butte County, Due: July 15, 1985, Contact: Stanley Hobson (208) 334-1601.

EIS No. 850231, Final, FWH, MI, Logan Street and Dewitt Road Reconstruction, Kalamazoo Street to I-69, Improvements, Ingham and Clinton Counties, Due: July 15, 1985, Contact: Thomas Fort, Jr. (517) 377-1879.

EIS No. 850232, FSuppl, COE, VA, Norfolk Harbor and Channels Deepening and Dredged Material Disposal Site Plan, Modifications, Due: July 15, 1985, Contact: Richard Muller (804) 441-3767.

EIS No. 850233, Final, FWS, AK, Izembek National Wildlife Refuge, Management and Comprehensive Conservation Plan and Wilderness Review, Due: July 15, 1985, Contact: William Knauer (907) 786-3399.

EIS No. 850234, Draft, FWS, AK, Togiak National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Due: August 23, 1985, Contact: William Knauer (907) 786-3399.

EIS No. 850235, Draft, AFS, NM, Alvarado Realty Land Exchange, Cibola National Forest, Acquisition, Bernalillo County, Due: July 29, 1985, Contact: C. Phil Smith (505) 766-2185.

EIS No. 850236, DSuppl, FHW, VA, East-West Expressway Construction, Jefferson Avenue to Armistead Avenue, Due: July 29, 1985, Contact: James Tumlin (804) 771-2371.

EIS No. 850237, Final, BLM, ID, Medicine Lodge Resource Area, Resource Management Plan, Due: July 22, 1985, Contact: O'dell Frandsen (208) 529-1020.

EIS No. 850238, Final, NRC, NY, Nine Mile Point Nuclear Station, Unit 2, Operating License, Oswego County, Due: July 15, 1985, Contact: Mary F. Haughey (301) 492-7000.

EIS No. 850239, FSuppl, HUD, HI, Kaka'ako Community Development Plan, Makai Area, Mortgage Insurance, Grants and Rental Housing Subsidies, Honolulu County, Due: July 15, 1985, Contact: Frank Johnson (808) 546-5570.

EIS No. 850240, Final, UMT, WA, Downtown Seattle Transit Project, Seattle Business District, King County, Due: July 15, 1985, Contact: Terry Ebersole (206) 442-5570.

EIS No. 850241, Draft, EPA, PR, Culebra Wastewater Treatment Facility Plan, Grant, Due: August 2, 1985, Contact: Robert Hargrove (212) 264-5391.

EIS No. 850242, Draft, AFS, CA, NV, Toiyable National Forest, Land and Resource Mgmt. Plan, Due: September 23, 1985, Contact: R.M. Nelson (702) 5331.

Amended Notices

EIS No. 850228, Draft, COE, PA, NY, MI, IN, OH, IL, WI, MN, Great Lakes Connecting Channels and Harbors Study, Final Feasibility Report, Due: July 29, 1985, Published FR 06-07-85—Extended review, Corrected accession number and Completed state information.

EIS No. 850227, Draft, FWS, NY, Honeoye Creek Wetland Expansion and Enhancement Project, Ontario County, Due: August 15, 1985 Published FR 6-7-85—Reestablished filing date.

EIS No. 850186, Final AFS, SC, Francis Marion National Forest, Land and Resource Management Plan, Berkeley and Charleston Counties, Due: June 10, 1985, Published FR—06-07-85, Corrected due date.

Dated: June 11, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-14410 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2851-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 28, 1985 through May 31, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-G65041-AR, Rating LO, Ozark-St. Francis Nat'l Forests, Land and Resource Mgmt. Plan, AR. *Summary:* EPA has no objections to the Forest management program as proposed.

ERP No. D-AFS-G65042-OK, Rating LO, Ouachita Nat'l Forest, Land and Resource Mgmt. Plan, OK. *Summary:* EPA expressed no objections to the proposed action as discussed in the DEIS.

ERP No. DR-AFS-J65089-MT, Rating EC2, Lolo Nat'l Forest, Land and Resource Mgmt. Plan, MT. *Summary:* It is clear, from the EPA review of the documents, that extensive land development activities are anticipated and are expected to extend over many years. EPA is particularly concerned about the potential to degrade water quality and diminish visibility from slash burning.

ERP No. DR-AFS-J65101-MT, Rating EC2, Beaverhead Nat'l Forest Land and Resource Mgmt. Plan, MT. *Summary:* EPA believes that the reduction in the proposed timber harvest and associated road building in the selected alternative, over those levels shown in a previous DEIS, should adequately protect the area's very high water quality. However, EPA believes that the Forest Service should closely monitor the water quality impacts of timber harvest and road building.

ERP No. D-AFS-J67004-MT, Rating EC2, Stillwater Valley Platinum-Palladium Mining and Milling Project, Operation Approval, Custer Nat'l Forest, MT. *Summary:* As part of the review, EPA reexamined the DEIS previously prepared, in 1982, for the Anaconda Minerals Company's proposed Stillwater Project. EPA is concerned that the use of a slurry pipeline and two of the three proposed tailing pond sites located in the Hertzler Valley, addressed in the 1982 DEIS, were deemed to be unsatisfactory. Therefore, EPA believes that the Forest Service should explicitly identify the differences and/or similarities between the proposed project and the 1982 project. EPA is also concerned about the lack of specificity concerning water quality monitoring; that there is no firm requirement for the company to prepare a pollution control contingency plan; that ground water could be adversely impacted; and that there does not appear to be an adequate long-term

pollution control program for post-mining years.

ERP No. D–COE–D36101–PA, Rating EC2, Francis E. Walter Dam Modifications, Lehigh River, Delaware R. Basin, PA. *Summary:* EPA does not object to the modification of the dam and reservoir operational procedures, but identified a number of issue areas which required clarification or additional study. These areas were divided between administrative (selection process of alternatives and minimum release flow) and technical (water quality, habitat, wetlands, and road relocation) concerns. EPA offered comments and requested additional information, suggesting also a post DEIS review meeting and on-site visitation.

ERP No. DR–COE–E39019–NC, Rating E01, Scuppernong R. Flood Control and Channel Drainage, Construction, NC. *Summary:* EPA believes the DEIS has sufficient data/information upon which to adequately evaluate the consequences of this action. However, EPA has significant environmental objections to the water quality degradation/sedimentation increases attendant to facility operation and maintenance, the necessity of using additional herbicides to control and prevent the spread of nuisance aquatic weeds, and the adverse impacts to the area's fishery resources from channelization.

ERP No. DR–COE–H36020–KS, Rating LO, Great Bend, Kansas Local Flood Protection Plan, Construction, Arkansas R., Walnut and Little Walnut Creeks, KS. *Summary:* EPA suggested additional mitigation be provided for 21 acres of riparian woodland lost to construction easements.

ERP No. D–IBR–J31016–SD, Rating E02, Lake Andes—Wagner Unit, Water Resource Project, Pick-Sloan Missouri Basin Program, SD. EPA's major concern was that the DEIS proposed to violate the existing S. Dakota total dissolved solids water quality standard. Other concerns included the potential for project return flows to raised nutrient levels of the receiving waters to a highly eutrophic condition, the net loss of over 300 acres of wetlands, and the timing of the subsurface drainage system installation. The DEIS failed to adequately address the potential for insecticide, herbicide, and heavy metal contamination of receiving waters, and did not include an assessment of potential cumulative impacts. EPA recommended that a supplemental DEIS be prepared to include a project alternative which would not violate the existing S. Dakota water quality standards.

ERP No. D–OSM–J01067–MT, Rating EC2, CX Ranch Mine Construction and Operation, Permit, MT. *Summary:* EPA identified environmental impacts that should be avoided to fully protect the environment; in particular, concern was expressed about likely violations of water quality standards (and subsequent aquatic impacts). While the DEIS indicates that the company will be required to meet these standards, no approaches to mitigate the problem were identified. The DEIS also did not adequately describe the preferred alternative.

Final EISs

ERP No. F–AFS–K61083–CA, Dodge Ridge Ski Resort, Expansion, Permit, Stanislaus Nat'l Forest, CA. *Summary:* EPA believes that the FEIS adequately addressed EPA's concerns raised on the DEIS.

ERP No. FS–COE–F32038–OH, Cleveland Harbor Navigation Project, Lake Erie, OH. *Summary:* EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F–COE–K32038–CA, Oakland Inner Harbor Deep Draft Navigation Improvements, CA. *Summary:* EPA had no comments to offer on the FEIS.

EPR No. F–NPS–L67017–AK, Denali Nat'l Park and Preserve, Kantishna Hills and Dunkle Mine Area, Mineral Leasing Program, AK. *Summary:* EPA felt the identified preferred alternatives for the two study areas were inconsistent with the management purposes set forth in ANILCA (Pub. L. 96–487) for Denali Park and Preserve. Serious water quality standards violations have occurred in the past and could continue. Finally, significant impacts to fish and wildlife would be likely. EPA, therefore, recommended that the Record of Decision adopt Alternative 2 (coupled with strict monitoring and enforcement of mining activities on existing claims) for the Kantishna Hills study area, and Alternative 3 for the Dunkle Mine study area instead of the identified preferred alternatives of the Alaska Land Use Council.

Dated: June 11, 1985.

David G. Davis,

Acting, Director Office of Federal Activities.

[FR Doc. 85–14409 Filed 6–13–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140062; TSH–FRC 2851–7]

Access to Confidential Business Information by Fairfax Opportunities Unlimited, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA will provide one employee of Fairfax Opportunities Unlimited, Inc., access to information which has been submitted under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATE: Access to CBI under this subcontract will occur no sooner than June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under section 14 of the Toxic Substances Control Act (TSCA), information submitted to EPA under the Act may be claimed as confidential by the submitters of that information. The Agency stores and uses much of the TSCA CBI submitted to EPA at Agency headquarters in the Office of Toxic Substances Confidential Business Information Center (CBIC). In the **Federal Register** of January 18, 1983 (48 FR 2195), EPA announced that under contract number 68–1–6639, Computer Sciences Corporation (CSC), of Falls Church, Va., through its subcontractor Interamerica Research Associates, Inc., of Rockville, MD. operates the CBIC. One of the responsibilities of the CBIC is to photocopy CBI documents. Under the same contract, CSC has subcontracted with Fairfax Opportunities Unlimited, Inc. (FOU), 5500 Port Royal Road, Springfield, Va., to provide an individual to operate photocopying equipment under the direction of the EPA Document Control Officer.

In accordance with 40 CFR 2.306(j), EPA has determined that the FOU photocopy machine operator will require access to CBI submitted under all sections of TSCA in order to perform work successfully under this contract. EPA is issuing this notice to inform all submitters to TSCA information that it is granting access to TSCA CBI to this FOU employee. The FOU employee will

have access to TSCA CBI only on EPA premises. Photocopying performed by the FOU employee will take place only within the CBIC and under the supervision of the Document Control Officer.

Clearance for access to TSCA CBI by the FOU employee under this contract is scheduled to expire on September 30, 1985.

The FOU employee has been authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. The FOU employee will be required to sign a nondisclosure agreement and will be briefed on appropriate security procedures before being permitted access to TSCA CBI, in accordance with the "TSCA Confidential Business Information Security Manual" and the Contractor Requirements manual.

Dated: June 11, 1985

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-14441 Filed 6-13-85; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank of its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and place: Friday, June 28, 1985 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1141, 811 Vermont Avenue, NW., Washington, D.C. 20571.

Agenda: The meeting agenda will include discussion of the status of legislation affecting Eximbank, an update on recent Eximbank activities (including policies, research and international negotiations), the Competitiveness Report (review of preliminary analysis) and the Marketing Program (domestic and international).

Public participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, D.C. 20571, (202) 566-8871, not later than June 21, 1985.

FOR FURTHER INFORMATION CONTACT: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, D.C. 20571, (202) 566-8871.

Joseph H. Gainer,

Acting General Counsel.

[FR Doc. 85-14437 Filed 6-13-85; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL RESERVE SYSTEM

First National Bancshares of Louisiana, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under section § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly of through a subsidiary, in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck; Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Bancshares of Louisiana, Inc.*, Alexandria, Louisiana; to engage *de novo* through its subsidiary, Security First Shelternet, Inc., Alexandria, Louisiana, in making and servicing mortgage loans in central Louisiana.

Board of Governors of the Federal Reserve System, June 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14371 Filed 6-13-85; 8:45 am]

BILLING CODE 6210-01-M

Summa Bank Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a heading must include a statement of why a written presentation would not suffice in lieu of a heaing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Summa Bank Corp.*, Stamford, New York; to become a bank holding company by acquiring 25 percent of the voting shares of Bank of Richmondville, Richmondville, New York.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Community Financial Corporation*, Littlestown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of

Community National Bank of Southern Pennsylvania, Littlestown, Pennsylvania.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.*, Kansas City, Missouri; to acquire 100 percent of the voting shares of Commerce Bank of Omaha, N.A., Omaha, Nebraska.

2. *International Bancorporation*, Denver, Colorado; to acquire 100 percent of the voting shares of International Bank of Wheat Ridge, Wheat Ridge, Colorado.

Board of Governors of the Federal Reserve System, June 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14370 Filed 6-13-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 7, 1985.

Health Care Financing Administration

Subject: Clearance of Information Collection Requirements in BQC-18-F, Claims Processing Assessment System—HCFA-R-3—New
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration

Subject: 1985 Client/Patient Sample Survey—New
Respondents: State/local governments, businesses, Federal agencies
Subject: An Evaluation of Primary Care Physician Knowledge of Alcohol, Drug Abuse, and Mental Health—New
Respondents: Individuals, physicians

Office of the Assistant Secretary for Health

Subject: Addendum to Financial Status Report—Reinstatement (0937-0011)
Respondents: State/local governments, non-profit institutions
Subject: 1986 National Health Interview Survey (second pretest and final survey)—Revision (0937-0021)
Respondents: Individuals

Health Resources and Services Administration

Subject: Health Maintenance Organization/Competitive Medical Plan National Reporting Requirements—Revision (0915-0063)
Respondents: Health Maintenance Organizations

Centers for Disease Control

Subject: U.S. Immunization Survey-Supplement to the September 1985 Current Population Survey—Revision (0920-0045)
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Performance Standards Development—Extension (0910-0072)
Respondents: Businesses
OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Office of Child Support Enforcement Financial/Statistical Report—OCSE-56-new
Respondents: State/local governments
Subject: Statement of Self Employment Income—SSA-766—Extension (0960-0046)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Report Clearance Officer on 202-245-6511. Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer)

Dated: June 10, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-14359 Filed 6-13-85; 8:45 am]

BILLING CODE 4150-04-M

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: June 25, 1985, 9:00 a.m. to 4:00 p.m.

ADDRESS: U.S. Capitol, Room H-139, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Ash Hayes, Ed.D, Acting Executive Director, President's Council on Physical Fitness and Sports, 450 Fifth Street, NW, Suite 7103, Washington, D.C. 20001, Telephone: (202) 272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12489 dated September 28, 1984. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) Advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities; and (3) Advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the Council members of the national program of physical fitness and sports, to report on on-going Council programs, and to plan for future directions.

Dated: May 29, 1985.

Ash Hayes, Ed.D.,

Acting Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 85-14280 Filed 6-13-85; 8:45 am]

BILLING CODE 4160-17-M

Alcohol, Drug Abuse, and Mental Health Administration

Research on Family Stress and the Care of Alzheimer's Disease Victims

Correction

In FR Doc. 85-13554 beginning on page 23829 in the issue of Thursday, June 6, 1985, make the following correction.

On page 23830, in the first column, in the second complete paragraph, the telephone number in the seventh and eight lines should read "(301) 443-1185."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer at (202) 395–7313.

Title: Subchapter G—Direct Loan and Guaranty Loan Program. Applications and Requirements (25 CFR Parts 101 and 103).

Abstract: To provide financial assistance to Tribes, Tribal organizations, and individuals through the Direct Loan and Loan Guaranty programs to promote economic development on or near reservations. The forms require certain financial data, background information, project feasibility, and financial solvency to determine the eligibility and potential success of the business.

Note.—This is not a new program or a new information collection by BIA. Bureau Form Numbers: 4706, 4709, 4712, 4713, 4717, 4719, 4720, 4728, 4729, 4730, 4737, 4738, 4739, 4740, 4741, 4743, 4745, 4749, 4753, 4755, 4759, and 4760.

Frequency: On occasion
Description of Respondents: Individual Indians and Indian organizations
Annual Responses: 1029
Annual Burden Hours: 1,105.1 hours
Bureau Clearance Officer: Ramona Moore (202) 343–3574.

John W. Fritz,

Assistant Secretary—Indian Affairs.

March 3, 1985.

[FR Doc. 85–14342 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 343–7340.

Titles: Subchapter H—Land and Water—Colorado River Irrigation Project, Arizona, 25 CFR Part 175; Flathead Indian Irrigation and Power Project, Montana, 25 CFR Part 176; San Carols Indian Irrigation Project, Arizona, 25 CFR Part 177.

Abstract: These irrigation and power projects provide electric power service. Projects need names and addresses of the electric power consumers, namely, households, commercial and industrial businesses, farming enterprises and municipalities in order to identify and assess the particular customer the monthly charges for receiving electric power.

Bureau form Number: None.
Frequency: On occasion.
Description of Respondents: Individuals, households, businesses, farms and municipalities buying electric power from these three irrigation projects.
Annual Responses: 4,621.0.
Annual Burden Hours: 2,331.75.
Bureau clearance officer: Romona Moore (202) 343–3574.

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs.

May 28, 1985.

[FR Doc. 85–14356 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[A–19365]

Arizona; Proposed Withdrawal and Reservation of Public Lands

June 7, 1985.

The Bureau of Reclamation, Box 427, Boulder City, Nevada 89005, has filed application, Serial Number A–19365, for withdrawal of the following described lands from settlement, sale, location, or entry under all of the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

T. 21 N., R. 21 W., GSR Mer., Arizona,
Sec. 30, lot 4, N½NE¼SE¼SW¼, SW¼NE¼SE¼SW¼, W½SE¼SW¼, NW¼SE¼SE¼SW¼ S½SE¼SE¼SW¼, E½SW¼SE¼, E½NW¼SW¼SE¼, NW¼NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, S½SW¼SW¼SE¼, SE¼SE¼.
T. 2 N., R. 22 W.,
Sec. 8, lots 4 through 9, incl., SW¼NE¼;
Sec. 17, lots 4 and 5;
Sec. 29, E½NE¼, SW¼NE¼, SE¼;
Sec. 30, lots 6 through 10, incl., 12 through 15, incl., lot 20.
T. 3 N., R. 22 W.,
Sec. 14, S½NW¼.
T. 2 N., R. 23 W.,
Sec. 25, lots 7 and 8, SE¼;
Sec. 35, lot 10, that portion lying south and east of the Colorado River;
Sec. 36, lot 1, NE¼NW¼, S½NW¼, SW¼.

The areas described aggregate approximately 1,686.3 acres in La Paz and Mohave Counties, Arizona.

The Bureau of Reclamation desires that the lands be withdrawn and reserved for protection of bankline and levee maintenance work under the Colorado River Front Work and Levee System. A 20-year term is proposed for the withdrawal.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for hearing to the undersigned officer within 30 days from publication of this notice. Upon determination by the Arizona State Director, Bureau of Land Management, that a public meeting will be held, a notice of the time and place of the meeting will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting which will be scheduled and conducted in accordance with BLM Manual section 2351.16B.

For a period of two years from the date of publication of this notice in the **Federal Register** the land will be segregated as specified above unless the application is rejected or the withdrawal is approved prior to that date.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources, and will also undertake

negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the **Federal Register**. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

All communications (except for public hearing requests) in connection with this proposed withdrawal should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-14347 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-32-M

Utah; Availability of Record of Decision and Rangeland Program Summary for Book Cliffs Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability—Book Cliffs Record of Decision.

SUMMARY: In accordance with 43 CFR 1610.5, notice is hereby given of the issuance of the Record of Decision and Rangeland Program Summary for the Book Cliffs Resource Management Plan.

This document is a land use plan for management of all natural resources on 1.1 million acres of public lands. It provides direction for resolving conflicts between competing resource uses such as minerals, recreation, wildlife, livestock, etc. Provisions for leasing additional Federal energy minerals such as oil shale and combined hydrocarbons are identified in the plan.

The affected public lands are primarily located within Uintah County, Utah. Other counties which could be affected include Duchesne and Grand, Utah; and Garfield, Mesa, Moffat and Rio Blanco, Colorado.

The environmental effects of this plan were analyzed in the Final Environmental Impact Statement on the Book Cliffs Resource Management Plan issued November 1984.

DATE: Copies will be available for the public on or about June 19, 1985.

ADDRESS: Vernal District Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Dean Evans, Book Cliffs Area Manager, Address Listed Above, Phone (801) 789-1362.

SUPPLEMENTARY INFORMATION: This document will be mailed to those people who requested copies in response to the Vernal District's solicitation dated April 1, 1985. All affected grazing permittees will also be sent copies

A limited number of copies of this document are available from Mr. Evans at the above address or from the Utah State Office; Bureau of Land Management, 324 South State Street, Suite 301, Salt Lake City, Utah 84111-2303.

Dated: June 5, 1985.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 85-14346 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-DQ-M

[W-28908]

Wyoming; Partial Termination of Proposed Withdrawal and Reservation of Lands

Notice of application Serial No. W-28908, filed by the Forest Service, U.S. Department of Agriculture, for the withdrawal of approximately 575 acres of land from location and entry under the general mining laws for the protection of roadside zone, was published in the **Federal Register** Doc. 71-10960 on pages 14223 and 14224 of the issue of July 31, 1971. The applicant agency has cancelled its application insofar as it affects the following described lands:

Sixth Principal Meridian

Medicine Bow National Forest, Wyoming State Highway No. 230 Roadside Zone

A strip of land 200 feet each side of the centerline of State Highway 230 through the following described lands:

T. 13 N., R. 77 W.
Sec. 7, SE¼SE¼;
Sec. 8, S½;
Sec. 9, All;
Sec. 17, W½NW¼;
Sec. 18, E½;
Sec. 19, lot 6 except NE¼, lots 5, 8, 9, W½NE¼.
T. 12 N., R. 78 W.
Sec. 4, W½NE¼, SE¼NW¼, SE¼SW¼, NW¼SE¼;
Sec. 9, W½E½, E½W½, SW¼SW¼;
Sec. 17, W½SE¼SE¼NE¼, SW¼, W½SE¼;
Sec. 18, SE¼SE¼;
Sec. 19, lots 1-4.
T. 13 N., R. 78 W.,
Sec. 24, S½S½;
Sec. 25, N½NW¼;
Sec. 26, N½, NW¼SW¼;
Sec. 27, S½;
Sec. 33, E½;
Sec. 34, NW¼NW¼.

The area described contains 575 acres in Albany County, Wyoming.

Pursuant to the regulations contained in 43 CFR 2310.2-1(c), these lands shall at 10 a.m. on July 15, 1985, be relieved of the segregative effect of the above mentioned application and open to such forms of appropriation as may, by law, be made of national forest lands.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 85-14351 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-22-M

[OR-35017]

Classification of Public Lands; Oregon; Cancellation of Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action cancels a notice of realty action, terminates a land classification, and will open 88.20 acres of land to surface entry and mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: July 22, 1985.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION:

1. By Notice of Realty Action which was published as FR Doc. 84-2301 on page 3541 of the issue of January 27, 1984, the following described land was classified and determined suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.):

Willamette Meridian

T. 41 S., R. 10 E.,
Sec. 15, lot 3 and SE¼NE¼.

The area described contains 88.20 acres in Klamath County, Oregon.

2. The above-described land has been eliminated from proposed lease or sale

under the Recreation and Public Purposes Act; therefore, the Notice of Realty Action identified in paragraph 1, is hereby cancelled.

3. The classification for lease or sale under the Recreation and Public Purposes Act, which was made by the Notice of Realty Action identified in paragraph 1, is hereby terminated.

4. At 8:30 a.m., on July 22, 1985, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on July 22, 1985, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on July 22, 1985, the land will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 6, 1985.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 85-14348 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-33-M

[W-65660-A]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-65660-A for lands in Washakie and Hot Springs Counties, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-65660-A effective February 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-14358 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-22-M

[OR 1202]

Oregon; Partial Termination of Proposed Withdrawal and Reservation of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service has cancelled its application in part to withdraw certain national forest lands for protection of the Big Craggies, Baby Foot, and York Creek Botanical Areas. The lands involved in the cancellation total 4,170 acres and are now part of the Kalmiopsis Wilderness Area and remain closed to surface entry and mining.

EFFECTIVE DATE: June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION:

1. Notice of Forest Service, U.S. Department of Agriculture, application OR 1202 for withdrawal and reservation of lands was published as FR Doc. 67-2379 on page 3713 of the issue of March 3, 1967. The purpose of the proposed withdrawal is to protect the Big Craggies, Baby Foot, and York Creek Botanical Areas within the Siskiyou National Forest, Curry and Josephine Counties, Oregon. The applicant agency has cancelled the application insofar as it affects the lands located within the Kalmiopsis Wilderness Area. Therefore, the proposed withdrawal as it affects approximately 4,170 acres within the Kalmiopsis Wilderness Area is hereby terminated. The balance of proposed withdrawal OR 1202 affecting approximately 1,050 acres, is not affected by this action.

2. The lands affected by this action are within the Kalmiopsis Wilderness Area; therefore, they remain withdrawn from operation of the public land laws, including the United States mining laws.

Dated: June 6, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-14349 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-33-M

Idaho Falls District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Meeting of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Thursday, July 18, 1985. Notice of this meeting is in accordance with Pub. L. 92-463. The meeting will begin at 9 a.m. at the Pocatello Resource Area Office in the Pocatello Federal Building at 250 South 4th Ave. The meeting is open to the public; public comments on agenda items will be accepted from 11:30 to 12 noon at the covered picnic area across from the hot pool at Lava Hot Springs, Idaho.

Agenda items are: a discussion on noxious weeds, the Garden Creek Gap development proposal, and a tour of the Henry Phosphate mine.

The public will need to provide their own transportation and lunch.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401; Telephone: (208) 529-1020.

James Gabettas,

Acting District Manager.

June 7, 1985.

[FR Doc. 85-14350 Filed 6-13-85; 8:45 am]

BILLING CODE 4310-GG-M

[AA-50379-3]

Alaska Native Claims Selection; Chugach Alaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a Decision to Issue Conveyance for the exclusive right and priviledge to drill for, mine, extract, remove and dispose of all the oil and gas deposits under the provisions of Paragraph 6 of the 1982 CNI Settlement Agreement, as authorized by secs. 12(c), 14(h)(8), and 22(f) of the Alaska Native

Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611(c), 1613(h)(8), 1621(f) and Secs. 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980, will be issued to Chugach Alaska Corporation, formerly known as Chugach Natives, Inc., for approximately 10,133.810 acres within the following described lands:

Copper River Meridian, Alaska (Unsurveyed)

T. 19 S., R. 5 E.
T. 19 S., R. 6 E.

A notice of the decision will be published once a week for four (4) consecutive weeks, in The Cordova Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271–5960).

Any party claimimg a property interest which is adversely affected by the decision shall have until July 15, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of A.N.C.S.A. Adjudication.

[FR Doc. 85–14385 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–JA–M

National Park Service

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. on Thursday, June 27, 1985, at the Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park planning and operations.

The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Freddye Scarborough Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The meeting will open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue NE, Atlanta, Georgia 30312; Telephone 404/221–5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated: May 31, 1985.

C. Wogle,

Acting Regional Director, Southeast Region.

[FR Doc. 85–14408 Filed 6–13–85; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30662]

Railroads; Gulf & Mississippi Railroad Corp.; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the:

(1) issuance of up to 1,000,000 shares of common stock, par value $1.00 per share;

(2) issuance of up to 30,000 shares of $100 preferred stock with a liquidation preference of per share; and

(3) issuance of notes or other evidence of indebtedness with respect to:

(a) A 10-year Term Loan Agreement for $15,000,000, and

(b) a 3-year revolving credit agreement for $8,000,000, subsequently converting to a 4-year term loan.

DATES: This exemption is effective on June 14, 1985. Petitions to reopen must be filed by July 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30662 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Betty Jo Christian, 1330 Connecticut Ave. NW, Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: May 17, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–14354 Filed 6–13–85; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Dana Corporation, 4500 Dorr Street, Toledo, Ohio 43615 is the parent corporation.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation are as follows:

i. Warner Electric Brake & Clutch Co., a Delaware corporation;

ii. Alcoils, Inc. an Indiana corporation;

iii. Dana Distribution, Inc., a Delaware corporation;

iv. DTF Trucking, Inc., a Delaware corporation;

v. Beaver Precision Products, Inc. a Michigan corporation.

vi. Diamond Printing & Mailing, Inc., a Delaware corporation.

1. Parent Corporation and address of principal office: Fundicion Arechiga

Sarinana, S.A., Calle Industrial No. 114–a, Col. 20 De Noviembre, Tijuana, B.C.

2. Wholly-owned subsidiary which will participate in the operation and State of Incorporation: FASSA Transportation Inc.—California

1. Parent corporation and address of principal office: Rockwell International Corporation, 600 Grant Street, Pittsburgh, PA 15219.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal office:

(a) Rockwell Telecommunications, Inc., an Illinois corporation, 8245 South Lemont Road, Downers Grove, Illinois 60515.

(b) Rockwell Graphic Systems, Inc., a Delaware corporation, 3100 South Central Avenue, Chicago, Illinois 60650.

(c) the Allen-Bradley Company, a Wisconsin corporation, 1201 South Second Street, Milwaukee, Wisconsin 53204.

A. J.P. Stevens & Co., Inc.—Parent Corporation, 1185 Avenue of the Americas, New York, New York 10036

B. Wholly-owned Subsidiaries:[1]

1. Stevens Aviation, Inc. (DE), Greenville-Spartanburg Jetport, Greer, SC 29651.

2. J.P. Stevens & Co. (Canada), Ltd, 474 Attwell Drive, Rexdale, Ontario M9W 1M4.

3. J.P. Stevens International Sales, Inc. (DE), 1185 Avenue of the Americas, New York, NY 10036.

4. J.P. Stevens (Europe), Ltd, 1185 Avenue of the Americas, New York, NY 10036.

5. J.P. Stevens & Co. Limited (Great Britain), 26 Dover Street, London, England WI.

6. Stevens Graphics, Inc. (GA), 713 Glenn St., S.W, Atlanta, GA 30310.

7. Automated Graphics Unlimited, Inc. (GA), 880 Great Southwest Pkwy, Atlanta, GA 30336.

8. Books, Inc. (AL), 3635 McChord Street, Montgomery, AL 36109.

9. Carolina Ruralist Press, Inc. (NC), 314 East Eighth Street, Charlotte, NC 28202.

10. Courier Graphics, Inc. (KY), 4325 Old Shepherdsville Road, Louisville, KY 40218.

11. Insurance Field Company (KY), 4325 Old Shepherdsville Road, Louisville, KY 40218.

12. Florida Printers, Inc. (FL), 5190 S.W. 75th Avenue, Miami, FL 33155.

13. Oxmoor Press, Inc. (AL), 100 W. Oxmoor Road, Birmingham, AL 35201.

14. Ruralist Press, Inc. (GA), 713 Glenn St., S.W, Atlanta, GA 30310.

15. Superior Type, Inc. (GA)., 109 Alexander, N.W, Atlanta, GA 30303.

16. Graphic Data Systems, Inc. (GA), 1819 Peachtree Rd., N.E, Atlanta, GA 30309.

17. Computer Business Products (DE), 2605 Phoenix Drive, Greensboro, NC 27406.

18. Computer Business Products (GA), 615 Wesleyan Drive, Atlanta, GA 30336.

19. Computer Business Products (FL), 1286 Harbor Road, Green Cove Springs, FL 32043.

20. Steven Stores, Inc. (DE), 2712 Laurens Road, Greenville, SC 29607.

21. Stevcoknit, Inc. (DE), 1450 Broadway, New York, NY 10018.

22. Stevcoknit Fabrics Co., Inc. (NY), 1450 Broadway, New York, NY 10018.

23. Carter Plant (DE), 601 Wilmington Road, Wallace, NC 28466.

24. Fayetteville Plant (NC), 902 Southern Avenue, Fayetteville, NC 28306.

25. Tuxedo Plant (DE), Highway 25, Tuxedo, NC 28784.

26. Ragan Plant (DE), Bessemer City Road, Gastonia, NC 28053.

27. SKT Research & Development and Workshop Corporation (CT), 1450. Broadway, New York, NY 10018

28. Gay-Tred Mills, Inc. (AL), 106 W. Maple Avenue, Scottsboro, AL 35768.

29. Glorid Vanderbilt Creations, Inc. (DE), 1185 Avenue of the Americas, New York, NY 10036.

30. Ralph Lauren Home Furnishings, Inc. (DE), 1185 Avenue of the Americas, New York, NY 10036.

31. Stevens Direct Marketing, Inc. (DE), Commercial Drive, Greenville, SC 29607.

32. J.P. Stevens (Deutschland) G.m.b.H., Wanhemerstrase 39, 4000 Dusseldorf, W. Germany 30.

1. Parent corporation—*Supermarkets General Corporation,* a Delaware corporation with its principal office address at 301 Blair Road, Woodbridge, New Jersey 07095.

2. Wholly-owned subsidiary corporations which will participate in the operations and the states of their incorporation, are:

Purity Supreme, Inc. A Massachusetts corporation;

P.S. Manufacturing Co., Inc. A Massachusetts corporation;

Li'l Peach of Massachusetts, Inc. A massachusetts corporation;

Pauls Trucking Corp. A New Jersey corporation;

Pacific Trucking Corp. A New Jersey corporation.

James H. Bayne,

Secretary.

[FR Doc. 85–14352 Filed 6–13–85; 8:45 am]

BILLING CODE 7035–01–M

[1] State in which chartered is shown after name of each subsidiary company, abbreviated and in parenthesis.

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

National Study of Law Enforcement Agencies' Policies and Practices Regarding Missing Children and Homeless Youth

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of issuance of solicitation for applications to conduct a comprehensive national study of law enforcement agencies' practices regarding the handling of missing children and homeless youth in order to guide future training, technical assistance and public education programs addressing the problems of missing children and homeless youth.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 404(b)(3) and 406(a)(5) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is sponsoring a comprehensive national study of law enforcement agencies' policies and procedures for handling reports of missing children and for identifying and recovering children and youth who may be missing, or, homeless and at risk of exploitation.

Private not-for-profit and for-profit organizations which can demonstrate the capability to design and carry out this study are invited to submit applications to enter into a cooperative agreement with the OJJDP.

OJJDP will select the applicant which presents the most cost effective and innovative approach, and which best demonstrates the organizational capability, knowledge of and experience in the field of applied research in the area of law enforcement policy and research relating to missing children. The project period is for eighteen months, during which three distinct surveys of law enforcement practices will be conducted. Applicants are invited to present alternative design strategies to that proposed in this solicitation. The budget for this study should not exceed $600,000 and applicants are encouraged to present cost-competitive proposals.

I. Introduction and Background

The problem of missing children has become a focus of national concern because it is a problem of national proportions. It is estimated that hundreds of thousands of children are missing from their homes each year for varying periods of time. While most of these children eventually return home, many become victims of physical or sexual abuse and in some cases even homicide.

The U.S. Congress took important steps to address this problem by passing the Missing Children Act in 1982 and, in 1984, the Missing Children's Assistance Act Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. In June 1984, the National Center for Missing and Exploited Children (NCMEC) was established as part of the Federal government's commitment to the issue of missing children.

The NCMEC serves as a clearinghouse of information and assistance concerning missing children and the criminal and sexual exploitation of children. Nationwide awareness campaigns are conducted to let families know what to do if a child is missing. Through its toll free number (1–800–843–5678), the Center helps coordinate information on missing and exploited children, which may lead to the location and recovery of a missing child. The Center is linked to the FBI's National Crime Information Center's Missing Person File (NCIC/MPF). The center also provides training for law enforcement personnel to assist them in recognizing when a runaway is a victim of abuse, and how to obtain help for that child. It helps law enforcement agencies to understand the link between the runaway child and the crimes of theft, drug abuse, prostitution and pornography.

In order to maximize the effectiveness of the Missing Children's Act and the National Center for Missing and Exploited Children, it is necessary to overcome some of the prevalent problems facing national efforts of law enforcement, citizen groups and private organizations in responding to the problem. The following impediments present significant challenges in understanding the nature and extent of the problem itself and identification of effective strategies to respond to it:

1. Fragmented and incomplete sources of information on missing children nationwide;

2. Lack of uniformity in defining "missing children" for puroses of law enforcement intervention;

3. Inconsistencies within and across jurisdictions in term of follow-up of particular missing children cases such as parental kidnapping, runaways and homeless youth; and

4. Lack of profiles on the types of missing children themselves, the circumstances of their disappearance, and their experiences while missing.

II. Research Strategy

In response to the Congressional mandate to establish annual research, demonstration and service strategies for making grants and contracts pursuant to section 406 of the Missing Children's Assistance Act, the Administrator of the OJJDP announced proposed program priorities in the **Federal Register** Vol. 50, No. 91, May 10, 1985, Page 19817.

A. Overall Strategy

This solicitation to conduct a National Study of Law Enforcement Agencies Policies and Practices for Handling Missing Children and Homeless Youth is the first component of this comprehensive strategy of research, program development and technical assistance. It is intended to identify the most effective policy methods of handling reports, investigations and follow-up and to complement other initiatives that are forthcoming.

The other major research projects include:

1. *National Incidence Study to Determine the Actual Numbers of Missing Children.* This study will determine for a given year the number of children under the age of 18 who are reported missing, including the numbers of such children who are victims of abductions by strangers, parental kidnapings and the number of children who are recovered each year. It will also determine the number of children whose whereabouts are unknown to their legal custodians because they are runaways, or missing for other reasons. It is anticipated that this effort, which will survey households, will gather important data regarding the numbers and characteristics of all incidents of missing children both those reported and unreported—and should provide valuable information on the circumstances and the duration of the absences, the child's experience, and assistance to the youth and family.

2. *The Relationship between Missing and Abducted Children and Sexual Exploitation.* Following an assessment of the literature on sexual exploitation of children, a research project will be undertaken to gather more factual information of the correlation between missing children and their risk of sexual exploitation and its consequences.

3. *Psychological Consequences of Abduction and Sexual Exploitation of Children.* Research is needed in this area to identify effective methods for treating children who have been victims of abduction and sexual exploitation and for helping the parents and child return to normally after the event.

4. *The Child Victim as Witness.* Children are serving more frequently as witnesses in trials of their accused abductors and abusers. Research is needed on the effectiveness of children as witnesses, the negative effects of the proceeding on children as well as other aspects of the child victim as witness.

B. Proposed Strategy for the National Study of Law Enforcement Agencies' Policies and Practices for Handling Missing Children and Homeless Youth

The following proposed strategy for conducting the National Study of Law Enforcement Agencies' Policies and Practices for Handling Missing Children and Homeless Youth is offered as one potential means for accomplishing the goals and objectives of this research. (See section III of the solicitation.) Applicants are invited to present alternative strategies which promise to achieve the objectives of the research. Therefore, where specific numbers of sites or cases are proposed herein, applicants should comment on the feasibility and suitability of these target numbers and, if needed, offer viable alternatives which will enhance the likelihood of getting reliable, comprehensive and representative information within the timeframes and resource limitations of the project.

The Law Enforcement Study is designed to be conducted in the three sequential phases.

Phase I: Phase I will begin with a national mail survey which will provide the broadest geographic coverage but the least level of detail on actual law enforcement practices. In this phase it is anticipated that a nationally representative sample of at least 500 full service law enforcement agencies will be selected for survey. The types of information to be gathered are discussed below in section III.A. of this solicitation. The results of this phase will serve two purposes: to provide general descriptive data on law enforcement policies, procedures and preliminary estimates of the numbers of reported missing children's cases; and to guide the selection of jurisdictions in subsequent phases of the research. Applicants will be asked to identify types of questions that would yield productive information in this phase of the research.

Phase II: The second phase should begin by the sixth month of the project period. This phase will consist of on-site interviews with personnel from 100 law enforcement agencies in the initial sample. The second sample of agencies should be chosen to reflect a wide range of police practices, geographic characteristics and rates of missing children reports based upon the initial data from Phase I. The specific kinds of information sought in this phase, or outlined in Section III.B., and will be more detailed than the first phase. For successful implementation of this phase two major considerations need to be addressed in the application: (1) The ability of the interviewer to obtain both cooperation from the department and reliable data on actual practices; and (2) the need to develop data collection instruments that capture actual practices within the jurisdiction and allow for cross-jurisdictional comparisons of decision-making.

Phase III: While the focus of Phase I and II is almost exclusively the law enforcement agency and its practices, Phase III will focus on the missing children cases themselves within the context of the operating policies and procedures. Ten law enforcement jurisdictions will be selected for participation in the study. This phase will involve intensive case-tracking of all calls and reports of missing children, regardless of whether a call meets the operational criteria for an official investigation. For example, a call which involves a report by a parent that a 13 year old son has been missing for eight hours and whose whereabouts is unknown would become part of the data base for follow-up. Even if there is a 24-hour requirement for police intervention in such cases, this case would be followed to determine the eventual return of the youth and circumstances surrounding his disappearance and recovery. The purpose of this component is to provide documentation on all cases reported to the police and to establish profiles of youth and their experience.

Interviews with families and the youth are expected to build a systematic, prospective data base on missing children cases. This component will be designed to complement data collection of the National Incidences Study described in section II.A. It will also be correlated with survey efforts by the Department of Health and Human Services, Administration for Children, Youth and Families, of its Runaway and Homeless Youth Program.

It is anticipated that the ten jurisdictions will be identified and case tracking will commence in late Spring of 1986 and continue through late Fall to allow for sufficient time to elapse (approximately six months) to follow at least two hundred cases per jurisdiction. The type of information to be gathered is outlined in section III C. of the solicitation. Of critical importance to this phase is the cooperation and commitment of the local law enforcement agencies selected and the persons involved in on-site data collection. Applicants will be asked to address this issue in their proposal.

A major factor in studying law enforcement agencies' practices through the methods described above is the sensitivity of jurisdictions regarding the identity of the agency and the individuals and families cooperating with the research. It is the position of this agency that all questionnaires, interviews and other data gathered from law enforcement agencies through this study will remain confidential. Reports on the results will be written so as not to divulge the sources or specific location of information. Those agencies that have been identified as having exemplary policies and procedures, community relations, training and other programs will be the only exceptions to this policy. These will be so noted only with the expressed permission of the appropriate executive official in the jurisdiction. Data collected on individual subjects of research, such as missing children and family members are subject to 28 CFR Part 22 Confidentiality of Identifiable Research and Statistical Information.

III. Program Goals and Objectives

Goals of the National study are: To systematically describe the role of law enforcement agencies both in responding to reports of missing children and in the identification and recovery of these children. This comprehensive national study will focus primarily on local law enforcement agencies' practices including their utilization of state and federal information resources such as the National Crime Information Center/ Missing Persons File (NCIC/MPF) and the Unidentified Deceased File (UDF). The scope of the study includes law enforcement's handling of all categories of missing children as well as homeless youth. It is expected that the knowledge gained from this study will contribute to our understanding of the extent and nature of the problem of missing children nationwide and to help identify effective responses at the Federal, State and local level to missing children and homeless youth.

Objectives: To achieve these goals several objectives have been identified which are specifically related to the three components of the study which will be carried out in sequential phases.

A. Phase 1: National Mail Survey of 500 Law Enforcement Agencies

1. To document and describe existing policies and practices of law enforcement agencies with respect to handling reports of missing children, particularly in the area of record keeping—i.e., classification; definitions; recording, case management and validation procedures; reporting to other agencies, etc.

2. To identify operational criteria for (1) classification of missing children reports; and (2) law enforcement responses to various categories of missing children by age and suspected reasons for the child's disappearance.

3. To estimate national incidence of the number of missing children reported to law enforcement agencies for a given year from this national representative sample of law enforcement agencies by type of case.

4. To determine the level of utilization of the Missing Persons File and the Unidentified Deceased File in the NCIC for both recording and recovery of missing children; and to determine to what extent state or local statutes or regulations mandate the use of such resources.

5. To determine the level of awareness and utilization of the National Center for Missing and Exploited Children (NCMEC) resources for reporting and seeking leads and the locating and recovery of missing children and apprehension of their abductors.

6. To identify potential impediments to law enforcement's ability to recover and return missing children to their families, particularly runaways.

Claims of extreme variation in law enforcement agencies' reactions to reports of missing children have been made with little documentation of actual practices. To date, no such national survey has been conducted of law enforcement's role in the identification, location and recovery of missing children. This first phase of the study should inform us about the extent to which varying definitions, case classification, record keeping procedures, etc., affect our ability to use official police reports as indicators of the national incidence of children reported missing and, to what extent various practices may impede or facilitate the process of recovery of missing children under varying circumstances.

The results of this survey and other information will be used to formulate

the sampling strategy for the second phase of the study.

B. Phase II: Onsite Interviews With Personnel From 100 Law Enforcement Agencies

1. To verify responses from the mailed questionnaire obtained in Phase 1:

2. To collect more detailed information from selected jurisdictions on actual investigative practices utilized by law enforcement agencies in responding to reports of missing children, with particular attention to the following types of reported cases:

a. Runaways;

b. Homeless youth;

c. Parental abduction/kidnapping;

d. Stranger aduction/kidnapping;

e. Potential accident victims;

f. Lost children; and

g. Other.

3. To collect more detailed information on actual law enforcement practices related to the identification, location, apprehension, custody, and return of missing children (listed above), with particular attention to those runaways who apparently have not been reported missing (chronic runaways, throwaways) and homeless youth.

4. To solicit recommendations from police regarding ways in which current policies and procedures could be improved to overcome obstacles to investigation, location, recovery, etc. of missing children within and across jurisdictions.

5. To identify law enforcement agencies which have established effective working/operational relationships with other public and private sector agencies in the identification, protection and recovery of missing children.

6. To better understand the role of the missing person function within the law enforcement bureaucracy in order to improve the responsiveness of law enforcement personnel to reports of missing children; or, to improve public awareness of the limitations of the law enforcement agency's capability in responding to such reports.

The purpose of this second component is to develop a more systematic body of data on actual investigative practices along with an understanding of the reasons for such practices. This information will be very useful in the implementation of recommendations from the overall study; as well as in training and technical assistance.

C. Phase III: Intensive Case-tracking in Ten Law Enforcement Agencies

1. To establish profiles of each of the categories of missing children in terms of:

a. Characteristics of the youth reported missing;

b. Characteristics of the event (duration, type, distance away etc.);

c. Official response and recording; and

d. Child's experience while away in terms of exploitation, protection, means of sustenance, etc.

2. To "observe" law enforcement procedures for the identification, location, protection and recovery of missing children, including the use of state and national information networks, as well as private service agencies.

The purpose of this Phase III component of the national survey is to create a multi-jurisdictional baseline of information on all reports of missing children in selected jurisdictions for purposes of comparison with conventional wisdom in the field, and if possible, for documenting the effectiveness of various methods for achieving a high rate of safe recoveries, investigating and locating of missing children. In addition, the design of the data collection instruments for tracking and follow-up of the cases will compliement those in the National Incidence Study in order to generate a large sample of comparable cases for descriptive and analytical purposes, and particularly for comparing profiles of reported and unreported cases of missing children.

IV. Major Responsibilities of the Successful Applicant

The organization selected to conduct this research project will be responsible for all aspects of the successful implementation and completion of all functions and activities of the study, whether carried out directly or contracted to other organizations or individuals, and, for the development of all products.

The successful applicant will be responsible for:

A. Activities and Functions

1. Developing a comprehensive research design for all phases of the study project as outlined in this solicitation including:

a. Uniform definitions of terminology consistent with the legislation for all survey instruments and interviews;

b. A sampling plan for each component;

c. Data collection instruments and protocols for each;

d. Pre-testing data collection instruments and protocols; and

e. Data analysis plans.

2. Identifying criteria for the selection of the 100 interview sites and the 10 intensive case-tracking sites.

3. Funding and managing the ten intensive site's data collection efforts.

4. Collecting data on all facets of the study with specific plans for:

a. Assuring a high response rate for the national mail survey;

b. Gaining access to law enforcement personnel for Phase II onsite interviews and to records and information in Phase III.

c. Selection and training of on-site interviewers and case-tracking data collectors and other measures to assure uniformity and quality control in the data collection process; and

d. Receipt, editing and maintaining the confidentiality of data.

5. Convening two meetings of an Advisory Group composed of not more than four experts in the fields of research, law enforcement policy development, and missing children, for the purpose of reviewing research plans and activities.

6. Preparing all quarterly financial and progress reports required by this agency.

B. Products

The following products will be developed by the research organization:

1. An advance report on the findings of the Phase I mail survey within six months of the award date;

2. Advanced report on the findings of the on-site Phase II interview survey within eleven months of the award date.

3. An advance report on the findings from Phase III within 16 months of the award data;

4. A comprehensive final report on the entire study within 18 months of the award date which is suitable for nationwide dissemination.

5. In addition to the specified reports, up to three special issues papers on topics to be identified in the application and developed subject to the approval of OJJDP.

6. Preparation of public use data tapes with all potential identifiers stripped, and with full documentation suitable for secondary analysis.

7. All programmatic quarterly progress reports.

As a cooperative agreement—as opposed to a grant or contract—the OJJDP will work collaboratively with the recipient and will approve major decisions throughout the course of the project including the final research design and methodology, definitions of terminology, criteria for site selection,

advisory board members, subject of topical reports, etc. Any and all sole source subcontracting in excess of $10,000 (with the exception of clerical support services) by the successful applicant is subject to prior agency approval.

V. Eligibility Requirements

Applications are invited from public and private not-for-profit and for-profit organizations. For-profit organizations must waive any managment fee or profit. Applicant organizations may choose to submit joint proposals with other organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Together co-applicants must meet the eligibility requirements specified in A and B.

The applicant must have experience in the following areas in order to be eligible for consideration:

A. Prior experience in the design and implementation of national surveys on law enforcement policies, procedures and practices; and

B. Demonstrated knowledge of the issues associated with law enforcement's handling cases of missing children, runaways, homeless youths and victimization of children in general.

In order to maximize competition in the award of this cooperative agreement, for-profit organizations are eligible to apply, provided that they comply with the requirements of LEAA Instruction 4000.3 "Federal Grant and Cooperative Agreement Act of 1977." Specifically, any for-profit applicant organization must certify compliance with the following two requirements:

1. The OJJDP grant award must not be used to support the normal profit-making operations of the organization, but must serve to stimulate the legislatively authorized research and evaluation objectives of OJJDP.

2. For at least one year following the termination of this award the recipient will not complete or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

The applicant must have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration

VI. Dollar Amount and Duration

A. One Cooperative Agreement Will Be Awarded

B. The Initial Period for the Project is 18 Months

Based on the need for and the availability of funds, the performance of the cooperative agreement recipient, a six months supplemental may be awarded. The funding level for the extension period would be based upon the scope of the work desired.

C. The Projected Budget for the 18-Month Project Period for This Cooperative Aggreement Is Not Expected To Exceed $600,000

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative. All applications must include the following information outlined in this section VII of the solicitation in Part IV, Program Narrative of the application. The program narrative shall not exceed 60 double-spaced pages in length.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

Applications which include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in section V. of this solicitation.

1. Organizational Experience. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to submit prior survey and other work products.

2. Financial Capability. In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. *All* questions are to be answered regardless of instructions (section C.1.b. note). The CPA certification is required *only* of those applicants who have not previously received Federal funding.

B. Realization of Research Strategy, Goals and Objectives

Applicants shall concisely present proposed strategy for conducting this study which demonstrates that it has a high probability of attaining the goals and objectives of the research within the parameter set forth in the solicitation. Applicants must demonstrate their understanding and ability to carry out the program design by providing a clear and concise Preliminary Research Design and Program Implementation Plan to carry out the functions and activities of the project. As specified in section VII.B, the Plan must address organizational, methodological, substantive, coordination, administrative and budget issues and must include the following components:

1. *Preliminary Research Design.* This section of the application will be the principal means for the applicant to demonstrate their substantive knowledge of survey research, law enforcement organizations, and missing children. Applicants must:

a. Present a concise discussion of the major substantive—i.e., legal,

administrative, implementation, etc.—issues affecting law enforcement's response to missing children and homeless youth and how this research program can make a contribution to resolving those issues.

b. Present a preliminary research design including a discussion of sampling criteria and plans for each of the three phases of the study; identification of critical issues for consideration and inclusion in the design of the data collection instruments and protocols for each component. Applicants must specifically address the issues raised in section II.B.

c. Discuss anticipated products and indicate how the major substantive issues addressed by this study will be incorporated in the research products.

2. *Implementation Plan.* Applicants shall describe how they will allocate the available resources to implement the strategy presented in their application. Applicants must develop an implementation plan which addresses the activities and functions described in section IV.A. Major Responsibilities of the Successful Applicant. The plan must include:

a. An annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components;

b. A list of key personnel responsible for managing and implementing the three major components of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individuals' resumes may be submitted as appendices to the application.

c. A concise discussion of the coordination, data access and administration issues related to the program design and how their proposal would address these issues.

d. A detailed time-task plan for the 18-month project period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the products identified in section IV.B.

C. Budget

Applicants shall provide an 18-month budget with a detailed justification for all costs, including the bases for computation of these costs. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. Applicants should highlight innovative, cost-effective measures of their proposal.

VIII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. Applications will be reviewed in terms of their responsiveness to the specifications in the solicitation, their organizational capability to achieve the goals and objectives of the study, their attention to substantive issues in the design and their innovativeness in responding to strategic issues in the implementation of the study.

A. Organizational Capability (10 Points)

The extent and quality of organizational experience in the design and implementation of national studies of law enforcement policies, procedures and actual practices. Special consideration will be given to experience in research associated with the handling of missing children, runaways, homeless youth and child victimization in general.

The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper dispursal and accounting of federal funds.

B. Project Staff (15 Points)

The extent and relevance of the experience and qualifications of staff identified to manage and implement this initiative, including staff to be hired through contracts. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the preliminary research design and implementation plan.

C. Preliminary Research Design (35 Points)

Responsiveness of the proposal to issues related to the research strategy. Proposals will be evaluated in terms of their understanding of both the substantive issues and the goals and objectives of the study; the clarity, comprehensiveness, appropriateness and innovativeness of their preliminary research design and sampling plan for accomplishing the objectives of this initiative; and, the potential utility of research products. Particular attention will be paid to the presentation of critical issues for consideration and inclusion in the design of data collection instruments for each component. Special consideration will be given for innovative responses to the data collection issues raised in section II.B.

D. Implementation Plan (20 Points)

Appropriateness of allocation of resources to accomplish the goals and objectives of the study within the 18-month project period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational, and individuals' roles and responsibilities for the completion of significant tasks and development of products.

E. Budget (20 Points)

Applicants must include on 18-month budget with a detailed narrative justifying the costs as specified in section VII.D. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the task to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

IX. Deadline for Submission of Applications

One signed original and three copies of the application must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 782, 633 Indiana Avenue, NW, Washington, D.C. 20531, by 5:30 p.m. on July 31, 1985. Those applications mailed to the above address must be postmarked on or before July 31, 1985 by the U.S. Postal Service. The necessary forms for applications may be obtained by writing to OJJDP. Questions regarding the solicitation may be directed to Barbara Allen-Hagen, 202/724–5929.

A Notification of Intent to apply for this program is included in the application kit, which can be obtained at the above address. Organizations which intend to submit applications are requested to return a complete Notification of Intent to OJJDP at the above address by July 12, 1985. The submission of this notification is optional and is for the purposes of estimating the workload associated with review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

X. Civil Rights Compliance

A. All recipient of OJJDP assistance, including any contractors, must comply with the non-discrimination

requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submt such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under an grant award.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-14407 Filed 6-13-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter on Implementing Income and Eligibility Verification System

Section 2651 of the Deficit Reduction Act amended Title XI of the Social Security Act to establish an income and eligibility verification system for exchange of information among State agencies administering programs of unemployment compensation, AFDC, Medicaid, Food Stamps, Supplemental Security Income, and any State program under a plan approved under Titles I, X, XIV, or XVI of the Social Security Act. The provisions took effect April 1, 1985, with the exception of the requirement for employers to report quarterly wages which is delayed until September 30, 1988. Programs participating in the income and eligibility verification system are required to share information to assist in the child support program and to assist the Secretary of Health and Human Services in verifying eligibility amounts under Titles II and XVI of the Social Security Act.

Section 2651 of the Deficit Reduction Act of 1984 also amended section 303 of Title III of the Social Security Act to require the State agency charged with administering the unemployment compensation law to participate in the income and eligibility verification system. Section 303 has previously required only that State unemployment compensation agencies disclose certain specified information to Federal and State Food Stamp agencies, and State and local child support enforcement agencies.

Under the new verification system, employers will be required to make quarterly wage reports to a State agency (which may be the State unemployment compensation agency) except that the requirement may be waived if an alternate system for providing employment-related income and eligibility data is approved by the Secretary of Labor (in consultation with the Secretaries of Health and Human Services and Agriculture). The wage data will be available for all of the participating programs under the income and eligibility verification system. All agencies will also have access to information on income and earnings of individuals from the Social Security Administration and unearned income from the Internal Revenue Service.

The Department of Labor has issued proposed rules at 20 CFR Part 603 regarding the income and eligibility verification system. The proposed rules were published in the **Federal Register** on March 14, 1985, (50 FR 10450, 10456) and allowed for a 45 day comment period after publication.

The Department proposes to adopt the Unemployment Insurance Program Letter with this notice, to supplement UIPL 1-85 and the proposed regulations. This proposed UIPL provides instructions for use of social security data, for agreements with requesting agencies, funding for wage record systems and notification to claimants of use of information. Comments on the UIPL may be submitted in writing on or before July 29, 1985.

Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 "D" Street NW., Washington, D.C. 20213.

The proposed Unemployment Insurance Program Letter is published below.

Dated: May 30, 1985

Frank C. Casillas,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No.

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator for Regional Management

Subject: Status of Implementation of Pub. L. 98-369 (The Deficit Reduction Act of 1984)

1. *Purpose.* To provide additional guidance to States on implementation of the income and eligibility verification system.

2. *References.* Section 2651, Pub. L. 98-369; UIPL 1-85; Proposed rules at 20 CFR Part 603, published in the **Federal Register** on March 14, 1985.

3. *Background.* Section 2651 amended Title XI of the Social Security Act to establish an income and eligibility verification system for exchange of information among State agencies administering programs for AFDC, Medicaid, Food Stamps, SSI and UI, and any State program under a plan approved under Title I, X, XIV, or XVI of the Social Security Act. The guidance in this UIPL is intended to supplement UIPL 1-85 and the proposed regulations. The provisions took effect April 1, 1985, with the exception of the requirement for employers to report quarterly wages which is delayed until September 30, 1988. This UIPL is being published for comment in the **Federal Register.** The proposed rules were published at 20 CFR Part 603 in the **Federal Register,** March 14, 1985 for comment for 45 days.

4. *Social Security Administration (SSA) Benefit Data.* The SSA administers and maintains records of a wide variety of benefit programs. Currently ETA is exploring with SSA the nature and extent of information which will be made available to SESAs. ETA will identify those programs which might affect entitlement under State law.

Section 603.8 of the Proposed Rules require SESAs to obtain information from the Social Security Administration to the extent useful in verifying eligibility and benefit amounts. States where benefit eligibility and/or amount is affected by receipt of a primary Social

Security retirement pension should enter into an agreement to obtain benefit information from SSA to verify the accuracy of retirement amounts. Such agreements were to be entered into by April 1, 1985 (see paragraph 7 below).

SSA has two basic systems for providing this information. The first is Bendex, which permits mass cross-matching of computer files on a periodic (usually monthly) basis. The SSA prefers to enter into Bendex agreements with only one agency in each State, which is usually the welfare agency. The other method is the Third Party Query System, which provides for agreements between using agencies and SSA. It involves use of a marked-sensed card for individual cases. Cards are sent to a SSA field office for transmission to the central office computer and responses are available within 24 hours. We encourage SESA's use of the Bendex systems to verify the accuracy of the social security number.

ETA is working with SSA to facilitate State access to benefit data and will keep SESAs informed of these developments. In the meantime, SESAs should contact local SSA and State agency authorities to begin the development of the required agreements.

Although IRS is required to disclose information on unearned income, ETA is not requiring SESAs to sign agreements with IRS for access to this data. Unearned income is normally not a factor in determining UI eligibility.

5. *Standardized Formats.* An agreement has already been reached on standardized formats for use in the Internet program to communicate with Child Support Enforcement agencies for purposes of crossmatching and verification. SESAs will be furnished other standardized formats as rapidly as they are released (a responsibility of the Secretary of Health and Human Services).

6. *Agreements between SESAs and Requesting Agencies.* Effective April 1, 1985, agencies covered by the income and eligibility verification system must exchange information that is useful and productive in verifying eligibility and benefit amounts. In order to exchange information, SESAs must sign agreements with agencies providing information as well as those requesting information. When the SESA is the provider, rather than the user, of wage and/or benefit data, the using agency should initiate the agreement process This applies to AFDC, Food Stamps, Medicaid, Title XI (SSI), and Child Support.

The law also refers to State programs under Title I (Old Age Assistance), Title X (Aid to the Blind), and Title XIV (Permanently Disabled). These progrms are operative only in Guam, Puerto Rico, and the Virgin Islands. In all other jurisdictions, programs covered by these three titles are incorporated in Title XVI, Supplemental Security Income. The SESA must be able to enter into an agreement, which includes having statutory authority to release data, and preparing in advance the procedural arrangements, such as forms and timing, necessary to complete an agreement by April 1, 1985. In addition, SESAs are responsible to ensure that agreements adequately provide for users' safeguarding these data and users' reimbursement of SESA costs for providing the information.

Agreements already in place (i.e., with AFDC, Child Support Enforcement, and Food Stamp agencies) may be adequate or may require modification. Agreements providing for interstate arrangements for data exchange and verification via Internet should be consistent with UIPL 6–84 and 10–84 procedures. Note that under the proposed rules SESAs may enter into agreements with a single agency which can redisclose information to other agencies, so long as such redisclosure is provided for in the agreement.

7. *Waiver of April 1, 1985, Deadline for Agreements.* As pointed out in paragraph 4, the statute provides that SESAs (where Social Security affects benefits), were to enter into agreements with SSA by April 1, 1985. The Secretary of Labor may, by waiver, grant a delay in this effective date if the State submits a plan describing a good faith effort to comply. The waiver may not extend beyond September 30, 1986.

Any State which cannot meet the April 1, 1985, deadline is to request a waiver from the Secretary of Labor via the appropriate regional office within 90 days of the date of final publication of the rules in the **Federal Register**. Section 603.9 of the Proposed Rules provides for this deferral in requesting a waiver of the effective date. The request should include in detail what the State did to conclude the agreements, on time, why agreements were not reached, plans for completing and signing agreements, and firm target dates for completion.

Requests for waiver should be signed by the Governor or his formally appointed designee.

Copies of signed agreements are to be furnished to the appropriate regional office.

8. *Quarterly Wage Reporting.* Those request reporting States which enact legislation to adopt quarterly wage reporting for UI purposes are eligible for funding from Title III grants for start-up and continuing costs. However, funds are not available for planning activities prior to the enactment of legislation.

States which elect to operate a wage-record system apart from the UI program administration but which will provide crossmatch capabilities with benefit payments will not receive advance planning or developmental funds from Title III Grants. However, Title III administrative grant funds (from the State's existing benefit payment control allocation) may be utilized for the SESA's share of ongoing use of the system in accordance with cost principles and cost allocation methodologies set forth in OMB Circular A–87, as codified at 41 CFR 1–15.7. SESAs are encouraged to participate in the development of any such cost allocation plan and/or carefully review it to ensure costs refects use of the wage-record system for crossmatch purposes only.

At this time, ETA is aware of only one State proposing to adopt a system other than quarterly wage reporting. Under the Act, the Secretary of Labor in consultation with the Secretaries of Agriculture and Health and Human Services must approve such an alternative system. The mechanism for consultation among the Secretaries and the criteria for waiver of the requirement have not been finalized. If any other State contemplates this course of action, th SESA should notify the appropriate regional office as early as possible so that procedures can be supplied for the State to secure the necessary approval by the Secretary of Labor prior to establishing the system

9. *Other Actions That Were Necessary by April 1, 1985.* The law also requires that SESAs obtain social security numbers (SSN) from claimants and use the numbers (as identifiers) in maintaining records.

Another requirement is that claimants be advised of the potential disclosure of their data to other agencies. Under Section 1137(a)(6) of the Social Security Act, the SESAs are required to notify claimants at the time of filing an initial claim and periodically thereafter that information available through the system will be requested and utilized Provision of a printed notice on or attached to any subsequent additional claims will satisfy the requirement for periodic notice thereafter. This amplifies on the requirement in Section 603.4 of the Proposed Rules relating to notification of claimants.

10. *OMB Approval.* The timing of the changes in the Deficit Reduction Act of 1984 did not allow for prior Office of Management and Budget (OMB) clearance under the Paperwork

Reduction Act of 1980. However, immediate dissemination of this information is imperative. OMB approval is being sought and States will be notified once this approval has been obtained.

11. *Action Required.* SESAs are requested to take steps to implement the amendments as explained above after notification of OMB approval.

12. *Inquiries.* Direct inquiries to appropriate regional office.

[FR Doc. 85-14388 Filed 6-13-85; 8:45 am]
BILLING CODE 4510-30-M

Job Training Partnership Act (Pub. L. 97-300); Program Year 1985 Allotments for Programs Under Title II, Part A; Training Services for the Disadvantaged; Adult and Youth Programs; Title III, Dislocated Worker Program; and 1985 Allotments for Title II, Part B, Summer Youth Employment and Training Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final allotments for Program Year (PY) 1985 (July 1, 1985 through June 30, 1986) for programs under Title II-A and III of the Job Training Partnership Act (JTPA), and the 1985 Summer Program under Title II-B of the JTPA.

FOR FURTHER INFORMATION CONTACT: For JTPA inquiries, contact Robert N. Colombo, Director, Office of Employment and Training Programs, 601 D Street, NW., Washington, D.C. 20213, telephone number: (202) 376-6093.

SUPPLEMENTARY INFORMATION: Attached are the final allotments for PY 1985 (July 1, 1985 through June 30, 1986) for programs under Titles II-A and III of JTPA and the final allotments for the 1985 Summer Program under Title II-B of JTPA. The allotments are based on the funds appropriated by Pub. L. 98-139 (1984 DOL Appropriation Act), 98-619 (1985 DOL Appropriation Act), the statutory formulas contained in the act and the latest data available to the Secretary.

Title II-A Allotments.

Attachment I shows the PY 1985 JTPA Title II-A allotments by State based on a total figure of $1,886,151,000, the same total available for the PY 1984 program. This amount is composed entirely of PY 1985 formula funds. These funds support the basic job training program. For all States, Puerto Rico, the Virgin Islands and the District of Columbia, the following data were used in developing these allotments:

—Data for areas of substantial unemployment are averages for the 12-month period, July 1983 through June 1984.
—The number of excess unemployed individuals are averages for this same 12-month period, July 1983 through June 1984.
—The economically disadvantaged data are from the 1980 Census.

The allotments for the territories are based on estimated 1983 unemployment, using a 90 percent relative share hold-harmless of the Title II-A allotments for these areas and a minimum allotment amount of $125,000.

Title II-B Allotments

Allotments for the 1985 JTPA Title II-B summer program total $824,549,000 and are shown in Column 3 on Attachment II. This amount is composed of $724,549,000 of PY 1984 formula funds and $100 million (Column 2) of supplemental funds. These funds support summer youth activities. Except for the territories, the same data used for the Title II-A allotments were also used for the formula Title II-B allotments. The allotments for the territories are also based on the relative share of Section 251 funds those areas received for the CY 1984 summer program. As required by Pub. L. 98-619 the $100 million supplemental funds were provided to service delivery areas (SDAs) whose based 1985 allotment was less than the amounts received by the SDA for the 1984 summer youth program. The $100 million was sufficient to assure that all SDAs received at least 95.7 percent of the amount allotted for the 1984 program.

Title III Allotments

The PY 1985 JTPA Title III Dislocated Worker Program allotments are reflected in Column 3-5 of Attachment III. Column 3 shows the total appropriation of $222,500,000, which includes the base allotment of Federal funds totaling $167,250,000 and the national reserve of $55,250,000 to be distributed at a later date. The base funds are subject to the matching requirements contained in Section 304 of JTPA. The PY 1985 program's funding is $500,000 less than was available in PY 1984. This reduction was taken entirely in the national reserve. The total base allotments are the same as in PY 1984. Allotments for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas, are based on the proportion these jurisdictions received of Title II-A funds.

Except for the above listed territories, the unemployment data used for determining these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are the averages for the September 1983 through August 1984 period. Long-term unemployed data used were for CY 1983.

Column 4 shows a total amount of $122,748,526. This represents the total amount States must provide in matching in accordance with Section 304 of the Act to be eligible for the Federal allotment listed in Column 3.

Column 5 shows a total amount of $345,248,526, the sum of Columns 3 and 4. This represents the total resources available for the Title III Dislocated Worker Program based on PY 1985 allotments.

Signed this 6th day of June 1985.

Roberts T. Jones,
Administrator, Office of Job Training Programs.

ATTACHMENT I.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1985, JTPA TITLE II—A ALLOTMENTS TO STATES, APRIL 24, 1985

	Allotment
Alabama	$45,931,374
Alaska	4,702,878
Arizona	21,664,570
Arkansas	20,851,069
California	[illegible]
Colorado	17,965,234
Connecticut	15,291,391
Delaware	4,702,878
District of Columbia	7,682,743
Florida	68,598,664
Georgia	36,253,423
Hawaii	5,778,514
Idaho	7,640,428
Illinois	103,491,557
Indiana	46,030,277
Iowa	18,177,836
Kansas	10,722,953
Kentucky	36,435,653
Louisiana	42,456,841
Maine	8,606,435
Maryland	24,560,926
Massachusetts	32,564,222
Michigan	101,142,486
Minnesota	25,868,305
Mississippi	27,042,089
Missouri	39,068,427
Montana	6,793,934
Nebraska	6,936,914
Nevada	6,820,260
New Hampshire	4,702,878
New Jersey	45,624,936
New Mexico	12,215,430
New York	125,613,465
North Carolina	41,276,156
North Dakota	4,702,878
Ohio	98,942,168
Oklahoma	23,018,730
Oregon	25,006,321
Pennsylvania	104,638,166
Puerto Rico	66,699,129
Rhode Island	7,024,036
South Carolina	25,238,109
South Dakota	4,702,878
Tennessee	43,340,568
Texas	98,947,206
Utah	10,067,553

ATTACHMENT I.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1985, JTPA TITLE II—A ALLOTMENTS TO STATES, APRIL 24, 1985—Continued

	Allotment
Vermont	4,702,878
Virginia	[illegible]
Washington	40,167,230
West Virginia	25,248,458
Wisconsin	38,832,871
Wyoming	4,702,878
American Samoa	315,023
Guam	1,311,514
Northern Marianas	125,000
Trust Territories	1,644,818
Virgin Islands	1,603,645
National total	1,886,151,000

ATTACHMENT II.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1984 JTPA TITLE II—B ALLOTMENTS TO STATES, JUNE 10, 1985

	Initial	Supplemental	Total
Alabama	$17,051,881	$740,737	$17,792,618
Alaska	1,775,415	[illegible]	1,831,904
Arizona	7,898,757	907,734	8,806,491
Arkansas	7,744,872	791,110	8,535,982
California	74,607,971	6,343,104	80,951,075
Colorado	6,556,684	857,648	7,414,332
Connecticut	7,480,284	[illegible]	9,565,477
Delaware	1,775,415	51,538	1,826,953
District of Columbia	6,071,659	1,956,119	8,027,778
Florida	25,489,976	4,041,534	29,531,510
Georgia	13,475,335	2,249,065	15,724,400
Hawaii	2,147,781	[illegible]	2,741,979
Idaho	[illegible]	244,673	3,083,021
Illinois	38,423,704	9,797,874	48,221,578
Indiana	17,090,312	4,683,399	21,773,711
Iowa	6,753,877	1,150,567	7,904,444
Kansas	4,019,344	1,346,177	5,365,521
Kentucky	13,530,328	1,366,157	14,896,485
Louisiana	15,766,663	184,791	15,951,454
Maine	3,197,501	470,761	3,668,262
Maryland	9,463,689	4,242,579	13,706,268
Massachusetts	15,155,266	4,401,350	19,556,616
Michigan	37,539,857	2,430,187	39,970,044
Minnesota	9,612,580	1,751,681	11,364,261
Mississippi	10,042,816	259,211	10,302,027
Missouri	14,510,382	1,973,386	16,483,768
Montana	2,523,695	0	2,523,695
Nebraska	2,833,087	684,266	3,517,353
Nevada	2,532,971	[illegible]	2,632,262
New Hampshire	1,775,415	[illegible]	2,191,445
New Jersey	19,586,010	6,561,892	26,147,902
New Mexico	4,537,868	0	4,537,868
New York	46,671,914	12,909,624	59,581,538
North Carolina	15,337,543	2,324,606	17,662,149
North Dakota	1,775,415	0	1,775,415
Ohio	36,731,889	5,344,394	42,076,283
Oklahoma	8,551,134	119,416	8,670,550
Oregon	9,284,867	530,718	9,815,585
Pennsylvania	38,851,764	4,031,416	42,883,180
Puerto Rico	25,509,387	164,143	25,673,530
Rhode Island	2,826,536	[illegible]	3,509,221
South Carolina	9,199,817	586,383	9,786,200
South Dakota	1,775,415	0	1,775,415
Tennessee	16,094,934	1,477,056	17,571,990
Texas	36,770,844	3,693,631	40,464,475
Utah	3,740,329	133,514	3,873,843
Vermont	1,775,415	0	1,775,415
Virginia	11,362,506	3,992,939	15,355,445
Washington	14,912,266	33,813	14,946,079
West Virginia	9,369,825	0	9,369,825
Wisconsin	14,039,224	1,230,120	15,269,344
Wyoming	1,775,415	0	1,775,415

ATTACHMENT II.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1984 JTPA TITLE II—B ALLOTMENTS TO STATES, JUNE 10, 1985—Continued

	Initial	Supplemental	Total
American Samoa	55,003	310	55,313
Guam	670,830	3,782	674,612
Northern Mananas	25,730	145	25,875
Trust Territories	74,374	420	74,794

ATTACHMENT II.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1984 JTPA TITLE II—B ALLOTMENTS TO STATES, JUNE 10, 1985—Continued

	Initial	Supplemental	Total
Virgin Islands	380,370	2,144	382,514
Native Americans	13,176,511	0	13,176,511
National total	724,549,000	100,000,000	824,549,000

ATTACHMENT III.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, PY 1985 JTPA TITLE III—DISLOCATED WORKER PROGRAM ALLOTMENTS AND MATCHING REQUIREMENTS, MAY 2, 1985

	Unemployment rate	Reduction units	Allotment	Required match	Total program
Alabama	11.7	4	$4,375,377	$875,075	$5,250,452
Alaska	10.5	3	423,383	169,353	592,736
Arizona	6.0	0	1,323,435	1,323,435	2,646,870
Arkansas	9.0	1	1,646,983	1,317,586	2,964,569
California	8.1	0	17,999,670	17,999,670	35,999,340
Colorado	5.3	0	1,154,720	1,154,720	2,309,440
Connecticut	4.7	0	930,630	930,630	1,861,260
Delaware	6.6	0	316,616	316,616	633,232
District of Columbia	10.5	3	680,962	272,385	953,347
Florida	6.9	0	5,228,930	5,228,930	10,457,860
Georgia	6.3	0	2,560,273	2,560,273	5,120,546
Hawaii	5.9	0	376,247	376,247	752,494
Idaho	7.6	0	604,865	604,865	1,209,730
Illinois	9.5	2	10,738,301	6,442,981	17,181,282
Indiana	9.3	2	4,771,790	2,863,074	7,634,864
Iowa	7.0	0	1,737,526	1,737,526	3,475,052
Kansas	5.2	0	854,101	854,101	1,708,202
Kentucky	9.7	2	3,241,553	1,944,932	5,186,485
Louisiana	9.9	2	3,674,881	2,204,929	5,879,810
Maine	7.3	0	645,335	645,335	1,290,670
Maryland	5.6	0	1,848,488	1,848,488	3,696,976
Massachusetts	5.6	0	2,477,850	2,477,850	4,955,700
Michigan	11.8	4	11,169,526	2,233,905	13,403,431
Minnesota	6.6	0	2,468,712	2,468,712	4,937,424
Mississippi	10.5	3	2,287,103	914,841	3,201,944
Missouri	8.1	0	3,540,734	3,540,734	7,081,468
Montana	8.2	1	546,566	437,253	983,819
Nebraska	4.5	0	423,466	423,466	846,932
Nevada	7.9	0	702,950	702,950	1,405,900
New Hampshire	4.2	0	222,742	222,742	445,484
New Jersey	6.6	0	4,006,433	4,006,433	8,012,866
New Mexico	8.2	1	844,531	675,625	1,520,156
New York	7.5	0	10,646,683	10,646,683	21,293,366
North Carolina	6.8	0	3,482,448	3,482,448	6,964,896
North Dakota	5.1	0	205,258	205,258	410,516
Ohio	10.0	2	11,236,251	6,741,751	17,978,002
Oklahoma	7.4	0	2,031,292	2,031,292	4,062,584
Oregon	9.6	2	2,493,309	1,495,985	3,989,294
Pennsylvania	9.7	2	11,134,643	6,680,786	17,815,429
Puerto Rico	21.5	14	4,111,275	0	4,111,275
Rhode Island	6.6	0	545,213	545,213	1,090,426
South Carolina	7.6	0	1,946,080	1,946,080	3,892,160
South Dakota	4.6	0	161,262	161,262	322,524
Tennessee	9.2	2	3,934,745	2,360,847	6,295,592
Texas	6.5	0	7,474,223	7,474,223	14,948,446
Utah	7.1	0	803,640	803,640	1,607,280
Vermont	6.0	0	231,705	231,705	463,410
Virginia	4.9	0	1,616,507	1,616,507	3,233,014
Washington	10.0	2	4,019,601	2,411,761	6,431,362
West Virginia	15.0	7	2,770,400	0	2,770,400
Wisconsin	8.1	0	3,883,145	3,883,145	7,766,290
Wyoming	6.3	0	254,278	254,278	508,556
American Samoa	0.0	0	27,934	0	27,934
Guam	0.0	0	116,295	0	116,295
Northern Mananas	0.0	0	11,084	0	11,084
Trust Territories	0.0	0	145,850	0	145,850
Virgin Islands	0.0	0	142,200	0	142,200
National Reserve	0.0	0	55,250,000	0	55,250,000
National total	8.1	0	222,500,000	122,748,526	345,248,526

[FR Doc. 85-14392 Filed 6-13-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[V-85-3]

Temporary Variance and Interim Order; ASARCO, Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: (1) Notice of application for temporary variance and interim order; (2) Grant of interim order.

SUMMARY: This notice announces the application of ASARCO, Incorporated, for a temporary variance and interim order pending a decision on the application for variance from certain requirements of the medical removal provisions prescribed in 29 CFR 1910.1025(k)(l)(i)(D) of the standard for Occupational Exposure to Lead.

It also announces the granting of an interim order until a decision is rendered on the application for temporary variance.

DATES: The interim order became effective on April 17, 1985, the date of the letter granting the interim order. The last date for interested persons to submit comments is July 15, 1985. The last date for affected employers and employees to request a hearing on the application is July 15, 1985.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3656, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination at the above address, Telephone: 202-523-7193

or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 555 Griffin Square Building, Room 602, Dallas, Texas 75202

U.S. Department of Labor—OSHA, Federal Building, Room 421, 1205 Texas Avenue, Lubbock, Texas 79401

U.S. Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor—OSHA, Overland-Wolf Building, Rm. 100, 6910 Pacific Street, Omaha, Nebraska 68106

U.S. Department of Labor—OSHA, 4300 Goodfellow Boulevard, Building 105E, St. Louis, Missouri 63120

U.S. Department of Labor—OSHA, Federal Building, Rm. 1554, 1961 Stout Street, Denver, Colorado 80294

U.S. Department of Labor—OSHA, Petroleum Building, Suite 210, 2812 1st Avenue North, Billings, Montana 59101.

Notice of Application

Notice is hereby given that ASARCO, Incorporated, 120 Broadway, New York, New York 10271, has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance from 29 CFR 1910.1025(k)(l)(i)(D) of the medical removal protection (MRP) provisions of the lead standard, which states:

> The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests * * * (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 ug/100g of whole blood: provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 ug/100g of whole blood.

The purpose of these provisions is to provide protection from excessive lead exposure for employees with substantially elevated blood-lead levels.

The addresses of the places of employment that will be affected by the application are as follows:

ASARCO, Incorporated, Post Office Box 7, Glover, Missouri 63646

ASARCO, Incorporated, East Helena, Montana 59835

ASARCO, Incorporated, Fifth and Doyle Streets, Omaha, Nebraska 68102

ASARCO, Incorporated, Post Office Box 1111, El Paso, Texas 79940.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that the implementation of the 50 μg/100g removal trigger of the lead standard is not feasible for the following reasons:

(1) Implementation would require the long-term removal of significant numbers of percentages of skilled and experienced employees who are critical to maintaining safe and healthful operations.

(2) The length of time these employees are predicted to have to remain on removal would create serious operational disruptions unless these employees can be quickly replaced, which they cannot.

Almost all jobs in ASARCO's primary lead facilities, the applicant claims, involve a degree of skill, training, and experience such that the widespread removals and transfers necessary under the 50 μg/100g trigger would severely impair the safety and efficiency of the plant. Limitation of the relief from removal/return trigger levels to supervisory, skilled or maintenance employees would, therefore, pose difficult administrative burdens. The applicant has requested a temporary variance to allow removal of employees under the MRP provisions when the employees' blood lead levels exceed 55 μg/100g rather than at the 50 μg/100g removal trigger. This relief would expire on February 1, 1986.

OSHA has decided to consider a step down process to assist the applicant in its endeavor to comply with the requirements of § 1910.1025(k)(1)(i)(D) by requiring medical removal at 55 μg/100g rather than at 60 μg/100g of whole blood as authorized under a recently expired temporary variance granted to the applicant. Whereby, the previous temporary variance required that at least 10 percent or more of the total lead-exposed supervisory, maintenance and skilled production employees have blood lead levels greater than 50 μg/100g of whole blood, OSHA will now consider the 55 μg/100g medical removal trigger when 5 percent or more of the applicant's employees have blood lead levels greater than 50 μg/100g of whole blood. OSHA believes that continued relief would be warranted if the applicant can show strict compliance with the Cooperative Assessment Program agreements reached with OSHA and the United Steelworkers of America (USWA), compelling evidence to show economic need for the relief and a significant reduction in the number of employees with blood lead levels above 50 μg/100g.

This request for relief comes at a time when ASARCO and the USWA have taken the initiative to apply the experience they gained under the arsenic standard. For the purpose of developing engineering compliance plans for ASARCO's four facilities, ASARCO, the USWA and OSWA are participating in a cooperative tripartite assessment to determine the lowest air lead levels that can be achieved by engineering controls, operation by operation, in each facility. Since OSHA

is very concerned that engineering solutions be found to lead exposure problems, the Agency looks favorably upon the tripartite arrangement as an effective way to achieve these solutions. As evidence of ASARCO's good faith in complying with the lead standard, it is signatory to several Cooperative Assessment Program (CAP) agreements in which milestones are established for the installation of feasible engineering controls and schedules are set for other related studies to be performed. OSHA commends ASARCO and the USWA for their initiative.

OSHA recognizes that the most effective solution to the problems of lead exposure at ASARCO is to implement engineering controls to the extent feasible and that such a solution will be most protective of employee's health. OSHA also recognizes that implementing engineering controls of the sort ASARCO has agreed to in the cooperative tripartite agreement will require the allocation of considerable technical expertise and supervisory and skilled personnel as well as the expenditure of large sums of money. Since ASARCO has committed itself to such a program, OSHA believes that its resources are stretched so thin that it cannot absorb the additional drain on professional, skilled and technical personnel that would be caused by the medical removal of all employees with blood lead levels over 50 μg/100g. Thus, in this case OSHA finds compelling evidence for the need for interim relief despite the fact that fewer than 10 percent of the total lead-exposed supervisory, maintenance and skilled production employees would have to be removed because of elevated blood lead levels. The 10 percent criterion for relief consistently has been treated by OSHA as a rule of thumb. Plants below that criterion have been eligible for relief if they could show by compelling evidence that relief is needed." (46 FR 37891, 37892; July 23, 1981.)

Our technical staff has reviewed the data submitted concerning ASARCO's primary lead smelting and refining plants located at Glover, Missouri; East Helena, Montana; Omaha, Nebraska; and El Paso, Texas. The applicant's data showed that 5.2 percent of the lead exposed employees had blood lead levels of at least 50 ug/100g of whole blood as averaged over a six-month period during calendar year 1984. During 1983, the applicant had shown that the percent of lead-exposed employees subject to removal under a 50 ug/100g trigger for the four plants ranged from 10.4 to 18.6 percent. The present 5.2 percent is a significant reduction in the number of the applicant's employees with a blood lead level above 50 ug/100g.

This relief is conditioned upon ASARCO's ongoing compliance with all other provisions of the lead standard as well as with all conditions of the order set forth below, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(l)(i)(D). OSHA believes that the inclusion in the order of additional requirements for medical surveillance, in conjunction with the agreed upon tripartite process demonstrates all parties concerned with the health of ASARCO's employees be protected.

A copy of the application for variance will be made available for inspection and copying upon request at the locations listed above. All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the pertinent application no later than July 15, 1985.

In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than July 15, 1985, in conformance with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Grant of Interim Order

It appears from the application and supporting data that an interim order is necessary to prevent undue hardship on the applicant and its employees pending a decision on the variance. Therefore, it is ordered, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.10(c) and in Secretary of Labor's Order No. 9–83 (48 FR 35736) that the facilities listed above are hereby authorized to comply with the requirements of the interim order set forth below, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(l)(i)(D). All other provisions of the lead standard are unaffected by this order and therefore must be complied with in conjunction with the terms of the order.

The terms of the interim order are as follows:

(1) This order may be revoked upon the employer's failure to meet the requirements of its Cooperative Assessment Program agreements.

(2) The terms of the order apply to all employees in the lead-exposed workforce.

(3) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, the employer shall perform blood lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood lead level at or above 40 ug/100g and who is exposed to lead above the action level or 30 ug/m³.

(4) The employer shall remove all employees in accordance with the provisions of § 1910.1025(k)(l)(i)(D) except that the average of the blood sampling tests shall indicate that the employee's blood lead level is at or above 55 ug/100g of whole blood instead of 50 ug/100g as the provision now reads.

(5) The employer shall return all employees in accordance with the provisions of § 1910.1025(k)(l)(iii)(A)(3) of the lead standard.

(6) For an employee with blood lead levels between 50 and 55 ug/100g, who need not be removed under the terms of this order and who work in jobs having air lead exposure at or above 30 ug/m³, the employer shall:

(a) Require that effective respiratory protection be worn at all times they are in the area;

(b) Do an immediate inspection and evaluation of the employee's respirator usage;

(c) Do an immediate inspection and evaluation of the lead-related work practices affecting the employee;

(d) Do an immediate inspection and evaluation of the use and availability of hygiene facilities, and the employee's relevant personal hygiene habits;

(e) Do an immediate inspection and evaluation of the existing engineering controls to determine whether they are maintained properly to insure that such systems do not have an adverse effect upon the employee;

(f) Provide a personal consultation with a licensed physician every two months; and

(g) Provide the comprehensive medical examination required under paragraph (j) of the lead standard by a licensed physician every three months.

(7) For all employees required to wear respiratory protection under the terms of this order, ASARCO, Incorporated shall provide:

(a) Quantitative face fit tests at the time of initial fitting and at least semi-annually thereafter;

(b) An evaluation by a licensed physician prior to the time of initial fitting and at least annually thereafter of:

(i) A pulmonary function test which includes FEV_1 and FVC; and

(ii) A physical examination; and

(c) A posterior-anterior chest x-ray on a 14 x 17 inch film, on a five-year time interval.

(8) Based upon the inspections and evaluations required in paragraphs 6(b), (c), (d), and (e), the employer shall take all reasonable and appropriate corrective steps to reduce the employee's absorption of lead. The employer shall submit to the Office of Variance Determination a written report documenting when and where the evaluations took place, the corrective actions that were necessary and taken, and the name and job classification of the affected employees. This submission shall be made within 45 days after the effective date of this order.

(9) After the various consultations, evaluations, examinations and tests required in paragraphs 6(f), 6(g), 7(b) and 7(c), the physician shall make a written determination as to whether the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead, or is unable to wear a respirator. If the employee is determined to have such a medical condition or to be unable to wear a respirator, he or she shall be removed from work areas where the exposure to airborne lead is at or greater than 30 ug/m^3.

(10) For the duration of the variance, the employer shall submit every two months to the Office of Variance Determination, blood lead, zinc protoporphyrin, and air lead data as accumulated.

(11) The employer shall agree to allow OSHA to inspect its premises in connection with this order.

(12) The employer shall comply with all other provisions of the lead standard which are unaffected by this order.

As soon as possible ASARCO, Incorporated shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for temporary variance and interim order. The Assistant Secretary may revoke this order at any time, without prior notice, whenever the applicant does not comply with any requirement of the order or the relevant standards or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until February 1, 1986 or until a decision is made on the application for temporary variance, whichever occurs first.

Signed at Washington, D.C. this 10th day of June, 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

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BILLING CODE 4510–26–M

[V–85–4]

St. Joe Lead Company; Application for Permanent Variance From Certain Provisions of the Standard for Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for permanent variance.

SUMMARY: This notice announces the application of the St. Joe Lead Company for permanent variance from certain provisions of the occupational health standard governing exposure to lead, 29 CFR 1910.1025. Specifically, the applicant seeks relief from the requirements in § 1910.1025 (e)(1), (e)(3), and (e)(4), concerning engineering controls; § 1910.1025 (f)(1), (f)(2), and (f)(3), concerning respiratory protection; and § 1910.1025 (k)(1(i)(C), (k)(1)(i)(D), and (k)(1)(iii)(A)(3), concerning medical removal protection.

DATE: The last date for interested persons to submit comments on the variance application is July 15, 1985.

The last date for affected employers, employees and appropriate State authority having jurisdiction over employment or places of employment covered in the application to request a hearing on the application is July 15, 1985.

ADDRESSES: Send comments and hearing requests to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Rm. N–3656, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination at the above address, Telephone: (202) 523–7193

or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor—OSHA, 4300 Goodfellow Boulevard, Building 105E, St. Louis, Missouri 63120.

Notice of Application

Notice is hereby given that St. Joe Lead Company, 7733 Forsyth Boulevard, Clayton, Missouri 63105, has filed an application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596, 29 U.S.C. 655(d)) and 29 CFR 1905.11, requesting a permanent variance from the following provisions of the occupational health standard governing exposure to lead ("the lead standard"): 29 CFR 1910.1025 (e)(1), (e)(3), and (e)(4); 29 CFR 1910.1025 (f)(1), (f)(2), and (f)(3); and 29 CFR 1910.1025 (k)(1)(i)(C), (k)(1)(i)(D), and (k)(1)(iii)(A)(3).

The address of the place of employment, a primary lead smelter and associated operations, that will be affected by this application is as follows:

St. Joe Lead Company, Herculaneum, Missouri 63048.

The applicant certifies that it has informed employees who would be affected by the variance of the application by posting copies at all places where notices to employees are normally posted. It reports that employees have also been informed of their right to petition the Assistant Secretary for a hearing. The applicant asserts that, taken as a whole, its proposals in lieu of compliance "afford employment as healthful as would prevail under the terms prescribed by the standard."

Engineering Controls

The sections under the lead standard's paragraph (e), *Methods of compliance*, that are pertinent require that the employer implement engineering and work practice controls in order to reduce and maintain employee exposure to lead within prescribed limits, "except to the extent that the employer can demonstrate that such controls are not feasible" [29 CFR 1910.1025(e)(1)]. Where such controls are not sufficient to reduce exposures to or below the permissible exposure limit (PEL), the employer must implement them nonetheless in order to reach the lowest feasible level of exposure and must achieve the PEL by supplementing them with respiratory protection as prescribed under paragraph (f) [29 CFR 1910.1025(e)(2)]. The standard establishes a PEL of fifty micograms of lead per cubic meter of air (50 $\mu g/m^3$) averaged over an 8-hour period. At present, employers in the primary smelting industry must achieve air lead exposures of 100 $\mu g/m^3$ by means of feasible engineering and work practice controls; the standard permits these employers to use respiratory controls to reduce employee exposures the rest of the way down to the 50 $\mu g/m^3$ permissible exposure limit (that is, down

from the currently prescribed level of 100 $\mu g/m^3$ or down from whatever is the lowest feasible level which may be attainable relying solely on engineering and work practice controls). In 1991, these employers must achieve air lead exposures of 50 $\mu g/m^3$ by means of feasible engineering and work practice controls.

Paragraph (e)(3) requires the employer to establish and implement a written compliance program in order to achieve the PEL. In addition, paragraph (e)(4) permits the employer to bypass compliance with the 100 $\mu g/m^3$ interim exposure level prescribed by the standard's implementation schedule where, according to his compliance plan, the employer would achieve the PEL solely by engineering and work practice controls and the diversion of resources necessary to comply with the interim exposure level would clearly preclude compliance, otherwise attainable, with the PEL by the time specified.

St. Joe Lead Company states that it cannot meet the requirements concerning engineering and work practice controls prescribed by the lead standard. The applicant asserts that, dating back to when it was issued a citation in 1974, it has been implementing engineering controls in some operations in order to reduce exposures down to 200 $\mu g/m^3$ (averaged over an 8-hour period). It also notes that "some engineering controls may materially assist in making the smelter cleaner thereby reducing the burden on housekeeping programs in particular." Moreover, such controls "have had some effect on area samples." Nevertheless, the applicant's experience is that these controls do not materially affect the exposure readings obtained from personal sampling and that high exposures still occur. Indeed, during some plant conditions an exposure to 10,000 $\mu g/m^3$ "would not be uncommon," given the high degree of mobility of lead-exposed employees in performing varying job tasks—e.g., start-up, keeping the material flowing, maintenance during "upset conditions," housekeeping, and shut-down. The company essentially contends that the salutary effects of engineering controls are limited to certain areas of the applicant's facility, whereas the varied responsibilities of many employees routinely take them throughout the facility, including into areas where feasible engineering controls are not available to reduce exposures. The applicant thus concludes that neither St. Joe Lead Company nor any other primary lead smelter will be able to satisfy the engineering control requirements of the lead standard at any time in the foreseeable future.

Accordingly, in lieu of complying with paragraphs (e)(1), (e)(3), and (e)(4) of the lead standard, the applicant proposes to implement a written compliance program "to reduce the average blood lead level of exposed employees to or below 35 $\mu g/dl$ [one deciliter is essentially the same as 100 grams] of whole blood," through a combination of administrative, respiratory and engineering controls. In the company's view, the purpose of the lead standard is "to reduce employee blood lead levels to the below those levels at which reversible physiological effects of lead exposure may appear." The company reads the standard as setting as a health goal "an average blood lead level of less than 40 $\mu g/dl$ for all exposed employees." Thus, the company believes that attainment of an "average plant-wide goal of a 35 $\mu g/dl$ blood lead" will produce equivalent health protection to that which would be obtained under the standard.

In the alternative, if the applicant fails to achieve the 35 $\mu g/dl$ target, but, within six years of the effective date of the variance order, succeeds in achieving a 37.5 $\mu g/dl$ average blood lead level for its exposed employees, then the applicant proposes that its obligations under this part of the variance would cease. In the event that the 37.5 $\mu g/dl$ target is not achieved after six years but the applicant "can demonstrate continued progress toward attainment of that level", the applicant proposes to revise its compliance program and to undertake to attain the 37.5 $\mu g/dl$ target by some other date determined by the applicant; if the applicant is unable to demonstrate continued progress after six years, then the company will revise its compliance program in order to attain the 37.5 $\mu g/dl$ target within four additional years.

The applicant also pledges its willingness to implement certain engineering controls which are feasible and cost-effective. Nevertheless, the applicant reserved the right over the course of the variance to substitute different cost-effective controls than those selected at the inception of the variance.

Respiratory Controls

The sections under the lead standard's paragraph (f), *Respiratory protection*, that are pertinent require the employer to provide and assure the use of appropriate respirators as prescribed in the standard. For example, the standard permits the use of a half-mask, air-purifying respirator with high efficiency filters for lead exposures not in excess of ten times the PEL. Respirators must be used where engineering and work practice controls are not sufficient to reduce exposures to or below the PEL [29 CFR 1910.1025(f)(1)]. The standard further provides that (after the dates for compliance with the interim levels specified in Table I) no employer shall require an employee to wear a negative pressure respirator longer than 4.4 hours per day [29 CFR 1910.1025(f)(1)]. Other appropriate respirators are not subject to this limitation [29 CFR 1910.1025(f)(2)]. The employer is also responsible for assuring that the respirator is fitted properly [29 CFR 1910.1025(f)(3)].

St. Joe Lead Company states that it has instituted a respirator program which includes quantitative fit testing, employee training, and mandatory, enforced work rules regarding respirator usage. The applicant asserts that the proper respirator use which is assured by its program will provide "equivalent air lead protection to that mandated by the standard." In this regard, the applicant contends that the protection factors (i.e., the ratio of air sample results taken at the employee's lapel to sample results taken inside the employee's respirator) which the lead standard attributes to different types of respirators are understated. For example, while the lead standard assigns a protection factor of 10 to half-mask, air purifying respirators equipped with high-efficiency filters, the applicant reports that test results obtained in its own fit testing program indicate protection factors of at least 100 for these respirators. Based on these findings, which the company believes to be supported both by field data collected at the Herculaneum plant in 1982 by the National Institute of Occupational Safety and Health as well as by the American National Standards Institute's standard Z88.2—1980, the applicant concludes that air-purifying, negative pressure, full or half-mask respirators that are fitted by quantitative fit testing will protect employees to below 50 $\mu g/m^3$ when air lead levels in the smelter are as high as 5000 $\mu g/m^3$.

Accordingly, in lieu of complying with paragraphs (f)(1), (f)(2) and (f)(3) of the lead standard, the applicant proposes to provide respirators consistent with the following scheme:

(1) Where airborne concentrations of lead do not exceed 0.5 mg/m^3 [500 $\mu g/m^3$], a half-mask air-purifying respirator equipped with a high-efficiency filter.

(2) Where airborne concentrations of lead do not exceed 5.0 mg/m^3 [5000 $\mu g/$

m^3], where St. Joe can demonstrate through quantitative fit testing that a protection factor of greater than 200 can be attained, a half-mask air-purifying respirator equipped with high-efficiency filters or a full facepiece air-purifying respirator with high-efficiency filters.

(3) Where airborne concentrations of lead do not exceed 20 mg/m^3 [20,000 $\mu g/m^3$], any powered air-purifying respirator with high-efficiency filters.

(4) Where airborne concentrations of lead do not exceed 50 mg/m^3 [50,000 $\mu g/m^3$], any half-mask supplied-air respirator.

(5) Where airborne concentrations of lead do not exceed 100 mg/m^3 [100,000 $\mu g/m^3$], a supplied-air respirator with full facepiece hood, helmet or suit operated in a positive-pressure mode.

(6) Where airborne concentrations of lead are greater than 100 mg/m^3 [100,000 $\mu g/m^3$], a full facepiece self-contained breathing apparatus operated in a positive-pressure mode.

The applicant also seeks exemption from the 4.4 hour limit per day governing employee use of negative pressure respirators. In the applicant's view, "at most it is a cosmetic provision in the sense that it arguably requires that employees be comfortable on the job." The applicant also contends that, given the necessity for its employees to wear respirators continuously during lead exposure, the 4.4 hour limit is infeasible because the company doubts that sufficient skilled maintenance and operating talent is available in the vicinity of its plant to operate it with such "part-time" labor.

Medical Removal Protection

The sections under the lead standard's paragraph (k), *Medical removal protection*, that are pertinent prescribe procedures for the temporary medical removal and return of an employee. By 1981, the employer must remove an employee from work having an exposure to lead at or above the 30 $\mu g/m^3$ action level on each occasion that a periodic and a follow-up blood sampling test conducted in accordance with the lead standard indicate that the employee's blood lead level is at or above 60 $\mu g/100g$ of whole blood [29 CFR 1910.1025(k)(1)(i)(C)]. As of March 1, 1983, an employee whose lead exposure is at or above the action level must also be removed on each occasion that the average of the last three blood sampling tests conducted in accord with the lead standard (or the average of all blood sampling tests conducted over the previous six months, whichever is longer) indicates that the employee's blood lead level is at or above 50 $\mu g/100g$ of whole blood [29 CFR 1910.1025(k)(1)(i)(D)]. Paragraph (k) provides, though, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 $\mu g/100g$ of whole blood.

The lead standard provides for the return to former job status for an employee removed due to a blood lead level at or above 60 $\mu g/100g$, or due to an average blood lead level at or above 50 $\mu g/100g$, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 $\mu g/100g$ of whole blood [29 CFR 1910.1025(k)(1)(iii)(A)(3)].

Under the terms of an interim order [49 FR 33757, August 24, 1984], St. Joe Lead Company is temporarily relieved from the requirement to comply with the 50 $\mu g/100g$ removal trigger level; it must continue to comply with the 60 $\mu g/100g$ removal trigger and the 40 $\mu g/100g$ return trigger.

St. Joe Lead Company argues that compliance with the 60 $\mu g/100g$ removal, 50 $\mu g/100g$ removal and 40 $\mu g/100g$ return triggers is not feasible at this time and may not be in the future. The applicant acknowledges that "tremendous progress" has been made in achieving blood lead reductions at the Herculaneum smelter, principally due to the company's hygiene, medical surveillance and respirator programs. The applicant contends, though, that the feasibility of medical removal protection (MRP) is ultimately defined by the percent of worker population actually on removal status at program equilibrium. In the company's view, this percent of population on removal is a function not only of the removal and return triggers but, most importantly, the removed individuals' lead absorption/excretion dynamics. According to this formulation, the applicant asserts that, at current exposures and resulting employee blood lead levels, the equilibrim percent of the company's exposed workforce on removal under the 60–40 and the 50–40 MRP programs would be in excess of 10% and of 50%, respectively. The applicant has calculated that, as of January 1983, 26.2% of the Herculaneum smelter's workforce had blood lead levels in the 50 $\mu g/dl$ to 60 $\mu g/dl$ range and fully 25% of the workforce would have been eligible for immediate removal on a blood lead "averaging" basis. The applicant has concluded that the maximum number of persons that can feasibly be sustained on medical removal is not more than four percent of the total exposed population.

In addition, in light of the asserted inefficacy of engineering controls, the company anticipates that relatively few work areas will have air lead measurements below the action level. Given the number of employees that the company expects to have on removal status, the applicant believes that sufficient work for all removed employees will not be available in the near future unless such employees are allowed to wear respirators in the removal areas and unless the respirators are assigned the higher protection factors which the company advocates.

The company belives that increased medical surveillance of lead exposed employees whose blood leads are at or above 50 $\mu g/100g$ constitutes "an equally effective health substitute" for achieving "the principal health goals of the standard."

Accordingly, in lieu of complying with paragraphs (k)(1)(i)(C), (k)(1)(i)(D), and (k)(1)(iii)(A)(3), the applicant proposes "eventual compliance" with the 50/40 removal-return triggers as follows:

1. St. Joe shall remove each employee with a blood lead level at or above 10 $\mu g/dl$, and return the employee when his or her blood lead level is at or below 50 $\mu g/dl$.

2. At such time as a blood lead census of exposed employees indicates that the sum of employees on medical removal and the non-removed employees whose blood lead exceeds 58 $\mu g/dl$ is less than 4% of the total exposed population, St. Joe shall adjust the removal/return triggers such that employees with blood lead levels at or above 58 $\mu g/dl$ are removed. Such a removed employee shall not be returned until that employee's blood lead level is at or below 48 $\mu g/dl$.

3. At such time as a blood lead census of exposed employees idicates that the sum of employees on medical removal and the non-removed employees whose blood lead exceeds 55 $\mu g/dl$ is less than 4% of the total exposed population, St. Joe shall adjust the removal/return triggers such that employees whose three most recent (or 6-month average, whichever is longer) blood lead level tests average 55 $\mu g/dl$ or over are removed. Such an employee shall not be returned until that employee's blood lead level is at or below 45 $\mu g/dl$.

4. At such time as a blood lead census of exposed employees indicates that the sum of employees on medical removal and the non-removed employees whose blood lead exceeds 53 $\mu g/dl$ is less than 4% of the total exposed population, St. Joe shall adjust the removal-return triggers such that employees whose three most recent (or 6-month average, whichever is longer) blood lead level tests average 53 $\mu g/dl$ or over are removed. Such an employee shall not be

returned until that employee's blood lead level is at or below 43 μg/dl.

5. At such time as a blood lead census of exposed employees indicates that the sum of employees on medical removal and the non-removed employees whose blood lead exceeds 50 μg/dl is less than 4% of the total exposed population, St. Joe shall adjust the removal-return triggers such that employees whose three most recent (or 6-month average, whichever is longer) blood lead level tests average 50 μg/dl or over are removed. Such an employee shall not be returned until that employee's blood lead level is at or below 40 μg/dl.

6. If after six years St. Joe has not made progress such that less than 5% of its exposed population exceeds a blood lead level of 55 μg/dl, then St. Joe shall undertake engineering control programs designed to reduce employee exposure to airborne lead.

7. If at any time in attempting to comply with paragraphs 2, 3, and 4 immediately above, St. Joe demonstrates that greater than 6% of its exposed employee population is on medical removal, St. Joe may raise its removal/return triggers as required to hold the removed population at or below 6% of its work force. In no case, however, may St. Joe adjust the removal/return triggers above 60 μg/dl removal and 50 μg/dl return.

8. If at any time St. Joe complies with paragraph 5 above, nothing further is required of this section of this order.

9. Beginning with the effective date of this order, St. Joe shall remove an employee from his normal work assignment to an erea where such employee's exposure is less than 30 μg/m³ or to an area where his exposure is less than 150 μg/m³ if respiratory protection is worn continuously and St. Joe can demonstrate for each affected employee through quantitative fit testing a protection factor of 100 or greater.

By way of increased medical surveillance, the applicant proposes to do the following:

1. St. Joe shall perform blood lead, zinc protoporphyrin (ZPP), hemoglobin, every two months on each employee whose last blood test indicted a blood lead level at or above 40 μg/100g.

2. For employees with blood lead levels above 50 μg/100g, St. Joe shall provide: (a) Personal consultation with a licensed physician every two months; and (b) a comprehensive medical examination by a licensed physician every six months.

3. After each personal consultation and the comprehensive medical examination, the physician shall make a written medical opinion as to whether the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(a) If the employee is determined to have such a condition, he or she shall be removed from work having an exposure to lead at or above 30 ug/m³; or

(b) If the employee is determined not to have such a condition, St. Joe shall retain and upon request make available to OSHA the written statements from the physician concerning each affected employee stating that it is medically appropriate for the employee to continue to work at his or her present job.

4. Commencing upon the effective date of this order, St. Joe shall submit to OSHA on a quarterly basis the names and job classifications of all employees on MRP and the areas to which removed employees are assigned.

5. For employees with blood lead levels at or above 50 ug/dl who are working in areas with air lead levels at or above 30 ug/m³, respirator usage shall be mandatory during the entire work shift.

6. For all employees with blood lead levels at or above 50 ug/dl who need not be removed under the terms of this order, St. Joe shall make periodic inspections and evaluations of:

(a) The lead-related work practices affecting the employees;

(b) The employee's respirator use; and

(c) The use and availability of protective clothing and other "personnel equipment" and hygiene facilities and the employee's relevant personal hygiene habits.

Based on the inspection and evaluation, St. Joe shall take all reasonable and appropriate corrective actions in these regards to reduce its employees' absorption of lead. Commencing on the effective date of this order, St. Joe shall submit to OSHA a quarterly report setting forth blood lead, ZPP, hemoglobin, and air-lead data for all exposed employees.

7. St. Joe shall agree to allow OSHA to inspect its premises in connection with this order.

Request for Public Comment

Section 6(d) of the Occupational Safety and Health Act of 1970 provides for the issuance of a variance upon a showing by the proponent "that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard." A copy of the application for variance will be made available for inspection and copying upon request at the locations listed above. Any affected employer, employee or appropriate State agency having jurisdiction over employment or places of employment covered in this application may file with the Assistant Secretary of Labor comments and/or a request for hearing concerning the merits of this application, as provided in 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate and must be directed to the Office of Variance Determination at the above address.

Signed at Washington, D.C. this 10th day of June 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-14391 Filed 6-13-85; 8:45 am]

BILLING CODE 4510-26-M

Office of the Assistant Secretary

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under Section 308, Title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, July 2, 1985, at 1:00 p.m., in the Secretary's Conference Room, S-2508, FPB.

Items to be discussed are:

Pre-separation Briefing Project

Colorado Partnership Project Interagency

VA/DOL Counseling Enhancement Project

Status-Emergency Veterans' Job Training Act

The public is invited.

Signed at Washington, D.C. this 11th day of June, 1985.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85-14389 Filed 6-13-85; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-37]

Intent To Grant an Exclusive Patent License; H.J. Schock and W.J. Rice of Bay Village, OH

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Harold J. Schock and William J. Rice of Bay Village, Ohio, a limited, exclusive, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,111,041 for an "Indicated Mean-Effective Pressure Instrument," which issued on September 5, 1978 and U.S. Patent No. 4,428,226 for a "Real Time Pressure Signal System for a Rotary Engine," which issued on January 31, 1984, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of the Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by August 13, 1985.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453-2430.

Dated: June 6, 1985.

John E. O'Brien,

Deputy General Counsel.

[FR Doc. 85-14331 Filed 6-13-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-38]

Intent To Grant Partially Exclusive Licenses; Rust-Oleum Corp. et al.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive patent licenses.

SUMMARY: NASA hereby gives notice of intent to grant to Rust-Oleum Corporation, Shane Associates, Inc., Inorganic Coatings, Inc., and CM Technologies, Inc., limited, partially exclusive, revocable licenses to practice the inventions as described in the foreign counterparts of U.S. Patent No. 4,162,169 for "Alkali-Metal Silicate Binders and Methods of Manufacture," and U.S. Patent No. 3,620,784 for "Potassium Silicate-Zinc Coatings." These licenses would allow practice of the inventions in Australia, Canada, France, West Germany, Great Britain, Japan, The Netherlands, Sweden, and Switzerland. The proposed partially exclusive licenses will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive licenses unless, within 60 days of the date of the Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the partially exclusive licenses.

DATE: Comments to this notice must be received by August 13, 1985.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453-2430.

Dated: June 6, 1985.

John E. O'Brien,

Deputy General Counsel.

[FR Doc. 85-14332 Filed 6-13-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-39]

NASA Wage Committee, Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage committee.

DATE AND TIME: July 10, 1985, 1:30 p.m. to 3:00 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 5092, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah C. Green, Code NPC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2622).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Director, Personnel Programs Division on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Pub. L. 92-392. The Committee, chaired by Ms. Deborah Green, consists of 6 members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since the session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention.

Type of meeting: Closed.

Purpose of meeting: The NASA Wage Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.

Dated: June 7, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-14334 Filed 6-13-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

NSF Advisory Committee on Merit Review; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Committee on Merit Review.

Date and Time: July 2, 1985—9:00 am-4:30 pm.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact Person: Dr. Carlos Kruytbosch, Acting Head, Science Indicators Unit, National Science Foundation, Washington, D.C. 20550, (202) 634–4682.

Anyone planning to attend this meeting should notify Dr. Kruytbosch no later then June 27, 1985.

Summary Minutes: Dr. Carlos Kruytbosch, at above address.

Purpose of Committee: To evaluate merit review as practiced by NSF and other agencies and provide its advice and recommendations concerning alternative systems of merit review and selection of projects.

Summarized Agenda: Reports from the NSF Director and staff; discussion of the Committee Charter and outline of work of the Committee and other items.

M. Rebecca Winkler,

Committee Management Officer.

June 11, 1985.

[FR Doc. 85–14379 Filed 6–13–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Availability of Volume 2, Volume 2 Addendum, and Volume 5 of "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee"

The U.S. Nuclear Regulatory Commission announces the availability of NUREG–1061, Volume 2, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee: Evaluation of Seismic Design-A Review of Seismic Design Requirements for Nuclear Power Plant Piping"; NUREG–1061, Volume 2 Addendum, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee: Summary and Evaluation of Historical Strong-Motion Earthquake Seismic Response and Damage to Aboveground Industrial Piping"; and NUREG–1061, Volume 5, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee: Summary-Piping Review Committee Conclusions and Recommendations."

The NRC Piping Review Committee was established by the Executive Director for Operations of the USNRC to make a comprehensive review of the NRC requirements in the area of nuclear power plant piping. The activities of this Review Committee were divided into four tasks handled by appropriate task groups. These are:

- Pipe Crack Task Group.
- Seismic Design Task Group.
- Pipe Break Task Group.
- Dynamic Load and Load Combinations Task Group.

Each Task Group prepared a report appropriate to its scope that was published as a Volume of NUREG–1061. Volumes 1, 3 and 4, the reports of the Pipe Crack Task Group, the Pipe Break Task Group and the Dynamic Loads and Load Combinations Task Group were published in August, 1984, November 1984 and December 1984, respectively.

NUREG–1061, Volume 2 reports the position and recommendations of the NRC Piping Review Committee, Seismic Design Task Group. The Task Group considered overlapping conservatism in the various steps of seismic design, the effects of using two levels of earthquake as a design criterion, and industry practices. Issues such as damping values, spectra modification, multiple response spectra methods, nozzle and support design, design margins, inelastic piping response, and the use of snubbers are addressed.

Effects of current regulatory requirements for piping design are evaluated, and recommendations for immediate licensing action, changes in existing requirements, and research programs are presented. Additional background information and suggestions given by consultants are also presented.

NUREG–1061, Volume 2 Addendum was prepared by Stevenson and Associates, Inc., for the Seismic Design Task Group and was used as a reference in the preparation of NUREG–1061, Volume 2. Earthquake experience data for industrial piping is summarized in this report.

NUREG–1061, Volume 5 prepared by the NRC Piping Review Committee, is an overview summary report. This volume summarizes the major issues, reviews the interfaces, and presents the Committee's conclusions and recommendations for updating NRC requirements on these issues. The report also suggests research or other actions that may be required to respond to issues not amendable to resolution at this time.

Copies of NUREG–1061, Volume 2, Volume 2 Addendum, and Volume 5 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Bethesda, Maryland this 10th day of June 1985.

R.H. Vollmer,

Cochairman, NRC Piping Review Committee.

L.C. Shao,

Cochairman, NRC Piping Review Committee.

[FR Doc. 85–14393 Filed 6–13–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50–454, STN 50–455, STN 50–456]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(i) to the Commonwealth Edison Company (the licensee) for Byron Station, Units 1 and 2, and Braidwood Station, Unit 1 (the facilities). Byron Station is located at the licensee's site in Ogle County, Illinois and Braidwood Station is located at the licensee's site in Will County, Illinois. Byron Station, Unit 1, revceived its full power operating license on February 14, 1985; the other two units have not yet received operating licenses.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e)(3)(i) to submit an updated Final Safety Analysis Report (FSAR) for the facilities within 24 months of the date of issuance of the operating license. By letter dated April 16, 1985, the licensee requested an exemption to defer submittal of the updated FSAR until 12 months after Braidwood Station, Unit 2, is licensed. This deferral is the proposed action being considered by the staff.

The Need for the Proposed Action

The FSAR applies to four units: Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2. The licensee will continue to keep the FSAR up-to-date throughout the licensing of Byron Station, Unit 2, and Braidwood Station, Units 1 and 2. The licensee states that it is not practical to maintain an FSAR and an updated FSAR and proposes to submit the updated FSAR within twelve months after issuance of the operating license for Braidwood Station, Unit 2.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the required date for updating the FSAR

and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FSAR. Such an action would not enhance the protection of the environment and is unnecessary in these circumstances since the purpose of maintaining a current FSAR will be met by compliance with 10 CFR 50.34 during the period of licensing review of Byron Unit 2 and Braidwood Units 1 and 2.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for both Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated April 16, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103, and at the Wilmington Public Library, 292 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Bethesda, Maryland, this 7th Day June, 1985.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-14395 Filed 6-13-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant located in Citrus County, Florida.

In accordance with the licensee's application dated February 27, 1985, as revised May 24, 1985, and June 7, 1985, the proposed amendment would move the Fire Service System tables from the Technical Specifications (TSs) to the Fire Protection Plan (FPP) to allow timely implementation of operability and surveillance requirements. The affected Technical Specifications are the Fire Detection Instrumentation (TS 3.3.3.7), Deluge and Sprinkler Systems (TS 3.7.11.2) and Fire Hose Stations (TS 3.7.11.4). Also a Fire Protection license condition would be added requiring that the FPP not be changed so as to significantly decrease the level of fire protection in the plant without the Commission's approval and that all changes be submitted annually to the Commission along with the updated FSAR. *See* 10 CFR 50.71.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibillity of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a purely administrative change to the TSs (Example (i)). The proposed amendment would not modify any requirements, but would merely relocate the tables covering the Fire Service System to the FPP. Many modifications to the Facility are now in progress to comply with he requirements of 10 CFR 50.48 and Appendix R. The proposed change would permit reduced processing and review time involved in revising the tables to accommodate these changes, (which might otherwise unnecessarily delay restart), while still assuring adequate licensee and Commission staff review and control.

Based on the reasons stated, the Commission's staff proposes to determine that the proposed amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 15, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Dated at Bethesda, Maryland, this 7th day of June 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch 4, Division of Licensing.

[FR Doc. 85–14394 Filed 6–13–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on July 16 and 17, 1985 in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on July 16, recess and reconvene at 8:00 a.m. on July 17. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The July 16 session and a portion of the July 17 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b (c) (1), (2), and 9 (B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b (c) (6).

The portion of the meeting open to the public will begin approximately 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on July 12. Ms. Boyd is also available to provide further information regarding this meeting.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

June 5, 1985.

[FR Doc. 85–14355 Filed 6–13–85; 8:45 am]

BILLING CODE 3170–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Losses and Goals Advisory Committee; Meeting

AGENCY: Losses and Goals Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Losses statement.
- Glossary of Terms Discussion.
- Accounting and Modeling issue paper.
- System Planning Principles Discussion Memorandum.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee.

DATE: June 20, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Statehouse Inn (Alpine Room) in Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–14328 Filed 6–13–85; 8:45 am]

BILLING CODE 000–00–M

POSTAL RATE COMMISSION

[Order No. 611; Docket No. C85–2]

Complaint of Tri-Parish Journal, Inc.; Notice and Order Fixing a Schedule for Statement of Issues and Appointing Officer of the Commission To Represent the Interests of the General Public

Issued: June 10, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

On June 7, 1985, Tri-Parish Journal, Inc. (Tri-Parish) filed a complaint with the Commission pursuant to 39 U.S.C. 3662, which alleged that certain regulations of the Postal Service are unconstitutional and violate the First and Fifth Amendments and/or contravene 39 U.S.C. 3623(c)(1). The complaint was docketed as No. C85–2.

Tri-Parish alleges that §§ 422.221 and 422.223 of the DMM "arbitrarily classify their publications as a third-class mailer." Complaint at 2. It states it cannot comply with those regulations because of its intent to provide the public with access to the news, and its belief in the right of all the public to have such access.

Tri-Parish cited the increased postage it has paid allegedly because of these regulations, as well as increased costs due to the folding requirements of holders of third-class permits as opposed to second-class permits. With regard to the latter requirements, Tri-Parish suggested certain procedures for immediate relief. Complaint at 3.

Tri-Parish also alleges that the relevant regulations which do not permit "requester publications" to receive the "in-county rate" violate the First and Fifth Amendments and 39 U.S.C. 3623(c)(1). Complaint at 3.

The Commission, in accordance with the provisions of section 3662, has determined to hold hearings on the complaint. The district court's decision in *Tri-Parish Journal, Inc.* v. *Bolger et al.*, Civil Action No. 84–5524, (E.D. La., May 13, 1985), concluded that the Commission is the appropriate forum to consider the issues raised by this complaint. The Commission is familiar with this dispute because of the litigation before the district court in Louisiana, as well as the parallel litigation in three additional cases. Specifically, similar issues have been raised in the following cases: *Gulf Times, Inc.* v. *Bolger et al.*, Civil Action No. 84–5361 BK (S.D.W., Va.); *Times Publications, Inc.* v. *Postal Service et al.*, Civil Action No. 85–0424–C–3 (E.D.Mo.) and *The Enterprise, Inc.* v. *Bolger et al.*, Civil Action No. 4–84–108 (E.D.Tenn., March 24, 1984), appeal docketed, Civil Action No. 84–5704 (6th Cir.). While we recognize that our determination to hold hearings under section 3662 is being made early in these proceedings, the court's opinion indicates that a hearing should begin within 90 days following the filing of the complaint. Furthermore, the Commission has examined the relevant judicial filings and has decided that a hearing in conformity with 39 U.S.C. 3624, as required by 39 U.S.C. 3662, is warranted in this docket.

Section 84 of our rules of practice provides for an answer by the Postal Service within 30 days after the filing of a complaint. In this case, given the time constraints indicated in the court's opinion and the opportunity provided in that case to become familiar with the issues, we are directing the Postal Service to file its answer within 20 days.[1] Additionally, the Postal Service is directed to file, along with its answer, a statement of the issues in the case. The statement of issues shall include legal issues, as well as issues of fact which it believes are in dispute.

Similarly, the intervenors are directed to file, along with their notices of intervention, a statement of issues—both legal and factual—within 15 days of the date of the Postal Service's filing. Again, these filings are being requested at an early date so that we can proceed as expeditiously as possible. We also request the parties to provide their views on Tri-Parish's request that the hearing be held in New Orleans, Louisiana. Complaint at 4. These comments are to be filed at the same time as the statements of issues.

The Commission appoints Stephen A. Gold, Director of our Office of Consumer Advocate, to represent the interests of the general public in this docket.[2] Any person who files a statement of issues and accompanying documents shall serve copies thereof on the Postal Service, the Consumer Advocate and Tri-Parish, pursuant to section 12 of the rules of practice. These statements also will be publicly available in the Docket Section.

[1] As with any deadline, the Postal Service may request additional time to file its answer.

[2] In addition to his other duties, the Consumer Advocate is directed to provide assistance to interested potential parties unfamiliar with Commission proceedings.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85-14329 Filed 6-13-85 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23723; 70-7102]

Allegheny Power System, Inc., et al.; Proposal To Issue Limited Guarantee

June 7, 1985.

Allegheny Power System, Inc. ("APS"), 320 Park Avenue, New York, New York 10022, a registered holding company, and its wholly owned electric utility subsidiaries Allegheny Power Service Corporation, 320 Park Avenue, New York, New York 10022, Monogahela Power Company ("MPC"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, (collectively, the "Companies"), have filed a declaration with this Commission pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

West Penn and Potomac are currently certified under applicable state workmen's compensation statutes as self-insurers of workmen's compensation liability. Pursuant to these statutes, employers are liable for a wide range of expenses and disability payments for those of their employees (and their beneficiaries) who incur employment-related disabilities.

The Workmen's Compensation Commission of Maryland and the Bureau of Worker's Compensation of Pennsylvania have advised Potomac and West Penn, respectively, that they will require the guarantee by APS of the workmen's compensation liability of Potomac and West Penn as a condition of such subsidiaries' recertifications as self-insurers. In general, such guarantees provide that APS may be called on to pay all past, present, and future liabilities which may be incurred by those subsidiaries under the relevant workmen's compensation statutes while such subsidiaries maintain self-insured status.

To the extent that the Companies have determined or may in the future determine that it is beneficial to self-insure against workmen's compensation liabilities, the Companies believe that the issuance of the requested parental guarantees will not materially detract from such benefits. Accordingly, the Companies hereby propose that APS issue guarantees in the case of the workmen's compensation liabilities of Potomac and West Penn in Pennsylvania and Maryland, respectively; and issue substantially similar guarantees in the case of similar liabilities of Potomac in Virginia and West Virginia, and APSC and Monongahela in the states in which they conduct operations, should the same prove desirable.

Such guarantees will each be in a principal amount of up to $25 million and will be effective through December 31, 1989.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 1, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be granted and permitted to became effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14362 Filed 6-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IA-979; 803-48]

The Baupost Group, Inc. and Baupost Partners; Application for an Order

June 7, 1985.

Notice is hereby given that The Baupost Group, Inc. ("Baupost"), P.O. Box 1288, Cambridge, Massachusetts 02238, registered as an investment adviser under the Investment Advisers Act of 1940 ("Act") and Baupost Partners (collectively, "Applicant"), which intends to register as an investment adviser under the Act, filed an applicantion on March 12, 1985, and an amendment thereto on May 17, 1985, requesting an order of the Commission, pursuant to section 206A of the Act: (1) Exempting Applicants; performance-based fee arrangement with certain limited partnerships ("Partnerships") from the provisions of section 205(1) of the Act; and (2) exempting Applicants from the recordkeeping requirements of section 204 of the Act and Rule 204-2 (b) and (c) thereunder to the extent such provisions require separate records to be maintained for each limited partner in the Partnerships. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

According to the application, Baupost was organized in 1982 to provide financial management and custodial services to a limited number of family groups with substantial net worth (not less than $1,000,000). Of the five directors of Baupost, three own a majority of Baupost's voting stock; of the remaining two directors, Howard Stevenson ("Stevenson") serves as president and is a stockholder, and Seth Klarman ("Klarman") is an officer and stockholder. Baupost acts as general partner of several investment partnerships offered to Baupost clients only; Stevenson and Klarman also act as general partners of those partnerships. The three investment partnerships that concentrate on equity investments are the Partnerships that are the subject of the instant application. At present, the Partnerships pay no advisory or custodial fee, but pay Baupost directly a quarterly fee of 3/16 of 1% (¾ of 1% annually) of net assets under management, including funds invested in the Partnerships. As of January 31, 1985, the Partnerships had net assets of approximately $45 million. Applicants propose to amend the limited partnership agreements of these Partnerships to permit a performance-based fee arrangement.

Applicants state that Baupost Partners is being formed by Baupost, Stevenson and Klarman as a partnership pursuant to the Massachusetts Uniform Partnership Act. Baupost Partners, Baupost, Stevenson and Klarman will be the general partners of the Partnerships. Baupost Partners will be the managing general partner of the Partnership and will be primarily responsible for the management and administration of the Partnerships, including the making of all investment decisions. Applicants state that the concurrence of Baupost will be required for the purchase or sale of any securities by a Partnership.

Applicants propose to amend each Partnership's limited partnership agreement, with the consent of the limited partners, to provide that Baupost Partners be added as the managing general partner, and be allocated a Partnership share equal to 20% of the amount measured over a five-year period by which the net realized profits less unrealized losses of a Partnership exceeds on a cumulative basis the rate on one-year U.S. Treasury Bills available at the beginning of each year during such period. Such allocation will be subject, at the end of the five-year period, to adjustment to take into account net unrealized appreciation and will be subject to reduction (but not below zero) to the extent that net realized profits and unrealized gains less unrealized losses are less than what the profits would have been at the Treasury Bill rate. Applicants represent that no distributions will be made to Baupost Partners with respect to its performance fee allocation except as may be necessary to discharge tax liabilities, until the end of the five-year period. Applicants also state that Baupost Partners will be allocated its fee annually in a suspense account and that each limited and general partner will be allocated a share of the remaining profits and losses of a Partnership, based on the proportion which his Partnership percentage bears to the opening capital accounts of all that Partnership's partners.

According to the application, each Partnership agreement will provide that a general partner may be removed with or without cause by (a) Baupost, if it is a general partner, with the concurrence of at least one-half in number of the remaining general partners, or if the remaining general partner is Baupost Partners, with the concurrence of a majority of the general partners of Baupost Partners, or (b) if Baupost is not a general partner, by a majority in number of the remaining general partners.

According to the application, Baupost will pay the salaries of persons providing investment and administrative support services to the Partnerships, and will provide office space and maintain custody of Partnership assets. Baupost will not receive any fees from the Partnerships, but will rather be compensated by its clients with respect to the assets invested in the Partnership at a quarterly rate of $^{15}/_{100}$ of 1% ($^{6}/_{10}$ of 1% annually), subject to modification from time to time by agreement. Partnership expenses relating to portfolio transactions and professional and related costs including legal and accounting fees, will be borne by the Partnerships.

Applicants state that the Partnerships are and will be exempt from the registration requirements of the Investment Company Act of 1940 pursuant to section 3(c)(1). Applicants further state that while each Partnership utilizes different tax strategies and risk tolerances, each has a portfolio that includes companies not widely followed or actively traded. Each Partnership also engages in arbitrage and short sale activities and invests in complex securities such as liquidating preferred stock, interests in royalty trusts, partnership interests and other securities whose value may be based on contractual arrangement. Partnership investments may from time to time be illiquid either because of the market for the securities.
or because the position taken by a Partnership was substantial.

Limited partners fo each Partnership will be restricted to only (a) members of families advised by Baupost and (b) Stevenson and Klarman and any additional partners of Baupost Partners. Each family will be required to have not less than $1 million, and each individual limited partner not less than $150,000, in assets under management by Baupost. For the purpose determining compliance with the financial criteria, a fiduciary with investment discretion for one or more family members will be deemed to be the limited partner. Trustees of trusts will be deemed limited partners unless the investment decisions are made by the beneficiary, who must then satisfy the financial criteria. Partnership interests have been and will be offered pursuant to Regulation D under the Securities Act of 1933. Baupots believes that each limited partner, and future limited partners will have, either alone or with his or her purchaser representative, sufficient knowledge and exprience in financial and business matters so as to be capable of evaluating the merits and risks of the proposed performance fee.

In addition, the directors of Baupost or their family members are presently limited partners in each of the Partnerships. During the period of the incentive compensation fee, each person who is a director of Baupost (other than Messrs. Stevenson and Klarman), either alone or together with members of their immediate families, will maintain investments of not less than an aggregate of $1 million in one or more of the Partnerships. Messrs. Stevenson and Klarman as general partners of each of the Partnerships together presently maintain investments of not less than 1% of the capital in each of the Partnerships and will continue their investments at least at their present amounts during the five-year measuring period.

Applicants state that the general partners will value the securities held by each Partnership quarterly, and upon valuation, the capital accounts of partners will be adjusted to reflect allocable share of partnership income, gains and loses. The limited partners of each Partnership will have the right to demand an independent review of any quarterly valuation of that Partnership's securities upon the request of 30 percent in interest of the limited partners or of four or more limited partners holding at least 20 percent in interest of each Partnership. Limited partners will be permitted to withdraw all, or with the consent of the general partners, any portion of their capital accounts at the end of each calendar quarter and may withdraw all or any portion of their capital accounts at the end of each calendar year.

The general partners will maintain financial records for each Partnership, and will provide quarterly reports to the limited partners. Each Partnership will be audited annually by an independent certified public accountant selected by the general partners. Limited partners will also be furnished with an annual report containing the audited financials. General partners will not be permitted. Applicants state, to borrow funds from the Partnerships.

Applicants request an exemption from section 205(1) of the Act to the extent necessary to permit Applicants to receive the proposed share of profits from the Partnerships. Applicants assert that the concerns underlying the prohibition in section 205(1) of the Act is that advisers who share in their clients' profits may be encouraged to take undue risks with those clients' funds. Applicants submit that the Partnerships have been structured so that the general partners will not be encouraged to take undue risks with the Partnerships's funds. First, the directors of Baupost, a general partner of Baupost Partners, and the individual partners of Baupost Partners will all have substantial funds invested in the Partnerships and will therefore be subject to the same risks as all other limited partners. Second, Baupost Partners will be rewarded only to the extent that the performance over the measuring period exceeds the one-year Treasury Bill rate set each year during the period and will be penalized for realized and unrealized profit below the one-year Treasury Bill rate. Third, distributions to and withdrawals by the general partners other than in respect of

their original capital contributions or for estimated tax liabilities are prohibited until the end of the measuring period, requiring Baupost Partners to subject any incentive amounts it may be allocated to future risks. Fourth, since Baupost Partners' share of profits is subject to offset for realized and unrealized capital losses during the five-year measuring period, the general partners can have no incentive selectively to realize gains and avoid realizing losses during the period. And last, Applicants submit that the limited partners will be wealthy investors who either alone or together with representatives not affiliated with the general partners (except for representatives of family members of Baupost directors) can reasonably be believed to be able to understand the impact on their investment of the general partners being allocated an interest in the profits and losses of the partnership.

Applicants also request an order granting exemption from the provisions of section 204 of the Act and Rules 204–2 (b) and (c) thereunder to the extent the provisions thereof require them to maintain books and records of the underlying interests of each limited partner in the Partnerships. The general partners, Applicants represent, will comply with all other applicable provisions of Rule 204–2. Applicants state it would be impractical and unduly burdensome to prepare and maintain all of the designated books and records for each limited partner individually. The general partners will, pursuant to the terms of the Partnerships agreements, maintain a capital account for each of the limited partners reflecting capital contribution, all income, gains, expenses and losses, withdrawals and distributions. As part of the Partnerships' annual audit, the independent accountants will reconcile the capital accounts of the limited partners. Applicants assert that such accounting will satisfy the limited partners' need for individual records.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 28, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–14365 Filed 6–13–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23721; 70–7115]

Central Power and Light Company et al.; Proposed Sublease of Railcars; Exception From Competitive Bidding

June 7, 1985.

Central Power and Light Company ("CPL"), P.O. Box 2121, Corpus Christi, TX, 78403, a wholly owned subsidiary of Central and South West Corporation, a registered holding company, and Monongahela Power Company ("MP"), 1310 Fairmont Avenue, Fairmont, WVA 26554, The Potomac Edison Company ("PE"), Downsville Pike, Hagerstown, MD 21740, and West Penn Power Company ("WP"), 800 Cabin Hill Drive, Greensburg, PA 15601, wholly owned subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application-declaration subject to sections 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("ACT"), and Rule 50(a)(5) thereunder.

CPL propcses to sublease ("Sublease") 106, 4,000 cubic foot, 100 ton hi-side gondola railcars from WP as agent for itself, MP and PE. The Subleases shall be for a period of 18 months from the first day of the month following the date of acceptance of said coal cars by CPL. CPL has the option to renew the Sublease for an additional one-year period at the same rental, exercisable upon at least 120 days notice prior to the expiration of the initial term. CPL, in addition to agreeing to make all repairs, perform all maintenance and do all other things reguired by the Master Lease at CPL's expense, has and will pay the amount of $11.17 per day for each railcar under the Sublease. Assuming CPL subleases all 106 railcars, its payments would be $1,184.02 per day. Under the Sublease, the railcars will be used by CPL to transport coal from mines located in Colorado to CPL's Coleto Creek electric generating plant located in Fannin, Texas. MP and PE received the necessary approvals for the Sublease from West Virginia Public Service Commission and Virginia State Corporation Commission in November and April, 1985 respectively.

The application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested person wishing to comment or request a hearing should submit their views in writing by July 1, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–14364 Filed 6–13–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14567 (File No. 813–63)]

First Boston Investment Limited Partnership No. 3 et al.; Application and Opportunity for a Hearing

June 10, 1984

Notice is hereby given that First Boston Investment Limited Partnership No. 3, a limited partnership (the "Partnership"), and FBGP INC., its general partner ("General Partner", collectively "Applicants"), Park Avenue Plaza, New York, New York 10055, filed an application of September 12, 1984, and an amendment thereto on May 29, 1985, for an order of the Commission, pursuant to sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act"), exempting Applicants and all similar partnerships offered to the same class of limited partner investors (such partnerships together with the Partnership, "Partnerships") from all provisions of the Act or, alternatively, from all provisions of the Act and the rules thereunder except section 9, sections 17(a) and 17(d), with certain exceptions, sections 36(a) and 36(b), section 37, and sections 38–53. Applicants also request an order of the Commission, pursuant to section 45(a) of the Act, granting confidential treatment

for certain reports to be filed with the Commission. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, the Partnerships will be limited partnerships established for the benefit of highly compensated key employees of First Boston, Inc. ("FBI") and its affiliates (collectively "First Boston") as a means of rewarding and retaining those employees. The application states that the Partnership will enable employees of First Boston to pool their investment resources and to receive the benefit of investment opportunities which come to the attention of First Boston.

Applicants state that interests in the Partnerships ("Interests") will be offered only to current employees of First Boston ("Eligible Employees"), and that each Partnership will qualify as an "employees' security company" under section 2(a)(13) of the Act. Applicants represent the Eligible Employees in addition to being professional engaged in various aspects of the investment banking and securities business, will in fact be sophisticated investors able to fend for themselves without benefit of regulatory safeguards. As senior employees of First Boston, it is represented that the Eligible Employees will have direct access to those individuals within First Boston who will serve as directors and officers of the General Partner of the Partnerships. The Eligible Employees will generally meet the current standard of "accredited investor" under Regulation D and will receive substantial income (not less than $100,000 on an annual basis) from First Boston.

Applicants state that the management of each of the Partnerships will be exclusively vested in the General Partner, a wholly-owned subsidiary of FBI. The directors and management of the General Partner are officers of First Boston and Eligible Employees. Applicants represent that the General Partner must have at least a 70% interest in each Partnership.

Applicants request an exemption from Section 17(a) of the Act and Rule 17a–6 thereunder, to the extent necessary to permit First Boston to engage in any transaction as principal with a Partnership. Applicants state that this exemption is requested to permit the Partnerships to (a) invest in, sell or resell, as appropriate, securities of companies or investment vehicles and other investment properties offered from or to First Boston or an affiliated partnership of First Boston on a principal basis, including interests previously acquired for the account of First Boston of the type which are consistent with the investment objectives of the Partnerships, and to purchase or sell securities or investment properties from such companies or vehicles through First Boston as agent; (b) purchase interests or property in, or lend money to, a company or other investment vehicle in which First Boston, an affiliated partnership of First Boston, or individual directors, officers, or employees of First Boston already own 5% or more of the voting securities of the company or vehicle, or where such company or vehicle is otherwise affiliated with First Boston or a Partnership (including through the Partnership's ownership of 5% or more of the voting securities of such entity); (c) sell, put or tender, or grant options in securities or interests in a company or investment vehicle back to such entity, where that entity is affiliated with First Boston, a First Boston affiliated partnership or individual directors, officers or employees of First Boston otherwise than as a result of the Partnership's ownership of voting securities; and (d) participate as a selling security holder in a public offering that is underwritten by First Bostonr in which First Boston acts as a member of the underwriting or selling group.

Applicant represents that these transactions willonly be effected upon a determination by the investment committee of the board of directors of the General Partner that the terms of the transaction are reasonable and fai to the limited partners of the Partnerships involved in the transaction and do not involve overreaching of the Partnerships or its limited partners on the part of any person concered. Moreover, Applicants represent that in any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a First Boston director, officer or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purcase or sale. Applicants state that the foregoing exemption is requested on the undertaking that no Partnership will make loans (i) to any officer, director or employee of First Boston, or (ii) with the exception of short term repurchase agreementsof other fully secured loans, to First Boston. Applicants also represent that the principal reason for the requested exemption under clauses (a) and (b) above is to ensure the Partnerships will be able to invest in attractive investment opportunities in which First Boston, other First Boston investment partnerships, or individual directors, officers or employees of First Boston may have already made an investment.

Applicants request the exemption from Section 17(d) and Rule 17d–1 to permit the Partnership to engage in transactions in which First Boston or affiliated persons of the Partnership may also be participants (arising from coinvestment, the receipt of fees for structuring, negotiating or managing an investment) on the undertaking that a Partnership will not make any joint investment in which First Boston, another First Boston affiliated partnership (including another Partnership), or any officer, director or employee of the General Partner, or any affiliated person thereof, is a participating investor, directly or indirectly (otherwise than through an investment in or relationship with a Partnership or Partnerships), *provided, however,* that this undertaking shall not apply to (a) 40% of the total assets of each Partnership, and (b) as to the remaining 60% of the total assets of a Partnership, to other investments by a Partnership in any other companies, partnerships or investment vehicles or property which are not sponsored, managed or underwritten on a principal basis by First Boston or its affiliates.

Applicants state that where any coinvestment by a Partnership is on terms different than that made by the affiliated co-investor, the investment committee of the board of directors of the General Partner will make a determination at the time of such investment that the participation by the Partnership in such investment is not less advantageous than any other participant with respect to the making of such investment, maintaining its investment position or disposing of such position. Applicants state that the undertaking not to make joint investments will not apply, however, to limit or prevent joint investment by a Partnership and (i) individual officers, directors or employees of First Boston making their own individual investment decisions apart from First Boston or an affiliated partnership; and/or (ii) in the case of real estate investments, by an individual who maintains an office at FBI and overseas, as consultant, significant First Boston real estate projects and receives fees for such services as finding, structuring, managing or developing the investment, or acting as a general partner of the investment vehicle ("Real Estate Consultant"), *provided, however,* in the case of (i) above, the foregoing

undertaking on joint investments would apply to situations where one or more directors of FBI, First Boston Corporation, the principal subsidiary of FBI ("FBC"), or the General Partner who hold outstanding shares of Common Stock of FBI, agregating 15% or more of the outstanding Common Stock of FBI, make a joint investment with a Partnership (otherwise than through an investment by First Boston or an affiliated partnership).

In the case of a joint investment by a Partnership and (i) any officer, director or employee of the General Partner, (ii) directors of FBI or FBC who hold outstanding shares of Common Stock of FBI aggregating 15% or more of the outstanding Common Stock of FBI, or (iii) First Boston officers, directors, employees or the Real Estate Consultant who hold individually or in the aggregate 15% or more of the equity interest in such investment (in the case of (i), (ii) or (iii) above, otherwise than through an investment in other affiliated partnerships), the General Partner also undertakes to obtain in each such case a commitment from each such person that he or she will not dispose of his or her interest in such joint investment without giving sufficient, but not less than one day's, notice to the General Partner so that the Partnership has the opportunity to dispose of its interest in the joint investment prior to or concurrently with such person.

Applicants agree that the order shall provide that the General Partner shall observe the standards prescribed in Section 57(f)(3) of the Act. Also, in connection with the exemptions requested under Sections 17(a) and 17(d), the General Partner undertakes to use reasonable efforts to ascertain, prior to making any investment, whether First Boston, any director of FBI or any officer, director, or employee of the General Partner owns more than 5% of the equity of any entity in which a particular Partnership plans to invest. Applicants further represent that minutes of meetings of the General Partner's board of directors will be available at any reasonable time for inspection by any limited partner. Applicants represent that as a condition to the granting of the order requested, the Applicants agree to file with the Commission, within 150 days after the end of each Partnership fiscal year, a copy of the annual report of each Partnership required by the terms of the Partnership Agreements to be sent to limited partners. In addition, the Applicants agree to file Form N–SAR with the Commission on an annual basis by July 1 of each year with such information as required by the Form for the preceding calendar year. In connection with the foregoing undertaking, the Applicants request that all such filings be afforded confidential treatment under section 45(a) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 5, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–14367 Filed 6–13–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14565 (File No. 812–6008)]

Koenig Tax-Advantaged Liquidity Fund, Inc.; Application for an Order Permitting Monthly Distributions of Long-Term Capital Gains

June 7, 1985.

Notice is hereby given that Koenig Tax-Advantaged Liquidity Fund, Inc. ("Applicant"), 50 Broadway, New York, NY 10004, filed an application on December 19, 1984 and an amendment thereto on May 15, 1985, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of section 19(b) of the Act and Rule 19b–1 thereunder to the extent necessary to permit Applicant to distribute its long-term capital gains in accordance with its policy of making distributions at least monthly based upon the total economic return since its previous distribution. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, and to the Act and the rules thereunder for the text of their relevant provisions.

According to the application, the Applicant is registered under the Act as an open-end, non-diversified management investment company whose investment objective is to earn a high level of total return from dividends, interest and net short-term and long-term (if any) realized and unrealized capital gains (including net gains from options and futures, subject to certain limitations) while preserving capital. Applicant states that it attempts to manage its portfolio so that all or a substantial portion of its distributions (not including income from foreign fixed income and equity securities and net long-term capital gains, if any) will qualify for the 85 percent corporate dividends received deduction for Federal income tax purposes.

According to the application, the Applicant attempts to achieve its objective primarily by investing in and maintaining a portfolio of equity and fixed income securities (including preferred stock and debt instruments) hedged with various index options. At times, the Applicant may make hedged short sales (using options or otherwise), or write call or put options with respect to some or all of such securities. In addition, Applicant may use options to hedge some or all of its investments in the underlying instruments in an effort to reduce fluctuations in the Fund's rate of return and to preserve capital. At times, the Applicant may also invest in preferred stock (including adjustable rate preferred stock) and debt instruments to generate income, to preserve capital or provide liquidity.

The Applicant states that it is structured for conservative corporate investors of substantial means seeking high total return and preservation of capital. The minimum initial investment in Applicant is $1,000,000 and subsequent investments must be at least $150,000. Individuals are not eligible to invest in the Applicant.

The Applicant states that its policy is to distribute at least monthly (or more frequently depending on whether purchases or redemptions occur) all of its total economic return including net dividend, interest, and stock loan income as well as net realized and unrealized short-term and long-term capital gains. The portion of distributions relating to net long-term capital gains, if any, are reported to shareholders annually, even though distributions may be made throughout the year. In general, the Applicant projects zero long-term capital gain distributions at year end. Applicant asserts, however, that due to recent changes in the Internal Revenue Code ("Code"), it may realize and recognize net long-term capital gains on certain of its investments. Any such amounts

would have been distributed during the Applicant's fiscal year as part of its distribution of its total economic return. Since the Applicant's policy calls for distributions based upon total economic return to be made at least monthly, it is possible that the Applicant will distribute more than one "capital gain dividend", within the meaning of section 852(b)(3)(C) of the Code, with respect to any one taxable year of the Fund, thus violating section 19(b) of the Act and Rule 19b–1 thereunder.

The Applicant believes that the concerns which led to the adoption of section 19(b) of the Act and Rule 19b–1 thereunder are inapplicable to the continuation of its distribution policy. Applicant asserts that its high minimum investment requirements and its prohibition on individual investors purchasing shares of the Applicant insure that only sophisticated corporate investors will be Applicant shareholders. Applicant respectfully submits that such investors, by virtue of their sophistication, are not in need of the kind of protection which the Congress and Commission were seeking to provide through adoption of section 19(b) and Rule 19b–1, respectively. Applicant represents that its investors are capable of understanding the difference between regular investment income and capital gains and are not confused by the Applicant's distribution policies which are fully disclosed in its prospectus.

Applicant states that long-term capital gains realized by the Applicant, if any, are expected to be due principally to changes in the Code that treat as long-term capital gains income previously treated differently. Those changes, and the long-term capital gains treatment that results from them, Applicant asserts, do not present the types of concerns which section 19(b) was intended to address, because those long-term capital gains it may realize will principally be due to the application of new Code provisions to the Applicant's activities. For example, Applicant states that there have been recent changes to the Code which expand the application of the "60%–40%" rule under Section 1256 of the Code. According to the application, the "60%–40%" rule provides that each "Section 1256 contract" is treated as if it were sold at the end of the taxable year with 60 percent of the gain of loss treated as long-term capital gain or loss and 40 percent of the gain or loss treated as short-term capital gain or loss. The definition of a "Section 1256 contract" has been expanded to include broad-based index options and options on stock index futures which the Fund uses to hedge against risk. Thus, at the end of the year these "Section 1256 contracts" will be considered sold with 60 percent of all gain treated as long-term capital gain. In addition, it is more likely that there will be long-term capital gain on the disposition of other of Applicant's investments during the year because the long-term capital gain holding period has been shortened and is now applicable to capital assets held in excess of six months instead of one year. In a letter dated June 6, 1985, Applicant represents that except for long-term capital gains recognized as the result of the effect of the "60%–40%" rule it is Applicant's intention that long-term capital gains shall be a *de minimis* component of the Applicant's income in the future.

Applicant further states that it is managed in such a way that a substantial portion of its distributions qualify for the 85 percent corporate dividends received deduction for Federal income tax purposes. Since the portion of any distribution attributable to capital gains does not qualify for the 85 percent deduction, Applicant asserts that there is little incentive for its management to attempt to realize such gains on a frequent or regular basis. Applicant therefore submits that the Commission's concern that investment company managers might be under pressure to realize frequent and regular capital gains is of minor importance with respect to the Applicant. In addition, it is asserted that because of the Applicant's emphasis on the nature of its after-tax earnings there is little value in promoting the sale of its shares by emphasizing increased earnings achieved through the realization of long-term capital gains.

Applicant also asserts that the additional administrative expenses attendant in its distribution policy are more than offset by the benefit to its shareholders of distributions made at least monthly. Finally, Applicant represents that, since any long-term capital gains realized as described above will have been distributed in large part during the Applicant's fiscal year as part of its distribution of its total economic return, the distribution of those capital gains would not result in additional administrative cost to Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 2, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–14366 Filed 6–13–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14566; 811–283]

United States & Foreign Securities Corporation; Application for Order Declaring Applicant Has Ceased To Be an Investment Company

June 7, 1985.

Notice is hereby given that United States & Foreign Securities Corporation ("Applicant"), 39 Main Street, Chatham, NJ 07940, registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified, management investment company, filed an application on January 29, 1985, and an amendment thereto on June 3, 1985, for a Commission order pursuant to section 8(f) of the Act declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicant states it was incorporated in Maryland in 1924 and registered under the Act in 1941. Applicant represents that its Board of Directors adopted a Plan of Liquidation and Dissolution, which was approved by a two-thirds majority of its shareholders on February 28, 1984. Applicant represents further that its Articles of Dissolution were filed with the State of Maryland on June 18, 1984, at which time there were 6,689 shareholders of record holding 6,924,168 shares.

Applicant also represents that distributions in partial liquidation were made to shareholders on May 3 and June 15, 1984, in the amounts of $19.50 and $2.30 per share, respectively. Further, Applicant represents that distribution in final liquidation was made on December 20, 1984 to shareholders of record on June 18, 1984, in the amount of $7,678,902 or $1.109 per share. No other distributions have been made to date.

Applicant state that it transferred its

remaining assets to Manufacturers Hanover Trust Company, as trustee ("Trustee") of a liquidating trust, the beneficiaries of which were or are Applicant's shareholders. Such amount was intended to be used to pay the remaining debts and liabilities of Applicant and has since been paid to Applicant's former employees as severance pay and termination benefits. Applicant states further that dividends remaining unclaimed were transferred to the Trustee for distribution to Applicant's shareholders or, if appropriate, to the State Comptroller of Maryland. Applicant represents that as of May 14, 1985, shareholders holding 104,391 shares and entitled to receive $115,769.62 had not yet proved their interests.

Applicant states it now has no assets, debts or outstanding liabilities remaining and that it is not a party to any litigation or administrative proceeding. Further, Applicant states that it is not engaged nor does it proposed to engage, in any business activity other than those necessary to wind up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 2, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14363 Filed 6-13-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Order 85-6-28; Docket 42922]

Application of King Flying Service for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding King Flying Service fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so no later than July 1, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42922 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Aviation Enforcement and Proceedings (C-70, Room 4116), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-6-28 is available for inspection from our Documentary Services Division at the above address.

Dated: June 11, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-14405 Filed 6-13-85; 8:45 am]

BILLING CODE 4910-62-M

[Order 85-6-21; Docket 42942]

Application of All Star Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding All Star fit and awarding it a certificate of public convenience and necessity to engage in a scheduled interstate and overseas air transportation of persons, property, and mail.

Persons wishing to file objections shall do so no later than July 1, 1985, and answers to objections shall be filed no later than July 11, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42942 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590 and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Michael K. Nolan, Aviation Enforcement and Proceedings (C-70, Room 4116), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-6-21 is available from the Documentary Services Division, whose address is provided above. Persons outside the metropolitan area may send a postcard request for Order 85-6-21 to that address.

Dated: June 10, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-14406 Filed 6-13-85; 8:45 am]

BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 115
Friday, June 14, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 10, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,247–L (Amendment)
United Southern Bank of Nashville, Nashville, Tennessee and
United American Bank in Hamilton County, Chattanooga, Tennessee and
First People Bank of Washington County (formerly known as City & County Bank of Washington County), Johnson City, Tennessee and
City and County Bank of Anderson County, Lake City, Tennessee and
United American Bank in Knoxville Knoxville, Tennessee and
City and County Bank of Knox County Knoxville, Tennessee

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: June 11, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–14417 Filed 6–12–85; 10:40 am]
BILLING CODE 6714–01–M

2

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 12, 1985, 49 FR 24736.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 13, 1985.

CHANGE IN THE MEETING: The Commission meeting for June 13, 1985, originally scheduled to be held in Room 9306 will be held in Hearing Room A.

Kenneth F. Plumb,
Secretary.
[FR Doc. 85–14465 File 6–12–85; 3:58 am
BILLING CODE 6717–02–M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, June 19, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a meeting on May 28, 1985).
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–14415 Filed 6–12–85; 10.39 am]
BILLING CODE 6210–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 19, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendment to Regulations G (Securities credit by Persons Other Than Banks, Brokers, or Dealers) to permit G-lenders to extend credit to employee stock ownership trusts on a good-faith basis. (Proposed earlier for public comment; Docket No. R–0529)
2. Proposed amendment to Regulation T (Credit by Brokers and Dealers) that would permit a premium-based margining system for the writing of options on equity securities. (Proposed earlier for public comment; Docket No. R–0538)
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 11, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–14416 Filed 6–12–85; 10:39 am]
BILLING CODE 6210–01–M

5

NATIONAL SCIENCE BOARD

DATE AND TIME:

June 20, 1985
8:15 a.m.—Open Session
1:30 p.m.—Open Session
June 21, 1985
9:00 a.m.—Closed Session
9:05 a.m.—Open Session

PLACE: National Science Foundation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

1. NSF Planning in Strategy for Fiscal Year 1987 and Future Years

4. Minutes—May 1985 Meeting
5. Grants, Contracts, and Programs—Action Items
6. Review of Conflict of Interests Principles
7. NSF Planning Strategy for FY 1987 and Future Years (Continued)—Summation, Conclusions, and Next Steps

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

2. Minutes—May 1985 Meeting
3. NSB and NSF Staff Nominees

Margaret L. Windus,

Executive Officer.

[FR Doc. 85-14664 Filed 6-12-85; 3:58 pm]

BILLING CODE 7555-01-M

5

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-Laws, sections 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Board Minutes
  1. Approval of Minutes
  2. Approval of Release of Portions of Minutes Previously Withheld
III. Approval of Revised Policy on Standards of Conduct
IV. Approval of Comprehensive Strategy Report and Appendices
V. Negotiation Update on Great Plains
VI. Approval of Tar Sands Solicitation
VII. Resolution to Close Meeting

Closed Session

VIII. Negotiation Update on Great Plains (Confidential Material)
IX. Negotiation Update—Fourth General Solicitation Projects
  1. Keystone
  2. ASC/Indiana
  3. Utah Methanol

TIME AND DATE: 9:30 a.m., June 18, 1985.

PLACE: 2121 K Street, NW., Rooms 403 and 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director—Media Relations, at (202) 822-6455.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

June 11, 1985.

[FR Doc. 85-14404 Filed 6-11-85; 4:59 pm]

BILLING CODE 6000-01-M

7

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1351)

TIME AND DATE: 10:15 a.m. (EDT), Tuesday, June 18, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 21, 1985.

Discussion Items

1. "Orphans of the Valley"—Report on status of abandoned mine land reclamation.

Action Items

Old Business

1. Grant of permanent easement to Watts Bar Utility District for construction, operation, and maintenance of a public water supply system affecting 8.1 acres of Watts Bar Reservoir land in Rhea County, Tennessee—Tract No. XTWBR-131WS.

New Business

B—Purchase Awards

B1. Requisition 12—Barge services for coal transportation to Allen, Colbert, Cumberland, Gallatin, and Paradise steam plants.

B2. Invitation 31-969126-Reissue—Secondary superheater first- and second-stage elements, loose tubes, lugs, and castings for Allen Fossil Plant.

C—Power Items

C1. Renewal power contract with Johnson City, Tennessee.

C2. Renewal power contract with Erwin, Tennessee.

C3. Renewal power contract with Mountain Electric Cooperative.

C4. Renewal power contract with Bristol, Virginia.

C5. Renewal power contract with Bristol, Tennessee.

C6. Renewal power contract with Greeneville, Tennessee.

C7. Renewal power contract with Elizabethton, Tennessee.

C8. Letter agreement with Knoxville Utilities Board covering arrangements for TVA's partial funding for Phase I of the Two-Way Powerline Carrier Communication, Distribution Automation, and Control Project.

D—Personnel Items

D1. Renewal of personal services contract with ITT Grinnell Corporation, Providence, Rhode Island, for services in connection with the design of onsite pipe supports for the Bellefonte Nuclear Plant, requested by the Office of Engineering.

*D2. Personal services contract with General Electric Company of Atlanta, Georgia, for engineering and related support to the Browns Ferry Nuclear Plant's Site Services Group, requested by the Office of Nuclear Power.

D3. Personnal services contract with Manpower Temporary Services, Chattanooga, Tennessee, to furnish part-time or temporary clerical services to TVA's offices in the Tennessee Valley region, with major use at Chattanooga, and Knoxville, Tennessee, and Muscle Shoals, Alabama, requested by the Division of Property and Services.

E—Real Property Transactions

E1. Abandonment of certain easement rights to Curtis Ray Mullins, affecting 0.1 acre of Cherokee Reservoir land located in Hawkins County, Tennessee—Tract No. XCK-389.

E2. Proposed sales of 13 noncommercial, nonexclusive permanent recreation easements affecting a total of 3.54 acres of Tellico Reservoir shoreland located in Loudon and Monroe Counties, Tennessee—Tract Nos. XTELR -27RE, -28RE, -29RE, -30RE, -31RE, -32RE, -33RE, -34RE, -35RE, -37RE, -38RE, -39RE, and -41RE.

E3. Resolution designating Tract No. XTM-2, known as the Power Building and located at the corner of Market and East Sixth Streets in Chattanooga, Tennessee, as surplus and for sale at public auction under Section 31 of the TVA Act.

F—Unclassified

F1. Fertilizer distribution agreement between Rio-Ag Products, Inc., and TVA.

*F2. Interagency agreement between TVA and the United States Department of the Army for analysis of engineering studies for the Department of the Army for RDX Expansion Program.

F3. Supplement to interagency agreement with the Department of Energy for TVA application of integrated on-farm alcohol production system.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 245-0101.

Dated: June 11, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-14422 Filed 6-12-85; 11:34 am]

BILLING CODE 8120-01-M

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* Item approved by individual Board members. This would give formal ratification to Board's action.

Federal Register

Friday
June 14, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona: AZ84-5005	Mar. 9, 1984.
California: CA84-5022	Oct. 5, 1984
District of Columbia: DC84-3009	Apr. 6, 1984.
Idaho:	
ID85-5010	Feb. 15, 1985.
ID85-5012	Mar. 22, 1985.
Michigan:	
MI84-5026	Dec. 21, 1984.
MI83-2008	Feb. 11, 1983.
MI83-2009	Do.
Ohio: OH83-5127	Dec. 23, 1983
Oklahoma: OK85-4012	May 10, 1985
Oregon: OR84-5020	June 22, 1984.
Pennsylvania: PA83-3001	Aug. 19, 1983.
Texas: TX85-4003	Feb. 22, 1985
Washington: WA84-5040	Nov. 16, 1984.
West Virginia: WV83-3023	Nov. 25, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Iowa:	
IA84-4018 (IA85-4016)	Mar. 23, 1984.
IA83-4022 (IA85-4017)	Mar. 11, 1983.
Michigan: MI83-2015 (MI85-5001)	Do
New Mexico: NM84-4099 (NM85-4014)	Oct. 19, 1984.
Texas.	
TX84-4112 (TX85-4018	Dec. 28, 1984
TX84-4036 (TX85-4019)	May 25, 1984

Signed at Washington, D.C. this 7th Day of June 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AZ84-3005 - MOD.6* (49 FR 9059 - March 9, 1984) Statewide, Arizona	Basic Hourly Rates	Fringe Benefits
Change:		
CARPENTERS:		
Northern Area:		
Carpenters: Saw Filer	$17.915	2.80
Piledrivermen	18.26	2.80
Central & Southern Areas:		
Carpenters; Saw Filer	15.415	2.80
Piledriver	15.76	2.80
CEMENT MASONS:		
Zone 1:		
Northern Area:		
Cement Masons	17.50	3.05
Concrete Troweling Machine, Sawing and Scoring Machine; Curb and Gutter Machine	17.72	3.05
Central & Southern Areas:		
Cement Masons	15.00	3.05
Concrete Troweling Machine; Sawing and Scoring Machine; Curb and Gutter Machine	15.22	3.05
Zone 2:		
Cement Masons	15.43	2.62
Concrete Troweling Machine; Sawing and Scoring Machine; Curb and Gutter Machine Clary and similar type of power Screed Operator	15.65	2.62
LABORERS:		
Area 1:		
Group 1	12.30	2.77
Group 2	14.66	2.77
Group 3	15.20	2.77
Group 4	15.45	2.77
Group 5	16.905	2.77
Area 2:		
Group 1	9.90	2.77
Group 2	12.16	2.77
Group 3	12.70	2.77
Group 4	12.95	2.77
Group 5	14.405	2.77

LABORERS (CONT'D): (Tunnel and Shaft Work)	Basic Hourly Rates	Fringe Benefits
Area 1:		
Group 1	$15.015	2.77
Group 2	15.25	2.77
Group 3	15.43	2.77
Group 4	15.94	2.77
Group 5	16.235	2.77
Area 2:		
Group 1	12.515	2.77
Group 2	12.75	2.77
Group 3	12.93	2.77
Group 4	13.41	2.77
Group 5	13.735	2.77
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	13.01	3.08
Group 2	15.37	3.08
Group 3	15.92	3.08
Group 4	16.55	3.08
Group 5	17.33	3.08
Group 6	18.09	3.08
Group 7	18.53	3.08
Group 8	19.01	3.08
Group 9	19.89	3.08
Area 2:		
Group 1	10.51	3.08
Group 2	12.87	3.08
Group 3	13.42	3.08
Group 4	14.05	3.08
Group 5	14.93	3.08
Group 6	15.53	3.08
Group 7	16.03	3.08
Group 8	16.51	3.08
Group 9	17.39	3.08
TRUCK DRIVERS:		
Area 1:		
Group 1	14.96	2.67
Group 2	15.15	2.67
Group 3	15.47	2.67
Group 4	15.99	2.67
Group 5	16.20	2.67
Group 5A	16.48	2.67
Group 6	15.67	2.67
Group 7	17.23	2.67
Group 8	18.015	2.67
Group 8A	18.12	2.67
Group 8B	18.50	2.67
Area 2:		
Group 1	$12.46	2.67
Group 2	12.65	2.67
Group 3	12.97	2.67
Group 4	13.48	2.67
Group 5	13.72	2.67
Group 5A	13.98	2.67
Group 6	14.17	2.67
Group 7	14.76	2.67
Group 8	15.513	2.67
Group 8A	16.62	2.67
Group 8B	16.00	2.67

DECISION NO. CA84-5022-MOD# 9 (49 FR 39416-October 5, 1984) Alameda, Alpine, Amador Counties, etc., California	Basic Hourly Rates	Fringe Benefits
Omit:		
Painters:		
Area 9		
Add:		
Painters:		
Area 9-A:		
Brush	$19.29	6.23
Spray	19.79	6.23
Paperhangers and Spray Coatings	20.04	6.23
Tapers	20.83	6.23
Area 9-B:		
Brush and Paperhangers	14.66	6.23
Spray	15.66	6.23
Tapers	20.83	6.23
AREA DESCRIPTIONS TO READ:		
Area 9-A: Alameda, Contra Costa, Napa and Solano Counties		
Area 9-B: El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties		

DECISION NUMBER OH83-5127 - MOD. #14 (48 FR 56903 - December 23, 1983) Adams, Allen,...Wood and Wyandot Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 4	$17.97	$3.36
Carpenters:		
Area 7	16.00	3.90
Cement Masons:		
Area 7	16.23	2.75
Elevator Constructors:		
Area 1:		
Elevator Constructors	16.97	3.29 +e+f
Helpers	70%JR	3.29 +e+f
Helpers (Prob.)	50%JR	
Lathers:		
Area 4	16.00	3.90
Millwrights:		
Area 7	17.32	3.90
Piledrivermen:		
Area 8	16.00	3.90

DECISION #OK85-4012-Mod.#1 50FR198595 - May 10, 1985	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Latimer, LeFlore, McIntosh Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington Counties, Oklahoma		
ADD:		
LINE CONSTRUCTION (except Braden, Pacola and Spiro Townships in LeFlore County):		
POWDERMAN	$13.99	3-1/2% +$1.25
GROUNDMAN	10.31	3-1/2% +$1.25
TRUCK DRIVER (FLAT BED, TON-HALF AND UNDER)	10.96	3-1/2% +$1.25

DECISION NO. DC84-3009-MOD. #15 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES	Basic Hourly Rates	Fringe Benefits
CHANGE:		
MARBLE & STONE MASONS	$16.25	$3.10

	Basic Hourly Rates	Fringe Benefits
Statewide Idaho		
Power:		
CARPENTERS:		
Area 1:		
Projects under $2,000,000 exclusive of mechanical and electrical subcontracts:		
Carpenters	$13.37	$3.67
Piledrivers:		
Piledrivers	13.49	3.67
Boom Man	13.57	3.67
Creosote	13.69	3.67
Millwrights	13.77	3.67
All other work:		
Carpenters	16.82	3.67
Piledrivers:		
Piledrivers	16.97	3.67
Boom Man	17.07	3.67
Creosote	17.22	3.67
Millwrights	17.32	3.67
CEMENT MASONS:		
Area 1:		
Group 1	15.62	3.80
Group 2	16.12	3.80
Group 3	16.62	3.80
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	14.70	4.35
Group 2	15.00	4.35
Group 3	15.55	4.35
Group 4	15.70	4.35
Group 5	15.85	4.35
Group 6	16.10	4.35
Group 7	16.35	4.35
Group 8	17.35	4.35
TRUCK DRIVERS:		
Area 1:		
(See Footnote "a")		
Group 1	13.43	4.10
Group 2	13.87	4.10
Group 3	13.91	4.10
Group 4	13.97	4.10
Group 5	16.06	4.10
Group 6	16.27	4.10
Group 7	16.31	4.10
Group 8	16.37	4.10
Group 9	16.41	4.10
Group 10	16.52	4.10
Group 11	16.56	4.10
Group 12	16.87	4.10
Group 13	17.01	4.10
Group 14	17.17	4.10
Group 15	17.31	4.10

	Basic Hourly Rates	Fringe Benefits
Mod #3		
(50 FR 11617 March 22, 1985)		
OMIT:		
Omit the reference to Power Equipment Operators in Footnote "a" (Footnote "a" now applies to Laborers & Truck Drivers only)		
DECISION NO. ID85-5012 - Mod#2		
(50 FR 11617 March 22, 1985)		
Benewah, Bonner, Boundary, Clearwater, Idaho (North of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties, Idaho		
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Backhoe under 1 yd	15.85	4.35
Backhoe 1 to 3 yds, Cranes over 25 tons to 45 tons, Draglines & Shovels under 3 yds, Loaders (front end or overhead) 4 yds to 8 yds Multiple dozer units with single blade	16.10	4.35
Backhoes over 3 yds, Cranes over 45 tons to 85 tons, Draglines 3 yds and over, Shovels 3 yds and over	16.35	4.35
TRUCK DRIVERS: (See Footnote "a")		
Dump Truck under 6 yds	15.97	4.10
Over 6 yds to 12 yds	16.27	4.10
OMIT:		
Omit reference to footnote "a" under Power Equipment Operators. (Footnote "a" now applies to Truck Drivers only)		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI84-5026		
Mod #5		
(49 FR 49812-December 21, 1984)		
Statewide, Michigan		
Change:		
Power Equipment Operators;		
Airport, Bridge and Highway construction:		
Contracts over $400,000:		
Zone 1:		
Class 1	[illegible]	4.35+13%
Class 2	[illegible]	4.35+13%
Class 3	[illegible]	4.35+13%
[illegible]	[illegible]	4.35+13%
Zone 2:		
Class 1	[illegible]	4.35+13%
Class 2	13.11	4.35+13%
Class 3	12.66	4.35+13%
Class 4	12.42	4.35+13%
Contracts $400,000 or less:		
Zone 1:		
Class 1	12.82	4.35+13%
Class 2	12.34	4.35+13%
Class 3	11.89	4.35+13%
Class 4	11.56	4.35+13%
Zone 2:		
Class 1	12.38	4.35+13%
Class 2	[illegible].78	4.35+13%
Class 3	[illegible].34	4.35+13%
Class 4	[illegible].4	4.35+13%
Truck Drivers:		
Airport, Bridge and Highway construction:		
Contracts over $400,000:		
Zone 1:		
Class 1	13.77	.50+c
Class 2	13.87	.50+c
Class 3	14.02	.50+c
Zone 2:		
Class 1	13.67	.50+c
Class 2	13.77	.50+c
Class 3	13.92	.50+c
Contracts $400,000 or less:		
Zone 1:		
Class 1	12.74	.50+c
Class 2	12.84	.50+c
Class 3	12.99	.50+c
Zone 2:		
Class 1	13.14	.50+c
Class 2	13.24	.50+c
Class 3	13.39	.50+c
Footnote C to read:		
C. $125.00 per week per employee		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI83-2008-		
MOD # 14		
(48 FR 6456-February 11, 1983)		
Alger, Baraga, Chippewa, etc. Counties, Michigan		
Change:		
Electricians:		
Alger & Marquette Counties:		
Contracts $80,000 or less:		
Electricians	16.02	2.33+ 3.75%
Cable Splicers	16.02	2.33+ 3.75%
Contracts over $80,000:		
Electricians	13.09	2.33+ 3.75%
Cable Splicers	15.09	2.33+ 3.75%
PLUMBERS and PIPEFITTERS	16.47	2.80
DECISION NO. MI83-2009-		
MOD #3		
(48 FR 6453-February 11, 1983)		
Marquette County, Michigan		
Change:		
Plumbers & Pipefitters	11.98	2.80

DECISION NO. PA83-3001 - MOD. #11 (48 FR 37805 - August 19, 1983)	Basic Hourly Rates	Fringe Benefits
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Leghigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties, Pennsylvania		
CHANGE:		
IRONWORKERS:		
Bradford & Tioga Cos.		
Structural, Ornamental & Reinforcing	14.40	3.10
CARPENTERS/PILEDRIVERMEN	13.17	2.60
LABORERS:		
Asphalt, tampers, concrete pitmen, puddlers & rubbers, Highway guardrail, right of way and property line fence, Highway slab reinforcing placers, laborers, landscape, planters, seeders and arborists, magazine tenders, railroad trackmen & Signalmen, leaser beam men (pipe laying, paving machine)	11.56	1.65
Pneumatic and Electric tool op. jackhammers, paving breakers, concrete saws, whacher vibrators, sheet hammers, steward, chain saws, pipelayers, asphalt rake, lute or screed men, concrete block layers	11.76	1.65
Caisson-open air below 8 feet, cofferdam open air below 8 feet where excavations for circular caissons and cefferdams 8 feet and below level of natural grade adjacent to starting point, form setters (road) wagon drill diamond point drill, gunite nozzle operators	12.11	1.65
Blasters	12.34	1.65
Reinforcing steel placers, bonding, aligning and securing and burning and welding in conjunction with reinforcing steel	12.40	1.65
Concrete surfaces	12.78	1.65
FREE AIR TUNNELS AND ROCK SHAFTS		
Outside laborers in conjunction tunnels & rock shafts	12.20	1.65
Chuck Tenders, Muckers, Nippers, Miners, & Drillers Helpers, Inside laborers	12.49	1.65
Miners, Drillers, Blasters, Pneumatic Shield Operators Lining, Spotting & Timers Workmen, Reinforcing Steel placer, Bonding, Aligning and Securing and Concrete Surfacers	12.97	1.65
POWER EQUIPMENT OPERATORS (HIGHWAY CONSTRUCTION, AND WATER LINES CONSTRUCTION (OFF PLANT SITE)		
Group 1	14.26	.50+ 26.6%
Group 2	13.42	.50 26.6%
Group 3	12.92	.50+ 26.6%
Group 4	12.48	.50+ 26.6%
Group 5	11.93	.50+ 26.6%
Group 6	14.50	.50+ 26.6%
Group 6-A	14.75	.50+ 26.6%
Group 6-B	15.00	.50+ 26.6%
TRUCK DRIVERS:		
Class I - Helper, stake body truck (single axle), dumpster	13.57	

DECISION NO. PA83-3001	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D)		
CLASS II - Dump Trucks, Tandem & Batch Trucks, Semi-Trailer, Agitator Mixer Trick, Ready Mix and Dumpcrete Type Vehicles, Asphalt Distributor when used for transportation State Body Truck Tandem	13.64	
Class III - Euclid type Off-Highway Equipment Back or Belly Dump Truck and Double Hitched Equipment, Straddle (roos) carrier, Lowbed Trailers	14.13	

DECISION NO. OR84-5020 - Mod#12 (49 FR 25821 - June 22, 1984) Statewide Oregon	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS: See Footnote "c"		
Zone 1:	$17.02	$4.02
Group 1	17.17	4.02
Group 2	17.27	4.02
Group 3	17.42	4.02
Group 4	17.12	4.02
Group 5	17.22	4.02
Group 6		
Zone Differential (add to zone 1 rates)		
Zone 2 $0.65		
Zone 3 1.15		
Zone 4 1.70		
Zone 5 2.75		
CEMENT MASONS: See Footnote "c"		
Cement Masons	16.19	4.72
Composition workers & power machinery operators	16.51	4.72
POWER EQUIPMENT OPERATORS: See Footnote "c"		
Group 1	15.52	5.15
Group 2	15.71	5.15
Group 3	15.87	5.15
Group 4	16.07	5.15
Group 5	16.10	5.15
Group 6	16.22	5.15
Group 7	16.29	5.15
Group 8	16.43	5.15
Group 9	16.52	5.15
Group 10	16.60	5.15
Group 11	16.62	5.15
Group 12	16.72	5.15
Group 13	16.82	5.15
Group 14	17.06	5.15
Group 15	17.25	5.15
Group 16	17.50	5.15
Group 17	17.70	5.15
Group 18	17.95	5.15
Group 19	18.13	5.15
TRUCK DRIVERS: See Footnote "c"		
Group 1	15.24	4.77
Group 2	15.29	4.77
Group 3	15.34	4.77
Group 4	15.39	4.77
Group 5	15.44	4.77
Group 6	15.54	4.77
Group 7	15.64	4.77
Group 8	15.74	4.77
Group 9	15.84	4.77
Group 10	16.01	4.77
Group 11	16.11	4.77
Group 12	16.21	4.77
Group 13	16.31	4.77
Group 14	16.41	4.77

DECISION NO. WA84-5040 - Mod #9 (49 FR 45532 - Nov. 16, 1984) Statewide Washington	Basic Hourly Rates	Fringe Benefits
OMIT:		
Omit reference to Footnote "e" under Power Equipment Operators Area 1		
Omit reference to Power Equipment operators Area 1 in Footnote "e"		
BRICKLAYERS, MARBLE SETTERS:		
Area 1:		
Masonry contracts under $100,000	13.07	4.04
Masonry Contracts over $100,000	16.23	4.04
ADD:		
BRICKLAYERS, MARBLE SETTERS:		
Area 1	16.73	3.70
CHANGE:		
CARPENTERS:		
Area 1:		
Projects under $2,000,000 exclusive of mechanical and electrical subcontracts:		
Carpenters	13.37	3.67
Piledrivers:		
Piledrivers	13.49	3.67
Boom Man	13.57	3.67
Creosote	13.69	3.67
Millwrights	13.77	3.67
All Other Work:		
Carpenters & Lathers	16.82	3.67
Piledriver, saw filer, stationary power woodworking tool	16.97	3.67
Boom man, carpenters working on burned charred, creosoted or simularly treated material	17.07	3.67
Piledriver, creosoted material	17.22	3.67
Millwright, machine erector	17.32	3.67
CEMENT MASONS:		
Area 1:		
Group 1	15.62	3.80
Group 2	16.12	3.80
Group 3	16.62	3.80
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	14.70	4.35
Group 2	15.00	4.35
Group 3	15.55	4.35
Group 4	15.70	4.35
Group 5	15.85	4.35
Group 6	16.10	4.35
Group 7	16.35	4.35
Group 8	17.35	4.35

DECISION NO. WA84-5040 Cont'd	Basic Hourly Rates	Fringe Benefits
CHANGE:		
TRUCK DRIVERS:		
Area 1:		
See Footnote "e"		
Group 1	13.43	4.10
Group 2	15.87	4.10
Group 3	15.91	4.10
Group 4	15.97	4.10
Group 5	16.06	4.10
Group 6	16.27	4.10
Group 7	16.31	4.10
Group 8	16.37	4.10
Group 9	16.41	4.10
Group 10	16.52	4.10
Group 11	16.56	4.10
Group 12	16.87	4.10
Group 13	17.01	4.10
Group 14	17.17	4.10
Group 15	17.31	4.10

DECISION NO. TX85-4003 - [illegible] #3 (50 FR 7544 - 2/22/85) Bell, Coryell & McLennan Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Incidental Paving & Utilities:		
Plumbers (Bell & Coryell):		
Within 45 miles of the McLennan Co. Courthouse incl. towns of Temple & Belton	$14.11	1.54
Over 45 miles from McLennan Co. Courthouse	15.61	1.54

DECISION #WV83-3023 - MOD. #4 (48 FR 53273 - November 25, 1983) Statewide, West Virginia (Heavy & Highway Construction)	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & PILEDRIVERMEN:		
Brooke, Hancock, Marshall, & Ohio Counties:		
Heavy Construction:		
Carpenters	$14.[illegible]	3.29
Piledrivermen	15.38	3.29
Highway Construction:		
Carpenters	14.60	3.29
Piledrivermen	15.06	3.29
Cabell, Lincoln (West of the Guyandot River), Mingo, & Wayne Counties:		
Heavy Construction:		
Carpenters	14.90	3.10
Piledrivermen	15.38	3.10
Highway Construction:		
Carpenters	14.60	3.10
Piledrivermen	15.06	3.10
Remainder of Counties:		
Heavy Construction:		
Carpenters	14.90	3.14
Piledrivermen	15.38	3.14
Highway Construction:		
Carpenters	14.60	3.14
Piledrivermen	15.06	3.14
LABORERS:		
Heavy Construction:		
Class I	14.47	2.70
II	13.89	2.70
III	13.47	2.70
IV	13.00	2.70
V	12.63	2.70

(LABORERS - Cont'd.):	Basic Hourly Rates	Fringe Benefits
Highway Construction:		
Class I	$14.21	2.70
II	13.63	2.70
III	13.16	2.70
IV	12.68	2.70
V	12.26	2.70
Classifications Definitions for Laborers Heavy & Highway Construction:		
Class I - Blacksmith, Tunnel driller, Tunnel miner, Powderman;		
Class II - Mucker-chucker, Reinforcing bar handler (structures);		
Class III - Caison bottom man, Pipe layer (including laser beam set-up), Form setter (road), Drill operator, Inside laborer, Air tool operator, Grade checker, Asphalt raker;		
Class IV - Vibrator man, Whacker, Chainsaw operator, Mortar man, Mason tender, Blacksmith tender, Cement finisher tender, Drill tender, Powderman tender, Waterproofer, Sheeter & Shorer, Pipe layer tender, Bull float man, Pavement Reinforcing placer, Handyman, Signal man, Green cutter, Georgia Power buggie, Burner, Cement blower man, Bituminous hand sprayer;		
Class V - Laborer, Deckhand, Mulcher & Seeder (Hand or Machine), Tree trimmer.		
POWER EQUIPMENT OPERATORS:		
Heavy Construction:		
Group 1	$16.09	3.65
2	14.96	3.65
3	13.90	3.65
4	13.56	3.65
5	12.63	3.65
[illegible]	14.36	3.65
Highway Construction:		
Group 1	15.86	3.65
2	14.67	3.65
3	13.61	3.65
4	13.28	3.65
5	12.34	3.65
6	14.08	3.65

SUPERSEDEAS DECISION

STATE: IOWA

COUNTIES: STATEWIDE (except Black Hawk and Scott Cos.)

DECISION NO.: IA85-4016

DATE: Date of Publication

Supersedes Decision No. IA84-4018 dated March 23, 1984 in 49 FR 11063.

DESCRIPTION OF WORK: Highway Projects (does not include building structures in rest area projects & work on or pertaining to the Mississippi & Missouri Rivers)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
ZONE 1 - Carpenters	$13.33	$2.10
Carpenters (creosote)	13.58	2.10
Piledrivermen	13.455	2.10
ZONES 2 & 3	11.22	1.38
ZONES 4 & 5	11.12	1.00
ZONE 6	8.78	.90
ZONE 7	8.53	
ZONES 8, 9 & 10	7.92	
CEMENT MASONS:		
ZONE 1	12.17	2.45
ZONES 2 & 3	11.22	1.38
ZONES 4 & 5	11.12	1.00
ZONE 6	8.78	.90
ZONE 7	8.53	
ZONES 8, 9 & 10	7.92	
LABORERS:		
ZONE 1 - GROUP 1	9.70	1.80
GROUP 2	9.82	1.80
GROUP 3	10.05	1.80
GROUP 4	9.99	1.80
GROUP 5	10.43	1.80
ZONES 2 & 3 - GROUP 1	10.00	1.30
GROUP 2	9.50	1.30
ZONES 4 & 5 - GROUP 1	9.76	1.20
GROUP 2	9.46	1.20
GROUP 3	9.26	1.20
ZONE 6 - GROUP 1	7.00	1.30
GROUP 2	6.50	1.30
ZONE 7 - GROUP 1	7.00	.82
GROUP 2	5.90	.82
ZONES 8, 9 & 10 - GROUP 1	7.00	
GROUP 2	5.50	
POWER EQUIPMENT OPERATORS:		
ZONES 1 & 2 - GROUP 1	12.25	2.25
GROUP 2	11.55	2.25
GROUP 3	10.76	2.25
ZONE 3 - GROUP 1	11.65	2.78
GROUP 2	10.00	2.78
GROUP 3	8.90	2.78
ZONE 4 - GROUP 1	11.91	2.00
GROUP 2	11.26	2.00
GROUP 3	10.56	2.00

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
ZONE 5 - GROUP 1	$11.40	$2.13
GROUP 2	9.79	2.13
GROUP 3	8.94	2.13
ZONE 6 - GROUP 1	9.75	1.10
GROUP 2	9.15	1.10
GROUP 3	8.50	1.10
GROUP 4	7.50	1.10
ZONE 7 - GROUP 1	9.03	.70
GROUP 2	8.54	.70
GROUP 3	8.11	.70
GROUP 4	7.31	.70
ZONES 8, 9 & 10 - GROUP 1	8.35	.70
GROUP 2	7.93	.70
GROUP 3	7.31	.70
GROUP 4	6.57	.70
STEEL WORKERS (Structural): Linn County	10.70	1.90
TRUCK DRIVERS:		
ZONE 1:		
Single axle, jack & spreader, tandem axle euclid, power lift form truck & jack, jack & spreader trucks low-boys, tractor-trailer water pulls, tandem dump w/auxiliary end, dump trailer	10.27	1.75
Water pulls	10.62	1.75
Lumber carrier	10.82	1.75
ZONES 2 & 3	10.48	.85
ZONES 4 & 5	9.18	.75
ZONE 6	8.35	.65
ZONE 7	7.02	.35
ZONES 8, 9 & 10	6.15	.35

ZONE DEFINITIONS

ZONE 1 - City of Council Bluffs

ZONE 2 - Linn & Polk Cos.; City of Dubuque

ZONE 3 - City of Clinton

ZONE 4 - Cities of Ames & Iowa City

ZONE 5 - City of Burlington (including Burlington Ordnance Plant)

ZONE 6 - Pottawattamie Co. (area west of the eastern boundaries of Minden, York, Washington & Silver Creek Townships); Benton, Boone, Buchanan, Cedar, Clinton, Dallas, Delaware, Dubuque, Jackson, Jasper, Johnson, Jones, Madison, Marion, Marshall, Story, Warren, Cos.; the Cities of Fort Madison, Keokuk, Muscatine & their abutting Municipalities (excluding the Cities of Ames, Clinton, Council Bluffs, Dubuque & Iowa City & their abutting municipalities

ZONE 7 - Des Moines, Louisa & Muscatine Cos. (excluding Cities of Burlington (including Burlington Ordnance Plant), Muscatine & abutting municipalities)

ZONE 8 - Allamakee, Appanoose, Bremer, Butler, Cerro Gordo, Chickasaw, Clayton, Davis, Fayette, Floyd, Franklin , Grundy, Hamilton, Hancock, Hardin, Henry, Howard, Iowa, Jefferson, Keokuk, Lee, Mahaska, Mitchell, Monroe, Poweshiek, Tama, Van Buren, Wapello, Washington, Webster, Winnebago, Winneshiek, Worth & Wright Cos. (excluding Cities of Keokuk, Fort Madison & abutting municipalities)

ZONE 9 - Adair, Adams, Audubon, Calhoun, Carroll, Cass, Clarke, Crawford, Decatur, Fremont, Greene, Guthrie, Harrison, Ida, Lucas, Mills, Monona, Montgomery, Page, Ringgold, Sac, Shelby, Taylor, Union, Wayne & Woodbury Cos. & Pottawattamie Co. (east of Minden, York, Washington & Silver Creek Townships)

ZONE 10 - Buena Vista, Cherokee, Clay, Dickinson, Emmet, Humboldt, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas & Sioux Cos.

LABORERS CLASSIFICATION DEFINITIONS - ZONE 1

GROUP 1 - General Laborers

GROUP 2 - Towboats & dredge deckhands

GROUP 3 - Rakers & Screedman on Asphalt; Mortar Mixers; Chain Saw Operators

GROUP 4 - Pipelayers; Concrete Saw Op.

GROUP 5 - Form Setters & Precast Manhole Setter, Inlet Builders & Manhole Setters

LABORERS CLASSIFICATION DEFINITIONS - ZONES 2,3,6,7,8,9 & 10

GROUP 1 - Powderman Blaster; Powderman Helper; Pipelayer, Sewer, Water, Telephone Conduits, etc.; Laser Operator; Gunnite Nozzleman; Diamond & Core Drills powered by air; Drill Operators of air tracs, Wagon Drills & similar Drillings; Form Setters/Stringman on paving work; Automatic asphalt & concrete curbing machine (without a seat)

GROUP 2 - Sandblasters; All work performed by laborers working from a bos'n chair, swinging stage, tag line or block & tackle; Tree Climber; Rakers; Potman, not mechanical; Timberman; Underpinning & shoring; Caisons over 12' in depth; Grade checker & cutting

LABORERS CLASSIFICATION DEFINITIONS ZONES 2,3,6,7,8,9 & 10 (CONT'D)
torches on demolition work; Trencher operator (walk behind); Self-propelled vibrating compactors (walk behind); Safety boat operators; Power buggymen; Concrete & paving sawman; Form line expansion joint assembler; Sewer utility topman/bottom man; Caulker, jointer & painter; Timber & chain-sawman; Mechanical grouters; Stresser or stretcherman on post tension or pre-stressed concrete on or offf the job; Form tamper; Air, gas & electric tool operators, vibrators, Barco hammer, paving breakers, spaders, tampers, electric drills, hammers & jackhammers; Tree groundman; Chain tenders; Drill tenders, Tool room men & checkers; Sandblaster tenders; Concrete processing material & monitors; Cement finisher tender; Power broom operator (not self-propelled); Fence erectors; Handling & placing of metal mesh, dowel bars, reinforcing bars & chairs; Dumpmen & spotters; Carrying reinforcing rods; Corrugated culvert pipe: Stake chaser, seeding or mulching & planting of trees, shrubs & flowers; Mechanic tender; Group greaser tender; Water pumps (under 3"): Compressor (under 400 cfm); General labor; Rodman; Carpenter tender; Hot asphalt labor

LABORERS CLASSIFICATION DEFINITIONS ZONES 4 & 5
GROUP 1 - Sandblasters; Powderman & blaster; Powderman tender; Pipelayer, sewer, water, telephone conduits, etc.; Sewer utility topman & laser op.; Gunnite nozzleman; Diamond & core drills, powered by air; All work performed by Laborers working from a bos'n chair, swinging stage, tag line or block & tackle; Drill ops. of air tracs, wagon drills & similar drillings; Tree climber; Form setters; Rakers; Automatic asphalt & concrete power curbing machines; Potmen, not mechanical; Timbermen; Underpinning & shoring; Caissons over 12' depth; Grade checker & cutting torches on demolition work; Trenchers; Self-propelled vibrating compactors; Safety boat ops.
GROUP 2 - Power buggymen; Concrete & paving sawmen; Form line expansion joint assembler; Bottom man; Caulker, jointer & painter; Timber & chain-sawman; Mechanical grouters; Stresser or stretcherman on post tension or pre-stressed concrete on or off the job; Form tamper; Air, gas, electric tool ops.; Vibrator, barco hammer, paving breakers, spaders, tampers, electric drills, hammer & jackhammers; Tree groundman; chain tender; Drill tender; Tool room men & checkers; Sandblaster tender; concrete processing material & monitors; Cement finisher tenders; Stringman on paving work & power broom op.
GROUP 3 - Fence erectors; Handling & placing of metal mesh, dowel bars, reinforcing bars & chairs; Dumpmen & spotters; Carrying reinforcing rods; Corrugated culvert pipe; Stake chaser, seeding & mulching & planting of trees, shrubs & flowers; Mechanic tenders; Group greaser tender; Water pumps (under 3"); Compressors (under 400 CFM); Common labor; Carpenter tender & hot asphalt labor

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 1,2,3,4 & 5
GROUP 1 - Power shovel, crane, backhoe & dragline; Central mix plant; Dredge engineer; Dredge leverman; Paver or spreader; Hoisting engineer (steel erection); Motor patrol; Piledriver machine; Concrete mixer; Tow or push boat; Master mechanic; CMI paver; CMI subgrader (or equivalent); Asphalt plant; Front end loader; Scraper; Bulldozer; Push cat; Tractor pulling scraper; Sideboom tractor; Churn or rotary drill; Trenching machine (Cleveland 80 or similar capacity); Asphalt laydown; Asphalt screed; Asphalt heater-planer unit;Asphalt roller; Self-propelled elevating grader or similar machine; spreader (concrete); Horizontal boring machine; Mechanics-welders; Group equipment greaser; Concrete pump; Self-propelled curb machine

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 1,2,3,4 & 5(CONTD
GROUP 2 - Concrete curb breaking machine; Concrete widening machine; Paving breaker; Barber greene, haiss loader or similar machine; Tractor-pulling ripper, disc, sheepsfoot or flat roller; Self-propelled sheepsfoot roller; Self-propelled roller (other than asphalt); Distributor; Screening & washing plant; Self-propelled vibrating compactor; Trenching machine (other than above); Steel placing machine; Conveyor; Finishing machine (on concrete); Flexplane; Bullfloat; Form grader; Water wagon on compaction
GROUP 3 - Boiler; Mechanical broom; Oiler; Farm-type tractor (pulling disc, harrow or roller); Welding machine; Pump (other than dredge); Boom & winch truck; Compressor; Tank car heater (combination boiler & booster); Pumps on well points & deep wells for dewatering; Truck crane combination driver-oiler; Concrete curbing machine; Safety boat; Batch plant, dry; Light plants; Compressors; Mechanical heaters; Pumps; Welding machines; Conveyors

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS ZONES 6,7,8,9 & 10
GROUP 1 - Power shovel; Crane; Backhoe (3/4 cu. yd. or larger); Dragline; Dredge engineer & leverman; Hoisting engineer (steel erection); Motor patrol (finish); Piledriver; Master mechanic; Sideboom tractor; Horizontal boring machine
GROUP 2 - Central mix plant; Paver or self-propelled spreader: Tow or push boat; CMI paver, subgrader or equivalent; Asphalt plant; Scraper (over 12 cu. yd.); Bulldozer (finish); Push cat; Mechanics-welders; Churn or rotary drill; Trenching machine)Cleveland 80 or similar capacity); Asphalt laydown; Asphalt screed; Asphalt heater-planer; Concrete pump; Self-propelled curb machine
GROUP 3 - Motor patrol (rough); Front end loader (3 cu. yd. or over); Scraper (12 cu. yd. & under); Bulldozer (rough); Backhoe (under 3/4 cu. yd.); Asphalt roller; Group equipment greaser; Concrete curb breaking machine; Concrete widening machine; Paving breaker; Barber greene, haiss loader or similar machines; Crawler tractor (pulling disc, sheepsfoot, ripper or flat roller; Self-propelled sheepsfoot roller; Self-propelled roller; Distributor; Screening & washing plant; Self-propelled vibrating compactor; Trenching machines (other than above); Steel placing machine; Conveyor; Finishing machine (on concrete); Flex plane; Bullfloat; Form grader
GROUP 4 - Boiler; Mechanical boom; Oiler; Farm-type tractor (pulling disc, harrow or roller); Welding machine; Pump (other than dredge); Boom & winch trucks; Compressor; Tank car heater (combination boiler & booster); Pumps on well points & deep wells for dewatering; Truck crane combination driver-oiler; Concrete curbing machine; Safety boat; Batch plant, dry; Spreader attachments; Utility tractor with attachments

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: IOWA

COUNTIES: STATEWIDE (except Black Hawk and Scott Cos.)

DECISION NO.: IA85-4017

DATE: Date of Publication

Supersedes Decision No. IA83-4022 dated March 11, 1983 in 48 FR 10577.

DESCRIPTION OF WORK: Heavy Projects (does not include work on or pertaining to the Mississippi or Missouri Rivers or on water & sewage treatment plants in Clinton, Des Moines, Dubuque, Johnson, Linn, Polk & Pottawattamie Cos.)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS, PILEDRIVERMEN & MILLWRIGHTS:		
ZONE 1:		
Carpenters	$13.33	$2.10
Carpenters (creosote)	13.58	2.10
Piledrivermen	13.455	2.10
ZONES 2 & 3	11.22	1.38
ZONE 4	8.78	.90
ZONE 5	8.53	
ZONES 6, 7 & 8	7.92	
CEMENT MASONS:		
ZONE 1	12.17	2.45
ZONES 2 & 3	11.22	1.38
ZONE 4	8.78	.90
ZONE 5	8.53	
ZONES 6, 7 & 8	7.92	
LABORERS:		
ZONE 1 - Group 1	9.70	1.80
Group 2	9.82	1.80
Group 3	10.03	1.80
Group 4	9.99	1.80
Group 5	10.43	1.80
ZONES 2 & 3 - Group 1	10.00	1.30
Group 2	9.50	1.30
ZONE 4 - Group 1	7.00	1.30
Group 2	6.50	1.30
ZONE 5 - Group 1	7.00	.82
Group 2	5.90	.82
ZONES 6, 7 & 8 - Group 1	7.00	
Group 2	5.50	
POWER EQUIPMENT OPERATORS		
ZONES 1 & 2 - Group 1	12.25	2.25
Group 2	11.55	2.25
Group 3	10.76	2.25
ZONE 3 - Group 1	11.65	2.78
Group 2	10.00	2.78
Group 3	8.90	2.78
ZONE 4 - Group 1	9.75	1.10
Group 2	9.15	1.10
Group 3	8.50	1.10
Group 4	7.50	1.10

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
ZONE 5 - Group 1	$ 9.03	$ .70
Group 2	8.54	.70
Group 3	8.11	.70
Group 4	7.31	.70
ZONES 6, 7 & 8 - Group 1	8.35	.70
Group 2	7.93	.70
Group 3	7.31	.70
Group 4	6.57	.70
TRUCK DRIVERS:		
ZONE 1:		
Single axle, jacks & spreader tandem axle euclid; power lift form truck & jack; jack & spreader truck lowboys tractor-trailer water pulls, tandem dump w/auxiliary end, dump trailer	10.27	1.75
Lumber carrier	10.82	1.75
Water pulls	10.62	1.75
ZONES 2 & 3	10.48	.85
ZONE 4	8.35	.65
ZONE 5	7.02	.35
ZONES 6, 7 & 8	8.15	.35

ZONE DEFINITIONS

ZONE 1 - City of Council Bluffs

ZONE 2 - Linn & Polk Cos.; Cities of Ames, Dubuque & Iowa City

ZONE 3 - Cities of Burlington (including Burlington Ordnance Plant) & Clinton

ZONE 4 - Pottawattamie Co. (area west of the eastern boundaries of Minden, York, Washington & Silver Creek Townships); Benton, Boone, Buchanan, Cedar, Clinton, Dallas, Delaware, Dubuque, Jackson, Jasper, Johnson, Jones, Madison, Marion, Marshall, Story, Warren Cos.; the Cities of Fort Madison, Keokuk, Muscatine & their abutting municipalities (excluding the Cities of Ames, Clinton, Council Bluffs, Dubuque & Iowa City & their abutting municipalities)

ZONE 5 - Des Moines, Louisa & Muscatine (excluding Cities of Burlington (incl. Burlington Ordnance Plant), Muscatine & abutting municipalities)

ZONE 6 - Allamakee, Appanoose, Bremer, Butler, Cerro Gordo, Chickasaw, Clayton, Davis, Fayette, Floyd, Franklin , Grundy, Hamilton, Hancock, Hardin, Henry, Howard, Iowa, Jefferson, Keokuk, Lee, Mahaska, Mitchell, Monroe, Poweshiek, Tama, Van Buren, Wapello, Washington, Webster, Winnebago, Winneshiek, Worth & Wright Cos. (excluding Cities of Keokuk, Fort Madison & abutting municipalities)

ZONE 7 - Adair, Adams, Audubon, Calhoun, Carroll, Cass, Clarke, Crawford, Decatur, Fremont, Greene, Guthrie, Harrison, Ida, Lucas, Mills, Monona, Montgomery, Page, Ringgold, Sac, Shelby, Taylor, Union, Wayne & Woodbury Cos. & Pottawattamie Co. (east of Minden, York, Washington & Silver Creek Townships)

ZONE 8 - Buena Vista, Cherokee, Clay, Dickinson, Emmet, Humboldt, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas & Sioux Cos.

CLASSIFICATION DEFINITIONS

LABORERS - ZONE 1

Group 1 - General laborers

Group 2 - Towboat & dredge deckhands

Group 3 - Rakers & screedman on asphalt; Mortar mixers; Chain saw operators

Group 4 - Pipelayers; Concrete saw operator

Group 5 - Form setters & precast manhole setter, inlet builders & manhole setters

LABORERS CLASSIFICATION DEFINITIONS - ZONES 2 thru 8

GROUP 1 - Powderman Blaster; Powderman Helper; Pipelayer, Sewer, Water, Telephone Conduits, etc.; Laser Operator; Gunnite Nozzleman; Diamond & Core Drills powered by air; Drill Operators of air track, Wagon Drills & similar Drillings; Form Setters/Stringman on paving work; Automatic asphalt & concrete curbing machine (without a seat)

GROUP 2 - Sandblasters; All work performed by laborers working from a boe'n chair, swinging stage, tag line or block & tackle; Tree Climber; Rakers; Potman, not mechanical; Timberman; Underpinning & shoring; Caisons over 12' in depth; Grade checker & cutting

torches on demolition work; Trencher operator (walk behind); Self-propelled vibrating compactors (walk-behind); Safety boat operators; Power buggymen; Concrete & paving sawman; Form line expansion joint assembler; Sewer utility topman/bottom man; Caulker, jointer & painter; Timber & chair-sawman; Mechanical grouters; Stresser or stretcherman on post tension or pre-stressed Concrete on or off the job; Form tamper; Air, gas & electric tool operators, vibrators, Barco Hammer, paving breakers, spaders, tampers, electric drills, hammers & jackhammers; Tree Groundman; Chain Tenders; Drill Tenders, Tool Room Men & Checkers; Sandblaster Tenders; Concrete processing material & monitors; Cement Finisher Tenders; Power Broom Operator (not self-propelled); Fence Erectors; Handling & placing of metal mesh, dowel bars, reinforcing bars & chairs; Dumpmen & spotters; carrying reinforcing rods; Corrugated culvert pipe; Stake Chaser, Seeding or mulching & planting of trees, shrubs & flowers; mechanic tender; Group Greaser tender; Water pumps (under 3"); Compressors (under 400 cfm); General labor; Rodman; Carpenter Tender; Hot Asphalt Labor

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 1,2, 6 3

GROUP 1 - Power Shovel, Crane, Backhoe & Dragline; Central Mix Plant; Dredge Engineer; Dredge Leverman; Paver or Spreader; Hoisting Engineer (steel erection); Motor Patrol; Piledriver Machine; Concrete Mixer; Tow or Push Boat; Master Mechanic, CMI Paver; CMI Subgrader (or equivalent); Asphalt Plant; Front End Loader; Scraper; Bulldozer; Push Cat; Tractor Pulling Scraper; Sideboom Tractor; Churn or Rotary Drill; Trenching Machine (Cleveland 80 or similar capacity); Asphalt Laydown; Asphalt Screed; Asphalt Heater-Planer Unit; Asphalt Roller; Self-propelled Elevating Grader or similar machine; Spreader (Concrete); Horizontal Boring Machine; Mechanics-Welders; Group Equip. Greaser; Concrete Pump; Self-propelled Curb Machine

GROUP 2 - Concrete Curb Breaking Machine; Concrete Widening Machine; Paving Breakers; Barber Greene, Haiss Loader or similar machine; Tractor-pulling ripper, disc, sheepsfoot or flat roller; Self-propelled Sheepsfoot Roller, Self-propelled Roller (other than asphalt); Distributor; Screening & Washing Plant; Self-propelled Vibrating Compactor; Trenching Machine (other than above); Steel Placing Machine; Conveyor; Finishing Machine (on concrete); Flex-plane; Bullfloat; Form Grader; Water Wagon on Compaction

GROUP 3 - Boiler; Mechanical Broom; Oiler; Farm-type Tractor (pulling disc, harrow or roller); Welding Machine; Pump (other than dredge); Boom & Winch Truck; Compressor; Tank Car Heater (combination boiler & booster); Pumps on Well Points & Deep Wells for dewatering; Truck Crane Combination Driver-Oiler; Concrete Curbing Machine; Safety Boat; Batch Plant, dry; Light Plants; Compressors; Mechanical Heaters; Pumps; Welding Machines; Conveyors

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES - 4, 5, 6, 7 & 8

GROUP 1 - Power Shovel; Crane; Backhoe (3/4 cu. yd. or larger); Dragline; Dredge Engineer & Leverman; Hoisting Engineer (steel erection); Motor Patrol (finish); Piledriver; Master Mechanic; Sideboom Tractor; Horizontal Boring Machine

POWER EQUIPMENT OPERATORS - ZONES 4,5,6,7 & 8 (Cont'd)

GROUP 2 - Central Mix Plant; Paver or Self-propelled Spreader; Tow or Push Boat; CMI Paver, Subgrader or equivalent; Asphalt Plant; Scraper (over 12 cu. yd.); Bulldozer (finish); Push Cat; Mechanics-Welders; Churn or Rotary Drill; Trenching Machine (Cleveland 80 or similar capacity); Asphalt Laydown; Asphalt Screed; Asphalt Heater-Planer; Concrete Pump; Self-propelled Curb Machine

GROUP 3 - Motor Patrol (rough); Front End Loader (3 cu. yd. or over); Scraper (12 cu. yd. & under); Bulldozer (rough); Backhoe (under 3/4 cu. yd.); Asphalt Roller; Group Equip. Greaser; Concrete Curb Breaking Machine; Concrete Widening Machine; Paving Breaker; Barber Greene, Haiss Loader or similar machine; Crawler Tractor (pulling disc, sheepsfoot, ripper or flat roller); Self-propelled Sheepsfoot Roller; Self-propelled Roller; Distributor; Screening & Washing Plant; Self-propelled Vibrating Compactor; Trenching Machine (other than above); Steel Placing Machine; Conveyor; Finishing Machine (on concrete); Flex Plane; Bullfloat; Form Grader

GROUP 4 - Boiler; Mechanical Boom; Oiler; Farm-type Tractor (pulling disc, harrow or roller); Welding Machine; Pump (other than dredge); Boom & Winch Trucks; Compressor; Tank Car Heater (combination boiler & booster); Pumps on Well Points & Deep Wells for dewatering; Truck Crane Combination Driver-Oiler; Concrete Curbing Machine; Safety Boat; Batch Plant, dry; Spreader attachments; Utility Tractor with attachments

WELDERS: Receive rate prescribed for craft performing operations to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

DECISION NUMBER: MI85-5001

STATE: MICHIGAN
COUNTIES: ALLEGAN, BARRY, BERRIEN, BRANCH, CALHOUN, CASS, CLINTON, EATON, HILLSDALE, INGHAM, IONIA, JACKSON, KALAMAZOO, LENAWEE, ST. JOSEPH, & VAN BUREN.
Supersedes Decision Number MI83-2015, dated March 11, 1983, in 48 FR 10579
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four stories) and HEAVY CONSTRUCTION PROJECTS (does not include Bridge, Airport, Sewer, Water Lines, or TV/Grout projects.)
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS:		
Area 1	$20.325	$3.58
Area 2	16.94	5.70
BRICKLAYERS, MARBLE MASONS, TERRAZZO WORKERS, TILE SETTERS:		
Area 1:		
Bricklayers	13.90	1.29
Marble Masons, Terrazzo Workers, Tile Setters	12.51	1.10
Area 2:		
Bricklayers	13.76	2.34
Marble Masons, Terrazzo Workers, Tile Setters	13.02	1.35
Area 3	14.10	2.35
Area 4:		
Bricklayers	15.59	1.40
Marble Masons, Terrazzo Workers, Tile Setters	13.03	2.65
CARPENTERS:		
Area 1	14.77	2.15
Area 2	17.10	3.82
Area 3	15.12	2.15
Area 4:		
Contracts $3,000,000 and over	13.94	2.20
Contracts under $3,000,000	11.84	2.20
CEMENT MASONS AND PLASTERERS:		
Area 1:		
Cement Masons	13.90	2.44
Plasterers	13.55	2.44
Area 2	12.87	2.39
Area 3:		
Cement Masons	13.40	2.12
ELECTRICIANS:		
Area 1	16.66	2.26+3%
Area 2	17.40	.84+ 9.5%
Area 3	17.03	3.19+3%
Area 4	20.00	3.00+ 3.3%
Electrician (Cont'd)		
Area 5:		
Electricians	16.96	1.76 + 19%
Cable Splicers	19.50	1.76 + 19%
Area 6:		
Electricians	13.00	1.23+ 9.25%
Cable Splicers	14.625	1.23+ 9.25%
Sound Technicians	11.35	3%
Area 7	16.40	1.20+ 10%
ELEVATOR CONSTRUCTIONS:		
Area 1:		
Mechanics	13.465	3.29+a
Helpers	9.425	3.29+a
Probationary Helpers	6.73	
Area 2:		
Mechanics	17.38	3.29+a
Helpers	12.17	3.29+a
Probationary Helpers	8.69	
Area 3:		
Mechanics	17.29	3.29+a
Helpers	12.10	3.29+a
Probationary Helpers	8.645	
Area 4:		
Mechanics	17.37	2.69+a
Helpers	12.16	2.69+a
Probationary Helpers	8.69	
Area 5:		
Mechanics	15.71	3.00+a
Helpers	11.00	3.00+a
Probationary Helpers	7.855	
GLAZIERS:		
Area 1	11.60	1.20
Area 2	14.73	
Area 3	13.42	16%
Area 4	14.69	3.55
Area 5	13.14	2.31
IRONWORKERS:		
Area 1	14.25	5.71
Area 2	19.19	3.84
Area 3	13.53	3.13+ 38.64%
Area 4:		
Bridges, Dams, Locks, and Powerplants	13.12	2.91
All other construction	11.00	2.91

	Basic Hourly Rates	Fringe Benefits
LATHERS:		
Area 1	16.97	4.34
Area 2	15.02	2.57
Area 3	14.05	2.57
MILLWRIGHTS:		
Area 1	15.4037	33.5%+ 2.8611
Area 2	16.10	2.20
LINE CONSTRUCTION:		
Area 1:		
Linemen-Technicians	17.63	13.5%+ 2.05
Cable Splicers	18.38	13.5%+ 2.05
Combination equipment operators & groundmen	14.14	13.5%+ 2.05
Combination truck driver & groundmen	13.31	13.5%+ 2.05
Groundmen	12.26	13.5%+ 2.05
Area 2:		
Linemen-Technicians	15.50	8.5%+ 1.00+c
Cable Splicers	16.13	8.5%+ 1.00+c
Combination digger operators, tractor operators, groundmen	12.07	8.5%+ 1.00+c
Light equipment operators-groundmen: Distribution line truck drivers, operators, groundmen	10.59	8.5%+ 1.00+c
Combination winch truck drivers-groundmen	10.10	8.5%+ 1.00+c
Combination truck drivers-groundmen	8.55	8.5%+ 1.00+c
PAINTERS:		
Area 1:		
Brush and Roller Paperhangers, wall coverers, drywall finisher and painter on railroad bridges	12.00	1.07
Swing Stage and window jacks	12.25	1.07
Spray, pressure roller, Steam cleaning, sand and water blast	12.50	1.07
	12.75	1.07
PAINTERS (Cont'd)		
Area 2:		
Brush-Roll; Paperhanger; Drywall-taping	14.55	
Spray; Sandblasting; work above 30 ft.; Bazooka gun; Mud box; Brush-steel; All work with mitts	16.30	
Area 3:		
Brush, Pan Roller, taping and Sign	13.65	1.75
Spray, Sandblasting and Swing Stage	14.85	1.75
Steeplejack	14.50	1.75
Mechanical Roller	14.35	1.75
Vinyl Hanger	13.85	1.75
Area 4:		
Brush and Roller	12.90	.95
Swing stage, Spray, Snadblast, drywall Tapers, wall coverers	13.50	.95
Area 5:		
Brush and Roller	14.75	5.02
Spray, under 40 ft.	15.25	5.02
Spray, over 40 ft.	15.375	5.02
Area 6:		
Brush, roller, drywall (hand)	14.20	1.7525
Paperhangers	14.55	1.7525
Structural Steel and towers	14.60	1.7525
Spray, sandblast, drywall (machine)	14.95	1.7525
PLUMBERS:		
Area 1	14.30	3.22
Area 2	16.87	3.63
Area 3	17.07	3.56
Area 4	16.61	2.10
Area 5	15.81	2.45
Area 6	16.19	4.24
Area 7	16.40	3.86
ROOFERS:		
Area 1:		
Asbestos, Slate and Tile	11.00	3.05
Built-up	10.75	3.05
Area 2:		
Composition	14.60	2.55
Slate and Tile	15.10	2.55
Area 3	11.83	3.65
Area 4	15.02	4.09
Area 5	16.45	3.85

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	Basic Hourly Rates	Fringe Benefits
ROOFERS (Cont'd)		
Area 6:		
Roofers	13.65	1.35
Slate and Tile	13.90	1.35
Pitch work	14.15	1.35
SHEET METAL WORKERS:		
Area 1	16.16	2.46
Area 2	16.825	3.635
Area 3	16.32	4.29
SPRINKLER FITTERS	17.17	2.83
TRUCK DRIVERS:		
Area 1:		
Trucks 8 cu. yds. & under	11.50	*76.50
Trucks, over 8 cu. yds.	11.60	*76.50
Semi-trucks, mechanics	11.70	*76.50
Area 2:		
Dump trucks, 8 cu. yds. and over, and pole trailers	10.26	*89.50
Lowboy and double bottom trucks	10.36	*89.50
All others trucks	10.16	*89.50
Area 3	10.50	2.46
*PER WEEK PER EMPLOYEE.		
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
LABORERS:		
Area 1:		
Contracts over $3,000,000:		
Class 1	9.95	2.24
Class 2	10.10	2.24
Class 3	10.20	2.24
Class 4	10.45	2.24
Contracts under $3,000,000:		
Class 1	7.85	2.24
Class 2	8.00	2.24
Class 3	8.10	2.24
Class 4	8.35	2.24
Area 2:		
Contracts over $3,000,000:		
Class 1	9.56	2.24
Class 2	9.71	2.24
Class 3	9.81	2.24
Class 4	10.06	2.24

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	Basic Hourly Rates	Fringe Benefits
LABORERS (Cont'd)		
Area 2 (Cont'd)		
Contracts under $3,000,000:		
Class 1	7.46	2.24
Class 2	7.61	2.24
Class 3	7.71	2.24
Class 4	7.96	2.24
Area 3:		
Class 1	11.60	1.69
Class 2	11.84	1.69
Area 4	10.90	1.69
LABORERS- open cut construction.		
Area 1:		
Contracts over $400,000:		
Class 1	12.07	2.54
Class 2	12.17	2.54
Class 3	12.27	2.54
Class 4	12.32	2.54
Class 5	12.42	2.54
Contracts $400,000 or less:		
Class 1	9.66	2.54
Class 2	9.77	2.54
Class 3	9.87	2.54
Class 4	9.92	2.54
Class 5	10.02	2.54
Area 2:		
Contracts over $400,000:		
Class 1	11.66	2.54
Class 2	11.77	2.54
Class 3	11.87	2.54
Class 4	11.92	2.54
Class 5	12.02	2.54
Contracts $400,000 or less:		
Class 1	10.31	2.54
Class 2	10.42	2.54
Class 3	10.52	2.54
Class 4	10.57	2.54
Class 5	10.67	2.54
Area 3:		
Class 1	9.80	2.29
Class 2	9.90	2.29
Class 3	10.00	2.29
Class 4	10.05	2.29
Class 5	10.15	2.29

DECISION NO. MI85-5001

	Basic Hourly Rates	Fringe Benefits
LABORERS- open cut Construction (Cont'd)		
Area 1:		
Class 1	10.61	2.29
Class 2	10.71	2.29
Class 3	10.81	2.29
Class 4	10.86	2.29
Class 5	10.96	2.29
LABORERS- Tunnel, Shaft and Caisson Construction:		
Contracts over $400,000:		
Class 1	12.56	2.99
Class 2	12.65	2.99
Class 3	12.70	2.99
Class 4	12.85	2.99
Class 5	13.06	2.99
Class 6	13.31	2.99
Contracts $400,000 or less:		
Class 1	10.55	2.99
Class 2	10.63	2.99
Class 3	10.68	2.99
Class 4	10.84	2.99
Class 5	11.04	2.99
Class 6	11.30	2.99
LANDSCAPE LABORERS:		
Class A	8.18	a+b
Class B	6.14	a+b
POWER EQUIPMENT OPERATORS:		
Area 1:		
Class A	16.47	4.35
Class B	16.25	4.35
Class C	15.69	4.35
Class D	15.21	4.35
Class E	14.84	4.35
Class F	12.59	4.35
Class G	11.77	4.35
Area 2:		
Class A	16.10	4.35
Class B	15.85	4.35
Class C	15.35	4.35
Class D	13.75	4.35
Class E	13.45	4.35
Class F	12.05	4.35
Class G	11.20	4.35

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS- Steel Erection:		
Area 1:		
Class 1	17.37	4.35+13%
Class 2	18.26	4.35+13%
Class 3	17.13	4.35+13%
Class 4	18.02	4.35+13%
Class 5	16.49	4.35+13%
Class 6	17.37	4.35+13%
Class 7	16.17	4.35+13%
Class 8	17.05	4.35+13%
Class 9	15.96	4.35+13%
Class 10	12.98	4.35+13%
Class 11	11.82	4.35+13%
Area 2:		
Class A	16.45	4.35
Class B	16.20	4.35
Class C	15.70	4.35
Class D	14.10	4.35
Class E	12.75	4.35
Class F	11.40	4.35
POWER EQUIPMENT OPERATORS- Underground Construction:		
Area 1:		
Contracts over $400,000:		
Class A	14.93	4.35+13%
Class B	14.55	4.35+13%
Class C	13.90	4.35+13%
Class D	13.40	4.35+13%
Contract $400,000 or less:		
Class A	14.04	4.35+13%
Class B	13.66	4.35+13%
Class C	13.02	4.35+13%
Class D	12.51	4.35+13%
Area 2:		
Contracts over $400,000:		
Class A	13.42	4.35+13%
Class B	12.89	4.35+13%
Class C	12.45	4.35+13%
Class D	12.20	4.35+13%
Contracts $400,000 or less:		
Class A	12.09	4.35+13%
Class B	11.57	4.35+13%
Class C	11.12	4.35+13%
Class D	10.88	4.35+13%

FOOTNOTES:

A. SEVEN PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day. VACATION PAY CREDIT: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% for employees with 6 months to 5 years of service.

B. FOUR PAID HOLIDAYS: New Year's Day; Decoration Day; Labor Day; Christmas Day.

C. SEVEN PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day; Provided the Employee worked the scheduled work day preceding and following the day observed.

AREA DESCRIPTIONS

BOILERMAKERS:

Area 1: Hillsdale and Lenawee Counties
Area 2: Remainder of Counties

BRICKLAYERS, MARBLE MASONS, TERRAZZO WORKERS, TILE SETTERS:

Area 1: Allegan County (townships of Dorr, Leighton and Wayland), Barry County (townships of Carlton, Castleton, Hastings, Irving, Rutland, Thornapple, Woodland and Yankee Springs), and Ionia County (except the townships of Danby, Lyons, North Plains and Portland).
Area 2: Allegan County (townships of Allegan, Casco, Cheshire, Clyde, Ganges, Gun Plain, Lee, Martin, Otsego, Trowbridge Valley and Watson), Barry County (townships of Barry, Hope, Orange and Prairieville), Berrien County, Cass County, Kalamazoo County, St. Joseph County and Van Buren County
Area 3: Barry County (townships of Assyria, Baltimore, Johnstown and Maple Grove), Calhoun County, and Eaton County (townships of Bellevue, Carmel, Kalamo and Walton)
Area 4: Clinton County, Eaton County (except the townships of Bellevue, Carmel, Kalamo and Walton), Ingham County (except the townships of Bunker Hill, Leslie, Onondaga and Stockbridge) and Ionia County (townships of Danby, Lyons, North Plains and Portland)

CARPENTER: Jackson and Lenawee Counties

Area 1: Jackson and Lenawee Counties
Area 2: Berrien County (townships of Chickaming, New Buffalo and Three Oaks)
Area 3: Clinton County, Eaton County (Except the townships of Bellevue, Kalamo, Vermontville and Walton), Ingham County, and Ionia County (townships of Danby, Orange, Portland and Sebewa)
Area 4: Remainder of Counties

CEMENT MASONS AND PLASTERERS:

Area 1: Branch, Hillsdale and Lenawee Counties
Area 2: Allegan County (townships of Allegan, Casco, Cheshire, Clyde, Ganges, Gun Plain, Lee, Martin, Otsego, Trowbridge, Valley and Watson), Barry County (townships of Barry, Hope, Orange and Prairieville), Berrien County, Cass County, Kalamazoo County, St. Joseph County and Van Buren County
Area 3: Clinton County, Eaton County, Ingham County and Livingston County (North Half, including the town of Howell)

ELECTRICIANS:

Area 1: Barry County (townships of Assyria, Baltimore, Carlton, Castleton, Hastings, Johnstown, Maple Grove and Woodland), Branch County, Calhoun County and Eaton County (townships of Bellevue, Brookfield, Kalamo, Sunfield, Vermontville and Walton)
Area 2: Berrien and Cass Counties
Area 3: Clinton County, Eaton County (townships of Benton, Carmel, Chester, Delta, Eaton, Eaton Rapids, Hamlin, Oneida, Roxand and Windsor), Gratiot County (townships of Alaiedon, Aurelius, Delhi, Ingham, Lansing, Leroy, Locke, Meridian, Vevay, Wheatfield, White Oak and Williamson), Ionia County (townships of Danby, Orange, Portland and Sebewa), Livingston County (townships of Cohoctah, Conway, Handy, Howell, Iosco and Marion), Shiawassee County (townships of Perry and Woodhull)
Area 4: Hillsdale and Lenawee Counties
Area 5: Ingham County (townships of Bunker Hill, Leslie, Onondaga and Stockbridge), Jackson County, Livingston County (townships of Green Oaks, Hamburg, Putnam and Unadilla) and Washtenaw County
Area 6: Allegan County (townships of Dorr, Fillmore, Laketon, Leighton, Overisel, and Salem), Barry County (townships of Irving and Thornapple) and Ionia County (townships of Berlin, Boston, Campbell, Easton, Ionia, Keene, Lyons, North Plains, Odessa, Orlean, Otisco, and Ronald)
Area 7: Allegan County (townships of Allegan, Casco, Cheshire, Clyde, Ganges, Gun Plain, Heath, Hopkins, Lee, Manlius, Martin, Monterey, Otsego, Saugatuck, Trowbridge, Valley, Watson and Wayland), Barry County (townships of Barry, Hope, Orangeville, Prairieville, Rutland and Yankee Springs), Kalamazoo County, St. Joseph County and Van Buren County

ELEVATOR CONSTRUCTORS:

Area 1: Ionia County
Area 2: Clinton County
Area 3: Eaton, Hillsdale, Ingham and Jackson Counties
Area 4: Lenawee County
Area 5: Remainder of Counties

GLAZIERS:

Area 1: Allegan County (Northern Half of County), Barry County (Northern Half of County) and Ionia County
Area 2: Allegan County (Southern Half of County), Barry County (Southern Half of County), Branch County, Calhoun County, Kalamazoo County, St. Joseph County and Van Buren County
Area 3: Berrien and Cass Counties
Area 4: Lenawee County
Area 5: Remainder of Counties

IRONWORKERS:

Area 1: Berrien and Cass Counties
Area 2: Lenawee County
Area 3: Clinton, Ingham and Jackson Counties
Area 4: Remainder of Counties

LATHERS:

Area 1: Lenawee County (Eastern Half of County)
Area 2: Clinton County, Eaton County (Except Southwest Corner), Ingham County, Ionia County (Southeast Corner), Jackson County, Lenawee County (Remainder of County)
Area 3: Berrien County (Southwest Corner)

LINE CONSTRUCTION:

Area 1: Ingham County (townships of Leroy, Locke, Wheatfield, White Oak and Williamson)
Area 2: Remainder of Counties

MILLWRIGHTS:

Area 1: Clinton County, Eaton County, Ingham County and Jackson County
Area 2: Allegan County, Barry County, Berrien County (Except the townships of Chickaming, New Buffalo and Three Oaks), Branch County, Calhoun County, Cass County, Hillsdale County, Ionia County, Kalamazoo County, St. Joseph County and Van Buren County

PAINTERS:

Area 1: Allegan County (Northern Portion) and Ionia County (Western Half of County)
Area 2: Allegan County (Southwest Half of County), Berrien County, Cass County (Western Half of County) and Van Buren County (Western Half of County)
Area 3: Allegan County (Southwest Half of County), Barry County (Southwest Half of County), Cass County (East Half of County), Kalamazoo County, St. Joseph County and Van Buren County (East Half of County)
Area 4: Barry County (Remainder of County), Branch County, Calhoun County, Hillsdale County (Western Third of County)
Area 5: Hillsdale County (Remainder of County), Jackson County, Lenawee County
Area 6: Remainder of Counties

PLUMBERS:

Area 1: Allegan County (townships of Dorr, Fillmore, Laketown, Leighton, Overisel and Salem), Barry County (townships of Carlton, Irving, Thornapple and Woodland), and Ionia County (Except the townships of Danby and Portland)
Area 2: Allegan County (Except the townships of Dorr, Fillmore, Laketown, Leighton, Overisel and Salem), Barry County (townships of Barry, Hope, Orangeville, Prairieville, Rythland and Yankee Springs), Kalamazoo County, St. Joseph County and Van Buren County
Area 3: Barry County (townships of Assyria, Baltimore, Castleton, Hastings, Johnstown and Maple Grove), Branch County, Calhoun County and Eaton County (Except the townships of Delta, Oneida, Roxand, Sunfield and Windsor)
Area 4: Berrien County (Except the townships of Bertrand, Buchanan, Chickaming, Galien, New Buffalo, Niles, Three Oaks and Weesaw)
Area 5: Berrien County (City of Miels and Vicinity), Cass County
Area 6: Clinton County, Eaton County (townships of Delta, Oneida, Roxland, Sunfield and Windsor), Ingham County, Ionia County (townships of Danby and Portland)
Area 7: Hillsdale County, Jackson County and Lenawee County (Except the townships of Clinton, Macon and Tecumseh)

ROOFERS:

Area 1: Allegan County, Barry County and Ionia County
Area 2: Berrien County
Area 3: Clinton, Eaton and Ingham Counties
Area 4: Hillsdale and Jackson Counties
Area 5: Lenawee County
Area 6: Branch, Calhoun, Kalamazoo, St. Joseph and Van Buren Counties

SHEET METAL WORKERS:

Area 1: Berrien, Cass and St. Joseph Counties
Area 2: Lenawee County
Area 3: Remainder of Counties

TRUCK DRIVERS:

Area 1: Ionia County (Western Half of County)
Area 2: Clinton County, Eaton County (Northern Half of County), Ingham County, Ionia County (Remainder of County)
Area 3: Barry County, Branch County, Calhoun County, Kalamazoo County (townships of Barry, Charleston, Climax, Comstock, Pavilion, Richland, Ross and Wakeshma)

LABORERS:

Area 1: Allegan, Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph and Van Buren Counties
Area 2: Ionia County (Excluding the City of Portland)
Area 3: Clinton, Eaton and Ingham Counties
Area 4: Hillsdale, Jackson and Lenawee Counties

LABORERS- Open Cut Construction:

Area 1: Clinton County, Eaton County, Ingham County and Ionia County (Southeast Corner)
Area 2: Hillsdale, Jackson and Lenawee Counties
Area 3: Ionia County (Remainder of County)
Area 4: Remainder of Counties

POWER EQUIPMENT OPERATORS:

Area 1: Lenawee County
Area 2: Remainder of Counties

POWER EQUIPMENT OPERATORS- Steel Erection:

Area 1: Lenawee County
Area 2: Remainder of Counties

POWER EQUIPMENT OPERATORS- Underground Construction:

Area 1: Branch, Calhoun, Clinton, Eaton, Hillsdale, Ingham, Jackson and Lenawee Counties
Area 2: Remainder of Counties

GROUP DEFINITIONS

LABORERS:

Area 1 and 2:
Group 1: General Laborers
Group 2: Plasterer Tender, Material Mixer, Portable Mixer, Air/Electric/Gas Tool Operators, Motor-Driver Buggy, Swing Scaffold
Group 3: Jackhammer Operator, Crock Layer, Caisson in Building
Group 4: Top Men on Chimney or Tower over 30' in height

Area 3:
Group 1: General Laborers, Mortar Mixer, Plasterer Tender, Portable Concrete Mixer (14 H.P. and under), Air/Electric/Gas Tool Operators, Hot Dope Carrier, Tar Kettle Tender, Gasoline Vibrator, Concrete Gas Buggy, Concrete Saw, Signal men and Top Men on Sewer, Caisson Construction (open cut work), Tunnel Men, Concrete Shoveler, Car Pusher, Bottom Men on Sewer work
Group 2: Windlass Operator on Caisson work, Crock or Pipe layers, Caisson Worker, Tunnel Mucker, Tunnel Miner, Jackhammer, Burner

LABORERS- Open Cut Construction:

Class 1 - Construction Laborers
Class 2 - Mortar & material mixer, concrete form man, signal man, well point man, manhole, headwall & catch basin builder, guardrail builder, & fence erector
Class 3 - Air/gas/electric tool operators, vibrator operator, driller, pump man, tar kettle operator, bracer, rodder, reinforced steel or mesh man (e.g. wire mesh, steel mats, dowel bars), cement finisher's laborer, pipe jacking & boring man, wagon drill & air track operator, concrete saw operator (under 40 HP.), windlass & tugger man
Class 4 - Trench or excavating grade man
Class 5 - Pipe layer (including crock, metal pipe, multi-plate or other conduits).

LABORERS - Tunnel, Shaft and Caisson Construction:

Class 1: Tunnel, Shaft, and Caisson Laborer, Dump Man, Shanty Man, Hog House Tender, Testing Man on Gas

Group Definitions (Cont'd)

LABORERS- Tunnel, Shaft and Caisson Construction (Cont'd):
Class 2: Manhole, Headwall, Catch Basin Builder, Bricklayer Tender, Mortar Man, Material Mixer, Fence Erector and Guard Rail Builder
Class 3: Air Tool Operator (Jackhammer, Bush Hammer and Grinding), First Bottom Man, Second Bottom Man, Cage Tender, Car Pusher, Carrier Man, Concrete Man, Concrete Form Man, Concrete Repair Man, Cement Invert Laborer, Cement Finisher Laborer, Concrete Shoveler, Conveyor Man, Floor Man, Gas and Electric Tool Operator, Gunnite Man, Grout Operator, Pump Man, Outside Lock Tender, Scaffold Man. Top Signal Man, Switch Man, Track Man, Tugger Man, Utility Man, Vibrator Man, Winch Operator, Pipe Jacking, Boring Man, Wagon Drill/Air Track Operator/Concrete Saw Operator (under 40 HP)
Class 4: Tunnel, Shaft and Caisson Mucker, Bracer Man, Liner Plate Man, Long Haul Dinky Driver and Well Point Man.
Class 5: Tunnel, Shaft and Caisson Miner, Drill Runner, Power Knife Operator, Reinforced Steel or Mesh Man (e.g., wire mesh, Steel Mats, Dowel Bars)
Class 6: Dynamite Man and Powder Man

LANDSCAPE LABORERS:
Class A: Landscape Specialist (including Air, Gas, Diesel, Electric Tool and Equipment)
Class B: Landscape Laborers, Truck Drivers, Material Haulers and Small Powered Equipment

POWER EQUIPMENT OPERATORS:
Area 1:
Class A: Crane with Boom and Jib or Leads 220' or longer
Class B: Crane with Boom and Jib or Leads 140' or longer
Class C: Crane with Boom and Jib or Leads 120' or longer
Class D: Regular Crane Operator
Class E: Regular Engineer
Class F: Engineer when operating compressor or welding machine
Class G: Fireman or Oiler
Area 2:
Class A: Crane with main Boom and Jib 220' or longer
Class B: Crane with main Boom and Jib 140' or longer, Tower Crane, Gantry Cranes, Whirley Derrick
Class C: Regular Equipment Operator, Cranes, Stiff Leg Derrick, Scraper, Dozer, Grader, Front End Loader, Hoist, Job Mechanic
Class D: Air Tugger (single drum), Material Hoist, Boiler Operators, Sweeping Machine, Winch Truck, Bobcat & Similar type Equipment, Fork Truck (over 20' Lift)
Class E: Pump 6" or over, Well Points, Freeze Systems, Boom Truck (nonswinging), Fork Truck (29' Lift)
Class F: Air Compressor, Welder, Generators, Pumps under 6," Grease Men, Conveyors
Class G: Oiler, Firemen and Heater Operators

GROUP DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS- Steel Erection:

Area 1:
Class A: Engineer when operating combination of boom and jib 220' or longer
Class B: Engineer when operating combination of boom and jib 140' or longer
Class C: Crane Operator, Job Mechanic
Class D: Hoisting Engineer
Class E: Compressor or Welder Operator
Class F: Oiler or Fireman
Area 2:
Class A: Crane Operator with main boom and jib 220' or longer
Class B: Crane Operator with main boom and jib 140' or longer, Tower Crane, Gantry Crane, Whirley Derrick
Class C: Regular Equipment Operator, Crane, Dozer, Loader, Hoist, Straddle Wagon, Job Mechanic
Class D: Air Tugger (single drum), Material Hoist, Pump 6" and over
Class E: Air Compressor, Welder, Generator, Conveyor
Class F: Oiler or Fireman

POWER EQUIPMENT OPERATORS- Underground Construction:

Class A - Backfiller tamper, backhoe, batch plant operator (concrete), clamshell, concrete paver (2-drum or larger), conveyor loader (Euclid type), crane (crawler, truck type or pile driving), dozer (9' blade & over), dragline, elevating grader, end loader (over 1½ cu yds. capacity), gradall, mechanic, power shovel, roller (asphalt), scraper (self-propelled or tractor drawn), side boom tractor (D-4 type), slip form paver, slope paver, trencher (over 8' digging capacity), well drilling rig;
Class B - Boom truck (power swing type boom), crusher, dozer (less than 9' blade), end loader (1½ cu. yds & smaller), hoist, pump (1 or more - 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more - inclusive of generator), side boom tractor (smaller than D-4 type), sweeper (Wayne type), tractor (pneu-tired, other than backhoe or front end loader), trencher (8' digging capacity)
Class C - Air compressor (600 CFM or larger), air compressor (2 or more - less than 600 CFM), boom truck (non-swinging, non-powered type boom), concrete breaker (self-propelled or truck mounted - includes compressor), concrete paver (1-drum, 1½ yd. or larger), elevator (other than passenger), maintenance man, mechanic tender, pump (2 or more, 4" to 6" discharge, gas or diesel powered, excluding submersible pumps), pumpcrete machine, wagon drill (multiple), welding machine or generator (2 or more, 300 amps or larger, gas or diesel powered)

GROUP DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS- Underground Construction (Cont'd):

Class D - Boiler, concrete saw (40 HP. or over), curing machine (self-propelled), farm tractor with attachment, finishing machine (concrete), fireman, hydraulic pipe pushing machine, mulching equipment, oiler, pumps (2 or more up to 4" discharge, gas or diesel powered, excluding submersible pumps), roller (other than asphalt), stump remover, trencher (service), vibrating compaction equipment (self-propelled, 6' wide or over).

Unlisted classification needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW MEXICO COUNTY: STATEWIDE (excluding Eddy & Lea Cos. for building construction)

DECISION NO.: NM85-4014 DATE: Date of Publication

SUPERSEDES DECISION NO. NM84-4099, dated October 19, 1984 in 49 FR 41140.

DESCRIPTION OF WORK: GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION shall include the construction, alteration, repair and demolition of buildings, including office buildings, warehouses, industrial and commercial buildings, institutional and public buildings, and all air conditioning, conduit, heating and other mechanical and electrical works and site preparation for building or heavy engineering projects under this classification, stadia; and shall include electrical, gas, water, sewer lines, and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer, provided, however, regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure; and include construction, alteration, repair and demolition of heavy engineering work such as power generating plants, pump stations, natural gas compressing stations; covered reservoirs and covered sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kilns, silos, shafts and tunnels (other than highway shafts and tunnels), hydro-electric projects; and well drilling, telephone and electrical transmission lines which are part of GENERAL BUILDING & HEAVY ENGINEERING PROJECTS: mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles.

DECISION NO. NM85-4014 PAGE 2

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
ZONE I	$16.78	3.56
ZONE II	17.95	2.37
BOILERMAKERS	14.43	4.25
BRICKLAYERS-STONEMASONS:		
ZONE I	14.11	2.07
ZONE II	15.61	2.07
ZONE III	16.36	2.07
ZONE IV	14.46	1.72
ZONE V	15.96	1.72
ZONE VI	14.66	1.52
ZONE VII	16.16	1.52
ZONE VIII-A	14.16	1.62
ZONE VIII-B	15.66	1.62
ZONE XI	15.90	1.42
ZONE X	14.14	1.42
CARPENTERS/LATHERS/PILE-DRIVERMEN:		
Construction,erection, alteration,repair,modification,addition to or improvement in whole or in part of structures for which the major support system is wood frame construction and will also include all apartments over 4 stories, all convenience stores,fast food restaurants,automobile service stations & motels up to 2 stories high	8.00	1.20
All other work	13.15	3.45
CEMENT MASONS:		
BUILDING CONSTRUCTION:		
AREA I:		
Construction,erection, repair,modification, addition to or improvement in whole or in part of structures for which the major support system is wood frame & will also include all apartments over 4 stories,convenience stores,fast food restaurants,automobile service stations & motels up to 2 stories high regardless of type of construction	8.00	1.20
All other work	11.99	2.22
CEMENT MASONS (CONT'D):		
BUILDING CONSTRUCTION:		
AREA II:		
Apartments over 4 stories	$ 8.08	1.12
All other work	11.99	2.22
HEAVY CONSTRUCTION	11.99	2.22
COMPOSITION & MACHINE OPERATORS	12.24	2.22
ELECTRICIANS:		
ZONE I:		
AREA I-A	17.00	2.20+ 3.75%
AREA I-B	18.53	"
AREA I-C	19.55	"
AREA I-D	21.42	"
ZONE II	19.55	"
ZONE III:		
3-A	14.20	.80+ 3.5%
3-B	15.65	"
ZONE IV:		
4-A	16.30	1.64+3%
4-B	16.75	1.64+3%
4-C	16.90	1.64+3%
4-D	17.15	1.64+3%
CABLE SPLICERS:		
ZONE I:		
AREA I-A	18.70	2.20+ 3.75%
AREA I-B	20.23	"
AREA I-C	21.25	"
AREA I-D	23.12	"
ZONE II	21.25	"
ZONE III:		
3-A	14.45	.80+ 3.5%
3-B	15.90	"
ZONE IV:		
4-A	16.65	1.64+3%
4-B	17.10	1.64+3%
4-C	17.25	1.64+3%
4-D	17.70	1.64+3%

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	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
AREA I:		
Mechanics	$16.44	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
AREA II:		
Mechanics	12.38	2.69+a
Helpers	70%JR	2.69+a
Helpers (Prob.)	50%JR	
a-Employer contributes 8% of basic hourly rate for over 5 years service & 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Seven Paid Holidays - New Years' Day,Memorial Day,Independence Day,Labor Day,Thanksgiving Day, the Friday after Thanksgiving Day & Christmas Day		
GLAZIERS	12.69	1.40
IRONWORKERS:		
ZONE I:		
Construction,erection, alteration,repair,modification, addition to or improvement in whole or in part of structures for which the major support system is wood frame construction & will include apartments over 4 stories, convenience stores, fast food restaurants, automobile service stations,motels up to 2 stories high regardless of the type of construction,all pre-engineered metal buildings except the structural portion of said buildings with eave height in excess of 40 ft. & all steel fencing	8.07	1.43
All other work	14.10	3.28
IRONWORKERS (CONT'D):		
ZONES II & III:		
Construction,erection, alteration,repair,modification,addition to or improvement in whole or in part of structures for which the major support system is wood frame construction & will also include apartments over 4 stories, convenience stores, fast food restaurants, automobile service stations,motels up to 2 stories high regardless of the type of construction,all pre-engineered metal buildings except the structural portion of said buildings with eave height in excess of 30 ft. & all steel fencing	$ 8.23	.95
All other work:		
ZONE II	13.55	2.97
ZONE III	14.55	2.97
LABORERS:		
GROUP 1	8.75	1.91
GROUP 2	9.25	1.91
GROUP 3	9.80	1.91
LEADBURNERS:		
ZONE I	17.29	3.73
ZONE II	17.29	3.73
ZONE III	17.29	3.73
ZONE IV (SPECIFIC AREA)	18.09	3.73

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK:		
AREA A:		
Linemen-Technicians:		
ZONE I	$17.00	2.20+ 3.5%
ZONE II	18.53	"
ZONE III	19.55	"
ZONE IV	21.42	"
Cable splicers:		
ZONE I	18.70	"
ZONE II	20.23	"
ZONE III	21.25	"
ZONE IV	23.12	"
Equipment Op.(includes helicopter op.):		
ZONE I	16.15	"
ZONE II	17.68	"
ZONE III	18.70	"
ZONE IV	20.57	"
Equipment mechanic (include helicopter mech.) & powderman:		
ZONE I	14.79	"
ZONE II	16.32	"
ZONE III	17.34	"
ZONE IV	19.21	"
Groundman-Jackhammer op.:		
ZONE I	12.07	"
ZONE II	13.60	"
ZONE III	14.62	"
ZONE IV	16.49	"
AREA B:		
Linemen-Technicians:		
ZONE I	14.50	1.00+ 3.5%
ZONE II	15.95	"
Cable splicers:		
ZONE I	14.79	"
ZONE II	16.27	"
Equipment op. (includes helicopter ops.):		
ZONE I	12.62	"
ZONE II	13.88	"
Equipment mechanic (including helicopter mechanic)		
ZONE I	12.62	"
ZONE II	13.88	"
Powderman:		
ZONE I	12.18	"
ZONE II	13.40	"
Jackhammer-Groundman:		
ZONE I	10.30	"
ZONE II	11.32	"

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK(CONT'D):		
AREA C:		
Lineman-Technicians:		
ZONE I	$17.10	1.00+ 3.5%
ZONE II	17.55	"
ZONE III	17.70	"
ZONE IV	17.95	"
Cable splicers:		
ZONE I	17.45	"
ZONE II	17.90	"
ZONE III	18.05	"
ZONE IV	18.30	"
Equipment Op. & mechanics (includes helicopter op.& mechanics		
ZONE I	14.88	"
ZONE II	15.33	"
ZONE III	15.48	"
ZONE IV	15.73	"
Powderman:		
ZONE I	14.36	"
ZONE II	14.81	"
ZONE III	14.96	"
ZONE IV	15.21	"
GROUNDMAN-JACKHAMMER:		
ZONE I	12.14	"
ZONE II	12.59	"
ZONE III	12.74	"
ZONE IV	12.99	"
MARBLE, TILE & TERRAZZO WORKERS	13.95	1.02
MARBLE, TILE & TERRAZZO FINISHERS	11.80	1.02
MILLWRIGHTS:		
ZONE I	14.30	3.45
ZONE 2	15.80	3.45
ZONE 3	16.55	3.45
PAINTERS:		
ZONE I:		
Mines,mills,power plants,energy plants,refineries,coal gassification plants,nuclear related facilities & all steel work incidental thereto including stacks of all description:		
Brush,roller,pot tender,sandblaster grinder operator:		
New work	13.15	2.10
Repaint/remodel	11.18	2.10
Spray:		
New work	13.65	2.10
Repaint/remodel	11.60	2.10

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D):		
ZONE I (CONT'D):		
Mines, mills,etc.(Cont'd):		
Drywall finisher & ames tool op.:		
New work	$13.65	2.10
Repaint/Remodel	11.60	2.10
Handfinisher, machine textures:		
New work	13.45	2.10
Repaint/remodel	11.43	2.10
Paperhangers:		
New work	14.15	2.10
Repaint/remodel	12.03	2.10
All other work:		
Brush & roller, hand texture:		
New work	11.85	2.10
Repaint/remodel	10.07	2.10
Spray:		
New work	12.35	2.10
Repaint/remodel	12.50	2.10
Special coating applicator, sandblaster, steel painter:		
New work	12.35	2.10
Repaint/remodel	10.50	2.10
Paperhanger:		
New work	12.85	2.10
Repaint/remodel	10.92	2.10
Ames tool op.:		
New work	12.43	2.10
Repaint/remodel	10.57	2.10
Hand finisher, machine texture:		
New work	12.18	2.10
Repaint/remodel	10.35	2.10
ZONE II:		
Building Construction:		
Brush, roller, paperhanger, tapers	9.21	1.02
Steel after erection, power driven tools	9.35	1.02
Spray	9.63	1.02
Sandblast, swing stage, striping machine	10.36	1.02
Ames tools	9.35	1.02
Heavy Construction:		
Brush, roller	9.77	1.02
Spray, sandblast, swing stage, steam cleaning, power driven tools	10.36	1.02
Water tanks, towers, smoke stacks	10.51	1.02

	Basic Hourly Rates	Fringe Benefits
PLASTERERS:		
Construction,erection, alteration,repair,modification,addition to or improvement in whole or in part of structures for which the major support system is wood frame construction & will also include all apartments over 4 stories, convenience stores, fast food restaurants, automobile service stations & motels up to 2 stories high regardless of type of construction:		
AREA I	$ 7.04	2.16
AREA II	8.08	1.12
All other work:		
AREAS I & II	13.15	2.12
PLUMBERS & PIPEFITTERS:		
AREA I	16.79	3.73
AREA II	16.79	3.73
AREA III	16.79	3.73
Specific Area	17.59	3.73
Plumbers, Pipefitters		
Light Commercial - all 5-N type construction work under the uniform building code of a project of 150 fixture units or less; Motels not over two stories in height regardless of type of construction; Refrigeration-limited to 49 tons per unit or less for comfort refrigeration only; Indoor swimming pools in conjunction with work covered above; All utilities except on industrial work; and all remodel work up to $120,000 in volume:		
Bernalillo County	10.00	2.31
Remainder of New Mexico	9.00	2.31
All Irrigation & Lawn Sprinkler Work	7.00	2.31

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
BUILDING CONSTRUCTION:		
GROUP I	11.08	1.90
GROUP II	12.22	1.90
GROUP III	12.30	1.90
GROUP IV	12.51	1.90
GROUP V	12.57	1.90
GROUP VI	12.67	1.90
GROUP VII	12.77	1.90
GROUP VIII	13.95	1.90
HEAVY CONSTRUCTION:		
GROUP I	11.31	2.15
GROUP II	12.47	2.15
GROUP III	12.56	2.15
GROUP IV	12.77	2.15
GROUP V	12.83	2.15
GROUP VI	12.94	2.15
GROUP VII	13.04	2.15
GROUP VIII	14.25	2.15
ROOFERS	10.62	1.30
SHEET METAL WORKERS:		
ZONE I-A	$16.67	3.92+3%
ZONE I-B	18.67	3.92+3%
ZONE I-C	19.92	3.92+3%
ZONE I-D	19.92	3.92+3%
ZONE II-A	14.01	2.61+3%
ZONE II-B	15.51	2.61+3%
ZONE II-C	16.26	2.61+3%
SPRINKLER FITTERS	16.17	3.23
SOFT FLOOR LAYERS	11.55	2.10
SOUND INSTALLERS:		
SOUNDMAN:		
ZONE I	13.75	1.75+ 3.5%
ZONE II	15.47	"
ZONE III	16.91	"
TECHNICIANS:		
ZONE I	11.00	"
ZONE II	12.72	"
ZONE III	14.16	"
SOUND INSTALLERS:		
ZONE I	8.94	"
ZONE II	10.66	"
ZONE III	14.10	"
TRUCK DRIVERS:		
BUILDING CONSTRUCTION:		
ZONE I		
GROUP I	9.93	1.79
GROUP II	10.20	1.79
GROUP III	10.28	1.79
GROUP IV	10.40	1.79
GROUP V	10.45	1.79
GROUP VI	10.55	1.79
GROUP VII	10.65	1.79
GROUP VIII	10.79	1.79
GROUP IX	10.94	1.79

TRUCK DRIVERS (CONT'D): BUILDING CONST.(CONT'D):	Basic Hourly Rates	Fringe Benefits
ZONE II		
GROUP I	11.68	1.79
GROUP II	11.95	1.79
GROUP III	12.03	1.79
GROUP IV	12.15	1.79
GROUP V	12.20	1.79
GROUP VI	12.30	1.79
GROUP VII	12.40	1.79
GROUP VIII	12.54	1.79
GROUP IX	12.69	1.79
ZONE III		
GROUP I	$12.18	1.79
GROUP II	12.45	1.79
GROUP III	12.53	1.79
GROUP IV	12.65	1.79
GROUP V	12.70	1.79
GROUP VI	12.80	1.79
GROUP VII	12.90	1.79
GROUP VIII	13.04	1.79
GROUP IX	13.19	1.79
HEAVY CONSTRUCTION:		
ZONE I		
GROUP I	10.08	1.54
GROUP II	10.35	1.54
GROUP III	10.43	1.54
GROUP IV	10.55	1.54
GROUP V	10.60	1.54
GROUP VI	10.70	1.54
GROUP VII	10.80	1.54
GROUP VIII	10.94	1.54
GROUP IX	11.09	1.54
ZONE II		
GROUP I	11.38	1.54
GROUP II	11.50	1.54
GROUP III	11.58	1.54
GROUP IV	11.70	1.54
GROUP V	11.75	1.54
GROUP VI	11.85	1.54
GROUP VII	11.95	1.54
GROUP VIII	12.09	1.54
GROUP IX	12.24	1.54
ZONE III		
GROUP I	11.63	1.54
GROUP II	11.75	1.54
GROUP III	11.85	1.54
GROUP IV	11.95	1.54
GROUP V	12.00	1.54
GROUP VI	12.10	1.54
GROUP VII	12.20	1.54
GROUP VIII	12.34	1.54
GROUP IX	12.49	1.54

CLASSIFICATION AREAS AND ZONES DEFINITIONS

ASBESTOS WORKERS
ZONE I - Statewide except Union, Harding, Curry, Roosevelt & Quay Counties
ZONE II - Union, Harding, Curry, Roosevelt & Quay Counties

BRICKLAYERS-STONEMASONS
ZONE I - Bernalillo County, townships of Bernalillo & Rio Rancho in Sandoval Co. & townships of Los Lunas & Belen in Valencia Co.
ZONE II - Santa Fe County
ZONE III - Catron, Colfax, Cibola, Harding, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval (excluding townships of Bernalillo & Rio Rancho), San Juan, San Miguel, Socorro, Taos, Torrence, Union & Valencia (excluding townships Los Lunas & Belen) Counties
ZONE IV - Curry & Roosevelt Counties
ZONE V - DeBaca, Guadalupe & Quay Counties
ZONE VI - Chaves County
ZONE VII - Lincoln County
ZONE VIII-A - Eddy & Lea Cos. (except at mine & refinery sites outside municipal limits)
ZONE VIII-B - Eddy & Lea Cos. (employees at mine & refinery sites outside municipal limits)
ZONE IX - Grant (excluding Communities of Silver City, Bayard, Central, Hurley & town site of Tyrone), Hidalgo, Luna, Otero (excluding Community of Alamogordo (Area Residents)) & Sierra Counties
ZONE X - Dona Ana, Communities of Silver City, Bayard, Central, Hurley & town site of Tyrone in Grant Co. & Community of Alamogordo (Area Residents) in Otero Co.

CEMENT MASONS
AREA I - Bernalillo, Catron, Chaves, Cibola, Curry, DeBaca, Dona Ana, Eddy, Grant, Guadalupe, Hidalgo, Lea, Lincoln, Luna, McKinley, Otero, Quay, Roosevelt, Sandoval, Sierra, Socorro, Torrance, Union & Valencia Counties
AREA II - Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Juan, San Miguel, Santa Fe & Taos Counties

ELECTRICIANS - CABLE SPLICERS
ZONE I
AREA I - Bernalillo, Santa Fe, Torrance, DeBaco, Guadalupe, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arriba, Grant, Sandoval, Valencia, Socorro, Catron, McKinley, Sierra, San Juan, Chaves, Curry, Lincoln, Cibola & Roosevelt Counties
AREA I-A
From nearest basing pointcities, towns & mileage from main post office in the following towns:

Albuquerque - 15 miles
Santa Fe - 10 miles
Las Vegas - 8 miles
Farmington - 6 miles
Raton - 6 miles
Tucumri - 6 miles
Aztec - 6 miles
Roswell - 12 miles
Ruidoso - 12 miles
Portales - 12 miles
Carrizozo - 12 miles
Clovis - 12 miles
Gallup - 10 miles
*Pojoaque - 2 miles

*All areas adjacent to Pojoaque are over 2 miles distant from main post office in that town will be zoned out of Santa Fe

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

ELECTRICIANS - CABLE SPLICERS (CONT'D):
AREA 1-B
Extending up to 20 miles beyond Area 1-A
AREA 1-C
Extending up to 30 miles from Area 1-A
AREA 1-D
Anything beyond 30 miles from Area 1-A
ZONE II - Los Alamos County
ZONE III - Dona Ana, Otero, Luna, Hidalgo Counties
Zone 3-A - Within 10 miles radius from the Post Office in Las Cruces and within a 5 m. radius from the Post Office in Alamorgordo
Zone 3-B - Dona Ana, Otero, Luna, and Hidalgo Counties (except that area specified in Zone 3-A)
ZONE IV
Eddy & Lea Cos. the following zones shall be designated from the main post office in Artesia, Carlsbad, Hobbs & Lovington
Zone 4-A - 0 to 12 miles
Zone 4-B - 12 to 22 miles
Zone 4-C - 22 to 40 miles
Zone 4-D - Over 40 miles

ELEVATOR CONSTRUCTORS:
AREA I
Bernalillo, Catron, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union, Cibola and Valencia Counties.
AREA II
Chaves, Hidalgo, Dona Ana, Grant, Luna, Otero and Sierra Cos.

IRONWORKERS:
ZONE I
Bernalillo, Catron, Colfax, DeBaca, Guadalupe, Lincoln, Los Alamos, Taos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Socorro, Torrance, Cibola & Valencia Counties
ZONE II
Dona Ana County with the exception of that portion of county that lies within the White Sands Missile Range; Chaves County, Eddy Co., except that Potash Basin & defined as the area 10 rd. miles on Highway62 & Highway 180, east of Carlsbad
ZONE III
Curry, Harding, Quay, Union, Hidalgo, Grant, Lea, Luna, Otero & Sierra Cos.: also White Sands & McGregor Missile Ranges, Potash Basin

LABORERS
GROUP 1 - Building & common laborers; chainmen; stake drivers; demolition; heater tender; pick & shovel work; window cleaning & cleanup
GROUP 2 - Carpenter tender; concrete workers; concrete buggy operators
GROUP 3 - Air & power tool operator; asphalt raker; chain saw operators; cutting torch operators; gunite reboundmen; fog machine operators; power buggy operators; sandblasters (potmen); window washers; wagon, core & diamond driller tenders (outside); pumps under 6"; asbestos removal; concrete burner; cement mason tenders; hod carriers; mortar mixers; plaster spreader operators; plaster tenders; gunite nozzlemen; pipelayer; pumpcrete nozzlemen; powderman; blaster

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

LEADBURNERS BASING POINTS AND AREA DEFINITIONS:
Albuquerque, Alamogordo, Anthony, Belen, Bernalillo, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Las Cruces, Las Vegas, Lordsburg, Los Lunas, Portales, Raton, Rio Rancho, Roswell, Ruidoso, Sante Fe, Silver City, Santa Rosa, Socorro, Taos, Tucumcari, Truth or Consequence, Artesia, Carlsbad, Hobbs, and Lovington.
Area I: Incudes a distance of 11 road miles inclusive beyond the city or town limits.
Area II: A 9 mile perimeter around Silver City.
Area III A distance of more than 11 road miles beyond the city or town limits; beyond 9 miles from Silver City.
Specific Area IV: Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Provins Grounds.

COMMERCIAL LINE WORK
AREA A
Bernalillo, Colfax, Catron, Chaves, Curry, DeBaca, Grant, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia & White Sands Missile Range & that portion of Fort Bliss in New Mexico
AREA A
ZONE I
Cities & Towns Basing Points - Miles from Main Post Offices

Albuquerque - 15 miles	Aztec - 6 miles
Santa Fe - 10 miles	Roswell - 12 miles
Las Vegas - 8 miles	Ruidoso - 12 miles
Farmington - 6 miles	Clovis - 12 miles
Raton - 6 miles	Gallup - 12 miles
Tucumari - 6 miles	

*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe
ZONE II
Extending up to 20 miles beyond Zone I
ZONE III
Extending up to 30 miles beyond Zone I
ZONE IV - Anything beyond 30 miles from Zone I
Las Alamos County - Use ZONE III RATES
AREA B
Applies to switching stations and sub-stations adjacent to power plants in Zone I & Zone II in Luna, Dona Ana, Otero & Hidalgo Cos., exclusive of White Sands Missile Range & that portion of Fort Bliss in New Mexico
ZONE I
That area within 25 miles radius from the downtown Post Office of El Paso, Texas. Fort Bliss & Biggs Fields; the area within a five mile radius of any city, town or municipality within which an employer established or maintains his place of business; the area within ten mile radius from the PO in Las Cruces & within a 5 mile radius from the PO in Alamogordo
ZONE II
All other areas of the jurisdiction except those specified in Zone I
AREA C
Applies to switching stations adjacent to power plants in Eddy & Lea Cos.; the following zones listed shall be designated from post office of Artersia, Carlsbad, Hobbs & Lovington:
ZONE I - o to 12 miles
ZONE II - 12 to 22 miles
ZONE III - 22 to 40 miles
ZONE IV - 40 miles and beyond

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

MILLWRIGHTS
BASING POINT - FROM ALBUQUERQUE CITY LIMITS:
ZONE 1 - o to 15 road miles from basing point
ZONE 2 - 15 to 35 raod miles from basing point
ZONE 3 - Over 35 road miles from basing point

PAINTERS
ZONE I
San Juan, McKinley, Bernalillo, Torrance, Guadalupe, Quay, Catron, Eddy, Socorro, Lincoln, DeBaca, Roosevelt, Chaves, Valencia, Sierra, Grant, Lea, Hidalgo, Curry, Sandoval.Colfax, Harding, Los Alamos, Mora, San Miguel, Rio Arriba, Taos, Union & Santa Fe Counties
ZONE II
Luna, Otero & Dona Ana Counties

PLASTERERS
AREA I
Bernalillo, Catron, Chaves, Cibola, Curry, DeBaca, Dona Ana, Eddy Grant, Guadalupe, Hidalgo, Lea, Lincoln, Luna, McKinley, Otero, Quay, Roosevelt, Sandoval, Sierra, Socorro, Torrance, Union & Valencia Counties
AREA II
Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Juan, San Miguel, Santa Fe & Taos Counties

PLUMBERS & PIPEFITTERS AREA DEFINITIONS:

Albuquerque, Alamogordo, Anthony, Belen, Bernalillo, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Las Cruces, Las Vegas, Lordsburg, Los Lunas, Portales, Raton, Rio Rancho, Roswell, Ruidoso, Sante Fe, Silver City, Santa Rosa, Socorro, Taos, Tucumcari, Truth or Consequence, Artesia, Carlsbad, Hobbs, and Lovington.

Area I: Incudes a distance of 11 road miles inclusive beyond the city or town limits.

Area II: A 9 mile perimeter around Silver City.

Area III: A distance of more than 11 road miles beyond the city or town limits; beyond 9 miles from Silver City.

Specific Area IV: Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS - BUILDING & HEAVY CONSTRUCTION
GROUP I
Fireman, oiler, screedman, scale op. such as bin-a-batch, rubber tired farm type tractor, tractors under 50 HP w/o attachments, breakman, concrete paving curing machine (bridgetype), helper (mechanic, welder, grease truck)
GROUP II
Rollers, sheepsfoot or pneumatic self-propelled w/o dozer, concrete conveyors, service truck op. (head oiler), air compressor (300 DPM & over), pumps (6" & over), screening plants, concrete mixers (under 1 CY), concrete saw or grinder-span type, 1 drum hoist, air tugger, elevating belt type loaders, forklift, lumber stacker, tractor farm type (under 50 HP w/attachments), motorman and industrial locomotive op., winch truck, front end loaders (under 2 CY), power plants which generate over 15 KW., welding machines
GROUP III
Bituminous distributors, boilers, retort & hot oil heaters, concrete mixers (1 CY & over), conc. paver-single drum, drilling equip.; (refrigeration, slusher, jumbo forms), trenching machines (all types), pumpcrete & gunite machines, slipform paver, mechanical bullfloats, concrete slab spreading machine, conc. slab finishing machine, asphalt plants, bituminous finishing machines, crushing plants
GROUP IV
Front end loaders (2 thru 10 CY), rollers steel wheeled-all types, bulldozers, scrapers (motor or towed), elevating graders, concrete batching plants, self-propelled rollers -- equipped w/dozer, twin-bowl scrapers and quad 8 or 9 pushers (35¢ over basic rate, three bowl scraper (60¢ over basic rate).
GROUP V
Hydraulic cranes-with less than 50 feet of boom (20 tons and under), concrete paver-double drum, cat cranes, hysters, side and swingboom cats, 2 drum hoist, auto fine grader
GROUP VI
Mucking machines-all types, motor grader (finish) mechanic welder
GROUP VII
Steam engineers, loader (front end over 10 CY), concrete pump (snorkel type)
GROUP VIII
All shovel type equipment; cranes, draglines, backhoes, derricks, guy & stiff leg, pipemobile (No. 2 operator), piledriver, hydraulic cranes (20 tons & over), mine hoist, belt loader ("C.M.I." Type), boom and jibs 150 ft. through 199 ft. - 25¢ per hour above base pay 200 ft. and over-50¢ per hour above base pay. Shovel (wheel type), boring machine (tunnel or shaft mole), pipe mobile

SHEET METAL WORKERS ZONE & CLASSIFICATION DEFINITIONS
ZONE I
Bernalillo, Catron, Chaves, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arribo, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union, Cibola and Valencia Counties.

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CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

SHEET METAL WORKERS (CONT'D)
ZONE IA - An area including 10 miles each direction east & west of Interstate 25 & extending north & south terminating with but including Santa Fe & Socorro. An area including 10 miles each direction north & south Interstate 40 & extending west from Albuquerque, terminating with but including Grants, New Mexico. Tucumcari, Gallup, Clovis, Portales, Las Vegas & Espanola;an area identified by cornerreference points beginning at and including Pojoaque, to Chimayo, to Velarde, to Abiquiu and back to Pojoaque; an area identified by corner reference points beginning at and including Farmington to Aztec, to Bloomfield and back to Farmington
ZONE IB - Los Alamos County
ZONE IC - San Juan (except that area in Zone IA)
ZONE ID - All areas not in Zones IA, IA or IC
ZONE II
Dona Ana, Grant, Hidalgo, Luna, Sierra, Otero, Eddy & Lea Counties
ZONE IIA - Any area within a 5 mile radius of the city limits of Carlsbad, Las Cruces, Artesia, Alamogordo, Hobbs & Sunland Park
ZONE IIB - White Sands, including Holloman, McGregor & Lyndon B. Johnson
ZONE IIC - All areas not in Zones IIA or IIB

SOUND INSTALLERS
ZONE I
Thirty mile radius of main post office in Albuquerque
ZONE II
Remainder of Valencia, Sandoval, Santa Fe, Torrance, Cibola & Socorro Cos., the hourly rates of pay shall be increased for twelve & one-half (12.5) percent of journeymen rate of pay for Zone I
ZONE III
Chaves, Curry, Roosevelt, Lincoln, Guadalupe, DeBaca, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arribo, Catron, Sierra, Grant, Los Alamos, San Juan, McKinley Cos. the hourly rates of pay shall be increased by thirty-seven and one-half (37.5) percent of the journeymen rate of pay for Zone I

TRUCK DRIVERS ZONE PAY BASING POINTS AND DEFINITIONS LISTED BELOW FOR BUILDING AND HEAVY CONSTRUCTION - BASING POINTS ARE AS FOLLOWS:
Alamogordo, Albuquerque, Artesia, Bayard, Belen, Carlsbad, Clovis, Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Santa Rose, Silver City, Socorro, Taos, Tucumcari
ZONE I
Shall be jobs or projects within 15 road miles from the starting points listed above
ZONE II
Shall be jobs or projects which are more than 15 road miles, but less than 35 road miles from base points, also, includes all of Los Alamos County
ZONE III
Shall be those jobs or projects which are 35 road miles or more from the base points

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

TRUCK DRIVERS (BUILDING & HEAVY CONSTRUCTION)
GROUP I
Pickup 3/4 ton and under, lubrication, light tire repair and washer, swamper, 2 or 4 and up.
GROUP II
Dump or batch truck under 8 C.Y.W.L.C.; flat bed (bobtail) 2 ton and under; warehouseman including material checker, fork lift under 5 tons MRC.
GROUP III
Dump trucks (including all highway and off highway) 8 up to 16 C.Y.W.L.C.; water, fuel or oil trucks less than 3,000 gal., flat bed (bobtail) over 2 tons.
GROUP IV
Distributor driver, heavy tire repair, lumber carrier driver, young buggy or similar equipment, transit mix or agitator 2 or 3 axle bobtail equipment, scissor truck, bulk cement bobtail 2 or 3 axles, semi-trailer flat-bed or van single axle, forklift 5 ton and over M.R.C.
GROUP V
Dumpsters and dumpcrete driver; water, fuel or oil truck 3,000 to 6,000 gallons; lowboys and light equipment driver; euclid type tank wagon under 6,000 gallons
GROUP VI
Vacuum truck; dump trucks (including all highway and off-highway 16 up to 22 C.Y.W.L.C.
GROUP VII
Transit mix or agitator semi or 4 axle equipment driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver; semi-doubles; 4 axle bobtail; winch truck and "A" frame; dump truck (including all highway and off-highway) 22 CY up to 35 C.Y.W.L.C.
GROUP VIII
Euclid diesel power turnarocker; terra coba-DW20-Le-Tourneau Pulls and similar diesel powered equipment when used to haul materials and assigned to a teamster-lowboy heavy equipment driver; water, fuel or oil trucks 6,000 gallons and over including tank wagon drivers, semi-trailer driver (flat-bed or van tandems); light equipment mechanic; dump trucks (including all highway and off-highway) 35 C.Y.W.L.C. and over; truck and trailer or semi-trailer (flatbed); eject all
GROUP IX
Lowboy (heavy equipment double gooseneck); heavy equipment mechanic; welder (body and fender men)

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday after Thanksgiving.

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Texas
COUNTIES: Collin,Dallas,Denton,Ellis,Grayson,Hood,Hunt,Johnson,Kaufman, Palo Pinto,Rockwall,Tarrant, & Wise
DECISION NO: TX85-4018 DATE: Date of Publication
Supersedes Decision No. TX84-4112, dated December 28, 1984, in 49 FR 50557.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to 6 including 4 stories). (Use current heavy & highway general wage determination for Paving Incidental to Building Const. in Tarrant Co. & for Paving & Utilities Incidental to Building Const. in remaining Cos.).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.71	$ 2.94
BOILERMAKERS	16.125	2.95
BRICKLAYERS & STONEMASONS:		
ZONE 1- Collin,Dallas, Ellis,Hunt,Kaufman, & Rockwall Cos.	14.00	2.50
ZONE 2- Denton,Hood,Johnson,Palo Pinto,Tarrant, and Wise Cos.	14.00	2.50
ZONE 3- Grayson Co.	12.77	2.50
CARPENTERS:		
ZONE 1- Grayson Co.:		
Carpenters	14.61	1.655
Millwrights	15.01	1.655
Piledrivermen	15.11	1.655
ZONE 2- Collin,Dallas, Denton,Ellis,Hood,Hunt, Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant, & Wise Cos.:		
Carpenters & Piledrivermen	14.00	2.22
Acoustical,Drywall, Insulation & Metal Door Frames	11.78	2.22
Millwrights	16.08	3.73
CEMENT MASONS:		
ZONE 1- Denton,Hood,Johnson,Palo Pinto,Tarrant, & Wise Cos.	13.65	2.07
ZONE 2- Collin,Dallas, Ellis,Hunt,Kaufman, & Rockwall Cos.	13.63	2.09
ELECTRICIANS:		
ZONE 1- Denton,Hood,Johnson,Palo Pinto,Tarrant, & Wise Cos.:		
Electricians	15.90	1.00 + 8%
Cable Splicers	16.15	1.00 + 8%
ZONE 2- Collin,Dallas, Ellis,Grayson,Hunt, Kaufman & Rockwall Cos.:		
Electricians	17.10	1.00+9%
Cable Splicers	18.81	1.00+9%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.175	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
GLAZIERS (excluding Grayson Co.)	15.60	1.55
IRONWORKERS:		
ZONE 1- Collin,Dallas, Denton,Ellis,Grayson, Hood,Hunt,Johnson,Kaufman,Palo Pinto(excluding northwest corner),Rockwall,Tarrant & Wise (excluding northwest ¼)	12.88	2.92
ZONE 2- Palo Pinto(northwest corner) & Wise (northwest ¼)	12.625	2.95
LABORERS:		
ZONE 1- Grayson Co.:		
GROUP 1- Unskilled	9.675	.775
GROUP 2- Air tool oper. (jackhammer,vibrator), mason tenders & mortar mixers,pipelayers	9.925	.775
ZONE 2- Collin,Dallas, Denton,Ellis,Hood,Hunt, Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant, & Wise Cos.	8.95	1.30
LATHERS	16.38	1.04
LINE CONSTRUCTION:		
ZONE 1- Collin,Dallas, Ellis,Grayson,Hunt, Kaufman & Rockwall Cos.:		
Lineman	17.10	1.00+8¼%
Cable Splicers	18.81	"
Operators	17.10	"
Groundman	11.97	"

DECISION NO.: TX85-4018 Page 2

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:(cont'd)		
ZONE 2- Denton,Hood,Johnson,Palo Pinto,Tarrant, & Wise Cos.:		
Lineman	$14.64	$1.00+8¼%
Cable Splicer	16.10	"
Operators	14.64	"
Groundman	10.25	"
MARBLE, TILE, & TERRAZZO WORKERS (excluding Ellis County)	14.94	1.87
PAINTERS:		
ZONE 1- Collin,Dallas, Denton,Ellis,Grayson, Hunt,Kaufman & Rockwall:		
GROUP 1- Brush	13.46	1.80
GROUP 2- All wall covering work: paper, fabric,sheeting,flexwood,etc.	13.71	1.80
GROUP 3- Ames tool oper	13.58	1.80
GROUP 4- Structural steel,stage work, bosun chair,spray gun, sandblasting & window jack & fire escapes	13.84	1.80
GROUP 5- Steeple jack work consisting of watertowers,smoke stacks & breeching; chimneys,flag poles, radio & TV towers, cable work 16' & over above ground where cables are strung to scaffolds & running boards	14.21	1.80
ZONE 2- Hood,Johnson,Palo Pinto,Tarrant & Wise:		
GROUP 1- Brush	16.31	1.47
GROUP 2- Wallcovering; (except commercial vinyl); sandblasting, steel storage tanks, mechanical drywall finishing tools	16.56	1.47
GROUP 3- Steeple jack (radio & TV towers, smoke stacks,chimneys & water towers & similar facilities & flagpole atop bldgs. lacated closer to the edge of bldg. that the height of the pole); toxic material (creosote,coal tar products or similar materials injuriaous to the skin	17.56	1.47
GROUP 4- Spray	16.685	1.47
PLASTERERS:		
ZONE 1- Collin,Dallas, Ellis,Hunt,Kaufman, & Rockwall Cos.	15.41	3.59
ZONE 2- Denton,Hood, Johnson,Palo Pinto, Tarrant, & Wise Cos.	16.33	1.09
PLUMBERS & PIPEFITTERS:		
ZONE 1- Collin,Dallas, Ellis,Grayson,Hood, Hunt,Kaufman, & Rockwall Cos.	15.00	2.19
ZONE 2- Denton,Johnson, Palo Pinto,Tarrant, & Wise Cos.	14.23	2.03
ROOFERS:		
GROUP 1- Slate & tile	12.96	.035
GROUP 2- Composition & built-up, dampproofing & bituminous waterproofing	12.81	.035
SHEET METAL WORKERS:		
ZONE 1- Collin,Dallas, Denton,Ellis,Grayson, Hood,Hunt,Johnson, Kaufman,Rockwall, Tarrant & Wise Cos.	16.905	2.08
ZONE 2- Palo Pinto Co.	14.38	.89
SOFT FLOOR LAYERS	14.25	1.25

	Basic Hourly Rates	Fringe Benefits
SOUND INSTALLERS - repair, service & install intercommunication telephones, interconnect sound & public address equipment, electronic systems, music & TV distributing systems for commercial bldgs. & shall include the pulling of all wires in conduit or raceways or surface wiring, the running of open wiring, the running of conduit & raceways not to exceed 10 ft. in length & the wiring of all electrical communication devices of 100 volts or less controlling the equipment described above	$11.36	.54+3% +c
SPRINKLER FITTERS	16.17	3.23
POWER EQUIPMENT OPERATORS:		
ZONE 1 - Dallas Co.:		
GROUP 1	15.65	2.35
GROUP 2	14.65	2.35
GROUP 3	13.45	2.35
GROUP 4	12.25	2.35
GROUP 5	11.25	2.35
ZONE 2 - Remaining Cos.:		
GROUP 1	15.20	2.80
GROUP 2	13.00	2.80
GROUP 3	10.80	2.80
GROUP 4	9.88	2.80

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

PAID HOLIDAYS
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate. Also 7 Paid Holidays A thru G
b - Sick or Injury Pay:
1st day out - no pay
2nd day out - 1/2 pay
3rd day out & thereafter - full pay for a maximum of 10 days pay per year
Employees who receive pay for less than 5 sick days per year shall receive on 8/31 of each year incentive pay equal in amount to a day's pay for each day that such days were less than 5

Employees who are members of a reserve component of the Armed Services & are ordered to annual active duty for training as a normal part of their reserve obligation shall be eligible for & shall receive differential pay equal to the difference between their computed daily base rate (excluding overtime compensation) & their daily military base pay (excluding quarters & subsistence allowances) for each day of military leave where the employee would normally have performed work up to a maximum of 10 work days per year

Employees absent from work while serving as jurors shall be paid at their hourly rate excluding overtime for the hours actually lost from work less any amount received by the employee as juror's fee

Up to 3 days leave for death of immediate family member (spouse,child,parent, brother,sister,mother-in-law,father-in-law,grandparents & grandchildren)

Paid Vacation:
after 1 year service - 1 week vacation
after 2 years service - 2 weeks vacation
after 5 years service - 2 weeks & 1 day vacation
after 6 years service - 2 weeks & 2 days vacation
after 7 years service - 2 weeks & 3 days vacation
after 8 years service - 2 weeks & 4 days vacation
after 9 years service - 3 weeks vacation

Paid Holidays - A thru G plus the last working day preceding Christmas Day & another day designated by the Company

POWER EQUIPMENT OPERATORS (ZONE 1) CLASSIFICATION DEFINITIONS

GROUP 1 - Tower Cranes; all conventional cranes, derricks, power operated; hoist, motor driven 2 drums or more; piledrivers; hydraulic cranes over 30 tons.

GROUP 2 - All backhoes; hydraulic cranes - 35 tons and over

GROUP 3 - Wagon drills; hydraulic cranes, under 35 tons; concrete pump; loaders over 1 yd.; foundation drilling machines

GROUP 4 - Material hoists; boom truck; placing boom; loaders 1 cu. yd. and under; gradall

GROUP 5 - Box blade; pneumatic roller, self-propelled; forklifts; 1 drum hoists; winch trucks; dozers and similar type equipment

POWER EQUIPMENT OPERATORS (ZONE 2) CLASSIFICATION DEFINITIONS

GROUP 1 - Hoist, two drum or more; Cableways; Cranes - Power operated; Derricks, power operated (all types); Pile Drivers; Hydraulic Cranes over 50 tons; Tower Cranes

GROUP 2 - Wagon Drill; Crushing Plants; Concrete Pumps (all types); Ford Tractor or like with any attachment (except blade and mower on rear); Drilling Machines (all types); Forklifts (40 feet and over); Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cu. ft. or over; Blade Graders, self-propelled; Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Trenching Machines; Heavy Duty Mechanic; Hydraulic Cranes 50 tons and under; 2 Air Tuggers

GROUP 3 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants, Conveyor, Elevators Building, Form Graders, Hoist (single drum), Ford Tractor including blade and mower on rear, Mixers less than 14 cubic feet, Screening Plants Forklifts (short, under 40 feet), Bobcat type equipment, Inside Automatic Building Elevator (50% of Heavy Equipment Rate), Welders, Scoopmobile, Winch Truck, Roller, ten tons or over, Air Compressor & Air Tugger, Boilers, two or more fired by one man.

GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Jefferson & Orange
DECISION NO.: TX85-4019 DATE: Date of Publication
Supersedes Decision No. TX84-4036, dated May 25, 1984, in 49 FR 22189.
DESCRIPTION OF WORK: Building (including Residential) Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Jefferson County	$13.23	3.23
Orange County	19.145	2.335
BOILERMAKERS	16.125	2.95
BRICKLAYERS & STONEMASONS:		
All refractory & acid proofing work	18.92	2.50
All other work	17.28	2.50
CARPENTERS:		
Carpenters - Commercial	16.52	3.065
Carpenters - Residential const. of not more than 2 units & condominium townhouses of not more than 10 units excluding all apt. const. & multiple bldgs. for rental purposes	16.09	3.065
Millwrights	16.875	2.95
Piledrivermen	16.76	2.90
CEMENT MASONS	18.02	
ELECTRICIANS	19.43	1.535+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	15.195	3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	
GLAZIERS:		
Northern 1/2 Jefferson Co	15.03	1.79
Southern 1/2 Jefferson Co & all of Orange Co.	14.53	2.29
IRONWORKERS	16.95	2.95
LABORERS:		
GROUP 1	10.66	1.50
GROUP 2	10.86	1.50
GROUP 3	10.96	1.50
GROUP 4	11.11	1.50
LATHERS	16.52	3.065
LINE CONSTRUCTION:		
Linemen & cable splicers	20.77	1.00+ 3.5%
Groundmen	15.16	1.00+ 3.5%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Southern 1/2 of Jefferson Co. & all of Orange Co.:		
Brush, roller, drywall finisher	$14.53	2.29
Spray, sandblasting & paperhanging	15.03	2.29
All work from stage, chair, window jack or ledge	14.78	2.29
Ames tools for drywall finishing	15.03	2.29
Northern 1/2 Jefferson Co:		
Brush, drywall hand cleaning operation	15.03	1.69
Paper & vinyl	15.28	1.69
Spray, sign, power tool operations	15.45	1.69
$.25 per hour above the prevailing wage rate when working on window sills or ledge, swing stage, bosun chair, cat walks, spider & skates in all classifications		
PIPEFITTERS	17.84	2.50
PLASTERERS	16.55	1.94
PLUMBERS	18.71	1.09
POWER EQUIPMENT OPERATORS:		
GROUP 1	17.985	1.65
GROUP 2	15.21	1.65
GROUP 3	13.99	1.65
GROUP 4	13.74	1.65
ROOFERS:		
Roofers	12.00	2.08
Kettlemen	10.50	2.08

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS: Commercial Work on a single family dwelling or multiple family housing units less than 3 stories in height where each individual family apt. is individually conditioned by a separate & independent unit or system	$17.43	3.11+3%
SPRINKLER FITTERS	12.20	3.11+3%
	16.17	3.23
TILE SETTERS	$17.57	2.20
TRUCK DRIVERS:		
GROUP 1 - Under 1-1/2 ton	13.99	1.25
GROUP 2 - 1-1/2 tons thru 2-1/2 tons	14.78	1.25
GROUP 3 - Dump truck less than 7 yds.	15.07	1.25
GROUP 4 - Over 2-1/2 tons; euclids (not self-loading)	15.25	1.25

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS
A - New Years' Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - the Friday after Thanksgiving Day; G - Christmas Day

FOOTNOTE FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; Also seven paid holidays A thru G

LABORERS CLASSIFICATION DEFINITIONS
GROUP 1 - All hand digging & dirt work; backfilling; loading & unloading of material to & from hoist or cages; loading & unloading of tools & equip.; handling of lumber, steel, cement; distribution of materials; wrecking & razing of bldgs. & structures; storing materials & tools in & out of receiving lots & sheds; dumper; spotter; carpenter tender & all construction work not hereinafter classified
GROUP 2 - Air power tool op.; cutting torch op.; gunnite rebound man; machine ops.; power buggy; sandblaster (potmen); drill tenders; concrete grademen; wagon drill op.; metal pan & steel form men
GROUP 3 - Conc. burner; cement mason tender; hod carries, mortar mixers, plaster tenders & brick mason tenders; pipelayer, pumpcrete nozzlemen; scaffold builder; water pump op.; tank cleaning; all pipe cleaning & wrapping; mortar & plaster mixing machines; grout machines; pumpcrete machines; gunnite mixing machines, incl. placing & cleaning of all pipe & conduits used in placing of concrete
GROUP 4 - Powdermen & blasters; sandblaster; gunnite workers; terrazzo grinders

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS
GROUP 1 - Heavy duty mechanic; Blade grade, self-propelled; Bullclam; Backfiller; Derrick, power operated all types; Draglines; Push cat; Bulldozer & all types of cat tractors; Cableway; Backhoe; Shovel; Cranes, power operated, all types; Elevating grader, self-propelled; Hoist-motor driven, two drum or more; Mixmobile; Winch truck; Locomotive crane; Mixer, 14 cu. ft. or more; Paving mixer, all sizes; Piledrivers; Scrapers-heavy type, over 3 cu. yds.; Trench machine, all sizes; Gradeall; High-lift; Foundation boring machines; Gasoline or diesel driven welding machines - 7 to 12 machines; Pumpcrete machine; Drill op. - water well; DW-10 euclid; Tournapulls; Asphalt plants; Crushing machine & batch plants; Scoopmobiles; Fingerlift op.; Elevator when used to haul men or material on const. work; Well point system & operation of similar dewatering devices
GROUP 2 - Air compressor; Blade grade - towed; Flex plane; Form grader; Mixer, less than 14 cu. ft.; Pump, Pulsometer; Truck crane driver; Gasoline or diesel welding mach., 3 to 6 machines; Hoist, single drum; Scraper, 3 cu. yds. or less; Conveyors, power operated
GROUP 3 - Fireman
GROUP 4 - Oiler

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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Friday
June 14, 1985

Part III

Department of Housing and Urban Development

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

Allocation of Funds and Miscellaneous Changes for the Solar Energy and Energy Conservation Bank; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

[Docket No. R-85-1221; FR-2051]

Allocation of Funds and Miscellaneous Changes for the Solar Energy and Energy Conservation Bank

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Final rule.

SUMMARY: Section 104(d)(2) of the Housing and Community Development Technical Amendments Act of 1984 amended section 520(b)(6) of the Solar Energy and Energy Conservation Bank Act to require revision of the regulations of the Solar Energy and Energy Conservation Bank. This statutory amendment requires that the regulations establish explicit criteria, and their relative weights, for allocation of financial assistance and provide that all amounts available for financial assistance shall be allocated at the same time. This final rule changes 24 CFR 1800.95 to conform to this statutory amendment and makes other necessary revisions to 24 CFR Part 1800.

EFFECTIVE DATE: July 23, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 7110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202-755-7166. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1985, the Solar Energy and Energy Conservation Bank (Bank) published a proposed rule (50 FR 9040) to implement section 104(d)(2) of the Technical Amendments Act of 1984 and to propose certain other necessary revisions to 24 CFR Part 1800.

The new legislation requires two basic changes to 24 CFR 1800.95 governing procedures for allocating funds among program participants. The relative weights among all of the allocation criteria must be stated in the regulation, previously there was no fixed relationship in the regulation between the weights given to the two sets of criteria and no weights were stated in the regulation for the "reserve fund" criteria (allocation and "reserve fund" criteria were explained in detail at 50 FR 9040-9042, March 6, 1985). Also, a single allocation round applying all of the criteria is now required each year instead of the distinct "formula" and "reserve fund" allocation rounds which occur at separate times of the year under the former regulation.

Eighteen commenters (primarily State participants) commented on the Bank's proposed rule. These comments are mentioned in the discussion of the affected sections. Several comments were supportive of specific changes in the proposed rule.

Section 1800.95

The Bank received seven comments on this section regarding how available funds are allocated to States. One commenter recommended using BTU savings over the useful life of the building rather than annual savings. The Bank believes no change is advisable because annual savings provides a more uniform basis than does building life. Several commenters suggested reducing the weight of the population-related factors, increasing the weight of the energy savings factor and justifying the weights of each of the factors. The Bank believes that a significant change of the weight of the population-related factors and the energy saving factor would distort allocations among States having comparable performance. The Bank believes the weights of the factors as discussed below are justified because of analysis performed with various weights to obtain funding levels with reasonable correlation with population and energy use where average performance is assumed. One commenter recommended adding administrative costs to the allocation formula. The Bank has not considered administrative costs in its allocation formula because these costs are not an indication of performance in terms of assistance provided or energy saved.

Three commenters suggested more flexibility in the timing of allocation and reallocation. The Bank believes that allocation timing is as flexible as administratively feasible in accordance with the requirements prescribed by the new legislation. Allocation timing is conditioned on the semi-annual reports due each January 31 and July 31 and consequently the allocations can be made no sooner than February or August each year depending upon which reporting period is used as the basis for performance determination. Reallocations are dependent on States' expenditures and the Bank believes this final rule provides the needed flexibility. To impose special reporting requirements for allocations at any other time is considered excessively burdensome. One commenter recommended using funds committed rather than funds expended as the criterion for performance. The Bank disagrees because expended funds represent past through current performance while committed funds are more an indication of future performance.

One commenter suggested amending the rule to reflect the March 20, 1985 court order in *Dobney* v. *Reagan*, Civ. No. 82-2231 CSH (S.D.N.Y.), which enjoined the Bank from returning to the United States Treasury any FY 1982 or FY 1983 appropriated funds recaptured by the Bank on or after March 1, that were obligated to the States but not liquidated on or before March 1, 1985 and directed the funds to be distributed "in accordance with law." The court found that these funds were available for use by the Bank. Three commenters expressed support for this decision and one suggested that the Bank state that these funds as well as Fiscal Year 1984 funds are covered by the proposed rule. The proposed rule provided for allocation of all legally available funds. Therefore, no change is necessary to bring it in conformity with the order of the court.

One commenter requested that the Bank reserve from allocation an amount for plaintiffs' attorney's fees in that litigation. That issue will be resolved in the litigation. Minor changes were necessary in § 1800.95 to address the possibility of allocations in the future in which there may be a small amount of recaptured funds.

The following discussion describes the changes from the former rule. Unless otherwise noted, the final rule adopts the proposed rule. Section 1800.95(a) preserves much of the former § 1800.95 (a) and (c) while making the changes required by legislation and certain other improvements. The score for each State is the product of two basic factors. The criteria for Factor "A" are the same as the objective criteria stated for the "formula" allocation in § 1800.95(a) of the former rule and used to calculate the tentative allocations announced on March 16, 1984 (49 FR 9962) except that the criterion in former § 1800.95(a)(2) regarding median income is excluded and the number of households and energy consumption criteria are multiplied rather than added together.

Factor "B" is comprised of four subjective criteria which (except for one change) were derived from the "funds drawdown history" item of former § 1800.95(c)(2); these and other criteria were used in calculating the former "reserve fund" allocation.

The first criterion of Factor B measures the extent of a State's energy

savings per Bank subsidy dollar expended, the second criterion measures total dollar investment in subsidized measures in a State per Bank subsidy dollar extended, the third criterion measures the proportion of funds awarded to a State which are actually expended and the fourth criterion measures a State's use of subsidy dollars in relation to the subsidy dollars used by all States. The third and fourth criteria use "expended" funds rather than "committed" funds as was done under the "reserve fund" allocation in September 1984, since the program is no longer at the start-up phase in which funds committed but not expended represented a significant amount of total activity.

For each of the four criteria the highest State value will be set equal to 5 with the values for the remaining States proportionately less. The Factor "B" is equal to one plus the sum of each element normalized to be in the range of 0–5 which represents a performance multiplier value. Each element is weighted such that Factor B has a possible range in value for any State of 1–6, meaning a State could receive a funding allocation of up to 6 times the amount it would receive with no program activity, *i.e.*, on the basis of Factor A only. Increasing the maximum value of the multiplier, to 10 for example, would increase the amount of funds distributed to participants with superior performance while decreasing the amount to low performers. The Bank feels the 1–6 range will provide adequate incentive for good performance without distorting award results with relatively small differences in performance as would occur with a large maximum value for Factor B. Weights given to the four criteria will be 0.1, 0.1, 0.5 and 0.3, respectively. The Bank recognizes that some alternative weighting may be feasible. Analysis has shown the assigned weights provide funding levels having a reasonable correlation with population and energy use assuming comparable performance, as the Bank believes should occur.

Similar to that done with the 1984 "reserve fund" allocation, a State's allocation may be reduced if the State program uses Bank loan subsidies to subsidize measures which benefit from another Federal subsidy as well. This reduction is a minimum 5 percent of Factor "B" and potentially 50 percent in case of a complete overlap of subsidies. The subsidy levels permitted in the Bank rule themselves provide sufficient Federal subsidy for efficient measures. The Bank views the potential for substantial downward adjustment of a State's funds as a flexible and effective way of discouraging Federal oversubsidization and leveraging more State and local government and private funds into the energy area. In response to one comment that this penalty factor be deleted, no change was made since the Bank believes that section 506(f) of the Solar Energy and Energy Conservation Bank Act restricting the use of Federal tax credits in conjunction with Bank subsidies represents the Congressional intent concerning the undesirability of overlapping various forms of Federal subsidization to achieve the policy objectives of the Bank's program. Given this rationale the Bank reaffirms the proposed rule and has deleted provisions barring the combination of Bank funds with certain specified Federal assistance programs and will rely instead exclusively on the funds allocation criteria to achieve these objectives.

As discussed in the preamble to the proposed rule, certain of the criteria used for the "reserve fund" allocation under former § 1800.95(c)(2) are not continued in § 1800.95. The final rule follows the proposed rule and drops "program scope" and does not use funds allocation as a means of encouraging broad-based State programs. "History of compliance with applicable rule provisions" (another criterion for the "reserve fund") was implemented in a very limited way, *e.g.* failure to submit required reports, and is being dropped since compliance reviews had been conducted for only a small number of participants and the first audits were not yet due under § 1800.125. The Bank will now allocate funds on the expectation of rule compliance and will use its authority to recapture funds or suspend drawdowns to address noncompliance problems. Failure to submit timely reports will have the effect of reducing an allocation, however, since a State will receive no score for the factors which depend on current information available only through the reports. "Population characteristics" was also a distinct criterion for the "reserve fund" allocation; this is no longer needed since the old "formula" and "reserve" allocations are in effect combined under the final rule and Factor "A" is based on population characteristics.

The final rule revises § 1800.95(a) in the proposed rule by addressing the possibility of tentative allocations of only recaptured funds. The Bank will make tentative allocations in the same manner as other allocations described in § 1800.95 but only to States with Cooperative Agreements and that have expended Bank funds for subsidies based on the view that recaptured funds should be allocated to those States having demonstrated the capability to utilize them.

The final rule repeats the proposed rule's revision to § 1800.95(b). The revision clarifies that the Bank is not required to obligate any new funds to a State if the State has been notified of a violation of program requirements and it remains unresolved. The notice of violation gives the Bank the right to recapture already-obligated funds to the State in which case it may be pointless to obligate new funds to that State.

Other Changes

Other changes to Part 1800 are described below. Changes from the proposed rule are specifically noted.

1. *Section 1800.3—Definitions.* The final rule reinserts the definition for "one- to four-family residential building" which was inadvertently dropped when Part 1800 was originally published as a final rule (49 FR 9865, March 16, 1984). The definition also adds to the definition a previously-announced Bank policy that at least half of a building's floor area must be for residential use. Based upon comments received the definition now clarifies that it includes only units within the living space of the building structure or the building envelope, except for single family attached construction. The Bank has also modified §§ 1800.47 and 1800.67 to be consistent with the revised definition. For unusual circumstances, States are directed to request a written determination from the Bank. By definition, a building can be eligible for assistance as a one-to four-family residential, multifamily residential or commercial building if it has 50 percent or more of its floor space devoted to one of those uses. Where the floor space is divided exactly 50 percent (*e.g.*, 50 percent commercial and 50 percent multifamily), the choice of building assistance is open. Another new definition is "solar pool heating system" which is a system to heat swimming pool water in a non-profit commercial building for therapeutic purposes.

The final rule modifies certain other definitions. In the definition of "active solar energy system", "domestic" before "water heating" is deleted in connection with new eligibility for swimming pools. The "annual income" definition references the new 24 CFR Part 813 which contains the rule for calculating income for purposes of HUD's section 8 housing assistance payment programs, but differs from Part 813 in not imputing

income to any "net family assets" which are not actually income-producing.

Additions to the "commercial building" definition clarify what is an ineligible building "used for the general conduct of government". The definition is not an exclusive list of such buildings. The revised definition of "commercial building" also specifically excludes buildings used for religious purposes to reflect Constitutional restrictions on use of Federal financial assistance. States and/or financial institutions should rely on relevant judicial opinions when evaluating the eligibility of an applicant for subsidy under the Bank program: they may consult the Bank in doubtful cases.

The "cost-effective" definition now clarifies that an applicant who is not *required* to submit an energy audit or energy design analysis may nevertheless choose to obtain an audit or analysis and use it to demonstrate cost-effectiveness. The definition also provides that an audit or analysis can demonstrate cost-effectiveness only on the basis of either simple payback or life-cycle cost analysis (both of which are explained). This precludes use of hybrid methods which use some factors excluded from simple payback, such as fuel cost escalation, but does not include all of the factors relevant to a comprehensive life-cycle cost analysis. In conjunction with this definition several comments were received. Comments included recommendations to define life of measures, clarify methodology to be used, and allow alternate audits for multifamily buildings. The Bank believes clarifications are best made through program guidelines to retain flexibility. Alternate audits for multifamily buildings are possible. The Bank concluded that no change was necessary in these sections.

"Energy audit" is redefined in the final rule to eliminate the prior special provisions for multifamily, commercial and agricultural buildings which appear unnecessary and which did not clearly require information on costs and savings for appropriate energy conservation measures or solar energy systems. A State can now determine which measures or systems are "inappropriate" for costs and savings information.

The "financial institution" definition updates a reference to regulations of the Neighborhood Reinvestment Corporation. The definition of "improvement costs" deletes the final three sentences of the current definition of the rule, which are now restated in new §§ 1800.33(c), 1800.47(a)(7) and 1800.67(a)(4). The "Indian tribe" definition (not mentioned in the proposed rule) updates a reference to HUD's Indian Housing regulations. "Median area income" is redefined to emphasize the need to consider applicant family size when determining applicant income in terms of percentage of median area income.

The "multifamily residential building" definition adds a statement that at least half of a building's floor area must be for residential use. Based upon comments received, the Bank has defined these buildings based on physical characteristics and has modified §§ 1800.47 and 1800.67 to be consistent with the revised definition. Where the definition is inadequate for unusual building configurations, the Bank may be consulted for a written determination of building classification.

The definition of "State" drops reference to selection by the Bank since the term is sometimes used to refer both to participating and nonparticipating (*i.e.*, unselected) States, and adds a reference to the Indian Assistance Coordinator which is treated as a State for most purposes.

One commenter suggested super-insulation as part of passive solar systems, but the Bank believes super-insulation is a conservation measure distinct from solar system functions and no change is advisable.

Section 1800.3 also defines the term "RCS" which is the Residential Conservation Service program of the Department of Energy. No change has been made to the parts of this rule which involve aspects of the RCS program (§ 1800.3 definitions of RCS, cost-effective and financial institution; § 1800.35, § 1800.69(e) and § 1800.77). During 1984, the Senate and House considered amendments to Title II of the National Energy Conservation and Policy Act (42 U.S.C. 8211 *et seq.*) which authorizes the RCS, as well as amendments or repeal of Title VII of the same Act which authorizes the Commercial and Apartment Conservation Service (CACS) program, but no legislative changes were made. The Bank is not aware of any legislative changes for the RCS program initiated so far this year. The Bank has been advised by the Department of Energy that covered utilities are not legally required to continue their RCS programs indefinitely beyond January 1, 1985. However, this is not a firm date because utilities will need varying amounts of time to complete their RCS services (*i.e.*, audits). As long as RCS audits are available and until directed otherwise (by Congress or DOE), the Bank will continue to proceed under its current rules which currently provide for instances where RCS audits are not available. The Bank will notify the States of any changes in the RCS-related requirements.

2. *Section 1800.13—Forms of assistance.* Previously, the Bank prohibited both interest and principal reduction for a single loan. The Bank has learned that combination of both subsidy types may be desired in certain cases and now permits it at the discretion of the financial institution. The combined subsidies are subject to the maximum levels stated in §§ 1800.47 and .67. The Bank continues to oppose the combination of grants with loan subsidies and prohibits this more explicitly.

3. *Section 1800.15—Reduction of principal.* The Bank revised this section to permit Bank subsidies based on a *bona fide* loan commitment for the unsubsidized loan amount and allow the repayment schedule to be calculated on the reduced principal amount. This section previously required an initial loan repayment schedule based on the unsubsidized loan and resulted in the need for recalculation of the repayment schedule. The Bank received two comments opposing the change and one comment in favor of the change. The section now allows either approach to be used. (See also § 1800.109.)

4. *Section 1800.17—Prepayment of interest.* This section now explains how to combine prepayment of interest with principal reduction pursuant to the change to § 1800.13. One commenter requested a longer loan term in § 1800.21, however the limit is set by statute (12 U.S.C. 3612(a)(1) and 3613(a)).

5. *Section 1800.29—Debarment.* This final rule updates a reference to the debarment regulation of the General Services Administration.

6. *Section 1800.33—Installation certificate.* Section § 1800.33 is revised to permit a financial institution representative, rather than a grant recipient, to certify as to use of Bank funds for eligible purposes when a grant payment is not actually made to the grant recipient but instead is paid to a contractor or supplier or paid to reimburse a party which has advanced funds. Two commenters recommended that "reasonable costs" in § 1800.33(c) should be clarified. The Bank believes no further clarification is advisable in the rule. For guidance, the States should contact the Bank or OMB Circular A–87, "Cost Principles for State and Local Governments" or A–122, "Cost Principles for Non-profit Organizations", as applicable.

7. *Section 1800.43—Eligible recipients (solar).* As required by statute the final

rule applies income limitations after December 31, 1985 (12 U.S.C. 3613(a)(4)). The final rule also removes paragraph (d) which barred Bank assistance for solar energy systems which are to be assisted under certain other Federal programs, in lieu of the more comprehensive approach of the allocation criteria discussed above. The final rule revises paragraph (e) to clarify that any person as defined in § 1800.3 may receive assistance on behalf of others.

8. *Section 1800.45—Eligible solar energy systems.* The final rule permits funding of heating for therapeutic swimming pools in non-profit commercial buildings and explains eligibility in case of mixed use buildings.

9. *Section 1800.47—Levels of assistance (solar).* The final rule adds an appropriate maximum assistance level for eligible solar pool heating systems and adds material moved from the definition of "improvement cost" in § 1800.3 regarding shared costs by two or more eligible applicants. The final rule replaces the criteria for determining the number of dwelling units in a building with revised definitions of one-to four-family residential building and mulifamily residential building in § 1800.3.

10. *Section 1800.55—Standards.* In the preamble to the proposed rule the Bank noted that a proposed rule had been published regarding HUD's Minimum Property Standards (MPS) for one and two-family dwellings for building insulation. HUD has made no final MPS changes to date. The Bank will notify the States of any final MPS changes which are made.

11. *Section 1800.63—Eligible recipients (conservation).* The final rule reorganizes and revises § 1800.63 to completely recognize the elimination of earlier income limitations for most owners. As with § 1800.43, the paragraph listing programs which cannot be combined with Bank funds is removed and the paragraph permitting assistance on behalf of others is clarified.

12. *Section 1800.65—Eligible energy conservation measures.* The final rule corrects a reference to the definitions section and explains eligibility in cases of mixed use buildings. Based on a comment received, the Bank has allowed for modification or replacement of multifamily water heaters in the list of eligible measures. Comments were also received on the 20 percent efficiency increase for replacement burners, furnaces and boilers. One commenter suggested using the efficiency increase only for replacement furnaces while another commenter favored elimination of the requirement for all heating systems. The Bank has decided to retain the efficiency increase because it reflects the statutory requirement that these measures must substantially increase the energy efficiency of the heating system.

The Bank has also considered revisions to three other provisions. Section 1800.65(a)(9) allows financial assistance for heat pumps in one- to four-family residential buildings only if the heat pumps replace existing pumps or replace a combination of electrical resistance heating and air conditioning. This restriction, which is explained in the preamble to the former rule, 49 FR 9872 (March 16, 1984), is related to ensuring that the replacement heat pump is cost-effective regardless of the future relationship between rates for different kinds of fuels. Similar concerns are addressed in the restrictions on assistance for heat pump water heaters in § 1800.65(a)(10). In the proposed rule the Bank sought public comment on whether revision would be appropriate before making a final decision. Two comments were received; one in favor of and one opposing the change but no consensus was reached. The Bank has decided to continue the former provisions without revision.

Additionally, the Bank sought public comment on its proposed decision not to revise § 1800.65(b)(9) to allow financial assistance for cogeneration systems in multifamily residential buildings. Comments and studies received demonstrated the feasibility of cogeneration systems in multifamily residential buildings. The Bank now allows cogeneration systems in multifamily residential buildings.

13. *Section 1800.67—Levels of assistance.* The final rule adds material moved from the definition of "improvement cost" in § 1800.3 regarding shared costs by two or more eligible applicants. The final rule replaces the criteria for determining the number of dwelling units in a building with revised definitions of one- to four-family residential building and multifamily residential building in § 1800.3.

14. *Section 1800.77—Contractors and suppliers.* The final rule inserts the word "for" which was inadvertently omitted when Part 1800 was originally published as a final rule.

15. *Section 1800.93—Program participants.* The final rule makes minor changes which clarify that all States with effective cooperative agreements on the date of an allocation round are treated the same; there is no special status for the original 1983 State participants. A reference to the reserve fund under § 1800.95 is deleted. The discussion of the Indian Assistance Coordinator (IAC) is revised to recognize that an initial IAC has been designated and to clarify that application of future IAC allocations of funds will be at the discretion of the Bank.

16. *Section 1800.97—Recapture of funds.* Since § 1800.97 no longer concerns reallocation of funds, the words "and reallocation" are deleted from the section heading.

17. *Section 1800.98—Reallocation of funds.* The final rule provides as a general rule that any funds which are legally available for reallocation will be allocated under § 1800.95(a) provisions. A special allocation is possible for funds which would expire before the next regular annual allocation.

18. *Section 1800.99—Authorized expenditures.* The final rule revises paragraph (d) to permit use of OMB Circular A–122, "Cost Principles for Non-profit Organizations", as applicable.

19. *Section 1800.103—State discretion.* An additional sentence to § 1800.103 is added to recognize current practice under which States (or their agents or designated local participants) perform many adminstrative tasks for financial institutions to "streamline" procedures.

20. *Section 1800.107—Reporting and recordkeeping requirements.* The final rule adds the need to report use of other Federal subsidies in connection with Bank subsidies in a State program.

21. *Section 1800.109—Manner of payment.* In connection with the revision of § 1800.15, the final rule permits a State to draw funds on the basis of *bona fide* loan commitments. The former rule restricted draws to loan closings or completed grant projects. This change eliminates any need for a financial institution to advance its own or other funds in the amount of the Bank subsidy while waiting for subsidy funds to be drawn and disbursed by a State. The financial institutions' funds will be needed only for the unsubsidized portion of the loan commitment.

22. *Section 1800.120—Conflict of interest.* A provision has been added to prevent any financial institution and any person involved in the assistance process from benefiting from the assistance, with exceptions for publicly-owned buildings and a person's principal residence.

23. *Section 1800.125—State audits.* Attachment P, "Audit Requirements", of OMB Circular A–102 has been superseded by OMB Circular A–128 "Audits of State and Local Governments" (50 FR 19114, May 6,

1985). Pursuant to the Single Audit Act of 1984 (Pub. L. 98–502) and Circular A–128, the final rule applies Circular A–128 and 24 CFR Part 44 (which implements A–128) to fiscal years of States that begin after December 31, 1984. Previous fiscal years may be covered by Attachment P to Circular A–102 or Circular A–128. Under Circular A–128, audits shall be conducted annually unless the State has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. In the latter situation, generally, biennial audits shall be required. The final rule also makes corresponding changes in §§ 1800.135(b) and 1800.137(g).

24. *Section 1800.127—Prohibition against tax credits.* The final rule corrects several incorrect references to the Secretary of the Treasury and conforms the reference to the residential energy tax credit to the section renumbering of the Internal Revenue Code made by section 471 of the Deficit Reduction Act of 1984. It also eliminates a certification requirement for an applicant for assistance for a building outside the 50 States and the District of Columbia.

The certification in this section requires an applicant to certify that certain tax credits will not be claimed "except as permitted by regulations or other legal interpretations of the Internal Revenue Service." The Bank has requested a clarifying interpretation from the IRS. Such interpretation has not been received. The Bank will advise the States of any changes reflected by any future legal interpretation.

25. *Section 1800.137—Other Federal requirements.* The final rule recognizes the Bank's Memorandum of Agreement with the Advisory Council on Historic Preservation, the new HUD rental rehabilitation and housing development grant programs and the possibility of HUD regulations to implement Executive Orders 11988 (wetlands) and 11990 (floodplains). The final rule does not restrict improvements to existing buildings in wetlands which are not also floodplains. Pursuant to a comment and other inquires the Bank has also reviewed the legality of relying on States for compliance with those Executive Orders and has determined that this would not be permissible under these Executive Orders. In response to another comment regarding the negative wording of § 1800.137(c) the Bank has also determined no further change is necessary because it follows the format of other requirements and restrictions in § 1800.137.

26. *Appendices II and III.* Additional material added for Appendices II and III would explain calculation of combined interest and principal loan subsidies pursuant to the changes to §§ 1800.13 and 1800.17

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The Bank finds that there are no anticompetitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

OMB Control Number

The reporting provisions of this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–111), and have been assigned OMB control number 2504–0001. This control number has an expiration date of January 31, 1988.

Regulatory Impact Analysis

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs for prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.550.

Lists of Subjects in 24 CFR Part 1800

Grant program, Energy conservation, Loan program, Solar energy, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Chapter XI, Part 1800 is amended as follows:

PART 1800—FINANCIAL ASSISTANCE PROGRAM OF THE SOLAR ENERGY AND ENERGY CONSERVATION BANK

1. The citation of authority for Part 1800 is revised to read as follows:

Authority: Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3602–3619).

2. Section 1800.3 is amended by adding definitions for "one- to four-family residential building" and "solar pool heating system" in alphabetical order and by revising the definitions of "active solar energy system", "annual income", "commercial building", "cost-effective", "energy audit", paragraph (g) of "financial institution", paragraph (d) of "improvement cost", "Indian tribe", "median area income", "multifamily residential building" and "State", to read as follows:

§ 1800.3 Definitions.

* * * * *

"Active solar energy system" means equipment which is designed to absorb solar energy and provide auxiliary water heating and/or space heating by use of mechanically forced thermal energy transfer devices such as fans or pumps.

* * * * *

"Annual income" means the total annual income of a family from all sources for the 12-month period following the date of determination of income, computed in accordance with Part 813 of this title which prescribes the method of computation for the section 8 housing assistance payment programs of HUD, except that for purposes of this part only actual income from "Net Family Assets" rather than imputed income shall be included.

* * * * *

"Commercial building" means any building other than a one- to four-family residential or multifamily residential building which is used primarily to carry on a business (including any nonprofit business) and is not used primarily for the manufacture or production of raw material, products, or agricultural commodities. A building is used primarily to carry on a business if it has 50 percent or more of its floor space

devoted to the business. A building owned by a public body may be a commercial building unless it is a building used for general conduct of government such as a public school, city hall, county administrative building, State capitol or office building or other facility in which the legislative, judicial or other general administrative affairs of government are conducted. Buildings used for religious purposes are not commercial buildings.

* * * * *

"Cost-effective" means, generally, that the solar energy system or energy conservation measure is expected to result in a dollar savings over the life of such system or measure that exceeds its costs over its useful life, as determined by an energy audit or energy design analysis without consideration of the financial assistance of the Bank. Such determination shall be made either on the basis of simple payback or life-cycle cost analysis. "Simple payback" means the determination of the time in years for recovery of the cost of an energy system based on estimated annual energy savings in dollars at current energy prices. The cost of a measure or system is divided by the annual savings to yield the simple payback period. "Life-cycle cost analysis" means an evaluation of investment alternatives to an energy conservation measure or a solar energy system which considers all costs and economic benefit parameters over the useful life of the measure or system as the common time element for the evaluation. All present value costs are aggregated and compared to the present value of all benefits and a measure or system is deemed to be cost-effective when the benefits exceed the costs. As a minimum, the evaluation shall compare the costs and benefits of a measure or system to a non-energy improvement investment alternative such as U.S. Treasury bonds. The general methodology to be followed in the evaluation shall be as defined by a State and approved by the Bank. A solar energy system or energy conservation measure will also be considered cost-effective, in the case of applicants for financial assistance who are excepted from the requirement to submit an energy audit or energy design analysis stated in § 1800.35, if such system or measure is a "program measure" for the area under the regulations governing the RCS program (10 CFR Part 456) or (in States for which there is no listing of "program measures" in the RCS regulations) if such system or measure is listed in §§ 1800.45(a), 1800.65(a), or 1800.65(b).

* * * * *

"Energy audit" means:

(a) An energy audit of a building or dwelling unit performed for purposes of Title II or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.* and 8281 *et seq.*, respectively, or

(b) An on-site inspection of the building or dwelling unit using procedures approved by a State or Federal government entity (or performed by an energy auditor who is determined to be qualified by a State or local government entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building or dwelling unit;

(2) Energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building or dwelling unit; and

(3) The cost of purchasing and installing appropriate energy conservation measures, a solar energy system, or both (excluding measures or systems considered inappropriate for this purpose by a State), and the savings in energy costs which are likely to result from the installation of such measures or system.

* * * * *

"Financial institution" means:

* * * * *

(g) Any Neighborhood Housing Services corporation which is administering a local program as described in § 4100.1 of this title and which meets all requirements of the Neighborhood Reinvestment Corporation.

* * * * *

"Improvement cost" means:

* * * * *

(d) The actual cost to the recipient of the labor involved in the installation by a contractor.

* * * * *

"Indian tribe" means any entity which is eligible to receive a grant under Part 571 of this title or under 10 CFR 440.11 or which is a "tribe" under § 905.102 of this title.

* * * * *

"Median area income" means the median annual income for an area as determined by HUD for the section 8 housing assistance payment programs of HUD which adjust median area income for family size and region. When the annual income of an applicant must be determined in terms of percentage of median area income, the median area income for the appropriate family size must be used.

* * * * *

"Multifamily residential building" means any building which has 50 percent or more of its floor space used for residential purposes, physically contains five or more dwelling units within the living space of the building structure or building envelope and has at least one system for heating or cooling or both.

* * * * *

Where building class cannot be readily defined due to unusual circumstances, the Bank will provide a written determination upon request.

* * * * *

"One- to four-family residential building" means any building which has 50 percent or more of its floor space used for residential purposes, physically contains at least one and not more than four dwelling units within the living space of the building structure or the building envelope, except for single family attached construction (*e.g.*, townhouses, rowhouses), and has at least one system for heating or cooling or both. Where a building class cannot be readily defined due to unusual circumstances, the Bank will provide a written determination upon request.

* * * * *

"Solar pool heating system" means an active or passive solar energy system for heating water in a swimming pool which is part of a commercial building and which is used predominantly for therapeutic or similar non-recreational purposes.

* * * * *

"State" means any State (which includes the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands). As described in § 1800.93(d)(2) of this part, an Indian Assistance Coordinator designated by the Bank shall also be treated as a State for most purposes.

* * * * *

3. Section 1800.13 is amended by revising paragraph (b)(1) and adding new paragraph (b)(3), to read as follows:

§ 1800.13 Types of assistance.

* * * * *

(b) *Forms of financial assistance for loans.*

(1) Except as specified in paragraph (b)(2) of this section, financial assistance used in connection with loans may be in the form of a reduction in principal, prepayment of interest, or a combination of reduction in principal

and prepayment of interest, at the discretion of the financial institution.

* * * * *

(3) Financial assistance in the form of grants shall not be combined with assistance in the form of a loan subsidy.

4. Section 1800.15 is revised to read as follows:

§ 1800.15 Reduction of principal.

When financial assistance is in the form of reduction of principal, a financial institution must have made a loan or at least a *bona fide* loan commitment in the full unreduced principal amount to an eligible recipient for use for eligible purposes under this part. Prior to receiving payment from a State a financial institution may choose to disburse loan proceeds for the unreduced principal amount or in an amount equal to the difference between the loan commitment and the subsidy amount as long as an amount equal to the rest of the loan commitment is disbursed to the recipient whenever the financial institution receives payment from the State. The loan repayment schedule may be set based on the principal amount which will remain owing after reduction of principal by the financial institution to avoid recalculation of the repayment schedule. The loan must have an interest rate not exceeding the rate for comparable unassisted loans.

5. Section 1800.17 is amended by revising paragraphs (a), (b) (3) and (4) to read as follows:

§ 1800.17 Prepayment of interest.

(a) *Form.* Prepayment of interest on a loan shall take the form of reduction of the interest rate which would otherwise have been charged. The available subsidy may be used entirely toward prepayment of interest or a portion of it may be used as a reduction of principal with the balance of the subsidy used toward prepayment of interest. Where the two forms of loan subsidy are applied to a single loan, the reduction of principal shall be applied first following § 1800.15 of this part and the prepayment of interest portion shall be calculated following paragraph (b) of this section using the reduced principal amount of the loan.

(b) * * *

(3) Appendix II to this part explains the calculation procedure for assistance in the form of prepayment of interest or combined reduction of principal and repayment of interest. Appendix III to this part presents examples of calculations for assistance in the form of prepayment of interest or combined reduction of principal and prepayment of interest. States may adopt alternative procedures provided the subsidy amount determined from any alternative procedure does not exceed the subsidy determined by Appendix II.

(4) In the case of a loan for which only a portion qualifies for financial assistance, *e.g.*, a home improvement loan of $2,000 which includes $1,000 for eligible conservation measures, the subsidy may be applied to the entire loan when calculated in accordance with procedures contained in Appendix II.

6. In § 1800.29, paragraph (a)(1) is revised to read as follows:

§ 1800.29 Debarred contractors, suppliers and financial institutions.

(a) * * *

(1) The Consolidated List of debarred, suspended and ineligible contractors prepared by the General Services Administration pursuant to 48 CFR Chapter 1, Subchapter B, Subpart 9.4;

* * * * *

7. Section 1800.33 is revised to read as follows:

§ 1800.33 Installation certificate.

(a) *Requirement for receiving Bank funds.* No financial institution may request any Bank funds in connection with a particular applicant's solar energy system or energy conservation measure unless:

(1) The financial institution has received an installation certificate from the applicant, or

(2) The applicant has agreed to provide an installation certificate to the financial institution immediately upon completion of installation of such solar energy system or energy conservation measure (not applicable to grants), or

(3) A representative of the financial institution has executed an installation certificate (applicable only when a grant will not be paid directly to the recipient).

(b) *Content of certificate.*

(1) An installation certificate from an applicant must include the following:

(i) The applicant's signature, and

(ii) A statement that the grant or loan proceeds will be used immediately toward payment for eligible purposes under this part, or toward reimbursement for payments for eligible purposes under this part.

(2) An installation certificate from a financial institution representative must include the following:

(i) The signature of the representative, and

(ii) A statement that the grant will not be paid directly to the recipient but will be used immediately by the financial institution for payment of eligible purposes under this part, or toward reimbursement for payments for eligible purposes under this part.

(3) In all cases except solar space heating or cooling systems, installation certificates must also include:

(i) The improvement cost, or

(ii) A statement that the improvement cost equals or exceeds the cost estimate (which shall be stated) which was used to determine the amount of financial assistance, or

(iii) A statement that the improvement cost equals or exceeds the loan amount (which shall be stated) used to determine the amount of financial assistance.

(c) *Reasonable costs.* Costs in excess of reasonable costs are not eligible for financial assistance and must be disregarded in an installation certificate.

8. Section 1800.35 is amended by adding the OMB control number at the end to read as follows:

§ 1800.35 Energy audit or energy design analysis required.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2504–0001)

9. Section 1800.43 is amended by removing current paragraph (d), redesignating current paragraphs (e), (f) and (g) as paragraphs (d), (e) and (f), respectively, and revising paragraph (c), and newly designated paragraphs (e) and (f) to read as follows:

§ 1800.43 Eligible recipients.

* * * * *

(c) *Joint applications.* A joint owner of a dwelling unit or of a building may apply for assistance individually, simultaneously with other joint owners in a single application, or simultaneously with other joint owners by a separate application. If simultaneous separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance exceeding the maximum level of assistance established for such building or dwelling unit under § 1800.47. Spouses are not considered joint owners. Each applicant in a joint application must be eligible under this section. The average annual income of joint applicants shall be used to determine compliance with paragraph (f) of this section after December 31, 1985.

* * * * *

(e) *Assistance on behalf of others.* Any person may receive financial assistance on behalf of any owner or tenant who would be eligible to receive financial assistance, if such owner or

tenant consents to the arrangement in writing. Such owner or tenant must comply with § 1800.127(b), and must be reported to the Internal Revenue Service pursuant to § 1800.127(a). Such person shall be responsible for compliance with all requirements of this part which would apply to the owner or tenant if he or she had received the financial assistance. Such person may receive the financial assistance in connection with a single loan in an amount equal to the sum of the amounts of financial assistance which each owner or tenant could have received.

(f) *Income limitation.* Financial assistance may not be provided in connection with a loan made to an owner of an existing one- to four-family residential building after December 31, 1985 if such owner is not an individual or is an individual whose family has an annual income in excess of 250 percent of the median area income.

10. Section 1800.45 is amended by revising paragraph (a) and adding new paragraphs (c) and (d), to read as follows:

§ 1800.45 Eligible solar energy systems.

(a) *Eligible systems.* The following are eligible solar energy systems, subject to paragraphs (b), (c) and (d) of this section:

(1) passive solar energy systems, and

(2) active solar energy systems.

* * * * *

(c) *Water heating.* The only eligible solar energy systems for water heating are solar domestic hot water systems and solar pool heating systems.

(d) *Mixed use buildings.* In a building in which floor space is used for both residential and other purposes, no special rules apply if the building is a commercial or agricultural building or is a one- to four-family or multifamily residential building in which at least 80 percent of the floor space is used for residential purposes. Otherwise, solar energy systems are eligible if they benefit the residential portion of the building only or if the applicant is a non-profit owner and the non-residential portion of the building is used for purposes which, if extended throughout the building, would qualify the building as a commercial or agricultural building.

11. Section 1800.47 is amended by redesignating current paragraphs (a)(3), (a)(4) and (a)(5) as paragraphs (a)(4), (a)(5) and (a)(6), respectively, revising newly designated (a)(5), and by adding new paragraphs (a)(3) and (a)(7) to read as follows:

§ 1800.47 Levels of assistance.

* * * * *

(a) * * *

(3) The maximum amount of assistance for solar pool heating systems shall be $12,500 or 40 percent of the improvement costs, whichever is less, for commercial buildings.

* * * * *

(5) In the case of solar energy systems (except for solar domestic hot water systems and passive solar space cooling systems) which do not benefit all dwelling units within a building, the maximum dollar amounts listed above shall be reduced by the percentage of dwelling units in the building which do not benefit from the solar energy system. The number of dwelling units in a building is determined using the definitions contained in § 1800.3.

* * * * *

(7) If more than one person is responsible for the cost of a solar energy system, then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost.

* * * * *

12. Section 1800.63 is amended by revising paragraphs (c)(3), (f) and (g), adding paragraph (c)(4), removing current paragraph (i), and redesignating current paragraphs (j) and (k) as paragraphs (i) and (j), respectively, to read as follows:

§ 1800.63 Eligible recipients.

* * * * *

(c) * * *

(3) Except as provided in paragraphs (c)(1) and (c)(2) of this section, an owner of a building shall not be subject to any income requirement.

(4) An owner which is not an individual shall be treated as having a family with an annual income in excess of 150 percent of the median area income.

* * * * *

(f) *Joint applications.* (1) A joint owner of a dwelling unit or of a building may apply for assistance individually, simultaneoulsy with other joint owners in a single application, or simultaneously with joint owners simultaneously by separate application. A tenant jointly renting a dwelling unit or a building with other tenants may apply for assistance individually, simultaneously with other tenants in a joint application, or simultaneously with other tenants by separate application.

(2) Spouses are not considered joint owners or tenants.

(3) If simultaneous separate applications are made by two or more joint owners or by two or more joint tenants with respect to the same building or dwelling unit, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which the applicant with the lowest annual income would be eligible if such applicant applied individually and did not share costs with anyone else.

(4) Each applicant in a joint application must be eligible under this section. If a joint application is made, the average annual income of all joint applicants shall be used for purposes of § 1800.67(a). When different family sizes are involved, the average size rounded up to the nearest whole number should be used. The average annual income of joint applicants when one or more is not an individual shall be considered in excess of 150% of median area income.

(g) *Assistance on behalf of others.* (1) Any person may receive financial assistance on behalf of an owner or tenant who would be eligible to receive financial assistance, if such owner or tenant consents to the arrangement in writing. Such owner or tenant must comply with § 1800.127(b), and must be reported to the Internal Revenue Service pursuant to § 1800.127(a). Such person shall be responsible for compliance with all requirements of this part which would apply to the owner or tenant if he or she had received the financial assistance.

(2) Such person may receive the financial assistance in the form of a single grant in an amount equal to the sum of the grants which each owner or tenant could have received. If the financial assistance is in the form of reduction of principal or prepayment of interest, such person may receive the financial assistance in connection with a single loan in an amount equal to the sum of the amounts of financial assistance which each owner or tenant could have received.

* * * * *

13. Section 1800.65 is amended by revising paragraphs (b) (9) and (13) and adding a new paragraph (d) to read as follows:

§ 1800.65 Eligible energy conservation measures.

* * * * *

(b) * * *

(9) Cogeneration systems and replacement or modification of multifamily residential building water heaters,

* * * * *

(13) Energy audits (as included in the definition of "improvement cost" in § 1800.3).

* * * * *

(d) *Mixed use buildings.* In a building in which floor space is used for both

residential and other purposes, no special rules apply if the building is a commercial or agricultural building or is a one- to four-family or multifamily residential building in which at least 80 percent of the floor space is used for residential purposes. Otherwise, energy conservation measures are eligible if they benefit the residential portion of the building only or if the applicant is a non-profit owner or tenant and the non-residential portion of the building is used for purposes which, if extended throughout the building, would qualify the building as a commercial or agricultural building.

* * * * *

14. Section 1800.67 is amended by revising paragraph (a)(2) and adding new paragraph (a)(4) to read as follows:

§ 1800.67 Levels of assistance.

* * * * *

(a) * * *

(2) In the case of energy conservation measures which do not benefit all dwelling units within a building, any dwelling units in the building which do not benefit from the energy conservation measures shall be counted in determining the building type but shall not be counted in determining maximum assistance. The number of dwelling units in a building is determined using the definitions contained in § 1800.3 of this part.

* * * *

(4) If more than one person is responsible for the cost of a measure then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost.

* * * * *

15. Section 1800.77 is revised to read as follows:

§ 1800.77 Contractors and suppliers.

All contractors and suppliers who install or supply energy conservation measures for which assistance is provided in the form of a grant must appear on a list of approved contractors and suppliers which meets the requirements of section 213(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8214. This requirement shall not apply in areas of a State which are not served by a public utility described in section 211(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8212, or [illegible] where such list has not been made public by a public utility under section 215(a)(3) of the National Energy Conservation Policy Act, 42 U.S.C. 8216, or by the Secretary of Energy.

§ 1800.93 [Amended]

16. In § 1800.93, paragraphs (a), (b) and (d)(2) are revised, to read as follows:

(a) *Current State participants.* Any State with a current cooperative agreement (one which is legally effective on the date of any tentative allocations under § 1800.95 may elect to receive any additional funds allocated under § 1800.95 on the basis of programs approved in its cooperative agreement. To receive any new allocation of funds, a State must complete and return to the Bank a Bank-prepared cooperative agreement amendment obligating such additional funds to the State within a 30-day period from the time such amendment is provided by the Bank.

(b) *States without cooperative agreements.* A State without a current cooperative agreement with the Bank may become a new participant in the Bank program for any allocation of funds under § 1800.95 by submitting a written program proposal which is accepted by the Bank. The Bank publishes, from time to time in the **Federal Register**, a Notice of Funding Availability which should be referred to for guidance as to the eligibility of a State and the contents of the program proposal.

* * * * *

(d) * * *

(2) An IAC was initially designated on the basis of a written program proposal and statement of qualifications submitted to the Bank in response to a competitive solicitation announced in the **Federal Register**. Whenever an IAC designation expires, the IAC may be redesignated without competitive solicitation or a new competitive solicitation may be announced in the **Federal Register**. Tentative allocations of funds for an IAC shall be determined in the same manner as for States under § 1800.95(a) except that Factor "A" shall be determined by the Indian population of the United States divided by United States household size and then multiplied by energy consumption per United States household. Values shall be given to Factor "B" on the basis of a particular IAC's program performance only if the resulting tentative allocation is expected to be obligated to the same IAC without an intervening competitive solicitation. At the discretion of the Bank, such allocation may be obligated to the then-designated IAC by amendment of its cooperative agreement, obligated by a cooperative agreement with a new IAC designated after competitive solicitation, or reallocated pursuant to § 1800.98. Except for designation and allocation of funds, the IAC shall be treated as a State for purposes of this part.

* * * * *

17. Section 1800.95 is revised to read as follows:

§ 1800.95 Allocation of funds.

(a) *Tentative allocation.* (1) Each Fiscal Year in which funds are legally available to the Bank for obligation, a tentative allocation shall be made to each State with a cooperative agreement and all other States which have submitted acceptable program proposals pursuant to § 1800.93. The tentative allocation shall be made during February or August at the Bank's option, but not both, depending on availability of funds and the need for additional funds by States to sustain program activities. In a Fiscal Year in which available funds are derived only from recapture pursuant to § 1800.97, the tentative allocation shall be made in the same manner as described in this section but only to States with Cooperative Agreements that have expended Bank funds for subsidies.

(2) The amount of funds allocated to each State is based on a score which is the product of two factors, provided that the tentative allocation of funds for each new State participant, if made, shall be not less than $120,000. The tentative allocation for each current State participant shall be not less than $20,000 unless there are insufficient funds available in which case only those States receiving a tentative allocation of at least $20,000 on the basis of Factor A and Factor B scores will be eligible to receive funds. Where total funds available for allocation are less than $40,000, the eligible State receiving the highest score shall be awarded the available funds and if not accepted, the funds shall be awarded in turn to the next highest scoring eligible State which agrees to accept the funds. The score for each State is divided by the sum of the scores of all States and the resulting ratio is multiplied by the available funds to provide a tentative allocation.

(i) Factor "A" is determined by the product of:

(A) The sum of 50 percent of the number of households in the State with income at 80 percent or less of the median household income for the State, 30 percent of the number of households with incomes greater than 80 percent of the median up to 150 percent of the median and 20 percent of the number of households with income greater than 150 percent of the median, normalized so that the largest value is equal to 100 with all other ratios proportionately less with a weight of 0.5; and

(B) The average amount of energy consumed per household for the State, normalized so that the largest resultant value is equal to 100 with a weight of 0.5.

(ii) Factor "B" is equal to one for a new participant pursuant to § 1800.93(b) and otherwise is determined by the sum of one plus:

(A) The annual Btu savings for subsidized energy conservation measures and solar energy systems per dollar of Bank subsidy expended normalized so that the highest value equals 5 with a weight of 0.1;

(B) The calculation of the total dollar investment made in subsidized measures and systems per dollar of Bank subsidy expended normalized so that the highest value equals 5 with a weight of 0.1;

(C) The calculation of the ratio of dollars of Bank subsidy expended to the total funds obligated to a State by the cooperative agreement normalized so that the highest value equals 5 with a weight of 0.5; and

(D) The calculation of the ratio of dollars of Bank subsidy expended to the total funds expended by all program participants normalized so that the highest value equals 5 with a weight of 0.3.

(iii) "Investment" as used in paragraph (a)(2)(ii)(B) of this section means the improvement cost for a measure or system when used as the basis for calculating a subsidy; otherwise it means the estimated system cost in the case of solar space heating or cooling systems.

(iv) The value for Factor "B" shall be reduced only if Bank subsidies and other Federal subsidies are provided for the purchase and installation of the same energy conservation measures or solar energy systems, with a minimum reduction of 5 percent and reductions at the rate of 5 percent for each 10 percent of total dollars of Bank subsidy which are expended for measures or systems which also are subsidized by other Federal subsidies to a maximum reduction of 50 percent.

(v) Factor "B" shall represent cumulative performance based on the entire period of State participation in the Bank program or the preceding 24 months, whichever period is less. The information needed to calculate the value for Factor "B" shall be taken from the State semi-annual reports due pursuant to § 1800.107. If any such report has not been received by the Bank from a State, no value will be given for paragraphs (a)(2)(ii) (A) and (B) of this section; in such case paragraphs (a)(2)(ii) (C) and (D) of this section shall be based on information available to the Bank through its fund transfer system with a 50 percent reduction applied to Factor B thus calculated for any State not reporting.

(b) *Obligation.* The Bank shall inform each State of its tentative allocation. Unless a State elects not to receive its tentative allocation, the full amount of the State's tentative allocation shall be obligated to a State by the cooperative agreement or an amendment to it, provided that if the Bank has issued to a State a notice of intent to recapture funds under § 1800.97(b) the Bank shall have no duty to obligate any additional funds to the State unless the violation is resolved to the satisfaction of the Bank.

18. The heading of § 1800.97 is revised to read as follows:

§ 1800.97 Recapture of funds.

19. A new § 1800.98 is added to read as follows:

§ 1800.98 Reallocation of funds.

Any funds which become available for reallocation after a tentative allocation and while they remain legally available for obligation shall be included in the next tentative allocation. A special reallocation may be made for any such funds which would cease to be legally available for obligation prior to the next anticipated tentative allocation and any special reallocation shall be in a manner as described in § 1800.95 using the most recent information available to the Bank. Funds available for reallocation include funds tentatively allocated under § 1800.95 to a State that does not elect to receive such funds or for an IAC when the Bank determines not to obligate such funds and funds recaptured under § 1800.97.

20. In § 1800.99, paragraph (d) is revised to read as follows:

§ 1800.99 Authorized expenditures.

* * * * *

(d) *Principles for determining allowable expenses.* Administrative and promotional expenses must be allowable under the principles and standards established in OMB Circular A–87, "Cost Principles for State and Local Governments", or A–122, "Cost Principles for Non-profit Organizations", as applicable.

21. Section 1800.103 is revised to read as follows:

§ 1800.103 Selection of financial institutions.

A State will select the financial institutions which will provide financial assistance within the State. A State may serve as a financial institution itself as long as it qualifies under the definition set forth in § 1800.3. A State not serving as a financial institution itself may nevertheless perform any functions prescribed for a financial institution by this part or a cooperative agreement to the extent agreed by the financial institution, except for the actual making of a grant or subsidized loan.

22. Section 1800.107 is amended by revising paragraph (a)(7) to read as follows:

§ 1800.107 Reporting and recordkeeping requirements.

(a) * * *

(7) The cost-effectiveness of the program in terms of the percent of Bank funds for subsidies expended in connection with some other form of Federal subsidy, administrative costs, promotional costs, leveraging of funds, energy savings in terms of dollars per barrel of oil equivalent and other measures as may be appropriate; and

* * * * *

23. Section 1800.109 is revised to read as follows:

§ 1800.109 Manner of payment.

Payments to States will be made by electronic funds transfer whenever possible, letter of credit, or other means, pursuant to the cooperative agreements in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201 *et seq.*) and Treasury Circular No. 1075 (31 CFR Part 205). States may receive payments for administrative and promotional expenses only after they have been incurred. States may receive other payments only in amounts necessary to pay financial institutions for financial assistance in connection either with energy conservation measures or solar energy systems which have been purchased, or with loans which have been closed or for which a *bona fide* loan commitment has been made if energy conservation measures or solar energy systems will be installed within 60 days of loan closing or 90 days of the loan commitment. States shall utilize appropriate procedures to minimize the time elapsing between the transfer of funds by the Treasury to the State and the disbursement of funds by the State.

24. A new § 1800.120 is added to Subpart F to read as follows:

§ 1800.120 Conflict of interest.

No financial institution and no person who is an employee, agent, consultant, officer, or elected or appointed official of a State, local participant, financial institution, or public or private entity acting as agent of any of the foregoing, and who is in a position to participate in a decisionmaking process or gain inside information with respect to expenditures

for administrative or promotional expenses or assistance for eligible activities under this part, may obtain a personal or financial interest in or benefit from such expenditures or assistance, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure. This paragraph does not restrict financial assistance to a publicly-owned building or to a person with respect to a single dwelling unit which is the person's principal residence.

25. Section 1800.125 is amended by revising paragraph (b) to read as follows:

§ 1800.125 Audit.

* * * * *

(b) *State audits.* HUD audit requirements in 24 CFR Part 44 and OMB Circular A–128 apply to States receiving funds under this part.

26. Section 1800.127 is revised to read as follows:

§ 1800.127 Prohibition against tax credits and financial assistance for same expenditure.

(a) *Information provided to the Secretary of the Treasury.* As required by section 506(f) of the Act, the Bank shall provide to the Secretary of the Treasury such information as the Secretary of the Treasury determines is necessary to insure that no person is allowed for the same expenditure both financial assistance under the Act and a credit against Federal income taxes under 26 U.S.C. 38 (investment credit) or 26 U.S.C. 23 (residential energy credit) except as permitted by regulations or other legal interpretations of the Internal Revenue Service. Except as otherwise directed by the Secretary of the Treasury, the Bank intends to discharge this responsibility as well as the information return requirements of 26 U.S.C. 6050D, where applicable, by requiring either a State or financial institutions within a State to submit Internal Revenue Service Form 6497 ("Information Return of Nontaxable Energy Grants or Subsidized Energy Financing") or any replacement form duly approved by the Office of Management and Budget to the appropriate office of the Internal Revenue Service.

(b) *Information required from applicant.* As a condition of financial assistance, an applicant shall be required to provide to the financial institution:

(1) All information which the Secretary of the Treasury determines is necessary under paragraph (a) of this section and which is possessed by the recipient, including the applicant's Social Security number or taxpayer identification number and other information required for Internal Revenue Service Form 6497 or any replacement form duly approved by the Office of Management and Budget, and

(2) A certification that the applicant will not claim a Federal tax credit under 26 U.S.C. 38 or 23 for amounts expended for the assisted energy conservation measures or assisted solar energy system up to the amount used as the basis for determining the financial assistance, except as permitted by regulations or other legal interpretations of the Internal Revenue Service. No certification shall be required from an applicant for financial assistance for a building in Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa or the Trust Territory of the Pacific Islands.

[Approved by the Office of Management and Budget under OMB control number, 2504–0001]

27. Section 1800.135(b) is amended by revising paragraph (b) to read as follows:

§ 1800.135 Applicability of general HUD regulations.

* * * * *

(b) *Regulations adopted.* The following provisions of this title, as they may be amended from time to time, are adopted by the Bank and shall be binding as regulations governing the internal operations of the Bank, except as they may be modified by the Board: Part O (Standards of Conduct), Part 1 (Nondiscrimination), Part 2 (Hearing Practice and Procedures under Part 1), Part 7 (Equal Employment Opportunity), Part 10 (Rulemaking: Policy and Procedures), Part 15 (Production or Disclosure of Material or Information), Part 16 (Privacy Act), Part 17 (Administrative Claims), Part 20 (Board of Contract Appeals), Part 44 (Non-Federal Governmental Audit Requirements), and Part 50 (Procedures for Protection and Enhancement of Environmental Quality). References to "the Secretary" in such provisions shall ordinarily be construed as including the Board. In conjunction with its adoption of Part 50 of this title, the Bank adopts a categorical exclusion from requirements for environmental clearances for approval of State programs and allocation of funds to the States, as well, as for any actions taken by States or financial institutions in accordance with approved State programs.

* * * * *

28. Section 1800.137 is amended by revising paragraphs (c), (d) and (g) to read as follows:

§ 1800.137 Other Federal requirements.

* * * * *

(c) *Historic preservation.* No financial assistance shall be provided in connection with any energy conservation measure or solar energy system with respect to any district, site, building, structure or object included in or eligible for inclusion in the National Register maintained by the Secretary of the Interior under 16 U.S.C. 470a as determined by the State or a financial institution, unless: (1) Such financial assistance is provided in compliance with the Bank's initial Memorandum of Agreement with the Advisory Council on Historic Preservation, or any subsequent such Memorandum of Agreement, or (2) such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the other Federal agency or a recipient of assistance under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) or section 17 of the United States Housing Act of 1937 (42 U.S.C.1437o) has complied with the procedures of the Advisory Council on Historic Preservation set forth in 36 CFR Part 800 or (in the case of Urban Development Action Grants) 36 CFR Part 801.

(d) *Special flood hazard areas and wetlands.* In order to carry out the Federal policies stated in Executive Orders 11988 ("Floodplain Management") and 11990 ("Protection of Wetlands"), no financial assistance shall be provided in connection with a newly constructed building located in wetlands or in connection with any building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless such financial assistance is in connection with as assistance program of a Federal agency other than the Bank for which the Federal agency or a recipient of assistance under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) or section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o) has complied with the procedures set forth in Executive Order 11988 or 11990. The preceding sentence shall not restrict the providing of financial assistance in compliance with any HUD regulations implementing Executive Orders 11988 and 11990 if such regulations have been

adopted by the Bank pursuant to § 1800.135(c)

* * * * *

(g) *OMB Circular A–102.* A State shall comply with the requirements of Attachments G, H, J, L, N and O of OMB Circular A–102 and shall be regarded as a grantee for the purposes of such requirements. The cooperative agreement required by § 1800.91 may clarify the requirements as applied to the financial assistance program of the Bank.

* * * * *

29. Appendix II is amended by adding a new section IV after the end of current section III to read as follows:

Appendix II—Procedure for Calculating Subsidy and Reduced Interest Rate on Prepayment of Interest Loan Assistance

* * * * *

IV. Combined reduction of principal and prepayment of interest. Category 5 loan.

1. Determine subsidy amount available as per §§ 1800.47 and 1800.67 as applicable.

2. Determine amount of subsidy to be used for reduction of principal. This would normally be estimated based on the amount of interest buydown desired as for a Category 1 loan.

3. Subtract the portion of the subsidy to be used as a reduction of principal from the loan amount to obtain the amount to be repaid.

4. Using the amount to be repaid and the portion of the available subsidy to be used toward prepayment of interest, calculate the loan repayment terms and subsidy amount as per steps C.1 through C.5 for a Category 2 loan.

5. The amount of Bank assistance to be provided is the sum of the subsidy amounts determined by steps 2 and 4 above. An iterative process may be needed to maximize use of an available subsidy if desired.

30. Appendix III is amended by adding a new Example 5 after the end of current Example 4 and before the Note to Appendix III to read as follows:

Example 5, Category 5

It is desired to offer reduced interest rate loans at a level competitive with rates of return available to individuals to discourage early repayment of loans but yet make the total amount of assistance attractive to individuals to encourage installation of energy conserving measures. Accordingly, a situation as per Example 1 is desired with a $500 reduction in principal in addition to the 10% reduced interest rate loan.

1. Using Category 5 procedures, a $500 reduction in principal is applied to the loan making the amount to be repaid $1,500.

2. The difference in finance charges from 15% to 10% for $1,500 is $229.05 ($641.25 – $412.20).

3. The discounted rate growth factor is 1.3489 as per example 1.

4. The amount of prepayment of interest subsidy required to reduce the interest rate to 10% is $169.80 ($229.05 divided by 1.3489).

5. The total amount of assistance to be provided is then $669.80 ($500 + $169.80). Since this is within the allowable subsidy of $700, the $669.80 is the subsidy amount.

EXAMPLE 5 SUMMARY

	Conventional	Bank subsidized
Principal	$2,000 00	$1,500 00
Interest rate	15 percent	10 percent
Term	5 years	5 years
Monthly payment	$47.60	$31 87
Total payments	$2,856 00	$1,912 20

Dated: June 6, 1985.

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 85–14335 Filed 6–13–85; 8:45 am]

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Part IV

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the establishment of local contribution rates under the Impact Aid program. The rates are used by the Secretary to compute maintenance and operations assistance to local educational agencies (LEAs) in federally affected areas.

DATE: All comments must be received on or before July 15, 1985.

ADDRESSES: Comments should be addressed to Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2109, Washington, D.C. 20202–6272.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Telephone (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 3 of Pub. L. 81–874 (the Act), commonly referred to as the Impact Aid program, the Secretary provides assistance for maintenance and operations to certain LEAs. LEAs eligible to participate in the program are those providing a free public education to certain types of so-called federally connected children: that is, children who reside on Federal property; children whose parents are employed on Federal property; children residing on Federal property with parents employed on Federal property; and children whose parents are on active duty in the uniformed services.

The amendments to the regulations affect implementation of section 3 of the Act. This section contains the procedure used by the Secretary to calculate payments to eligible applicants. Except for the changes to the provisions governing local contribution rates and additional assistance under sections 3(d)(2)(B) and 3(d)(3)(B)(ii) of the Act, these proposed regulations contain no other changes to the regulations implementing Pub. L. 81–874. The majority of the provisions in this notice of proposed rulemaking (NPRM) are very similar to the interim final regulations published in the **Federal Register** on August 7, 1984, except that two new provisions, §§ 222.33(c) and 222.37, have been added in response to public comments.

The amount of a section 3 payment is determined by several factors: The number(s) and type(s) of federally connected children attending the schools of an applicant LEA, the applicant's local contribution rate, the amount of the annual appropriation, and the distribution formula contained in the appropriation legislation. Among other provisions, section 3 requires the Secretary to establish for each applicant a local contribution rate and, in the case of certain applicants, to determine which LEAs in their respective States are generally comparable to those applicants. The majority of applicants under the Impact Aid program are paid on the basis of the minimum rate guaranteed by the Act. These regulations governing local contribution rates and the identification of generally comparable LEAs and the changes being proposed in them will apply to a very small but important group of applicants.

Because of a number of inquiries regarding the methods used by the Secretary to identify generally comparable LEAs, the Secretary reviewed the current practices and regulations for the program and determined that the provisions governing those methods should include objective factors that would produce more uniform results for districts with similar characteristics.

The Secretary proposed changes including such objective factors to the regulations governing local contribution rates originally in an NPRM published in the **Federal Register** on March 30, 1984 (49 FR 12950). The public was given 45 days in which to comment on the NPRM. After reviewing the comments that were received and adopting several of the recommended changes, the Department published interim final regulations on August 7, 1984 (49 FR 31628). They became effective on September 21, 1984. Because of the interest in these regulations, the Secretary invited the public to comment during an additional 60-day period following the publication of the interim final regulations.

The Secretary has incorporated into these proposed regulations several of the recommendations received from the public during the second comment period. Because there are a number of significant changes, another NPRM is being published. Until these proposed rules are published in final form, the provisions of the interim final regulations will be used to identify generally comparable LEAs and calculate local contribution rates.

Substantive comments received on the interim final regulations and the Secretary's responses are summarized in the Appendix to these proposed regulations.

Summary of Changes From the Interim Final Regulations

A brief summary of changes in this NPRM resulting from substantive comments on the interim final regulations follows. In addition to the specific changes discussed, some editorial changes have been made.

"Hold-Harmless" Prevention. In response to public comments, the Secretary is proposing to include a "hold-harmless" provision in § 222.31(d) for fiscal year (FY) 1985 and subsequent years to continue to help a small group of applicant LEAs make the transition to the generally comparable LEA method. Under this proposal, no LEA would be required in any year to absorb more than a 10 percent reduction from its prior year's rate.

Grouping LEAs by Size. Several commenters objected to grouping LEAs by size into only two groups because this method would include LEAs of very different sizes in the same group. On the other hand, one commenter requested that the division into two groups not be changed so that States with small numbers of LEAs could continue to use the method. In order to respond to both points of view, the Secretary is proposing to change §§ 222.33(a)(2) and (a)(4) to allow division of LEAs into either thirds or halves, at the discretion of the State educational agency (SEA) in consultation with the applicant LEAs in the State.

Metropolitan Statistical Area. The Secretary also proposes to replace the term "standard metropolitan statistical area" (SMSA) in §§ 222.33(a)(3) and (a)(4) with the term "metropolitan statistical area" (MSA. This is being done to conform to U.S. Bureau of the Census revisions in the terminology and definition of metropolitan areas approved by the Office of Management and Budget.

Heavily Impacted LEAs Warranting Special Consideration. A number of commenters requested a different method of identifying generally comparable LEAs for certain heavily impacted applicant LEAs. In response to these commenters, the Secretary is proposing to identify a group of heavily

impacted applicants located in States which provide a low level of support for education whose circumstances appear to warrant special consideration. A new § 222.33(c) is being added which provides one procedure, more flexible than the four standard options, for identifying generally comparable LEAs for both the new group of applicants being identified and the group of LEAs whose boundaries are coterminous with the boundaries of Federal property. (The definition of a coterminous applicant is no longer restricted to LEAs whose boundaries are coterminous with the boundaries of a Federal military installation.) The new procedure is similar to that contained in the former § 222.33(c) in the interim final regulations, but it now includes standards to be followed in identifying generally comparable LEAs for these applicants. The new section also proposes a method of identifying generally comparable LEAs for a heavily impacted, coterminous applicant that serves a different span of grades from all other LEAs in its State.

Provision Concerning Unusual Geographical Factors. The Secretary is proposing to include a provision in the regulations which would implement section 3(d)(3)(B)(ii) of the Act. This statutory provision provides additional compensation to certain applicant LEAs affected by unusual geographical factors. The former provision regarding section 3(d)(3)(B)(ii) was found in § 222.32, but the new provision has been added as § 222.37 in this NPRM. The section provides more detailed procedures for determining eligibility for and the amount of an additional payment under section 3(d)(3)(B)(ii).

Provision Concerning LEAs in States Having Unorganized Territory. One commenter requested that LEAs in States in which "a substantial proportion of the land is in unorganized territory" not be restricted to using the local contribution rate guaranteed by the Act. The Secretary is proposing to allow LEAs in these States to recommend local contribution rates computed using the generally comparable LEA method in §§ 222.33 and 222.34.

Special Request for Comments. The Secretary is providing a 30-day period during which the Department will receive public comment on these proposed regulations. The Secretary invites the public to comment in particular on several of the new provisions in these regulations. First, the Secretary is interested in the public's views on § 222.33(c) which contains the new method of identifying generally comparable LEAs for coterminous applicants and for the new group of heavily impacted applicants. The Secretary would like specific data on the practical application of the new method and would like to know if it adequately addresses the needs of the applicants to whom it applies. If commenters do not believe that the method is adequate, the Secretary would like specific suggestions for an alternative procedure also based on objective factors. Second, the public is invited to comment on § 222.37, the provision governing eligibility for special funding under section 3(d)(3)(B)(ii) of the Act. Finally, the Secretary would like data on the results of allowing LEAs in States in which a substantial proportion of the land is in unorganized territory to use the generally comparable LEA method.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by the regulations are small LEAs. The regulations contain a "hold-harmless" provision for FY 1985 and subsequent years under which no applicant would be required to absorb more than a 10 percent reduction from its prior year's local contribution rate. This provision will minimize the economic impact of these proposed regulations on small LEAs.

These regulations will not affect a substantial number of small LEAs because only approximately 10 percent of all Impact Aid recipients are expected to take advantage of the "hold-harmless" provision. This means that the remaining 90 percent of the program's recipients are either not affected by the generally comparable LEA method, or their rates, and thus their payments, under the method are adequate.

Paperwork Reduction Act of 1980

Sections 222.33, 222.34, and 222.37 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. The provisions of §§ 222.33 and 222.34 in this NPRM are substantially the same as the corresponding provisions in the interim final regulations. The public is invited to comment in particular on the new information collection requirements in §§ 222.33(c) and 222.37(c). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments should be submitted on or before July 15, 1985 to be assured of consideration by the Secretary.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2109, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

Dated: June 12, 1985.

William J. Bennett,

Secretary of Education.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

The Secretary proposes to amend Part 222 of Title 34 of the Code of Federal Regulations as follows:

1. The table of contents for Subpart D is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

Sec.

222.30 Determination of local contribution rates: general.
222.31 Recommendation of local contribution rate.
222.32 Local contribution rate guaranteed by the Act.
222.33 Identification of generally comparable LEAs.
222.34 Local contribution rate based on generally comparable LEAs.
222.35 Computation of local contribution rates.
222.36 Determination of additional assistance.
222.37 Determination of compensation for unusual geographical factors.

* * * * *

Authority: Pub. L. 81-874, as amended, 64 Stat. 1100 (20 U.S.C. 236-244), unless otherwise noted.

2. Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates.

§222.30 Determination of local contribution rates: general.

(a) Before computing the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact Aid program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

(b) The provisions in §§222.31 through 222.34 describe the methods that may be recommended by LEAs to be used by the Secretary in the determination of local contribution rates.

(c) Except as specified in §§222.31(a)(2) and 222.32(b), the provisions in §§222.31 through 222.37 do not apply to applicant LEAs located in—

(1) Puerto Rico;
(2) Wake Island;
(3) Guam;
(4) American Samoa;
(5) The Northern Mariana Islands;
(6) The Virgin Islands; and
(7) Any State in which there is only one LEA.

(20 U.S.C. 238(d)(3))

§222.31 Recommendation of local contribution rate.

An LEA shall recommend to the Secretary one of the following types of local contribution rates. If the recommended local contribution rate meets the requirements of the Act and this Part 222, the Secretary accepts the recommendation and bases the LEA's payment on that rate.

(a) *Guaratneed Minimum Rate.* (1) The LEA may recommend the local contribution rate guaranteed by the Act.

(2) In the case of a jurisdiction listed or identified in §222.30(c), the Secretary establishes as the local contribution rate the rate guaranteed by the Act.

(3) The provisions governing this rate are in §222.32.

(b) *Generally Comparable LEA Rate.* (1) The LEA may recommend a local contribution rate based on appropriate data from generally comparable LEAs within its State.

(2) The provisions governing this rate are in §§222.33 through 222.35.

(c) *"Hold-Harmless" Rate for FY 1984.* (1) For fiscal year (FY) 1984 only, an LEA that was paid on a rate above the rate guaranteed by the Act in FY 1981 may recommend a rate 37.57 percent greater than its FY 1981 rate.

(2) To compute the amount of a rate under paragraph (c)(1) of this section, multiply the FY 1981 section 3 local contribution rate by 1.3757.

(3) If, during FY 1981, the LEA received additional assistance under section 3(d)(2)(B) or 3(d)(3)(B)(ii) of the Act as well as a regular payment under section 3, the LEA may apply the 37.57 percent increase only to the rate used for determining its regular payment under section 3 for FY 1981.

(d) *"Hold-harmless" Rate for FY 1985 and Subsequent Years.* (1) If the generally comparable LEA method described in § 222.33 results in a regular section 3 rate for the current fiscal year that is at least 10 percent less than an applicant's prior fiscal year regular section 3 rate, the applicant may recommend that its rate for the current fiscal year be 90 percent of its prior fiscal year rate.

(2) To compute the amount of a rate under paragraph (d)(1) of this section, multiply the prior fiscal year section 3 local contribution rate by .90.

(3) If, during the prior fiscal year, the LEA received additional assistance under sections 3(d)(2)(B) or 3(d)(3)(B)(ii) of the Act as well as a regular payment under section 3, the LEA may apply the .90 multiplier only to the rate used for determining its regular payment under section 3 for the prior fiscal year.

(20 U.S.C. 238(d)(3); 242(b))

§ 222.32 Local contribution rate guaranteed by the Act.

(a) Except as provided in paragraph (b) of this section, the local contribution rate guaranteed by the Act is the greater of—

(1) Fifty percent of the average per pupil expenditure in the LEA's State during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed; or

(2) Fifty percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(b) If a rate resulting from paragraph (a)(2) of this section exceeds 100 percent of the average per pupil expenditure in the LEA's State for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed, the Secretary approves a local contribution rate that is equal to that State's average per pupil expenditure for the second preceding fiscal year.

(20 U.S.C. 238(d)(3)(B)

§ 222.33 Identification of generally comparable LEAs.

(a) If an LEA wishes to recommend to the Secretary a rate based on appropriate data from generally comparable LEAs within its State, the SEA for that State shall use data from the second fiscal year preceding the fiscal year for which the local contribution rate is being computed to group all of its LEAs as follows:

(1) *Grouping by Grade Span/Legal Classification Alone.* Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary considers this classification relevant and sufficiently different from grade span within the State.

(2) *Grouping by Grade Span/Legal Classification and Size.* (i) Divide all LEAs into groups by grade span and legal classification, if relevant and sufficiently different. The SEA shall include all applicant LEAs when determining each group.

(ii) List all LEAs within each group in descending order by size as measured by average daily attendance (ADA), placing the LEA with the *largest* ADA at the top of the list. A State that does not tabulate actual annual ADA shall use the same formula for establishing ADA for the purpose of ranking LEAs by size as the Department of Education has approved for the purpose of calculating section 3 payments for applicant LEAs in the State.

(iii) After consultation with the applicant LEAs in the State, divide each group into either two subgroups or three subgroups.

(iv) To determine the subgroups, divide each list at the point(s) that will result in as nearly equal numbers of LEAs in each subgroup as possible, so that no group is more than one LEA larger than any other group.

(3) *Grouping by Grade Span/Legal Classification and Location.* Divide all LEAs into groups by grade span and, if relevant and sufficiently different, legal classification; then subdivide these groups by location, as determined by placement inside or outside a metropolitan statistical area (MSA) as defined by the U.S. Bureau of the Census. The Department of Education will supply SEAs with lists of MSA classifications for their LEAs, and only the classifications on those lists will be recognized by the Department for the purposes of these regulations.

(4) *Grouping by Grade Span/Legal Classification, Size, and Location.* (i) Divide all LEAs into groups by grade span and, if relevant and sufficiently different, legal classification; then subdivide these groups by size (into two or three subgroups for each grade span, as described in paragraph (a)(2) of this section); and further subdivide these groups by location (inside or outside an MSA).

(ii) In using both the size and location factors, the SEA shall subdivide according to the size factor before the location factor.

(b) After applying the following restrictions, the SEA shall compute a local contribution rate according to the provisions of § 222.35 for each group of generally comparable LEAs identified under paragraph (a) of this section:

(1) The SEA shall not, when computing a local contribution rate, include the following heavily impacted LEAs in any group of generally comparable LEAs:

(i) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—20 percent or more of its ADA composed of children identified under section 3(a) of the Act.

(ii) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—50 percent or more of its ADA composed of children identified under section 3(b) of the Act, or under both sections 3(a) and 3(b) of the Act.

(2) The SEA shall not compute a local contribution rate for any group that contains fewer than 10 LEAs.

(c)(1)(i) In the case of an applicant LEA that satisfies the requirements contained in paragraph (c)(2) of this section, the SEA, in consultation with the LEA, may select 10 or more generally comparable LEAs from the group identified under paragraph (a)(2) of this section that includes the applicant LEA.

(ii) An LEA that otherwise meets either of the requirements of paragraph (c)(2) of this section but serves a different span of grades from all other LEAs in its State (and therefore cannot match any group of generally comparable LEAs under paragraph (a)(2) of this section) must be matched, for purposes of this paragraph (c) only, to a group using legal classification and size as measured by ADA. The group identified using legal classification and size will be the applicant's group under paragraph (a)(2) for purposes of this paragraph (c) only.

(2) In order to qualify under paragraph (c)(1) of this section, an applicant LEA must either—

(i)(A) Be composed entirely of Federal property; and

(B) Be raising either no local revenues or an amount of local revenues the Secretary determines to be minimal; or

(ii)(A) Be located in a State where State aid makes up no more than 40 percent of the State average per pupil expenditure in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed;

(B) Have federally connected children identified in the current year under section 3(a) of the Act equal to at least 20 percent of its total ADA; and

(C) Have federally connected children identified in the current year under both sections 3(a) and 3(b) of the Act equal to at least 50 percent of its total ADA.

(3) In the case of an applicant LEA that meets either of the requirements contained in paragraph (c)(2) of this section, the SEA, in consultation with the LEA, may select 10 or more generally comparable LEAs that share one or more common factors of general comparability with the eligible applicant LEA, as follows:

(i)(A) The SEA shall consider one or more generally accepted, objectively defined factors that affect the applicant's cost of educating its children. Examples of such cost-related factors include sparsity of population, an unusually large geographical area, economically depressed areas, low-income families, handicapped children, neglected or delinquent children, low-achieving children, children with limited English proficiency, and minority children.

(B) The SEA shall not consider cost-related factors that can be varied at the discretion of the applicant LEA or its generally comparable LEAs or factors dependent on the wealth of the applicant LEA or its generally comparable LEAs. Examples of factors that shall not be considered include special alternative curricular programs, pupil-teacher ratio, and her pupil expenditures.

(ii) The SEA shall apply the factor(s) of general comparability recommended under paragraph (c)(3)(i) of this section in one of the following ways in order to identify 10 or more generally comparable LEAs for the eligible applicant LEA, none of which may be heavily impacted LEAs:

(A) The SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor(s). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA contains a designated economically depressed area, and the SEA recommends "economically depressed areas" as an additional factor of general comparability. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies two subgroups, those LEAs that contain designated economically depressed areas and those that do not. The entire subgroup identified by the SEA that includes the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

(B) The SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor(s). The SEA then systematically orders all of the LEAs in the group that includes the eligible applicant LEA. The SEA may further divide the ordered LEAs into subgroups by using logical division points (e.g., the median, quartiles, or standard deviations) or a continuous interval of the ordered LEAs (e.g., a percentage or a numerical range). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be

computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA serves an unusually high percentage of handicapped children, and the SEA recommends proportion of "handicapped children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of handicapped children enrolled in each of the LEAs. The SEA divides the list of LEAs into four groups containing equal numbers of LEAs. The group containing the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

Example. An eligible applicant LEA serves an unusually high percentage of minority children, and the SEA recommends proportion of "minority children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of minority children enrolled in each of the LEAs. The SEA chooses from the list of LEAs the 15 LEAs whose percentages of minority children are closest to the eligible applicant LEA's. These 15 LEAs will be the eligible applicant LEA's new group of generally comparable LEAs.

(C) The SEA may recommend and apply more than one factor of general comparability in selecting a new group of 10 or more generally comparable LEAs for the eligible applicant LEA. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data from all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA is very sparsely populated and serves an unusually high percentage of children with limited English proficiency. The SEA recommends "sparsity of population" and proportion of "children with limited English proficiency" as additional comparability factors. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies all LEAs that are sparsely populated. The SEA further subdivides the sparsely populated LEAs into two groups, those that serve an unusually high percentage of children with limited English proficiency and those that do not. The subgroup of sparsely populated LEAs that serve a high percentage of children with limited English proficiency is the eligible applicant LEA's new group of generally comparable LEAs.

(4)(i) Using the new group of generally comparable LEAs selected under paragraph (c)(3) of this section, the SEA shall compute the local contribution rate for the eligible applicant LEA according to the provisions of § 222.35.

(ii) The SEA shall recommend the resulting local contribution rate to the Secretary and provide the Secretary a description of the additional factor(s) of general comparability and the data used to identify the new group of generally comparable LEAs.

(iii) The Secretary reviews the recommended local contribution rate and supporting data and accepts them if the Secretary determines that they meet the purposes and requirements of the Act and this Part 222.

(20 U.S.C. 238(d)(3)(A); 242(b))

§ 222.34 Local contribution rate based on generally comparable LEAs.

(a) In selecting its recommended rate, the LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.33 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* Using State-supplied data, the LEA shall identify within the State the entire group of LEAs (containing at least 10 LEAs exclusive of heavily impacted LEAs) that matches the factor or factors selected in Step 1 and that contains the applicant LEA or would contain the applicant LEA if it were not heavily impacted.

(3) *Step 3.* The LEA shall recommend to the Secretary the local contribution rate, which the SEA has computed according to the provisions of § 222.35, based on the group identified in Step 2.

(b) A heavily impacted LEA is entitled to—

(1) Apply for assistance under the program; and

(2)(i) Recommend as its local contribution rate any type of rate described in § 222.31 for which the LEA is eligible, including a rate based on generally comparable LEAs; and

(ii) Under the generally comparable LEA method, recommend for itself the local contribution rate of any group it would be included in based on grade span/legal classification, size, and/or location, if it were not excluded as heavily impacted in paragraph (b)(1) of § 222.33.

Example. An LEA applies for assistance under section 3 of the Impact Aid Program and wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State.

Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K–8). In the applicant's State, legal classification of LEAs is based on grade span, and thus does not act to further subdivide groups of LEAs.

The ADA of the applicant LEA is above the median ADA of LEAs serving only K–8 in the State.

The applicant LEA is located outside an MSA.

Characteristics of Other LEAs Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.33.

The SEA identifies the following groups:

One hundred and one LEAs serve only K–8. The SEA has identified a group of 50 LEAs having an ADA above the median ADA for the group of 101, one LEA having an ADA at the median, and a group of 50 LEAs having an ADA below the median ADA; and, according to § 222.33(a)(2)(i), the SEA considers 51 LEAs to have an ADA below the median ADA.

Of the 101 LEAs in the group, the SEA has identified a group of 64 LEAs as being inside an MSA and a group of 37 LEAs as being outside an MSA.

Among the group of 50 LEAs having an ADA above the median, the SEA has identified a group of 35 LEAs as being inside an MSA and a group of 15 LEAs as being outside an MSA.

Among the group of 51 LEAs having an ADA at or below the median, the SEA has identified a group of 29 LEAs as being inside an MSA and 22 LEAs as being outside an MSA.

One LEA has 20 percent of its ADA composed of children identified under section 3(a) of the Act and, therefore, must be excluded from any group it falls within before the SEA computes a local contribution rate for the group. This LEA has an ADA below the median ADA and is located outside an MSA.

On the basis of § 222. 35, the SEA computes the local contribution rate for each group of generally comparable LEAs that the SEA has identified.

Selection of Generally Comparable LEAs

The applicant LEA selects the group of generally comparable LEAs matching the factor or factors it wishes to use as the basis for general comparability.

Under the requirements of § 222.33, the applicant LEA must begin with the group that includes all LEAs with its grade span, and, if relevant and sufficiently different, legal classification. In this case, grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs, after excluding the one heavily impacted LEA.

The applicant LEA then has several options:

Option 1. The applicant LEA may select as its group of generally comparable LEAs on which to base its recommended local contribution rate the entire group of 100 LEAs serving K–8, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2. Instead of selecting the group of 100, the applicant LEA may select as its generally comparable group only those LEAs

within the 101 (the heavily impacted LEA must be included initially for the purpose of determining the median ADA) that have an ADA above the median ADA, that is, the group of 50. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 3. Instead of selecting either of the groups described in Options 1 and 2, the applicant LEA may select as its generally comparable group only those LEAs within the 100 that are outside an MSA; that is, the group of 36, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4. Instead of selecting any of the groups described in Options 1, 2, and 3, the applicant LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 101 *and* are outside an MSA; that is, the group of 15. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.33(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have computed a rate for such a group. Therefore, an applicant LEA included in such a group would not be able to use this factor or combination of factors in recommending its local contribution rate to the Secretary.

The heavily impacted LEA, while included for determining the median ADA, is excluded from the computation of any group's local contribution rate. However, the heavily impacted LEA may recommend for itself the local contribution rate of any group it matches in grade span/legal classification, size, and/or location (that is, in the case of the heavily impacted LEA referred to in this example, below the median ADA and outside an MSA), provided the group contains at least 10 LEAs that are not heavily impacted.

(20 U.S.C. 238(d)(3)(A); 242(b))

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, the SEA, subject to the Secretary's review and approval, shall compute a local contribution rate for each group of generally comparable LEAs within its State that was identified using the factors in § 222.33, as follows:

(a)(1) The SEA shall compile the aggregate local current expenditures of the comparable LEAs in each group for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the generally comparable LEAs from revenues derived from local sources. No State or Federal funds may be included.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs in each group provided a free public education during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for additional assistance under section 3(d)(2)(B) of the Act, as well as applying for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(d) In the case of an applicant that recommends the "hold-harmless" rate, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the group of LEAs that produces the highest regular section 3 rate under the generally comparable LEA method, as described in § 222.33(a); and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(20 U.S.C. 238(d)(2)(B); 242(b))

§ 222.37 Determination of compensation for unusual geographical factors.

(a) The Secretary may determine, after reviewing the data provided under paragraph (c) of this section, that an applicant LEA cannot provide a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based because the applicant's current expenditures are affected by unusual geographical factors, and, as a result, those current expenditures are not reasonably comparable to the current expenditures of the generally comparable LEAs.

(b) If the Secretary makes the determination in paragraph (a) of this section, the Secretary increases the applicant LEA's local contribution rate up to the amount the Secretary determines will compensate the applicant for the increase in its current expenditures necessitated by the unusual geographical factors, but no more than is necessary to allow the applicant to provide a level of education equivalent to that provided by its generally comparable LEAs.

(c) When applying for compensation under this section, an applicant shall provide the Secretary the following information—

(1) A specific description of the unusual geographical factors on which the applicant is basing its request for compensation under this section, and objective data demonstrating that the applicant is more severely affected by these factors than any other LEA in its State;

(2) Objective data demonstrating the specific ways in which the unusual geographical factors affect the applicant's current expenditures so that they are not reasonably comparable to the current expenditures of the generally comparable LEAs on which the applicant's local contribution rate is based;

(3) Objective data demonstrating the specific ways in which the unusual geographical factors prevent the applicant from providing a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based;

(4) Objective data demonstrating that the applicant's fiscal effort per student based on expenditures of State and local revenues for the provision of free public education in the preceding fiscal year was at least equal to the same fiscal effort per student for the second preceding fiscal year; and

(5) Any other information that the Secretary may reasonably require to

make the determination under paragraph (a) of this section.

(d) The Secretary does not provide compensation under section 3(d)(3)(B)(ii) to an applicant in a State that takes such compensation into account in an equalization program that qualifies under section 5(d)(2) of the Act.

(20 U.S.C. 238(d)(3)(B)(ii); 242(b))

Appendix—Summary of Comments and Responses to the Interim Final Regulations

Note.—This appendix will not be codified in the Code of Federal Regulations.

Part 222—Impact Aid Program

General

A number of individual commenters, as well as a spokesperson for the SEA of a State with 53 applicants, a spokesperson for a State-wide Impact Aid association representing 245 applicants, and the director of the national Impact Aid association, indicated their support for the interim final regulations because they provide a more equitable distribution of Impact Aid funds. Other specific comments follow.

Comment. One commenter stated that "adoption of these regulations will cause severe economic hardship to heavily impacted districts throughout the United States."

Response. No change has been made. The effect of these regulations is quite the opposite of what this commenter suggests. The local contribution rates of 46 percent of all heavily impacted LEAs are either increased or not affected by the new generally comparable LEA rate policy in the regulations. Of the 579 heavily impacted LEAs in 1984 (those LEAs whose "a" children equal at least 20 percent of their total ADA or whose "b" children equal at least 20 percent of their total ADA, or both), 392 LEAs, 68 percent of the total, requested the minimum rate guaranteed by the Act. The rates of these LEAs were not affected by the new rate policy. One hundred and four LEAs, 18.0 percent of the total, requested rates under the generally comparable LEA method in the regulations. Presumably, the rates of these LEAs are higher under the new policy. The remaining 83 LEAs, 14 percent of the total, requested rates under the 1984 "hold-harmless" provision. Presumably, the rates of these LEAs would have been lower under the new rate policy.

Comment. One commenter suggested that there be a graduated payment scale for the program so that there would not be an abrupt change in payment levels from those LEAs with 20 percent "a" children or 20 percent "b" children to those with fewer than 20 percent "a" children or 20 percent "b" children. The commenter gave as an example of this alternative the following scale:

Percent of Federal children ("a" or "b")	Percent of entitlement to be paid
25 to 100	[illegible]
20 to 24	85
15 to 19	75
0 to 14	(1)

(1) Prorated to available funds.

Response. No change has been made. This suggestion cannot be implemented in these proposed regulations, because it would require an amendment to the Act.

Comment. One commenter objected to the $5,000 minimum payment provision, which has prevented his LEA from receiving any funds since fiscal year (FY) 1981.

Response. No change has been made. The minimum payment provision was implemented through legislative action by the Congress. In many cases, payments of small amounts are not cost effective—the expenses incurred by LEAs and SEAs in filing Impact Aid applications and those incurred by the Department in processing applications are greater than the payment amounts. The $5,000 minimum payment provision has been implemented through appropriation legislation by the Congress and cannot be dealt with in these regulations.

Comment. One commenter objected to the classification of the regulations as "non-major" under Executive Order 12291 (46 FR 13193, February 19, 1981).

Response. No change has been made. The commenter did not base his disagreement on evidence that the regulations met one of the three specific criteria found in the definition of a "major rule" in section 1(b) of the Executive Order. Instead, the commenter believed that the regulations reflected major policy or methodological changes. The Secretary therefore affirms the classification of the regulations as non-major rules under Executive Order 12291.

Comment. One commenter disagreed with the Secretary's certification that the regulations would not have a significant economic impact on a substantial number of small LEAs.

Response. No change has been made. These regulations propose a "hold-harmless" provision for FY 1985 and subsequent years under which no applicant would be required to absorb more than a 10 percent reduction from its prior year's local contribution rate. This provision will minimize the economic impact of these proposed regulations on small LEAs; however, only approximately 10 percent of all Impact Aid recipients are expected to take advantage of the "hold-harmless" provision. The Secretary believes that this can be taken as evidence that the remaining 90 percent of the program's recipients are either not affected by the generally comparable LEA method, or that their rates, and thus their payments, increase under the method.

Section 222.30 Determination of local contribution rates: general.

Comment. One commenter noted that § 222.30(c) requires LEAs enumerated in section 3(d)(3)(B)(iii) of the Act to use the rate guaranteed by the Act. The commenter objected to this restriction and suggested that a new section be added to the regulations which would allow the Secretary to modify the procedures for establishing local contribution rates for these LEAs on a case-by-case basis.

Response. A change has been made. Section 3(d)(3)(B)(iii) of the Act provides that the Secretary shall establish the local contribution rate for LEAs in the territories, in States with substantial unorganized territory, and in States having a single LEA. The Secretary was given this discretion apparently because it was thought to be difficult or impossible to identify generally comparable LEAs for applicants in those areas. The Department determined that the previously used group and individually selected comparable district rate methods could not be applied meaningfully to these LEAs, and they were assigned the rate guaranteed by the Act. The Secretary believes that the broad objective criteria contained in the new generally comparable LEA method in §§ 222.33 and 222.34 can be used to identify appropriate groups of generally comparable LEAs for applicants in States with substantial unorganized territory. However, the Secretary also believes that it is not possible to identify generally comparable LEAs for the remaining LEAs listed in section 3(d)(3)(B)(iii) and payments to LEAs in States or territories in which there is only one LEA will continue to be based on the rate guaranteed by the Act. It is not necessary to add a new section to the proposed regulations to accomplish the change being made.

Section 222.31 Recommendation of local contribution rate.

Comment. A number of commenters suggested that a "hold-harmless" provision should be available not only in FY 1984 but in subsequent years as well. One commenter requested that

such a provision be continued from year to year until the rate guaranteed by the Act has increased to the extent that the "hold-harmless" provision can be phased out. The commenter believed that this transition period would allow LEAs to trim expenses and make other adjustments in their budgets without disruption. Another commenter recommended that LEAs having received "grossly excessive" local contribution rates in the past be allowed "hold-harmless" rates in FY 1985 of up to 125 percent of the rate guaranteed by the Act. A third commenter suggested that the "hold-harmless" provision could be calculated by adjusting FY 1981 rates that were higher than the rate guaranteed by the Act by an inflation factor each year through FY 1989.

Response. A change has been made. The Secretary has decided that a "hold-harmless" provision should be available in FY 1985 and future years to enable LEAs to continue to make the transition to the generally comparable LEA rate method. Beginning in FY 1985, an LEA can recommend to the Secretary a rate that is 90 percent of its prior year's regular section 3 rate. Thus, no LEA would be required to absorb more than a 10 percent reduction from its prior year's rate. Because the "hold-harmless" provision would produce a predictable local contribution rate from year to year, LEAs choosing to use this rate should be able to plan better their expenditures for the coming year and avoid budgetary disruption. The Secretary decided against the two specific methods of calculating "hold-harmless" rates suggested by the commenters because one would perpetuate unfairly high rates for some LEAs at the expense of others, and neither would help LEAs receiving such rates make the transition to the generally comparable LEA rate method.

Comment. One commenter asserted that rates calculated under the FY 1984 "hold-harmless" provision were inconsistent with "applicable law." The commenter also found it unfair to applicants eligible for additional assistance under section 3(d)(2)(B) of the Act that the percentage increase allowed under the "hold-harmless" provision was applied only to a regular section 3 rate and not to a section 3(d)(2)(B) rate.

Response. No change has been made. The Secretary decided to add a "hold-harmless" provision to the interim final regulations in response to numerous public comments on the notice of proposed rulemaking (NPRM) published on March 30, 1984. The commenters stated that LEAs that had received a rate higher than the rate guaranteed by the Act in 1981 needed some type of "hold-harmless" provision to enable those LEAs to make the transition to the Department's generally comparable LEA method without budgetary disruption. In FY 1981, regular section 3 rates other than the rate guaranteed by the Act were established using SEA-selected groups of LEAs or using individually selected comparable districts (ISCDs). The Department's procedure known as the "$50 rule" was an integral part of the administration of the ISCD method.

The Secretary determined that the LEAs that had used the group and ISCD methods in FY 1981 needed a chance to adjust to the rates established under the Department's new method and that a "hold-harmless" provision should be available, based on those FY 1981 rates. Accordingly, the interim final regulations provided that in FY 1984 an applicant could request a rate calculated by increasing its regular section 3 rate for FY 1981 by the same percentage as the rate guaranteed by the Act (based on the national average per pupil expenditure) increased from FY 1981 to FY 1984. This procedure was fair to LEAs that has used the group and ISCD rates in FY 1981, because it was based on the higher rates upon which some applicants had come to depend. However, it was also fair to the remaining applicants that used the rate guaranteed by the Act because, while those higher FY 1981 rates increased, they were only allowed to increase by a reasonable amount.

The Secretary does not believe that basing the "hold-harmless" provision on rates established using the "$50 rule" violates any "applicable law." The court decision regarding the "$50 rule" is now on appeal. The Department continues to believe that the "$50 rule" is a valid method under the Act and previous regulations for determining which LEAs are generally comparable to an applicant. Further, in appropriation legislation, the Congress based payments for FYs 1982 and 1983 on the FY 1981 payments. By basing regular section 3 rates under the "hold-harmless" provision on FY 1981 rates, the Department is adapting Congressional policy for the purposes of these regulations.

The Secretary does not believe that it would be consistent with section 3(d)(2)(B) of the Act to calculate a "hold-harmless" rate by applying a percentage increase to an applicant's section 3(d)(2)(B) rate. Payments under this section are made to certain heavily impacted applicants to enable them to provide a level of education equivalent to that provided by their generally comparable LEAs. In general, once the threshold eligibility requirement has been met, final eligibility for and the amount of these payments are established if the applicant can demonstrate financial need. The applicant's financial need is assessed on the basis of current fiscal data, rather than the two-year old data on which regular section 3 local contribution rates are based. Establishing a section 3(d)(2)(B) rate by increasing a prior year's rate by a specified percentage would eliminate the assessment of the applicant's need required by the statute. In addition, this calculation might reduce the amount of the applicant's payment because the applicant's need might have increased by more than the specified percentage.

Section 222.33 Identification of generally comparable LEAs.

Comment. One commenter repeated an earlier objection that the interim final regulations and the new generally comparable LEA method are a "complete and dramatic departure" from the previous regulations and are therefore inconsistent with and in violation of the Act.

Response. No change has been made. These proposed regulations implement the statutory requirement that the Secretary identify LEAs generally comparable to the applicant and are consistent with the previous regulations. All of the factors in these regulations used to determine general comparability are found in the previous regulations as well as in the legislative history. In keeping with the legislative history, both regulations include the concept of basing local contribution rates on larger groups of LEAs.

Comment. A number of commenters contended that the requirement that every group contain at least 10 LEAs is arbitrary and too restrictive. Suggestions for a minimum of five or three were offered.

Response. No change has been made. The legislative history indicates the Congress' belief that the larger the number of comparable LEAs on which a local contribution rate is based, the more objective and equitable the resulting rate will be. A minimum of 10 LEAs per group was established to be consistent with the legislative intent and to achieve confidence in the objectivity of the calculated local contribution rates.

Comment. Six commenters stated that grouping LEAs by size into only two groups would result in LEAs with major differences in ADA being identified as "generally comparable." The commenters generally suggested that

LEAs be divided into thirds or fourths instead of into halves. Another commenter maintained that even dividing LEAs into fourths would produce groups that are too large and local contribution rates that do not reflect the great differences in the capacity of individual LEAs to raise local revenues.

Response. A change has been made. The proposed regulations permit an SEA, after consultation with the applicant LEAs in the State, to divide the LEAs by size into halves *or* thirds. This change is designed to provide greater flexibility in determining groups of generally comparable LEAs. States with large numbers of LEAs will be able to subdivide their groups into thirds in order to have groups of generally comparable LEAs with less variation in size within the groups. At the same time, States with fewer LEAs will be able to continue to use the median to subdivide their groups into halves.

The suggestion that LEAs be divided into fourths was not adopted because in many cases it would produce groups that contain too few LEAs. Groups that are too small are not consistent with the intent expressed in the legislative history.

Comment. One commenter asked that the number of groups not be increased because of the possible adverse effect on States with relatively few LEAs.

Response. A change has been made. While the proposed regulations provide that LEAs may be divided into thirds as well as into halves, the choice of whether to divide LEAs into halves or thirds is left to the discretion of the SEA in consultation with the applicant LEAs in the State.

Therefore, this change in the proposed regulations will not adversely affect States with small numbers of LEAs.

Comment. One commenter again asserted that ADA will, in effect, be the only criterion used to identify generally comparable LEAs.

Response. No change has been made. The generally comparable LEA method in these regulations is based on a number of factors of general comparability including grade span, legal classification (if the Secretary regards this classification as relevant and sufficiently different from grade span within the State), size as measured by ADA, and location as determined by metropolitan status. No option in these regulations uses ADA as the only factor on which comparability is determined.

Comment. One commenter suggested that an SEA should not be required to apply "grade span" as a comparability factor in identifying a group of generally comparable LEAs for a coterminous applicant LEA if the coterminous applicant has a different grade span from every other LEA in its State.

Response. A change has been made. Because the Secretary believes that the circumstances of heavily impacted coterminous LEAs deseve special consideration, an SEA would be given some additional flexibility in selecting a group of generally comparable LEAs for coterminous applicants under the provisions of § 222.33(c). In the case where a coterminous applicant LEA has a different grade span from all other LEAs in its State, the SEA may select generally comparable LEAs for the coterminous applicant from the group of LEAs that match the coterminous applicant in legal classification as well as size as measured by ADA.

Comment. Several commenters suggested that the generally comparable LEA method should be changed to enable an aplicant to select a small number of LEAs that would, as one commenter phrased it, "most closely resemble the applicant's situation had the applicant not been subjected to the federal presence." One commenter suggested that this change should be applied only to small LEAs (less than 800 students) serving grades K–12. Another commenter thought that heavily impacted LEAs were most in need of this change.

Response. No change has been made. These commenters seem to be suggesting that an applicant should be allowed to base its local contribution rate on LEAs that are the "most nearly comparable" to the applicant. The "most nearly comparable" standard was used for a short period of time early in the history of the Impact Aid program. However, since 1958, the Act has specified that "generally comparable" LEAs must be identified and the task of defining "generally comparable" has been placed within the Secretary's discretion. The Secretary has determined that, for the purposes of these regulations, the term "generally" should be interpreted to mean that comparability is determined by taking an overall view of LEAs' shared basic circumstances. The broad objective factors contained in the generally comparable LEA method are appropriate measures of these basic circumstances and therefore of *general* comparability.

Comment. Six individual commenters, the director of the national Impact Aid association, and the spokesperson for one SEA writing on behalf of 53 applicants in its State asked that the interim final regulations be amended to provide additional flexibility in identifying generally comparable LEAs for certain "unique" or "exceptional" applicants. The commenters generally defined an "exceptional" applicant as one whose ADA consists of at least 50 percent federally connected students, at least 20 percent of whom are category "a" students, and that is located in a State which provides a low level of State aid for education. Some commenters suggested that the State should be providing less than 50 percent of educational costs on average, and others suggested less than 40 percent.

One commenter believed that "exceptional" LEAs should be limited to those heavily impacted LEAs serving fewer than 800 students in grades K–12. Another suggested that, in addition to the general criteria, an "exceptional" LEA is one that is raising a low percentage of its funds from local sources. One commenter suggested that an LEA should be considered "exceptional" if it is located in a State providing less than 50 percent of total current operating expenditures and meets two of the following three conditions: the LEA's enrollment is composed of 50 percent federally connected students; the Federal Government owns property whose aggregate worth equals 25 percent of the total assessed value of all real property in the LEA *or* the LEA qualifies for additional assistance under section 3(d)(2)(B); or 25 percent of the LEA's students are economically disadvantaged as that term is defined in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA).

While some commenters only offered criteria for identifying "exceptional" applicants, others offered various proposals for selecting generally comparable LEAs on which to base the local contribution rates of these applicants. One commenter suggested that once an "exceptional" applicant has been identified, it should be allowed to choose a minimum of 10 LEAs that are within plus or minus 200 of the applicant's ADA. Another believed than an "exceptional" applicant should choose not more than five LEAs from its group identified under § 222.33(a)(2). A third commenter recommended that an "exceptional" applicant should be allowed to pick any 10 LEAs from its group identified under § 222.33(a)(4), as the LEAs that are coterminous with military reservations did in FY 1984. One commenter suggested that an "exceptional" applicant should select five LEAs which share at least three of the following five characteristics, in addition to the same grade span and legal classification: enrollment within

500 students or 10 percent of the "exceptional" applicant's, whichever is less; enrollment per square mile within 10 percent of the "exceptional" applicant's; pupil-teacher ratio within five pupils of the "exceptional" applicant's; tax effort not more than 10 percent higher than the "exceptional" applicant's; or cost of transportation for educational purposes within 10 percent of the "exceptional" applicant's.

Response. A change has been made. In developing the generally comparable LEA method, the Department attempted to devise a procedure for identifying generally comparable LEAs that was based on objective factors that affect educational costs and that produced fair results on a national scale. The Secretary believes the method contained in the interim final regulations largely achieves the goal of equitably distributing funds under the Impact Aid program, a belief the comments indicate many applicants share. However, while believing the method fair, the Department was aware that in developing rules of general applicability the legitimate concerns of some LEAs might be overlooked. The comments submitted in response to the interim final regulations reveal that such legitimate concerns exist, and the Secretary has determined that they should be addressed.

There is a group of LEAs whose circumstances appear to be inadequately addressed by the four standard options under the generally comparable LEA method. A number of commenters agreed on the basic identifying characteristics of this group. The LEAs in this group are heavily impacted, having at least 50 percent federally connected students, a high proportion of whom are category "a" students. These LEAs are also located in States which provide, on the average, 40 percent or less of the cost of education.

The Secretary believes that the Federal presence places a greater burden on this group of heavily impacted LEAs than is placed on other LEAs. Large numbers of federally connected students, especially category "a" students, combined with Federal ownership of real property in an LEA can result in a reduction in the local revenues per student available to an LEA for educational purposes. Such a reduction in local revenues can be compensated for if the LEA is in a State which provides a relatively large amount of support for education. If the LEA is located in a State which provides a relatively small amount of support, however, the LEA has fewer options for making up these reduced local revenues. Because such an LEA has fewer options from which to choose in meeting its greater burden, the Secretary has determined that these proposed regulations should include a provision that allows more flexibility in identifying generally comparable LEAs under these circumstances.

A new § 222.33(c) has been added to these proposed regulations to address the needs of the LEAs whose circumstances the Secretary has determined warrant special consideration. The new section will include LEAs whose boundaries are coterminous with the boundaries of Federal property. This category of LEA has been expanded from the interim final regulations to include LEAs that are coterminous with all types of Federal property and not only those coterminous with Federal military property.

The new § 222.33(c) will apply also to LEAs with at least 50 percent federally connected students, at least 20 percent category "a" students, located in States where State aid makes up no more than 40 percent of the State average per pupil expenditure. The SEA, in consultation with an applicant eligible under this section, will select at least 10 generally comparable LEAs from the group identified under § 222.33(a)(2) that includes the applicant. The SEA must use generally accepted, objective factors that affect the applicant's cost of educating its children to identify the applicant's group of generally comparable LEAs. The SEA will compute the applicant's local contribution rate using data from all of the LEAs in the applicant's group. The SEA will then recommend the resulting rate to the Secretary and will submit with its recommendation data supporting the factors and the method used to choose the applicant's group of generally comparable LEAs. The Secretary will review the recommended rate and supporting data and will approve them if the Secretary determines they meet the purpose of the Act and the regulations.

This procedure is modeled as one commenter suggested it should be, after the procedure contained in the former § 222.33(c) in the interim final regulations, which applied to LEAs coterminous with Federal military property. Borrowed from the former provision is the concept of allowing the SEA and LEA to identify the applicant's generally comparable LEAs by further subdividing a larger group identified under one of the standard options in the generally comparable LEA method. Instead of option 4, however, the new provision uses option 2, under which LEAs are subdivided by grade span, legal classification (if relevant and sufficiently different), and size. Using the option 2 group will give applicants and their SEAs more flexibility by making available a larger group from which to choose generally comparable LEAs.

The new provision includes for the first time a general procedure to be followed by the SEAs and applicants in identifying the applicants' generally comparable LEAs. This procedure ensures that objective, cost-related factors will be used to identify LEAs under this section, as under the four standard options of the generally comparable LEA method. As one commenter stated, this procedure would provide "uniformity in the method of establishing exceptionality, and would eliminate the previous practice in which districts generate additional aid based on self-defined exceptionality."

It is equitable to apply the same procedure to all the LEAs whose circumstances the Secretary has determined warrant special consideration. All these LEAs are greatly burdened by the Federal presence in their districts and have a limited ability or no ability to compensate for the reduction in or elimination of local revenues resulting from this burden. The Secretary believes there is enough flexibility in the new procedure to address the circumstances of both types of LEAs. Applicants eligible to use this procedure will be allowed to choose the factor(s) of general comparability most appropriate to their circumstances.

However, the public is invited to submit substantive comments regarding the practical application of this procedure. If the procedure does not adequately address the circumstances of the applicants to whom it applies, the Secretary would like specific suggestions for an alternative based on objective factors that would be more responsive.

The Secretary decided for several reasons not to adopt the commenters' other suggestions concerning either which applicants should be considered "exceptional" or what procedure should be used to identify generally comparable LEAs for those applicants.

The Secretary did not want to limit this "exceptional" category to LEAs serving 800 students or fewer in grades K–12, as one commenter suggested. Such a limit would unfairly eliminate from consideration LEAs serving larger numbers of students that are likely to be at least as burdened by the Federal

presence as smaller LEAs. The Secretary also decided to set the level of State aid at 40 percent rather than at 50 percent as two commenters requested. Because the generally comparable LEA method works well for the majority of applicants, the Secretary believes that § 222.33(c) should address the circumstances of a very small number of LEAs that are not adequately treated under the four standard options.

Restricting § 222.33(c) is in keeping with one commenter's statement that there should be a "strict test of 'exceptionality'." If the 50 percent level of State aid were to be used, LEAs in approximately half of the States could qualify for special consideration. The provision would then apply to heavily impacted LEAs in an average situation, defeating the purpose of addressing the circumstances of "exceptional" LEAs.

Another commenter suggested that "exceptional" LEAs include those that qualify for additional assistance under section 3(d)(2)(B) of the Act, or contain Federal property with a value equal to 25 percent of the assessed value of all property in the LEA, or have disadvantaged students as defined under Chapter 1 of the ECIA equal to at least 25 percent of the LEA's total ADA. While all of these LEAs may qualify under the new procedure, there is no reason to make the first two circumstances eligibility requirements under § 222.33(c). In both cases LEAs could already be receiving additional compensation for their circumstances, either under section 3(d)(2)(B) or under section 2 of the Act. The third circumstance, involving disadvantaged children, is not appropriate as a threshold criterion of eligibility because serving disadvantaged children is unrelated to the purpose of the Impact Aid program. Such children may be federally connected as defined in the Act but, for the most part, Federal activities have not brought them into the LEAs. LEAs already receive assistance to provide services for these children under another program. An LEA eligible under § 222.33(c) may use the presence of a large proportion of disadvantaged students as a factor of general comparability, however.

Commenters' suggestions regarding the method of identifying generally comparable LEAs for "exceptional" applicants generally were not adopted because they either did not give any guidance regarding the standards that should be used or they involved factors that were too limited. The Secretary determined that an applicant should not simply select any 10 LEAs from the group identified under § 222.33(a)(4) that includes the applicant. Since this group would not include the required minimum number of 10 LEAs for some applicants, these otherwise eligible applicants would not be able to benefit from § 222.33(c). Also, this option does not provide any guidance concerning the standards the Secretary believes should be used to identify generally comparable LEAs.

The Secretary also rejected a procedure containing six different criteria from which an applicant could choose to identify its generally comparable LEAs. The criteria suggested are inappropriate because they are not broad enough to include all the possible situations faced by "exceptional" applicants. Some of them, such as pupil-teacher ratio, are objectionable because they can be controlled at the discretion of the applicant. An approach similar to this was considered by the Department briefly several years ago and was found unsatisfactory.

Comment. One commenter said that the metropolitan versus rural classification totally ignores the suburban group, which is a significant grouping for LEAs. Pupils, salaries, resources, and courses of study are different in city and suburban LEAs and therefore a suburban classification should be used in determining comparability.

Response. No change has been made. The Secretary does not believe that the differences between urban and suburban school districts are significant for the purposes of these regulations. Based on data compiled by the U.S. Bureau of the Census, urban and suburban communities are grouped together as a metropolitan area because they share certain basic economic characteristics. As a result, the Secretary believes that the LEAs in these urban and suburban communities share basic characteristics that are relevant to the determination of general comparability.

Comment. One commenter (speaking for almost 300 superintendents in his State and the SEA) urged that any generally comparable LEA method of establishing local contribution rates be eliminated and a study be conducted to determine " 'actual' local contributions and a simple method to determine the relative necessary federal assistance." The commenter made this suggestion because, although these regulations "will greatly reduce the gross injustices of excessive rates under the previous reg[ulation]s, . . . the alternatives offered under the minimum rate are the most equitable."

Response. No change has been made. The Act authorizes the Secretary to establish local contribution rates for applicants based on fiscal and pupil attendance data from generally comparable LEAs, except that such rates may not be less than the rate guaranteed by the Act. The Act requires the Secretary to make the final determination regarding which LEAs are generally comparable to the applicant. The Secretary believes that the generally comparable LEA method for determining local contribution rates contained in these proposed regulations is fair and equitable and is consistent with the Act and the legislative history.

Section 222.35 Computation of local contribution rates.

Comment. One commenter stated that some exorbitant rates, beyond the districts' needs, are still possible under the revised regulations, resulting in these districts' benefitting unfairly at the expense of others. The commenter felt that such rates should be identified and prevented.

Response. No change has been made. The Secretary is required to use the formula in section 3(d)(3)(A) of the Act to compute an applicant's regular section 3 local contribution rate. This formula does not attempt to establish the extent of an applicant's "need." Rather, it attempts to establish the approximate amount per student contributed by local taxpayers in generally comparable LEAs toward the cost of elementary and secondary education.

Comment. One commenter asked that payments be based on all students enrolled in a district rather than those in average daily attendance. The commenter stated that a district's expenses are the same whether students are present or absent.

Response. No change has been made. The Act specifically directs that entitlements be computed on the basis of federally connected in average daily attendance.

Comment. Three commenters asked for a clarification of the term "revenue derived from local sources." One asked that the regulations further clarify that Federal as well as State funds are excluded from local revenues. Two were particularly concerned about the classification and treatment of funds collected by the State and returned to the local jurisdictions in which they were collected.

Response. A change has been made regarding the first concern. Section 222.35(a)(2) has been changed to indicate that neither State nor Federal funds may be considered local revenues.

Regarding the second concern, for purposes of the Impact Aid program, the Secretary will use the same guidelines to determine sources of revenue as are used by the National Center for Education Statistics for its annual collection of data on school district revenues and expenditures. In addition, § 222.3(1) of the Impact Aid regulations explains how to treat funds collected by the State and returned to local jurisdictions.

Section 222.37 Determination of compensation for unusual geographical factors.

Comment. One commenter objected to the deletion of the regulation implementing section 3(d)(3)(B)(ii) of the Act which provides additional compensation to certain LEAs whose current expenditures are affected by unusual geographical factors.

Response. A change has been made. The Secretary is proposing a new § 222.37 implementing section 3(d)(3)(B)(ii) of the Act that contains a more explicit statement of the standards the Secretary uses to determine an applicant's eligibility for compensation under this section of the Act. The new provision is intended to clarify the Department's existing policy regarding this section of the Act.

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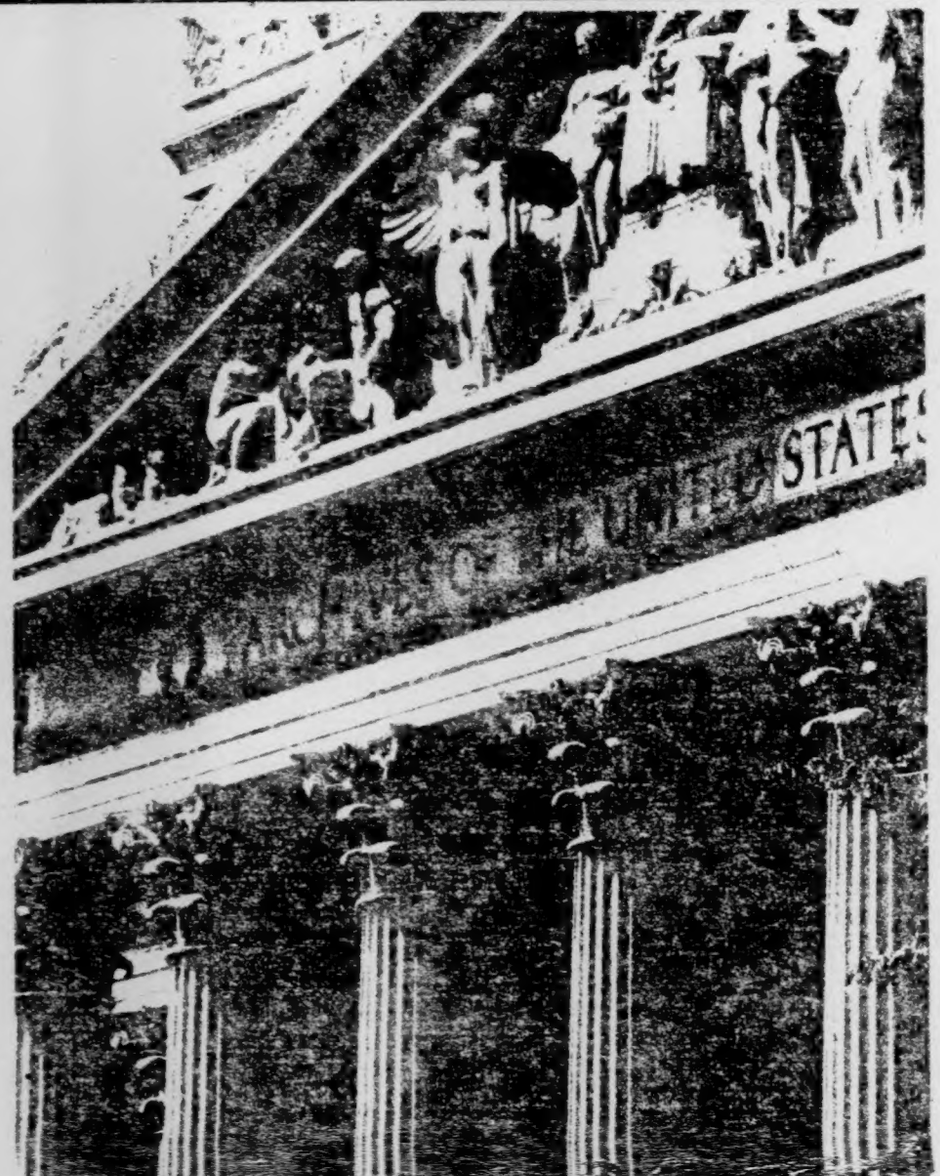
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